



**AGENDA
REGULAR CITY COUNCIL
CITY OF LEANDER, TEXAS**

Pat Bryson Municipal Hall
201 North Brushy Street ~ Leander, Texas



Thursday ~ July 7, 2016 at 7:00 PM

**Mayor – Christopher Fielder
Place 1 – Andrea Navarrette
Place 2 – Michelle Stephenson
Place 3 – Shanan Shepherd**

**Place 4 – Ron Abruzzese (Mayor Pro Tem)
Place 5 – Jeff Seiler
Place 6 – Troy Hill
City Manager – Kent Cagle**

1. Open meeting, Invocation, Pledges of Allegiance
2. Roll Call
3. Staff Comments:
4. Citizen Comments: Three (3) minutes allowed per speaker
Please turn in speaker request form before the meeting begins

CONSENT AGENDA: ACTION

5. Approval of the minutes: June 16, 2016
6. Dedication and Acceptance of Subdivision Infrastructure Improvements for Borho Phase 8
7. Dedication and Acceptance of Circle Diamond – Offsite Waterline Extension
8. Dedication and Acceptance of Subdivision Infrastructure Improvements for Mason Ranch, Phase 2 Section 2B

PUBLIC HEARING: ACTION

9. **Public Hearing** on Zoning Case 15-TOD-Z-030 and Subdivision Case 15-TOD-CP-009: Consider rezoning and approval of the Tylerville Commercial Concept Plan and PUD Zoning of 11.221 acres, more or less, for a tract of land generally located to the southwest of the intersection of San Gabriel Parkway & US Hwy 183 from PUD, Planned Unit Development to an amended PUD to include the base zoning districts of GC-3-A, General Commercial, GC-2-A, General Commercial and LC-2-A, Local Commercial, Leander, Williamson County, Texas
Applicant/Agent: Bill Pohl on behalf of Waterstone Tylerville, LP

Action on Zoning Case 15-TOD-Z-030 and Subdivision Case 15-TOD-CP-009: Rezoning and approval of the Tylerville Commercial Concept Plan and PUD Zoning of 11.221 acres, more or less, for a tract of land generally located to the southwest of the intersection of San Gabriel Parkway & US Hwy 183 from PUD, Planned Unit Development to an amended PUD to include the base zoning districts of GC-3-A, General Commercial, GC-2-A, General Commercial and LC-2-A, Local Commercial, Leander, Williamson County, Texas

10. **Public Hearing** on Ordinance Case 16-OR-001: Consider amending sections of the Composite Zoning Ordinance, to add definitions, update the use components, to modify setbacks for commercial fueling, to update requirements for screening, to update the parking requirements table, to modify residential setbacks, to clarify requirements for drainage and detention facilities, to modify outdoor lighting requirements, to update the architectural standards, to update the site development standards

Action on Ordinance Case 16-OR-001: amending sections of the Composite Zoning Ordinance, to add definitions, update the use components, to modify setbacks for commercial fueling, to update requirements for screening, to update the parking requirements table, to modify residential setbacks, to clarify requirements for drainage and detention facilities, to modify outdoor lighting requirements, to update the architectural standards, to update the site development standards

11. **Public Hearing** on Ordinance Case 16-OR-002: consider amending sections of the Subdivision Ordinance, to add definitions, to modify provisions for the protection of riparian corridors, to modify requirements associated with construction plans; to update tree preservation plan requirements, to modify private street standards, and to clarify the park land dedication requirements

Action on Ordinance Case 16-OR-002: amending sections of the Subdivision Ordinance, to add definitions, to modify provisions for the protection of riparian corridors, to modify requirements associated with construction plans; to update tree preservation plan requirements, to modify private street standards, and to clarify the park land dedication requirements

REGULAR AGENDA

12. Consider an Ordinance regarding Donation Drop Boxes
13. Consider Task Order WAL-1 with Walker Partners Engineering, Inc. for Design, Bidding, and Construction Phase Professional Services for Raider Way and E. Woodview Drive
14. Consider amendment to Task Order HWL-1 with H. W. Lochner, Inc. for professional services for Bagdad Road North Improvements
15. Consider a variance to allow for construction activities outside of the normal hours of 7am and 9pm for Suddenlink Communications on the Old 2243 Project
16. Consider approval of an amendment to the Sales Tax Rebate Agreement for the Gateway Shopping Center between the City of Leander and Hayden Asset I, LLC, a Delaware limited liability company
17. Consider Acceptance of a Community Development Block Grant for the construction of a sidewalk on the east side of Bagdad Road
18. Consider Development Agreement Case 15-DA-006: Consider approval of a development agreement between the City of Leander, Sixth Street Capital, LLC, a Texas limited liability company, and Devine Land Investments, LLC, a Nevada limited liability company for 208 acres more or less, generally located at southwest of the intersection of Bagdad Road and the future extension San Gabriel Parkway; City of Leander, Williamson County, Texas
19. Council Member Closing Statements

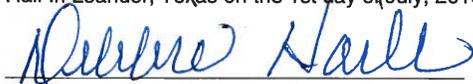
EXECUTIVE SESSION

20. Convene into executive session pursuant to Section 551.072 Texas Government Code, related to proposed settlement of eminent domain litigation regarding the purchase and/or value of real property. to wit: a 5.217 acre tract owned by Gary and Cathy Gross

21. Reconvene into open session to take action as deemed appropriate in the City Council's discretion related to proposed settlement of eminent domain litigation regarding the purchase and/or value of real property, to wit: a 5.217 acre tract owned by Gary and Cathy Gross
22. Consider a resolution authorizing the City Manager to release funds totaling \$840,380 to effectuate final settlement of pending eminent domain litigation to acquire a 5.217 acre tract owned by Gary and Cathy Gross ("Gross") and also to execute a Declaration of Covenants, Conditions and Restrictions concerning the 5.217 acre tract for a deep water intake maintenance site, on terms subject to review and approval by the City Attorney and Special Counsel.
23. Adjournment

CERTIFICATION

This meeting will be conducted pursuant to the Texas Government Code Section 551.001 et seq. At any time during the meeting the Council reserves The right to adjourn into executive session on any of the above posted agenda items in accordance with the sections 551.071 [litigation and certain Consultation with attorney], 551.072 [acquisition of interest in real property], 551.073 [contract for gift to city], 551.074 [certain personnel deliberations Or 551.076 [deployment/implementation of security personnel or devices]. The City of Leander is committed to compliance with the American with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request. Please call the City Secretary at (512) 528-2743 for information. Hearing impaired or speech disabled persons equipped with telecommunication devices for the deaf may call (512) 528-2800. I certify that the above agenda for this meeting of the City Council of the City of Leander, Texas, was posted on the bulletin board at City Hall in Leander, Texas on the 1st day of July, 2016 by 5:00 pm pursuant to Chapter 551 of the Texas Government Code



Debbie Haile, TRMC, City Secretary



**MINUTES
REGULAR CITY COUNCIL
CITY OF LEANDER, TEXAS**

Pat Bryson Municipal Hall
201 North Brushy Street ~ Leander, Texas



Thursday ~ June 16, 2016 at 7:00 PM

**Mayor – Christopher Fielder
Place 1 – Andrea Navarrette
Place 2 – Michelle Stephenson
Place 3 – Shanan Shepherd**

**Place 4 – Ron Abruzzese (Mayor Pro Tem)
Place 5 – Jeff Seiler
Place 6 – Troy Hill
City Manager – Kent Cagle**

1. Open meeting, Invocation, Pledges of Allegiance
Mayor Fielder opened the meeting at 7:00 pm and welcomed those in attendance
Council Member Seiler delivered the invocation
2. Roll Call
All present
3. Staff Comments
No staff comments
4. Citizen Comments: Three (3) minutes allowed per speaker
Please turn in speaker request form before the meeting begins
Tegan Retzer, 2105 Emerald Isle Drive – spoke about the chicken ordinance and visitation from Code Enforcement

Chief Greg Minton explained the ordinance regarding chickens

Laura Yambrick, 1908 Western Justice – spoke about the speed on Crystal Falls and on Lakeline Blvd.
5. Consider approval to name the Children’s Reading Room at the Library after Carol North and presentation of plaque.
Sponsored by the Leander Library Foundation
Motion made by Mayor Fielder to approve. Second by Mayor Pro Tem Abruzzese.
Motion passes, all voting “aye”

Steve Bosak, Parks & Recreation Director introduced Gary Anderson, President of the Leander Library Foundation Board who presented the plaque to April Werner, daughter of Carol North. Mayor Pro Tem Abruzzese read the message on the plaque.

CONSENT AGENDA: ACTION

6. Approval of the minutes: June 2, 2016
7. Second Reading of an Ordinance on Zoning Case 16-Z-011: a zoning change of 1.384 acres, more or less, located at 14000 Nameless Road from Interim SFR-1-B, Single Family Rural to LO-2-B, Local Office, Leander, Williamson County, Texas
8. Dedication and Acceptance of Subdivision Infrastructure Improvements for Savanna Ranch Section 4
Motion made by Council Member Navarrette to approve the consent agenda. Second by Mayor Pro Tem Abruzzese. Motion passes, all voting “aye”

PUBLIC HEARING: ACTION

Mayor Fielder announced that item # 9 has been postponed. Both the public hearing and action item will be held on July 21, 2016 at the regular city council meeting

9. **Public Hearing** on Zoning Case 16-Z-006: Consider a zoning change for 50.615 acres, more or less, generally located to the west of the intersection of Crystal Falls Parkway and Lakeline Blvd., more specifically to the west of the Fairways at Crystal Falls, Section 5 from SFS-2-B, Single Family Suburban to PUD, Planned Unit Development with a base zoning district of MF-2-A, Multi Family, Leander, Travis County, Texas
Applicant: Mike Siefert on behalf of Lookout Partners, LP

Action on Zoning Case 16-Z-006: a zoning change for 50.615 acres, more or less, generally located to the west of the intersection of Crystal Falls Parkway and Lakeline Blvd., more specifically to the west of the Fairways at Crystal Falls, Section 5 from SFS-2-B, Single Family Suburban to PUD, Planned Unit Development with a base zoning district of MF-2-A, Multi Family, Leander, Travis County, Texas

**Mayor Fielder moved into executive session for item 22(c) at this time at 7:20 pm
Council reconvened into open session at 7:38 pm**

10. **Public Hearing** on Zoning Case 16-Z-013: Consider a zoning change for 65.25 acres, more or less, generally located to the southwest of the intersection of Crystal Falls Parkway and 183A Toll from GC-2-A, General Commercial, LC-2-A, Local Commercial, LO-2-A, Local Office and SFT-2-A, Single Family Townhome to PUD, Planned Unit Development with a base zoning district of GC-2-A, General Commercial and MF-2-A, Multi Family, or any other more restrictive district, Leander, Williamson County, Texas
Applicant: City of Leander on behalf of Premas Global Leander, LLC
Tom Yantis, Asst. City Manager explained

No speakers

Action on Zoning Case 16-Z-013: a zoning change for 65.25 acres, more or less, generally located to the southwest of the intersection of Crystal Falls Parkway and 183A Toll from GC-2-A, General Commercial, LC-2-A, Local Commercial, LO-2-A, Local Office and SFT-2-A, Single Family Townhome to PUD, Planned Unit Development with a base zoning district of GC-2-A, General Commercial and MF-2-A, Multi Family, or any other more restrictive district, Leander, Williamson County, Texas

Motion made by Council Member Navarrette to approve with modifications. Second by Council Member Shepherd. Motion passes, 6 to 1 with Mayor Fielder voting against

REGULAR AGENDA

11. Second Reading of an Ordinance on Zoning Case 16-Z-009: a zoning change for 10.922 acres, more or less, generally located to the northwest corner of Crystal Falls Parkway and Lakeline Blvd. from GC-3-B, General Commercial to PUD, Planned Unit Development with base zoning districts MF-2-A, Multi-Family and GC-2-A, General Commercial, Leander, Williamson County, Texas
Tom Yantis, Asst. City Manager explained

Motion made by Council Member Shepherd to approve. Second by Council Member Stephenson. Motion passes, 5 to 2 with Mayor Pro Tem Abruzzese and Council Member Hill voting against.

12. Consider Action on: (a) the Settlement Agreement with Premas Global Leander, LLC, and (b) the Development Agreement for Global Village; for 65.25 acres, more or less, generally located to the southwest of the intersection of Crystal Falls Parkway and 183A Toll, Leander, Williamson County, Texas

Tom Yantis, Asst. City Manager explained

Motion made by Council Member Seiler to approve with modifications. Second by Council Member Shepherd. Motion passes, 6 to 1 with Mayor Fielder voting against.

13. Second Reading of an Ordinance on Zoning Case 16-Z-013: a zoning change for 65.25 acres, more or less, generally located to the southwest of the intersection of Crystal Falls Parkway and 183A Toll from GC-2-A, General Commercial, LC-2-A, Local Commercial, LO-2-A, Local Office and SFT-2-A, Single Family Townhome to PUD, Planned Unit Development with a base zoning district of GC-2-A, General Commercial and MF-2-A, Multi Family, or any other more restrictive district, Leander, Williamson County, Texas

Tom Yantis, Asst. City Manager explained

Motion made by Council Member Shepherd to approve. Second by Council Member Seiler. Motion passes, 6 to 1 with Mayor Fielder voting against.

14. Consider proposed removal of a Heritage Tree located within the Deerbrooke Subdivision, Leander, Williamson County, Texas

Tom Yantis, Asst. City Manager explained

Motion made by Council Member Seiler to approve. Second by Council Member Navarrette. Motion passes, 5 to 2 with Mayor Fielder and Mayor Pro Tem Abruzzese voting against.

15. Authorize the City Manager to execute a professional services contract with Revenue Enhancement Services, LLC to conduct an audit of billing and collection services within the Utility Billing office.

Robert Powers, Finance Director explained

Motion made by Council Member Navarrette to approve. Second by Council Member Stephenson. Motion passes, all voting "aye"

16. Consider the Construction Manager at Risk method of delivery for the relocation of Fire Station #1

Joy Simonton, Purchasing Agent explained

Motion made by Council Member Shepherd to approve. Second by Mayor Pro Tem Abruzzese. Motion passes, all voting "aye"

17. Consider the Sealed Competitive Proposal method of solicitation for the Police Department Sally Port construction project

Robert Powers, Finance Director explained

Motion made by Council Member Seiler to approve. Second by Council Member Shepherd. Motion passes, all voting "aye"

18. Consider Termination and Release of a Water Line Easement located on the Hero Way Multi-family site, now known as The Standard at Leander Station

Wayne Watts, City Engineer explained

Motion made by Council Member Stephenson to approve. Second by Council Member Shepherd. Motion passes, all voting "aye"

19. Consider appointment of 2 council members to serve on the Old Town Christmas Festival Committee

**Motion made by Council Member Seiler to appoint Council Members Navarrette and Shepherd.
Second by Council Member Hill. Motion passes, all voting “aye”**

20. Water Use and Supply update

Pat Womack, Director of Public Works gave the update

21. Council Member Closing Statements

Council Members gave their closing statements

EXECUTIVE SESSION

22. Convene into executive session:

- a) pursuant to Section 551.071, Texas Government Code, and Section 1.05, Texas Disciplinary Rules of Professional Conduct to consult with legal counsel regarding legal issues related to the City’s boundaries and the future growth of the City
- b) pursuant to Section 551.071 and 551.087, Texas Government Code, and Section 1.05, Texas Disciplinary Rules of Professional Conduct to deliberate the offer of financial or other incentives to business prospects the City seeks to have locate in the city
- c) pursuant to Section 551.071, Texas Government Code, and Section 1.05, Texas Disciplinary Rules of Professional Conduct to consult with legal counsel regarding a proposed settlement agreement in Cause No. 15-0088- C277, Premas Global Leander I v. City of Leander, et al., In the 277th Judicial District Court of Williamson County, Texas

Council convened into executive session at 8:22 pm

Council reconvened into open session at 8:49 pm

23. Reconvene into open session to take action as deemed appropriate in the City Council’s discretion:

- a) regarding the City’s boundaries and future growth of the City
No action taken
- b) regarding the offer of financial or other incentives to business prospects the City seeks to have locate in the City
No action taken
- c) regarding a proposed settlement agreement in Cause No. 15-0088- C277, Premas Global Leander I v. City of Leander, et al., In the 277th Judicial District Court of Williamson County, Texas
No action taken

24. Adjournment

With there being no further business, the meeting adjourned at 8:49 pm

Attest:

Christopher Fielder, Mayor

Debbie Haile, TRMC, City Secretary



Executive Summary

July 7, 2015

Council Agenda Subject: Consider Dedication and Acceptance of Subdivision Infrastructure Improvements for Borho Phase 8

Background: The subdivision infrastructure improvements required for Borho Phase 8 have been installed, inspected, and found to be satisfactorily completed. All documentation required for acceptance of the subdivision has been received, including record drawings, statement of substantial completion prepared by a Professional Engineer licensed in the State of Texas, copies of all inspection reports and certified test results, electronic files of the improvements and final plat, affidavit of all bills paid, and a two-year term Maintenance Bond. The Maintenance Bond will commence its two year term upon City Council acceptance, as anticipated, on **July 7, 2016**, which will provide warranty and maintenance coverage for the infrastructure improvements through **July 7, 2018**. The Engineering Department will perform a formal inspection of the improvements approximately 30 days prior to the expiration of the Maintenance Bond to assure that any defects in materials, workmanship, or maintenance are corrected prior to expiration of the bond.

Origination: Wayne S. Watts, P.E., CFM, City Engineer

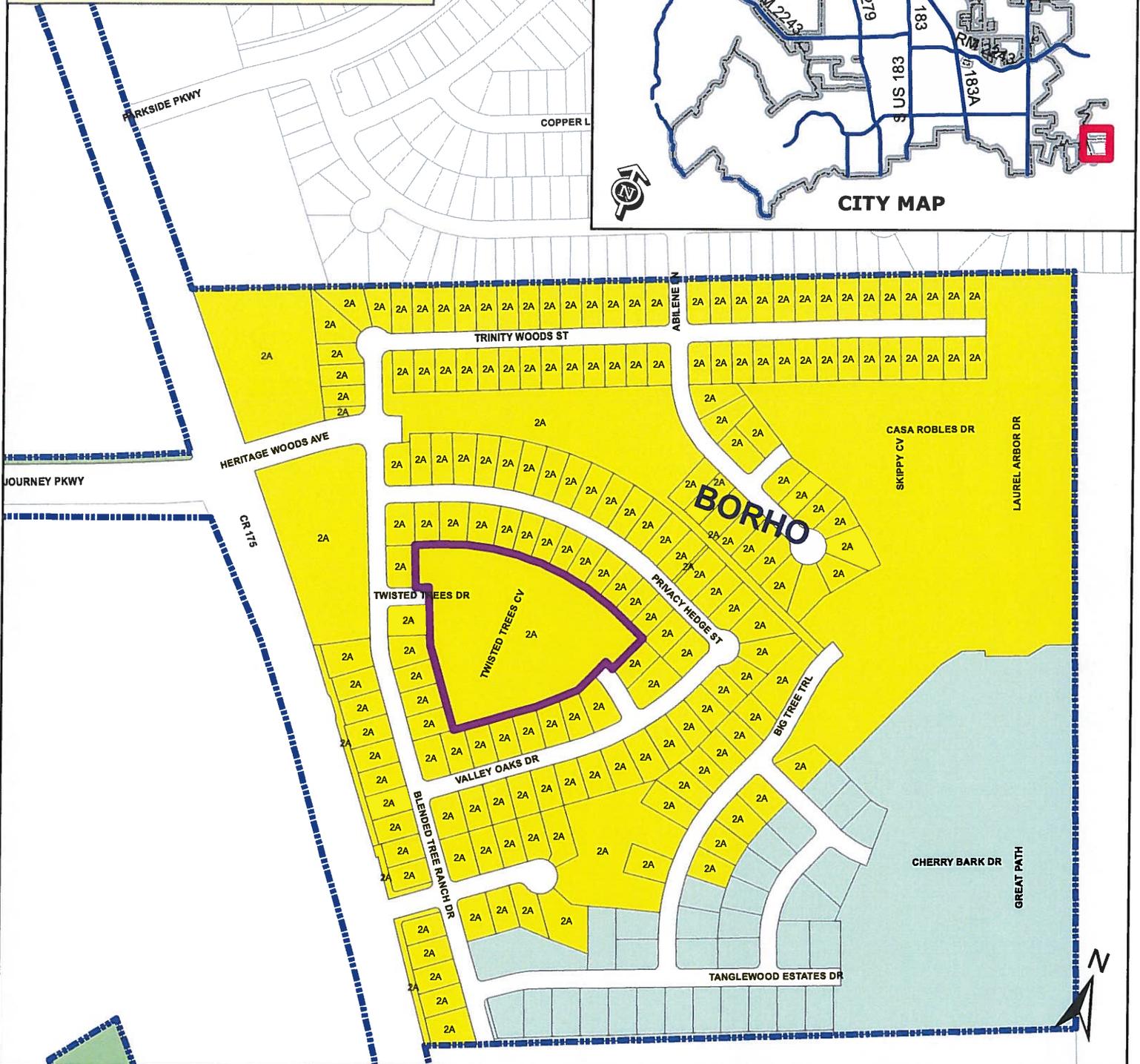
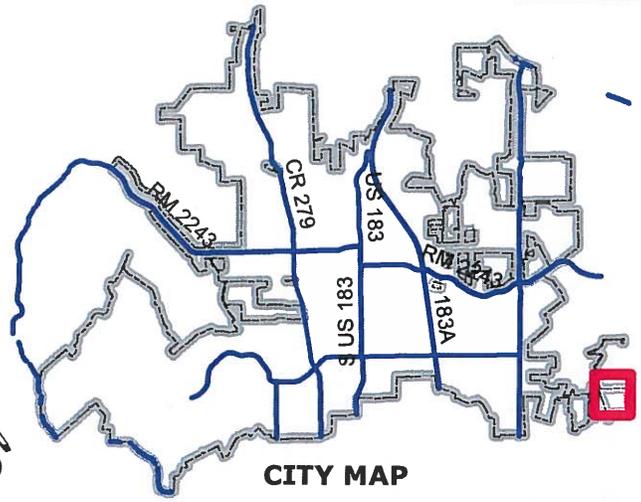
Financial Consideration: N/A

Recommendation: Staff recommends City Council's formal acceptance of the subdivision infrastructure improvements for Borho Phase 8.

Attachments: Location Map, Engineer's Concurrence Letter, TAS Approval Letter, Maintenance Bond, Affidavits of All Bills Paid, and Final Pay Estimates.

Prepared by: Wayne S. Watts, P.E., CFM, City Engineer

This map has been produced by the City of Leander for informational purposes only. No warranty is made by the City regarding completeness or accuracy, please refer to the official ordinance for zoning verification. This data should not be construed as a legal description or survey instrument. No responsibility is assumed for damages or other liabilities due to the accuracy, availability, completeness, use or misuse of the information herein provided.



SUBDIVISION ACCEPTANCE

Location Map - Borho Phase 8

-  Area for Acceptance
-  City Limits
-  PUD Commercial
-  PUD Mixed Use
-  PUD Multi-Family
-  PUD Single-Family
-  PUD Townhome

-  SFR
-  SFT
-  GC
-  SFE
-  SFU/MH
-  HC
-  SFS
-  TF
-  HI
-  SFU
-  MF
-  PUD
-  SFC
-  LO
-  SFL
-  LC





ENGINEER'S CONCURRENCE
FOR
PROJECT ACCEPTANCE

PROJECT: Borho Phase 8
Street, Drainage, Water and Wastewater

Date: June 7, 2016

Owner's Name and Address

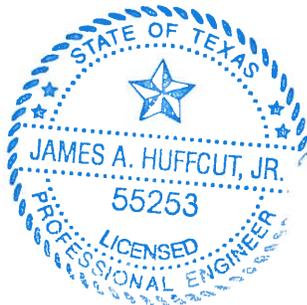
Consultant Engineer's Name and Address

Meritage Homes of Texas, L.L.C.
8920 Business Park Drive, Suite 350
Austin, Texas 78759

Pape-Dawson Engineers, Inc.
7800 Shoal Creek Blvd., Suite 220 West
Austin, Texas 78757

On April 15, 2016, I, the undersigned Professional Engineer in the State of Texas, or my representative, met with representatives of the City of Leander and the Project Contractor and made a visual inspection of the above referenced project. No discrepancies in approved construction plans or deficiencies in construction were visible or brought to my attention by the parties at the meeting except those listed below. I, therefore, recommend acceptance of this project by the City of Leander once the following listed items are corrected to the satisfaction of the City of Leander.

Punchlist items have been completed.



(SEAL)


Signature

James A. Huffcut, Jr., P.E.
Typed Name

55253
Texas Registration No.



**Engineers
Inspectors
& Surveyors**

FIRM REG. #2487

4910 W Hwy 290
Austin, Texas 78735
512.328.6995
512.328.6996. Fax

Commercial and
Residential Engineering

- Structural
- Civil
- Mechanical
- Electrical
- Plumbing

Rehabilitation Designs

Property Condition
Inspections

Surveying

Texas Accessibility
Standards Compliance
Reviews & Inspections

Certified Code
Compliance Inspectors
& Plan Reviewers

Construction Consulting

Trails of Shady Oaks, Ph. 7 & 8 TAS Inspection – No Violations
Transmittal Letter

May 23, 2016

Joe M. Copeland
Land Development Manager, Austin Division
Meritage Corporation
8920 Business Park Dr., Suite 350
Austin, Texas 78759

Re: BORHO/ Trails of Shady Oaks, Phases 7 & 8 TAS Inspection

INSPECTION – NO VIOLATIONS

Dear Mr. Copeland,

On May 20, 2016, I inspected the sidewalks and curb ramps in the public right-of-way of the Trails of Shady Oaks, Phases 7 & 8, Leander, Texas, for compliance with the Texas Accessibility Standards. We are pleased to inform you that the referenced facility has been inspected and found to be in substantial compliance with provisions of the Texas Government Code, Chapter 469.

Due to this project not subject to TDLR review, the inspection results will not be forwarded to the Texas Department of Licensing and Regulation for issuance of the final approval letter. This is the Final Approval Letter for this phase of the project for the common pedestrian elements only. Future development of this project dictates inspection for TAS compliance after the sidewalks and driveway approaches have been installed.

Please note, this determination does not address the requirements of the Americans with Disabilities Act (ADA), (P.L. 101-336), or any other state, local, or federal requirement. For information on the ADA, please contact the United States Department of Justice, Civil Rights Division at (202) 514-0301.

Sincerely,

Richard Emerson
Registered Accessibility Specialist RAS- 245

MAINTENANCE BOND
Subdivision Improvements

Bond No. 1048937

THE STATE OF TEXAS §

COUNTY OF WILLIAMSON §

KNOW ALL BY THESE PRESENTS, that DNT Construction, LLC as Principal, whose address is 2300 Picadilly Dr., Round Rock, TX 78664 and The Hanover Insurance Company, a Corporation organized under the laws of the State of New Hampshire, and duly authorized to do business in the State of Texas, as Surety, are held and firmly bound unto the City of Leander, Texas as Obligee, in the penal sum of Thirty Thousand Sixty Seven & 55/100's Dollars (\$30,067.55) to which payment will and truly to be made we do bind ourselves, our and each of our heirs, executors, administrators, successors and assigns jointly and severally, firmly by these presents.

WHEREAS, the said Principal has constructed Borho Phase 8 (the "improvements") pursuant to the ordinances of the Obligee, which ordinances are hereby expressly made a part hereof as though the same were written and embodied herein;

WHEREAS, said Obligee requires that the Principal furnish a bond conditioned to guarantee for the period of two (2) years after acceptance by the Obligee, against all defects in workmanship and materials which may become apparent during said period;

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that, if the Principal keeps and perform the requirement of the Obligee's ordinances and this Maintenance Bond to maintain the improvements and keep the same in good repair and shall indemnify the Obligee for all loss that the Obligee may sustain by reason of any defective materials or workmanship which become apparent during the period of two (2) years from and after the date of acceptance by the Owner, then this obligation shall be void, otherwise to remain in full force and effect, and Owner shall have and cover from said Principal and Surety damages in the premises, as provided, and it is further agreed that this obligation shall be a continuing one against the Principal and Surety hereon, and that successive recoveries may be had thereon for successive breaches until the full amount shall have been exhausted; and it is further understood that the obligation herein to maintain said improvements shall continue throughout the maintenance period, and the same shall not be diminished in any manner from any cause during said time..

Principal agrees to repair or reconstruct the improvements in whole or in part at any time within the two year period to such extent as the Obligee deems necessary to properly correct all defects except for normal wear and tear. If the Principal fails to make the necessary corrections within ten days after being notified, the Obligee may do so or have done all said corrective work and shall have recovery hereon for all expenses thereby incurred. Principal will maintain and keep in good repair the improvements for a period of two years from the date of acceptance; it being understood that the purpose of this Maintenance Bond is to cover all defective conditions arising by reason of defective material, work, or labor performed by said Principal or its subcontractors, and in the case the said Principal shall fail to do so within ten days after being notified, it is agreed that the Obligee may do said work and supply such materials, and charge the

same against Principal and Surety on this obligation.

The Surety shall notify the Obligee at least fifteen (15) days prior to the end of the first full calendar year and prior to the lapse of this Maintenance Bond at the end of the second full calendar year.

Surety and Principal agree that whenever a defect or failure of the improvement occurs within the period of coverage under this Bond, the Surety and Principal shall provide a new maintenance bond or other surety instrument in a form acceptable to the Obligee and compliant with the Obligee's ordinances conditioned to guarantee for the period of one (1) year after the Obligee's acceptance of the corrected defect or failure, against all defects in workmanship and materials associated with the corrected defect or failure which may become apparent during said period, which shall be in addition to this Maintenance Bond.

The Surety agrees to pay the Obligee upon demand all loss and expense, including attorneys' fees, incurred by the Obligee by reason of or on account of any breach of this obligation by the Surety. Provided further, that in any legal action be filed upon this bond, venue shall lie in the county where the improvements are constructed.

This Bond is a continuing obligation and shall remain in full force and effect until cancelled as provided for herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the improvements, or the work to be performed thereon, or the plans, specifications or drawings accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the improvements, or the work to be performed thereon.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this 11th day of May, 2016 .

DNT Construction, LLC
Principal

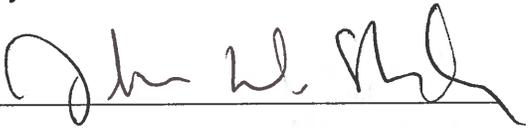
By: 

Title: DEAN TOMME PRESIDENT

Address: _____

2300 Picadilly Dr.
Round Rock, TX 78664

The Hanover Insurance Company
Surety

By: 

Title: John W. Schuler, Attorney-in-Fact

Address: _____

10375 Richmond Ave, Ste. 1050
Houston, TX 77042

The name and address of the Resident Agent of Surety is:

Time Insurance Agency, Inc.

1405 E. Riverside Drive, Austin, TX 78741

(Seal)

**THE HANOVER INSURANCE COMPANY
MASSACHUSETTS BAY INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF AMERICA**

*POWERS OF ATTORNEY
CERTIFIED COPY*

KNOW ALL MEN BY THESE PRESENTS: That THE HANOVER INSURANCE COMPANY and MASSACHUSETTS BAY INSURANCE COMPANY, both being corporations organized and existing under the laws of the State of New Hampshire, and CITIZENS INSURANCE COMPANY OF AMERICA, a corporation organized and existing under the laws of the State of Michigan, do hereby constitute and appoint

John W. Schuler, Steve Dobson and/or Walter E. Benson, Jr.

of **Austin, TX** and each is a true and lawful Attorney(s)-in-fact to sign, execute, seal, acknowledge and deliver for, and on its behalf, and as its act and deed any place within the United States, or, if the following line be filled in, only within the area therein designated any and all bonds, recognizances, undertakings, contracts of indemnity or other writings obligatory in the nature thereof, as follows:

Any such obligations in the United States, not to exceed Ten Million and No/100 (\$10,000,000) in any single instance

and said companies hereby ratify and confirm all and whatsoever said Attorney(s)-in-fact may lawfully do in the premises by virtue of these presents. These appointments are made under and by authority of the following Resolution passed by the Board of Directors of said Companies which resolutions are still in effect:

"RESOLVED, That the President or any Vice President, in conjunction with any Vice President, be and they are hereby authorized and empowered to appoint Attorneys-in-fact of the Company, in its name and as its acts, to execute and acknowledge for and on its behalf as Surety any and all bonds, recognizances, contracts of indemnity, waivers of citation and all other writings obligatory in the nature thereof, with power to attach thereto the seal of the Company. Any such writings so executed by such Attorneys-in-fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company in their own proper persons." (Adopted October 7, 1981 - The Hanover Insurance Company; Adopted April 14, 1982 - Massachusetts Bay Insurance Company; Adopted September 7, 2001 - Citizens Insurance Company of America)

IN WITNESS WHEREOF, THE HANOVER INSURANCE COMPANY, MASSACHUSETTS BAY INSURANCE COMPANY and CITIZENS INSURANCE COMPANY OF AMERICA have caused these presents to be sealed with their respective corporate seals, duly attested by two Vice Presidents, this 6th day of **May 2014**.



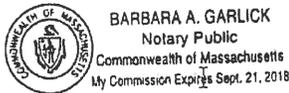
**THE HANOVER INSURANCE COMPANY
MASSACHUSETTS BAY INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF AMERICA**

Robert Thomas
Robert Thomas, Vice President

Joe Brenstrom
Joe Brenstrom, Vice President

THE COMMONWEALTH OF MASSACHUSETTS)
COUNTY OF WORCESTER) ss.

On this 6th day of **May 2014** before me came the above named Vice Presidents of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, to me personally known to be the individuals and officers described herein, and acknowledged that the seals affixed to the preceding instrument are the corporate seals of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, respectively, and that the said corporate seals and their signatures were duly affixed and subscribed to said instrument by the authority and direction of said Corporations.



Barbara A. Garlick
Barbara A. Garlick, Notary Public
My Commission Expires September 21, 2018

I, the undersigned Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, hereby certify that the above and foregoing is a full, true and correct copy of the Original Power of Attorney issued by said Companies, and do hereby further certify that the said Powers of Attorney are still in force and effect.

This Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America.

"RESOLVED, That any and all Powers of Attorney and Certified Copies of such Powers of Attorney and certification in respect thereto, granted and executed by the President or any Vice President in conjunction with any Vice President of the Company, shall be binding on the Company to the same extent as if all signatures therein were manually affixed, even though one or more of any such signatures thereon may be facsimile." (Adopted October 7, 1981 - The Hanover Insurance Company; Adopted April 14, 1982 - Massachusetts Bay Insurance Company; Adopted September 7, 2001 - Citizens Insurance Company of America)

GIVEN under my hand and the seals of said Companies, at Worcester, Massachusetts, this 11th day of May 2016.

**THE HANOVER INSURANCE COMPANY
MASSACHUSETTS BAY INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF AMERICA**

Glenn Margosian
Glenn Margosian, Vice President



IMPORTANT NOTICE

To obtain information or make a complaint:
You may call The Hanover Insurance Company/Citizens Insurance Company of America's toll-free telephone number for information or to make a complaint at:

1-800-608-8141

You may also write to The Hanover Insurance Company/Citizens Insurance Company of America at:

440 Lincoln Street
Worcester, MA 01615

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

1-800-252-3439

You may write the Texas Department of Insurance:

P. O. Box 149104
Austin, TX 78714-9104
Fax: (512) 475-1771
Web: <http://www.tdi.state.tx.us>
E-mail: ConsumerProtection@tdi.state.tx.us

PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim you should contact the agent or the company first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR POLICY: This notice is for information only and does not become a part or condition of the attached document.

AVISO IMPORTANTE

Para obtener informacion o para someter una queja:
Usted puede llamar al numero de telefono gratis de The Hanover Insurance Company/Citizens Insurance Company of America's para informacion o para someter una queja al:

1-800-608-8141

Usted tambien puede escribir a The Hanover Insurance Company/Citizens Insurance Company of America al:

440 Lincoln Street
Worcester, MA 01615

Puede comunicarse con el Departamento de Seguros de Texas para obtener informacion acerca de companias, coberturas, derechos o quejas al:

1-800-252-3439

Puede escribir al Departamento de Seguros de Texas:

P. O. Box 149104
Austin, TX 78714-9104
Fax: (512) 475-1771
Web: <http://www.tdi.state.tx.us>
E-mail: ConsumerProtection@tdi.state.tx.us

DISPUTAS SOBRE PRIMAS O RECLAMOS:

Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con el agente o la compania primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI).

UNA ESTE AVISO A SU POLIZA: Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.



**Construction Contract Summary
Borho Subdivision
Phase 8**

Final Pay Application (04/04/16)
DNT Construction

Prepared By: **6/7/2016**
Juan Brizuela, PE
Pape-Dawson Engineers, Inc.
TBPE Firm Reg #470

	Original Contract			Final
	Amount	CO#1	CO#2	
Clear and Grub	\$ 14,880.11			\$ 14,880.11
Paving	\$ 46,189.83			\$ 46,189.83
Curb and Gutter	\$ 17,077.92			\$ 17,077.92
Concrete	\$ 1,916.60			\$ 1,916.60
Signage and Striping	\$ 591.43			\$ 591.43
Drainage	\$ 64,081.83			\$ 64,081.83
Water	\$ 29,260.56			\$ 29,260.56
WW	\$ 80,461.70			\$ 80,461.70
ESC	\$ 7,965.15			\$ 7,965.15
Miscellaneous	\$ 15,299.82			\$ 15,299.82
Street Lights	\$ 22,950.50			\$ 22,950.50
CO		Embankment	Miscellaneous	Miscellaneous
				\$ -
				\$ -
Total	\$ 300,675.45	\$ -	\$ -	\$ 300,675.45

**Note: Dry Utilities and Lot Improvements are excluded from Construction Summary total and Maintenance Bond amount.*



Juan C. Brizuela 06/07/16

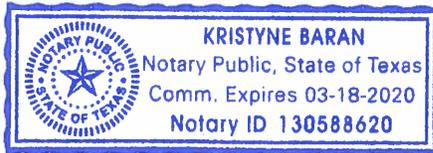
STATE OF TEXAS ,

COUNTY OF TRAVIS ,

BEFORE ME the undersigned authority on this day personally appeared Dean Tomme, known to me to be the person noted above, and acknowledged to me the following: that he/she executed the foregoing for the purpose and consideration therein expressed, in the capacity therein stated, and as the duly authorized act and deed of the party releasing and waiving the lien therein; and that every statement therein is within his/her knowledge and is true and correct.

2016 GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 8th day of June,

[SEAL]



Kristyne Baran
Notary in and for the State of Texas

Name: Kristyne Baran

My commission expires: March 18, 2020



Executive Summary

July 7, 2016

Council Agenda Subject: Consider Dedication and Acceptance of Circle Diamond – Offsite Waterline Extension

Background: The Offsite Waterline Extension for the Circle Diamond Site has been installed, inspected, and found to be satisfactorily completed. All documentation required for acceptance of the offsite utility improvements have been received, including record drawings, statement(s) of substantial completion prepared by a Professional Engineer licensed in the State of Texas, copies of all inspection reports and certified test results, electronic files of the improvements and final plat(s), affidavit(s) of all bills paid, and a Cash Deposit Agreement as fiscal surety. The City will refund to Contractor the remaining balance, if any, of the Cash Deposit upon the two year term of City Council acceptance, as anticipated, on **July 7, 2016**, which will provide warranty and maintenance coverage for the utility improvements through **July 7, 2018**. The Engineering Department will perform a formal inspection of the improvements approximately 30 days prior to the expiration of the maintenance period to assure that any defects in materials, workmanship, or maintenance are corrected prior to expiration of the agreement.

Origination: Wayne S. Watts, P.E., CFM, City Engineer

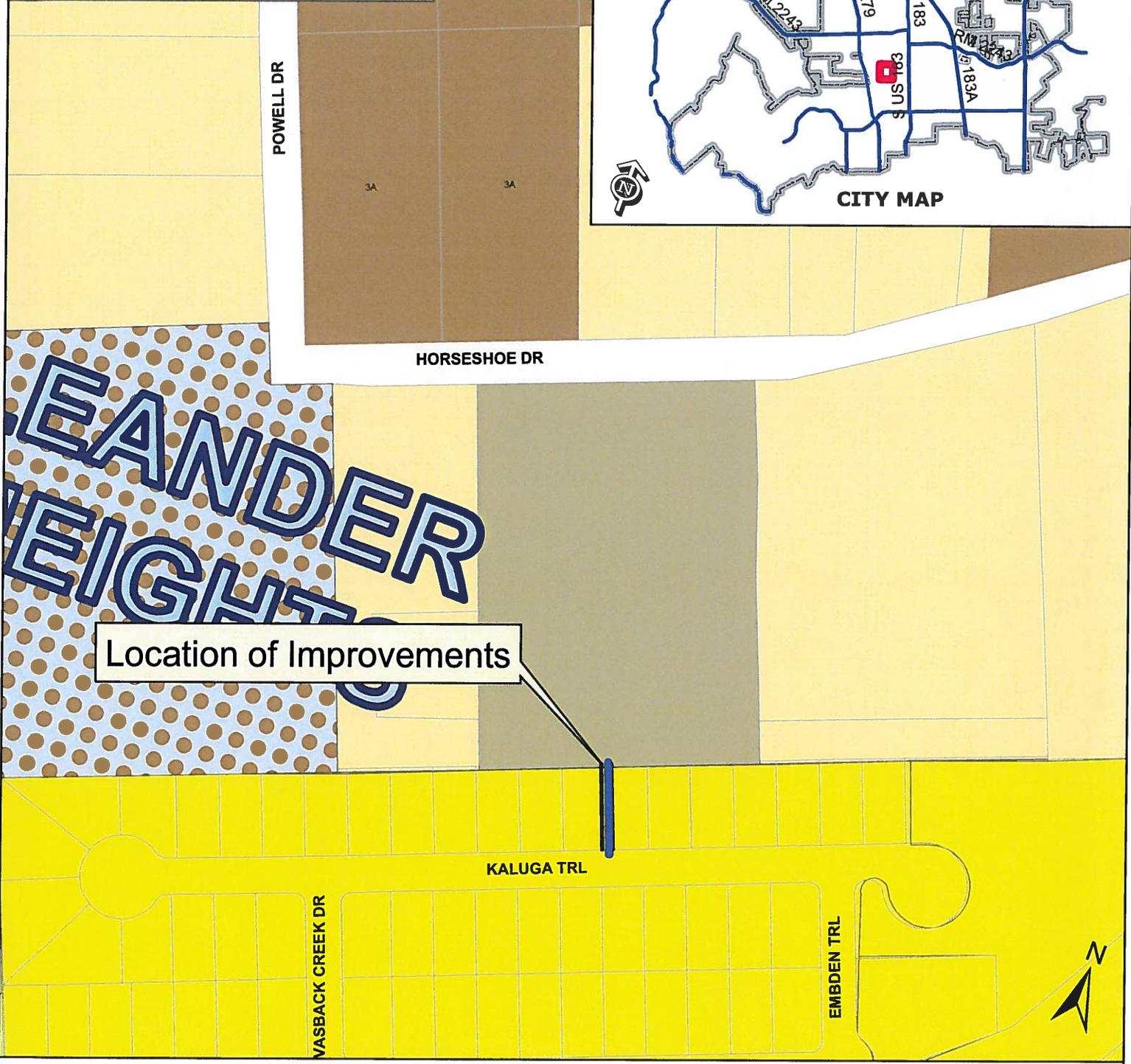
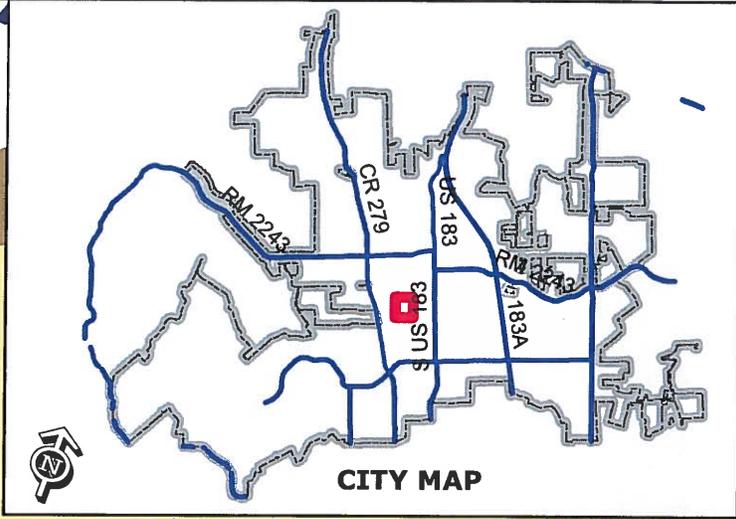
Financial Consideration: N/A

Recommendation: Staff recommends City Council's formal acceptance of the Circle Diamond Offsite waterline

Attachments: Engineer's Concurrence Letter(s), Cash Deposit Agreement, Affidavit(s) of All Bills Paid, and Final Pay Estimate(s)

Prepared by: Wayne S. Watts, P.E., CFM, City Engineer

This map has been produced by the City of Leander for informational purposes only. No warranty is made by the City regarding completeness or accuracy, please refer to the official ordinance for zoning verification. This data should not be construed as a legal description or survey instrument. No responsibility is assumed for damages or other liabilities due to the accuracy, availability, completeness, use or misuse of the information herein provided.



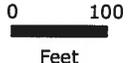
LEANDER EIGHT

PROJECT ACCEPTANCE

Location Map - Circle Diamond Offsite Improvements

- Easement
- Waterline
- City Limits
- PUD Commercial
- PUD Mixed Use
- PUD Multi-Family
- PUD Single-Family
- PUD Townhome

- SFR
- SFE
- SFS
- SFU
- SFC
- SFL
- SFT
- SFU/MH
- TF
- MF
- LO
- LC
- GC
- HC
- HI
- PUD





CEE, Inc.

Coombs Environmental Engineering, Inc.
1610 Williams Drive
Georgetown, TX 78628

Consulting Engineers

TBPE #F-3742
(512) 763-1600 ph
(512) 519-7364 fax

April 6, 2016

City of Leander Planning Dept.
PO Box 319
Leander, TX 78646

Attention: Tom Yantis,
Development Services Director

Subject: Engineer's Concurrence Letter for Circle Diamond Offsite Water Line Extension
Project #15-PCIP-029

Dear Mr. Yantis,

This is to certify that the above referenced water line improvements have been constructed and inspected to my satisfaction, and that the installation is complete and in substantial accordance with my plans and specifications as approved by the City of Leander.

If you have any further comments regarding the construction or close-out of this project, please contact me at (512)763-1600.

Sincerely,
Coombs Environmental Engineering, Inc.

David W. Coombs, P.E.



Circle Diamond Offsite Water Line
Cash Deposit Agreement

March 30, 2016

April 1, 2016

Wayne S. Watts, P.E., CFM
City Engineer
City of Leander
200 W. Willis
P. O. Box 319
Leander, Texas 78646-0319

Rock Master Creation and Excavation
Rodrigo Duplan
7004 Carver Ave
Austin, Texas 78752

Gentlemen:

This Letter Agreement ("Agreement") is entered into by and among the **City of Leander, Texas** (the "City") and **Rock Master Creation and Excavation** ("Contractor") as the constructor of **Circle Diamond Offsite Water Line**. ("Subdivision") for the purpose of establishing the terms and conditions under which Contractor shall make a cash deposit with the City, and the City will hold the cash deposit in escrow. The City and Contractor are sometimes referred to hereinafter as the "Parties" and individually as a "Party".

The Parties hereby contract, covenant and agree, as follows:

1. Contractor hereby deposits Eleven Hundred and _____ Dollars (\$ 1,100.00) (the "Cash Deposit") with the City to guarantee against all defects in workmanship and materials which may become apparent during the maintenance period. The Cash Deposit will secure the performance by Contractor of all of its duties and obligations with respect to the maintenance of all the improvements and infrastructure constructed with the Subdivision.
2. The City will hold the Cash Deposit for the period of two (2) years after acceptance. Upon expiration of the maintenance period, the City will refund to Contractor the remaining balance, if any, of the Cash Deposit.
3. Contractor agrees to repair or reconstruct the improvements in whole or in part at any time within the two year period to such extent as the City deems necessary to properly correct all defects except for normal wear and tear. If the Contractor fails to make the necessary

Circle Diamond Offsite Water Line
Cash Deposit Agreement

March 30, 2017

corrections within ten days after being notified, the City may do so or have done all said corrective work and may use and apply the Cash Deposit or such amount thereof as is reasonably required to make the necessary corrections. Contractor will maintain and keep in good repair the improvements for a period of two years from the date of acceptance; it being understood that the purpose of this Agreement is to cover all defective conditions arising by reason of defective material, work, or labor performed by said Contractor or its subcontractors, and in the case said Contractor shall fail to do so within ten days after being notified, it is agreed that the City may do said work and supply such materials, and charge the same against the Cash Deposit.

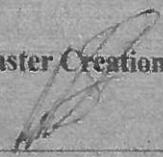
4. The City shall not have any duty or responsibility to maintain or repair the improvements, save and except to the extent the Cash Deposit is sufficient to fund and pay all the cost thereof together with all related expense to be incurred by the City. The City shall have no liability to make any disbursements pursuant to this Agreement, except from Cash Deposit funds held by the City.
6. Contractor agrees that whenever a defect or failure of the improvement occurs within the period of coverage under this Agreement, the Contractor shall provide a new maintenance escrow agreement conditioned to guarantee for the period of one (1) year after the City's acceptance of the corrected defect or failure, against all defects in workmanship and materials associated with the corrected defect or failure which may become apparent during said period, which shall be in addition to this Agreement.
7. The Contractor agrees to pay the City upon demand all loss and expense, including attorneys' fees, incurred by the City by reason of or on account of any breach of this Agreement by the Contractor. Provided further, that in any legal action be filed upon this Agreement, venue shall lie in the county where the improvements are constructed.
8. This Agreement may be executed in several counterparts, each of which so executed shall be an original.

IN WITNESS WHEREOF, we have caused this Agreement to be executed by our duly authorized representatives effective as of the 1 th day of April 2017

The City of Leander, Texas

Rock Master Creation and Excavation

By: _____
Name: Wayne S. Watts, P.E., CFM
Title: City Engineer

By: 
Name: Rodrigo Duplan
Title: Owner

RECEIPT

4/11/16

Bob Mather Fashion & Exc

No. 734425

\$1,100.00

one thousand one hundred and 00/100 DOLLARS

Acct Diamond off-site WL - Close-out

CASH
 MONEY ORDER
 CHECK
 CREDIT CARD

FROM

TO

107

by Deanna B. Blund

02.25.2016

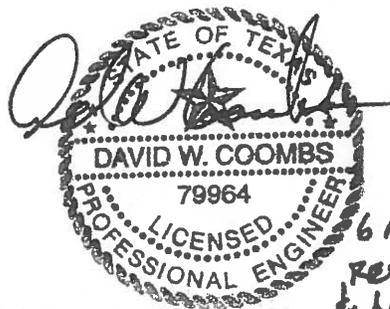
Invoice No. 0001

To: Akram Amani
1613 Nokota Ct
Leander, Texas 78641

Quantity	Description	Unit Price	Total
1	100% completion - Install 132 LF 8" PVC C - 900 water line Install 1 - 8" tapping saddle Install 1 - 8" gate valve Install 1 - 8" pvc cap	\$11,000.00	\$11,000.00
	Kaluga Trail - Circle Diamond offsite Leander, Texas 78641		
	Subtotal		\$11,000.00
	Sales Tax		
	Shipping & Handling		
	Total Due		\$11,000.00

Due upon receipt

Thank you for your business!



6 APR 16
REVIEWED
& ACCEPTED

Rock Master Creation and Excavation

Tel 512-247-0270

7004 Carber Avenue
Austin, Texas 78752

Subcontractor Agreement

SUBCONTRACTOR:

Rock Master Creation and Excavation
Company Name

Abraham Cortez
Contact Person

7004 Carber Avenue
Austin, TX 78752
Address

(512)247-0270
Phone

OWNER:

Akram Amani
Name

Akram Amani
Contact Person

1613 Nokota Ct
Leander, TX 78641
512-560-2463
Address/ Phone

Kaluga Trail – Circle Diamond offsite
Leander, TX 78641
Job Address

This agreement is made and effective February 9, 2016, by and between Akram Amani and Rock Master Creation and Excavation to perform the work identified in Article 2 in accordance with the project documents.

ARTICLE 1 CONTRACT PAYMENT: The Contractor agrees to pay Subcontractor for satisfactory performance of Subcontractor's Work the sum of \$11,000.00 (Contract Amount).

50% completion = \$ 5,500.00
Job completion = \$ 5,500.00
Total Contract Amount = \$11,000.00

ARTICLE 2 SCOPE OF WORK: Subcontractor agrees to commence Subcontractor's Work herein described upon notification by Contractor, and to perform and complete such Work in accordance with Contract Documents and under the general direction of Contractor in accord with Contractor's schedule. This shall include all work necessary or incidental to complete the following:

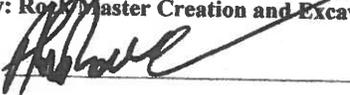
Total of \$11,000.00 is for the following

Install 132 LF 8" PVC C – 900 water line
Install 1 – 8" tapping saddle
Install 1 – 8" gate valve
Install 1 – 8" pvc cap

Superintendent: Abraham Cortez

Accepted this _____ day of _____ 20____

Company: Rock Master Creation and Excavation

Signature: 

Title: Owner

Date: 2 29 2016

Company: Akram Amani

Signature: 

Title: owner

Date: 2-12-16

**FINAL BILLS PAID AFFIDAVIT
AND WAIVER OF LIEN**

STATE OF TEXAS
COUNTY OF

Date: 3/29/16

Developer: Akram Amami

Contractor/Material
Provider ("Affiant"):

Project: Circle Diamond Office Water Line Extension

This is to acknowledge and certify that Affiant has completed the construction of all improvements for the project noted above and that Affiant has been paid in full for all labor and material provided to the above-noted construction project, except for retainage, and acknowledges and certifies that Affiant, and all of his or its agents, employees, successors, assigns, subsidiaries, and legal representatives will and do release and waive all Mechanic's liens, or similar lien rights, which have or might arise as a result of the Affiant's or Affiant's agents' or employees' providing labor and materials to the above-noted project. Affiant understands that a portion or all of the property upon which the project is located has been or will be accepted by the City of Leander, Texas, for ownership, maintenance, and operation. Affiant further agrees that it shall look solely to the Developer for payment of the retainage and shall have no cause of action whatsoever, against the City in the event that the retainage is not paid to the Affiant, and that Affiant shall not file a lien of any kind which has or may arise related to the release of the retainage for the project. Affiant acknowledges and understands that the City is relying on the representations made in this document to accept the phase or portion of the subdivision in which the project is located.

In addition to the foregoing, Affiant acknowledges and certifies that Affiant has paid all laborers, subcontractors, materialmen, and all other persons or parties who have provided labor or materials through, for, or on behalf of the Affiant to the above-noted construction project.

Affiant indemnifies and holds Owner harmless from any liens, debts or obligations which arise as a result of labor or materials provided by or through Affiant to the project through the date set out above. Affiant further indemnifies and holds harmless all real property on which the improvements were constructed and all interests in such property, including leasehold interests, from any liens, debts, or obligations arising from any labor or materials provided by or through Affiant to the project through the date set out above.

Initialed: RD

AFFIANT

Signature

Typed Name

Rodrigo Duplan

Title

OWNER

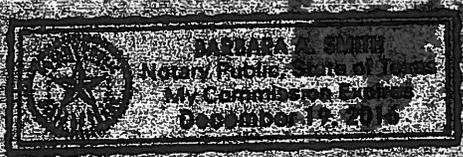
STATE OF TEXAS

COUNTY OF WILLIAMSON

BEFORE ME the undersigned authority on this day personally appeared known to me to be the person noted above, and acknowledged to me the following: that he/she executed the foregoing for the purpose and consideration therein expressed, in the capacity therein stated, and as the duly authorized act and deed of the party releasing and waiving the lien therein, and that every statement therein is within his/her knowledge and is true and correct.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 29th day of March, 2016.

(SEAL)



Barbara A. Smith
Notary in and for the State of Texas

Name: BARBARA A. SMITH

My commission expires

Initialed: R.D.



Executive Summary

July 7, 2016

Council Agenda Subject: Consider Dedication and Acceptance of Subdivision Infrastructure Improvements for Mason Ranch, Ph 2 Sec 2B

Background: The subdivision infrastructure improvements required for Mason Ranch, Ph 2 Sec 2B have been installed, inspected, and found to be satisfactorily completed. All documentation required for acceptance of the subdivision has been received, including record drawings, statement of substantial completion prepared by a Professional Engineer licensed in the State of Texas, copies of all inspection reports and certified test results, electronic files of the improvements and final plat, affidavit of all bills paid, and a two-year term Maintenance Bond. The Maintenance Bond will commence its two year term upon City Council acceptance, as anticipated, on **July 7, 2016**, which will provide warranty and maintenance coverage for the infrastructure improvements through **July 7, 2018**. The Engineering Department will perform a formal inspection of the improvements approximately 30 days prior to the expiration of the Maintenance Bond to assure that any defects in materials, workmanship, or maintenance are corrected prior to expiration of the bond.

Origination: Wayne S. Watts, P.E., CFM, City Engineer

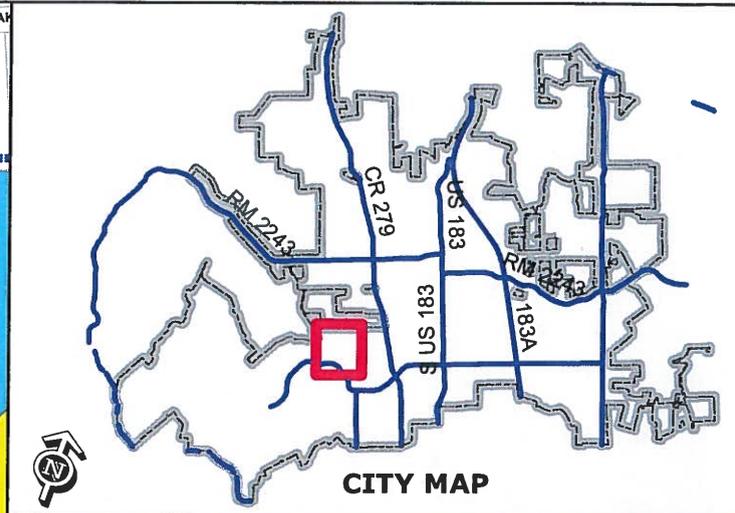
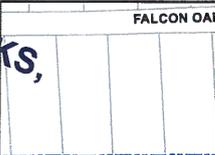
Financial Consideration: N/A

Recommendation: Staff recommends City Council's formal acceptance of the subdivision infrastructure improvements for Mason Ranch, Ph 2 Sec 2B.

Attachments: Engineer's Concurrence Letter, Maintenance Bond, Affidavits of All Bills Paid, and Final Pay Estimates.

Prepared by: Wayne S. Watts, P.E., CFM, City Engineer

This map has been produced by the City of Leander for informational purposes only. No warranty is made by the City regarding completeness or accuracy, please refer to the official ordinance for zoning verification. This data should not be construed as a legal description or survey instrument. No responsibility is assumed for damages or other liabilities due to the accuracy, availability, completeness, use or misuse of the information herein provided.



SUBDIVISION ACCEPTANCE

- Area for Acceptance
- City Limits
- PUD Commercial
- PUD Mixed Use
- PUD Multi-Family
- PUD Single-Family
- PUD Townhome

Location Map - Mason Ranch: 2-2B

- | | | |
|-----|--------|-----|
| SFR | SFT | GC |
| SFE | SFU/MH | HC |
| SFS | TF | HI |
| SFU | MF | PUD |
| SFC | LO | |
| SFL | LC | |
- 0 500 Feet

ENGINEER'S CONCURRENCE
FOR
CITY OF LEANDER
June 20, 2016

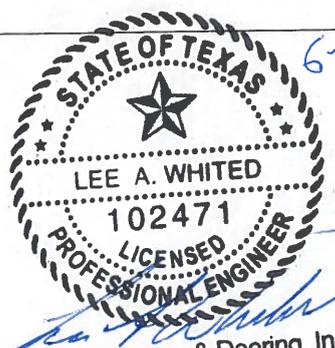
PROJECT: MASON RANCH PHASE 2 SECTION 2B

Owner's Name and Address	Consultant Engineer's Name and Address
<u>Gehan Homes</u>	<u>Carlson Brigance & Doering, Inc.</u>
<u>c/o Ryan Mikulenska</u>	<u>5501 West William Cannon Dr</u>
<u>Authorized Representative</u>	<u>Austin, Texas 78749</u>
<u>10800 Pecan Park Blvd, st 200</u>	<u>(512) 280-5160</u>
<u>Austin, Texas 78750</u>	

On this day, I, the undersigned professional engineer, or my representative, made a visual inspection of the above referenced project. No discrepancies in approved construction plans or deficiencies in construction were visible or brought to my attention by the inspecting authority except those listed below. I, therefore, recommend acceptance of this project by the City of Leander, once the following listed items are corrected to the satisfaction of the Public Works Department.

No items remain.

Seal



Carlson, Brigance & Doering, Inc.
I.D. #F3791

Lee A. Whited, P.E.
102471
Texas Registration Number

Austin Engineering Co., Inc.
Attn: Mr. Nat Wood
PO BOX 342349
Austin, Texas 78734

June 16, 2016

**RE: Mason Ranch Section 2 Phase 2B
Project# 4637**

Dear Mr. Wood:

We are pleased to inform you the above referenced facility has been inspected and found to be in substantial compliance with the provisions of the Texas Accessibility Standards. Note: *The inspection is specific only to the scope of work noted in the civil construction documents provided.* Since there were no residential driveways completed at the time of inspection, we have not included review of any drive pads.

This review is advisory in nature as this project is not subject to review under the current Administrative Rules as published by the Texas Department of Licensing and Regulation.

An inspection of the residential subdivision infrastructure was conducted on June 15, 2016. The field inspection included, but wasn't limited to, the review of the following elements:

- Curb Ramps
- Crosswalks with Curb Ramps
- Common Area Sidewalks

All of the elements listed above were found to be in compliance with the Texas Accessibility Standards adopted by the Texas Department of Licensing and Regulation for the purpose of ensuring compliance with the Texas Architectural Barriers Act, Article 9102, and Texas Civil Statutes.

Please note, this determination does not address the applicability of the Americans with Disabilities Act (ADA), (P.L. 101-336), or any other state, local or federal requirements. For information on the ADA, call the ADA hotline, 800-949-4232 or the U.S. Department of Justice at 202-514-0301.

If you have any questions concerning the results of the inspection, or the requirements of the Architectural Barriers Act, please contact Mike Gabel at 512-627-8670.

Sincerely,



Mike Gabel
Registered Accessibility Specialist
Lic. #1319

MAINTENANCE BOND
Subdivision Improvements
Bond No. 4407279

THE STATE OF TEXAS §

COUNTY OF WILLIAMSON §

KNOW ALL BY THESE PRESENTS, that Austin Engineering Co., Inc. as Principal, whose address is P.O. Box 342349, Austin, Texas 78734 and Suretec Insurance Company a Corporation organized under the laws of the State of Texas, and duly authorized to do business in the State of Texas, as Surety, are held and firmly bound unto the City of Leander, Texas as Obligee, in the penal sum of One Hundred Twenty Seven Thousand Seven Hundred Thirteen and 97/100's Dollars (\$127,713.97) to which payment will and truly to be made we do bind ourselves, our and each of our heirs, executors, administrators, successors and assigns jointly and severally, firmly by these presents.

WHEREAS, the said Principal has constructed Mason Ranch – Section 2-2B Subdivision Improvements (*insert description of subdivision improvements*) (the “improvements”) pursuant to the ordinances of the Obligee, which ordinances are hereby expressly made a part hereof as though the same were written and embodied herein;

WHEREAS, said Obligee requires that the Principal furnish a bond conditioned to guarantee for the period of two (2) years after acceptance by the Obligee, against all defects in workmanship and materials which may become apparent during said period;

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that, if the Principal keeps and perform the requirement of the Obligee’s ordinances and this Maintenance Bond to maintain the improvements and keep the same in good repair and shall indemnify the Obligee for all loss that the Obligee may sustain by reason of any defective materials or workmanship which become apparent during the period of two (2) years from and after the date of acceptance by the Owner, then this obligation shall be void, otherwise to remain in full force and effect, and Owner shall have and cover from said Principal and Surety damages in the premises, as provided, and it is further agreed that this obligation shall be a continuing one against the Principal and Surety hereon, and that successive recoveries may be had thereon for successive breaches until the full amount shall have been exhausted; and it is further understood that the obligation herein to maintain said improvements shall continue throughout the maintenance period, and the same shall not be diminished in any manner from any cause during said time..

Principal agrees to repair or reconstruct the improvements in whole or in part at any time within the two year period to such extent as the Obligee deems necessary to properly correct all defects except for normal wear and tear. If the Principal fails to make the necessary corrections within ten days after being notified, the Obligee may do so or have done all said corrective work and shall have recovery hereon for all expenses thereby incurred. Principal will maintain and keep in good repair the improvements for a period of two years from the date of acceptance; it being understood that the purpose of this Maintenance Bond is to cover all defective conditions arising by reason of defective material, work, or labor performed by said Principal or its subcontractors, and in the case the said Principal shall fail to do so within ten days after being

notified, it is agreed that the Obligee may do said work and supply such materials, and charge the same against Principal and Surety on this obligation.

The Surety shall notify the Obligee at least fifteen (15) days prior to the end of the first full calendar year and prior to the lapse of this Maintenance Bond at the end of the second full calendar year.

Surety and Principal agree that whenever a defect or failure of the improvement occurs within the period of coverage under this Bond, the Surety and Principal shall provide a new maintenance bond or other surety instrument in a form acceptable to the Obligee and compliant with the Obligee's ordinances conditioned to guarantee for the period of one (1) year after the Obligee's acceptance of the corrected defect or failure, against all defects in workmanship and materials associated with the corrected defect or failure which may become apparent during said period, which shall be in addition to this Maintenance Bond.

The Surety agrees to pay the Obligee upon demand all loss and expense, including attorneys' fees, incurred by the Obligee by reason of or on account of any breach of this obligation by the Surety. Provided further, that in any legal action be filed upon this bond, venue shall lie in the county where the improvements are constructed.

This Bond is a continuing obligation and shall remain in full force and effect until cancelled as provided for herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the improvements, or the work to be performed thereon, or the plans, specifications or drawings accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the improvements, or the work to be performed thereon.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this 13th day of June, 2016.

Austin Engineering Co., Inc.
Principal

Suretec Insurance Company
Surety

By: 
Title: Vice President

By: 
Title: David S. Ballew, Attorney-In-Fact

Address: _____

Address: _____

P.O. Box 342349

1330 Post Oak Blvd., Suite 1100

Austin, Texas 78734

Houston, Texas 77056

The name and address of the Resident Agent of Surety is:

Ballew Surety Agency, Inc., David S. Ballew

3802 Manchaca Road, Austin, Texas 78704-6734

(Seal)

SureTec Insurance Company

LIMITED POWER OF ATTORNEY

Know All Men by These Presents, That SURETEC INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Texas, and having its principal office in Houston, Harris County, Texas, does by these presents make, constitute and appoint

David S. Ballew

its true and lawful Attorney-in-fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings or other instruments or contracts of suretyship to include waivers to the conditions of contracts and consents of surety for:

Three Million Dollars and no/100 (\$3,000,000.00)

and to bind the Company thereby as fully and to the same extent as if such bond were signed by the President, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney-in-Fact may do in the premises. Said appointment shall continue in force until 5/18/2017 and is made under and by authority of the following resolutions of the Board of Directors of the SureTec Insurance Company:

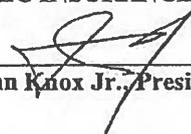
Be it Resolved, that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

Attorney-in-Fact may be given full power and authority for and in the name of and of behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

Be it Resolved, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached. *(Adopted at a meeting held on 20th of April, 1999.)*

In Witness Whereof, SURETEC INSURANCE COMPANY has caused these presents to be signed by its President, and its corporate seal to be hereto affixed this 21st day of March, A.D. 2013.

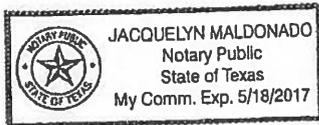
SURETEC INSURANCE COMPANY

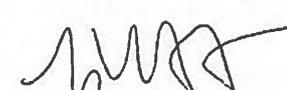
By: 
John Knox Jr., President



State of Texas ss:
County of Harris

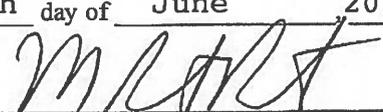
On this 21st day of March, A.D. 2013 before me personally came John Knox Jr., to me known, who, being by me duly sworn, did depose and say, that he resides in Houston, Texas, that he is President of SURETEC INSURANCE COMPANY, the company described in and which executed the above instrument; that he knows the seal of said Company; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Company; and that he signed his name thereto by like order.




Jacquelyn Maldonado, Notary Public
My commission expires May 18, 2017

I, M. Brent Beaty, Assistant Secretary of SURETEC INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Company, which is still in full force and effect; and furthermore, the resolutions of the Board of Directors, set out in the Power of Attorney are in full force and effect.

Given under my hand and the seal of said Company at Houston, Texas this 13th day of June, 2016, A.D.


M. Brent Beaty, Assistant Secretary

Any instrument issued in excess of the penalty stated above is totally void and without any validity.
For verification of the authority of this power you may call (713) 812-0800 any business day between 8:00 am and 5:00 pm CST.

SureTec Insurance Company
THIS BOND RIDER CONTAINS IMPORTANT COVERAGE INFORMATION

Statutory Complaint Notice

To obtain information or make a complaint: You may call the Surety's toll free telephone number for information or to make a complaint at: 1-866-732-0099. You may also write to the Surety at:

SureTec Insurance Company
9737 Great Hills Trail, Suite 320
Austin, Tx 78759

You may contact the Texas Department of Insurance to obtain information on companies, coverage, rights or complaints at 1-800-252-3439. You may write the Texas Department of Insurance at

PO Box 149104
Austin, TX 78714-9104
Fax#: 512-475-1771

PREMIUM OR CLAIM DISPUTES: Should you have a dispute concerning your premium or about a claim, you should contact the Surety first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

Terrorism Risks Exclusion

The Bond to which this Rider is attached does not provide coverage for, and the surety shall not be liable for, losses caused by acts of terrorism, riot, civil insurrection, or acts of war.

**Exclusion of Liability for
Mold, Mycotoxins, Fungi & Environmental Hazards**

The Bond to which this Rider is attached does not provide coverage for, and the surety thereon shall not be liable for, molds, living or dead fungi, bacteria, allergens, histamines, spores, hyphae, or mycotoxins, or their related products or parts, nor for any environmental hazards, bio-hazards, hazardous materials, environmental spills, contamination, or cleanup, nor the remediation thereof, nor the consequences to persons, property, or the performance of the bonded obligations, of the occurrence, existence, or appearance thereof.

Contractor: Austin Engineering Co., Inc.
 P. O. Box 342349
 Austin, Texas 78734-2349
 Phone: (512)327-1464 FAX (512) 327-1765

INVOICE

Estimate Number: _____
 Estimate Date: 6/25/2016
 INVOICE NO: _____

RETAINAGE

Owner: Gehan Homes, Ltd.
 3815 S. Capital of Texas Highway, Ste. 275
 Austin, Texas 78704
 Attn: Ryan Wilkullenka

FINAL COST & QUANTITIES FOR ENGINEERING SUMMARY

Project: MASON RANCH PHASE 2, SECTION 2B

Client No: 3597

AECO. Job No. 15006

ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	AMOUNT	PREVIOUS		CURRENT		TOTAL		% COMPL
						QTY	AMOUNT	QTY	AMOUNT	QTY	AMOUNT	
1 DEMOLITION & SITE CLEARING												
A	ROW CLEARING & GRUBBING	15,164	SY	\$ 0.75	\$ 11,373.00	100%	\$ 11,373.00	0%	\$ -	100%	\$ 11,373.00	100%
TOTAL DEMO & SITE CLEARING					\$ 11,373.00		\$ 11,373.00		\$ -		\$ 11,373.00	100%
2 GRADING												
A	ROW EXCAVATION	15,164	SY	\$ 4.75	\$ 72,029.00	100%	\$ 72,029.00	0%	\$ -	100%	\$ 72,029.00	100%
B	DIVERSION BERM/ SWALE	1,025	LF	\$ 8.00	\$ 8,200.00	100%	\$ 8,200.00	0%	\$ -	100%	\$ 8,200.00	100%
TOTAL GRADING					\$ 80,229.00		\$ 80,229.00		\$ -		\$ 80,229.00	100%
3 STREET IMPROVEMENTS												
A	SUBGRADE PREP	10,387	SY	\$ 3.00	\$ 31,161.00	100%	\$ 31,161.00	0%	\$ -	100%	\$ 31,161.00	100%
B	10" BASE	10,387	SY	\$ 12.50	\$ 129,837.50	100%	\$ 129,837.50	0%	\$ -	100%	\$ 129,837.50	100%
C	1.5" HMAC	8,400	SY	\$ 9.20	\$ 77,280.00	100%	\$ 77,280.00	0%	\$ -	100%	\$ 77,280.00	100%
TOTAL STREET IMPROVEMENTS					\$ 238,278.50		\$ 238,278.50		\$ -		\$ 238,278.50	100%
4 SEWER SYSTEM												
A	8" SDR-26 (0-8)	1,386	LF	\$ 42.00	\$ 58,212.00	100%	\$ 58,212.00	0%	\$ -	100%	\$ 58,212.00	100%
B	8" SDR-26 (8-10)	298	LF	\$ 47.00	\$ 14,006.00	100%	\$ 14,006.00	0%	\$ -	100%	\$ 14,006.00	100%
C	8" SDR-26 (10-12)	322	LF	\$ 55.00	\$ 17,710.00	100%	\$ 17,710.00	0%	\$ -	100%	\$ 17,710.00	100%
D	4' DIA MANHOLE	14	EA	\$ 4,200.00	\$ 58,800.00	100%	\$ 58,800.00	0%	\$ -	100%	\$ 58,800.00	100%
E	EXTRA MANHOLE DEPTH	82	EA	\$ 400.00	\$ 32,600.00	100%	\$ 32,600.00	0%	\$ -	100%	\$ 32,600.00	100%
F	DOUBLE SERVICE	19	EA	\$ 1,650.00	\$ 31,350.00	100%	\$ 31,350.00	0%	\$ -	100%	\$ 31,350.00	100%
G	SINGLE SERVICE	5	EA	\$ 1,500.00	\$ 7,500.00	100%	\$ 7,500.00	0%	\$ -	100%	\$ 7,500.00	100%
H	TRENCH SAFETY	2,006	LF	\$ 1.00	\$ 2,006.00	100%	\$ 2,006.00	0%	\$ -	100%	\$ 2,006.00	100%
I	ADJUST MANHOLE TO GRADE	15	EA	\$ 400.00	\$ 6,000.00	100%	\$ 6,000.00	0%	\$ -	100%	\$ 6,000.00	100%
TOTAL SEWER					\$ 228,184.00		\$ 228,184.00		\$ -		\$ 228,184.00	100%

Contractor: Austin Engineering Co., Inc.
 P. O. Box 342349
 Austin, Texas 78734-2349
 Phone: (512)327-1464 FAX (512) 327-1765

INVOICE

Estimate Number: _____
 Estimate Date: **6/25/2016**
RETAINAGE

Owner: Gehan Homes, Ltd.
 3815 S. Capital of Texas Highway, Ste. 275
 Austin, Texas 78704
 Attn: Ryan Mikulienka

FINAL COST & QUANTITIES FOR ENGINEERING SUMMARY

Project: **MASON RANCH PHASE 2, SECTION 2B** Client No: **3597** AECO, Job No. **15006**

ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	AMOUNT	PREVIOUS QTY	PREVIOUS AMOUNT	CURRENT QTY	CURRENT AMOUNT	TOTAL QTY	TOTAL AMOUNT	% COMPL
5 STORM DRAINAGE SYSTEM												
A	18" RCP CL-III	858	LF	\$ 54.00	\$ 46,332.00	100%	\$ 46,332.00	0%	\$ -	100%	\$ 46,332.00	100%
B	24" RCP CL-III	435	LF	\$ 64.00	\$ 27,840.00	100%	\$ 27,840.00	0%	\$ -	100%	\$ 27,840.00	100%
C	30" RCP CL-III	112	LF	\$ 95.00	\$ 10,640.00	100%	\$ 10,640.00	0%	\$ -	100%	\$ 10,640.00	100%
D	36" RCP CL-III	276	LF	\$ 120.00	\$ 33,120.00	100%	\$ 33,120.00	0%	\$ -	100%	\$ 33,120.00	100%
E	4X4' AREA INLET	1	EA	\$ 2,400.00	\$ 2,400.00	100%	\$ 2,400.00	0%	\$ -	100%	\$ 2,400.00	100%
F	4X4 JUNCTION BOX	1	EA	\$ 9,500.00	\$ 9,500.00	100%	\$ 9,500.00	0%	\$ -	100%	\$ 9,500.00	100%
G	5X5 JUNCTION BOX	1	EA	\$ 10,800.00	\$ 10,800.00	100%	\$ 10,800.00	0%	\$ -	100%	\$ 10,800.00	100%
H	6 x 5 JUNCTION BOX	1	EA	\$ 13,500.00	\$ 13,500.00	100%	\$ 13,500.00	0%	\$ -	100%	\$ 13,500.00	100%
I	10' CURB INLET	10	EA	\$ 3,555.00	\$ 35,550.00	100%	\$ 35,550.00	0%	\$ -	100%	\$ 35,550.00	100%
J	TRENCH SAFETY	1,681	LF	\$ 0.50	\$ 840.50	100%	\$ 840.50	0%	\$ -	100%	\$ 840.50	100%
K	CONC RIPRAP AT AREA INLET	119	SY	\$ 77.00	\$ 9,163.00	100%	\$ 9,163.00	0%	\$ -	100%	\$ 9,163.00	100%
TOTAL STORM DRAINAGE					\$ 199,685.50		\$ 199,685.50		\$ -		\$ 199,685.50	100%
6 WATER SYSTEM												
A	8" C-900 DR-14	2,678	LF	\$ 40.00	\$ 107,120.00	100%	\$ 107,120.00	0%	\$ -	100%	\$ 107,120.00	100%
B	8" GATE VALVE	8	EA	\$ 1,250.00	\$ 10,000.00	100%	\$ 10,000.00	0%	\$ -	100%	\$ 10,000.00	100%
C	FIRE HYDRANT ASSEMBLY	5	EA	\$ 3,600.00	\$ 18,000.00	100%	\$ 18,000.00	0%	\$ -	100%	\$ 18,000.00	100%
D	DOUBLE SERVICE	21	EA	\$ 1,600.00	\$ 33,600.00	100%	\$ 33,600.00	0%	\$ -	100%	\$ 33,600.00	100%
E	SINGLE SERVICE	7	EA	\$ 650.00	\$ 4,550.00	100%	\$ 4,550.00	0%	\$ -	100%	\$ 4,550.00	100%
F	TRENCH SAFETY	2,678	LF	\$ 0.50	\$ 1,339.00	100%	\$ 1,339.00	0%	\$ -	100%	\$ 1,339.00	100%
G	ADJUST VALVE CASTINGS	13	EA	\$ 400.00	\$ 5,200.00	100%	\$ 5,200.00	0%	\$ -	100%	\$ 5,200.00	100%
TOTAL WATER					\$ 179,809.00		\$ 179,809.00		\$ -		\$ 179,809.00	100%

Contractor: Austin Engineering Co., Inc.
P. O. Box 342349
Austin, Texas 78734-2349
Phone: (512)327-1464 FAX (512) 327-1765

Owner: Gehan Homes, Ltd.
3815 S. Capital of Texas Highway, Ste. 275
Austin, Texas 78704
Attn: Ryan Mikulenka

INVOICE

FINAL COST & QUANTITIES FOR ENGINEERING SUMMARY

Estimate Number: _____ Invoice No: _____
Estimate Date: **6/25/2016** **RETAINAGE**

Project: **MASON RANCH PHASE 2, SECTION 2B** Client No: **3597** AECO, Job No. **15006**

ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	AMOUNT	PREVIOUS		CURRENT		TOTAL		%
						QTY	AMOUNT	QTY	AMOUNT	QTY	AMOUNT	
7 CONCRETE WORK												
A	CURB & GUTTER	4,831	LF	\$ 11.90	\$ 57,488.90	100%	\$ 57,488.90	0%	\$ -	100%	\$ 57,488.90	100%
B	ADA RAMPS	20	EA	\$ 980.00	\$ 19,600.00	100%	\$ 19,600.00	0%	\$ -	100%	\$ 19,600.00	100%
C	CONC VALLEY GUTTER	1	EA	\$ 3,905.00	\$ 3,905.00	100%	\$ 3,905.00	0%	\$ -	100%	\$ 3,905.00	100%
D	4' SIDEWALK	842	LF	\$ 21.50	\$ 18,103.00	100%	\$ 18,103.00	0%	\$ -	100%	\$ 18,103.00	100%
	TOTAL CONCRETE WORK				\$ 99,096.90		\$ 99,096.90		\$ -		\$ 99,096.90	100%
8 MISCELLANEOUS WORK (Signage & striping)												
B	STREET/STOP/BAR	4	EA	\$ 550.00	\$ 2,200.00	100%	\$ 2,200.00	0%	\$ -	100%	\$ 2,200.00	100%
C	BARICADES	2	EA	\$ 1,100.00	\$ 2,200.00	100%	\$ 2,200.00	0%	\$ -	100%	\$ 2,200.00	100%
D	STABILIZED CONSTRUCTION ENTRANCE	1	EA	\$ 1,000.00	\$ 1,000.00	100%	\$ 1,000.00	0%	\$ -	100%	\$ 1,000.00	100%
E	SILT FENCE	4,040	LF	\$ 2.00	\$ 8,080.00	100%	\$ 8,080.00	0%	\$ -	100%	\$ 8,080.00	100%
F	INLET PROTECTION	11	EA	\$ 85.00	\$ 935.00	100%	\$ 935.00	0%	\$ -	100%	\$ 935.00	100%
G	ROW REVEGETATION	5,367	SY	\$ 0.10	\$ 536.70	100%	\$ 536.70	0%	\$ -	100%	\$ 536.70	100%
H	CONCRETE WASHOUT	1	EA	\$ 1,100.00	\$ 1,100.00	100%	\$ 1,100.00	0%	\$ -	100%	\$ 1,100.00	100%
I	MOBILIZATION	1	LS	\$ 11,500.00	\$ 11,500.00	100%	\$ 11,500.00	0%	\$ -	100%	\$ 11,500.00	100%
J	STAKING	1	LS	\$ 17,100.00	\$ 17,100.00	100%	\$ 17,100.00	0%	\$ -	100%	\$ 17,100.00	100%
K	TESTING	1	LS	\$ 18,600.00	\$ 18,600.00	100%	\$ 18,600.00	0%	\$ -	100%	\$ 18,600.00	100%
	TOTAL MISCELLANEOUS				\$ 63,251.70		\$ 63,251.70		\$ -		\$ 63,251.70	100%
9 ELECTRIC & STREET LIGHTS												
A	3" CONDUIT	5,484	LF	\$ 3.50	\$ 19,194.00	100%	\$ 19,194.00	0%	\$ -	100%	\$ 19,194.00	100%
B	TRANSFORMER PADS	7	EA	\$ 1,400.00	\$ 9,800.00	100%	\$ 9,800.00	0%	\$ -	100%	\$ 9,800.00	100%
C	SECONDARY ENCLOSURES	24	EA	\$ 650.00	\$ 15,600.00	100%	\$ 15,600.00	0%	\$ -	100%	\$ 15,600.00	100%

P. O. Box 342349
 Austin, Texas 78734-2349
 Phone: (512)327-1464 FAX (512) 327-1765

Owner: Gehan Homes, Ltd.
 3815 S. Capital of Texas Highway, Ste. 275
 Austin, Texas 78704
 Attn: Ryan Milkienka

INVOICE

Estimate No: 6/25/2016
 Estimate Date: 6/25/2016
 RETAINAGE

FINAL COST & QUANTITIES FOR ENGINEERING SUMMARY

Project: MASON RANCH PHASE 2, SECTION 2B

Client No: 3597

AECo. Job No. 15006

ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	AMOUNT	PREVIOUS QTY	PREVIOUS AMOUNT	CURRENT QTY	CURRENT AMOUNT	TOTAL QTY	TOTAL AMOUNT	% COMPL
D	TRENCH	4,150	LF	7.50	\$ 31,125.00	100%	\$ 31,125.00	0%	\$ -	100%	\$ 31,125.00	100%
E	PULL STRING	5,484	LF	0.15	\$ 822.60	100%	\$ 822.60	0%	\$ -	100%	\$ 822.60	100%
F	WARNING TAPE	4,150	LF	0.15	\$ 622.50	100%	\$ 622.50	0%	\$ -	100%	\$ 622.50	100%
G	54X66 ENCLOSURE	2	EA	1,800.00	\$ 3,600.00	100%	\$ 3,600.00	0%	\$ -	100%	\$ 3,600.00	100%
H	STD PEC STREET LIGHT POLES	16	EA	1,500.00	\$ 24,000.00	100%	\$ 24,000.00	0%	\$ -	100%	\$ 24,000.00	100%
I	STREET LIGHT BASES AND CONDUIT	16	EA	850.00	\$ 13,600.00	100%	\$ 13,600.00	0%	\$ -	100%	\$ 13,600.00	100%
J	STREET LIGHT WIREING /POWER	1	LS	56,000.00	\$ 56,000.00	100%	\$ 56,000.00	0%	\$ -	100%	\$ 56,000.00	100%
K	2" CONDUIT	972	LF	2.25	\$ 2,187.00	100%	\$ 2,187.00	0%	\$ -	100%	\$ 2,187.00	100%
L	STREET LIGHT TRENCH	227	LF	3.00	\$ 681.00	100%	\$ 681.00	0%	\$ -	100%	\$ 681.00	100%
TOTAL ELECTRIC & STREET LIGHTS					\$ 177,232.10		\$ 177,232.10		\$ -		\$ 177,232.10	100%
TOTAL CONTRACT					\$ 1,277,139.70		\$ 1,277,139.70		\$ -		\$ 1,277,139.70	100%

Submitted by:
AUSTIN ENGINEERING CO., INC.

Approved for Payment:
GEHAN HOMES, LTD.

Date: 6/25/2016

Title: _____ Date: _____

Total Work Complete to Date \$ 1,277,139.70
 Less 10% Retainage \$ -
 Subtotal \$ 1,277,139.70
 Less Previous Pay Request \$ 1,277,139.70
 Amount Due This Estimate \$ -

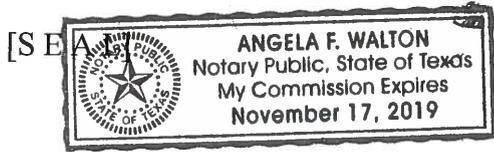


6/13/2016 10:51 AM
 Carlson, Brigrance & Doering, Inc.
 I.D. #F3791

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

BEFORE ME the undersigned authority on this day personally appeared Nat Wood, Project Manager, known to me to be the person noted above, and acknowledged to me the following: that he/she executed the foregoing for the purpose and consideration therein expressed, in the capacity therein stated, and as the duly authorized act and deed of the party releasing and waiving the lien therein; and that every statement therein is within his/her knowledge and is true and correct.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 16th day of June, 2016.



Angela Walton
Notary in and for the State of Texas

Name: Angela F. Walton

My commission expires: November 17, 2019

Initialed: _____



Executive Summary

July 07, 2016

-
- Agenda Subject:** Zoning Case 15-TOD-Z-030 & Subdivision Case 15-TOD-CP-009: Hold a public hearing and consider action on the rezoning and approval of the Tylerville Commercial Concept Plan and PUD zoning of a tract of land generally located to the southwest of the intersection of San Gabriel Pkwy & US 183; 11.221 acres more or less; WCAD Parcel R395875. Currently, the property is zoned PUD (Planned Unit Development) and the applicant is proposing an amendment to the PUD to include the base zoning districts of GC-3-A (General Commercial), GC-2-A (General Commercial), and LC-2-A (Local Commercial); Leander, Williamson County, Texas.
- Background:** This request is the second step in the rezoning and subdivision process.
- Origination:** Applicant/Agent: Kristiana Alfsen on behalf of Waterstone Tylerville, LP.
- Financial Consideration:** None
- Recommendation:** See Planning Analysis. The Planning & Zoning Commission recommended to approve the request with staff recommendation including the following conditions at the June 23, 2016 meeting with a 5 to 1 vote (Commissioner Anderson opposing).
1. Update the PUD to meet the intent of the ordinance with regard to continuous building frontage along US 183. An example could include relocating the pumps to allow for another building between US 183 and the pumps.
 2. Add a requirement that the continuous building frontage will not be required for Parcel 2 as long as the buildings are oriented towards the creek corridor instead of San Gabriel Pkwy. The creek shall be treated as the street with regard to the masonry requirements. The creek shall include an active edge with a trail system, pedestrian amenities, outdoor seating, landscaping, etc.

3. Add a note to Exhibit E stating that the site plan is conceptual and has not been reviewed by City Staff. A formal review will be conducted at the site development stage of the process.
4. Update Exhibit F to demonstrate the averaging the riparian corridor setbacks. Currently, the exhibit only shows the removal.
5. Provide a trail along the creek.

Attachments:

1. Planning Analysis
2. Current Zoning Map
3. Future Land Use Map
4. Notification Map
5. Proposed Zoning Map
6. Aerial Map
7. PUD Notes and Conceptual Site Layout & Land Use Plan
8. Letter of Intent
9. Ordinance
10. Minutes-Planning & Zoning Commission June 23, 2016

Prepared By:

Tom Yantis, AICP
Assistant City Manager

06/24/2016



PLANNING ANALYSIS

ZONING CASE 15-TOD-Z-030
 CONCEPT PLAN 15-TOD-CP-006

TYLERVILLE COMMERCIAL PUD & CONCEPT PLAN

GENERAL INFORMATION

Owner: Waterstone Tylerville, LP.

Current Zoning: PUD (Planned Unit Development)

Proposed Zoning: PUD (Planned Unit Development) with the base zoning districts of:
 GC-3-A (General Commercial)
 GC-2-A (General Commercial)
 LC-2-A (Local Commercial)

Size and Location: The property is generally located to the southwest of the intersection of San Gabriel Pkwy & US 183 and includes approximately 11.221 acres.

Staff Contact: Robin M. Griffin, AICP
 Senior Planner

ABUTTING ZONING AND LAND USE:

The table below lists the abutting zoning and land uses.

	ZONING	LAND USE
NORTH	PUD/TOD PUD/TOD	Undeveloped Property Proposed Enclave at Maya Vista Subdivision
EAST	PUD/TOD	Undeveloped Property
SOUTH	PUD/TOD	Proposed Oak Creek Subdivision Undeveloped Property
WEST	PUD/TOD	Proposed Oak Creek Subdivision

COMPOSITE ZONING ORDINANCE & SMARTCODE INTENT STATEMENTS

PUD/TOD – PLANNED UNIT DEVELOPMENT/TRANSIT ORIENTED DEVELOPMENT:

The purpose and intent of the Planned Unit Development (PUD) district is to design unified standards for development in order to facilitate flexible, customized zoning and subdivision standards which encourage imaginative and innovative designs for the development of property within the City. The intent of this zoning request is to provide for the design of a development which permits a master planned commercial project. The intent of this zoning district is to cohesively regulate the development to assure compatibility with adjacent single-family residences, neighborhoods, and commercial properties within the region.

CONVENTIONAL ZONE:

The Conventional Development Sector allows conventional single-use and mixed-use development with some basic design standards to provide a transition to adjacent neighborhoods and pedestrian-oriented communities, and for the possibility of future retrofit of the area to a more pedestrian-oriented pattern.

USE COMPONENTS

GC – GENERAL COMMERCIAL:

Features: Any use in LC plus bar, nightclub, entertainment venues, hospital, hotel, liquor store, office/warehouse, vehicle and equipment sales, leasing and repair, furniture sales, pet shop, wholesale activities less than 3,500 sq. ft.

Intent: Development of small to large scale commercial, retail, and commercial service uses located in high traffic areas. Access to this component should be provided by an arterial street. The heaviest concentration of this component should be located at intersections of arterial streets.

LC – LOCAL COMMERCIAL:

Features: Any use in LO plus retail sales and services, restaurants, banks, nursery or greenhouse, grocery sales, pharmacies, fitness centers, dance and music academies, artist studio, colleges and universities, bed and breakfast. Hours of operation: 5:00 a.m. to 10:00 p.m. Sun.-Thurs., 5:00 a.m. to 11:00 p.m. Fri. and Sat.

Intent: Development of small scale, limited impact commercial, retail, personal services and office uses located in close proximity to their primary customers, which cater to the everyday needs of the nearby residents, and which may be located near residential neighborhoods. Access should be provided by a collector or higher classification street.

SITE COMPONENTS

TYPE 2:

Features: Accessory buildings greater of 10% of primary building or 120 sq. ft.; accessory dwellings for SFR, SFE and SFS; drive-thru service lanes; uses not to exceed 40,000 sq. ft.; multi-family provides at least 35% of units with an enclosed garage parking space.

Intent:

- (1) The Type 2 site component may be utilized with non-residential developments that are adjacent to a residential district or other more restrictive district to help reduce potential negative impacts to the more restrictive district and to provide for an orderly transition of development intensity.

- (2) The Type 2 site component is intended to be utilized for residential development not meeting the intent of a Type 1 site component and not requiring the additional accessory structure or accessory dwelling privileges of the Type 3 site component.
- (3) This component is intended to be utilized with the majority of LO and LC use components except those that meet the intent of the Type 1 or Type 3 site component or with any use requiring drive-through service lanes.
- (4) This component is generally not intended to be utilized with HC and HI use components except where such component is adjacent to, and not adequately buffered from, residential districts or other more restricted districts, and except as requested by the land owner.

TYPE 3:

Features: Accessory buildings up to 30% of primary building; accessory dwellings; drive-thru service; limited outdoor display and storage; outdoor fueling and washing of vehicles; overhead service doors, no indoor parking required.

Intent:

- (1) A Type 3 site component is intended to be utilized with LO and LC use components where adjacent to less restricted districts to provide for a land use transition.
- (2) This component is intended to be utilized with residential components where accessory dwellings or additional accessory structures are appropriate and are not provided for in the Type 1 or 2 site components.
- (3) This component is intended to be combined with LO, LC, GC, HC and HI components where it is appropriate to utilize the outdoor site area for outdoor fuel sales, limited outdoor display and storage or accessory buildings.

ARCHITECTURAL COMPONENT

TYPE A:

Features: 85% masonry; 5 or more architectural features.

Intent:

- (1) The Type A architectural component is intended to be utilized for high quality developments or to provide variety as an additional option for portions of a residential development and may be utilized in or adjacent to single-family uses.
- (2) This component is intended to be utilized for single-family development that backs up to, or sides to, a major thoroughfare.
- (3) Combined with appropriate use and site components, this component is intended to help provide for harmonious land use transitions by applying this component to a less restrictive use or site component adjacent to a more restrictive use or site component. This standard may be utilized to help ensure compatibility for non-residential uses, multi-family, two-family, townhouse or small lot residential development with adjacent property that is more restricted.
- (4) This component is intended to be utilized for buildings requiring heights greater than those provided in other architectural components.
- (5) This component may be utilized for any high profile development, for any property in a prominent location or at an important gateway to the community.
- (6) This component is not intended to become an involuntary standard for the majority of a single-family subdivision, especially with SFR, SFE, SFS, SFU and SFC components.

COMPREHENSIVE PLAN STATEMENTS:

The following Comprehensive Plan statements may be relevant to this case:

- Provide a balanced mix of complementary uses that support a strong and diverse tax base.
- Mixed Use Corridors are areas along arterials between Centers that have available land and should be developed to preserve the integrity of the corridor and maintain mobility. These corridors include land within approximately 500 feet of the outer edge of the right-of-way (typically one block deep).
- Commercial Corridors allow for additional commercial development along corridors already devoted to primarily commercial and office uses. The typical uses associated with this corridor include a variety of medium-intensity uses including general businesses and services, offices, restaurants, retail, professional and medical services, light industrial, flex space, storage and even some limited residential uses.

ANALYSIS:

The applicant is requesting an amendment to the TOD/PUD (Transit Oriented Development/Planned Unit Development) district in to order to develop a commercial project. This request for a PUD and a Conceptual Site Layout and Land Use Plan that can also be considered as the Concept Plan as permitted by the Composite Zoning Ordinance. This submittal includes the PUD zoning request and Concept Plan for review by the Planning & Zoning Commission.

The surrounding properties are also located within the TOD. The properties to the west and south are part of the proposed Oak Creek Subdivision. A portion of the property to the north is part of the proposed Enclave at Maya Vista Subdivision. The remaining properties are currently undeveloped.

The proposed base zonings for this PUD are GC-3-A (General Commercial), GC-2-A (General Commercial), and LC-2-A (Local Commercial). The proposed GC-3-A is located at the corner of US 183 and San Gabriel Parkway. The zoning is proposed to transition with regards to intensity as the project moves to the west. The GC-2-A district is proposed in the center and the LC-2-A district is proposed to be located at the intersection of W Broade Street and San Gabriel Parkway.

The GC use component permits the development of small to large scale commercial, retail, and commercial service uses located in high traffic areas. Access to this component should be provided by an arterial street. The heaviest concentration of this component should be located at intersections of arterial streets.

The LC use component allows for the development of small scale, limited impact retail that offers personal services and office uses located in close proximity to their primary customers, Access should be provided by a collector or higher classification street.

The requested Type 3 site component would permit outdoor fuel sales, limited outdoor storage and/or display, overhead doors, drive-through service lanes and carwashes. This use component

is intended to be combined with the GC use component where it is appropriate to utilize the outdoor site area for outdoor fuel sales, limited outdoor display and storage or accessory buildings.

The requested Type 2 site component would prohibit outdoor fuel sales, outdoor storage and/or display, overhead doors, drive-through service lanes and carwashes. This site component is intended to be combined with the GC use component where it is adjacent to a residential district in order to reduce potential negative impacts to the more restrictive district.

The Type A Architectural Component requires that 85% of the walls are comprised of masonry. In addition, a minimum of five architectural features are required.

This application includes the following higher standards and waivers.

HIGHER STANDARDS	WAIVERS
COMPOSITE ZONING ORDINANCE	
Type A Architectural Component	-
-	Remove requirement for continuous building frontage
-	Reduction in screening requirement for gas pumps
-	Modify riparian corridor setbacks

The Conventional Development (CD) Sector Standards will apply to this project. US 183 and San Gabriel Parkway are designated as B-Streets. These standards are listed below.

STANDARDS SPECIFIC TO B-STREETS IN COMMERCIAL ZONING DISTRICTS

- a. Surface parking consisting of no more than one drive aisle with head-in parking spaces on each side of the drive aisle are permitted between the building and the right-of-way. A landscape screen or wall no taller than 4 feet in height shall be constructed and maintained to screen the view of the parking from the adjacent ROW.
- b. All drive aisles shall be designed and easements conveyed to connect to existing or future drive aisles on adjacent properties.
- c. Sidewalks and street trees in compliance with the Composite Zoning Ordinance shall be required between the parking lot and the right-of-way.
- d. Sidewalks at least 12 feet wide shall be provided between the building facade and the parking lot, with trees in grates or planter boxes every 30 feet.
- e. A continuous building frontage is required. The frontage may only be broken by a street, pedestrian passage, courtyard or similar feature approved by the Planning Director. For phased building construction within a block, a screen wall or landscape hedge shall be constructed at the building frontage line prior to building construction.
- f. The provision of pedestrian amenities such as benches, outdoor dining areas, awnings over sidewalks and other similar features is encouraged. The Planning Director may provide a reduction of the minimum parking or landscaping requirement of up to 15% for the provision of pedestrian amenities.

Standards Specific to Lots & Buildings on B-Streets in Commercial Zoning Districts

- a. Buildings fronting on A- and B-Streets shall meet the Type A Architectural Component of the Composite Zoning Ordinance.
- b. Buildings fronting on A- and B-Streets shall provide a primary entrance facing the street accessing the required sidewalk.

STAFF RECOMMENDATION:

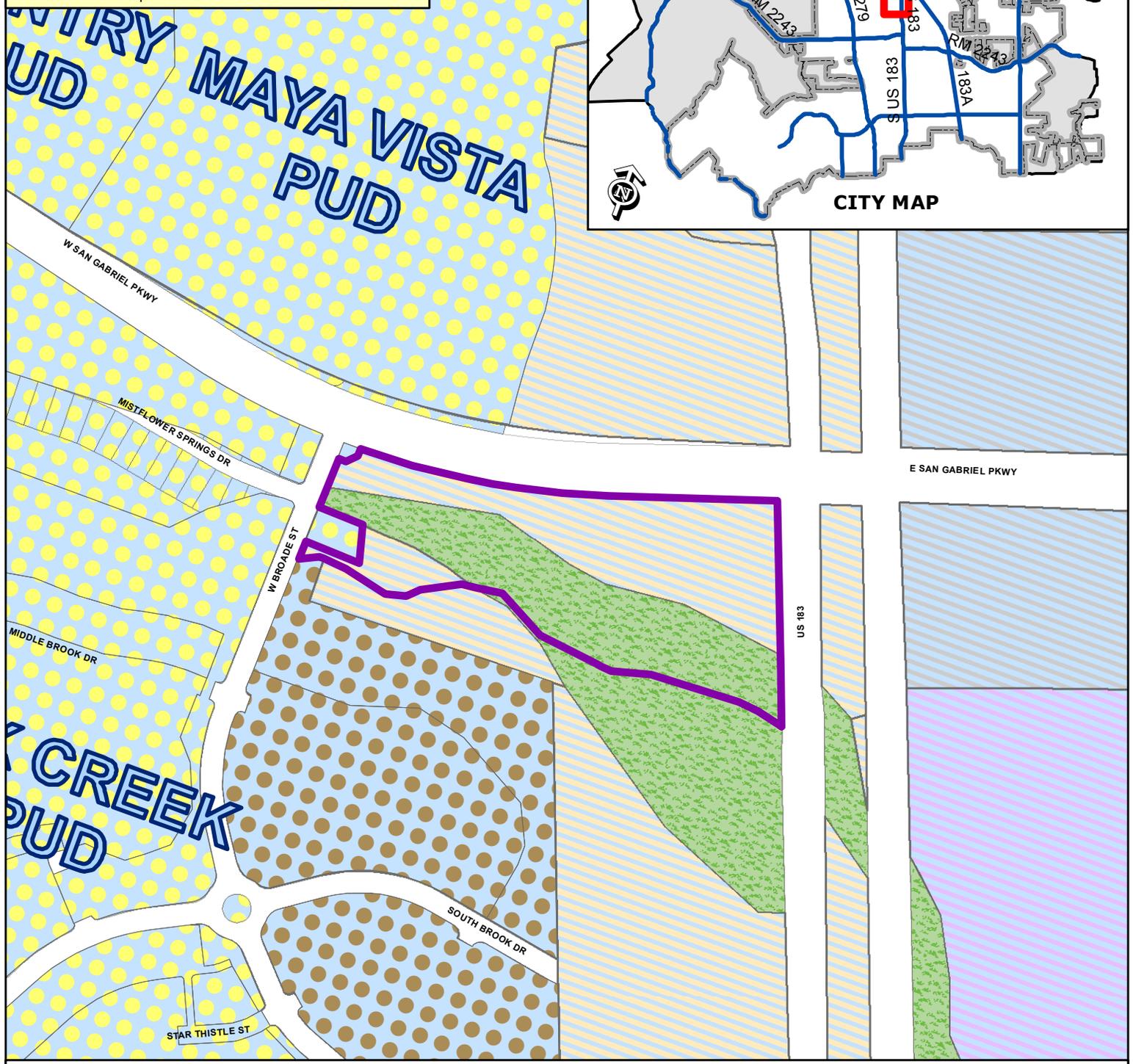
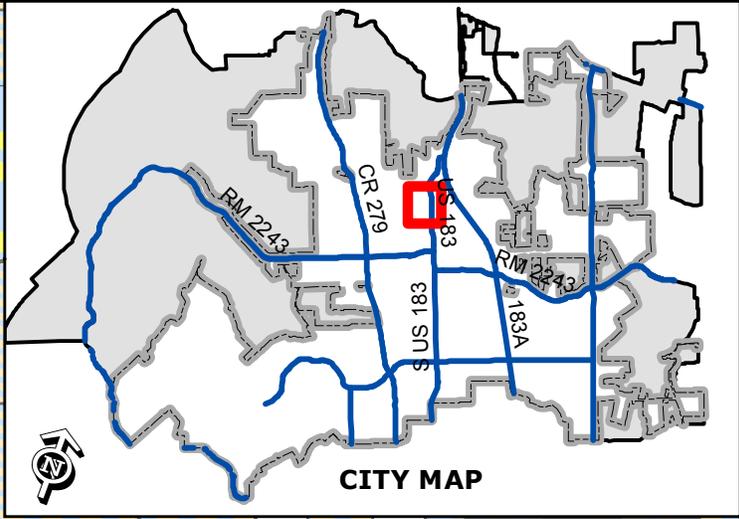
Staff recommends approval of the requested PUD and Concept Plan with the following conditions:

1. Update the PUD to meet the intent of the ordinance with regard to continuous building frontage along US 183. An example could include relocating the pumps to allow for another building between US 183 and the pumps.
2. Add a requirement that the continuous building frontage will not be required for Parcel 2 as long as the buildings are oriented towards the creek corridor instead of San Gabriel Pkwy. The creek shall be treated as the street with regard to the masonry requirements. The creek shall include an active edge with a trail system, pedestrian amenities, outdoor seating, landscaping, etc.
3. Add a note to Exhibit E stating that the site plan is conceptual and has not been reviewed by City Staff. A formal review will be conducted at the site development stage of the process.
4. Update Exhibit F to demonstrate the averaging the riparian corridor setbacks. Currently, the exhibit only shows the removal.
5. Provide a trail along the creek.

The intent of the B-Street standards is to provide for a pedestrian friendly, walkable area. A continuous building frontage is required along this street type. In this situation, orienting the buildings to face the creek and a trail would promote a pedestrian friendly atmosphere.

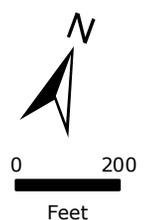
This request with staff recommendations meets the intent statements of the Composite Zoning Ordinance and the goals of the Comprehensive Plan.

This map has been produced by the City of Leander for informational purposes only. No warranty is made by the City regarding completeness or accuracy, please refer to the official ordinance for zoning verification. This data should not be construed as a legal description or survey instrument. No responsibility is assumed for damages or other liabilities due to the accuracy, availability, completeness, use or misuse of the information herein provided.

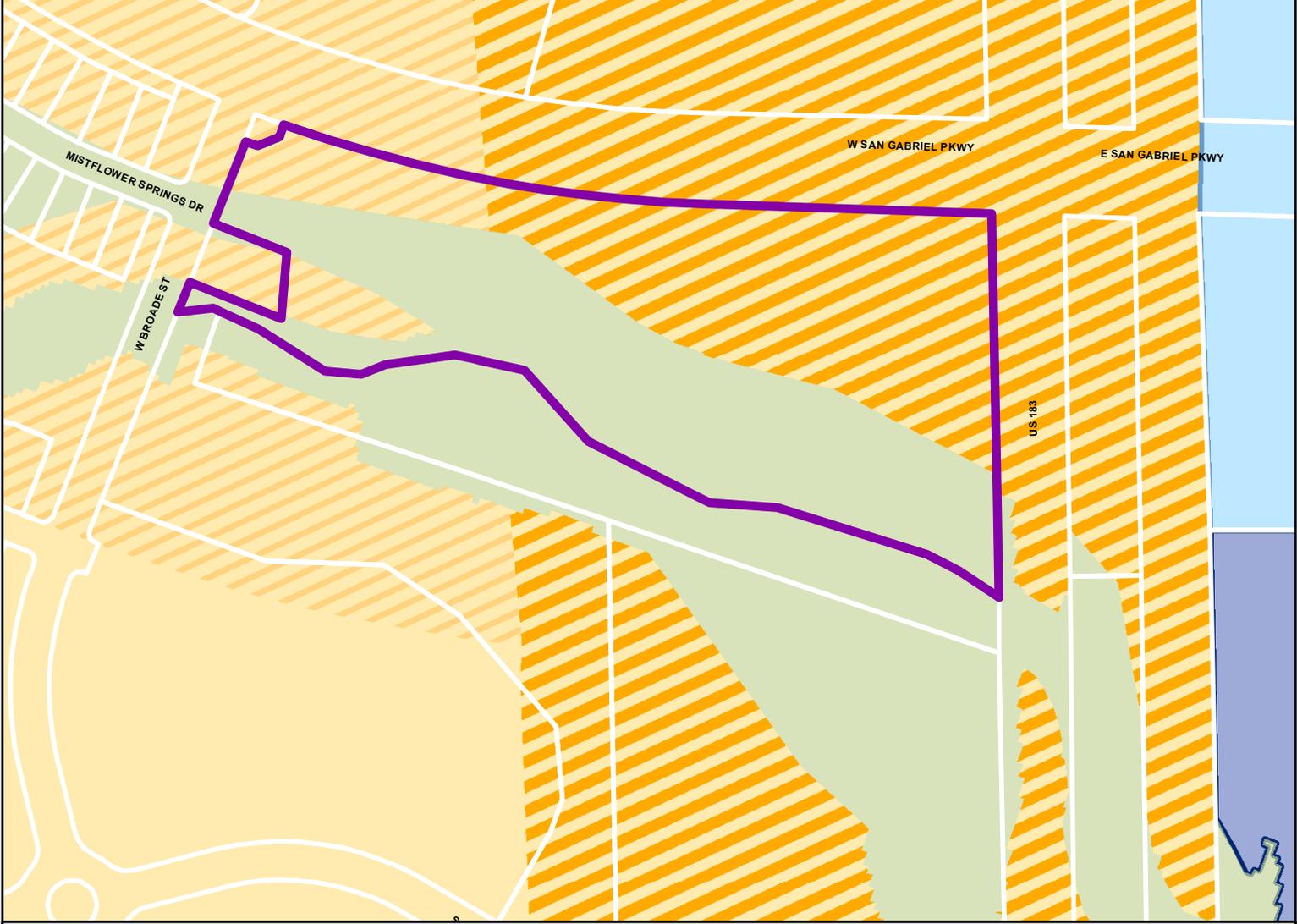
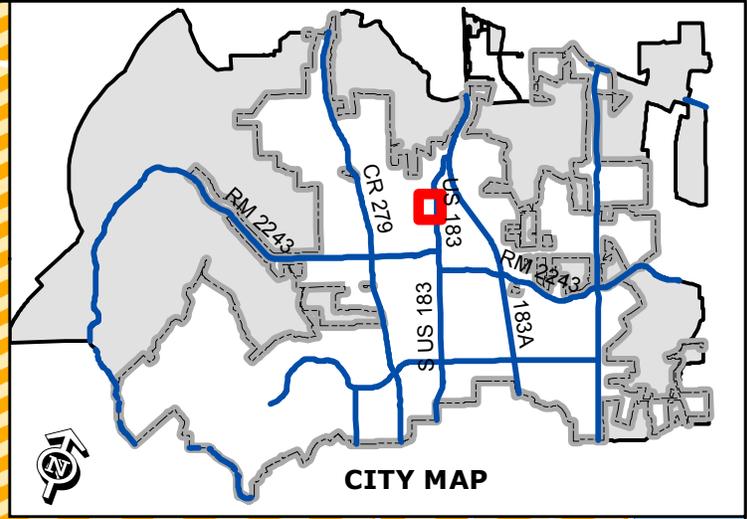


ZONING CASE 15-TOD-Z-030 Attachment #2 Current Zoning Map - Tylerville PUD

Subject Property	SFR	SFL	LO	PUD - Commercial
City Limits	SFE	SFT	LC	PUD - Mixed Use
	SFS	SFU/MH	GC	PUD - Multi-Family
	SFU	TF	HC	PUD - Townhomes
	SFC	MF	HI	PUD - Single-Family



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ZONING CASE 15-TOD-Z-030 Attachment #3 Future Land Use Map - Tylerville PUD

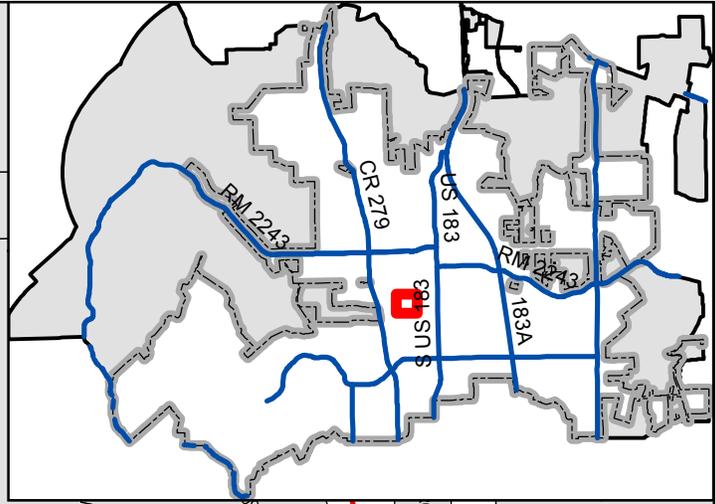
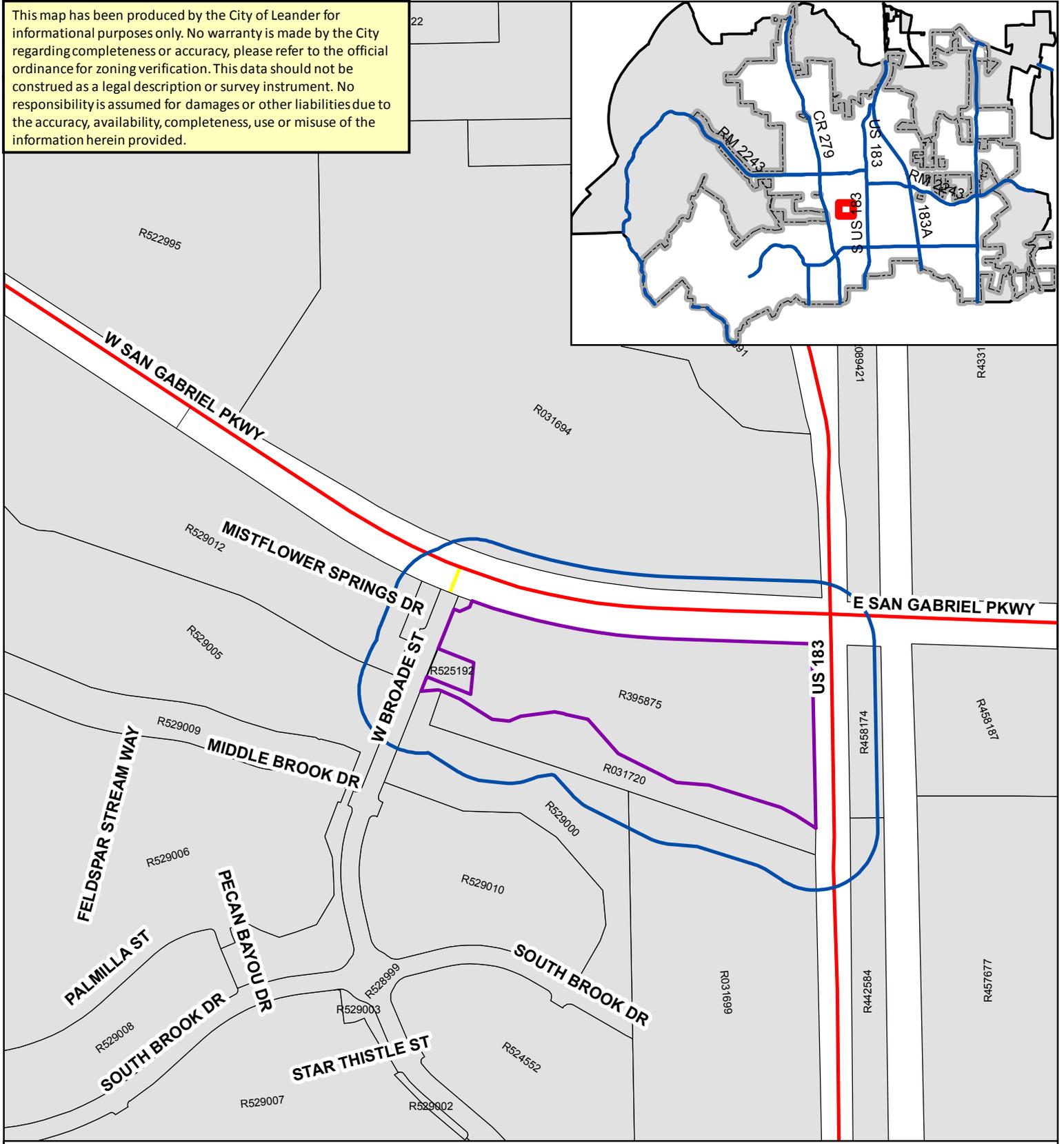
 Subject Property	 Commercial Corridor	 Transit Supportive Mixed Use
 City Limits	 Neighborhood Center	 Station Area Mixed Use
 Open Space	 Community Center	 Old Town Mixed Use
 Mixed Use Corridor	 Activity Center	 Employment Mixed Use
	 Industrial District	
	 Neighborhood Residential	





0 200
Feet

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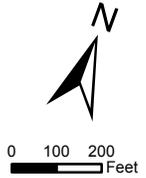


ZONING CASE 15-TOD-Z-030

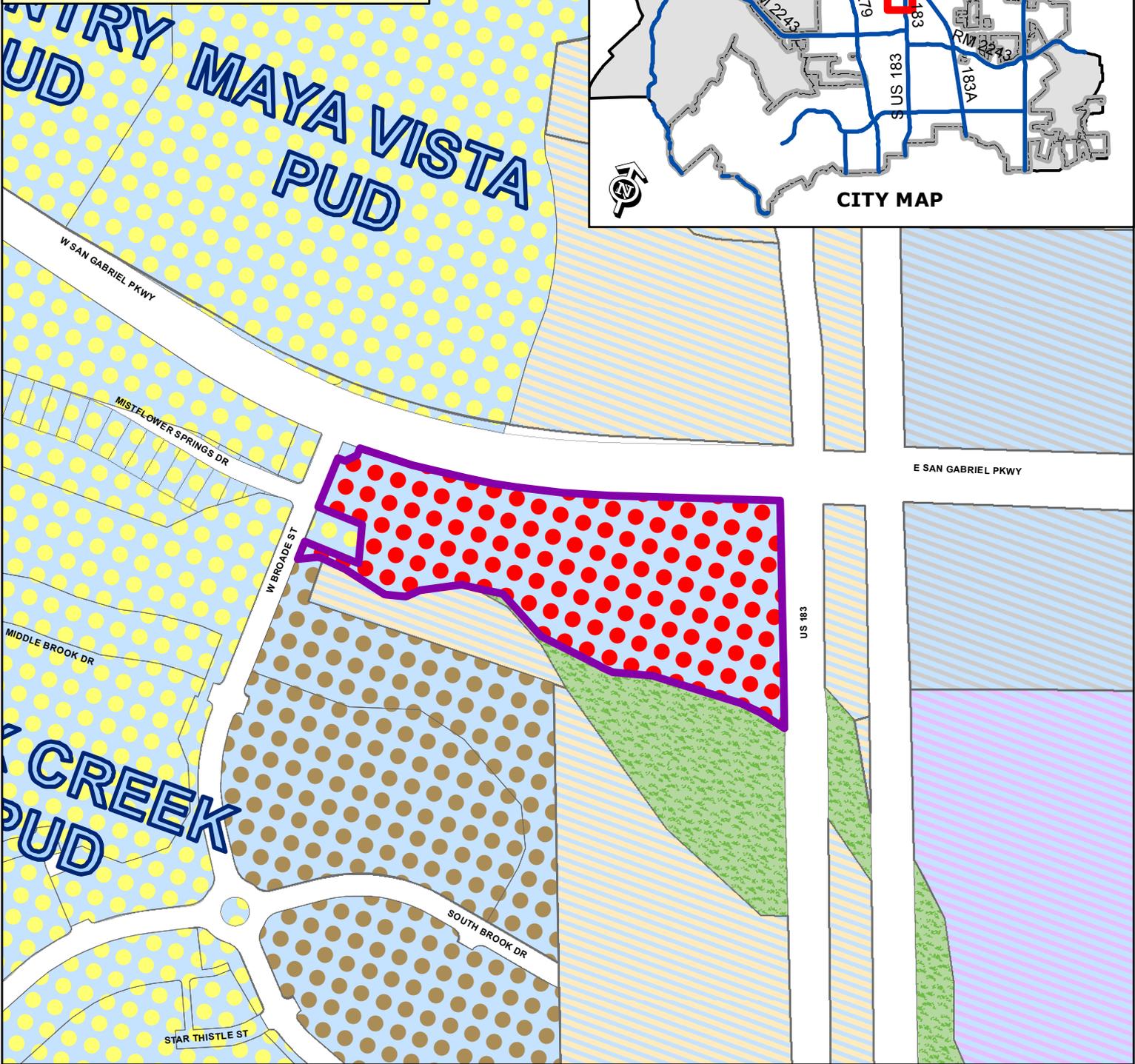
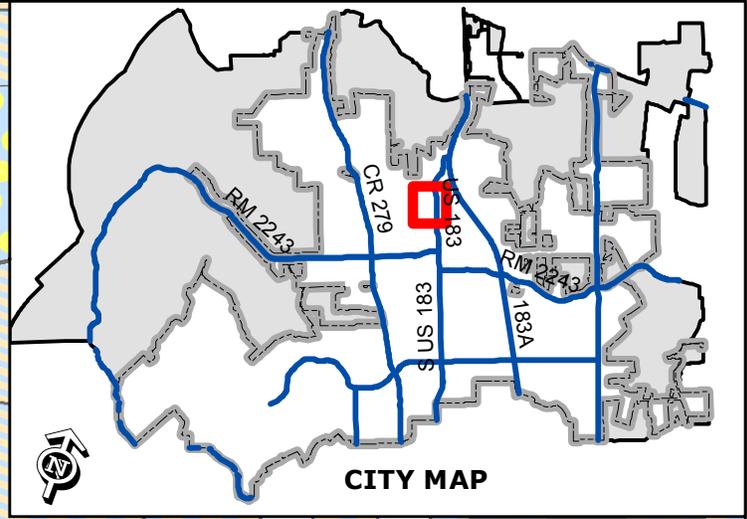
Attachment #4

Notification Map
Tylerville Commercial PUD Amendment

-  Public Notification Boundary
-  Subject Property
-  City Limits
-  WCAD Parcels

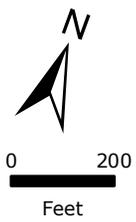


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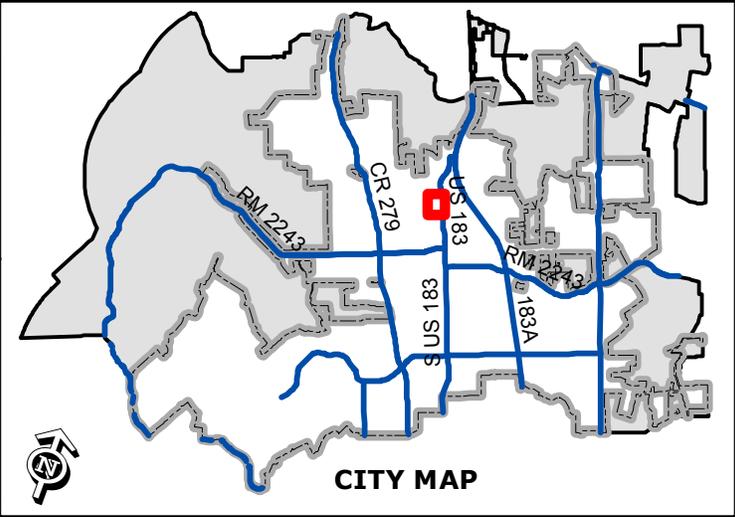


ZONING CASE 15-TOD-Z-030 Attachment #5 Proposed Zoning Map - Tylerville PUD

Subject Property	SFR	SFL	LO	PUD - Commercial
City Limits	SFE	SFT	LC	PUD - Mixed Use
	SFS	SFU/MH	GC	PUD - Multi-Family
	SFU	TF	HC	PUD - Townhomes
	SFC	MF	HI	PUD - Single-Family



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ZONING CASE 15-TOD-Z-030 Attachment #6

Aerial Exhibit - Approximate Boundaries
Tylerville Commercial PUD



-  Subject Property
-  City Limits

Exhibit A

Tylerville Commercial Planned Unit Development

A. Purpose and Intent

The Tylerville Commercial PUD is composed of approximately 10.6 acres, as described in Exhibit B (Field Notes). The development of this property is planned as a high quality, non-residential development with a variety of office and retail offerings.

Tylerville Commercial has been designed to create a walkable, pedestrian friendly development providing retail services and employment to the surrounding area. The contents of this PUD further explain and illustrate the overall appearance and function desired for this development. A Conceptual Site Layout and Land Use Plan has been attached to this PUD, Exhibit C, to illustrate the design intent for the property. The Conceptual Site Layout and Land Use Plan is intended to serve as a guide to illustrate the general development vision and design concepts and is not intended to serve as a final document. The Conceptual Site Layout and Land Use Plan depicts a mix of non-residential offerings and open space areas which are contemplated within the development.

B. Applicability and Base Zoning

All aspects regarding the development of this PUD shall comply the City of Leander Composite Zoning Ordinance, except as established in this exhibit, titled Exhibit A.

For the purpose of establishing development standards for the PUD, base zoning districts have been selected from the Leander Composite Zoning Ordinance for the various non-residential products proposed within the PUD.

- Base District General Commercial (GC-3-A)
- Base District General Commercial (GC-2-A)
- Base District Local Commercial (LC-2-A)

Each plat or site plan submitted to the City will identify the use at the time of City Submittal. All development within the PUD will comply with the modified development standards of this PUD. In the case that this PUD does not address a specific City requirement, the Leander Composite Zoning Ordinance shall apply. In the event of a conflict between this PUD and the base zoning district found in the Leander Composite Zoning Ordinance, this PUD shall control.

C. Conceptual Site Layout and Land Use Plan

Exhibit C attached is a conceptual development plan intended to visually convey the design intent for the Tylerville Commercial development. The design of the development is not final, and is subject to refinement during the platting and site planning stages. This PUD zoning document does not constitute plat or site plan approval of the attached plan.

The Tylerville Commercial project is comprised of a mix of various office and retail products. The product placement within the development is planned to provide the following development pattern:

- Parcel 3, GC-3-A General Commercial

At the corner of US 183 and San Gabriel Parkway is a 2.1 acre tract. This tract will be the location of a convenience store with gas pumps, providing services to the surrounding areas (See Exhibit E: Concept Site Plan). As defined in Section F of this PUD, Parcel 3 shall be exempt from Section 2.4.e of the Development Standards for the Conventional Development Sector (CD). While the convenience store building will meet the Ordinance intent along San Gabriel Parkway, the gas pumps will be located along US 183 as described below.

Gas pumps will be set to the side of the primary building elevation viewed from US 183. The gas pump facility shall be located no closer to US 183 than the front elevation of the convenience store building. A tire air station will also be located set back from the convenience store's San Gabriel Parkway elevation.

The architectural standards of the convenience store shall be consistent with those established within the Leander Composite Zoning Ordinance GC-3-A. All other constructed structures shall complement the convenience store architectural style.

Article VI, Section 1, Landscaping and Screening of the Composite Zoning Ordinance establishes minimum landscape and screening requirements.

The landscape area for Parcel 3 will be increased from the commercial uses minimum of 15% (as established in Article VI, Section 1.b.(9)iii) to a minimum of 20%. Additionally, the gas pump facility will be screened from the view of at least 60% of adjacent properties outside this PUD in addition to being screened from any public ROW. See Exhibit D: Parcel 3 Landscape Screening, for prototypical screening to be provided along US 183 and San Gabriel Parkway.

- Parcel 2, GC-2-A General Commercial

West of Parcel 3 will be a 4.8 acre tract. Located within this tract will be a mix of retail and office buildings, associated parking and detention/water quality facilities. As Illustrated on Exhibit C, Conceptual Site Layout and Land Use Plan, Parcel 2 is located along the creek corridor. This PUD seeks to place buildings and potential outdoor spaces in a manner to enjoy the creek corridor. Therefore, as defined in Section F of this PUD, Parcel 2 shall not be exempt from Section 2.4.e of the Development Standards for the Conventional Development Sector (CD).

- Parcel 1, LC-2-A Local Commercial

The western tract is 3.7 acres. A mix of retail and office buildings and associated parking shall be located within this parcel. Due to the Parcel's proximity to residential communities north and west of the parcel, the parcel will be zoned LC-2-A as a transition intensity. As Illustrated on Exhibit C, Conceptual Site Layout and

Land Use Plan, Parcel 1 is located along the creek corridor. This PUD seeks to place buildings and potential outdoor spaces in a manner to enjoy the creek corridor. Therefore, as defined in Section F of this PUD, Parcel 1 shall not be exempt from Section 2.4.e of the Development Standards for the Conventional Development Sector (CD).

D. Parkland/Open Space/Trails

Exhibit C, Conceptual Site Layout and Land Use Plan illustrates the property's relationship to the creek corridor. The creek is not located within the boundary of this PUD.

An internal, private pedestrian network is anticipated linking buildings with each other and associated parking lots. During site planning of said pedestrian networks, connections will be provided to the offsite regional North Brushy Creek Trail.

E. Riparian Corridors

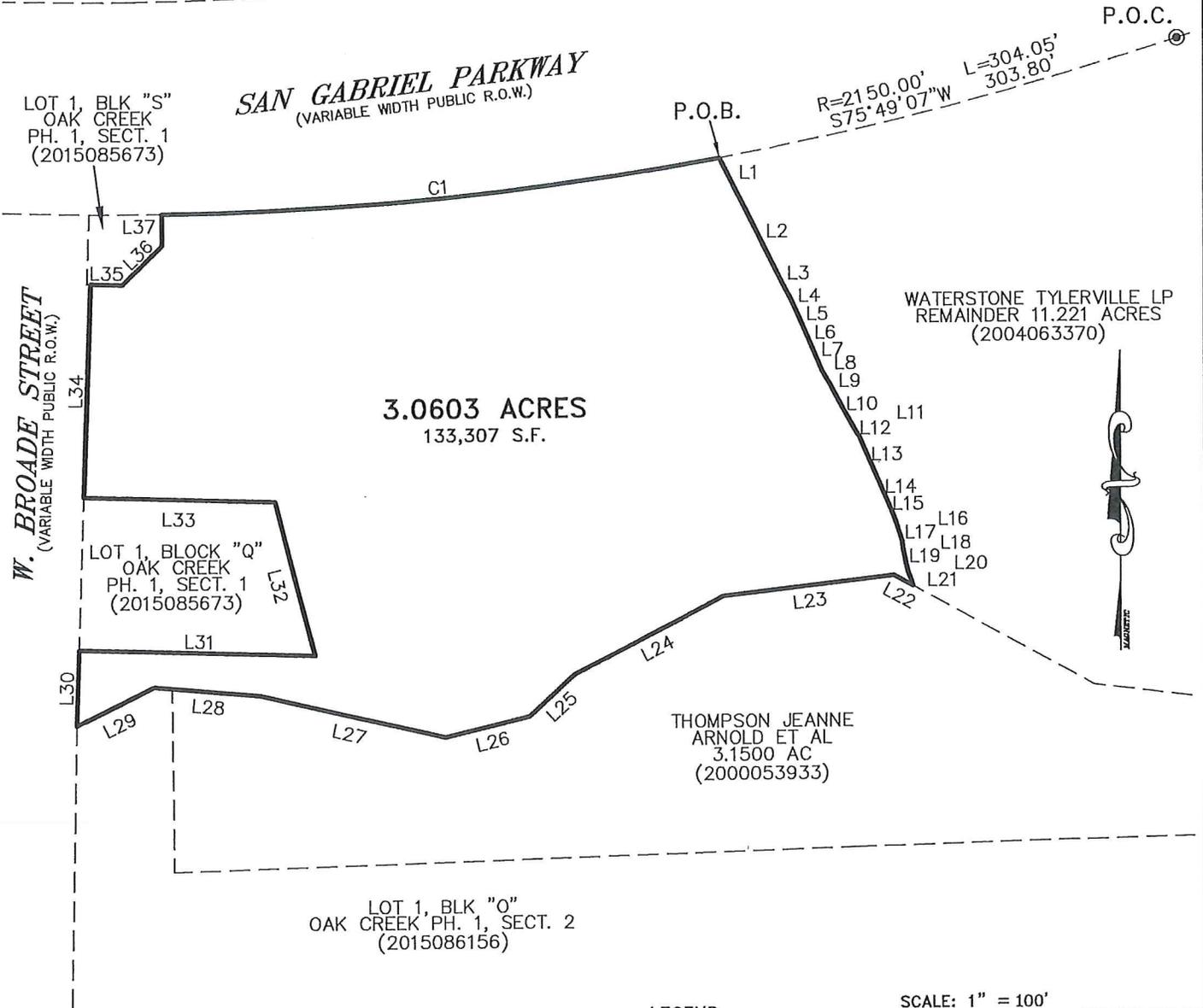
As noted within this PUD, a creek runs along the southern boundary of the PUD. As such, Section 49, Riparian Corridors of the Subdivision Ordinance requires the establishment of a riparian corridor along the creek and associated tributaries. Exhibit F, Floodplain Exhibit, illustrates the modified riparian corridor within the boundary of this PUD. The area highlighted in blue on Exhibit F has been removed from the riparian corridor and associated development regulations.

F. Architectural Criteria

All office and commercial product within this PUD shall comply with the Development Standards for the Conventional Development Sector (CD) with the following exceptions.

1. Parcel 3 shall be exempt from Section 2.4.e.:
“A continuous building frontage is required. The frontage may only be broken by a street, pedestrian passage, courtyard or similar feature approved by the Planning Director. For phase building construction within a block, a screen wall or landscape hedge shall be constructed at the building frontage line prior to building construction.”

SKETCH TO ACCOMPANY FIELD NOTES FOR 3.0603 ACRES OUT OF THE CHARLES COCHRAN SURVEY, ABSTRACT NO. 134 IN WILLIAMSON COUNTY, TEXAS, BEING A PORTION OF AN 11.221 ACRE TRACT CONVEYED TO WATERSTONE TYLERVILLE LP BY DEED RECORDED IN DOCUMENT NO. 2004063370, OFFICIAL PUBLIC RECORDS, WILLIAMSON COUNTY, TEXAS



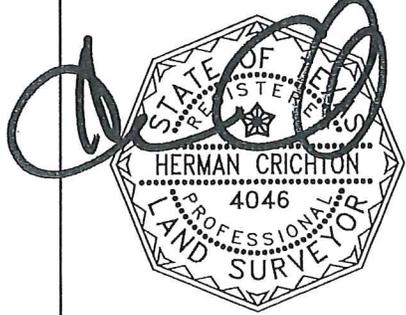
CRICHTON
AND ASSOCIATES INC.
LAND SURVEYORS

TBLS Firm # 101727-00
6448 East Highway 290
Suite B105
Austin, Texas 78723
(512) 244-3395
Orders@CrichtonandAssociates.com

Ex B 4 of 11

- LEGEND**
- ⊙ 1/2" IRON PIN FOUND
 - 1/2" IRON PIN SET
 - △ NAIL FOUND

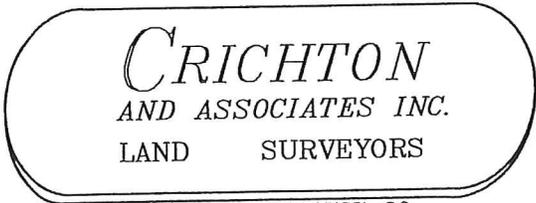
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SKETCH TO ACCOMPANY FIELD NOTES FOR 3.0603 ACRES OUT OF THE CHARLES COCHRAN SURVEY, ABSTRACT NO. 134 IN WILLIAMSON COUNTY, TEXAS, BEING A PORTION OF AN 11.221 ACRE TRACT CONVEYED TO WATERSTONE TYLERVILLE LP BY DEED RECORDED IN DOCUMENT NO. 2004063370, OFFICIAL PUBLIC RECORDS, WILLIAMSON COUNTY, TEXAS

LINE TABLE		
LINE	LENGTH	BEARING
L1	41.33	S26°48'57"E
L2	42.76	S26°22'45"E
L3	17.78	S27°16'38"E
L4	13.73	S23°14'28"E
L5	11.94	S23°34'10"E
L6	13.95	S23°11'49"E
L7	10.04	S23°05'05"E
L8	10.41	S30°52'12"E
L9	15.16	S27°15'29"E
L10	18.67	S28°28'41"E
L11	4.94	S33°20'56"E
L12	6.80	S22°19'19"E
L13	29.96	S23°45'48"E
L14	15.50	S22°55'37"E
L15	8.15	S21°32'45"E
L16	12.23	S16°48'55"E
L17	4.55	S07°44'54"E
L18	11.05	S11°15'18"E
L19	5.29	S13°51'58"E
L20	4.03	S21°08'17"E
L21	4.54	S19°24'44"E
L22	14.23	N61°12'03"W
L23	109.99	S83°28'22"W
L24	108.08	S62°50'32"W
L25	40.13	S48°09'34"W
L26	55.40	S76°19'29"W
L27	121.71	N76°56'31"W
L28	68.92	N85°07'58"W
L29	55.12	S63°50'48"W
L30	48.73	N01°44'18"E
L31	152.13	S88°15'45"E
L32	102.19	N14°42'21"W
L33	123.20	N88°15'45"W
L34	136.75	N01°44'18"E
L35	20.00	S88°15'42"E
L36	35.85	N46°01'53"E
L37	20.05	N00°25'05"W

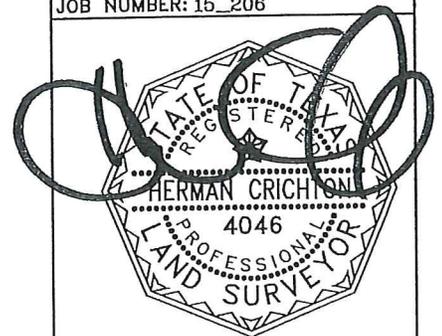
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TBLS Firm # 101727-00
6448 East Highway 290
Suite B105
Austin, Texas 78723
(512) 244-3395
Orders@CrichtonandAssociates.com

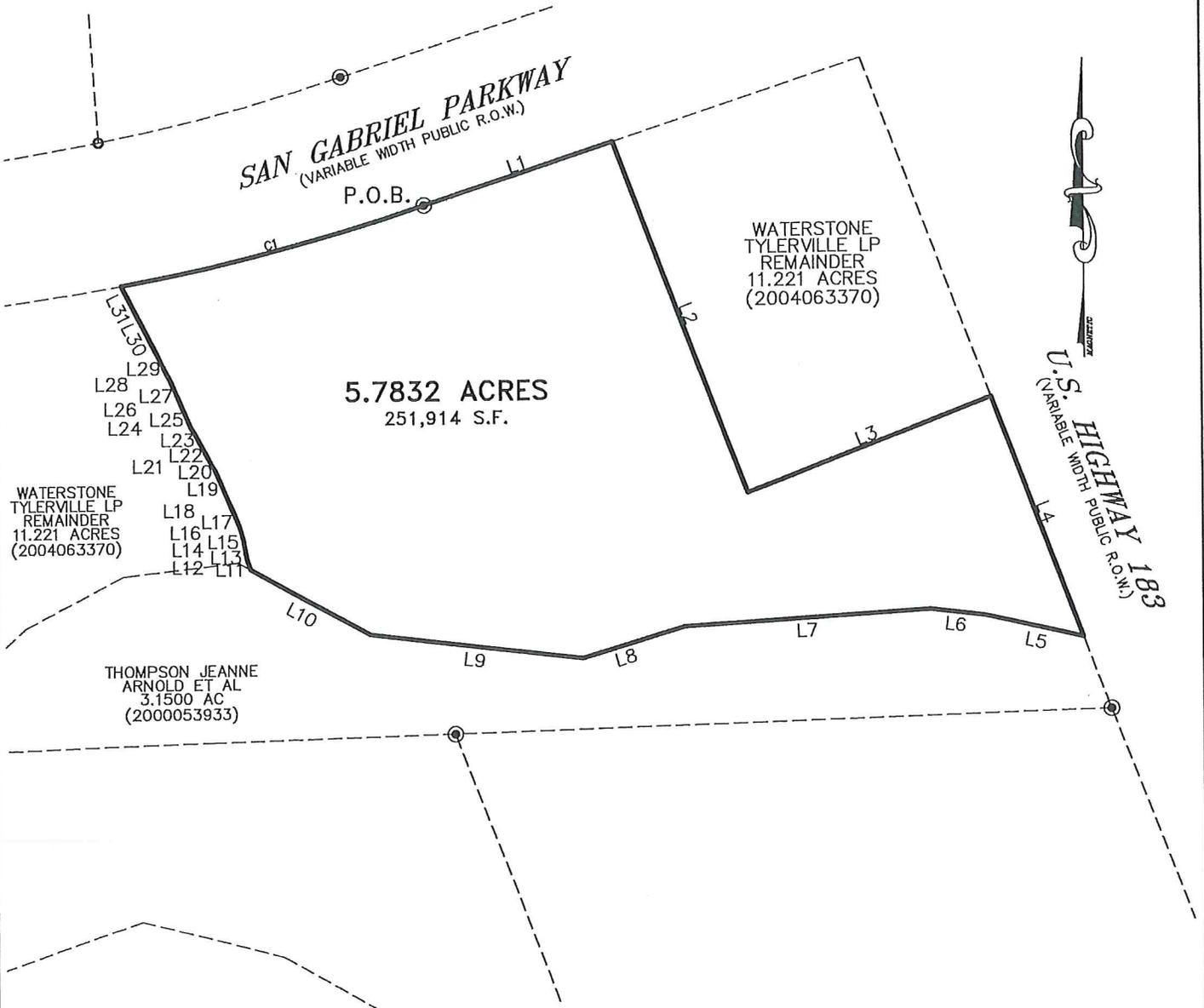
Ex 5 of 11

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DATE: October 16, 2015

SKETCH TO ACCOMPANY FIELD NOTES FOR 5.7832 ACRES OUT OF THE CHARLES COCHRAN SURVEY, ABSTRACT NO. 134 IN WILLIAMSON COUNTY, TEXAS, BEING A PORTION OF AN 11.221 ACRE TRACT CONVEYED TO WATERSTONE TYLERVILLE LP BY DEED RECORDED IN DOCUMENT NO. 2004063370, OFFICIAL PUBLIC RECORDS, WILLIAMSON COUNTY, TEXAS



5.7832 ACRES
251,914 S.F.

WATERSTONE TYLERVILLE LP REMAINDER
11.221 ACRES
(2004063370)

THOMPSON JEANNE ARNOLD ET AL
3.1500 AC
(2000053933)

LEGEND

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- 1/2" IRON PIN SET
- △ NAIL FOUND

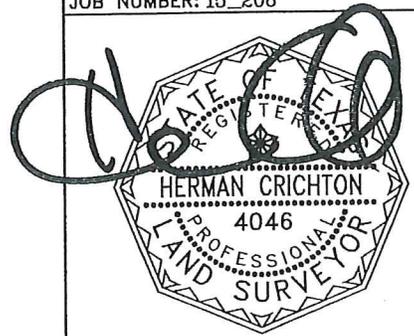
SCALE: 1" = 100'

JOB NUMBER: 15_208

CRICHTON
AND ASSOCIATES INC.
LAND SURVEYORS

TBLS Firm # 101727-00
6448 East Highway 290
Suite B105
Austin, Texas 78723
(512) 244-3395
Orders@CrichtonandAssociates.com

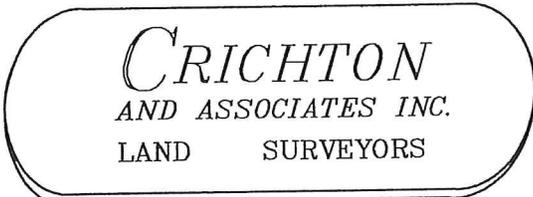
Ex B 8 of 11



SKETCH TO ACCOMPANY FIELD NOTES FOR 5.7832 ACRES OUT OF THE CHARLES COCHRAN SURVEY, ABSTRACT NO. 134 IN WILLIAMSON COUNTY, TEXAS, BEING A PORTION OF AN 11.221 ACRE TRACT CONVEYED TO WATERSTONE TYLERVILLE LP BY DEED RECORDED IN DOCUMENT NO. 2004063370, OFFICIAL PUBLIC RECORDS, WILLIAMSON COUNTY, TEXAS

LINE TABLE		
LINE	LENGTH	BEARING
L1	192.05	N72°04'32"E
L2	364.16	S20°54'37"E
L3	252.45	N69°12'16"E
L4	250.00	S20°55'02"E
L5	98.29	N77°02'12"W
L6	54.18	N83°00'19"W
L7	237.79	S86°46'20"W
L8	103.76	S73°39'28"W
L9	207.01	N83°05'56"W
L10	133.40	N61°12'03"W
L11	4.54	N19°24'44"W
L12	4.03	N21°08'17"W
L13	5.29	N13°51'58"W
L14	11.05	N11°15'18"W
L15	4.55	N07°44'54"W
L16	12.23	N16°48'55"W
L17	8.15	N21°32'45"W
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L20	6.80	N22°19'19"W
L21	4.94	N33°20'56"W
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L23	15.16	N27°15'29"W
L24	10.41	N30°52'12"W
L25	10.04	N23°05'05"W
L26	13.95	N23°11'49"W
L27	11.94	N23°34'10"W
L28	13.73	N23°14'28"W
L29	17.78	N27°16'38"W
L30	42.76	N26°22'45"W
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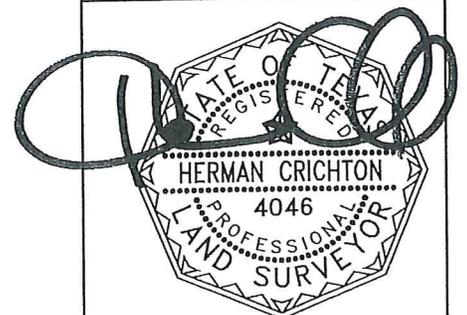
CURVE TABLE				
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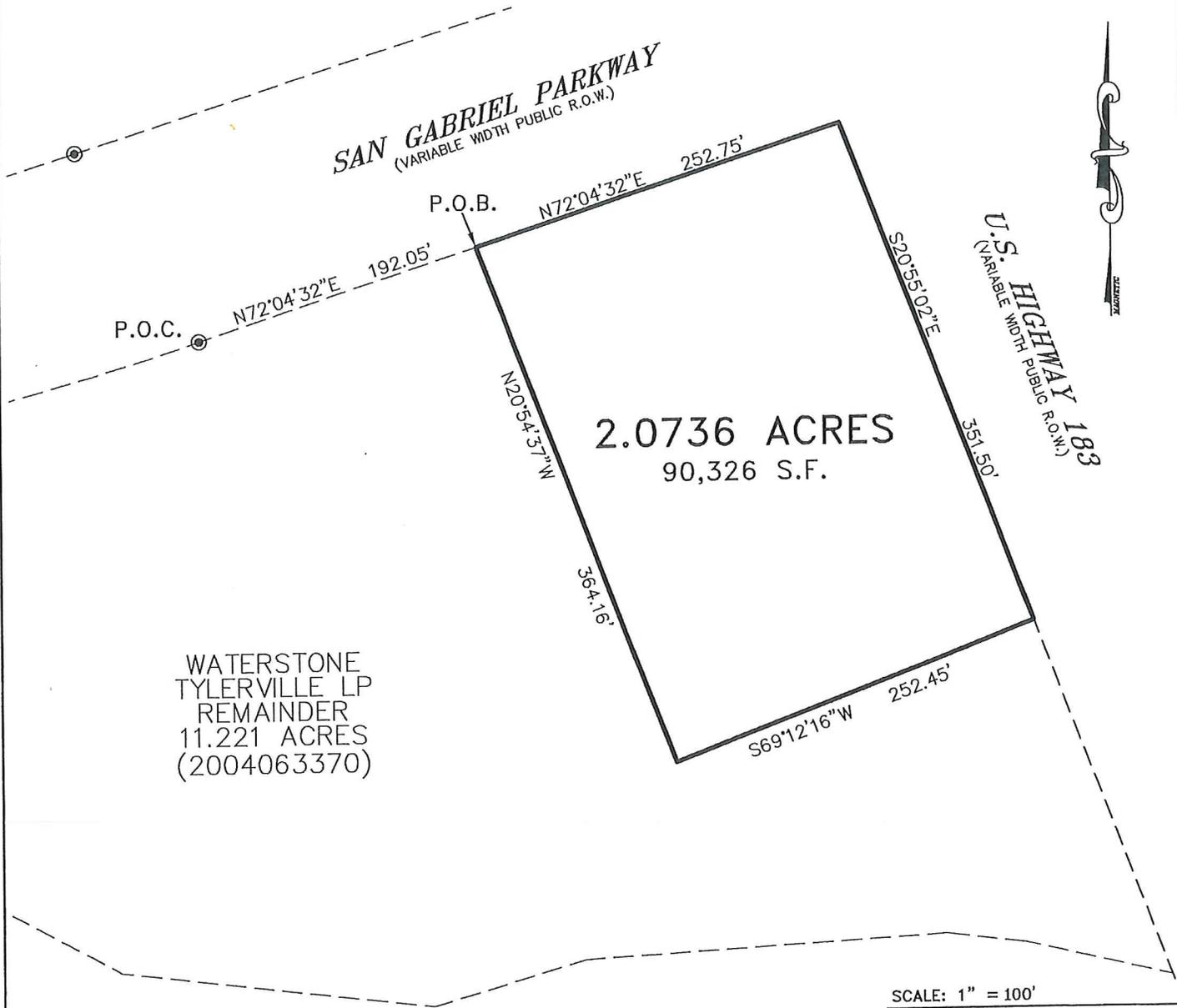
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Austin, Texas 78723
(512) 244-3395
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LB 9 of 11

SCALE: 1" = N/A
JOB NUMBER: 15_206



SKETCH TO ACCOMPANY FIELD NOTES FOR 5.7832 ACRES OUT OF THE CHARLES COCHRAN SURVEY, ABSTRACT NO. 134 IN WILLIAMSON COUNTY, TEXAS, BEING A PORTION OF AN 11.221 ACRE TRACT CONVEYED TO WATERSTONE TYLERVILLE LP BY DEED RECORDED IN DOCUMENT NO. 2004063370, OFFICIAL PUBLIC RECORDS, WILLIAMSON COUNTY, TEXAS

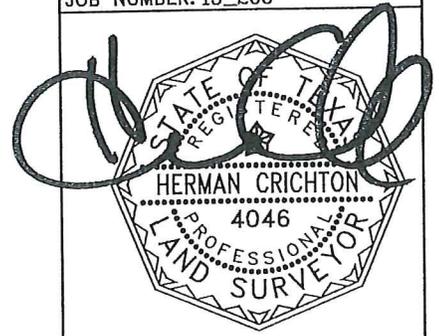


LEGEND

- ⊙ 1/2" IRON PIN FOUND
- ⊙ 1/2" IRON PIN SET
- △ NAIL FOUND

SCALE: 1" = 100'

JOB NUMBER: 15_206



DATE: October 16, 2015

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Ex B 11 of 11



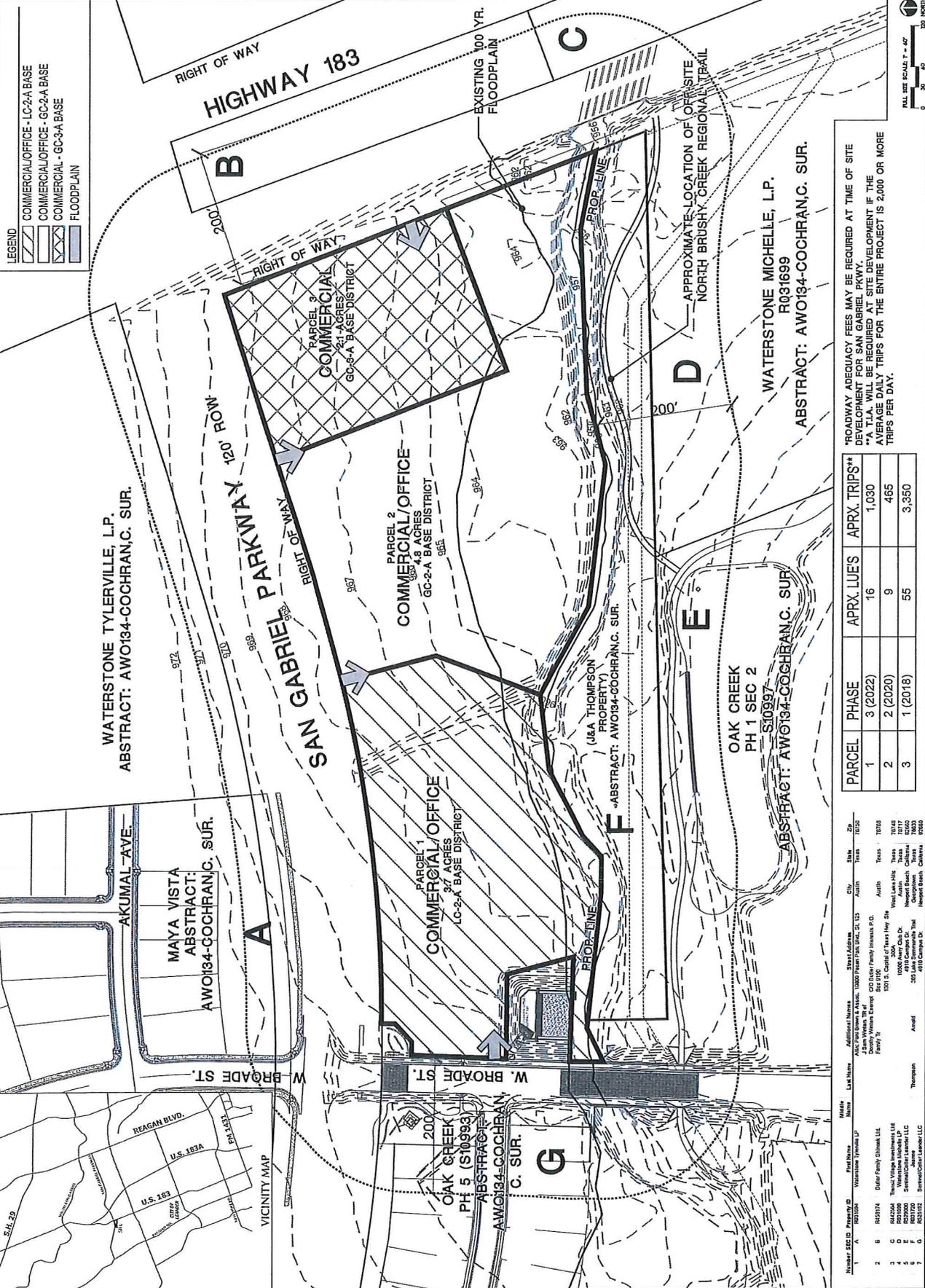
SEC Planning, LLC
 15000 North Loop West, Suite 1000
 Houston, Texas 77040
 Phone: 281.441.1111
 Fax: 281.441.1112
 Website: www.secplanning.com

OWNER:
POHL PARTNERS
 18000 Katy Road, Suite 200
 Houston, TX 77058
 T: 281.335.5577

EXHIBIT C
CONCEPTUAL SITE LAYOUT
AND LAND USE PLAN
TYLERVILLE COMMERCIAL
 LEANDER, TEXAS

DATE: 08/15/2018
PROJECT: Tylerville Commercial
SCALE: 1" = 100'
DATE: 08/15/2018
PROJECT: Tylerville Commercial
SCALE: 1" = 100'
DATE: 08/15/2018
PROJECT: Tylerville Commercial
SCALE: 1" = 100'

Drawn By: CJI
Reviewed By: POHL
Project No.: 150010-POHL



LEGEND

- COMMERCIAL/OFFICE - LC-2-A BASE
- COMMERCIAL/OFFICE - GC-2-A BASE
- COMMERCIAL - GC-3-A BASE
- FLOODPLAIN

PARCEL	PHASE	APPR. LUES'S	APPR. TRIPS**
1	3 (2022)	16	1,030
2	2 (2020)	9	465
3	1 (2018)	55	3,350

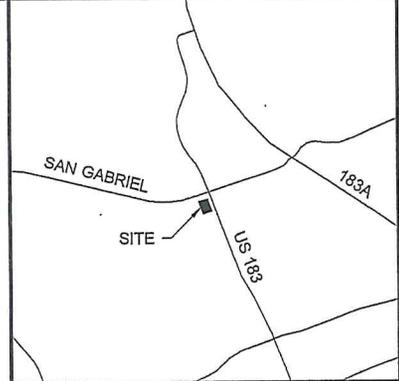
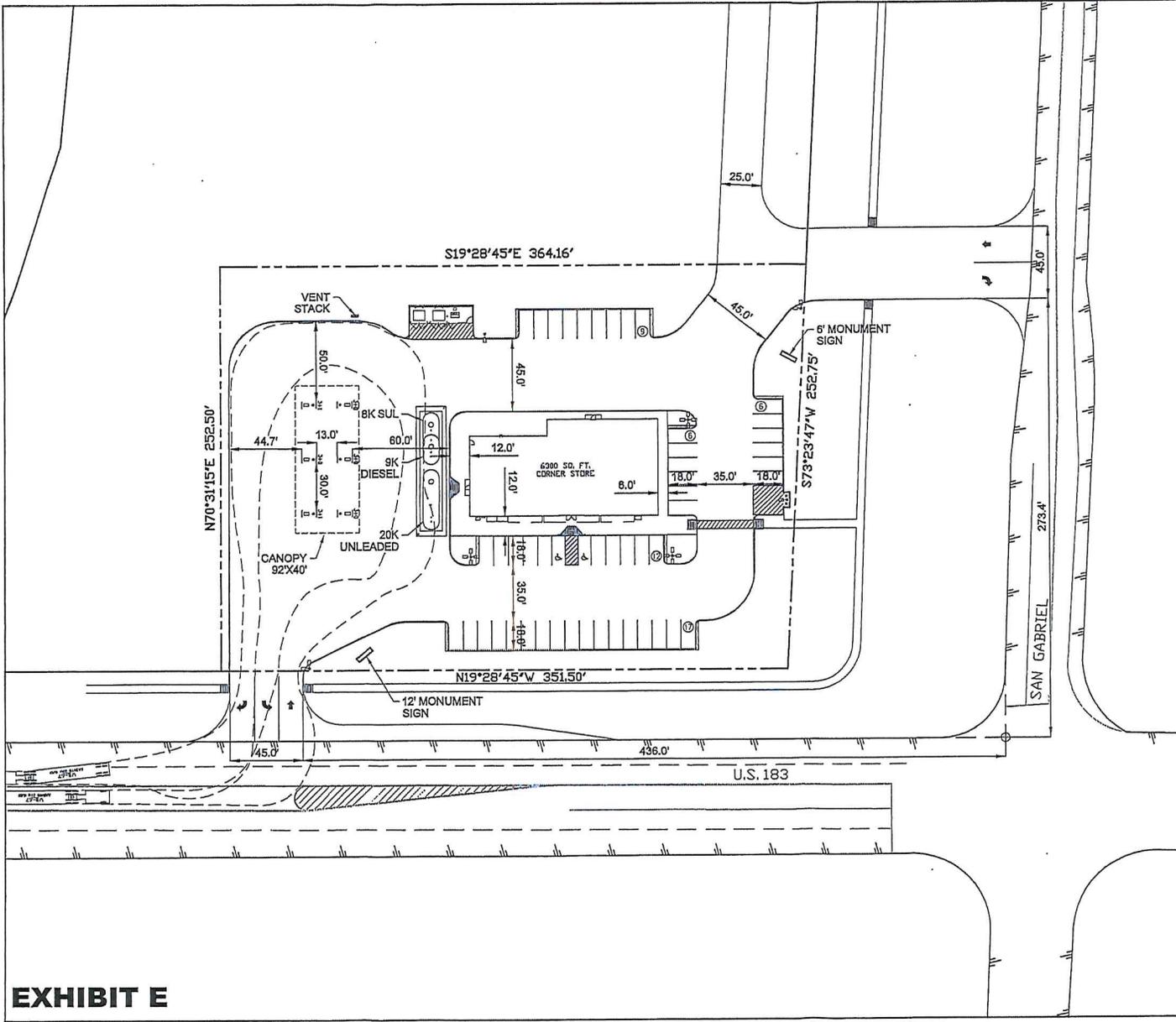
Parcel No.	Parcel Description	City	State	Zip
1	1.8 ACRES, LC-2-A BASE DISTRICT	Austin	Texas	78702
2	4.8 ACRES, GC-2-A BASE DISTRICT	Austin	Texas	78702
3	2.1 ACRES, GC-2-A BASE DISTRICT	Austin	Texas	78702

ROADWAY ADEQUACY FEES MAY BE REQUIRED AT TIME OF SITE DEVELOPMENT FOR SAN GABRIEL PKWY.
****A T.I.A. WILL BE REQUIRED AT SITE DEVELOPMENT IF THE AVERAGE DAILY TRIPS FOR THE ENTIRE PROJECT IS 2,000 OR MORE TRIPS PER DAY.**



Exhibit D

Parcel 3 Landscape Screening



2 VICINITY MAP
SCALE: N.T.S.

CODE VERIFICATION AND SURVEY NEEDED

SITE PLAN WAS CONSTRUCTED FROM PRELIMINARY INFORMATION PROVIDED BY CST BRANDS, INC. IT DOES NOT NECESSARILY REPRESENT THE FULL EXTENT OF PROPERTY, DEVELOPER, AND CODE REQUIREMENTS.

ID PRICE SIGN

1 2 3

EBS

Y N

REVIEWED BY:

FOR CST BRANDS

APPROVED

APPROVED WITH COMMENT

REVISE & RESUBMIT

PRELIMINARY PROJECT DATA

SITE AREA	90,372 S.F. (2.07 ACRES)
BUILDING AREA	6,300 S.F.
PARKING PROVIDED	48 SPACES
H.C. PARKING PROVIDED	2 SPACES
TOTAL PARKING	50 SPACES
IMPERVIOUS COVER	69,491 S.F. (76.9%)
PERVIOUS	20,881 S.F. (23.1%)
ZONING	COMMERCIAL

1 CONCEPT SITE PLAN
SCALE: 1" = 80'-0"

CORNER STORE

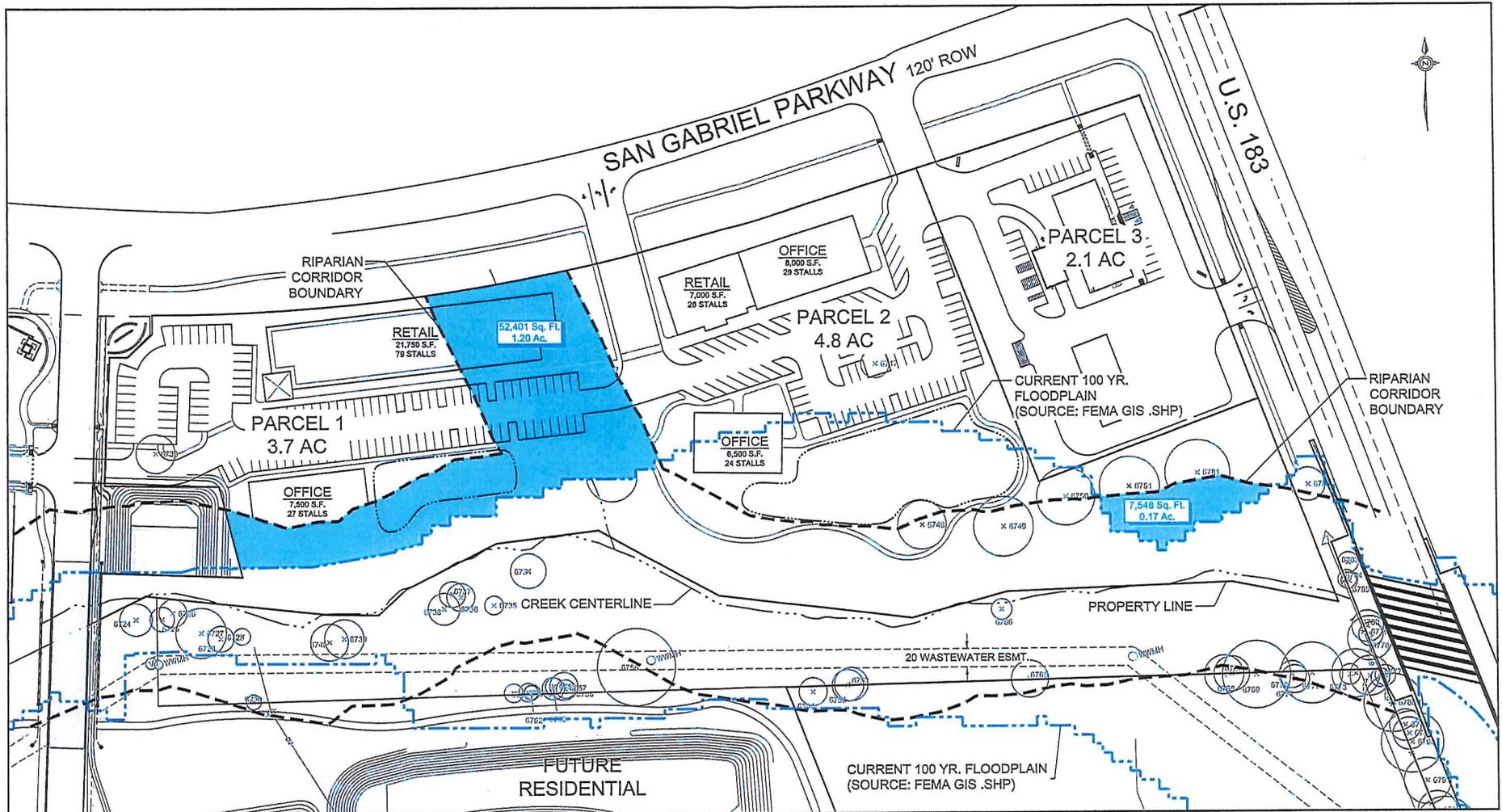
CST BRANDS, INC.
ONE VALERO WAY
SAN ANTONIO, TX, 78249
(210) 692-5000

PROJECT: CST CORNER STORE #1872
U.S. 183 & SAN GABRIEL, LEANDER, TX
CONCEPT SITE PLAN
SHEET TITLE

REV.	DATE
6	04/07/2016

SHEET NO.
SP1-1

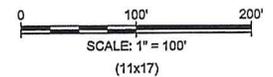
EXHIBIT E



LAND DEV
 CONSULTING, LLC
 OFFICE: 512.872.6696
 FIRM NO. 16384

TYLERVILLE SOUTH
FLOODPLAIN EXHIBIT
 LEANDER, TEXAS

MAY 09, 2016
EXHIBIT F





SEC Planning, LLC

Land Planning + Landscape Architecture + Community Branding

CLIENT-CENTERED THINKING™

October 14, 2015

City of Leander Planning Department
104 North Brushy Street
P.O. Box 319
Leander, TX 78646-0319

Re: Description of Property and Letter of Intent

The Tylerville Commercial tract is a 10.6 acre tract of land located within the City of Leander at the southwest intersection of US 183 and San Gabriel Parkway. It is the Applicant's intent and request to rezone the entire 10.6 acres with a mix of commercial and office. Please see the included Requested Zoning Exhibit for an illustrative depiction of the requested zoning districts.

Tylerville Commercial is conveniently located at the intersection of two major north/south and east/west roads in the northwest portion of the City. Along with strong access from these roadways, the property is in close proximity to future residential neighborhoods, some of which are now under development. The requested rezoning request will provide employment, retail and service opportunities within walkable distance of these neighborhoods.

Current site conditions are also favorable for the vision of a higher intensity development. The property consists of flat pasture lands with limited tree coverage. The southern boundary of the tract is a creek and associated floodplain. This corridor will remain open, providing the opportunity for future pedestrian trail connections.

Thank you for your consideration of this zoning change request. The Applicant believes this location has the potential to help meet service and employment goals for Leander.

Sincerely,

A handwritten signature in blue ink, appearing to read "Peter Verdicio".

Peter Verdicio, RLA, LEED AP, ASLA
Principal

ORDINANCE NO #

ORDINANCE OF THE CITY OF LEANDER, TEXAS, AMENDING THE PLANNED UNIT DEVELOPMENT KNOWN AS THE TRANSIT ORIENTED DEVELOPMENT DISTRICT FOR A PARCEL OF LAND BY CREATING THE TYLERVILLE COMMERCIAL PLANNED UNIT DEVELOPMENT; MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS.

Whereas, the owner of the property described herein after (the "Property"), which is located within the planned unit development known as the Transit Oriented Development District (the "TODD"), has requested that the Property be rezoned and a planned unit development plan (the "PUD plan") for the Tylerville Commercial Planned Unit Development ("PUD") be adopted;

Whereas, after giving at least ten days written notice to the owners of land within two hundred feet of the Property, the Planning & Zoning Commission held a public hearing on the proposed rezoning and forwarded its recommendation on the rezoning to the City Council;

Whereas, after publishing notice of the public hearing at least fifteen days prior to the date of such hearing, the City Council at a public hearing has reviewed the request and the circumstances of the Property and finds that a substantial change in circumstances of the Property, sufficient to warrant a change in the zoning of the Property, has transpired;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEANDER, TEXAS, THAT:

Section 1. Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 2. Amendment of TODD Ordinance. Ordinance No.05-026, as amended, the City of Leander TODD Ordinance, is hereby modified and amended for these Properties as set forth in Section 3.

Section 3. Applicability. The TODD Ordinance is hereby amended by creating the Tylerville Commercial PUD, which are herein referred to as the "Property," generally located to the southwest of the intersection of San Gabriel Pkwy and US 183, and more particularly described as follows: those certain parcels of land being 11.221 acres, more or less, out of the Charles Cochran Survey Abstract No. 134; located in Leander, Williamson County, Texas, being more particularly shown and described in Exhibit "B"; and identified by tax identification number R395875; more particularly described in instrument number 2004063370 recorded in the Williamson County Official Public Records.

Section 4. Property Rezoned. The Property is zoned to the planned unit development district known as the Tylerville Commercial PUD within the TODD. The Property shall be developed and occupied in compliance with the PUD plan attached hereto as Exhibits "A", "B", "C", "D", "E", and "F", the Conventional Development Sector Standards of the Smart Code (defined in the TODD Ordinance) and as amended by the PUD, the Composite Zoning Ordinance, and other

applicable regulations of the City.

Section 5. Recording Zoning Change. The City Council directs the City Secretary to record this zoning classification on the City's official zoning map with the official notation as prescribed by the City's zoning ordinance.

Section 6. Severability. Should any section or part of this ordinance be held unconstitutional, illegal, or invalid, or the application to any person or circumstance for any reasons thereof ineffective or inapplicable, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portion or portions thereof; but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this ordinance are declared to be severable.

Section 7. Open Meetings. That it is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapt. 551, Loc. Gov't. Code.

PASSED AND APPROVED on First Reading this the 7th day of July, 2016.
FINALLY PASSED AND APPROVED on this the 21st day of July, 2016.

THE CITY OF LEANDER, TEXAS

ATTEST:

Christopher Fielder, Mayor

Debbie Haile, City Secretary

Exhibit A

Tylerville Commercial Planned Unit Development

A. Purpose and Intent

The Tylerville Commercial PUD is composed of approximately 10.6 acres, as described in Exhibit B (Field Notes). The development of this property is planned as a high quality, non-residential development with a variety of office and retail offerings.

Tylerville Commercial has been designed to create a walkable, pedestrian friendly development providing retail services and employment to the surrounding area. The contents of this PUD further explain and illustrate the overall appearance and function desired for this development. A Conceptual Site Layout and Land Use Plan has been attached to this PUD, Exhibit C, to illustrate the design intent for the property. The Conceptual Site Layout and Land Use Plan is intended to serve as a guide to illustrate the general development vision and design concepts and is not intended to serve as a final document. The Conceptual Site Layout and Land Use Plan depicts a mix of non-residential offerings and open space areas which are contemplated within the development.

B. Applicability and Base Zoning

All aspects regarding the development of this PUD shall comply the City of Leander Composite Zoning Ordinance, except as established in this exhibit, titled Exhibit A.

For the purpose of establishing development standards for the PUD, base zoning districts have been selected from the Leander Composite Zoning Ordinance for the various non-residential products proposed within the PUD.

- Base District General Commercial (GC-3-A)
- Base District General Commercial (GC-2-A)
- Base District Local Commercial (LC-2-A)

Each plat or site plan submitted to the City will identify the use at the time of City Submittal. All development within the PUD will comply with the modified development standards of this PUD. In the case that this PUD does not address a specific City requirement, the Leander Composite Zoning Ordinance shall apply. In the event of a conflict between this PUD and the base zoning district found in the Leander Composite Zoning Ordinance, this PUD shall control.

C. Conceptual Site Layout and Land Use Plan

Exhibit C attached is a conceptual development plan intended to visually convey the design intent for the Tylerville Commercial development. The design of the development is not final, and is subject to refinement during the platting and site planning stages. This PUD zoning document does not constitute plat or site plan approval of the attached plan.

The Tylerville Commercial project is comprised of a mix of various office and retail products. The product placement within the development is planned to provide the following development pattern:

- Parcel 3, GC-3-A General Commercial

At the corner of US 183 and San Gabriel Parkway is a 2.1 acre tract. This tract will be the location of a convenience store with gas pumps, providing services to the surrounding areas (See Exhibit E: Concept Site Plan). As defined in Section F of this PUD, Parcel 3 shall be exempt from Section 2.4.e of the Development Standards for the Conventional Development Sector (CD). While the convenience store building will meet the Ordinance intent along San Gabriel Parkway, the gas pumps will be located along US 183 as described below.

Gas pumps will be set to the side of the primary building elevation viewed from US 183. The gas pump facility shall be located no closer to US 183 than the front elevation of the convenience store building. A tire air station will also be located set back from the convenience store's San Gabriel Parkway elevation.

The architectural standards of the convenience store shall be consistent with those established within the Leander Composite Zoning Ordinance GC-3-A. All other constructed structures shall complement the convenience store architectural style.

Article VI, Section 1, Landscaping and Screening of the Composite Zoning Ordinance establishes minimum landscape and screening requirements.

The landscape area for Parcel 3 will be increased from the commercial uses minimum of 15% (as established in Article VI, Section 1.b.(9)iii) to a minimum of 20%. Additionally, the gas pump facility will be screened from the view of at least 60% of adjacent properties outside this PUD in addition to being screened from any public ROW. See Exhibit D: Parcel 3 Landscape Screening, for prototypical screening to be provided along US 183 and San Gabriel Parkway.

- Parcel 2, GC-2-A General Commercial

West of Parcel 3 will be a 4.8 acre tract. Located within this tract will be a mix of retail and office buildings, associated parking and detention/water quality facilities. As Illustrated on Exhibit C, Conceptual Site Layout and Land Use Plan, Parcel 2 is located along the creek corridor. This PUD seeks to place buildings and potential outdoor spaces in a manner to enjoy the creek corridor. Therefore, as defined in Section F of this PUD, Parcel 2 shall not be exempt from Section 2.4.e of the Development Standards for the Conventional Development Sector (CD).

- Parcel 1, LC-2-A Local Commercial

The western tract is 3.7 acres. A mix of retail and office buildings and associated parking shall be located within this parcel. Due to the Parcel's proximity to residential communities north and west of the parcel, the parcel will be zoned LC-2-A as a transition intensity. As Illustrated on Exhibit C, Conceptual Site Layout and

Land Use Plan, Parcel 1 is located along the creek corridor. This PUD seeks to place buildings and potential outdoor spaces in a manner to enjoy the creek corridor. Therefore, as defined in Section F of this PUD, Parcel 1 shall not be exempt from Section 2.4.e of the Development Standards for the Conventional Development Sector (CD).

D. Parkland/Open Space/Trails

Exhibit C, Conceptual Site Layout and Land Use Plan illustrates the property's relationship to the creek corridor. The creek is not located within the boundary of this PUD.

An internal, private pedestrian network is anticipated linking buildings with each other and associated parking lots. During site planning of said pedestrian networks, connections will be provided to the offsite regional North Brushy Creek Trail.

E. Riparian Corridors

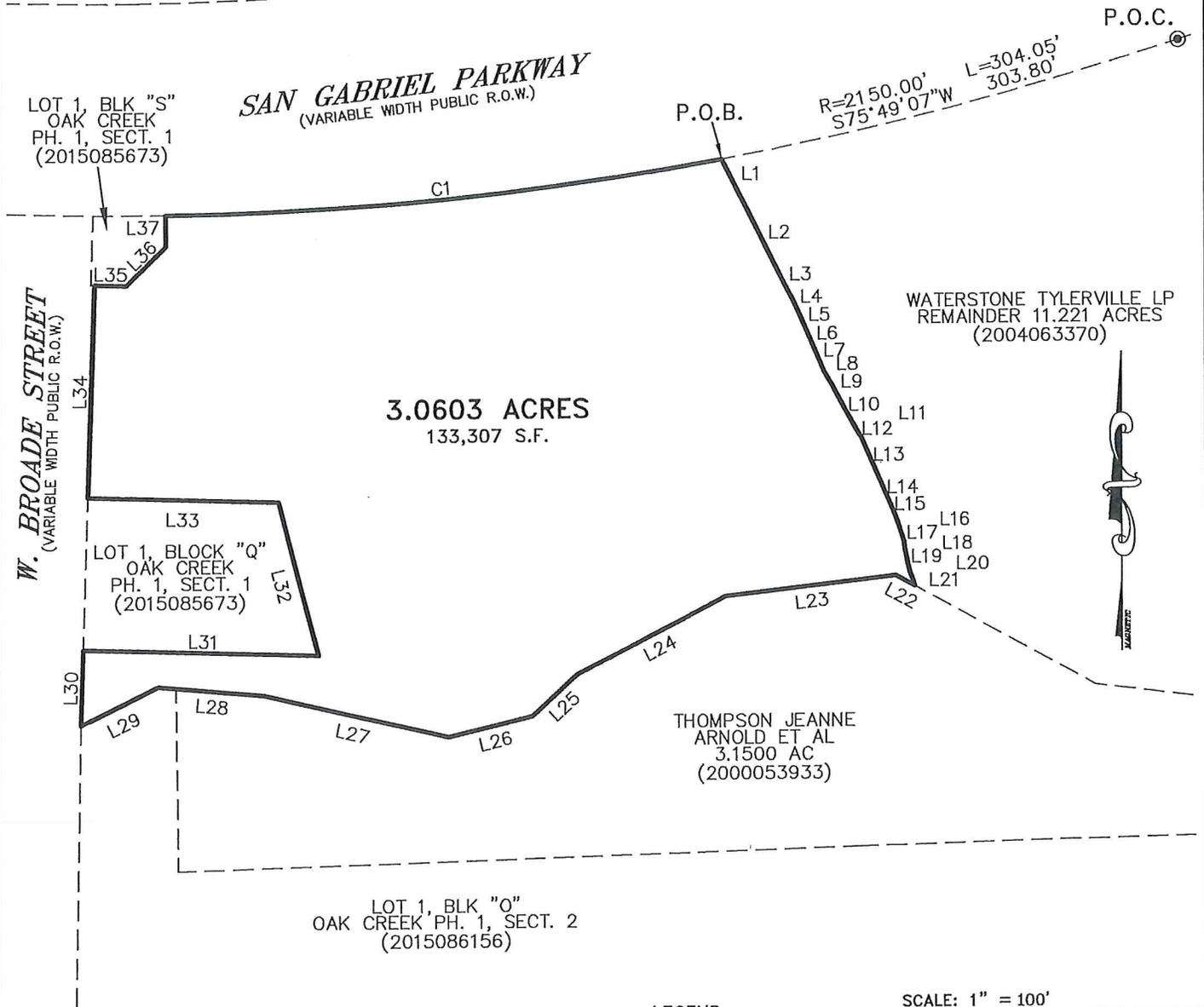
As noted within this PUD, a creek runs along the southern boundary of the PUD. As such, Section 49, Riparian Corridors of the Subdivision Ordinance requires the establishment of a riparian corridor along the creek and associated tributaries. Exhibit F, Floodplain Exhibit, illustrates the modified riparian corridor within the boundary of this PUD. The area highlighted in blue on Exhibit F has been removed from the riparian corridor and associated development regulations.

F. Architectural Criteria

All office and commercial product within this PUD shall comply with the Development Standards for the Conventional Development Sector (CD) with the following exceptions.

1. Parcel 3 shall be exempt from Section 2.4.e.:
“A continuous building frontage is required. The frontage may only be broken by a street, pedestrian passage, courtyard or similar feature approved by the Planning Director. For phase building construction within a block, a screen wall or landscape hedge shall be constructed at the building frontage line prior to building construction.”

SKETCH TO ACCOMPANY FIELD NOTES FOR 3.0603 ACRES OUT OF THE CHARLES COCHRAN SURVEY, ABSTRACT NO. 134 IN WILLIAMSON COUNTY, TEXAS, BEING A PORTION OF AN 11.221 ACRE TRACT CONVEYED TO WATERSTONE TYLerville LP BY DEED RECORDED IN DOCUMENT NO. 2004063370, OFFICIAL PUBLIC RECORDS, WILLIAMSON COUNTY, TEXAS



3.0603 ACRES
133,307 S.F.

WATERSTONE TYLerville LP
REMAINDER 11.221 ACRES
(2004063370)

THOMPSON JEANNE
ARNOLD ET AL
3.1500 AC
(2000053933)

LOT 1, BLK "O"
OAK CREEK PH. 1, SECT. 2
(2015086156)

LEGEND

- ⊙ 1/2" IRON PIN FOUND
- 1/2" IRON PIN SET
- △ NAIL FOUND

SCALE: 1" = 100'
JOB NUMBER: 15_206

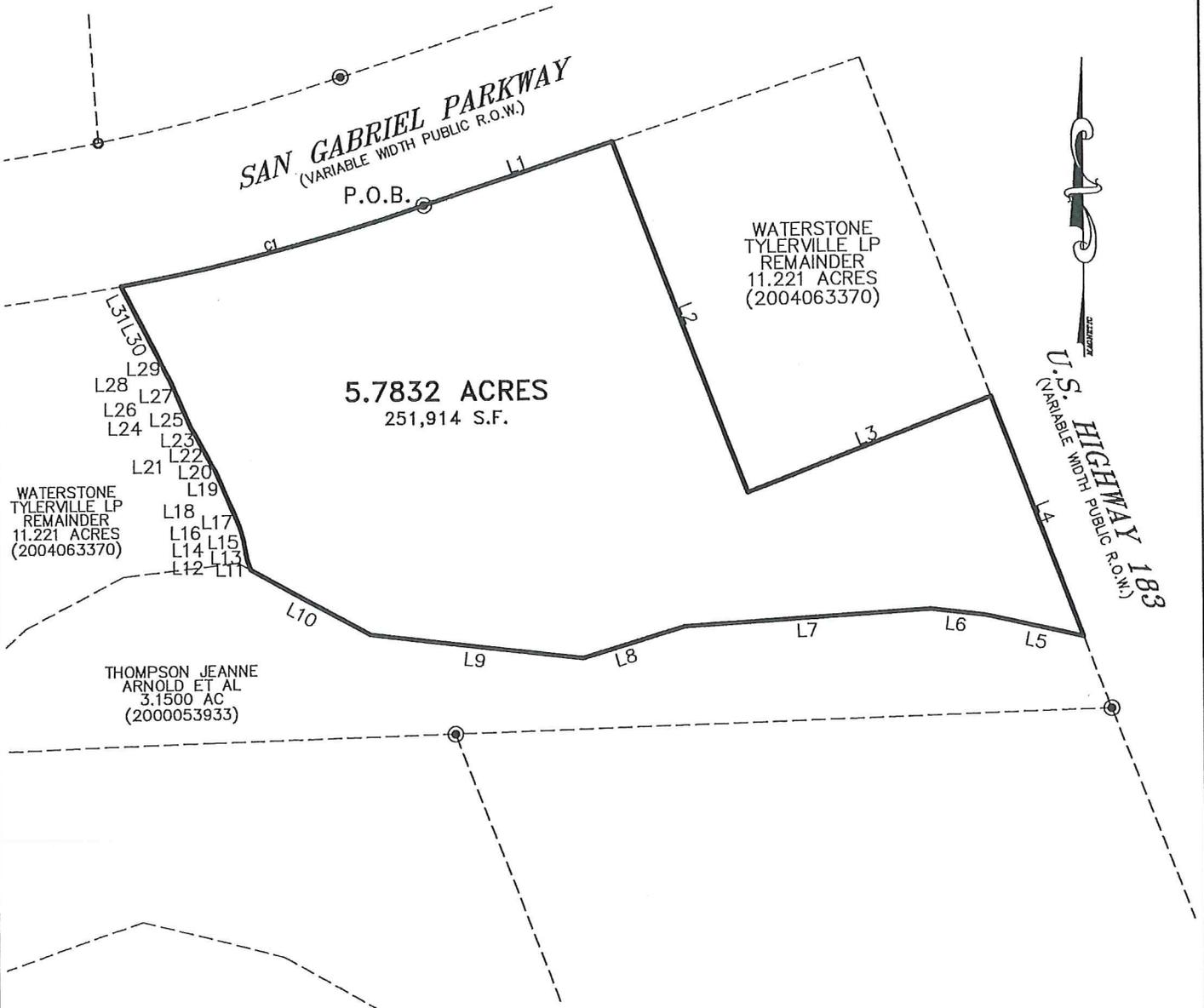
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Ex B 4 of 11



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5.7832 ACRES
251,914 S.F.

WATERSTONE TYLERVILLE LP REMAINDER
11.221 ACRES
(2004063370)

THOMPSON JEANNE ARNOLD ET AL
3.1500 AC
(2000053933)

LEGEND

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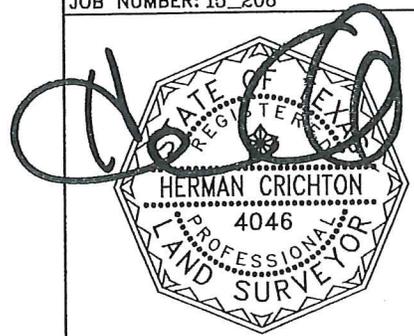
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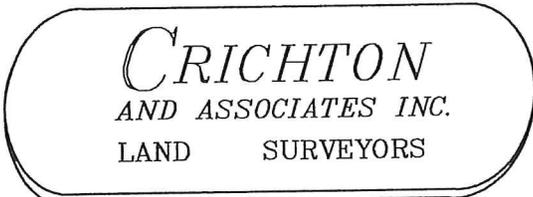
Ex B 8 of 11



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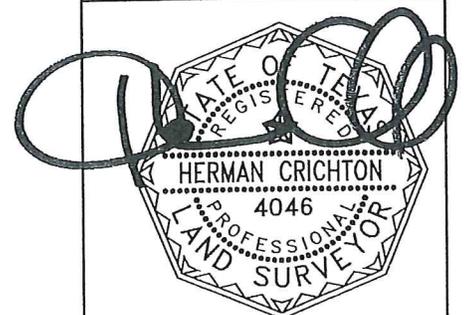
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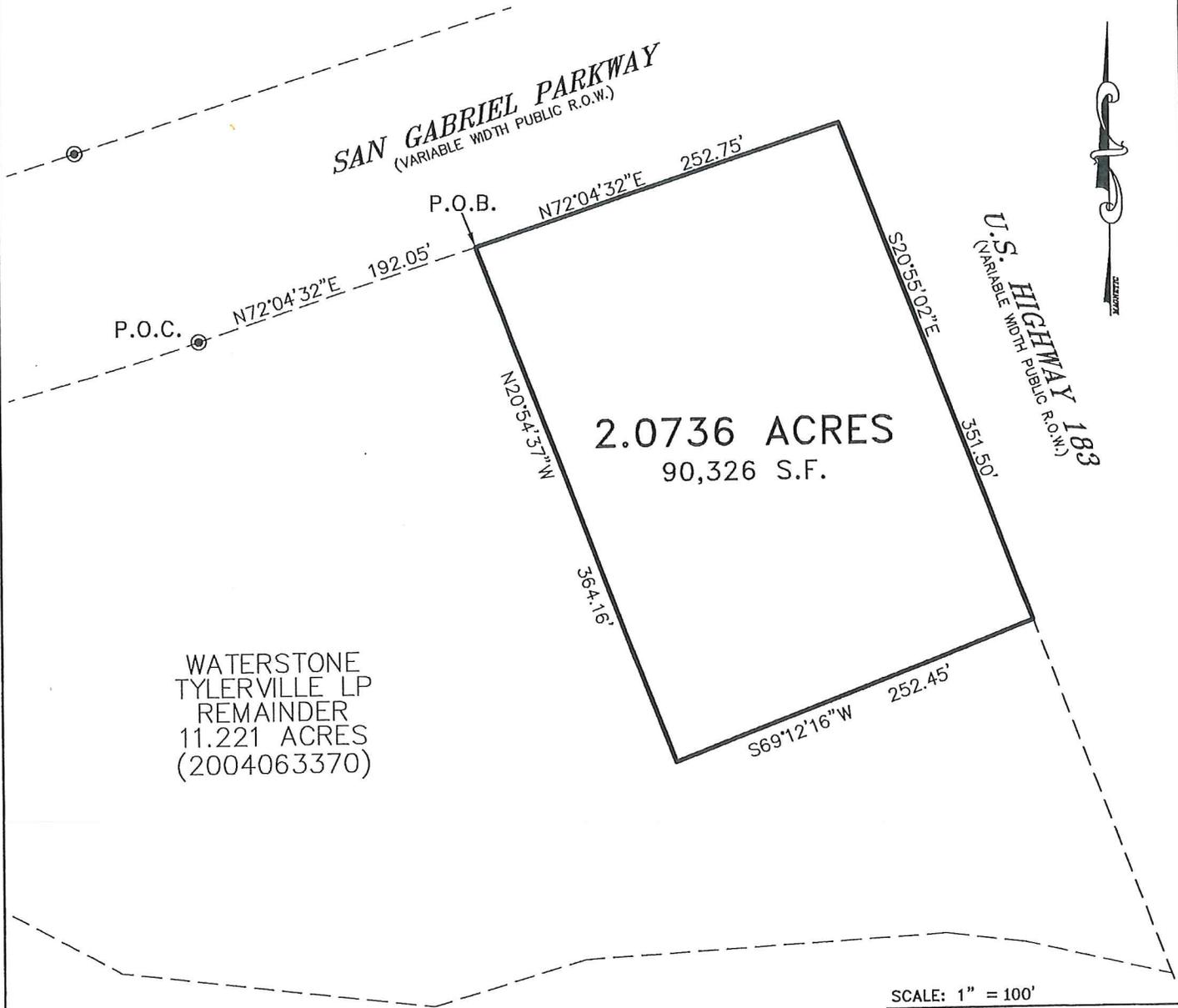
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LB 9 of 11

SCALE: 1" = N/A
JOB NUMBER: 15_206



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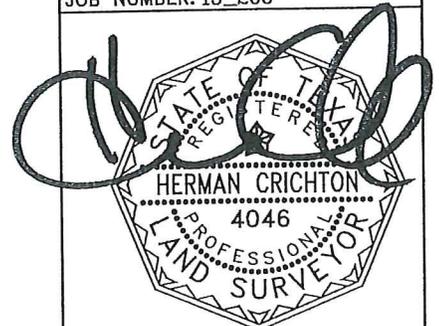


LEGEND

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- △ NAIL FOUND

SCALE: 1" = 100'

JOB NUMBER: 15_206



DATE: October 16, 2015

CRICHTON
AND ASSOCIATES INC.
LAND SURVEYORS

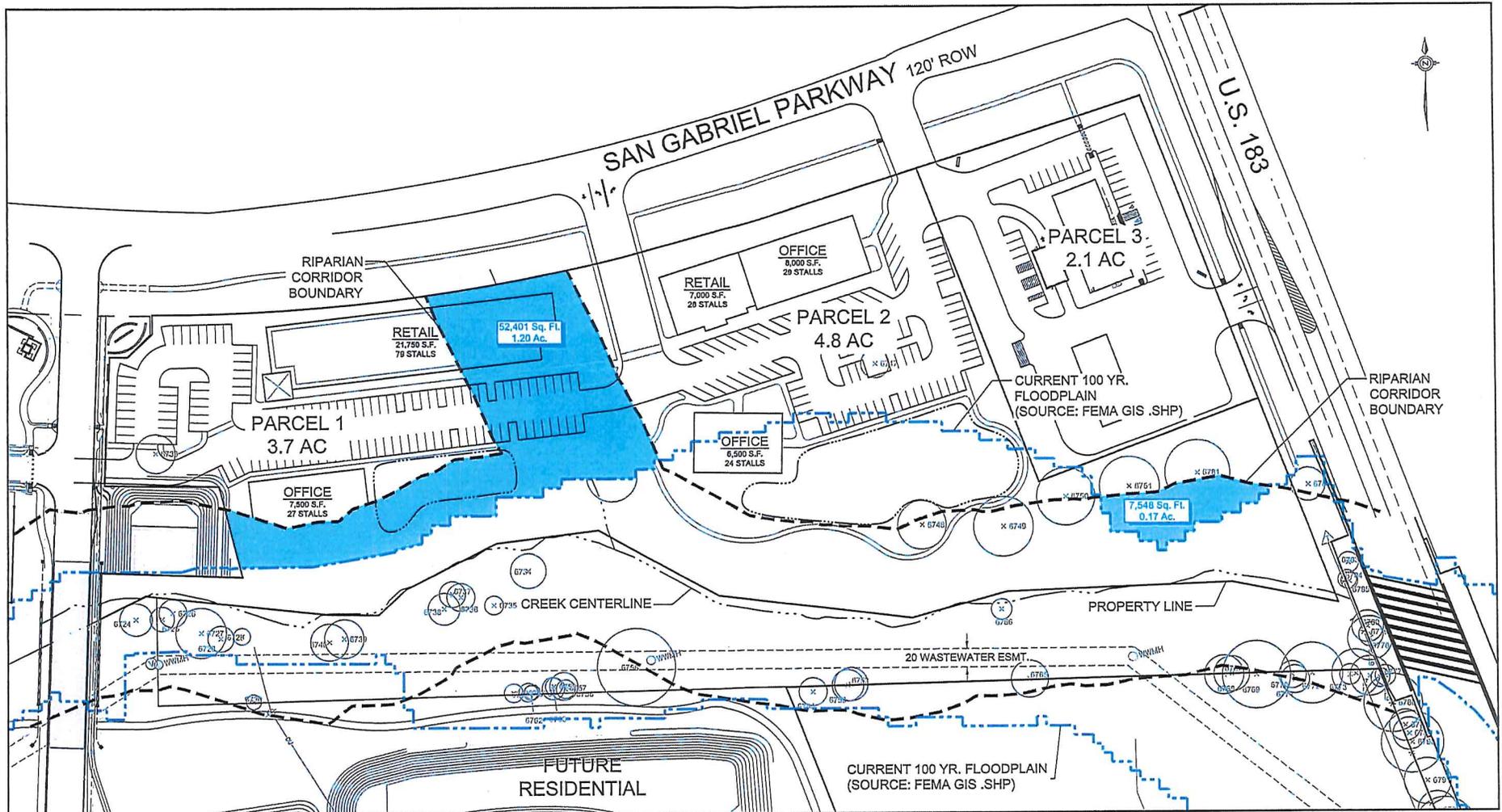
TBLS Firm # 101727-00
 6448 East Highway 290
 Suite B105
 Austin, Texas 78723
 (512) 244-3395
 Orders@CrichtonandAssociates.com

Ex B 11 of 11



Exhibit D

Parcel 3 Landscape Screening



LAND DEV

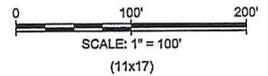
CONSULTING, LLC
 OFFICE: 512.872.6696
 FIRM NO. 16384

TYLERVILLE SOUTH
FLOODPLAIN EXHIBIT

LEANDER, TEXAS

MAY 09, 2016

EXHIBIT F



Public Hearing

7. **Zoning Case 15-TOD-Z-030 & Subdivision Case 15-TOD-CP-009**: Hold a public hearing and consider action on the rezoning and approval of the Tylerville Commercial Concept Plan and PUD zoning of a tract of land generally located to the southwest of the intersection of San Gabriel Pkwy & US 183; 11.221 acres more or less; WCAD Parcel R395875. Currently, the property is zoned PUD (Planned Unit Development) and the applicant is proposing an amendment to the PUD to include the base zoning districts of GC-3-A (General Commercial), GC-2-A (General Commercial), and LC-2-A (Local Commercial); Leander, Williamson County, Texas. Applicant/Agent: Kristiana Alfsen on behalf of Waterstone Tylerville, LP.

a) Staff Presentation

Robin Griffin, Senior Planner, discussed the proposed zoning request and staff recommendation.

b) Applicant Presentation

Bill Pohl and Andrew Holden explained the purpose for their zoning request.

c) Open Public Hearing

**Chair Sokol opened the public hearing
No one wished to speak.**

d) Close Public Hearing

Chair Sokol closed the public hearing.

e) Discussion

Discussion took place.

f) Consider Action

Commissioner Anderson moved to approve the zoning request to amend the PUD to include the base zoning districts of GC-3-A (General Commercial), GC-2-A (General Commercial), and LC-2-A (Local Commercial) with staff recommendation including items 2 through 5; Chair Sokol seconded the motion. Motion failed 2 to 4 with Commissioner Schwendenmann, Vice Chair Allen, Commissioner Means, and Commissioner Hines opposing.

Commissioner Means moved to approve the zoning request to amend the PUD to include the base zoning districts of GC-3-A (General Commercial), GC-2-A (General Commercial), and LC-2-A (Local Commercial) with staff recommendation; Vice Chair Allen seconded the motion. Motion passed 5 to 1 with Commissioner Anderson opposing.

8. Ordinance Case 16-OR-001: Hold a public hearing and consider action on amending sections of the Composite Zoning Ordinance, to add definitions, update the use components, to modify setbacks for commercial fueling, to update requirements for screening, to update the parking requirements table, to modify residential setbacks, to clarify requirements for drainage and detention facilities, to modify outdoor lighting requirements, to update the architectural standards, to update the site development standards. Applicant: City of Leander

a) Staff Presentation

Robin Griffin, Senior Planner explained the proposed amendments to the Composite Zoning Ordinance.



Executive Summary

July 7, 2016

Agenda Subject: Ordinance Case 16-OR-001: Hold a public hearing and consider action on amending sections of the Composite Zoning Ordinance, to add definitions, update the use components, to modify setbacks for commercial fueling, to update requirements for screening, to update the parking requirements table, to modify residential setbacks, to clarify requirements for drainage and detention facilities, to modify outdoor lighting requirements, to update the architectural standards, to update the site development standards.

Background: Staff presented a proposal to the Planning & Zoning Commission on November 12, 2015 that included several amendments to clarify the Composite Zoning Ordinances. Based on the results of that meeting, staff is proposing the following amendments to the Composite Zoning Ordinance.

1. Update the definitions section
2. Clarify the number of children permitted in an in home daycare
3. Add temporary parking to the list of permitted uses
4. Add Gaming Room Facility to the HC use component
5. Update the PUD section to include examples of higher standards
6. Increase the setback between commercial fueling and residential uses
7. Modify the screening requirements
8. Update the disturbance zone
9. Change “Tree Protection” to “Tree Preservation” to be consistent throughout the ordinance
10. Update the parking requirements
11. Revise the setback requirements
12. Revise the drainage and detention facility requirements
13. Update the outdoor lighting requirements
14. Modify the fencing requirements
15. Clarify the masonry requirements
16. Update the brush removal requirements

Origination: Applicant: City of Leander

**Financial
Consideration:**

None

Recommendation: See Planning Analysis. The Planning & Zoning Commission unanimously recommended to approve the amendments with staff recommendation and the following changes at the June 23, 2016 meeting:

1. Remove the restrictions regarding the limitations on stucco
2. Reword the language regarding the drainage structures to clarify the permitted wall materials

Attachments:

1. Proposed Amendments
2. Ordinance
3. HBA Correspondence
4. Proposed P&Z Amendments
5. Minutes-Planning & Zoning Commission June 23, 2016

Prepared By:

Tom Yantis, AICP
Assistant City Manager

06/30/2016

COMPOSITE ZONING ORDINANCE AMENDMENTS

ARTICLE I – GENERAL

SECTION 6: DEFINITIONS

Dark Sky means the use of lighting in a way that directs the light source away from the sky in order for the night sky to remain relatively free of interference from artificial light. This type of lighting is in compliance with the International Dark Sky Association standards.

Gaming Room Facility means a place to deal, operate, carry on, conduct, maintain, or expose for play any game, sports book, promotion, sweepstakes, or other activity electronic or otherwise that may or may not confer upon the patrons or participants the right, chance, or ability to win and or claim prizes.

Gaming Device means a clock, tape machine, slot machine, or other machine or device for the reception of money or other thing of value on chance or skill or upon action of which money or other thing of value is staked, hazarded, bet, won, or lost; or any mechanism, furniture, fixture, equipment or other device designed primarily for use in a gambling place. It does not include: (1) A coin-in-slot-operated mechanical device played for amusement that rewards the player with the right to replay such mechanical device; or (2) Vending machines by which full and adequate return is made for the money invested and in which there is no element of chance or hazard.

Lot Width means the average horizontal distance between side property or lot lines. Lot width can also be identified as the measurement of the lot at the building setback line. The minimum lot width for lots fronting a cul-de-sac may be reduced to a minimum of thirty (30') feet at the front property line provided that the minimum required lot width is provided at the front setback line.

Soil means the upper layer of the earth in which plants grow and contains humus, minerals, available nutrients, and beneficial micro-organisms, resulting in a favorable condition for vegetative growth.

ARTICLE III – USE COMPONENTS

SECTION 1: SFR – SINGLE-FAMILY RURAL

(b) Conforming Uses

- (1) Single-family dwelling of not less than sixteen hundred (1,600) square feet of living area; accessory dwelling with a minimum living area of four hundred (400) square feet; and a maximum living area of nine hundred (900) square feet or 40% of the gross living area of the primary dwelling, whichever is greater. However, for lots greater than three acres in size, there is no limit to the maximum size of the accessory dwelling.
- (2) Community services including community center, civic organizations, fraternal organizations, and cemetery / mausoleum not including a crematory or embalming facilities

- (3) Golf courses (public and private) and all associated improvements and activities, but not including miniature golf courses, golf practice ranges (unless associated with a golf course), or similar forms of commercial amusement
- (4) Day care (in home) for 56 or fewer children
- (5) Emergency services including fire, police and EMS stations
- (6) Family Home and Group Home-Class 1
- (7) Home occupations (see Article IV, Section 8 for Use Standards)
- (8) Parks, playgrounds and associated equipment and facilities, recreational amenity center
- (9) Place of worship
- (10) Public buildings, including libraries, museums and administrative offices
- (11) Real estate sales offices during the development and sale of a residential subdivision and subject to the restrictions contained in this ordinance
- (12) Schools, public or private, including all levels up to and including secondary (high) school and equivalent curriculum including support facilities are permitted
- (13) Temporary buildings incidental to construction work on the premises if such buildings are removed upon the completion or abandonment of construction work (see Article IV, Sec. 7)
- (14) Utilities (minor) including ground mounted service equipment and minor structures and facilities such as poles, minor electrical switching facilities, lift stations, water pump stations and gas regulating facilities
- (15) Water supply reservoirs and pumping plants when screened from public view
- (16) Wireless communications facilities (WCFs) attached to street poles or facades attached to non-residential buildings or stealth WCFs are permitted subject to the provisions of this ordinance. Freestanding WCFs, including lattice towers and mono-poles, are prohibited.
- (17) (For lots or tracts three or more acres in size) ranches, dairy farms, stables, riding academies and roping arenas; including the feeding, raising and breeding of agricultural livestock and exotic hoof stock; however, with exception of commercial feed lots which are not permitted, and the exception that not more than one large animal (e.g. a horse, cow, bull or similar animal) or five small animals (e.g. goats, sheep or similar animal) may be permitted for each acre of grazeable land. Grazeable land shall be land that is fenced and maintained with suitable forage for grazing of the particular species. Barns and stables shall not be located within 25 feet of any property line. (See Chap. 2, City Code for animal control regulations)
- (18) Agricultural, small wind energy systems, solar energy systems and rainwater harvesting systems including or similar to:
 - (i) As accessory uses, solar energy systems designed to supply energy for use on the premises, and rainwater harvesting systems meeting the standards of Article IV, Sec. 5 of Article 14.200. In addition, if approved with a special use permit, small wind energy systems may be approved as an accessory use if meeting the standards of Article IV, Sec. 5 of Article 14.200.
 - (ii) Hunting and/or hunting leases (for lots or tracts three or more acres in size).
 - (iii) Farming or truck gardens, limited to the propagation and cultivation of plants.

- (19) Temporary parking associated with model homes and/or sales trailers prior to the completion of model homes. Article IX of this ordinance will apply to temporary parking lots.
- (20) Other similar uses as determined by the Director of Planning [see Article II, Sec. 2, (f)].

SECTION 14: HC – HEAVY COMMERCIAL

(b) Conforming Uses

- (1) Any use permitted in the "GC" component
- (2) Bingo
- (3) Car Title Loans Shop/Business
- (4) Commercial laundry
- (5) Contractor and building material storage
- (6) Gaming Room Facility/Gaming Device
- ~~(6)~~(7) Hooka Lounge
- ~~(7)~~(8) Manufacture, assembly or processing of materials not classified as hazardous by the Fire Chief
- ~~(8)~~(9) Mini-warehouse or self-service storage facilities [required to be set back at least four hundred (400) feet from a tollway, highway or major arterial roadway if built to Type B, C or D architectural standards or such facilities include exterior warehouse doors], warehouse and distribution, commercial storage
- ~~(9)~~(10) Pawn Shop
- ~~(10)~~(11) Payday Lending Business
- ~~(11)~~(12) Research, Testing, and Development Laboratory
- ~~(12)~~(13) Research, Testing, and Development Laboratory (Intense)
- ~~(13)~~(14) Retail sales, second hand resale, and services
- ~~(14)~~(15) RV, trailer, commercial motor vehicle and boat outdoor storage [required to be set back at least four hundred (400) feet from a tollway, highway or major arterial roadway] (Note: refer to Article VI, Section 9 for rules on special vehicle storage)
- ~~(15)~~(16) Tattoo and/or Body Piercing Parlor
- ~~(16)~~(17) Utilities, including ground mounted service equipment and structures as a primary use and facilities such as poles, electrical switching facilities, lift stations, water pump stations, gas regulating facilities, electrical substations, generating plants, wastewater and water treatment plants, etc. (see screening requirements in Article VI, Sec. 1)
- ~~(17)~~(18) Vehicle and major equipment sales, rental or leasing, repair, body shop [Small engine repair shops and motorcycle repair shops shall not be permitted within one-hundred fifty (150') feet of a residential district unless such repairs are conducted totally within a fully enclosed building.]
- ~~(18)~~(19) Warehouse and distribution
- ~~(19)~~(20) Wood yard
- ~~(20)~~(21) Wholesale activities
- ~~(21)~~(22) Wrecker Impoundment, Towing [required to be set back at least four hundred (400) feet from a tollway, highway or major arterial roadway]
- ~~(22)~~(23) Stand alone crematory or embalming establishment as long as the crematory stack is no closer than 200' from a restaurant or associated parking or from a residential district (unless such district is utilized for non-residential uses).
- ~~(23)~~(24) Other similar uses as determined by the Director of Planning based on the criteria of Article II, Sec. 2, (f)

SECTION 16: PUD – PLANNED UNIT DEVELOPMENT

(d) Rules Applicable

(8) The PUD shall result in overall higher standards than what would be provided by the base zoning district. As examples: (1) if residential lot sizes are decreased or development densities are increased, the PUD will be expected to significantly exceed other standards such as parkland and facilities dedication, landscaping, architectural controls, thoroughfare or other transportation improvements, creation of unique characteristics of the neighborhood, retention of significant trees and/or provision of public facilities, etc., or (2) if masonry standards or building/development setbacks are proposed to be decreased, other standards would be expected to be increased such as landscaping, screening, retention of significant trees, architectural controls, land uses and/or unique site layout standards, etc. Other examples may include:

(i) Designating the Type A Architectural Component

(ii) Adding additional architectural features

(iii) Provide a master architectural and signage plan that includes a cohesive materials palette

(iv) Enhanced landscaping and/or trees

(v) Increased landscape area

(vi) Masonry perimeter walls for subdivisions

(vii) Provide brick or stone instead of decorative concrete panels for screening walls

(viii) Plant street trees

(ix) Provide more parkland dedication

(x) Increase recreation improvements

(xi) Trails system in greenbelt areas

(xii) Provide a Master Sign Plan including: proposed locations, provide cohesive materials palette, design specifications for signage, type of illumination

(xiii) Limit fencing to wrought iron or decorative tubular metal fencing along greenbelt lots.

(xiv) Provide unique characteristics of a neighborhood with a unique site layout

(xv) Include a mixture of uses

(xvi) Provide public spaces

(xvii) Incorporate public art

ARTICLE V – SITE COMPONENTS

SECTION 3: TYPE 3

(b) Site Uses and Features (Some Site Uses Listed Also Require Appropriate Use Component)

(2) Commercial and Industrial Development:

(v) Outdoor commercial fueling and washing of vehicles meeting the following requirements is permitted:

a. Washing of vehicles (including vacuum facilities) is not located within one hundred fifty (150') feet of a residential district unless such district is utilized for non-residential purposes. The location is measured from the closest portion of the structure associated with the washing of vehicles to the residential district; and

b. Commercial fueling is not located within ~~one-two~~ hundred (~~1200~~) feet of a residential district unless such district is utilized for non-residential purpose. The location is measured from the closest portion of the structure associated with the outdoor commercial fueling to the residential district; and

ARTICLE VI – SITE STANDARDS

SECTION 1: LANDSCAPING, TREE PRESERVATION AND PROTECTION, AND SCREENING REQUIREMENTS

(c) Tree Preservation and Protection.

(4) Significant Tree Preservation Requirements

- (iv) Significant Trees greater than eight (8) inches in caliper shall be preserved to the greatest extent reasonably possible. Significant Trees removed during construction shall be supplanted with Replacement Trees if required by the tree mitigation requirements of this section. No Significant Tree shall be removed until a tree ~~protection-preservation~~ plan has been approved by the Director of Planning in accordance with this Chapter. Significant Trees may be removed only in accordance with the approved tree ~~protection-preservation~~ plan, and trees must be protected during construction activities on the property in accordance with the approved tree ~~protection-preservation~~ plan. This provision only applies to projects before the certificate of occupancy has been issued for single-family and two-family developments. For single-family and two-family projects, this provision only applies prior to the initial certificate of occupancy for each lot.

- (8) A non-disturbance zone shall be maintained on single-family and two-family lots ~~during the subdivision construction and building permit phases of development~~. A disturbance area no more than five (5') feet from the foundation necessary for construction and grade transitions shall be permitted. This disturbance area shall be no more than ten (10') feet from the foundation for properties zoned with the SFR (Single-Family Rural) use component. The trees located on the remainder of the lot shall not be removed unless a unique situation is approved by the Planning Director.

(9) Tree Protection Plan Requirements

- (i) An applicant for a single-family or two-family preliminary plat or final plat, or a site development permit shall provide a tree survey prepared within five years preceding the application date. This tree survey shall include the street and lot layout, or site plan superimposed at a scale of 1"=100' (or as appropriate) identifying significant trees located on the property that meet the requirements indicated in this section. Applicants for a single-family or two-family preliminary or final plat are only required to submit a tree survey for the portion of the property that the applicant is proposing to disturb with the subdivision construction. The applicant shall provide a tree preservation plan that identifies the surveyed trees and the mitigation of the protected trees that are proposed for removal. The applicant shall be required to demonstrate that lot lines, street layouts and site improvements have been designed and located and that lot width, depth and size flexibility as permitted by the applicable zoning district has been utilized to the maximum extent necessary to retain the maximum number of significant trees reasonably practicable. Applicants for a single-family or two-family preliminary or final plat may plant replacement trees within lots owned by the Homeowners Association including but not limited to landscape lots, park lots, or amenity center lots.
- (ii) The Director of Planning shall determine if adequate performance is achieved based on the standards of this section. Approval of the tree ~~protection~~

preservation plan by the Director of Planning is required prior to preparation and submission of a subdivision or site development permit application. The applicant may appeal any decision of the Director to the Commission. A decision of the Commission may be appealed to the City Council. Any preserved or replacement trees may be counted toward the landscape requirements of this section. See the Construction Plan requirements for details.

(d) Screening Requirements.

- (1) In addition to the landscaping requirements of this section, all development other than single-family or two-family shall comply with the following screening requirements:
 - (i) The following shall be screened from the view of at least sixty percent (60%) of adjacent single-family or two-family residences and any street or public right-of-way: off-street parking areas, loading spaces and docks, trash and storage containers, outside storage areas, satellite dishes larger than eighteen (18) inches in diameter, antennas, mechanical equipment, and metal siding.
 - (ii) Above ground utility facilities up to six (6) feet above grade for multi-family and non-residential development are required to be screened from view except for poles, fire hydrants and existing lines.
 - (iii) Detention Facilities including detention ponds and/or water quality ponds shall be screened from view.
 - (iv) Screening by vegetation that could be removed from adjacent undeveloped or partially developed properties when such property is developed is not considered as screening from view.
 - (v) Outside storage areas shall be screened by the use of a privacy fence or wall at least the height of the items to be screened and in conformance with the requirements of this ordinance. If the outdoor storage area is adjacent to an arterial or collector roadway, then the wall is required to be constructed of one or more of the following materials: brick, stone, cast stone, stucco (limited to thirty-five (35%) of the exterior surface area of walls), factory tinted (not painted) split face concrete masonry unit, or other similar material approved by the Director of Planning. In addition to the materials listed above, textured pre-cast concrete (e.g. Woodcrete) is also permitted with the wall is adjacent to collectors.
 - (vi) A minimum five-foot (5') landscaped area located on the exterior of the fence shall be provided and landscaped in accordance with paragraph (2) (i) above unless the fence is on a rear boundary line or adjoining a permanent structure on the site.
 - (vii) Fuel pumps are required to be screened from view of any street or public right-of-way to at least the height of the fuel pump.
 - (viii) Lift stations are required to be screened from view of adjacent single-family or two-family residences, or any street or public right-of-way by the use of a wall. The wall is required to be constructed of one or more of the following materials: brick, stone, cast stone, stucco (limited to thirty-five (35%) of the exterior surface area of walls), factory tinted (not painted) split face concrete masonry unit, textured pre-cast concrete (e.g. Woodcrete) or other similar material approved by the Director of Planning.
- (2) Approved screening techniques include privacy fences, evergreen vegetative screens, landscape berms, existing vegetation or any combination thereof unless otherwise noted in this section.

- (3) Privacy Fences (See section 14 and 16 of this Article)
- (4) Evergreen Vegetative Screens. Evergreen plant materials shall be shrubs, at least thirty (30) inches in height and at a minimum spacing of 48 inches at the time of installation, in combination with shade trees not more than fifty feet apart.
- (5) Landscape Berms, in combination with trees, shall fulfill the screening requirements of this section if the berms are at least three (3) feet in height and have maximum side slopes of four (4) feet of horizontal run for every one (1) foot in vertical rise.
- (6) Existing on-site vegetation, demonstrating significant visual screening capabilities and as approved by the Director of Planning, shall fulfill the requirements of this section.

SECTION 3: OFF-STREET PARKING REQUIREMENTS

(a) The following off-street parking requirements are considered minimum requirements and may not adequately reflect the specific needs of a proposed business. A commercial building permit applicant shall analyze the parking needs of the specific users being proposed and provide the amount of parking required for such uses. When any building or structure is erected, or an existing building is enlarged by fifty (50) percent or more in floor area, off-street parking shall be provided in accordance with the following requirements (Note: Any building enlargement is required to add at least the amount of additional parking required by the enlargement):

<u>USE CATEGORY</u>	<u>SPECIFIC USE</u>	<u>SPACE REQUIREMENT</u>
<u>RESIDENTIAL USES</u>		
<u>Household Living</u>	Single Family	See Use District
	Multi-Family	1 ½ for one bedroom plus ½ for each additional bedroom.
	<u>Senior Multi-Family</u>	<u>1 per dwelling plus additional 5% of total spaces for visitor use.</u>
<u>Group Living</u>	Fraternity House, Sorority House, Dormitory, Rooming House, Boarding House	1 per each two beds
	<u>Nursing Home/Hospice/ Assisted Living</u>	<u>1 per bedroom</u>
	<u>All other Group Homes</u>	<u>1 per bedroom</u>
	<u>Family Home and Group Home-Class 1</u>	<u>not less than four (4) off street parking spaces, or one parking space per bedroom, whichever is greater.</u>
	<u>Group Home-Class 2 & Group Home-Class 3</u>	<u>not less than six (6) off street parking spaces, or one parking space per bedroom, whichever is greater.</u>
<u>CIVIC USES</u>		

<u>Educational & Daycare Facilities</u>	<u>Elementary Schools</u>	<u>greater of 1:4 seats in auditorium or 2: classroom</u>
	<u>Secondary Schools, colleges</u>	<u>greater of 1:4 seats in auditorium or 10: classroom</u>
	<u>Day Care Center</u>	<u>1:400 sq. ft.</u>
<u>Medical & Institutional Facilities</u>	<u>Hospital, Sanitarium; Convalescent Home</u>	<u>1:4 beds</u>
	<u>All other institutions</u>	<u>1:250 sq. ft.</u>
<u>Parks & Open Areas</u>	<u>Golf Courses</u>	<u>3: hole</u>
	<u>Neighborhood Amenity Center</u>	<u>1:300 sq. ft. (including pools in square footage calculation)</u>
<u>Places of Worship</u>	<u>Religious Assembly</u>	<u>1:200 square feet of sanctuary, classrooms, flexible seating areas</u>
<u>COMMERCIAL USES</u>		
<u>Automotive Sales & Services</u>	<u>Motor Vehicle Salesrooms & Used Car Lots</u>	<u>greater of 1:800 sq. ft. of sales floor or lot area</u>
	<u>Vehicle Repair Garage</u>	<u>1:400 sq. ft.</u>
<u>Overnight Accommodations</u>	<u>Hotel, Motel</u>	<u>1 per room plus 1:200 sq. ft. of Comm. Floor Area</u>
	<u>Bed & Breakfast/Inn</u>	<u>1 per guest room plus 2 additional spaces</u>
<u>Food & Beverage Establishments</u>	Restaurant as a single use or comprising more than 20% of a mixed retail center	1:100 sq. ft.
<u>Entertainment & Recreation</u>	<u>Dance / Assembly / Exhibition Hall, Restaurant, Night Club, Lodge or Country Club</u>	<u>1:100 sq. ft.</u>
	<u>Bowling Alleys</u>	<u>5: lane alley</u>
	<u>Community Center, Library, Museum, Art Gallery</u>	<u>1:300 sq. ft.</u>
	<u>Theater, Auditorium (except school), Sports Arena, Stadium, Gymnasium, Funeral Home</u>	<u>1:4 seats</u>

<u>Commercial Office, Retail Sales, & Services</u>	Medical / Dental Clinic/ Office, Personal Service, Mixed Use Retail Center less than 20,000 sq. ft.	1:200 sq. ft.
	Mixed Use Retail greater than 20,000 sq. ft.	1:225 sq. ft.
	Studio, Bank, Retail	1:250 sq. ft.
	Business / Professional Office	1:275 sq. ft.
	<u>Furniture, Appliance or Hardware Store; Wholesale Sales Establishment, Machinery / Equipment Sales & Service; Clothing / Shoe Repair; Service Shop</u>	<u>1:300 sq. ft.</u>
<u>INDUSTRIAL USES</u>		
<u>Industrial, Manufacturing, Warehousing, Storage</u>	Manufacturing, Industrial, Research, Testing, Warehouse, Storage Buildings and Yards, Lumber Yard, Printing Shop, Plumbing Shop	1:600 plus spaces for business vehicles
	<u>Mini-Warehouse Self Storage</u>	<u>parking required only for office</u>
	Church, Theater, Auditorium (except school), Sports Arena, Stadium, Gymnasium, Funeral Home	1:4 seats
	Hotel, Motel	1 per room plus 1:200 sq. ft. of Comm. Floor Area
	Furniture, Appliance or Hardware Store; Wholesale Sales Establishment, Machinery / Equipment Sales & Service; Clothing / Shoe Repair; Service Shop; Community Center;	1:300 sq. ft.

	Library, Museum, Art Gallery	
	Hospital, Sanitarium, Convalescent Home	1:4 beds
	Dance / Assembly / Exhibition Hall, Restaurant, Night Club, Lodge or Country Club	1:100 sq. ft.
	Motor Vehicle Salesrooms & Used Car Lots	greater of 1:800 sq. ft. of sales floor or lot area
	Vehicle Repair Garage	1:400 sq. ft.
	Mini Warehouse Self Storage	parking required only for office
	Golf Courses	3:hole
	Bowling Alleys	5:alley
	Elementary Schools	greater of 1:4 seats in auditorium or 2:classroom
	Secondary Schools, colleges	greater of 1:4 seats in auditorium or 10:classroom
	Family Home and Group Home Class 1	not less than four (4) off-street parking spaces, or one parking space per bedroom, whichever is greater.
	Group Home Class 2 & Group Home Class 3	not less than six (6) off-street parking spaces, or one parking space per bedroom, whichever is greater

In a development with mixed-use buildings designed and built in a walkable and pedestrian friendly configuration, the Planning Director may consider the following shared parking factors in reviewing a proposal for a reduction in the minimum parking requirements (the shared parking factor is applied to the sum of the individual uses minimum parking requirements):

Shared Parking Factor				
	Residential	Lodging	Office	Retail
<u>Residential</u>	<u>100%</u>	<u>=</u>	<u>=</u>	<u>=</u>
<u>Lodging</u>	<u>90%</u>	<u>100%</u>	<u>=</u>	<u>=</u>
<u>Office</u>	<u>70%</u>	<u>60%</u>	<u>100%</u>	<u>=</u>
<u>Retail</u>	<u>80%</u>	<u>75%</u>	<u>80%</u>	<u>100%</u>

For uses not listed, the Planning Director may request additional parking demand analysis from the applicant to justify a reduction in the minimum parking requirements.

Where shared parking is provided, a shared parking and cross access agreement between the cooperating property owners shall be approved by the Planning Director and recorded prior to issuance of a building permit. This agreement must be recorded in the real property records of the county in which the property sits and the agreement may not be modified or revoked without the approval of the Planning Director. If any requirements for shared parking are violated, the affected property owners must provide a remedy satisfactory to the Planning Director or provide the full amount of required parking for each individual use.

SECTION 6: SETBACKS

(a) Building / Structure and Site Improvements:

BUILDING / STRUCTURE						
	Use Component	Architectural Component	Front	Side	Street Side	Rear
Standard Setback	SFR		25'	7'	15'	15'
	SFE, SFS, SFU, SFU/MH, TF		20'	5'	15'	15'
	SFC, SFL		20 15'*	5' or 0' & 10'	15'	15 0'
	SFT		10 5'*	0 or 10'	15'	15 0'
	MF	Type A	20'	10'	20'	20'
		Type B	25'	10'	25'	20'
	LO, LC, GC, HC, HI	Type A, B Type C	15' 20'	10' 10'	15' 20'	10' 10'
GC, HC, HI	Type D	25'	15'	25'	15'	
Special Setback Where Adjacent to SFR, SFE, SFS, SFU, SFC, SFL, SFU/MH, TF**	MF, LO, LC, GC, HC, HI	Type A Type B	(NA) (NA)	20' 25'	(N/A) (N/A)	20' 25'
	LO, LC, GC, HC, HI	Type C	(NA)	30'	(N/A)	30'
	GC, HC, HI	Type D	(NA)	50'	(N/A)	50'
Garage Setback	SFR, SFE, SFS, SFU, SFU/MH, SFC, SFL, SFT, TF		See Article VIII, Section 5 (i)			

PARKING, AISLE, LOADING, CANOPIES, OUTDOOR DISPLAY						
	Use Component	Site Component	Front	Side	Street Side	Rear
Standard Setback	MF	All	20'	5'***	20'	5'***
	LO, LC, GC, HC, HI	Type 1, 2	15'	5'***	15'	5'***
		Type 3	20'	5'***	20'	5'***
		Type 4, 5	25'	5'***	25'	5'***
Special Setback Where Adjacent to SF or TF**	MF, LO, LC, GC, HC, HI	Type 1-3 Type 4, 5	(N/A) (N/A)	15' 20'	(N/A) (N/A)	15' 20'

OUTDOOR STORAGE						
	Use Component	Site Component	Front	Side	Street Side	Rear
Standard Setback	LO, LC, GC, HC, HI	Type 3-4	***	5'***	***	0'
		Type 5	25'	0'***	25'	0'
Special Setback Where Adjacent to SF or TF**	LO, LC, GC, HC, HI	Type 3-5	(N/A)	25'	(N/A)	25'

* In no case shall the garage be closer to the ROW than 18'

** Unless such district is utilized for a non-residential use

*** No closer than the street facing wall of the primary structure that utilizes such storage.

***Setback does not apply for parking, drive aisles, storage etc. that are intended to cross lot line.

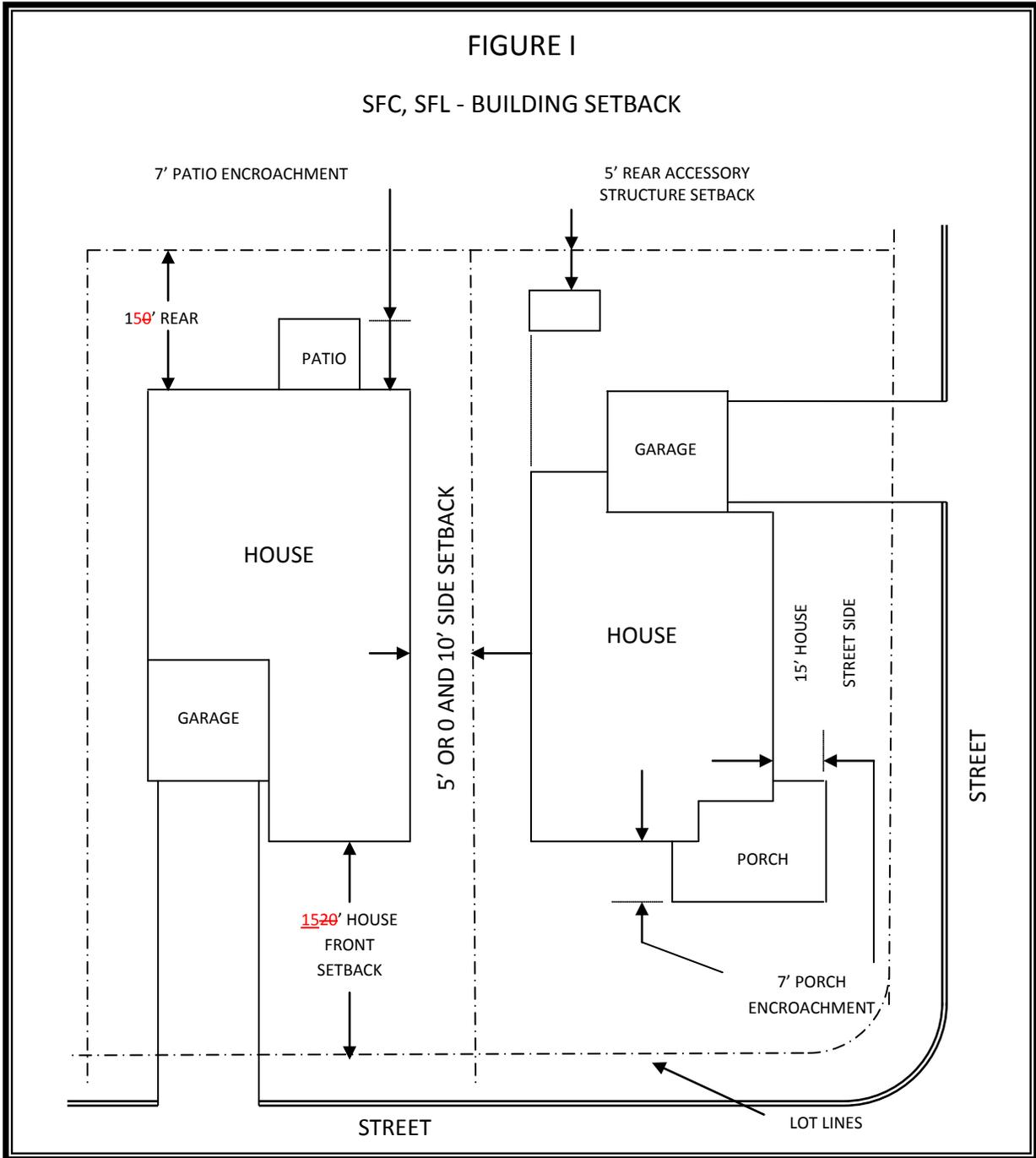
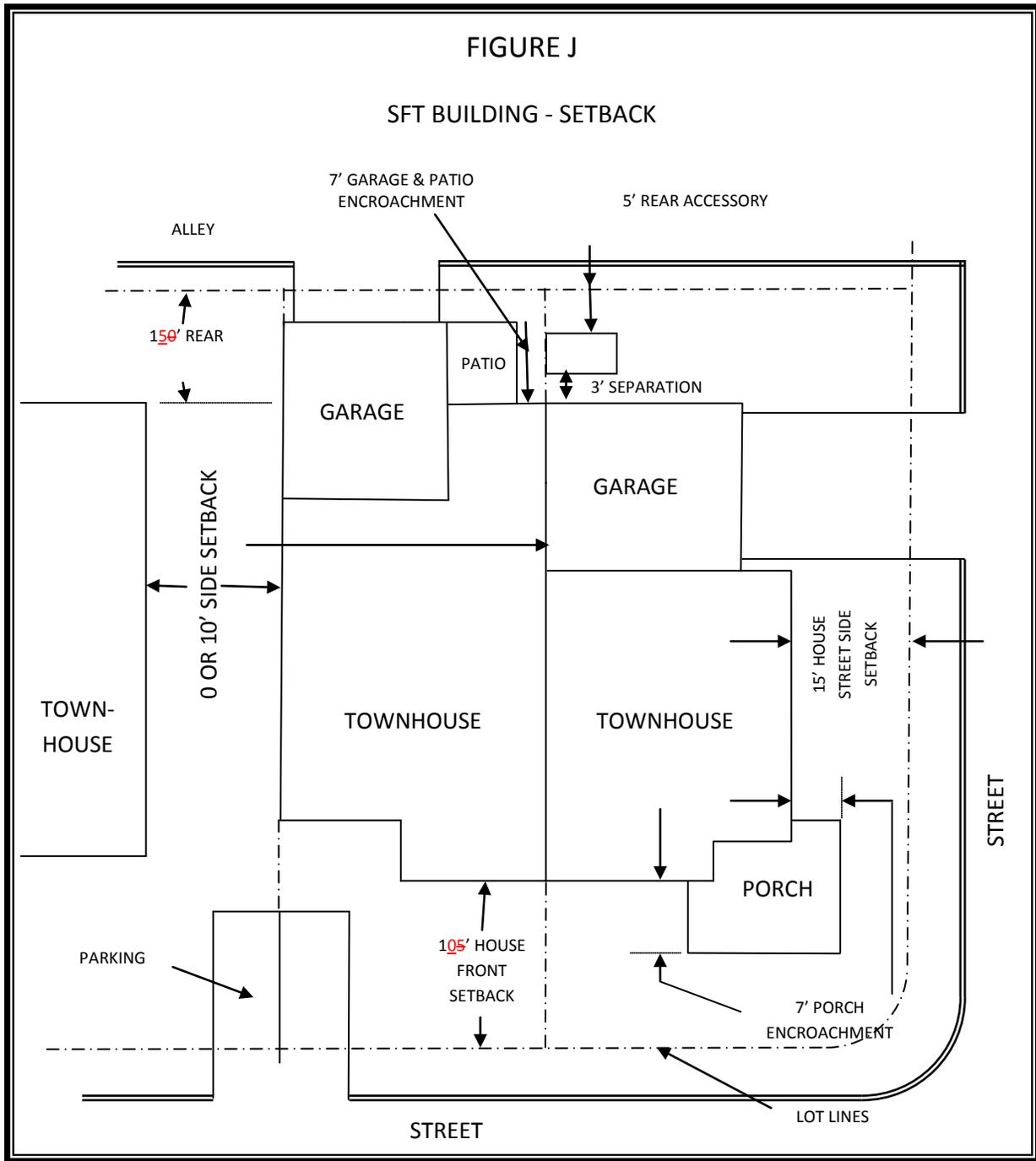


FIGURE J

SFT BUILDING - SETBACK



SECTION 7: DRAINAGE AND DETENTION FACILITIES

(a) Purpose.

The purpose of this section is to provide for the design of drainage and detention facilities that contribute to visual aesthetics of projects and limit the amounts of visible concrete that do not meet the requirements listed below. For the purposes of this section, visible shall be defined as noticeable by a person of average height walking on a street, sidewalk, or trail, or able to be seen by a neighboring property that is two stories in height.

(b) Non-Residential and Multi-Family Drainage and Detention Facilities:

- (1) Non-residential and multi-family drainage facilities include all detention ponds, water quality ponds, pond outlet structures, berms, improved channels or other improvements associated with the drainage improvements. Roadside swales, storm sewer outfalls unless visible from a ROW, inlets, and areas of concrete that are no more than one hundred (100) square feet in size are not included.
- (2) Non-residential and multi-family drainage facilities are not allowed within ten feet (10') of street ROW except those which are necessary to convey drainage in the shortest possible route to or from street ROW.
- (3) Non-residential and multi-family drainage facilities located within the front setback shall not exceed 25% of the area of the front setback.
- (4) Any fencing around non-residential and multi-family detention ponds shall be constructed of wrought iron or decorative tubular metal or other similar product.
- (5) Structural stabilization including vertical walls and riprap for non-residential and multi-family drainage facilities shall be limited to not more than thirty (30%) percent of the perimeter of the pond excluding outlet structures. The remainder of the perimeter shall be earthen embankment no steeper than 3:1 slope. All exposed concrete that is visible is required to be clad in stone provide decorative textured concrete and tinting in earthen colors, or masonry veneer including but not limited to ledgerstone, fieldstone, ~~or~~ cast stone, or other decorative materials as approved by the Director of Planning. All other exposed concrete is required to be clad in stone as listed above or textured and tinted in earthen colors. In the event that the drainage facility is below grade, structural stabilization is permitted for the full perimeter and screening requirements listed in Article VI, Section 1 (d) of this Ordinance shall apply.

(c) Residential Drainage and Detention Facilities:

- (1) Residential drainage facilities include all detention ponds, water quality ponds, pond outlet structures, berms, improved channels or other improvements associated with the drainage improvements. Roadside swales, storm sewer outfalls unless visible from a ROW, inlets, and areas of concrete that are no more than one hundred (100) square feet in size are not included.
- (2) Residential drainage facilities shall utilize earthen berms and be designed with a curvilinear shape. Any structural stabilization with slopes steeper than 3:1 shall be limited to the use of native stone (except for outlet structures which can be concrete) and shall be limited to not more than thirty (30%) percent of the perimeter of the pond. Such ponds shall be seamlessly integrated with the landscaping. All exposed concrete that is visible is required to be clad in stone provide decorative textured concrete and tinting in earthen colors, or masonry veneer including but not limited to ledgerstone, fieldstone, ~~or~~ cast stone, or other decorative materials as approved by the Director of Planning. All other exposed concrete is required to be clad in stone as listed above or textured and tinted in earthen colors. In the event that the drainage facility is below grade, concrete is permitted instead of native stone and screening requirements Article VI, Sec. 1 (d) of this Ordinance shall apply.
- (3) Any fencing around residential detention ponds shall be constructed of wrought iron or decorative tubular metal or other similar product.

SECTION 8: SINGLE-FAMILY AND TWO-FAMILY LOTS ABUTTING OR ADJACENT TO TOLLWAY, HIGHWAY, ~~OR ARTERIAL~~, OR COLLECTOR ROADWAY

For single-family and two-family lots contained within a subdivision receiving approval for a preliminary plat and final plat or a short form plat after the effective date of this ordinance and abutting or adjacent to a tollway, highway, arterial, or collector roadways as identified on the Leander Transportation Plan or based on roadway design, direct driveway access to any single-family or two-family lot from such roadway shall be prohibited. The following are also applicable:

- (b) For lots adjacent to tollway, highway, arterial, or collector roadways and backing up to such roadway (having frontage on another roadway of a lesser classification), the following shall be provided (see Figure Q – following pages):
 - (2) A six-foot privacy fence is required to be constructed at the common lot line between the landscape lot and the single-family or two-family lots. The fence is required to be constructed of one or more of the following materials: brick, stone, cast stone, ~~stucco~~, factory tinted (not painted) split-faced concrete masonry unit, or other similar material approved by the Director of Planning. In addition to the materials listed above, textured pre-cast concrete (e.g. WoodCrete) is also permitted when the privacy fence is adjacent to collectors. All columns are required to have concrete footings. The landscape lot is required to be maintained by a private association.
- (c) For lots adjacent to tollway, highway, arterial, or collector roadways and having a side of the lot adjacent to such roadway (having frontage on another roadway of a lesser classification), the following shall be provided (see Figure Q – next page):
 - (2) A six-foot privacy fence is required to be constructed at the common lot line between the landscape lot and the single-family or two-family lots from the rear lot line to a point even with the rear wall of the house at a minimum, but no further than to a point even with the front wall of the house. Any fence closer to the front lot line than the front wall of the house shall not exceed three feet in height; however, such fence is not required. Such fence is required to be constructed of one or more of the following materials: brick, stone, cast stone, ~~stucco~~, factory tinted (not painted) split-faced concrete masonry unit, or other similar material approved by the Director of Planning. In addition to the materials listed above, textured pre-cast concrete (e.g. WoodCrete) is also permitted when the privacy fence is adjacent to collectors. All columns are required to have concrete footings. The landscape lot is required to be maintained by a private association.

SECTION 12: OUTDOOR LIGHTING

- (a) The purpose of this section is to provide design standards for site and building lighting that are Dark Sky compliant and compatible with adjacent uses.
- (b) Non-residential outdoor lighting will be in accordance with other provisions of this ordinance and City building codes. A detailed Lighting Plan and photometric plan shall be included with the Building Permit application and shall meet the following requirements:-
 - (1) Outdoor Lighting
 - a. Fixture
 - i. All permanent exterior lighting shall be non-flashing and shielded such that the light source (cone of direct light) is not visible from the public ROW or adjacent residential uses at the property line (see Figure R – following page).

i-ii. Wall pack lighting or other lighting that directs the light in a horizontal direction without an adequate shield is not permitted (since it directs the light glare directly outward) if there are streets or residential uses in the direction of the light.

b. Illumination Levels

ii-i. All site lighting shall be designed and installed so that the level of illumination as measured in foot candles at a height of three (3') feet at the property line does not exceed two (2') foot candles.

~~(a)~~ (c) Residential outdoor lighting on residential property will be installed in accordance with applicable City Code Standards. It will be located so as not to create a nuisance for adjoining property owners.

~~(b)~~ (d) ~~All permanent exterior lighting shall be non-flashing and shielded such that the light source (cone of direct light) is not visible from the public ROW or adjacent residential uses at the property line (see Figure R following page). Wall pack lighting or other lighting that directs the light in a horizontal direction without an adequate shield is not permitted (since it directs the light glare directly outward) if there are streets or residential uses in the direction of the light.~~

SECTION 14: ADDITIONAL MULTI-FAMILY AND NON-RESIDENTIAL STANDARDS

(d) Masonry Privacy Wall

- (1) A six-foot masonry privacy wall is required to be constructed by any non-residential use that abuts property utilized for a single-family or two-family residence on land zoned single-family or two-family, or land planned or platted for such with an approved concept plan, preliminary plat or final plat, unless an existing structure is proposed to be expanded by less than 50%, or 1,000 sq. ft., whichever is less.
 - (i) Such wall shall be constructed at the common property line between the uses, or if such location is not feasible because of floodplain, trees or other natural feature, at a location that will effectively screen the non-residential use from view from the single-family or two-family residence.
 - (ii) Such wall is required to be constructed of one or more of the following materials: textured pre-cast concrete that is constructed to appear as brick, stone, or cast stone as approved by the Director of Planning, brick, stone, cast stone, ~~stucco,~~ factory tinted or painted split-faced concrete masonry unit, granite, tile or other similar material approved by the Director of Planning.
 - (iii) An eight-foot wall may be utilized for security purposes.
 - (iv) Gates shall be provided in the wall as appropriate to connect to public sidewalks or other pedestrian connections unless such wall is also used as described above for security.
- (2) The masonry privacy wall is not required for non-residential uses that are permitted by right in any Single-Family Districts.

SECTION 16: FENCES

(d) Fences less than or equal to eight (8) feet in height shall be allowed for impeding access to hazardous or secured facilities including, but not limited to, electrical substations and chemical or equipment storage yards; or where ~~because of severe slope conditions, such fencing height can be demonstrated to be necessary for privacy or visual buffering, or where~~ the fence forms a perimeter around a subdivision. For high security applications, barbed wire or razor wire (or equivalent) may be installed above the eight (8) foot height limit but not to exceed a total of ten feet in height.

ARTICLE VII – ARCHITECTURAL COMPONENTS

SECTION 1: TYPE A

(b) Exterior Wall Standards:

- (1) At least eighty-five percent (85%) of the exterior surface area of all walls, including all stories of primary buildings / structures, shall consist of un-painted clay brick, ledge stone, fieldstone, cast stone, marble, granite, tile, painted or tinted stucco (limited to thirty-five (35%) of the exterior surface area of walls), non-reflective glass façade, glass block (or alternative glazing e.g. Kalwall) and factory tinted (not painted) split faced concrete masonry unit (non-residential buildings and structures only) or similar material approved by the Director of Planning. The remaining exterior wall surface shall be comprised of those materials listed or cementious-fiber planking (not panels unless they are used with board and batten application). Solid wood planking and decorative cementious-fiber panels may be used for accent features.

SECTION 2: TYPE B

(b) Exterior Wall Standards:

- (1) At least eighty-five (85%) percent of the exterior surface area of first story walls and fifty percent (50%) percent of the exterior surface area of each additional story walls of the exterior surface area (all stories) and at least eighty-five percent (85%) of the exterior surface area of first story walls of primary buildings / structures, shall consist of un-painted clay brick, ledge stone, fieldstone, cast stone, marble, granite, tile, painted or tinted stucco (limited to thirty-five (35%) of the exterior surface area of walls), glass façade, glass block (or alternative glazing e.g. Kalwall) and factory tinted (not painted) split faced concrete masonry unit (non-residential buildings and structures only) or similar material approved by the Director of Planning. The remaining exterior wall surface shall be comprised of those materials listed or cementious-fiber planking (not panels unless they are used with a board and batten application). Solid wood planking, decorative cementious-fiber panels and other materials approved by the Director of Planning may be used for accent features.

SECTION 3: TYPE C

(b) Exterior Wall Standards:

- (1) At least sixty (60%) percent of the exterior surface area of street facing walls (See Figures U, V, and W – following pages) of primary buildings and thirty five percent (35%) percent of the exterior surface area of all other walls ~~(all stories), including at least sixty percent (60%) of the exterior surface area of street facing walls (all stories) (see Figures U, V and W – following pages)~~ of primary buildings / structures shall consist of un-painted clay brick, ledge stone, fieldstone, cast stone, marble, granite, tile, painted or tinted stucco, glass façade, glass block (or alternative glazing e.g. Kalwall) and, for non-residential buildings and structures, factory tinted (not painted) split faced concrete masonry unit, pre-cast concrete tilt wall with a decorative or textured finish (needs approval by the Director of Planning to determine if finish is acceptable) or similar material approved by the Director of Planning. The remaining exterior wall surface shall be comprised of those materials listed or cementious-fiber planking (not panels unless they are used with a board and batten application) or, ~~for non-residential applications only,~~ exterior insulating finishing system (E.I.F.S.). Solid wood planking, decorative cementious-fiber panels and other materials approved by the Director of Planning may be used for accent features. For non-residential buildings, smooth faced concrete masonry unit and metal panels or similar materials approved by

the Director of Planning may be utilized as an accent feature and shall comprise not more than ten percent (10%) of any wall surface area.

SECTION 4: TYPE D

(b) Exterior Wall Standards:

- (1) ~~For all buildings / structures that are more than four hundred (400') feet from a street, the masonry requirements do not apply. For all buildings / structures that are within four hundred (400') feet of a street at least sixty (60%) percent of the exterior surface area of street facing walls (See Figures U, V, and W – following pages) of primary buildings and thirty five (35%) percent of the exterior surface area of all other walls Unless there are no street facing walls, at least thirty five percent (35%) of the exterior surface area of walls (all stories), including at least sixty percent (60%) of the exterior surface area of street facing walls (all stories) (see Figures S, T and U – previous pages)~~ of primary buildings / structures shall consist of un-painted brick, ledge stone, fieldstone, cast stone, marble, granite, tile, painted or tinted stucco, exterior insulating finishing system (E.I.F.S.), glass façade, glass block (or alternative glazing e.g. Kalwall), factory tinted (not painted) split faced concrete masonry unit, pre-cast concrete tilt wall with a decorative or textured finish or similar material approved by the Director of Planning. The remaining exterior wall surfaces shall be comprised of those materials listed or cementious-fiber planking or panels, or painted metal siding except that metal siding is not permitted on any street facing wall. Solid wood planking, decorative cementious-fiber panels and other materials approved by the Director of Planning may be used for accent features. Smooth faced concrete masonry unit and metal panels or similar materials approved by the Director of Planning may be utilized as an accent feature only and shall not comprise more than fifteen percent (15%) of any wall surface area.

ARTICLE VIII - ARCHITECTURAL STANDARDS

SECTION 1: WALL AREA CALCULATIONS

- (a) In calculating percentage of exterior wall area, the area of windows and window frames, doors and door frames, eaves, soffits, dormers, columns, recessed entryways, foundation and similar areas are excluded from the calculations and may utilize any of the materials listed in the applicable component exterior wall standards, when, in the opinion of the Building Official, construction with the required masonry materials is not reasonably feasible.
- (b) A street facing wall is the exterior wall of a building, including any off-sets, projections or recesses, facing a street or within forty-five (45) degrees of such orientation and within four hundred (400) feet of the street. A wall is considered facing a street even if there is another public ROW between the wall and the street. A wall is not considered facing a street if another building or other permanent screening material on site is between the wall and the street and blocks the view of the wall from the street by at least seventy-five percent (75%) from all view angles. Five year projected maturity of any on-site evergreen planted materials may be considered in the screening assessment.
- (c) A masonry calculation table is required at the building permit stage to demonstrate compliance with the ordinance requirements.

ARTICLE IX – SITE DEVELOPMENT

SECTION 1: GENERAL PROVISIONS

(b) Applicability; Site Development Permit Required

Any person who develops, or causes to be developed, property located within the corporate limits of the City shall comply with this Chapter. Within the city corporate limits the use of property shall not be changed, no development shall take place and no building permit shall be issued until a site development permit has been issued in accordance with the code of ordinances of the City. Property for which a site development permit has been issued shall be developed in compliance with the approved site plan. The following are exceptions to the applicability of this Chapter:

- (1) Construction, alteration or addition to a single-family or two family residential structure, or an accessory building to any such structure.
- (2) Alteration or finish-out of an existing building when the alteration or finish-out does not increase the square footage of the building or change the building footprint as long as one of the following applies:
 - (i) The use does not change, or if the use changes, the new use does not require more parking than is currently existing and no additional parking spaces, aisles or driveways are proposed;
 - (ii) The alteration, finish-out or change of use is in compliance with all applicable codes and regulations of the city; and
 - (iii) The proposal does not increase the degree of any existing non-conforming use or non-conforming structure.
- (3) Construction of a fence, but no exception is granted by this subsection for construction of a retaining wall or for a fence that may obstruct or change the flow of water.
- (4) Brush clearing in compliance with the landscape and tree regulations of the city as long as only rubber-tired equipment is introduced to the site (no equipment with tracks).

(e) Minor Site Development Permit

- (1) Projects that include minor site activity similar to those listed in Section 1(b) and including brush clearing, Article IX of this ordinance may be eligible for a minor site development permit. To be eligible, such projects may increase the impervious cover by no more than 1,000 square feet. In addition, a minor site development permit application shall be submitted for review in conformance with all information and materials required by the most recent minor site development permit application/checklist.
- (2) A professional recovery fee as set forth in Appendix A shall be required at the time of site development permit exemption application submittal.

ARTICLE X – ADMINISTRATION

SECTION 10: ENFORCEMENT

(a) Penalty

- (1) Penalty. Any person who shall violate any of the provisions of this ordinance, or shall fail to comply therewith, or with any of the requirements thereof, within the City limits shall be deemed guilty of an offense and shall be liable for a fine not to exceed the sum of two thousand dollars (\$2000.00). Each day the violation exists shall constitute a separate offense. Such penalty shall be in addition to all the other remedies provided herein
- (2) Administrative Penalty. Any person who removes a Significant Tree greater than 8 inches in caliper prior to approval of a tree ~~protection-preservation~~ plan, or who removes a Significant Tree greater than 8 inches in caliper that is not authorized to be removed under an approved tree ~~protection-preservation~~ plan shall be charged and shall pay a fee of \$300 per inch for each Significant Tree greater than 8 inches in caliper removed in violation of this ordinance. The City will rely on remaining evidence on site to determine if a violation of this ordinance has occurred. For enforcement purposes the City will consider that any stump remaining on the property which is eight inches or more in diameter measured at ground level or higher was a stump of a Significant Tree greater than 8 inches in caliper. Furthermore, any cut wood discovered on site will be considered evidence of a Significant Tree greater than 8 inches in caliper if the diameter of the cut wood is measured at eight inches or greater at any point on any piece of cut wood. A site development or building permit application for property from which one or more Significant Trees have been removed in violation of this ordinance may not be approved until an administrative

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF LEANDER, TEXAS AMENDING SECTIONS OF ARTICLE 14.02, THE COMPOSITE ZONING ORDINANCE, TO ADD DEFINITIONS, UPDATE THE USE COMPONENTS, TO MODIFY SETBACKS FOR COMMERCIAL FUELING, TO UPDATE REQUIREMENTS FOR SCREENING, TO UPDATE THE PARKING REQUIREMENTS TABLE, TO MODIFY RESIDENTIAL SETBACKS, TO CLARIFY REQUIREMENTS FOR DRAINAGE AND DETENTION FACILITIES, TO MODIFY OUTDOOR LIGHTING REQUIREMENTS, TO UPDATE THE ARCHITECTURAL STANDARDS, TO UPDATE THE SITE DEVELOPMENT STANDARDS; PROVIDING A SEVERABILITY CLAUSE, PROVIDING SAVINGS, EFFECTIVE DATE AND OPEN MEETINGS CLAUSES, AND PROVIDING FOR RELATED MATTERS.

Whereas, the Planning & Zoning Commission held a public hearing on the proposed amendments to Section 14.02.001, Article 14.02, Chapter 14, Leander Code of Ordinances (the “Composite Zoning Ordinance”), and forwarded its recommendation on the amendments to the City Council; and

Whereas, after publishing notice of the public hearing at least fifteen days prior to the date of such hearing, the City Council at a public hearing has considered the proposed amendments and finds that the amendments are reasonable and necessary to protect the health, safety, and welfare of the present and future residents of the City;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEANDER, TEXAS, THAT:

Section 1. Findings of Fact. The above and foregoing recitals are hereby found to be true and correct and are incorporated herein as findings of fact.

Section 2. Amendment of Article I, Section 6. Article I, Section 6 of the Composite Zoning Ordinance is hereby amended to add the following definitions:

Dark Sky means the use of lighting in a way that directs the light source away from the sky in order for the night sky to remain relatively free of interference from artificial light. This type of lighting is in compliance with the International Dark Sky Association standards.

Gaming Room Facility means a place to deal, operate, carry on, conduct, maintain, or expose for play any game, sports book, promotion, sweepstakes, or other activity electronic or otherwise that may or may not confer upon the patrons or participants the right, chance, or ability to win and or claim prizes.

Gaming Device means a clock, tape machine, slot machine, or other machine or device for the reception of money or other thing of value on chance or skill or upon action of

which money or other thing of value is staked, hazarded, bet, won, or lost; or any mechanism, furniture, fixture, equipment or other device designed primarily for use in a gambling place. It does not include: (1) A coin-in-slot-operated mechanical device played for amusement that rewards the player with the right to replay such mechanical device; or (2) Vending machines by which full and adequate return is made for the money invested and in which there is no element of chance or hazard.

Soil means the upper layer of the earth in which plants grow and contains humus, minerals, available nutrients, and beneficial micro-organisms, resulting in a favorable condition for vegetative growth.

Section 3. Amendment of Article I, Section 6. The definitions of “Lot Width” and “Riparian Corridor” set forth in Article I, Section 6 of the Composite Zoning Ordinance are hereby amended to read as follows:

Lot Width means the average horizontal distance between side property or lot lines. Lot width can also be identified as the measurement of the lot at the building setback line. The minimum lot width for lots fronting a cul-de-sac may be reduced to a minimum of thirty (30’) feet at the front property line provided that the minimum required lot width is provided at the front setback line.

Riparian Corridor means any defined stream channel including the area up to the ordinary high water (or bankfull-flow line), as well as all riparian (streamside) vegetation in contiguous adjacent uplands. Riparian Corridors also includes the Secondary and Connector Trail Corridors identified in the City of Leander Parks, Recreation & Open Space Master Plan and the Transportation Plan.

Section 4. Amendment to Article III, Section 1 (b). Article III, Section 1(b) of the Composite Zoning Ordinance is hereby amended in its entirety to read as follows:

(b) Conforming Uses

- (1) Single-family dwelling of not less than sixteen hundred (1,600) square feet of living area; accessory dwelling with a minimum living area of four hundred (400) square feet; and a maximum living area of nine hundred (900) square feet or 40% of the gross living area of the primary dwelling, whichever is greater. However, for lots greater than three acres in size, there is no limit to the maximum size of the accessory dwelling.
- (2) Community services including community center, civic organizations, fraternal organizations, and cemetery / mausoleum not including a crematory or embalming facilities
- (3) Golf courses (public and private) and all associated improvements and activities, but not including miniature golf courses, golf practice ranges (unless associated with a golf course), or similar forms of commercial amusement

- (4) Day care (in home) for 5 or fewer children
- (5) Emergency services including fire, police and EMS stations
- (6) Family Home and Group Home-Class 1
- (7) Home occupations (see Article IV, Section 8 for Use Standards)
- (8) Parks, playgrounds and associated equipment and facilities, recreational amenity center
- (9) Place of worship
- (10) Public buildings, including libraries, museums and administrative offices
- (11) Real estate sales offices during the development and sale of a residential subdivision and subject to the restrictions contained in this ordinance
- (12) Schools, public or private, including all levels up to and including secondary (high) school and equivalent curriculum including support facilities are permitted
- (13) Temporary buildings incidental to construction work on the premises if such buildings are removed upon the completion or abandonment of construction work (see Article IV, Sec. 7)
- (14) Utilities (minor) including ground mounted service equipment and minor structures and facilities such as poles, minor electrical switching facilities, lift stations, water pump stations and gas regulating facilities
- (15) Water supply reservoirs and pumping plants when screened from public view
- (16) Wireless communications facilities (WCFs) attached to street poles or facades attached to non-residential buildings or stealth WCFs are permitted subject to the provisions of this ordinance. Freestanding WCFs, including lattice towers and monopoles, are prohibited.
- (17) (For lots or tracts three or more acres in size) ranches, dairy farms, stables, riding academies and roping arenas; including the feeding, raising and breeding of agricultural livestock and exotic hoof stock; however, with exception of commercial feed lots which are not permitted, and the exception that not more than one large animal (e.g. a horse, cow, bull or similar animal) or five small animals (e.g. goats, sheep or similar animal) may be permitted for each acre of grazeable land. Grazeable land shall be land that is fenced and maintained with suitable forage for grazing of the particular species. Barns and stables shall not be located within 25 feet of any property line. (See Chap. 2, City Code for animal control regulations)
- (18) Agricultural, small wind energy systems, solar energy systems and rainwater harvesting systems including or similar to:
 - (i) As accessory uses, solar energy systems designed to supply energy for use on the premises, and rainwater harvesting systems meeting the standards of Article IV, Sec. 5 of Article 14.200. In addition, if approved with a special use permit, small wind energy systems may be approved as an accessory use if meeting the standards of Article IV, Sec. 5 of Article 14.200.
 - (ii) Hunting and/or hunting leases (for lots or tracts three or more acres in size).

- (iii) Farming or truck gardens, limited to the propagation and cultivation of plants.
- (19) Temporary parking associated with model homes and/or sales trailers prior to the completion of model homes. Article IX of this ordinance will apply to temporary parking lots.
- (20) Other similar uses as determined by the Director of Planning [see Article II, Sec. 2, (f)].

Section 5. Amendment to Article III, Section 14 (b). Article III, Section 14 (b) of the Composite Zoning Ordinance is hereby amended in its entirety to read as follows:

(b) Conforming Uses

- (1) Any use permitted in the “GC” component
- (2) Bingo
- (3) Car Title Loans Shop/Business
- (4) Commercial laundry
- (5) Contractor and building material storage
- (6) Gaming Room Facility/Gaming Device
- (7) Hooka Lounge
- (8) Manufacture, assembly or processing of materials not classified as hazardous by the Fire Chief
- (9) Mini-warehouse or self-service storage facilities [required to be set back at least four hundred (400) feet from a tollway, highway or major arterial roadway if built to Type B, C or D architectural standards or such facilities include exterior warehouse doors], warehouse and distribution, commercial storage
- (10) Pawn Shop
- (11) Payday Lending Business
- (12) Research, Testing, and Development Laboratory
- (13) Research, Testing, and Development Laboratory (Intense)
- (14) Retail sales, second hand resale, and services
- (15) RV, trailer, commercial motor vehicle and boat outdoor storage [required to be set back at least four hundred (400) feet from a tollway, highway or major arterial roadway] (Note: refer to Article VI, Section 9 for rules on special vehicle storage)
- (16) Tattoo and/or Body Piercing Parlor
- (17) Utilities, including ground mounted service equipment and structures as a primary use and facilities such as poles, electrical switching facilities, lift stations, water pump stations, gas regulating facilities, electrical substations, generating plants, wastewater and water treatment plants, etc. (see screening requirements in Article VI, Sec. 1)
- (18) Vehicle and major equipment sales, rental or leasing, repair, body shop [Small engine repair shops and motorcycle repair shops shall not be permitted within one-hundred fifty (150’) feet of a residential district unless such repairs are conducted totally within a fully enclosed building.]
- (19) Warehouse and distribution
- (20) Wood yard
- (21) Wholesale activities

- (22) Wrecker Impoundment, Towing [required to be set back at least four hundred (400) feet from a tollway, highway or major arterial roadway]
- (23) Stand alone crematory or embalming establishment as long as the crematory stack is no closer than 200' from a restaurant or associated parking or from a residential district (unless such district is utilized for non-residential uses).
- (24) Other similar uses as determined by the Director of Planning based on the criteria of Article II, Sec. 2, (f)

Section 6. Amendment to Article III, Section 16 (d) (8). Article III, Section 16 (d) (8) of the Composite Zoning Ordinance is hereby amended in its entirety to read as follows:

(d) Rules Applicable

- (8) The PUD shall result in overall higher standards than what would be provided by the base zoning district. As examples: (1) if residential lot sizes are decreased or development densities are increased, the PUD will be expected to significantly exceed other standards such as parkland and facilities dedication, landscaping, architectural controls, thoroughfare or other transportation improvements, creation of unique characteristics of the neighborhood, retention of significant trees and/or provision of public facilities, etc., or (2) if masonry standards or building/development setbacks are proposed to be decreased, other standards would be expected to be increased such as landscaping, screening, retention of significant trees, architectural controls, land uses and/or unique site layout standards, etc. Other examples may include:
 - (i) Designating the Type A Architectural Component
 - (ii) Adding additional architectural features
 - (iii) Provide a master architectural and signage plan that includes a cohesive materials palette
 - (iv) Enhanced landscaping and/or trees
 - (v) Increased landscape area
 - (vi) Masonry perimeter walls for subdivisions
 - (vii) Provide brick or stone instead of decorative concrete panels for screening walls
 - (viii) Plant street trees
 - (ix) Provide more parkland dedication
 - (x) Increase recreation improvements
 - (xi) Trails system in greenbelt areas
 - (xii) Provide a Master Sign Plan including: proposed locations, provide cohesive materials palette, design specifications for signage, type of illumination
 - (xiii) Limit fencing to wrought iron or decorative tubular metal fencing along greenbelt lots.
 - (xiv) Provide unique characteristics of a neighborhood with a unique site layout
 - (xv) Include a mixture of uses
 - (xvi) Provide public spaces
 - (xvii) Incorporate public art

Section 7. Amendment to Article V, Section 3 (b) (2) (v) (b). Article V, Section 3 (b) (2) (v) (b) of the Composite Zoning Ordinance is hereby amended in its entirety to read as follows:

- b. Commercial fueling is not located within two hundred (200') feet of a residential district unless such district is utilized for non-residential purpose. The location is measured from the closest portion of the structure associated with the outdoor commercial fueling to the residential district; and

Section 8. Amendment to Article VI, Section 1 (c) (4) (iv). Article VI, Section 1 (c) (4) (iv) of the Composite Zoning Ordinance is hereby amended in its entirety to read as follows:

- (iv) Significant Trees greater than eight (8) inches in caliper shall be preserved to the greatest extent reasonably possible. Significant Trees removed during construction shall be supplanted with Replacement Trees if required by the tree mitigation requirements of this section. No Significant Tree shall be removed until a tree preservation plan has been approved by the Director of Planning in accordance with this Chapter. Significant Trees may be removed only in accordance with the approved tree preservation plan, and trees must be protected during construction activities on the property in accordance with the approved tree preservation plan. This provision only applies to projects before the certificate of occupancy has been issued for single-family and two-family developments. For single-family and two-family projects, this provision only applies prior to the initial certificate of occupancy for each lot.

Section 9. Amendment to Article VI, Section 1 (c) (9) (i) & (ii). Article VI, Section 1 (c) (9) (i) & (ii) of the Composite Zoning Ordinance is hereby amended in its entirety to read as follows:

- (9) Tree Protection Plan Requirements
 - (i) An applicant for a single-family or two-family preliminary plat or final plat, or a site development permit shall provide a tree survey prepared within five years preceding the application date. This tree survey shall include the street and lot layout, or site plan superimposed at a scale of 1"=100' (or as appropriate) identifying significant trees located on the property that meet the requirements indicated in this section. Applicants for a single-family or two-family preliminary or final plat are only required to submit a tree survey for the portion of the property that the applicant is proposing to disturb with the subdivision construction. The applicant shall provide a tree preservation plan that identifies the surveyed trees and the mitigation of the protected trees that are proposed for removal. The applicant shall be required to demonstrate that lot lines, street layouts and site improvements have been designed and located and that lot width, depth and size flexibility as permitted by the applicable zoning district has been utilized to the maximum extent necessary to retain the maximum number of significant trees reasonably practicable. Applicants for a single-family or two-

family preliminary or final plat may plant replacement trees within lots owned by the Homeowners Association including but not limited to landscape lots, park lots, or amenity center lots.

- (ii) The Director of Planning shall determine if adequate performance is achieved based on the standards of this section. Approval of the tree preservation plan by the Director of Planning is required prior to preparation and submission of a subdivision or site development permit application. The applicant may appeal any decision of the Director to the Commission. A decision of the Commission may be appealed to the City Council. Any preserved or replacement trees may be counted toward the landscape requirements of this section. See the Construction Plan requirements for details.

Section 10. Amendment to Article VI, Section 1 (c) (8). Article VI, Section 1 (c) (8) of the Composite Zoning Ordinance is hereby amended in its entirety to read as follows:

- (8) A non-disturbance zone shall be maintained on single-family and two-family lots during the subdivision construction and building permit phases of development. A disturbance area no more than five (5') feet from the foundation necessary for construction and grade transitions shall be permitted. This disturbance area shall be no more than ten (10') feet from the foundation for properties zoned with the SFR (Single-Family Rural) use component. The trees located on the remainder of the lot shall not be removed unless a unique situation is approved by the Planning Director.

Section 11. Amendment to Article VI, Section 1 (d) (1) (v). Article VI, Section 1 (d) (1) (v) of the Composite Zoning Ordinance is hereby amended in its entirety to read as follows:

- (v) Outside storage areas shall be screened by the use of a privacy fence or wall at least the height of the items to be screened and in conformance with the requirements of this ordinance. If the outdoor storage area is adjacent to an arterial or collector roadway, then the wall is required to be constructed of one or more of the following materials: brick, stone, cast stone, stucco (limited to thirty-five (35%) of the exterior surface area of walls), factory tinted (not painted) split face concrete masonry unit, or other similar material approved by the Director of Planning. In addition to the materials listed above, textured pre-cast concrete (e.g. Woodcrete) is also permitted with the wall is adjacent to collectors.

Section 12. Amendment to Article VI, Section 1 (d) (1) (viii). Article VI, Section 1 (d) (1) of the Composite Zoning Ordinance is hereby amended by adding subsection (viii) to read as follows:

- (viii) Lift stations are required to be screened from view of adjacent single-family or two-family residences, or any street or public right-of-way by the use of a wall. The wall is required to be constructed of one or more of the following materials:

brick, stone, cast stone, stucco (limited to thirty-five (35%) of the exterior surface area of walls), factory tinted (not painted) split face concrete masonry unit, textured pre-cast concrete (e.g. Woodcrete) or other similar material approved by the Director of Planning.

Section 13. Amendment to Article VI, Section 1 (d) (2). Article VI, Section 1 (d) (2) of the Composite Zoning Ordinance is hereby amended in its entirety to read as follows:

- (2) Approved screening techniques include privacy fences, evergreen vegetative screens, landscape berms, existing vegetation or any combination thereof unless otherwise noted in this section.

Section 14. Amendment to Article VI, Section 3 (a). Article VI, Section 3(a) of the Composite Zoning Ordinance is hereby amended in its entirety to read as follows:

SECTION 3: OFF-STREET PARKING REQUIREMENTS

(a) The following off-street parking requirements are considered minimum requirements and may not adequately reflect the specific needs of a proposed business. A commercial building permit applicant shall analyze the parking needs of the specific users being proposed and provide the amount of parking required for such uses. When any building or structure is erected, or an existing building is enlarged by fifty (50) percent or more in floor area, off-street parking shall be provided in accordance with the following requirements (Note: Any building enlargement is required to add at least the amount of additional parking required by the enlargement):

USE CATEGORY	SPECIFIC USE	SPACE REQUIREMENT
RESIDENTIAL USES		
Household Living	Single Family	See Use District
	Multi-Family	1 ½ for one bedroom plus ½ for each additional bedroom.
	Senior Multi-Family	1 per dwelling plus additional 5% of total spaces for visitor use.
Group Living	Fraternity House, Sorority House, Dormitory, Rooming House, Boarding House	1 per each two beds
	Nursing Home/Hospice/ Assisted Living	1 per bedroom
	All other Group Homes	1 per bedroom

	Family Home and Group Home-Class 1	not less than four (4) off street parking spaces, or one parking space per bedroom, whichever is greater.
	Group Home-Class 2 & Group Home-Class 3	not less than six (6) off street parking spaces, or one parking space per bedroom, whichever is greater
CIVIC USES		
Educational & Daycare Facilities	Elementary Schools	greater of 1:4 seats in auditorium or 2:classroom
	Secondary Schools, colleges	greater of 1:4 seats in auditorium or 10:classroom
	Day Care Center	1:400 sq. ft.
Medical & Institutional Facilities	Hospital, Sanitarium	1:4 beds
	All other institutions	1:250 sq. ft.
Parks & Open Areas	Golf Courses	3:hole
	Neighborhood Amenity Center	1:300 sq. ft. (including pools in square footage calculation)
Places of Worship	Religious Assembly	1:200 square feet of sanctuary, classrooms, flexible seating areas
COMMERCIAL USES		
Automotive Sales & Services	Motor Vehicle Salesrooms & Used Car Lots	greater of 1:800 sq. ft. of sales floor or lot area
	Vehicle Repair Garage	1:400 sq. ft.
Overnight Accommodations	Hotel, Motel	1 per room plus 1:200 sq. ft. of Comm. Floor Area
	Bed & Breakfast/Inn	1 per guest room plus 2 additional spaces
Food & Beverage Establishments	Restaurant as a single use or comprising more than 20% of a mixed retail center	1:100 sq. ft.
Entertainment & Recreation	Dance / Assembly / Exhibition Hall, Restaurant, Night Club, Lodge or Country Club	1:100 sq. ft.
	Bowling Alleys	5:lane

	Community Center, Library, Museum, Art Gallery	1:300 sq. ft.
	Theater, Auditorium (except school), Sports Arena, Stadium, Gymnasium, Funeral Home	1:4 seats
Commercial Office, Retail Sales, & Services	Medical / Dental Clinic/ Office, Personal Service, Mixed Use Retail Center less than 20,000 sq. ft.	1:200 sq. ft.
	Mixed Use Retail greater than 20,000 sq. ft.	1:225 sq. ft.
	Studio, Bank, Retail	1:250 sq. ft.
	Business / Professional Office	1:275 sq. ft.
	Furniture, Appliance or Hardware Store; Wholesale Sales Establishment, Machinery / Equipment Sales & Service; Clothing / Shoe Repair; Service Shop	1:300 sq. ft.
INDUSTRIAL USES		
Industrial, Manufacturing, Warehousing, Storage	Manufacturing, Industrial, Research, Testing, Warehouse, Storage Buildings and Yards, Lumber Yard, Printing Shop, Plumbing Shop	1:600 plus spaces for business vehicles
	Mini-Warehouse Self Storage	parking required only for office

In a development with mixed-use buildings designed and built in a walkable and pedestrian friendly configuration, the Planning Director may consider the following shared parking factors in reviewing a proposal for a reduction in the minimum parking requirements (the shared parking

factor is applied to the sum of the individual uses minimum parking requirements):

Shared Parking Factor				
	Residential	Lodging	Office	Retail
Residential	100%	—	—	—
Lodging	90%	100%	—	—
Office	70%	60%	100%	—
Retail	80%	75%	80%	100%

For uses not listed, the Planning Director may request additional parking demand analysis from the applicant to justify a reduction in the minimum parking requirements.

Where shared parking is provided, a shared parking and cross access agreement between the cooperating property owners shall be approved by the Planning Director and recorded prior to issuance of a building permit. This agreement must be recorded in the real property records of the county in which the property sits and the agreement may not be modified or revoked without the approval of the Planning Director. If any requirements for shared parking are violated, the affected property owners must provide a remedy satisfactory to the Planning Director or provide the full amount of required parking for each individual use.

Section 15. Amendment to Article VI, Section 6 (a). Article VI, Section 6 (a) of the Composite Zoning Ordinance is hereby amended in its entirety to read as follows; provided that Figures G through M shall remain in full force and effect except as modified by this ordinance:

(a) Building / Structure and Site Improvements:

BUILDING / STRUCTURE						
	Use Component	Architectural Component	Front	Side	Street Side	Rear
Standard Setback	SFR		25'	7'	15'	15'
	SFE, SFS, SFU, SFU/MH, TF		20'	5'	15'	15'
	SFC, SFL		15'*	5' or 0' & 10'	15'	15'
	SFT		10'*	0 or 10'	15'	15'
	MF	Type A Type B	20' 25'	10' 10'	20' 25'	20' 20'

	LO, LC, GC, HC, HI	Type A, B Type C	15' 20'	10' 10'	15' 20'	10' 10'
	GC, HC, HI	Type D	25'	15'	25'	15'
Special Setback Where Adjacent to SFR, SFE, SFS, SFU, SFC, SFL, SFU/MH, TF**	MF, LO, LC, GC, HC, HI	Type A Type B	(NA) (NA)	20' 25'	(N/A) (N/A)	20' 25'
	LO, LC, GC, HC, HI	Type C	(NA)	30'	(N/A)	30'
	GC, HC, HI	Type D	(NA)	50'	(N/A)	50'
	Garage Setback SFR, SFE, SFS, SFU, SFU/MH, SFC, SFL, SFT, TF					

PARKING, AISLE, LOADING, CANOPIES, OUTDOOR DISPLAY						
	Use Component	Site Component	Front	Side	Street Side	Rear
Standard Setback	MF	All	20'	5'****	20'	5'****
	LO, LC, GC, HC, HI	Type 1, 2	15'	5'****	15'	5'****
		Type 3	20'	5'****	20'	5'****
		Type 4, 5	25'	5'****	25'	5'****
Special Setback Where Adjacent to SF or TF**	MF, LO, LC, GC, HC, HI	Type 1-3	(N/A)	15'	(N/A)	15'
		Type 4, 5	(N/A)	20'	(N/A)	20'

OUTDOOR STORAGE						
	Use Component	Site Component	Front	Side	Street Side	Rear
Standard Setback	LO, LC, GC, HC, HI	Type 3-4	***	5'****	***	0'
		Type 5	25'	0'****	25'	0'
Special Setback Where Adjacent to SF or TF*	LO, LC, GC, HC, HI	Type 3-5	(N/A)	25'	(N/A)	25'

- * In no case shall the garage be closer to the ROW than 18'
- ** Unless such district is utilized for a non-residential use
- *** No closer than the street facing wall of the primary structure that utilizes such storage.
- **** Setback does not apply for parking, drive aisles, storage etc. that are intended to cross lot line.

Section 16. Amendment to Article VI, Section 6 (a) Figures I & J. Article VI, Section 6 (a) Figures I & J of the Composite Zoning Ordinance are hereby amended in their entirety to read as follows:

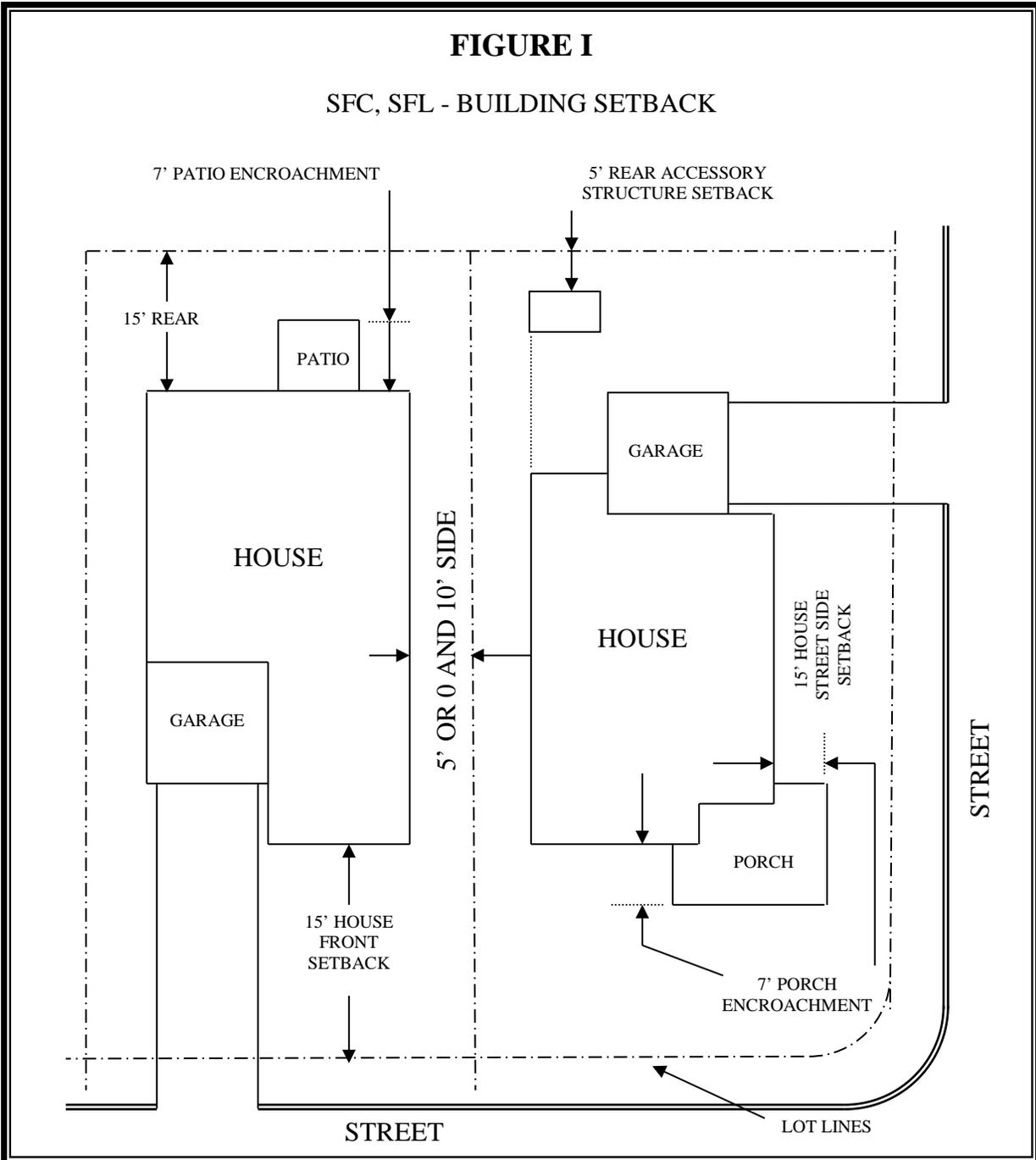
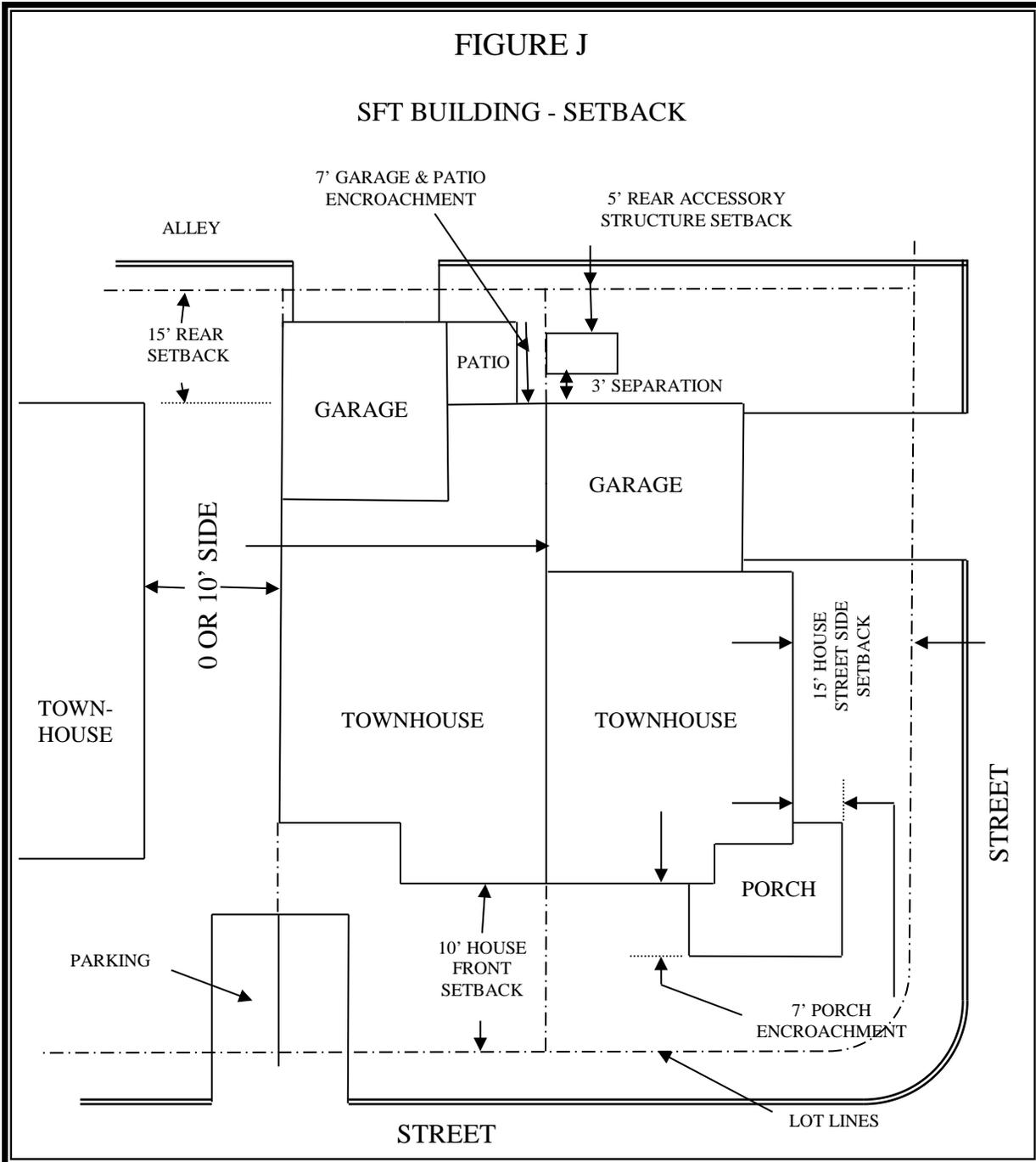


FIGURE J

SFT BUILDING - SETBACK



Section 17. Amendment to Article VI, Section 7. Article VI, Section 7 of the Composite Zoning Ordinance is hereby amended in its entirety to read as follows:

SECTION 7: DRAINAGE AND DETENTION FACILITIES

(a) Purpose.

The purpose of this section is to provide for the design of drainage and detention facilities that contribute to visual aesthetics of projects and limit the amounts of visible concrete that do not meet the requirements listed below. For the purposes of this section, visible shall be defined as noticeable by a person of average height walking on a street, sidewalk, or trail, or able to be seen by a neighboring property that is two stories in height.

(b) Non-Residential and Multi-Family Drainage and Detention Facilities:

- (1) Non-residential and multi-family drainage facilities include all detention ponds, water quality ponds, pond outlet structures, berms, improved channels or other improvements associated with the drainage improvements. Roadside swales, storm sewer outfalls unless visible from a ROW, inlets, and areas of concrete that are no more than one hundred (100) square feet in size are not included.
- (2) Non-residential and multi-family drainage facilities are not allowed within ten feet (10') of street ROW except those which are necessary to convey drainage in the shortest possible route to or from street ROW.
- (3) Non-residential and multi-family drainage facilities located within the front setback shall not exceed 25% of the area of the front setback.
- (4) Any fencing around non-residential and multi-family detention ponds shall be constructed of wrought iron or decorative tubular metal or other similar product.
- (5) Structural stabilization including vertical walls and riprap for non-residential and multi-family drainage facilities shall be limited to not more than thirty (30%) percent of the perimeter of the pond excluding outlet structures. The remainder of the perimeter shall be earthen embankment no steeper than 3:1 slope. All exposed concrete that is visible is required to be clad in stone including but not limited to ledgerstone, fieldstone, cast stone, or other decorative materials as approved by the Director of Planning. All other exposed concrete is required to be clad in stone as listed above or textured and tinted in earthen colors. In the event that the drainage facility is below grade, structural stabilization is permitted for the full perimeter and screening requirements listed in Article VI, Section 1 (d) of this Ordinance shall apply.

(c) Residential Drainage and Detention Facilities:

- (1) Residential drainage facilities include all detention ponds, water quality ponds, pond outlet structures, berms, improved channels or other improvements associated with the drainage improvements. Roadside swales, storm sewer outfalls unless visible from a ROW, inlets, and areas of concrete that are no more than one hundred (100) square feet in size are not included.
- (2) Residential drainage facilities shall utilize earthen berms and be designed with a curvilinear shape. Any structural stabilization with slopes steeper than 3:1 shall be limited to the use of native stone (except for outlet structures which can be concrete) and shall be limited to not more than thirty (30%) percent of the perimeter of the pond. Such ponds shall be seamlessly integrated with the landscaping. All exposed concrete that is visible is required to be clad in stone including but not limited to ledgerstone, fieldstone, cast

stone, or other decorative materials as approved by the Director of Planning. All other exposed concrete is required to be clad in stone as listed above or textured and tinted in earthen colors. In the event that the drainage facility is below grade, concrete is permitted instead of native stone and screening requirements Article VI, Sec. 1 (d) of this Ordinance shall apply.

- (3) Any fencing around residential detention ponds shall be constructed of wrought iron or decorative tubular metal or other similar product.

Section 18. Amendment to Article VI, Section 8. The title of Article VI, Section 8 of the Composite Zoning Ordinance is hereby amended in its entirety to read as follows:

SECTION 8: SINGLE-FAMILY AND TWO-FAMILY LOTS ABUTTING OR ADJACENT TO TOLLWAY, HIGHWAY, ARTERIAL, OR COLLECTOR ROADWAY

Section 19. Amendment to Article VI, Section 8 (b) (2). Article VI, Section 8 (b) (2) of the Composite Zoning Ordinance is hereby amended in its entirety to read as follows:

- (2) A six-foot privacy fence is required to be constructed at the common lot line between the landscape lot and the single-family or two-family lots. The fence is required to be constructed of one or more of the following materials: brick, stone, cast stone, factory tinted (not painted) split-faced concrete masonry unit, or other similar material approved by the Director of Planning. In addition to the materials listed above, textured pre-cast concrete (e.g. WoodCrete) is also permitted when the privacy fence is adjacent to collectors. All columns are required to have concrete footings. The landscape lot is required to be maintained by a private association.

Section 20. Amendment to Article VI, Section 8 (c) (2). Article VI, Section 8 (c) (2) of the Composite Zoning Ordinance is hereby amended in its entirety to read as follows:

- (2) A six-foot privacy fence is required to be constructed at the common lot line between the landscape lot and the single-family or two-family lots from the rear lot line to a point even with the rear wall of the house at a minimum, but no further than to a point even with the front wall of the house. Any fence closer to the front lot line than the front wall of the house shall not exceed three feet in height; however, such fence is not required. Such fence is required to be constructed of one or more of the following materials: brick, stone, cast stone, factory tinted (not painted) split-faced concrete masonry unit, or other similar material approved by the Director of Planning. In addition to the materials listed above, textured pre-cast concrete (e.g. WoodCrete) is also permitted when the privacy fence is adjacent to collectors. All columns are required to have concrete footings. The landscape lot is required to be maintained by a private association.

Section 21. Amendment to Article VI, Section 12. Article VI, Section 12 of the Composite Zoning Ordinance is hereby amended in its entirety to read as follows; provided that Figure R shall be and remain in full force and effect:

SECTION 12: OUTDOOR LIGHTING

- (a) The purpose of this section is to provide design standards for site and building lighting that are Dark Sky compliant and compatible with adjacent uses.
- (b) Non-residential outdoor lighting will be in accordance with other provisions of this ordinance and City building codes. A detailed lighting plan and photometric plan shall be included with the Building Permit application and shall meet the following requirements:
 - (1) Outdoor Lighting
 - a. Fixture.
 - i. All permanent exterior lighting shall be non-flashing and shielded such that the light source (cone of direct light) is not visible from the public ROW or adjacent residential uses at the property line (see Figure R – following page).
 - ii. Wall pack lighting or other lighting that directs the light in a horizontal direction without an adequate shield is not permitted (since it directs the light glare directly outward) if there are streets or residential uses in the direction of the light.
 - b. Illumination Levels
 - i. All site lighting shall be designed and installed so that the level of illumination as measured in foot candles at a height of three (3') feet at the property line does not exceed two (2') foot candles.
- (c) Residential outdoor lighting on residential property will be installed in accordance with applicable City Code Standards. It will be located so as not to create a nuisance for adjoining property owners.

Section 22. Amendment to Article VI, Section 14 (d). Article VI, Section 14 (d) of the Composite Zoning Ordinance is hereby amended in its entirety to read as follows:

(d) Masonry privacy wall

- (1) A six-foot masonry privacy wall is required to be constructed by any non-residential use that abuts property utilized for a single-family or two-family residence on land zoned single-family or two-family, or land planned or platted for such with an approved concept plan, preliminary plat or final plat, unless an existing structure is proposed to be expanded by less than 50%, or 1,000 sq. ft., whichever is less.
 - (i) Such wall shall be constructed at the common property line between the uses, or if such location is not feasible because of floodplain, trees or other natural feature, at a location that will effectively screen the non-residential use from view from the single-family or two-family residence.
 - (ii) Such wall is required to be constructed of one or more of the following materials: textured pre-cast concrete that is constructed to appear as brick, stone, or cast stone as approved by the Director of Planning, brick, stone, cast stone, factory tinted or

painted split-faced concrete masonry unit, granite, tile or other similar material approved by the Director of Planning.

- (iii) An eight-foot wall may be utilized for security purposes.
 - (iv) Gates shall be provided in the wall as appropriate to connect to public sidewalks or other pedestrian connections unless such wall is also used as described above for security.
- (2) The masonry privacy wall is not required for non-residential uses that are permitted by right in any Single-Family Districts.

Section 23. Amendment to Article VI, Section 16 (d). Article VI, Section 16 (d) of the Composite Zoning Ordinance is hereby amended in its entirety to read as follows:

- (d) Fences less than or equal to eight (8) feet in height shall be allowed for impeding access to hazardous or secured facilities including, but not limited to, electrical substations and chemical or equipment storage yards; or where the fence forms a perimeter around a subdivision. For high security applications, barbed wire or razor wire (or equivalent) may be installed above the eight (8) foot height limit but not to exceed a total of ten feet in height.

Section 24. Amendment to Article VII, Section 1 (b) (1). Article VI, Section 1 (b) (1) of the Composite Zoning Ordinance is hereby amended in its entirety to read as follows:

- (1) At least eighty-five percent (85%) of the exterior surface area of all walls, including all stories of primary buildings / structures, shall consist of un-painted clay brick, ledge stone, fieldstone, cast stone, marble, granite, tile, painted or tinted stucco (limited to thirty-five (35%) of the exterior surface area of walls), non-reflective glass façade, glass block (or alternative glazing e.g. Kalwall) and factory tinted (not painted) split faced concrete masonry unit (non-residential buildings and structures only) or similar material approved by the Director of Planning. The remaining exterior wall surface shall be comprised of those materials listed or cementitious-fiber planking (not panels unless they are used with board and batten application). Solid wood planking and decorative cementitious-fiber panels may be used for accent features.

Section 25. Amendment to Article VII, Section 2 (b) (1). Article VI, Section 2 (b) (1) of the Composite Zoning Ordinance is hereby amended in its entirety to read as follows:

- (1) At least eighty-five (85%) percent of the exterior surface area of first story walls and fifty (50%) percent of the exterior surface area of each additional story walls of primary buildings / structures, shall consist of un-painted clay brick, ledge stone, fieldstone, cast stone, marble, granite, tile, painted or tinted stucco (limited to thirty-five (35%) of the exterior surface area of walls), glass façade, glass block (or alternative glazing e.g. Kalwall) and factory tinted (not painted) split faced concrete masonry unit (non-residential buildings and structures only) or similar material approved by the Director of Planning. The remaining exterior wall surface shall be comprised of those materials listed or cementitious-fiber planking (not panels

unless they are used with a board and batten application). Solid wood planking, decorative cementitious-fiber panels and other materials approved by the Director of Planning may be used for accent features.

Section 26. Amendment to Article VII, Section 3 (b) (1). Article VI, Section 3 (b) (1) of the Composite Zoning Ordinance is hereby amended in its entirety to read as follows:

- (1) At least sixty (60%) percent of the exterior surface area of street facing walls (See Figures U, V, and W – following pages) of primary buildings and thirty five (35%) percent of the exterior surface area of all other walls of primary buildings / structures shall consist of un-painted clay brick, ledge stone, fieldstone, cast stone, marble, granite, tile, painted or tinted stucco, glass façade, glass block (or alternative glazing e.g. Kalwall) and, for non-residential buildings and structures, factory tinted (not painted) split faced concrete masonry unit, pre-cast concrete tilt wall with a decorative or textured finish (needs approval by the Director of Planning to determine if finish is acceptable) or similar material approved by the Director of Planning. The remaining exterior wall surface shall be comprised of those materials listed or cementitious-fiber planking (not panels unless they are used with a board and batten application) or exterior insulating finishing system (E.I.F.S.). Solid wood planking, decorative cementitious-fiber panels and other materials approved by the Director of Planning may be used for accent features. For non-residential buildings, smooth faced concrete masonry unit and metal panels or similar materials approved by the Director of Planning may be utilized as an accent feature and shall comprise not more than ten percent (10%) of any wall surface area.

Section 27. Amendment to Article VII, Section 4 (b) (1). Article VI, Section 4 (b) (1) of the Composite Zoning Ordinance is hereby amended in its entirety to read as follows:

- (1) For all buildings / structures that are more than four hundred (400') feet from a street, the masonry requirements do not apply. For all buildings / structures that are within four hundred (400') feet of a street at least sixty (60%) percent of the exterior surface area of street facing walls (See Figures U, V, and W – following pages) of primary buildings and thirty five (35%) percent of the exterior surface area of all other walls of primary buildings / structures shall consist of un-painted brick, ledge stone, fieldstone, cast stone, marble, granite, tile, painted or tinted stucco, exterior insulating finishing system (E.I.F.S.), glass façade, glass block (or alternative glazing e.g. Kalwall), factory tinted (not painted) split faced concrete masonry unit, pre-cast concrete tilt wall with a decorative or textured finish or similar material approved by the Director of Planning. The remaining exterior wall surfaces shall be comprised of those materials listed or cementitious-fiber planking or panels, or painted metal siding except that metal siding is not permitted on any street facing wall. Solid wood planking, decorative cementitious-fiber panels and other materials approved by the Director of Planning may be used for accent features. Smooth faced concrete masonry unit and metal panels or similar materials approved by the Director of Planning may be utilized as an accent feature only and shall not comprise more than fifteen percent (15%) of any wall surface area.

Section 28. Amendment to Article VIII, Section 1 (c). Article VI, Section 1 of the Composite Zoning Ordinance is hereby amended to add subsection (c) to read as follows:

- (c) A masonry calculation table is required at the building permit stage to demonstrate compliance with the ordinance requirements.

Section 29. Amendment to Article IX, Section 1 (b). Article IX, Section 1 (b) of the Composite Zoning Ordinance is hereby amended to remove the following:

- (4) Brush clearing in compliance with the landscape and tree regulations of the city as long as only rubber-tired equipment is introduced to the site (no equipment with tracks).

Section 30. Amendment to Article IX, Section 2 (c) (1). Article IX, Section 2 (c) (1) of the Composite Zoning Ordinance is hereby amended in its entirety to read as follows:

- (1) Projects that include minor site activity similar to those listed in Section 1(b) and including brush clearing, Article IX of this ordinance may be eligible for a minor site development permit. To be eligible, such projects may increase the impervious cover by no more than 1,000 square feet. In addition, a minor site development permit application shall be submitted for review in conformance with all information and materials required by the most recent minor site development permit application/checklist.

Section 31. Amendment to Article X, Section 10 (a) (2). Article X, Section 10 (a) (2) of the Composite Zoning Ordinance is hereby amended in its entirety to read as follows:

- (2) Administrative Penalty. Any person who removes a Significant Tree greater than 8 inches in caliper prior to approval of a tree preservation plan, or who removes a Significant Tree greater than 8 inches in caliper that is not authorized to be removed under an approved tree preservation plan shall be charged and shall pay a fee of \$300 per inch for each Significant Tree greater than 8 inches in caliper removed in violation of this ordinance. The City will rely on remaining evidence on site to determine if a violation of this ordinance has occurred. For enforcement purposes the City will consider that any stump remaining on the property which is eight inches or more in diameter measured at ground level or higher was a stump of a Significant Tree greater than 8 inches in caliper. Furthermore, any cut wood discovered on site will be considered evidence of a Significant Tree greater than 8 inches in caliper if the diameter of the cut wood is measured at eight inches or greater at any point on any piece of cut wood. A site development or building permit application for property from which one or more Significant Trees have been removed in violation of this ordinance may not be approved until an administrative

Section 32. Conflicting Ordinances. Exhibit “A”, Section 14.02.001, Article 14.02, Leander

Code of Ordinances and of Ordinance No. 05-018-00 is amended as provided herein. All ordinances or parts thereof conflicting or inconsistent with the provisions of this ordinance as adopted herein, are hereby amended to the extent of such conflict. In the event of a conflict or inconsistency between this ordinance and any other code or ordinance of the City, the terms and provisions of this ordinance shall govern.

Section 33. Savings Clause. All rights and remedies of the City of Leander are expressly saved as to any and all violations of the provisions of any ordinances affecting zoning within the City which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

Section 34. Effective Date. This ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Tex. Loc. Gov't. Code and the City Charter.

Section 35. Severability. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation of this ordinance of any such invalid phrase, clause, sentence, paragraph or section. If any provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end the provisions of this Ordinance are declared to be severable.

Section 36. Open Meetings. It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED on the 7th day of July, 2016.

PASSED AND FINALLY APPROVED on the 21st day of July, 2016.

THE CITY OF LEANDER, TEXAS

ATTEST:

Christopher Fielder, Mayor

Debbie Haile, City Secretary



Agenda Subject: Ordinance Case 16-OR-001

Background: On February 25, 2016 the Leander Real Estate Advisory Board was notified by the City of Leander that several code changes would be proposed later this year and they would include modifications to the Masonry Ordinance.

On May 20, 2016 the Real Estate Advisory Board received the proposed draft ordinances for both the composite and subdivision ordinances and made several recommendations.

On June 9, 2016 there was a follow-up meeting to discuss the recommendations as well as seek clarification. Most of the recommendations were accepted, however there were still questions and reservations regarding two components in the Composite Zoning Ordinance Amendments.

The two sections are:

1. Article VI, Section 7: Drainage and Detention Facilities
2. Article VII, Sections 1-4 (related to Architectural components)

Concerns:

- Article VI:
 - We believe that requiring “All exposed concrete that is visible” to be clad in stone is excessive.
 - By the standards presented, someone who is 5’7” (average height of a male 20 years of age and over according to the CDC) needs only to see concrete that is exposed to meet the requirement.
 - Requiring the concrete to be clad in stone may require complete re-engineering of drainage facilities to safely support the additional weight of the stones, resulting in significant increased costs.
- Article VII
 - Limiting stucco to 35% of the overall façade of a home is effectively a “ban” on stucco.
 - 35% only allows stucco accents which are not cost effective to do.
 - There are also warranty issues with providing warranties on the stucco accents because they are more prone to cracking because the structural support isn’t as substantial as an entire wall.
 - Recent market studies have shown majority of prospective buyers are requesting “all” stucco homes, by eliminating it as an option the city would force buyers to look elsewhere for their needs.

Recommendations:

Recommendation No. 1- Amend Article VI, Section 7, b(5) to: *“All exposed concrete that is visible is required to be clad in stone, or consist of approved decorative materials including: ledgerstone, fieldstone, cast stone, or textured and tinted in earthen colors and must be approved by the Director of Planning. All other materials not listed must be approved by the Director of Planning.”*

Recommendation No. 2-Amend Article VII, Section 1-4 by removing: *“(limited to thirty-five (35%) of the exterior surface area of walls)”* in all sections.

Contact Information:

Geoffrey Tahuahua, Vice President of Public Policy
Home Builders Association of Greater Austin
(512) 982-9175
geoffrey@hbaaustin.com

COMPOSITE ZONING ORDINANCE AMENDMENTS

ARTICLE I – GENERAL

SECTION 6: DEFINITIONS

Dark Sky means the use of lighting in a way that directs the light source away from the sky in order for the night sky to remain relatively free of interference from artificial light. This type of lighting is in compliance with the International Dark Sky Association standards.

Gaming Room Facility means a place to deal, operate, carry on, conduct, maintain, or expose for play any game, sports book, promotion, sweepstakes, or other activity electronic or otherwise that may or may not confer upon the patrons or participants the right, chance, or ability to win and or claim prizes.

Gaming Device means a clock, tape machine, slot machine, or other machine or device for the reception of money or other thing of value on chance or skill or upon action of which money or other thing of value is staked, hazarded, bet, won, or lost; or any mechanism, furniture, fixture, equipment or other device designed primarily for use in a gambling place. It does not include: (1) A coin-in-slot-operated mechanical device played for amusement that rewards the player with the right to replay such mechanical device; or (2) Vending machines by which full and adequate return is made for the money invested and in which there is no element of chance or hazard.

Lot Width means the average horizontal distance between side property or lot lines. Lot width can also be identified as the measurement of the lot at the building setback line. The minimum lot width for lots fronting a cul-de-sac may be reduced to a minimum of thirty (30') feet at the front property line provided that the minimum required lot width is provided at the front setback line.

Soil means the upper layer of the earth in which plants grow and contains humus, minerals, available nutrients, and beneficial micro-organisms, resulting in a favorable condition for vegetative growth.

ARTICLE III – USE COMPONENTS

SECTION 1: SFR – SINGLE-FAMILY RURAL

(b) Conforming Uses

- (1) Single-family dwelling of not less than sixteen hundred (1,600) square feet of living area; accessory dwelling with a minimum living area of four hundred (400) square feet; and a maximum living area of nine hundred (900) square feet or 40% of the gross living area of the primary dwelling, whichever is greater. However, for lots greater than three acres in size, there is no limit to the maximum size of the accessory dwelling.
- (2) Community services including community center, civic organizations, fraternal organizations, and cemetery / mausoleum not including a crematory or embalming facilities

- (3) Golf courses (public and private) and all associated improvements and activities, but not including miniature golf courses, golf practice ranges (unless associated with a golf course), or similar forms of commercial amusement
- (4) Day care (in home) for 56 or fewer children
- (5) Emergency services including fire, police and EMS stations
- (6) Family Home and Group Home-Class 1
- (7) Home occupations (see Article IV, Section 8 for Use Standards)
- (8) Parks, playgrounds and associated equipment and facilities, recreational amenity center
- (9) Place of worship
- (10) Public buildings, including libraries, museums and administrative offices
- (11) Real estate sales offices during the development and sale of a residential subdivision and subject to the restrictions contained in this ordinance
- (12) Schools, public or private, including all levels up to and including secondary (high) school and equivalent curriculum including support facilities are permitted
- (13) Temporary buildings incidental to construction work on the premises if such buildings are removed upon the completion or abandonment of construction work (see Article IV, Sec. 7)
- (14) Utilities (minor) including ground mounted service equipment and minor structures and facilities such as poles, minor electrical switching facilities, lift stations, water pump stations and gas regulating facilities
- (15) Water supply reservoirs and pumping plants when screened from public view
- (16) Wireless communications facilities (WCFs) attached to street poles or facades attached to non-residential buildings or stealth WCFs are permitted subject to the provisions of this ordinance. Freestanding WCFs, including lattice towers and mono-poles, are prohibited.
- (17) (For lots or tracts three or more acres in size) ranches, dairy farms, stables, riding academies and roping arenas; including the feeding, raising and breeding of agricultural livestock and exotic hoof stock; however, with exception of commercial feed lots which are not permitted, and the exception that not more than one large animal (e.g. a horse, cow, bull or similar animal) or five small animals (e.g. goats, sheep or similar animal) may be permitted for each acre of grazeable land. Grazeable land shall be land that is fenced and maintained with suitable forage for grazing of the particular species. Barns and stables shall not be located within 25 feet of any property line. (See Chap. 2, City Code for animal control regulations)
- (18) Agricultural, small wind energy systems, solar energy systems and rainwater harvesting systems including or similar to:
 - (i) As accessory uses, solar energy systems designed to supply energy for use on the premises, and rainwater harvesting systems meeting the standards of Article IV, Sec. 5 of Article 14.200. In addition, if approved with a special use permit, small wind energy systems may be approved as an accessory use if meeting the standards of Article IV, Sec. 5 of Article 14.200.
 - (ii) Hunting and/or hunting leases (for lots or tracts three or more acres in size).
 - (iii) Farming or truck gardens, limited to the propagation and cultivation of plants.

- (19) Temporary parking associated with model homes and/or sales trailers prior to the completion of model homes. Article IX of this ordinance will apply to temporary parking lots.
- (20) Other similar uses as determined by the Director of Planning [see Article II, Sec. 2, (f)].

SECTION 14: HC – HEAVY COMMERCIAL

(b) Conforming Uses

- (1) Any use permitted in the "GC" component
- (2) Bingo
- (3) Car Title Loans Shop/Business
- (4) Commercial laundry
- (5) Contractor and building material storage
- (6) Gaming Room Facility/Gaming Device
- ~~(6)~~(7) Hooka Lounge
- ~~(7)~~(8) Manufacture, assembly or processing of materials not classified as hazardous by the Fire Chief
- ~~(8)~~(9) Mini-warehouse or self-service storage facilities [required to be set back at least four hundred (400) feet from a tollway, highway or major arterial roadway if built to Type B, C or D architectural standards or such facilities include exterior warehouse doors], warehouse and distribution, commercial storage
- ~~(9)~~(10) Pawn Shop
- ~~(10)~~(11) Payday Lending Business
- ~~(11)~~(12) Research, Testing, and Development Laboratory
- ~~(12)~~(13) Research, Testing, and Development Laboratory (Intense)
- ~~(13)~~(14) Retail sales, second hand resale, and services
- ~~(14)~~(15) RV, trailer, commercial motor vehicle and boat outdoor storage [required to be set back at least four hundred (400) feet from a tollway, highway or major arterial roadway] (Note: refer to Article VI, Section 9 for rules on special vehicle storage)
- ~~(15)~~(16) Tattoo and/or Body Piercing Parlor
- ~~(16)~~(17) Utilities, including ground mounted service equipment and structures as a primary use and facilities such as poles, electrical switching facilities, lift stations, water pump stations, gas regulating facilities, electrical substations, generating plants, wastewater and water treatment plants, etc. (see screening requirements in Article VI, Sec. 1)
- ~~(17)~~(18) Vehicle and major equipment sales, rental or leasing, repair, body shop [Small engine repair shops and motorcycle repair shops shall not be permitted within one-hundred fifty (150') feet of a residential district unless such repairs are conducted totally within a fully enclosed building.]
- ~~(18)~~(19) Warehouse and distribution
- ~~(19)~~(20) Wood yard
- ~~(20)~~(21) Wholesale activities
- ~~(21)~~(22) Wrecker Impoundment, Towing [required to be set back at least four hundred (400) feet from a tollway, highway or major arterial roadway]
- ~~(22)~~(23) Stand alone crematory or embalming establishment as long as the crematory stack is no closer than 200' from a restaurant or associated parking or from a residential district (unless such district is utilized for non-residential uses).
- ~~(23)~~(24) Other similar uses as determined by the Director of Planning based on the criteria of Article II, Sec. 2, (f)

SECTION 16: PUD – PLANNED UNIT DEVELOPMENT

(d) Rules Applicable

(8) The PUD shall result in overall higher standards than what would be provided by the base zoning district. As examples: (1) if residential lot sizes are decreased or development densities are increased, the PUD will be expected to significantly exceed other standards such as parkland and facilities dedication, landscaping, architectural controls, thoroughfare or other transportation improvements, creation of unique characteristics of the neighborhood, retention of significant trees and/or provision of public facilities, etc., or (2) if masonry standards or building/development setbacks are proposed to be decreased, other standards would be expected to be increased such as landscaping, screening, retention of significant trees, architectural controls, land uses and/or unique site layout standards, etc. Other examples may include:

(i) Designating the Type A Architectural Component

(ii) Adding additional architectural features

(iii) Provide a master architectural and signage plan that includes a cohesive materials palette

(iv) Enhanced landscaping and/or trees

(v) Increased landscape area

(vi) Masonry perimeter walls for subdivisions

(vii) Provide brick or stone instead of decorative concrete panels for screening walls

(viii) Plant street trees

(ix) Provide more parkland dedication

(x) Increase recreation improvements

(xi) Trails system in greenbelt areas

(xii) Provide a Master Sign Plan including: proposed locations, provide cohesive materials palette, design specifications for signage, type of illumination

(xiii) Limit fencing to wrought iron or decorative tubular metal fencing along greenbelt lots.

(xiv) Provide unique characteristics of a neighborhood with a unique site layout

(xv) Include a mixture of uses

(xvi) Provide public spaces

(xvii) Incorporate public art

ARTICLE V – SITE COMPONENTS

SECTION 3: TYPE 3

(b) Site Uses and Features (Some Site Uses Listed Also Require Appropriate Use Component)

(2) Commercial and Industrial Development:

(v) Outdoor commercial fueling and washing of vehicles meeting the following requirements is permitted:

a. Washing of vehicles (including vacuum facilities) is not located within one hundred fifty (150') feet of a residential district unless such district is utilized for non-residential purposes. The location is measured from the closest portion of the structure associated with the washing of vehicles to the residential district; and

b. Commercial fueling is not located within ~~one-two~~ hundred (~~1200~~200') feet of a residential district unless such district is utilized for non-residential purpose. The location is measured from the closest portion of the structure associated with the outdoor commercial fueling to the residential district; and

ARTICLE VI – SITE STANDARDS

SECTION 1: LANDSCAPING, TREE PRESERVATION AND PROTECTION, AND SCREENING REQUIREMENTS

(b) Screening Requirements.

- (1) In addition to the landscaping requirements of this section, all development other than single-family or two-family shall comply with the following screening requirements:
 - (i) The following shall be screened from the view of at least sixty percent (60%) of adjacent single-family or two-family residences and any street or public right-of-way: off-street parking areas, loading spaces and docks, trash and storage containers, outside storage areas, satellite dishes larger than eighteen (18) inches in diameter, antennas, mechanical equipment, and metal siding.
 - (ii) Above ground utility facilities up to six (6) feet above grade for multi-family and non-residential development are required to be screened from view except for poles, fire hydrants and existing lines.
 - (iii) Detention Facilities including detention ponds and/or water quality ponds shall be screened from view.
 - (iv) Screening by vegetation that could be removed from adjacent undeveloped or partially developed properties when such property is developed is not considered as screening from view.
 - (v) Outside storage areas shall be screened by the use of a privacy fence or wall at least the height of the items to be screened and in conformance with the requirements of this ordinance. If the outdoor storage area is adjacent to an arterial or collector roadway, then the wall is required to be constructed of one or more of the following materials: brick, stone, cast stone, stucco (limited to thirty-five (35%) of the exterior surface area of walls), factory tinted (not painted) split face concrete masonry unit, or other similar material approved by the Director of Planning. In addition to the materials listed above, textured pre-cast concrete (e.g. Woodcrete) is also permitted with the wall is adjacent to collectors.
 - (vi) A minimum five-foot (5') landscaped area located on the exterior of the fence shall be provided and landscaped in accordance with paragraph (2) (i) above unless the fence is on a rear boundary line or adjoining a permanent structure on the site.
 - (vii) Fuel pumps are required to be screened from view of any street or public right-of-way to at least the height of the fuel pump.
 - (viii) Lift stations are required to be screened from view of adjacent single-family or two-family residences, or any street or public right-of-way by the use of a wall. The wall is required to be constructed of one or more of the following materials: brick, stone, cast stone, stucco (limited to thirty-five (35%) of the exterior surface area of walls), factory tinted (not painted) split face concrete masonry unit, textured pre-cast concrete (e.g. Woodcrete) or other similar material approved by the Director of Planning.
- (2) Approved screening techniques include privacy fences, evergreen vegetative screens, landscape berms, existing vegetation or any combination thereof unless otherwise noted in this section.
- (3) Privacy Fences (See section 14 and 16 of this Article)
- (4) Evergreen Vegetative Screens. Evergreen plant materials shall be shrubs, at least thirty (30) inches in height and at a minimum spacing of 48 inches at the time of installation, in combination with shade trees not more than fifty feet apart.

- (5) Landscape Berms, in combination with trees, shall fulfill the screening requirements of this section if the berms are at least three (3) feet in height and have maximum side slopes of four (4) feet of horizontal run for every one (1) foot in vertical rise.
- (6) Existing on-site vegetation, demonstrating significant visual screening capabilities and as approved by the Director of Planning, shall fulfill the requirements of this section.

- (8) A non-disturbance zone shall be maintained on single-family and two-family lots during the subdivision construction and building permit phases of development. A disturbance area no more than five (5') feet from the foundation necessary for construction and grade transitions shall be permitted. This disturbance area shall be no more than ten (10') feet from the foundation for properties zoned with the SFR (Single-Family Rural) use component. The trees located on the remainder of the lot shall not be removed unless a unique situation is approved by the Planning Director.

(c) Tree Preservation and Protection.

(4) Significant Tree Preservation Requirements

~~(iii)~~(iv) Significant Trees greater than eight (8) inches in caliper shall be preserved to the greatest extent reasonably possible. Significant Trees removed during construction shall be supplanted with Replacement Trees if required by the tree mitigation requirements of this section. No Significant Tree shall be removed until a tree protection-preservation plan has been approved by the Director of Planning in accordance with this Chapter. Significant Trees may be removed only in accordance with the approved tree protection-preservation plan, and trees must be protected during construction activities on the property in accordance with the approved tree protection-preservation plan. This provision only applies to projects before the certificate of occupancy has been issued for single-family and two-family developments. For single-family and two-family projects, this provision only applies prior to the initial certificate of occupancy for each lot.

(9) Tree Protection Plan Requirements

- (i) An applicant for a single-family or two-family preliminary plat or final plat, or a site development permit shall provide a tree survey prepared within five years preceding the application date. This tree survey shall include the street and lot layout, or site plan superimposed at a scale of 1"=100' (or as appropriate) identifying significant trees located on the property that meet the requirements indicated in this section. Applicants for a single-family or two-family preliminary or final plat are only required to submit a tree survey for the portion of the property that the applicant is proposing to disturb with the subdivision construction. The applicant shall provide a tree preservation plan that identifies the surveyed trees and the mitigation of the protected trees that are proposed for removal. The applicant shall be required to demonstrate that lot lines, street layouts and site improvements have been designed and located and that lot width, depth and size flexibility as permitted by the applicable zoning district has been utilized to the maximum extent necessary to retain the maximum number of significant trees reasonably practicable. Applicants for a single-family or two-family preliminary or final plat may plant replacement trees within lots owned by

the Homeowners Association including but not limited to landscape lots, park lots, or amenity center lots.

- (ii) The Director of Planning shall determine if adequate performance is achieved based on the standards of this section. Approval of the tree protection preservation plan by the Director of Planning is required prior to preparation and submission of a subdivision or site development permit application. The applicant may appeal any decision of the Director to the Commission. A decision of the Commission may be appealed to the City Council. Any preserved or replacement trees may be counted toward the landscape requirements of this section. See the Construction Plan requirements for details.

SECTION 3: OFF-STREET PARKING REQUIREMENTS

- (a) The following off-street parking requirements are considered minimum requirements and may not adequately reflect the specific needs of a proposed business. A commercial building permit applicant shall analyze the parking needs of the specific users being proposed and provide the amount of parking required for such uses. When any building or structure is erected, or an existing building is enlarged by fifty (50) percent or more in floor area, off-street parking shall be provided in accordance with the following requirements (Note: Any building enlargement is required to add at least the amount of additional parking required by the enlargement):

<u>USE CATEGORY</u>	<u>SPECIFIC USE</u>	<u>SPACE REQUIREMENT</u>
<u>RESIDENTIAL USES</u>		
<u>Household Living</u>	Single Family	See Use District
	Multi-Family	1 ½ for one bedroom plus ½ for each additional bedroom.
	<u>Senior Multi-Family</u>	<u>1 per dwelling plus additional 5% of total spaces for visitor use.</u>
<u>Group Living</u>	Fraternity House, Sorority House, Dormitory, Rooming House, Boarding House	1 per each two beds
	<u>Nursing Home/Hospice/ Assisted Living</u>	<u>1 per bedroom</u>
	<u>All other Group Homes</u>	<u>1 per bedroom</u>
	<u>Family Home and Group Home-Class 1</u>	<u>not less than four (4) off street parking spaces, or one parking space per bedroom, whichever is greater.</u>
	<u>Group Home-Class 2 & Group Home-Class 3</u>	<u>not less than six (6) off street parking spaces, or one parking space per bedroom, whichever is greater.</u>
<u>CIVIC USES</u>		

<u>Educational & Daycare Facilities</u>	<u>Elementary Schools</u>	<u>greater of 1:4 seats in auditorium or 2: classroom</u>
	<u>Secondary Schools, colleges</u>	<u>greater of 1:4 seats in auditorium or 10: classroom</u>
	<u>Day Care Center</u>	<u>1:400 sq. ft.</u>
<u>Medical & Institutional Facilities</u>	<u>Hospital, Sanitarium; Convalescent Home</u>	<u>1:4 beds</u>
	<u>All other institutions</u>	<u>1:250 sq. ft.</u>
<u>Parks & Open Areas</u>	<u>Golf Courses</u>	<u>3: hole</u>
	<u>Neighborhood Amenity Center</u>	<u>1:300 sq. ft. (including pools in square footage calculation)</u>
<u>Places of Worship</u>	<u>Religious Assembly</u>	<u>1:200 square feet of sanctuary, classrooms, flexible seating areas</u>
<u>COMMERCIAL USES</u>		
<u>Automotive Sales & Services</u>	<u>Motor Vehicle Salesrooms & Used Car Lots</u>	<u>greater of 1:800 sq. ft. of sales floor or lot area</u>
	<u>Vehicle Repair Garage</u>	<u>1:400 sq. ft.</u>
<u>Overnight Accommodations</u>	<u>Hotel, Motel</u>	<u>1 per room plus 1:200 sq. ft. of Comm. Floor Area</u>
	<u>Bed & Breakfast/Inn</u>	<u>1 per guest room plus 2 additional spaces</u>
<u>Food & Beverage Establishments</u>	Restaurant as a single use or comprising more than 20% of a mixed retail center	1:100 sq. ft.
<u>Entertainment & Recreation</u>	<u>Dance / Assembly / Exhibition Hall, Restaurant, Night Club, Lodge or Country Club</u>	<u>1:100 sq. ft.</u>
	<u>Bowling Alleys</u>	<u>5: lane alley</u>
	<u>Community Center, Library, Museum, Art Gallery</u>	<u>1:300 sq. ft.</u>
	<u>Theater, Auditorium (except school), Sports Arena, Stadium, Gymnasium, Funeral Home</u>	<u>1:4 seats</u>

<u>Commercial Office, Retail Sales, & Services</u>	Medical / Dental Clinic/ Office, Personal Service, Mixed Use Retail Center less than 20,000 sq. ft.	1:200 sq. ft.
	Mixed Use Retail greater than 20,000 sq. ft.	1:225 sq. ft.
	Studio, Bank, Retail	1:250 sq. ft.
	Business / Professional Office	1:275 sq. ft.
	<u>Furniture, Appliance or Hardware Store; Wholesale Sales Establishment, Machinery / Equipment Sales & Service; Clothing / Shoe Repair; Service Shop</u>	<u>1:300 sq. ft.</u>
<u>INDUSTRIAL USES</u>		
<u>Industrial, Manufacturing, Warehousing, Storage</u>	Manufacturing, Industrial, Research, Testing, Warehouse, Storage Buildings and Yards, Lumber Yard, Printing Shop, Plumbing Shop	1:600 plus spaces for business vehicles
	<u>Mini-Warehouse Self Storage</u>	<u>parking required only for office</u>
	Church, Theater, Auditorium (except school), Sports Arena, Stadium, Gymnasium, Funeral Home	1:4 seats
	Hotel, Motel	1 per room plus 1:200 sq. ft. of Comm. Floor Area
	Furniture, Appliance or Hardware Store; Wholesale Sales Establishment, Machinery / Equipment Sales & Service; Clothing / Shoe Repair; Service Shop; Community Center;	1:300 sq. ft.

	Library, Museum, Art Gallery	
	Hospital, Sanitarium, Convalescent Home	1:4 beds
	Dance / Assembly / Exhibition Hall, Restaurant, Night Club, Lodge or Country Club	1:100 sq. ft.
	Motor Vehicle Salesrooms & Used Car Lots	greater of 1:800 sq. ft. of sales floor or lot area
	Vehicle Repair Garage	1:400 sq. ft.
	Mini Warehouse Self Storage	parking required only for office
	Golf Courses	3:hole
	Bowling Alleys	5:alley
	Elementary Schools	greater of 1:4 seats in auditorium or 2:classroom
	Secondary Schools, colleges	greater of 1:4 seats in auditorium or 10:classroom
	Family Home and Group Home Class 1	not less than four (4) off-street parking spaces, or one parking space per bedroom, whichever is greater.
	Group Home Class 2 & Group Home Class 3	not less than six (6) off-street parking spaces, or one parking space per bedroom, whichever is greater

In a development with mixed-use buildings designed and built in a walkable and pedestrian friendly configuration, the Planning Director may consider the following shared parking factors in reviewing a proposal for a reduction in the minimum parking requirements (the shared parking factor is applied to the sum of the individual uses minimum parking requirements):

Shared Parking Factor				
	Residential	Lodging	Office	Retail
<u>Residential</u>	<u>100%</u>	<u>=</u>	<u>=</u>	<u>=</u>
<u>Lodging</u>	<u>90%</u>	<u>100%</u>	<u>=</u>	<u>=</u>
<u>Office</u>	<u>70%</u>	<u>60%</u>	<u>100%</u>	<u>=</u>
<u>Retail</u>	<u>80%</u>	<u>75%</u>	<u>80%</u>	<u>100%</u>

For uses not listed, the Planning Director may request additional parking demand analysis from the applicant to justify a reduction in the minimum parking requirements.

Where shared parking is provided, a shared parking and cross access agreement between the cooperating property owners shall be approved by the Planning Director and recorded prior to issuance of a building permit. This agreement must be recorded in the real property records of the county in which the property sits and the agreement may not be modified or revoked without the approval of the Planning Director. If any requirements for shared parking are violated, the affected property owners must provide a remedy satisfactory to the Planning Director or provide the full amount of required parking for each individual use.

SECTION 6: SETBACKS

(a) Building / Structure and Site Improvements:

BUILDING / STRUCTURE						
	Use Component	Architectural Component	Front	Side	Street Side	Rear
Standard Setback	SFR		25'	7'	15'	15'
	SFE, SFS, SFU, SFU/MH, TF		20'	5'	15'	15'
	SFC, SFL		20 15'*	5' or 0' & 10'	15'	15 0'
	SFT		10 5'*	0 or 10'	15'	15 0'
	MF	Type A	20'	10'	20'	20'
		Type B	25'	10'	25'	20'
	LO, LC, GC, HC, HI	Type A, B Type C	15' 20'	10' 10'	15' 20'	10' 10'
GC, HC, HI	Type D	25'	15'	25'	15'	
Special Setback Where Adjacent to SFR, SFE, SFS, SFU, SFC, SFL, SFU/MH, TF**	MF, LO, LC, GC, HC, HI	Type A Type B	(NA) (NA)	20' 25'	(N/A) (N/A)	20' 25'
	LO, LC, GC, HC, HI	Type C	(NA)	30'	(N/A)	30'
	GC, HC, HI	Type D	(NA)	50'	(N/A)	50'
Garage Setback	SFR, SFE, SFS, SFU, SFU/MH, SFC, SFL, SFT, TF		See Article VIII, Section 5 (i)			

PARKING, AISLE, LOADING, CANOPIES, OUTDOOR DISPLAY						
	Use Component	Site Component	Front	Side	Street Side	Rear
Standard Setback	MF	All	20'	5'***	20'	5'***
	LO, LC, GC, HC, HI	Type 1, 2	15'	5'***	15'	5'***
		Type 3	20'	5'***	20'	5'***
		Type 4, 5	25'	5'***	25'	5'***
Special Setback Where Adjacent to SF or TF**	MF, LO, LC, GC, HC, HI	Type 1-3 Type 4, 5	(N/A) (N/A)	15' 20'	(N/A) (N/A)	15' 20'

OUTDOOR STORAGE						
	Use Component	Site Component	Front	Side	Street Side	Rear
Standard Setback	LO, LC, GC, HC, HI	Type 3-4 Type 5	*** 25'	5'*** 0'***	*** 25'	0' 0'
	LO, LC, GC, HC, HI	Type 3-5	(N/A)	25'	(N/A)	25'

* In no case shall the garage be closer to the ROW than 18'

** Unless such district is utilized for a non-residential use

*** No closer than the street facing wall of the primary structure that utilizes such storage.

***Setback does not apply for parking, drive aisles, storage etc. that are intended to cross lot line.

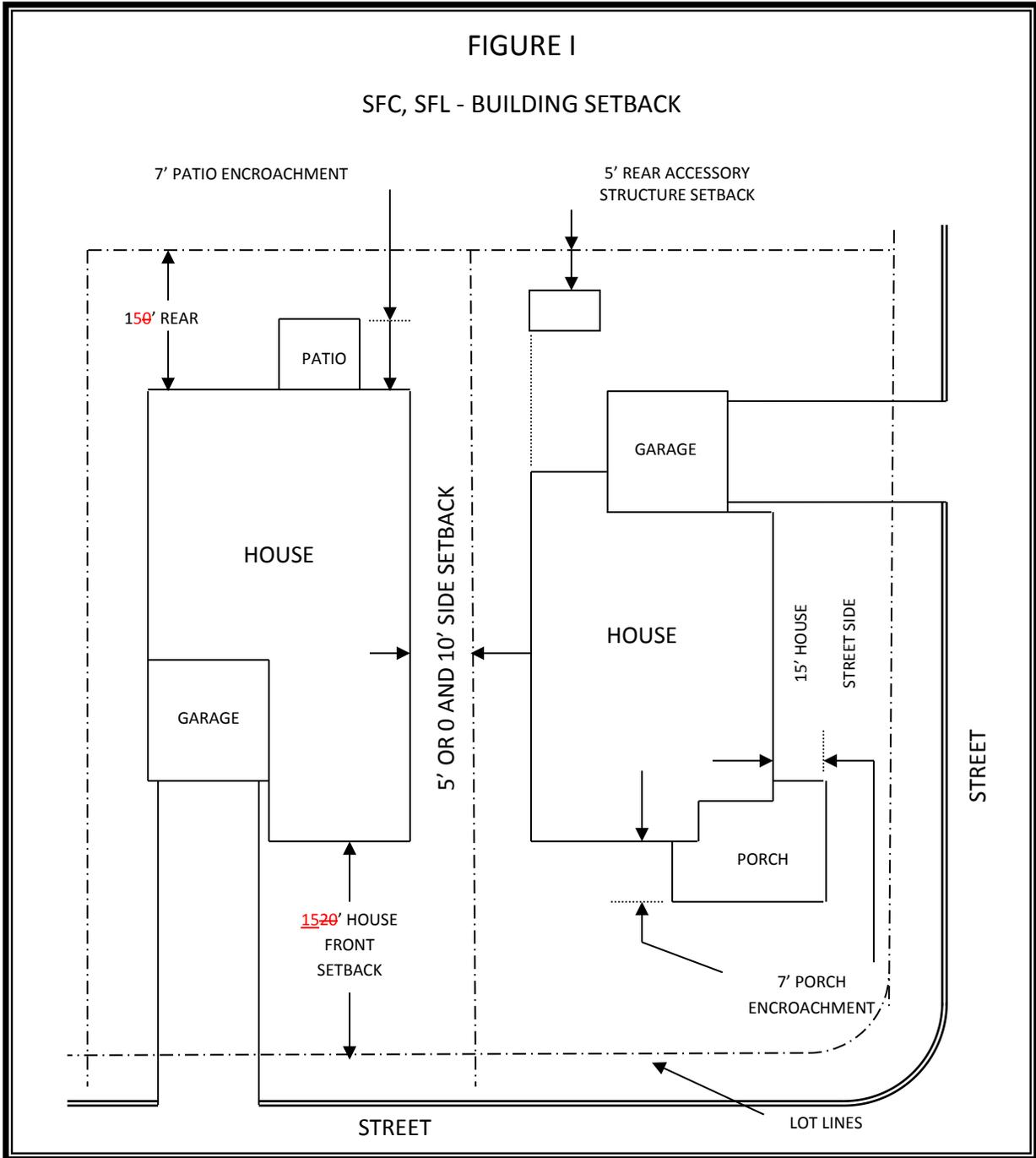
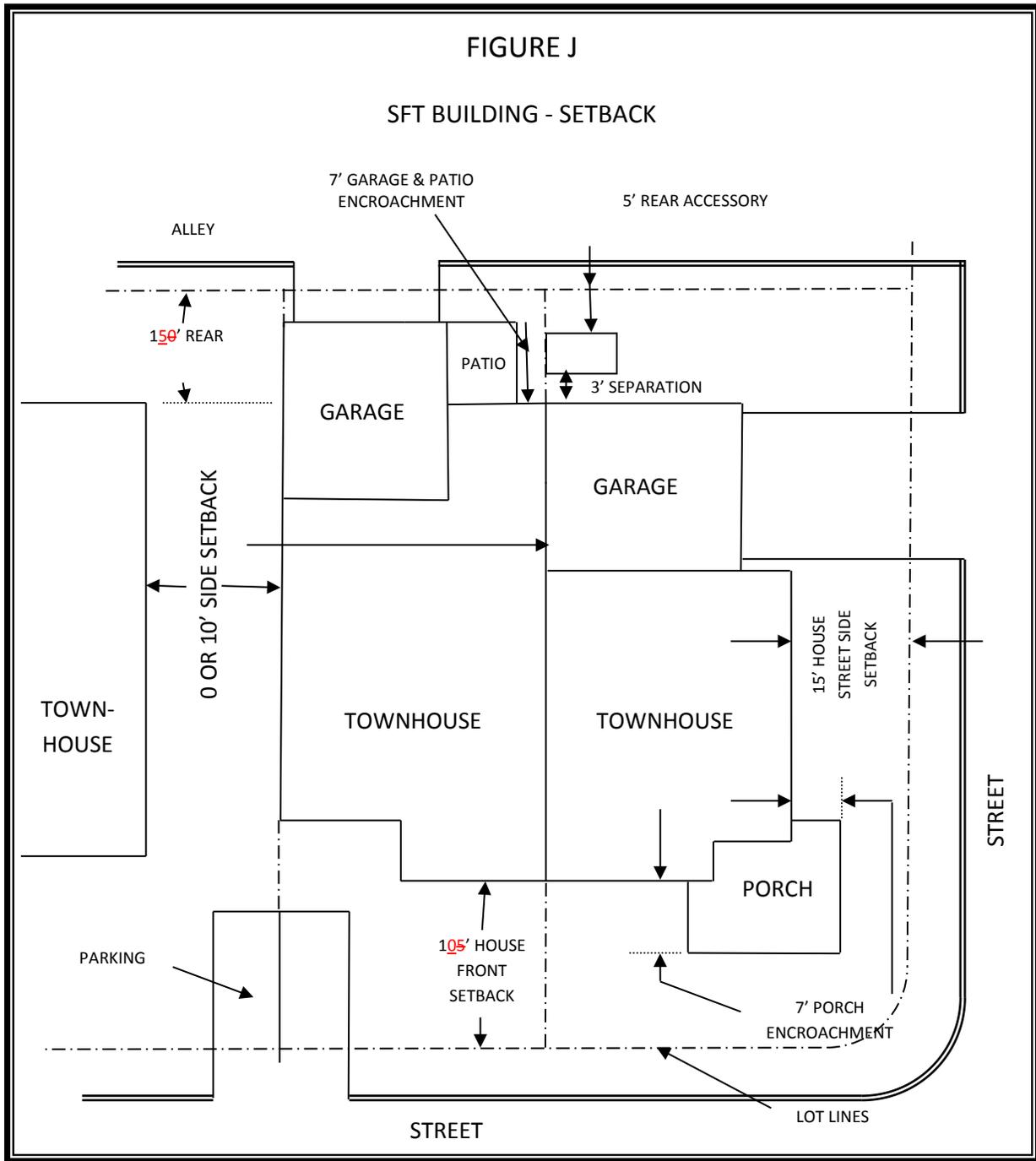


FIGURE J

SFT BUILDING - SETBACK



SECTION 7: DRAINAGE AND DETENTION FACILITIES

(a) Purpose.

The purpose of this section is to provide for the design of drainage and detention facilities that contribute to visual aesthetics of projects and limit the amounts of visible concrete that do not meet the requirements listed below. For the purposes of this section, visible shall be defined as noticeable by a person of average height walking on a street, sidewalk, or trail, or able to be seen by a neighboring property that is two stories in height.

(b) Non-Residential and Multi-Family Drainage and Detention Facilities:

- (1) Non-residential and multi-family drainage facilities include all detention ponds, water quality ponds, pond outlet structures, berms, improved channels or other improvements associated with the drainage improvements. Roadside swales, storm sewer outfalls unless visible from a ROW, inlets, and areas of concrete that are no more than one hundred (100) square feet in size are not included.
- (2) Non-residential and multi-family drainage facilities are not allowed within ten feet (10') of street ROW except those which are necessary to convey drainage in the shortest possible route to or from street ROW.
- (3) Non-residential and multi-family drainage facilities located within the front setback shall not exceed 25% of the area of the front setback.
- (4) Any fencing around non-residential and multi-family detention ponds shall be constructed of wrought iron or decorative tubular metal or other similar product.
- (5) Structural stabilization including vertical walls and riprap for non-residential and multi-family drainage facilities shall be limited to not more than thirty (30%) percent of the perimeter of the pond excluding outlet structures. The remainder of the perimeter shall be earthen embankment no steeper than 3:1 slope. All exposed concrete that is visible is required to be made of stone or clad in stone provide decorative textured concrete and tinting in earthen colors, or masonry veneer including but not limited to ledgerstone, fieldstone, ~~or cast stone,~~ or other decorative materials as approved by the Director of Planning. All other exposed concrete is required to be made of stone or clad in stone as listed above or textured and tinted in earthen colors. In the event that the drainage facility is below grade, structural stabilization is permitted for the full perimeter and screening requirements listed in Article VI, Section 1 (d) of this Ordinance shall apply.

(c) Residential Drainage and Detention Facilities:

- (1) Residential drainage facilities include all detention ponds, water quality ponds, pond outlet structures, berms, improved channels or other improvements associated with the drainage improvements. Roadside swales, storm sewer outfalls unless visible from a ROW, inlets, and areas of concrete that are no more than one hundred (100) square feet in size are not included.
- (2) Residential drainage facilities shall utilize earthen berms and be designed with a curvilinear shape. Any structural stabilization with slopes steeper than 3:1 shall be limited to the use of native stone (except for outlet structures which can be concrete) and shall be limited to not more than thirty (30%) percent of the perimeter of the pond. Such ponds shall be seamlessly integrated with the landscaping. All exposed concrete that is visible is required to be made of stone or clad in stone provide decorative textured concrete and tinting in earthen colors, or masonry veneer including but not limited to ledgerstone, fieldstone, ~~or cast stone,~~ or other decorative materials as approved by the Director of Planning. All other exposed concrete is required to be made of stone or clad in stone as listed above or textured and tinted in earthen colors. In the event that the drainage facility is below grade, concrete is permitted instead of native stone and screening requirements Article VI, Sec. 1 (d) of this Ordinance shall apply.
- (3) Any fencing around residential detention ponds shall be constructed of wrought iron or decorative tubular metal or other similar product.

SECTION 8: SINGLE-FAMILY AND TWO-FAMILY LOTS ABUTTING OR ADJACENT TO TOLLWAY, HIGHWAY, ~~OR ARTERIAL~~, OR COLLECTOR ROADWAY

For single-family and two-family lots contained within a subdivision receiving approval for a preliminary plat and final plat or a short form plat after the effective date of this ordinance and abutting or adjacent to a tollway, highway, arterial, or collector roadways as identified on the Leander Transportation Plan or based on roadway design, direct driveway access to any single-family or two-family lot from such roadway shall be prohibited. The following are also applicable:

- (b) For lots adjacent to tollway, highway, arterial, or collector roadways and backing up to such roadway (having frontage on another roadway of a lesser classification), the following shall be provided (see Figure Q – following pages):
 - (2) A six-foot privacy fence is required to be constructed at the common lot line between the landscape lot and the single-family or two-family lots. The fence is required to be constructed of one or more of the following materials: brick, stone, cast stone, ~~stucco~~, factory tinted (not painted) split-faced concrete masonry unit, or other similar material approved by the Director of Planning. In addition to the materials listed above, textured pre-cast concrete (e.g. WoodCrete) is also permitted when the privacy fence is adjacent to collectors. All columns are required to have concrete footings. The landscape lot is required to be maintained by a private association.
- (c) For lots adjacent to tollway, highway, arterial, or collector roadways and having a side of the lot adjacent to such roadway (having frontage on another roadway of a lesser classification), the following shall be provided (see Figure Q – next page):
 - (2) A six-foot privacy fence is required to be constructed at the common lot line between the landscape lot and the single-family or two-family lots from the rear lot line to a point even with the rear wall of the house at a minimum, but no further than to a point even with the front wall of the house. Any fence closer to the front lot line than the front wall of the house shall not exceed three feet in height; however, such fence is not required. Such fence is required to be constructed of one or more of the following materials: brick, stone, cast stone, ~~stucco~~, factory tinted (not painted) split-faced concrete masonry unit, or other similar material approved by the Director of Planning. In addition to the materials listed above, textured pre-cast concrete (e.g. WoodCrete) is also permitted when the privacy fence is adjacent to collectors. All columns are required to have concrete footings. The landscape lot is required to be maintained by a private association.

SECTION 12: OUTDOOR LIGHTING

- (a) The purpose of this section is to provide design standards for site and building lighting that are Dark Sky compliant and compatible with adjacent uses.
- (b) Non-residential outdoor lighting will be in accordance with other provisions of this ordinance and City building codes. A detailed Lighting Plan and photometric plan shall be included with the Building Permit application and shall meet the following requirements:-
 - (1) Outdoor Lighting
 - a. Fixture
 - i. All permanent exterior lighting shall be non-flashing and shielded such that the light source (cone of direct light) is not visible from the public ROW or adjacent residential uses at the property line (see Figure R – following page).

i-ii. Wall pack lighting or other lighting that directs the light in a horizontal direction without an adequate shield is not permitted (since it directs the light glare directly outward) if there are streets or residential uses in the direction of the light.

b. Illumination Levels

ii-i. All site lighting shall be designed and installed so that the level of illumination as measured in foot candles at a height of three (3') feet at the property line does not exceed two (2') foot candles.

~~(a)~~ (c) Residential outdoor lighting on residential property will be installed in accordance with applicable City Code Standards. It will be located so as not to create a nuisance for adjoining property owners.

~~(b)~~ (d) ~~All permanent exterior lighting shall be non-flashing and shielded such that the light source (cone of direct light) is not visible from the public ROW or adjacent residential uses at the property line (see Figure R following page). Wall pack lighting or other lighting that directs the light in a horizontal direction without an adequate shield is not permitted (since it directs the light glare directly outward) if there are streets or residential uses in the direction of the light.~~

SECTION 14: ADDITIONAL MULTI-FAMILY AND NON-RESIDENTIAL STANDARDS

(d) Masonry Privacy Wall

- (1) A six-foot masonry privacy wall is required to be constructed by any non-residential use that abuts property utilized for a single-family or two-family residence on land zoned single-family or two-family, or land planned or platted for such with an approved concept plan, preliminary plat or final plat, unless an existing structure is proposed to be expanded by less than 50%, or 1,000 sq. ft., whichever is less.
 - (i) Such wall shall be constructed at the common property line between the uses, or if such location is not feasible because of floodplain, trees or other natural feature, at a location that will effectively screen the non-residential use from view from the single-family or two-family residence.
 - (ii) Such wall is required to be constructed of one or more of the following materials: textured pre-cast concrete that is constructed to appear as brick, stone, or cast stone as approved by the Director of Planning, brick, stone, cast stone, ~~stucco~~, factory tinted or painted split-faced concrete masonry unit, granite, tile or other similar material approved by the Director of Planning.
 - (iii) An eight-foot wall may be utilized for security purposes.
 - (iv) Gates shall be provided in the wall as appropriate to connect to public sidewalks or other pedestrian connections unless such wall is also used as described above for security.
- (2) The masonry privacy wall is not required for non-residential uses that are permitted by right in any Single-Family Districts.

SECTION 16: FENCES

(d) Fences less than or equal to eight (8) feet in height shall be allowed for impeding access to hazardous or secured facilities including, but not limited to, electrical substations and chemical or equipment storage yards; or where ~~because of severe slope conditions, such fencing height can be demonstrated to be necessary for privacy or visual buffering; or where~~ the fence forms a perimeter around a subdivision. For high security applications, barbed wire or razor wire (or equivalent) may be installed above the eight (8) foot height limit but not to exceed a total of ten feet in height.

ARTICLE VII – ARCHITECTURAL COMPONENTS

SECTION 1: TYPE A

(b) Exterior Wall Standards:

- (1) At least eighty-five percent (85%) of the exterior surface area of all walls, including all stories of primary buildings / structures, shall consist of un-painted clay brick, ledge stone, fieldstone, cast stone, marble, granite, tile, painted or tinted stucco (limited to thirty-five (35%) of the exterior surface area of walls), non-reflective glass façade, glass block (or alternative glazing e.g. Kalwall) and factory tinted (not painted) split faced concrete masonry unit (non-residential buildings and structures only) or similar material approved by the Director of Planning. The remaining exterior wall surface shall be comprised of those materials listed or cementitious-fiber planking (not panels unless they are used with board and batten application). Solid wood planking and decorative cementitious-fiber panels may be used for accent features.

SECTION 2: TYPE B

(b) Exterior Wall Standards:

- (1) At least eighty-five (85%) percent of the exterior surface area of first story walls and fifty percent (50%) percent of the exterior surface area of each additional story walls of the exterior surface area (all stories) and at least eighty-five percent (85%) of the exterior surface area of first story walls of primary buildings / structures, shall consist of un-painted clay brick, ledge stone, fieldstone, cast stone, marble, granite, tile, painted or tinted stucco (limited to thirty-five (35%) of the exterior surface area of walls), glass façade, glass block (or alternative glazing e.g. Kalwall) and factory tinted (not painted) split faced concrete masonry unit (non-residential buildings and structures only) or similar material approved by the Director of Planning. The remaining exterior wall surface shall be comprised of those materials listed or cementitious-fiber planking (not panels unless they are used with a board and batten application). Solid wood planking, decorative cementitious-fiber panels and other materials approved by the Director of Planning may be used for accent features.

SECTION 3: TYPE C

(b) Exterior Wall Standards:

- (1) At least sixty (60%) percent of the exterior surface area of street facing walls (See Figures U, V, and W – following pages) of primary buildings and thirty five percent (35%) percent of the exterior surface area of all other walls (all stories), including at least sixty percent (60%) of the exterior surface area of street facing walls (all stories) (see Figures U, V and W – following pages) of primary buildings / structures shall consist of un-painted clay brick, ledge stone, fieldstone, cast stone, marble, granite, tile, painted or tinted stucco, glass façade, glass block (or alternative glazing e.g. Kalwall) and, for non-residential buildings and structures, factory tinted (not painted) split faced concrete masonry unit, pre-cast concrete tilt wall with a decorative or textured finish (needs approval by the Director of Planning to determine if finish is acceptable) or similar material approved by the Director of Planning. The remaining exterior wall surface shall be comprised of those materials listed or cementitious-fiber planking (not panels unless they are used with a board and batten application) or, for non-residential applications only, exterior insulating finishing system (E.I.F.S.). Solid wood planking, decorative cementitious-fiber panels and other materials approved by the Director of Planning may be used for accent features. For non-residential buildings, smooth faced concrete masonry unit and metal panels or similar materials approved by

the Director of Planning may be utilized as an accent feature and shall comprise not more than ten percent (10%) of any wall surface area.

SECTION 4: TYPE D

(b) Exterior Wall Standards:

- (1) ~~For all buildings / structures that are more than four hundred (400') feet from a street, the masonry requirements do not apply. For all buildings / structures that are within four hundred (400') feet of a street at least sixty (60%) percent of the exterior surface area of street facing walls (See Figures U, V, and W – following pages) of primary buildings and thirty five (35%) percent of the exterior surface area of all other walls Unless there are no street facing walls, at least thirty five percent (35%) of the exterior surface area of walls (all stories), including at least sixty percent (60%) of the exterior surface area of street facing walls (all stories) (see Figures S, T and U – previous pages)~~ of primary buildings / structures shall consist of un-painted brick, ledge stone, fieldstone, cast stone, marble, granite, tile, painted or tinted stucco, exterior insulating finishing system (E.I.F.S.), glass façade, glass block (or alternative glazing e.g. Kalwall), factory tinted (not painted) split faced concrete masonry unit, pre-cast concrete tilt wall with a decorative or textured finish or similar material approved by the Director of Planning. The remaining exterior wall surfaces shall be comprised of those materials listed or cementious-fiber planking or panels, or painted metal siding except that metal siding is not permitted on any street facing wall. Solid wood planking, decorative cementious-fiber panels and other materials approved by the Director of Planning may be used for accent features. Smooth faced concrete masonry unit and metal panels or similar materials approved by the Director of Planning may be utilized as an accent feature only and shall not comprise more than fifteen percent (15%) of any wall surface area.

ARTICLE VIII - ARCHITECTURAL STANDARDS

SECTION 1: WALL AREA CALCULATIONS

- (a) In calculating percentage of exterior wall area, the area of windows and window frames, doors and door frames, eaves, soffits, dormers, columns, recessed entryways, foundation and similar areas are excluded from the calculations and may utilize any of the materials listed in the applicable component exterior wall standards, when, in the opinion of the Building Official, construction with the required masonry materials is not reasonably feasible.
- (b) A street facing wall is the exterior wall of a building, including any off-sets, projections or recesses, facing a street or within forty-five (45) degrees of such orientation and within four hundred (400) feet of the street. A wall is considered facing a street even if there is another public ROW between the wall and the street. A wall is not considered facing a street if another building or other permanent screening material on site is between the wall and the street and blocks the view of the wall from the street by at least seventy-five percent (75%) from all view angles. Five year projected maturity of any on-site evergreen planted materials may be considered in the screening assessment.
- (c) A masonry calculation table is required at the building permit stage to demonstrate compliance with the ordinance requirements.

ARTICLE IX – SITE DEVELOPMENT

SECTION 1: GENERAL PROVISIONS

(b) Applicability; Site Development Permit Required

Any person who develops, or causes to be developed, property located within the corporate limits of the City shall comply with this Chapter. Within the city corporate limits the use of property shall not be changed, no development shall take place and no building permit shall be issued until a site development permit has been issued in accordance with the code of ordinances of the City. Property for which a site development permit has been issued shall be developed in compliance with the approved site plan. The following are exceptions to the applicability of this Chapter:

- (1) Construction, alteration or addition to a single-family or two family residential structure, or an accessory building to any such structure.
- (2) Alteration or finish-out of an existing building when the alteration or finish-out does not increase the square footage of the building or change the building footprint as long as one of the following applies:
 - (i) The use does not change, or if the use changes, the new use does not require more parking than is currently existing and no additional parking spaces, aisles or driveways are proposed;
 - (ii) The alteration, finish-out or change of use is in compliance with all applicable codes and regulations of the city; and
 - (iii) The proposal does not increase the degree of any existing non-conforming use or non-conforming structure.
- (3) Construction of a fence, but no exception is granted by this subsection for construction of a retaining wall or for a fence that may obstruct or change the flow of water.
- (4) ~~Brush clearing in compliance with the landscape and tree regulations of the city as long as only rubber-tired equipment is introduced to the site (no equipment with tracks).~~

(e) Minor Site Development Permit

- (1) Projects that include minor site activity similar to those listed in Section 1(b) and including brush clearing, Article IX of this ordinance may be eligible for a minor site development permit. To be eligible, such projects may increase the impervious cover by no more than 1,000 square feet. In addition, a minor site development permit application shall be submitted for review in conformance with all information and materials required by the most recent minor site development permit application/checklist.
- (2) A professional recovery fee as set forth in Appendix A shall be required at the time of site development permit exemption application submittal.

ARTICLE X – ADMINISTRATION

SECTION 10: ENFORCEMENT

(a) Penalty

- (1) Penalty. Any person who shall violate any of the provisions of this ordinance, or shall fail to comply therewith, or with any of the requirements thereof, within the City limits shall be deemed guilty of an offense and shall be liable for a fine not to exceed the sum of two thousand dollars (\$2000.00). Each day the violation exists shall constitute a separate offense. Such penalty shall be in addition to all the other remedies provided herein
- (2) Administrative Penalty. Any person who removes a Significant Tree greater than 8 inches in caliper prior to approval of a tree ~~protection-preservation~~ plan, or who removes a Significant Tree greater than 8 inches in caliper that is not authorized to be removed under an approved tree ~~protection-preservation~~ plan shall be charged and shall pay a fee of \$300 per inch for each Significant Tree greater than 8 inches in caliper removed in violation of this ordinance. The City will rely on remaining evidence on site to determine if a violation of this ordinance has occurred. For enforcement purposes the City will consider that any stump remaining on the property which is eight inches or more in diameter measured at ground level or higher was a stump of a Significant Tree greater than 8 inches in caliper. Furthermore, any cut wood discovered on site will be considered evidence of a Significant Tree greater than 8 inches in caliper if the diameter of the cut wood is measured at eight inches or greater at any point on any piece of cut wood. A site development or building permit application for property from which one or more Significant Trees have been removed in violation of this ordinance may not be approved until an administrative

Public Hearing

7. Zoning Case 15-TOD-Z-030 & Subdivision Case 15-TOD-CP-009: Hold a public hearing and consider action on the rezoning and approval of the Tylerville Commercial Concept Plan and PUD zoning of a tract of land generally located to the southwest of the intersection of San Gabriel Pkwy & US 183; 11.221 acres more or less; WCAD Parcel R395875. Currently, the property is zoned PUD (Planned Unit Development) and the applicant is proposing an amendment to the PUD to include the base zoning districts of GC-3-A (General Commercial), GC-2-A (General Commercial), and LC-2-A (Local Commercial); Leander, Williamson County, Texas. Applicant/Agent: Kristiana Alfsen on behalf of Waterstone Tylerville, LP.

a) Staff Presentation

Robin Griffin, Senior Planner, discussed the proposed zoning request and staff recommendation.

b) Applicant Presentation

Bill Pohl and Andrew Holden explained the purpose for their zoning request.

c) Open Public Hearing

**Chair Sokol opened the public hearing
No one wished to speak.**

d) Close Public Hearing

Chair Sokol closed the public hearing.

e) Discussion

Discussion took place.

f) Consider Action

Commissioner Anderson moved to approve the zoning request to amend the PUD to include the base zoning districts of GC-3-A (General Commercial), GC-2-A (General Commercial), and LC-2-A (Local Commercial) with staff recommendation including items 2 through 5; Chair Sokol seconded the motion. Motion failed 2 to 4 with Commissioner Schwendenmann, Vice Chair Allen, Commissioner Means, and Commissioner Hines opposing.

Commissioner Means moved to approve the zoning request to amend the PUD to include the base zoning districts of GC-3-A (General Commercial), GC-2-A (General Commercial), and LC-2-A (Local Commercial) with staff recommendation; Vice Chair Allen seconded the motion. Motion passed 5 to 1 with Commissioner Anderson opposing.

8. **Ordinance Case 16-OR-001**: Hold a public hearing and consider action on amending sections of the Composite Zoning Ordinance, to add definitions, update the use components, to modify setbacks for commercial fueling, to update requirements for screening, to update the parking requirements table, to modify residential setbacks, to clarify requirements for drainage and detention facilities, to modify outdoor lighting requirements, to update the architectural standards, to update the site development standards. Applicant: City of Leander

a) Staff Presentation

Robin Griffin, Senior Planner explained the proposed amendments to the Composite Zoning Ordinance.

b) Open Public Hearing

Chair Sokol opened the public hearing.

Nathan Button – Against - stucco limitation

Geoffrey Tahuahua – Against – stucco limitation and pond wall materials

Tom Klemcke – Against - stucco limitation

Brandon Cooper – Against - stucco limitation

c) Close Public Hearing

Chair Sokol closed the public hearing

d) Discussion

Discussion took place.

e) Consider Action

Commissioner Hines moved to approve the amendments to the Composite Zoning Ordinance with staff recommendation with the following changes:

- 1. Remove the restrictions regarding the limitations on stucco**
- 2. Reword the language regarding the drainage structures to clarify the permitted wall materials**

Commissioner Anderson seconded the motion. Motion passed unanimously.

9. Ordinance Case 16-OR-002: Hold a public hearing and consider action on amending sections of the Subdivision Ordinance, to add definitions, to modify provisions for the protection of riparian corridors, to modify requirements associated with construction plans; to update tree preservation plan requirements, to modify private street standards, and to clarify the park land dedication requirements. Applicant: City of Leander

a) Staff Presentation

Robin Griffin, Senior Planner, explained the proposed amendments to the Subdivision Ordinance.

b) Open Public Hearing

Chair Sokol opened the public hearing

No one wished to speak.

c) Close Public Hearing

Chair Sokol closed the public hearing.

d) Discussion

Discussion took place.

e) Consider Action

Commissioner Hines moved to approve the amendments to the Subdivision Ordinance with staff recommendation and modifying the provisions associated with gated, private streets to include private drives. Commissioner Schwendenmann seconded the motion. Motion passed unanimously.



Executive Summary

July 07, 2016

-
- Agenda Subject:** Ordinance Case 16-OR-002: Hold a public hearing and consider action on amending sections of the Subdivision Ordinance, to add definitions, to modify provisions for the protection of riparian corridors, to modify requirements associated with construction plans; to update tree preservation plan requirements, to modify private street standards, and to clarify the park land dedication requirements.
- Background:** Staff presented a proposal to the Planning & Zoning Commission on November 12, 2015 that included several amendments to clarify the Subdivision Ordinances. Based on the results of that meeting, staff is proposing the following amendments to the Subdivision Ordinance.
1. Update the riparian corridor definitions
 2. Change “Tree Protection” to “Tree Preservation” to be consistent throughout the ordinance
 3. Add provisions for construction plan permits
 4. Add provisions for private, gated streets
 5. Modify riparian corridor requirements
 6. Clarify parkland dedication requirements in the ETJ
- Origination:** Applicant: City of Leander
- Financial Consideration:** None
- Recommendation:** See Planning Analysis. The Planning & Zoning Commission unanimously recommended to approve the amendments with staff recommendation and modifying the provisions associated with gated, private streets to include access to private drives at the June 23, 2016 meeting.
- Attachments:**
1. Proposed Amendments
 2. Proposed P&Z Amendments
 3. Ordinance

4. Minutes-Planning & Zoning Commission June 23, 2016

Prepared By:

Tom Yantis, AICP
Assistant City Manager

06/30/2016

SUBDIVISION ORDINANCE AMENDMENTS

ARTICLE I – GENERAL

SECTION 1. DEFINITIONS

Riparian Corridor means any defined stream channel including the area up to the ordinary high water (or bankfull-flow line), as well as all riparian (streamside) vegetation in contiguous adjacent uplands. Riparian Corridors also includes the Secondary and Connector Trail Corridors identified in the City of Leander Parks, Recreation & Open Space Master Plan and the Transportation Plan.

Riparian Corridor Setback means a line or lines designating the minimum distance the closest wall Improvements and/or Structures of a structure areis required to be from a Riparian Corridor. Building projections (e.g. eaves, awnings, window boxes, and porch overhangs) may extend up to two feet into the Riparian Corridor Setback.

ARTICLE II – PROCEDURE

SECTION 22. PRELIMINARY PLAT

(c) Content

(2) Existing Conditions

(iii) Tree Protection-Preservation Plan

- a) A tree protection-preservation plan consisting of a tree survey prepared within five years preceding the application date with the street and lot layout superimposed at a scale of 1"=100' (or as appropriate) shall be prepared demonstrating that lot lines and street layouts have been designed and located and that lot width, depth and size flexibility (as permitted by the applicable zoning district if inside the City) has been utilized to the maximum extent necessary to retain the maximum number of significant trees reasonably practicable.
- b) The applicant shall provide a tree preservation plan that identifies the surveyed trees and the mitigation of the protected trees that are proposed for removal. The tree protection-preservation plan is required to be approved by the Director of Planning prior-at the time of submission of a preliminary plat application. Up to fifty (50%) percent of the caliper inches of Significant Trees between eight (8) and twenty-six (26) caliper inches may be removed without mitigation for single-family and two-family subdivisions. Up to fifty (50%) percent of the caliper inches of Significant Trees between eight (8) and eighteen (18) caliper inches may be removed without mitigation for subdivisions other than single-family and two family.

f) Replacement Trees

- 1. Replacement trees shall be a minimum of two (2) caliper inches and identified on the City of Leander preferred plant list or included in the Grow Green Guide for Native and Adaptive Landscape Plants published by the City of Austin Watershed Protection and Texas A&M AgriLife Extension, as amended from time to time. The tree protection

preservation plan is required to be approved by the Director of Planning prior to submission of a preliminary plat application.

(4) Support Documents.

- (i) A drainage study, consisting of a Drainage Area Map with contours, location and capacities of existing and proposed drainage features, and calculations in accordance with this Ordinance and good engineering practices, shall be provided to ensure the property will be developed in accordance with City drainage policies.
- (ii) Utility demand data, consistent with the proposed uses indicated on the Preliminary Plat, to determine the adequacy and the consistency of proposed utility improvements.
- (iii) A letter of certification, when applicable, that the plat has been submitted to the County Health District for review (applicable to all projects proposing septic systems and/or containing any portion of the regulatory one hundred (100) year floodplain outside of the City limits).
- (iv) Copy of approved concept plan.
- (v) Copy of deed showing current ownership.
- (vi) Park proposal in compliance with approved Concept Plan.
- (vii) Copy of the approved tree protection-preservation plan.

(d) **Procedure.** A Preliminary Plat for any proposed subdivision of land, shall be submitted to the City for Commission action after a tree protection-preservation plan is approved by the Director of Planning.

SECTION 23. CONSTRUCTION PLANS

(e) **Approval.** Within thirty (30) days of the date on which all required information has been accepted for review, the City Engineer shall either approve or disapprove the Construction Plans.

- (1) If the Construction Plans are disapproved, the City Engineer shall notify the applicant, in writing, of disapproval and indicate the requirements for bringing the Construction Plans into compliance.
- (2) If Construction Plans are approved, then the City Engineer shall sign the cover sheet of the Construction Plans and a pre-construction meeting shall be scheduled. A construction plan permit shall be signed and issued during the pre-construction meeting. A signed copy of the plans shall be returned, returning one (1) signed copy to the applicant and a copy shall be retained~~ed~~ing the other signed copy for City records.
- (3) The developer should be aware that specific approvals from other agencies may be required.
- (4) All improvements shown in the approved Construction Plans shall be constructed pursuant to and in compliance with the approved plans, except as otherwise specifically approved.

(g) **Approval Expiration.** The construction plan permit approval of the Construction Plans shall expire two years after the date that the permit is issued e-City Engineer approves the

~~Construction Plans~~—unless an unexpired Final Plat is on file with the City or the Final Plat has been approved and that approval has not expired.

ARTICLE III – DESIGN STANDARDS

(b) Policy.

(2) Additional street and trail design standards shall be as follows:

- (vi) Private, gated streets may only be approved for local streets and may not be approved where the gated, private street would prohibit the connection of the street network between neighborhoods or otherwise impair the ability to complete the City's overall transportation network.

SECTION 49. RIPARIAN CORRIDORS

The intent of these provisions is to control development within Riparian Corridors for the purpose of preserving and protecting the natural wildlife. Riparian Corridors provide important functions that contribute to the overall quality of the community including enhancing water quality, reducing erosion, and providing important habitat to wildlife.

(a) Riparian Corridor Setbacks shall be based on the following drainage criteria for all developments. These setback requirements do not include trails and related improvements. No structure shall be erected or installed within the Riparian Corridor Setback. The following Riparian Corridor Setbacks are established:

- 1) Creeks ~~or swales~~ draining more than five (5) acres but less than forty (40) acres shall have a minimum Riparian Corridor Setback of twenty-five (25') feet from the centerline of the creek or swale.
- 2) Creeks ~~or swales~~ draining more than forty (40) acres but less than one hundred twenty-eight (128) acres shall have a minimum Riparian Corridor Setback of seventy-five (75') feet from the centerline of the creek or swale.
- 3) Creeks ~~or swales~~ draining more than one hundred twenty-eight (128) acres ~~but less than six hundred forty (640) acres~~ shall have a minimum Riparian Corridor Setback of one hundred (100') feet from the centerline of the creek or swale.
- 4) A minimum one hundred (100') foot Riparian Corridor Setback is required off of the centerline of creeks identified on the City of Leander Parks, Recreation & Open Space Master Plan.

(b) It is recognized that there are some necessary impacts to the Riparian Corridors. The following disturbances shall be allowed in the Riparian Corridor Setbacks

- 1) Roadway Crossing
 - i. Arterial and Collector Streets identified in the Transportation Plan may cross the Riparian Corridor.
 - ii. All other Collector Streets not shown on Transportation Plan may cross a Riparian Corridor as long as the crossing is one thousand (1,000') feet from a Collector or Arterial Street crossing on the same Riparian Corridor.
 - iii. A Local Street may cross a Riparian Corridor if necessary to provide access to property that cannot otherwise be safely accessed.
- 2) Stormwater Detention Structures
 - i. Stormwater detention is allowed within the Riparian Corridor Setback when the detention embankment/structure occupies a narrow footprint similar to utility and roadway crossing and no excavation takes place within the Riparian Corridor Setbacks.

3) Underground Utilities

- (c) The Riparian Corridor classification does not apply to a previously modified drainage feature serving a public roadway right-of-way that does not possess any natural and traditional character and cannot reasonably be restored to a natural condition.

SECTION 50. TREE PRESERVATION

No Significant Tree shall be removed until a tree ~~protection-preservation~~ plan has been approved by the Director of Planning in accordance with this Chapter. Significant Trees may be removed only in accordance with the approved tree ~~protection-preservation~~ plan, and trees must be protected during construction activities on the property in accordance with the approved tree ~~protection-preservation~~ plan.

ARTICLE IV – IMPROVEMENTS

SECTION 61. PARK LAND DEDICATION AND PARK IMPROVEMENTS

Park Land Dedication and Park Improvements Required: A developer of any subdivision subject to this ordinance or a site development permit subject to the Composite Zoning Ordinance which includes residential lots, building sites, or multi-family residential site development residential-subdivision within the City limits or the City's extra-territorial jurisdiction ~~or multi-family residential site development within the City limits~~, that adds any residential units to any subdivision or multi-family residential site development, shall prepare a park plan to provide for sufficient and suitable park land and park improvements for the purpose of public recreation in accordance with the following provisions:

ARTICLE V – ADMINISTRATION

SECTION 77. ENFORCEMENT

- (b) Administrative Penalty. Any person who removes a Significant Tree greater than 8 inches in caliper prior to approval of a tree ~~protection-preservation~~ plan, or who removes a Significant Tree greater than 8 inches in caliper that is not authorized to be removed under an approved tree ~~protection-preservation~~ plan shall be charged and shall pay a fee of \$150 per inch for each Significant Tree greater than 8 inches in caliper removed in violation of this ordinance. The City will rely on remaining evidence on site to determine if a violation of this ordinance has occurred. For enforcement purposes the City will consider that any stump remaining on the property which is eight inches or more in diameter measured at ground level or higher was a stump of a Significant Tree greater than 8 inches in caliper. Furthermore, any cut wood discovered on site will be considered evidence of a Significant Tree greater than 8 inches in caliper if the diameter of the cut wood is measured at eight inches or greater at any point on any piece of cut wood. A plat or construction plan application for property from which one or more Significant Trees have been removed in violation of this ordinance may not be approved until an administrative penalty owed under this subsection has been paid.

SUBDIVISION ORDINANCE AMENDMENTS

ARTICLE I – GENERAL

SECTION 1. DEFINITIONS

Riparian Corridor means any defined stream channel including the area up to the ordinary high water (or bankfull-flow line), as well as all riparian (streamside) vegetation in contiguous adjacent uplands. Riparian Corridors also includes the Secondary and Connector Trail Corridors identified in the City of Leander Parks, Recreation & Open Space Master Plan and the Transportation Plan.

Riparian Corridor Setback means a line or lines designating the minimum distance the closest wall Improvements and/or Structures of a structure areis required to be from a Riparian Corridor. Building projections (e.g. eaves, awnings, window boxes, and porch overhangs) may extend up to two feet into the Riparian Corridor Setback.

ARTICLE II – PROCEDURE

SECTION 22. PRELIMINARY PLAT

(c) Content

(2) Existing Conditions

(iii) Tree Protection-Preservation Plan

- a) A tree protection-preservation plan consisting of a tree survey prepared within five years preceding the application date with the street and lot layout superimposed at a scale of 1"=100' (or as appropriate) shall be prepared demonstrating that lot lines and street layouts have been designed and located and that lot width, depth and size flexibility (as permitted by the applicable zoning district if inside the City) has been utilized to the maximum extent necessary to retain the maximum number of significant trees reasonably practicable.
- b) The applicant shall provide a tree preservation plan that identifies the surveyed trees and the mitigation of the protected trees that are proposed for removal. The tree protection-preservation plan is required to be approved by the Director of Planning prior-at the time of submission of a preliminary plat application. Up to fifty (50%) percent of the caliper inches of Significant Trees between eight (8) and twenty-six (26) caliper inches may be removed without mitigation for single-family and two-family subdivisions. Up to fifty (50%) percent of the caliper inches of Significant Trees between eight (8) and eighteen (18) caliper inches may be removed without mitigation for subdivisions other than single-family and two family.

f) Replacement Trees

1. Replacement trees shall be a minimum of two (2) caliper inches and identified on the City of Leander preferred plant list or included in the Grow Green Guide for Native and Adaptive Landscape Plants published by the City of Austin Watershed Protection and Texas A&M AgriLife Extension, as amended from time to time. The tree protection

preservation plan is required to be approved by the Director of Planning prior to submission of a preliminary plat application.

(4) Support Documents.

- (i) A drainage study, consisting of a Drainage Area Map with contours, location and capacities of existing and proposed drainage features, and calculations in accordance with this Ordinance and good engineering practices, shall be provided to ensure the property will be developed in accordance with City drainage policies.
- (ii) Utility demand data, consistent with the proposed uses indicated on the Preliminary Plat, to determine the adequacy and the consistency of proposed utility improvements.
- (iii) A letter of certification, when applicable, that the plat has been submitted to the County Health District for review (applicable to all projects proposing septic systems and/or containing any portion of the regulatory one hundred (100) year floodplain outside of the City limits).
- (iv) Copy of approved concept plan.
- (v) Copy of deed showing current ownership.
- (vi) Park proposal in compliance with approved Concept Plan.
- (vii) Copy of the approved tree protection-preservation plan.

(d) **Procedure.** A Preliminary Plat for any proposed subdivision of land, shall be submitted to the City for Commission action after a tree protection-preservation plan is approved by the Director of Planning.

SECTION 23. CONSTRUCTION PLANS

(e) **Approval.** Within thirty (30) days of the date on which all required information has been accepted for review, the City Engineer shall either approve or disapprove the Construction Plans.

- (1) If the Construction Plans are disapproved, the City Engineer shall notify the applicant, in writing, of disapproval and indicate the requirements for bringing the Construction Plans into compliance.
- (2) If Construction Plans are approved, then the City Engineer shall sign the cover sheet of the Construction Plans and a pre-construction meeting shall be scheduled. A construction plan permit shall be signed and issued during the pre-construction meeting. A signed copy of the plans shall be returned, returning one (1) signed copy to the applicant and a copy shall be retained~~ed~~ing the other signed copy for City records.
- (3) The developer should be aware that specific approvals from other agencies may be required.
- (4) All improvements shown in the approved Construction Plans shall be constructed pursuant to and in compliance with the approved plans, except as otherwise specifically approved.

(g) **Approval Expiration.** The construction plan permit approval of the Construction Plans shall expire two years after the date that the permit is issued e-City Engineer approves the

~~Construction Plans~~—unless an unexpired Final Plat is on file with the City or the Final Plat has been approved and that approval has not expired.

ARTICLE III – DESIGN STANDARDS

(b) Policy.

(2) Additional street and trail design standards shall be as follows:

- (vi) Private, gated streets or drives may only be approved for local streets or drives and may not be approved where the gated, private street or drive would prohibit the connection of the street network between neighborhoods or otherwise impair the ability to complete the City's overall transportation network.

SECTION 49. RIPARIAN CORRIDORS

The intent of these provisions is to control development within Riparian Corridors for the purpose of preserving and protecting the natural wildlife. Riparian Corridors provide important functions that contribute to the overall quality of the community including enhancing water quality, reducing erosion, and providing important habitat to wildlife.

(a) Riparian Corridor Setbacks shall be based on the following drainage criteria for all developments. These setback requirements do not include trails and related improvements. No structure shall be erected or installed within the Riparian Corridor Setback. The following Riparian Corridor Setbacks are established:

- 1) Creeks ~~or swales~~ draining more than five (5) acres but less than forty (40) acres shall have a minimum Riparian Corridor Setback of twenty-five (25') feet from the centerline of the creek or swale.
- 2) Creeks ~~or swales~~ draining more than forty (40) acres but less than one hundred twenty-eight (128) acres shall have a minimum Riparian Corridor Setback of seventy-five (75') feet from the centerline of the creek or swale.
- 3) Creeks ~~or swales~~ draining more than one hundred twenty-eight (128) acres ~~but less than six hundred forty (640) acres~~ shall have a minimum Riparian Corridor Setback of one hundred (100') feet from the centerline of the creek or swale.
- 4) A minimum one hundred (100') foot Riparian Corridor Setback is required off of the centerline of creeks identified on the City of Leander Parks, Recreation & Open Space Master Plan.

(b) It is recognized that there are some necessary impacts to the Riparian Corridors. The following disturbances shall be allowed in the Riparian Corridor Setbacks

- 1) Roadway Crossing
 - i. Arterial and Collector Streets identified in the Transportation Plan may cross the Riparian Corridor.
 - ii. All other Collector Streets not shown on Transportation Plan may cross a Riparian Corridor as long as the crossing is one thousand (1,000') feet from a Collector or Arterial Street crossing on the same Riparian Corridor.
 - iii. A Local Street may cross a Riparian Corridor if necessary to provide access to property that cannot otherwise be safely accessed.
- 2) Stormwater Detention Structures
 - i. Stormwater detention is allowed within the Riparian Corridor Setback when the detention embankment/structure occupies a narrow footprint

similar to utility and roadway crossing and no excavation takes place within the Riparian Corridor Setbacks.

3) Underground Utilities

- (c) The Riparian Corridor classification does not apply to a previously modified drainage feature serving a public roadway right-of-way that does not possess any natural and traditional character and cannot reasonably be restored to a natural condition.

SECTION 50. TREE PRESERVATION

No Significant Tree shall be removed until a tree ~~protection-preservation~~ plan has been approved by the Director of Planning in accordance with this Chapter. Significant Trees may be removed only in accordance with the approved tree ~~protection-preservation~~ plan, and trees must be protected during construction activities on the property in accordance with the approved tree ~~protection-preservation~~ plan.

ARTICLE IV – IMPROVEMENTS

SECTION 61. PARK LAND DEDICATION AND PARK IMPROVEMENTS

Park Land Dedication and Park Improvements Required: A developer of any subdivision subject to this ordinance or a site development permit subject to the Composite Zoning Ordinance which includes residential lots, building sites, or multi-family residential site development residential-subdivision within the City limits or the City's extra-territorial jurisdiction ~~or multi-family residential site development within the City limits~~, that adds any residential units to any subdivision or multi-family residential site development, shall prepare a park plan to provide for sufficient and suitable park land and park improvements for the purpose of public recreation in accordance with the following provisions:

ARTICLE V – ADMINISTRATION

SECTION 77. ENFORCEMENT

- (b) Administrative Penalty. Any person who removes a Significant Tree greater than 8 inches in caliper prior to approval of a tree ~~protection-preservation~~ plan, or who removes a Significant Tree greater than 8 inches in caliper that is not authorized to be removed under an approved tree ~~protection-preservation~~ plan shall be charged and shall pay a fee of \$150 per inch for each Significant Tree greater than 8 inches in caliper removed in violation of this ordinance. The City will rely on remaining evidence on site to determine if a violation of this ordinance has occurred. For enforcement purposes the City will consider that any stump remaining on the property which is eight inches or more in diameter measured at ground level or higher was a stump of a Significant Tree greater than 8 inches in caliper. Furthermore, any cut wood discovered on site will be considered evidence of a Significant Tree greater than 8 inches in caliper if the diameter of the cut wood is measured at eight inches or greater at any point on any piece of cut wood. A plat or construction plan application for property from which one or more Significant Trees have been removed in violation of this ordinance may not be approved until an administrative penalty owed under this subsection has been paid.

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF LEANDER, TEXAS AMENDING SECTIONS OF CHAPTER 10, THE SUBDIVISION ORDINANCE, TO ADD DEFINITIONS, TO MODIFY PROVISIONS FOR THE PROTECTION OF RIPARIAN CORRIDORS, TO MODIFY REQUIREMENTS ASSOCIATED WITH CONSTRUCTION PLANS; TO UPDATE TREE PRESERVATION PLAN REQUIREMENTS, TO MODIFY PRIVATE STREET STANDARDS, AND TO CLARIFY THE PARK LAND DEDICATION REQUIREMENTS, REVISING THE ADMINISTRATIVE PENALTY FOR REMOVAL OF SIGNIFICANT TREES; PROVIDING A SEVERABILITY CLAUSE, PROVIDING SAVINGS, EFFECTIVE DATE AND OPEN MEETINGS CLAUSES, AND PROVIDING FOR RELATED MATTERS.

Whereas, the City Council held a public hearing on the proposed amendments to Chapter 10, Article 10.02, Section 10.02.001, Exhibit A, Leander Code of Ordinances (the “Subdivision Ordinance”); and

Whereas, the City Council at a public hearing has considered the proposed amendments and finds that the amendments are reasonable and necessary to protect the health, safety, and welfare of the present and future residents of the City;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEANDER, TEXAS, THAT:

Section 1. Findings of Fact. The above and foregoing recitals are hereby found to be true and correct and are incorporated herein as findings of fact.

Section 2. Amendment of Article I, Section 6. Article I, Section 1 of the Subdivision Ordinance to amend the definitions of “Riparian Corridor” and “Riparian Corridor Setback” in their entirety to read as follows:

Riparian Corridor means any defined stream channel including the area up to the ordinary high water (or bankfull-flow line), as well as all riparian (streamside) vegetation in contiguous adjacent uplands. Riparian Corridors also includes the Secondary and Connector Trail Corridors identified in the City of Leander Parks, Recreation & Open Space Master Plan and the Transportation Plan.

Riparian Corridor Setback means a line or lines designating the minimum distance the closest Improvements and/or Structures are required to be from a Riparian Corridor. Building projections (e.g. eaves, awnings, window boxes, and porch overhangs) may extend up to two feet into the Riparian Corridor Setback.

Section 3. Amendment to Article II, Section 22 (c) (2) (iii) (a) & (b). Article II, Section 22 (c) (2) (iii) (a) & (b) of the Subdivision Ordinance are hereby amended in its entirety to read as follows:

(iii) Tree Preservation Plan

- a) A tree preservation plan consisting of a tree survey prepared within five years preceding the application date with the street and lot layout superimposed at a scale of 1"=100' (or as appropriate) shall be prepared demonstrating that lot lines and street layouts have been designed and located and that lot width, depth and size flexibility (as permitted by the applicable zoning district if inside the City) has been utilized to the maximum extent necessary to retain the maximum number of significant trees reasonably practicable.
- b) The applicant shall provide a tree preservation plan that identifies the surveyed trees and the mitigation of the protected trees that are proposed for removal. The tree preservation plan is required to be approved by the Director of Planning at the time of submission of a preliminary plat application. Up to fifty (50%) percent of the caliper inches of Significant Trees between eight (8) and twenty-six (26) caliper inches may be removed without mitigation for single-family and two-family subdivisions. Up to fifty (50%) percent of the caliper inches of Significant Trees between eight (8) and eighteen (18) caliper inches may be removed without mitigation for subdivisions other than single-family and two family.

Section 4. Amendment to Article II, Section 22 (c) (2) (iii) (f) (1). Article II, Section 22 (c) (2) (iii) (f) (1) of the Subdivision Ordinance is hereby amended in its entirety to read as follows:

f) Replacement Trees

1. Replacement trees shall be a minimum of two (2) caliper inches and identified on the City of Leander preferred plant list or included in the Grow Green Guide for Native and Adaptive Landscape Plants published by the City of Austin Watershed Protection and Texas A&M AgriLife Extension, as amended from time to time. The tree preservation plan is required to be approved by the Director of Planning prior to submission of a preliminary plat application.

Section 5. Amendment to Article II, Section 22 (c) (4) (vii). Article II, Section 22 (c) (4) (vii) of the Subdivision Ordinance is hereby amended in its entirety to read as follows:

- (vii) Copy of the approved tree preservation plan.

Section 6. Amendment to Article II, Section 22 (d). The first paragraph of Article II, Section 22 (d) of the Subdivision Ordinance is hereby amended in its entirety as to read follows; provided

that subsections (1) through (7) of Article II, Section 22 (d) shall be and remain in full force and effect:

- (d) **Procedure.** A Preliminary Plat for any proposed subdivision of land, shall be submitted to the City for Commission action after a tree preservation plan is approved by the Director of Planning.

Section 7. Amendment to Article II, Section 23 (e) (2). Article II, Section 23 (e) (2) of the Subdivision Ordinance is hereby amended in its entirety to read as follows:

- (2) If Construction Plans are approved, then the City Engineer shall sign the cover sheet of the Construction Plans and a pre-construction meeting shall be scheduled. A construction plan permit shall be signed and issued during the pre-construction meeting. A signed copy of the plans shall be returned to the applicant and a copy shall be retained for City records.

Section 8. Amendment to Article II, Section 23 (g). Article II, Section 23 (g) of the Subdivision Ordinance is hereby amended in its entirety to read as follows:

- (g) **Approval Expiration.** The construction plan permit shall expire two years after the date that the permit is issued unless an unexpired Final Plat is on file with the City or the Final Plat has been approved and that approval has not expired.

Section 9. Amendment to Article III, Section 42 (b) (2) (vi). Article III, Section 42 (b) (2) of the Subdivision Ordinance is hereby amended to add subsection (vi) to read as follows:

- (vi) Private, gated streets may only be approved for local streets and may not be approved where the gated, private street would prohibit the connection of the street network between neighborhoods or otherwise impair the ability to complete the City's overall transportation network.

Section 10. Amendment to Article III, Section 49. Article III, Section 49 of the Subdivision Ordinance is hereby amended in its entirety to read as follows:

SECTION 49. RIPARIAN CORRIDORS

The intent of these provisions is to control development within Riparian Corridors for the purpose of preserving and protecting the natural wildlife. Riparian Corridors provide important functions that contribute to the overall quality of the community including enhancing water quality, reducing erosion, and providing important habitat to wildlife.

- (a) Riparian Corridor Setbacks shall be based on the following drainage criteria for all developments. These setback requirements do not include trails and related improvements. No structure shall be erected or installed within the Riparian Corridor Setback. The following Riparian Corridor Setbacks are established:
- 1) Creeks draining more than five (5) acres but less than forty (40) acres shall have a minimum Riparian Corridor Setback of twenty-five (25') feet from the centerline of the creek or swale.
 - 2) Creeks draining more than forty (40) acres but less than one hundred twenty-eight (128) acres shall have a minimum Riparian Corridor Setback of seventy-five (75') feet from the centerline of the creek or swale.
 - 3) Creeks draining more than one hundred twenty-eight (128) acres shall have a minimum Riparian Corridor Setback of one hundred (100') feet from the centerline of the creek or swale.
 - 4) A minimum one hundred (100') foot Riparian Corridor Setback is required off of the centerline of creeks identified on the City of Leander Parks, Recreation & Open Space Master Plan.
- (b) It is recognized that there are some necessary impacts to the Riparian Corridors. The following disturbances shall be allowed in the Riparian Corridor Setbacks
- 1) Roadway Crossing
 - i. Arterial and Collector Streets identified in the Transportation Plan may cross the Riparian Corridor.
 - ii. All other Collector Streets not shown on Transportation Plan may cross a Riparian Corridor as long as the crossing is one thousand (1,000') feet from a Collector or Arterial Street crossing on the same Riparian Corridor.
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 - 2) Stormwater Detention Structures
 - i. Stormwater detention is allowed within the Riparian Corridor Setback when the detention embankment/structure occupies a narrow footprint similar to utility and roadway crossing and no excavation takes place within the Riparian Corridor Setbacks.
 - 3) Underground Utilities
- (c) The Riparian Corridor classification does not apply to a previously modified drainage feature serving a public roadway right-of-way that does not possess any natural and traditional character and cannot reasonably be restored to a natural condition.

Section 11. Amendment to Article III, Section 50. Article III, Section 50 of the Subdivision Ordinance is hereby amended in its entirety to read as follows:

SECTION 50. TREE PRESERVATION

No Significant Tree shall be removed until a tree preservation plan has been approved by the

Director of Planning in accordance with this Chapter. Significant Trees may be removed only in accordance with the approved tree preservation plan, and trees must be protected during construction activities on the property in accordance with the approved tree preservation plan.

Section 12. Amendment to Article IV, Section 61. The first paragraph of Article IV, Section 61 of the Subdivision Ordinance is hereby amended in its entirety to read as follows; provided that subsections (a) through (i) shall be and remain in full force and effect:

SECTION 61. PARK LAND DEDICATION AND PARK IMPROVEMENTS

Park Land Dedication and Park Improvements Required: A developer of any subdivision subject to this ordinance or a site development permit subject to the Composite Zoning Ordinance which includes residential lots, building sites, or multi-family residential site development within the City limits or the City's extra-territorial jurisdiction, that adds any residential units to any subdivision or multi-family residential site development, shall prepare a park plan to provide for sufficient and suitable park land and park improvements for the purpose of public recreation in accordance with the following provisions:

Section 13. Amendment to Article V, Section 77 (b). Article V, Section 77 (b) of the Subdivision Ordinance is hereby amended in its entirety to read as follows:

SECTION 77. ENFORCEMENT

(b) Administrative Penalty. Any person who removes a Significant Tree greater than 8 inches in caliper prior to approval of a tree preservation plan, or who removes a Significant Tree greater than 8 inches in caliper that is not authorized to be removed under an approved tree preservation plan shall be charged and shall pay a fee of \$300 per inch for each Significant Tree greater than 8 inches in caliper removed in violation of this ordinance. The City will rely on remaining evidence on site to determine if a violation of this ordinance has occurred. For enforcement purposes the City will consider that any stump remaining on the property which is eight inches or more in diameter measured at ground level or higher was a stump of a Significant Tree greater than 8 inches in caliper. Furthermore, any cut wood discovered on site will be considered evidence of a Significant Tree greater than 8 inches in caliper if the diameter of the cut wood is measured at eight inches or greater at any point on any piece of cut wood. A plat or construction plan application for property from which one or more Significant Trees have been removed in violation of this ordinance may not be approved until an administrative penalty owed under this subsection has been paid.

Section 14. Conflicting Ordinances. Exhibit "A", Section 10.02.001, Article 10.02, Chapter

10, Leander Code of Ordinances is amended as provided herein. All ordinances or parts thereof conflicting or inconsistent with the provisions of this ordinance as adopted herein, are hereby amended to the extent of such conflict. In the event of a conflict or inconsistency between this ordinance and any other code or ordinance of the City, the terms and provisions of this ordinance shall govern.

Section 15. Savings Clause. All rights and remedies of the City of Leander are expressly saved as to any and all violations of the provisions of any ordinances affecting subdivision within the City which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

Section 16. Effective Date. This ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Tex. Loc. Gov't. Code and the City Charter.

Section 17. Severability. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation of this ordinance of any such invalid phrase, clause, sentence, paragraph or section. If any provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end the provisions of this Ordinance are declared to be severable.

Section 18. Open Meetings. It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED on the 7th day of July, 2016.

THE CITY OF LEANDER, TEXAS

ATTEST:

Christopher Fielder, Mayor

Debbie Haile, City Secretary

b) Open Public Hearing

Chair Sokol opened the public hearing.

Nathan Button – Against - stucco limitation

Geoffrey Tahuahua – Against – stucco limitation and pond wall materials

Tom Klemcke – Against - stucco limitation

Brandon Cooper – Against - stucco limitation

c) Close Public Hearing

Chair Sokol closed the public hearing

d) Discussion

Discussion took place.

e) Consider Action

Commissioner Hines moved to approve the amendments to the Composite Zoning Ordinance with staff recommendation with the following changes:

1. Remove the restrictions regarding the limitations on stucco

2. Reword the language regarding the drainage structures to clarify the permitted wall materials

Commissioner Anderson seconded the motion. Motion passed unanimously.

9. **Ordinance Case 16-OR-002**: Hold a public hearing and consider action on amending sections of the Subdivision Ordinance, to add definitions, to modify provisions for the protection of riparian corridors, to modify requirements associated with construction plans; to update tree preservation plan requirements, to modify private street standards, and to clarify the park land dedication requirements. Applicant: City of Leander

a) Staff Presentation

Robin Griffin, Senior Planner, explained the proposed amendments to the Subdivision Ordinance.

b) Open Public Hearing

Chair Sokol opened the public hearing

No one wished to speak.

c) Close Public Hearing

Chair Sokol closed the public hearing.

d) Discussion

Discussion took place.

e) Consider Action

Commissioner Hines moved to approve the amendments to the Subdivision Ordinance with staff recommendation and modifying the provisions associated with gated, private streets to include private drives. Commissioner Schwendenmann seconded the motion. Motion passed unanimously.



Executive Summary

July 7, 2016

Agenda Subject: Donation Drop Boxes Ordinance

Background: The Code Enforcement Department has received several complaints during the past year on trash and junk around donation drop boxes located throughout the city. Currently there are 16 donation drop boxes inside the city limits of Leander. There are no requirements for them to be permitted or requirements for appearance, fencing, and background check for authenticity. There are two separate charities that we have confirmed but cannot verify that have all of the charity drop boxes. We have been unable to speak with all of the owners representing these drop boxes. The first charity is Arms of Hope, which appears to be a reasonable charity but has no connection to the City of Leander or Austin area. The second charity is Pointe of Hope. Pointe of Hope is sponsored by Rock Pointe Church in support of the homeless in Austin. They hand out clothes and hygiene items on the 2nd Saturday of each month to the homeless under the 7th Street Bridge in downtown Austin.

We requested information on what had been done by other cities to address this growing issue, the following is a summary from a few cities we contacted based on location and facing rapid growth challenges.

- Cedar Park – No ordinance but have trash issue and currently encourage removal when dealing with property owners.
- Georgetown – No ordinance but has trash issue and using trash collecting and loading areas ordinance to control.

- Pflugerville – Recently passed ordinance banning stand-alone collection/donation boxes.
- South Lake – Does not allow stand alone donation boxes
- Frisco – Does not allow stand alone donation boxes

I would recommend we ban stand-alone collection/donation boxes in the City of Leander. Currently Planning and Zoning have rules for accessory buildings that help with appearance, screening, and maintenance of the area that would allow property owners to apply for an accessory building to be able to have a donation box on their property if it supports their business.

This change could help support local donation program if it was directed to appropriate locations and definitely clean up several areas of the community that regularly on the weekends become junk and trash collection points.

Origination: Bill Gardner, Fire Chief

Recommendation: Staff move forward to bring ordinance for a change to City Council for approval.

Attachments: Ordinance to be added

Prepared by: Bill Gardner

Drop Box Locations

- 1.) Dollar General (1 box)
2802 Bagdad Rd
- 2.) Camco Mart (1box)
1912 Bagdad Rd
- 3.) 7-11 (1box)
1870 Bagdad Rd
- 4.) Bagdad Headstart CDC (1box)
351 Bagdad Rd
- 5.) Mouton's Southern Bistro (1 box)
509 183 N
- 6.) La Tapatia (old location) (1 box)
109 183 N
- 7.) Leander Inspection Station (1 box)
101 183 N
- 8.) Leander Chiropractic Center (1 box)
211 Hwy 183 S
- 9.) Old Auto Parts Store next to Jardin Del Rey (1 box)
603 183 S
- 10.) Gateway at Leander (3 boxes)
Gateway Shopping Center
- 11.) Great Value Storage (1box)
2407 Hwy 183 S
- 12.) Kingdom Kids Daycare (1 box)
805 Crystal Falls Pkwy
- 13.) Dollar Tree (1 box)
600 Crystal Falls
- 14.) Tucker Dental (1 box)
10703 Crystal Falls Pkwy
- 15.) RockPointe Church (1 box)
1070 CR 177













ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF LEANDER, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF LEANDER BY ADDING ARTICLE 6.08, DONATION CONTAINERS, TO CHAPTER 6, HEALTH AND SANITATION, REGARDING THE PERMITTING, LOCATION AND CONDITION OF DONATION CONTAINERS; PROVIDING FOR ABATEMENT; PROVIDING FOR A PENALTY OF A FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00); PROVIDING FOR SEVERABILITY, SAVINGS, OPEN MEETINGS AND EFFECTIVE DATE CLAUSES; AND PROVIDING FOR RELATED MATTERS.

WHEREAS, combating illegal dumping and refuse is a rightful concern of the City of Leander, Texas (“City”);

WHEREAS, the City has experienced a growing problem with illegal dumping occurring at or around “donation containers” located within the City's jurisdiction;

WHEREAS, many donation containers are not regularly collected, causing unsightly overflow; and

WHEREAS, “donation containers” continue to proliferate within the City's jurisdiction;

WHEREAS, people leaving used items at donation containers often leave items outside of said containers resulting in unsightly and sometimes unhealthy conditions;

WHEREAS, used items left at donation containers are frequently broken, torn or soiled items that otherwise constitute trash, rubbish or junk;

WHEREAS, Section 217.042 of the Texas Local Government Code authorizes a home rule municipality to define and abate nuisances within the corporate limits of the municipality and in the extraterritorial jurisdiction within 5,000 feet outside the city limits;

WHEREAS, the City Council of the City finds that the unregulated location and operation of donation containers negatively impacts property values and the health, safety and welfare of the community; and

WHEREAS, the City Council of the City further finds it to be in the public interest to amend the Code of Ordinances of the City by adopting regulations regarding the permitting, location, operation and condition of donation containers within the City and surrounding areas.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEANDER, TEXAS THAT:

Section 1. Findings of Fact. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 2. Amending Chapter 6, Health and Sanitation, Leander Code of Ordinances by adding

Article 6.08, Donation Containers. Article 6.08, Leander Code of Ordinances, is hereby added to read as follows:

ARTICLE 6.08 DONATION CONTAINERS

Sec. 6.08.001 Definitions

1. *Donation container* means any box, structure, container, trailer or other receptacle, whether permanently or temporarily affixed or placed on real property, that is intended for use as a collection point for clothing, other household materials or other new and/or used personal property to be donated to a charitable organization; the term does not include recycle bins or any donation container located within a building.

2. *Building* means a commercial building lawfully occupied by a business or charitable organization pursuant to a valid certificate of occupancy.

3. *Person* includes an individual, sole proprietorship, corporation, association, nonprofit corporation, partnership, joint venture, limited liability company, estate, trust, public or private organization that is not a state agency, business trust, public corporation, or any other legal or commercial entity.

4. *Recycle Bin* means a receptacle used for the collection of recyclable materials governed or regulated by the City's zoning code.

Sec. 6.08.002 Permit Required

(a) It shall be unlawful to locate a donation container within the City or within 5,000 feet outside of the City limits without first obtaining a permit from the City.

(b) To obtain a permit, a person must show:

1. A sketch indicating the location where the donation container will be placed and the dimensions of the container;
2. Be the property owner, property manager, or person who has a right to possess the property, indicating that the donation container may be placed on the property and acknowledging that they will be held responsible for maintenance of the area around the donation container; and
3. That the donation container will comply with all requirements of this Article.

(c) Only nonprofit charitable organizations that serve the local community and have obtained a determination letter pursuant to 26 USC 501 (c)(3) may obtain a permit to locate donation containers within the City or within 5,000 feet outside of the City limits.

(d) Permits are non-transferable.

Sec. 6.08.003 Placement

(a) Donation containers shall not be located within any residential zoning district.

(b) No more than one donation container may be located on a single platted lot or unplatted

tract of land.

(c) A donation container shall not be located closer than 300 feet from another donation container even if located on different tracts of land or lots.

(d) A donation container shall not be located within ten (10) feet of the travelled portion of any street, road or highway or placed in a manner that blocks driveways, interferes with traffic flow or visibility.

(e) A donation container shall not be located within any right-of-way or easement dedicated to and/or owned by any governmental entity.

(f) A donation container shall not be located at any location the City determines:

1. May pose a safety hazard to the public;
2. Constitutes an obstruction to traffic entering, exiting or circulating within the property on which the donation container is located;
3. Constitutes an obstruction to pedestrian traffic using any public sidewalk; or
4. Constitutes an obstruction to the flow of surface water on the property such that surface water will be diverted to other properties or otherwise inhibits or prevents surface water from draining to an existing drainage facility.

Sec. 6.08.004 Construction

Donation containers must:

1. Be constructed of metal, fiber glass or wood;
2. Labeled “No Dumping” and also indicate the name, address and telephone number of the organization and party responsible for collection;
3. Be secured at all times, except when they are being emptied;
4. Have a lid or a top to protect the contents from the weather;
5. Be no larger than 120 cubic feet.

Sec. 6.08.005 Maintenance

(a) The area around the donation container shall be kept free of any junk, debris or other materials and shall be emptied often enough so that the donations do not overflow.

(b) Donation containers shall be maintained in good condition and appearance with no structural damage, holes, or visible rust. Containers shall be kept free of graffiti.

(c) The City shall give the permit holder seventy-two (72) hours written notice to clear any debris. If

the debris is not cleared, the City may clear the debris and bill the property owner for the cost to abate any violation.

Sec. 6.08.006 Existing Donation Containers

(a) Operators of existing donation containers or the owner of the property on which the container is located shall be given oral notice that they have thirty (30) days to obtain a permit. If the operators or owners do not apply for a permit, the operators and the property owners have thirty (30) days to remove the donation containers or the property owners may give the City permission to remove the donation containers.

(b) If an operator or property owner cannot be reached, a letter will be mailed to either the address of the property owner listed on the appraisal district records or the address on the donation container, if available, or both. Notice shall also be posted on the donation container itself. The operator or property owner shall have thirty (30) days from the day a letter is mailed or posted on the container to obtain a permit.

(c) If the city removes the donation container, the property owner or the operator shall be billed the removal and storage costs.

(d) Donation containers located closer than three hundred (300) feet shall not be required to be moved to comply with Sec. 6.08.003(c).

(e) Notwithstanding paragraph (d) of this section, a donation container that was located less than 300 feet from another donation container that is removed from such location for more than three (3) days must be relocated to a location that complies with Sec. 6.08.003(c).

Sec. 6.08.007 Permit Revocation

(a) The City may revoke a permit for failure of the operator or property owner to comply with the requirements in this Article. The operator or owner may appeal the revocation to the City Manager or their designee within 72 hours of the revocation notice. The City Manager's or their designee's decision shall be final.

(b) The donation container must be removed within seven (7) days of the permit revocation or appeal hearing, as applicable. If not removed within seven (7) days, the City may have it removed and the operator or property owner shall be billed the removal and storage costs.

(c) A donation container impounded by the City shall be released to the owner upon the payment of an impound fee of \$200.00, and a daily storage fee of \$20.00 for each day in City possession after impound. Any impounded donation container not claimed within thirty (30) days after impoundment may be destroyed without further notice from the City.

Section 3. Enforcement. The Leander Police Department, Fire Department, Code Enforcement Department or authorized designee are authorized to enforce the provisions of this Article.

Section 4. Penalty Clause. Any person convicted of violating any provision of this Ordinance shall be guilty of a misdemeanor and shall be subject to a fine in an amount not to exceed Two Thousand Dollars (\$2000.00). Each and every day such violation shall continue shall be deemed to constitute a separate offense.

Section 5. Savings Clause. All rights and remedies of the City are expressly saved as to any and all violations of the provisions of any ordinances affecting donation containers within the City which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

Section 6. Conflicting Ordinances. All prior ordinances of the City dealing with or applicable to donation containers are hereby amended only to the extent of any conflict with the amendments set forth herein, and all ordinances or parts thereof conflicting or inconsistent with the provisions of this Ordinance as adopted and amended herein are hereby amended to the extent of such conflict. In the event of a conflict or inconsistency between this Ordinance and any other code or ordinance of the City, the terms and provisions of this Ordinance shall govern.

Section 7. Severability. Should any section or part of this Ordinance be held unconstitutional, illegal, or invalid, or the application to any person or circumstance thereof ineffective or inapplicable, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portion or portions thereof; but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this Ordinance are declared to be severable.

Section 8. Effective Date. This Ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the *Tex. Loc. Gov't. Code*.

Section 9. Open Meetings. It is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, *Chapt. 551, Tex. Gov't. Code*.

PASSED AND APPROVED this the _____ day of _____, 2016.

ATTEST:

City of Leander, Texas

Debbie Haile, City Secretary

Christopher Fielder, Mayor



Executive Summary

July 7, 2016

Council Agenda Subject: Consideration of Standard Professional Services and Task Order WAL-1 with Walker Partners Engineering, Inc., for Design, Bidding, and Construction Phase Professional Services for Raider Way and E. Woodview Drive Roadway Improvements Project

Background: Task Order WAL-1 provides for the design, bidding, and construction phase professional services for the improvements at Raider Way and E. Woodview Drive Roadway Improvements Project. This proposed work will include preliminary design, utility coordination final design and construction phases for project improvements which will include widening each roadway to a width of 45' of pavement with curb, gutter, storm sewer, street lighting, utility relocations, water quality services, 6' and 8' sidewalks, turn lanes and signal modifications at Crystal Falls Parkway.

The total compensation for the Raider Way and E. Woodview Drive Roadway Improvements Project shall be on a lump sum basis of \$755,360.00 as described in the fee schedule attached to the task order. The Engineer will review design schedule and prepare monthly progress reports for review by the City over the length of the contract period. Lump sum invoices for work performed, based on percent complete, will be submitted monthly by the engineer. Final payment shall be due upon completion of the services described.

Origination: Wayne S. Watts, P.E., CFM, City Engineer

Financial Consideration: \$755,360.00 from General Purpose CIP Fund, GL# TBD

Recommendation: Staff requests authorization of the City Manager to negotiate and execute the Standard Professional Services and Task Order WAL-1.

Attachments: Standard Professional Services and Task Order WAL-1 with supporting documentation

Prepared by: Wayne S. Watts, P.E., CFM, City Engineer

PROFESSIONAL SERVICES CONTRACT

This Professional Services Contract ("Contract") between the City Of Leander ("OWNER") and _____, ("Professional"), collectively referred to as the "Parties", is an agreement for the Professional to provide the OWNER with the professional services described in this Contract, for and in consideration of the payment terms and performance obligations herein described. The effective date of this Contract shall be the date set forth on the signature page.

Article 1. Work to be Provided

(a) Professional shall provide Work (the "Work") to OWNER under individual assignments. A general description of the Work required by this Contract includes water and wastewater utility engineering services, design and studies of hydrology and hydraulics, and design and studies of transportation infrastructure. OWNER will provide a written Task Order, including a written Statement of Work describing the tasks to be performed, to Professional for the particular Task and a specific price or a formula by which the price can be determined. No Work is authorized unless authorized representatives of both parties sign such a Task Order. This Contract does not guarantee a minimum amount Professional will be paid or a minimum number of Task Orders.

(b) Notwithstanding anything to the contrary contained in this Agreement, OWNER and Professional agree and acknowledge that OWNER is entering into this Agreement in reliance on Professional's special and unique abilities with respect to performing the Work, and Professional's special and unique abilities with respect to engineering services. The Professional accepts the relationship of trust and confidence established between it and the OWNER by this Agreement. Professional covenants with OWNER to use its best efforts, skill, judgment, and abilities to perform the Work and to further the interests of OWNER in accordance with OWNER's requirements and procedures, in accordance with the standards of Professional's profession or business. Professional represents that there are no undisclosed obligations, commitments, or impediments of any kind that will or could taint, limit or prevent performance of the Work.

(c) Changes In Scope of Work. OWNER may request additional Work or changes in the Work as the project progresses. If so, changes in the Scope of Work shall be initiated by a written change order signed by an authorized representative of each party. The change order shall describe the Work to be added, changed or deleted and shall state the additional cost or cost reduction and schedule changes, if any. Verbal change orders shall have no effect, except in cases of an emergency threatening personal injury or property damage. The terms and conditions of this Contract may be modified only by a writing signed by an authorized representative of each party.

Article 2. Contract Documents

(a) General Definition. The Contract Documents, in order of precedence consist of:

- ☛ All written Change Orders executed after the effective date of this Contract by an authorized representative of each Party;

- ⌚ Each Task Order executed pursuant to this Contract by an authorized representative of both parties;
- ⌚ The Statement of Work attached to each Task order;
- ⌚ This Contract; and
- ⌚ Any other documents specifically identified as Contract Documents in the General Conditions.

(b) Exclusion from Contract Documents. No term, condition, or provision of any Task Order or other document that conflicts with the terms and conditions contained in this Professional Services Contract will be considered part of the Contract Documents, or otherwise valid, unless expressly provided and accepted in writing by the OWNER.

Article 3. Term

This Contract is for a three (3) year period subject to extension as provided in this Article, but not to exceed a maximum five (5) year period. The primary term begins upon execution of this Contract by an authorized representative of the OWNER and expires in three years. OWNER shall thereafter have the option to extend the contract for up to, but not to exceed, two extended terms of one year each. Any extension by the OWNER shall be effective upon 30 days notice to Professional prior to the end of the then current term. The extension shall be deemed automatically accepted by Professional unless Professional refuses the extension by written notice to OWNER within ten (10) days after the Professional receives the notice of extension from the OWNER.

Article 4. Schedule

Time is an important element of the performance of this contract. Professional will put forth its best efforts to complete the Work in accordance with any deadlines to which the parties agree in any Task Order. Professional agrees to perform all obligations and render the Work set forth in this Contract or any Task Order issued pursuant hereto in accordance with the any timelines included in the Statement of Work, except as the Parties may hereafter mutually agree in writing otherwise. If required by the Statement of Work, a specific work progress schedule will be developed for each individual task in compliance with that Statement of Work.

Article 5. Price

The Price to be paid for Work under any Task Order shall be as agreed in a particular Task Order.

Article 6. Payment

(a) Anything in this agreement to the contrary notwithstanding, all payments to be made by the OWNER hereunder are subject to Ch. 2251 of the Texas Government Code, popularly known as the Prompt Payment Act. Payment in full for invoices shall be due within thirty (30) days from date the invoice is received by OWNER. Invoices paid more than thirty (30) days after the invoice is received are subject to a late charge of 1% per month (12% APR) on the amount of the undisputed past due balance.

(b) Invoices for payment under this Contract shall be sent to:

Wayne S. Watts, P.E.
City Engineer
City of Leander
P.O. Box 319
Leander, Texas 78646-0319

Payments may be based on completion of the Work, fulfillment of milestones, progress payments or any other method that is established in the agreed Statement of Work. In no event shall Professional invoice OWNER more than once monthly.

Article 7. Acceptance of the Work

When Professional can demonstrate that the Work is complete in accordance with the acceptance criteria included in the Statement of Work and so notifies OWNER, OWNER shall review the Work for general compliance with the Contract. If the Work appears to comply with the Contract requirements, and Professional has furnished all required documentation, OWNER shall notify Professional in writing of OWNER's Acceptance of the Work. Acceptance of the Work shall not limit nor diminish Professional's responsibilities, duties and warranties with respect to the Work. The Work shall be performed by the Professional in a manner consistent with good practices for the profession, and the standards and skills of the professionals practicing such profession in Travis County and Williamson County, Texas.

Article 8. Jobsite Inspection

If required by OWNER, Professional's representatives shall observe the jobsite and clearly understand the requirements and risks of the Work to be performed, the jobsite conditions, traffic conditions, the proximity of high-voltage power lines, utilities, and other local conditions likely to affect Professional's performance before accepting any Task Order. Acceptance of a Task Order shall constitute the Professional's certification that it has by observation satisfied itself with respect to all such local conditions and is willing to accept all risks they impose.

Article 9. Independent Contractor

(a) Professional shall perform in all respects as an independent contractor and not as an employee, partner, joint venture or agent of the OWNER. The Work to be performed by Professional shall be subject to the OWNER's review, approval and acceptance as provided in the Contract Documents, but the detailed manner and method of performance shall be under the control of Professional. The accuracy, completeness, and scheduling of the Work and the application of proper means and methods for performance of the Work are entirely the responsibility of Professional. Professional shall be solely responsible for hiring, supervising and paying its employees, subcontractors and suppliers. Professional shall be solely responsible for payment of all (i) compensation, including any employment

benefits, to its employees, (ii) taxes, including withholding for federal income tax purposes, employment and unemployment taxes, and (iii) such other expenses as may be owed to Professional's employees. However, because Professional's Work may be associated in the minds of the public with OWNER, Professional shall ensure that all Work by its employees, subcontractors and agents is performed in an orderly, responsible and courteous manner. Non-citizen workers shall be properly documented.

(b) Upon prior notification to and written approval of OWNER, Professional may hire subcontractors to perform work hereunder. Professional shall be responsible to OWNER for the performance of all such subcontractors. OWNER shall require any and all such subcontractors to sign agreements with Professional that bind the subcontractors to perform subcontracts in accordance with the Contract Documents. Upon the request of OWNER, Professional shall furnish OWNER with copies of such subcontracts. In addition, Professional agrees that it is Professional's responsibility to ensure that such subcontractors make all appropriate tax payments or tax withholding in relation to subcontractor's employees providing work to OWNER through Professional under this Contract. Professional represents that it and its subcontractors are fully trained to perform the tasks required by this Contract and that they need no training by the OWNER. Professional further understands and agrees that it will be responsible to OWNER for the quality and performance of any Work performed by any such subcontractor.

Article 10. Licenses and Permits

(a) Professional shall procure and maintain at its expense all licenses and permits necessary for it to perform the Work.

(b) Professional shall ensure that its subcontractors' and their employees are all properly licensed to perform their respective portions of the Work.

Article 11. Governing Laws, Regulations & Standards

(a) This Contract shall be governed, interpreted and enforced under the laws of the State of Texas, without regard to its conflict of law principles. In the event of litigation between the Parties arising out of this Contract issued under it, venue for such litigation shall be in a court of competent jurisdiction in Williamson County, Texas.

(b) Professional shall be aware of and shall comply with all non-conflicting Federal, State, and local laws, ordinances, codes (including applicable Professional codes) and regulations applicable to the Work, any equipment to be fabricated and delivered and for compliance with standards and codes of technical societies that have been adopted by law or regulation or compliance with which is required in the Contract Documents. If any of the Work fails to comply with such laws, ordinances, codes, and regulations, Professional shall bear any expense arising from that failure, including the costs to bring the Work into compliance.

(c) Without limiting the generality of the foregoing, during the performance of the Agreement, Professional agrees to comply with all applicable regulations of Executive Order No. 11246 of September 24, 1965, and the rules, regulations, and relevant orders of

the Secretary of Labor as they may apply to Equal Employment Opportunity. Professional will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor pursuant thereto, and will permit access to its books, records, and accounts by the cognizant agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

Article 12. Intoxicants & Drugs: Employee Conduct

OWNER shall not allow intoxicants or illegal drugs on its jobsite. Professional shall not at any time allow personnel for whom it is responsible on the jobsite if they are under the influence of any substance that may impair their performance. Professional shall promptly remove from the jobsite any person who is or appears to be under the influence of any of these substances or is otherwise unsafe or disorderly. Professional shall ensure that its employees, subcontractors and their employees avoid excessive noise, exceeding speed limits or reckless driving, use of weapons, or trespass on land not owned by or under easement to OWNER. If private property must be entered or crossed to perform the Work, Professional shall obtain permission from the property owner before entering.

Article 13. Risk of Loss

(a) Professional shall bear the expense and risk of loss or damage to work in progress, completed Work, materials, equipment, and all other incidents of the Work prior to Acceptance of the Work. Professional shall promptly replace or repair any loss or damage at its own expense. In the event of substantial loss or damage due to Force Majeure, the schedules shall be equitably extended. Professional shall bear the expense of storage space for stored materials, whether on-site or off-site, and shall bear the risk of loss or damage to all such materials. Professional shall take reasonable precautions to protect the materials from weather damage, burglary, pilferage and similar hazards.

(b) Professional shall bear the risk of loss or damage to its own equipment, tools, supplies and property and those of its subcontractors and suppliers, regardless of the cause of loss or damage throughout the project.

Article 14. Warranties and Representations

(a) **Warranty of Title.** Professional warrants the title to any goods it delivers to OWNER incidental to the performance of the Work and that said goods will be free and clear of all liens, mortgages, security interests or other encumbrances.

(b) **General Warranty of the Work.** Professional represents that all Work shall be performed in a Professional manner consistent with the industry standards and the standards of the profession of Professional. Professional shall correct, without delay and at its own expense, any portion of the Work that does not meet the foregoing warranty and is discovered within one year after Acceptance of the Work by re-performing that portion of the Work. Any repair, replacement, or modification of the Work performed pursuant to the provisions of this paragraph shall be supplied or repaired on the same terms and conditions as provided for herein for the Work.

(c) **Intellectual Property Representation.** Professional represents that the Work and the processes used in performing it shall not infringe on any valid United States patent, registered United States copyright, trademark or trade secret.

(d) **Business Standing Warranty.** Professional warrants, represents, and agrees that if (i) it is a corporation or limited liability company, then it is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, or a foreign corporation or limited liability company duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary corporate power and has received all necessary corporate approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of Professional has been duly authorized to act for and bind Professional; or (ii) if it is a partnership, limited partnership, or limited liability partnership, then it has all necessary partnership power and has secured all necessary approvals to execute and deliver this Agreement and perform all its obligations hereunder; and the individual executing this Agreement on behalf of Professional has been duly authorized to act for and bind Professional.

Article 15. General Indemnity

(a) Professional shall hold the OWNER and its councilmember's, officers, employees, agents and professionals harmless from all claims, damages, losses and expenses (jointly, "Claims"), including reasonable attorneys' fees, arising out of, or resulting from or arising under this Agreement, provided that any such liabilities, damage, loss, or expense is caused by the negligent, grossly negligent or intentional act or willful misconduct of Professional, anyone directly or indirectly employed by it, or anyone for whose acts it is legally liable.

(b) To the extent allowed by law, OWNER agrees to indemnify and hold harmless Professional, its directors, officers and employees, from and against any and all losses, claims, attorneys' fees and expenses arising from the negligent act or omission or willful misconduct of the OWNER related to this Contract which causes the death of, injury to or damage to the property of, any person.

(c) If the parties are concurrently negligent, each party's liability shall be limited to that portion of negligence attributable to it as determined under the applicable proportionate responsibility rules of the state of Texas.

(d) Anything to the contrary herein notwithstanding, neither party shall be liable to indemnify the other for the negligence, gross negligence or willful misconduct of the other.

(e) The foregoing indemnity provisions shall be deemed independent covenants and shall survive completion of or any termination of the Agreement or any claimed breach thereof. Professional's indemnity responsibility as specified in this clause shall not include special, incidental, punitive or consequential damages.

Article 16. Intellectual Property Indemnity

(a) Professional shall, at its own expense, defend all suits or proceedings instituted

against OWNER, its officers, agents, employees, or professionals based upon any claim that the Work, or any part thereof, or the process performed thereby constitutes an infringement of either any patent or copyright of the United States or of any trademark or trade secret protected by either federal or state law. Professional shall pay all awards of damages assessed which result from any such claim, suit, or proceeding and shall indemnify and save OWNER harmless against losses, expenses (including reasonable attorney's fees), and damages resulting from any such claim, suit, or proceeding, including obedience to resulting decrees and to resulting compromises for which Professional is legally liable.

(b) If, in any such suit, a restraining order or temporary injunction is granted, Professional shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of any such restraining order or temporary injunction. If, in any such suit, the Work or any part thereof or the process performed thereby is held to constitute an infringement and its use be permanently enjoined, Professional shall at once make every reasonable effort to secure for OWNER a license at Professional's expense authorizing the continued use of the alleged infringing portion of the Work. If Professional is unable to secure such license within a reasonable time, Professional shall, at its own expense and without impairing performance requirements, either provide non-infringing replacements or modify the Work to eliminate the infringement. In addition to indemnifying and saving OWNER harmless, Professional shall reimburse OWNER for any costs incurred as a result of the unavailability of the infringing item or its non-infringing replacement.

(c) Such indemnity shall not apply to infringement claims that are based upon patent, copyright, trademark, or trade secret violations where such information was supplied by OWNER or which were directed for use by OWNER.

Article 17. Indemnity Procedures

With respect to any claim for Indemnity, the following procedures shall apply:

(a) **Notice.** Promptly after receipt by any entity entitled to indemnification of notice of the commencement or threatened commencement of any civil, administrative, or investigative action or proceeding involving a claim in respect of which the indemnities shall seek indemnification, the indemnities shall notify the indemnitor of such claim in writing. No failure to so notify an indemnitor shall relieve the Indemnitor of its obligations under this Agreement except to the extent that it can demonstrate damages attributable to such failure. Within fifteen (15) days following receipt of written notice from the indemnitee relating to any claim, but no later than ten (10) days before the date on which any response to a complaint or summons is due, the indemnitor shall notify the indemnitee in writing if the indemnitor elects to assume control of the defense and settlement of that claim (a "Notice of Election"). It is specifically provided that any indemnitee may by separate legal counsel participate in any proceeding brought by a third party and raise defenses available to indemnities, without waiving or limiting the benefits of this article or any duty or responsibility of indemnitor; provided that such indemnitee shall not attempt to limit or waive any defenses raised by indemnitor.

(b) **Procedure for Notice of Election.** If the indemnitor delivers a Notice of Election relating to any claim within the required notice period, the indemnitor shall be entitled to have sole control over the defense and settlement of such claim; provided, however, that (i) the indemnitees shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim, and (ii) the indemnitor shall obtain the prior written approval of the indemnitees before entering into any settlement of such claim or ceasing to defend against such claim. After the indemnitor has delivered a Notice of Election relating to any claim in accordance with the preceding paragraph, the indemnitor shall not be liable to the indemnitees for any legal expenses incurred by such indemnitees in connection with the defense of that claim. In addition, the indemnitor shall not be required to indemnify the indemnitees for any amount paid or payable by such indemnitees in the settlement of any claim for which the indemnitor has delivered a timely Notice of Election if such amount was agreed to without the written consent of the indemnitor.

(c) **Procedure Where No Notice of Election Is Delivered.** If the indemnitor does not deliver a Notice of Election relating to any claim within the required notice period, the indemnitees shall have the right to defend the claim in such manner as it may deem appropriate. If the indemnitor fails to deliver a Notice of Election for any claim for which indemnitor is obligated to indemnify the indemnitees pursuant to the terms of this Agreement, then the indemnitor will be solely responsible for any and all costs and expenses incurred by the indemnitees in defending such claim and the indemnitor shall promptly reimburse the indemnitees for all such costs and expenses.

Article 18. Insurance

Professional shall obtain and maintain the insurance coverage specified below on an occurrence-basis and shall provide to Owner an insurance certificate listing the coverage before starting work on any OWNER property. **THE COVERAGE SHALL NOT BE CONSTRUED AS ESTABLISHING OR LIMITING PROFESSIONAL'S LIABILITY UNDER THE INDEMNITY PROVISION.** OWNER shall be listed as an "additional insured" on all policies other than the Workers Compensation and Professional Liability policies. Professional for itself and its insurers hereby waive subrogation against OWNER, its affiliates, their Boards of Directors, Directors, officers, employees and agents. Professional's failure to maintain the required insurance coverage at any time during the contract period may be grounds for OWNER to suspend the Contract and withhold payment until insurance coverage is satisfactory.

	<u>Type of Insurance</u>	<u>Minimum Coverage</u>
(a)	<u>Workers' Compensation</u>	
	Coverage A -	statutory
	Coverage B -	\$250,000 employer's liability
(b)	<u>General Liability</u>	
	Bodily Injury	\$500,000 per person
	Bodily Injury	\$1,000,000 per occurrence
	Property Damage	\$1,000,000 per occurrence

- (c) Automobile Liability
(including owned or leased vehicles and heavy equipment)

Bodily Injury	\$1,000,000 per occurrence
Property Damage	\$ 500,000 per occurrence

The automobile liability coverage shall apply to owned, non-owned, hired and leased vehicles. Before work begins, a certificate of all required insurance shall be filed with Project Manager of OWNER.

- (d) Professional Liability \$1,000,000 per occurrence

Article 19. Force Majeure

(a) The nonperformance or delayed performance by Professional or OWNER of any obligation under the Agreement shall be excused if such nonperformance or delay is caused by an event beyond the control of the affected party ("Force Majeure"), except to the extent that Professional knew of or should reasonably have been able to foresee such an event and failed to take reasonable measures to avoid the event. Items beyond the control of the parties include, but are not limited to: acts of war, acts of a public enemy; acts of domestic or foreign terrorism, natural disasters; strikes, epidemics or quarantine restrictions; riot, or sabotage; and acts of civil or military authority having jurisdiction.

(b) Upon occurrence of a Force Majeure, the date for performance of the Work shall be extended for a period equal to the time lost by reason of the delay, provided Professional or OWNER has taken reasonable steps to proceed with the performance of the Agreement and has made written notification of such delay and of any corrective action taken. Professional shall not be entitled to any increase in compensation by reason of Force Majeure.

(c) The following delays shall not constitute excusable delays in performance by Professional and shall not constitute a reason for extending the date for performance of the Work:

1. Delays by subcontractors or by suppliers for reasons other than Force Majeure;
2. Delays in approval of documentation because of inadequate performance or to unrealistic approval schedules;
3. Delays caused by Professional's lack of sufficient personnel with the necessary skills.

Article 20. General Safety, Environmental and Site Operations Requirements

(a) Safety. All parts of this Contract shall be performed in strict accordance with the safety requirements of applicable codes and statutes, federal, state, and local requirements, and the best industry practice. Professional is solely responsible in its procedures for the safety of its jobsite personnel, equipment, and properties involved in this project, including Professional's subcontractors. However, Professional is not responsible for jobsite safety of others, including Construction Contractor personnel or Construction Contractor means, methods, or procedures.

(b) Environmental. Professional is solely responsible for all costs incurred by OWNER for any spills or leaks caused by Professional or its subcontractors or sub consultants during performance of, or in connection with, the Work. Without limiting the foregoing sentence, Professional shall be responsible for all costs incurred to contain, remediate, and restore the site of the spill according to applicable state and federal laws and regulations, and if on OWNER's property, according to OWNER's requirements.

OWNER shall be responsible for all notifications required by and federal, state, or local law or regulation. Professional shall immediately notify OWNER with the nature and location of the spill. Professional shall provide a written report to OWNER whose representative shall identify the substance, quantity released, location of the spill, and perform clean up and remediation activities. If the spill occurs off OWNER's property, then the Professional shall also notify the OWNER of any agencies notified and the representatives of the agencies contacted. The report shall be a narrative that summarizes on-scene activity and remediation efforts. If long-term remediation will be required, it shall be noted in the report. The initial report shall be provided to OWNER within 24 hours after the incident. Follow-up reports shall be provided to OWNER weekly until remediation efforts have been completed and the spill has been properly remediated.

PROFESSIONAL SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY AND ALL LIABILITIES, INCLUDING, BUT NOT LIMITED TO, REMEDIATION COSTS, FINES, PENALTIES, COURT COSTS, AND ATTORNEY'S FEES RESULTING FROM SPILLS, RELEASES, IMPROPER HANDLING AND/OR DISPOSAL OF WASTES CAUSED BY PROFESSIONAL, ITS SUBCONTRACTORS, AND/OR SUBCONSULTANTS.

Article 21. Assignment

This Contract is to be considered a personal Work Contract. Professional may not assign this Contract without the consent of OWNER. Any permitted assignee must notify the OWNER in writing that it accepts the assignment on the same terms and conditions contained in this Contract. No permitted assignment shall limit Professional's responsibility for performance of this contract. Attempted assignment or delegation of this Contract, including obligations under it, without the written consent of OWNER shall be void, and not merely voidable.

Article 22. Termination for Convenience

(a) OWNER shall have the right to terminate this Contract for its convenience at any time. After receipt of the notice of termination, the Professional shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due at that point in the Contract:

1. Stop all ongoing Work.
2. Place no further subcontracts or orders for materials or Work.
3. Terminate all subcontracts.
4. Cancel all materials and equipment orders, as applicable.
5. Take any action that is necessary to protect and preserve all property related to this Contract that is in the possession of the Professional.

(b) In the event of a termination under paragraph (a) of this Article, OWNER shall pay equitable termination charges, for all billable time expended or portions of Work completed (as applicable) and materials purchased, and if the Work includes construction profit on completed portions, and out-of-pocket costs that have been reasonably incurred by Professional as a result of terminating this Contract. OWNER shall not be liable in connection with any termination under this Article for special, incidental, consequential, or punitive damages, or for loss of anticipated future work, anticipated profits, administrative costs or overhead on anticipated work, or other indirect costs.

Article 23. Termination for Cause

(a) The occurrence of any one or more of the following events will constitute an event of default:

- (1) Professional's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers, suitable materials or equipment, or to adhere to project schedules as adjusted from time to time pursuant by the parties);
- (2) Professional's disregard of applicable laws or regulations;
- (3) Professional's disregard of the authority of OWNER's Representative;
- (4) Professional's violation in any substantial way of any provisions of the Contract Documents;

(5) Failure of Professional to pay subcontractors and/or material suppliers; or

(6) Professional's violation of OWNER's ethics policy.

(b) If one or more of the events identified in paragraph (a) occur, OWNER may terminate this Agreement, if after giving Professional (and the surety, if any) seven (7) calendar days prior written notice, unless such event of default shall have been cured.

(c) If this Contract has been so terminated by OWNER, the termination will not affect any rights or remedies of OWNER against Professional or any surety then existing or which may thereafter accrue. No retention or payment of moneys due Professional by OWNER will release Professional from liability.

(d) In such a circumstance, OWNER shall notify Professional in writing of the termination, with copies of the notice to OWNER's jobsite personnel. Upon notice of termination, Professional and its subcontractors shall promptly stop the Work and allow OWNER to take possession of the jobsite including any equipment and materials identified to the project (whether stored on-site or off-site), after securing the jobsite from safety and environmental hazards.

Article 24. Suspension

(a) OWNER may, at any time and at its sole option, suspend all or any portions of the Work to be performed under this Agreement by providing ten (10) calendar days written notice to the Professional. Upon receipt of any such notice, Professional shall:

1. Immediately discontinue the Work on the date and to the extent specified in the notice.
2. Place no further orders or subcontracts for materials, Work, or facilities with respect to the suspended portion of the Work, other than to the extent necessary to protect any portion of the Work already performed.
3. Promptly make every reasonable effort to obtain suspension, upon terms satisfactory to OWNER, of all orders, subcontracts, and rental agreements to the extent that they relate to performance of the portion of Work suspended by the notice.
4. Continue to protect and maintain the portion of the Work already completed, including the portion of the Work suspended hereunder, unless otherwise specifically stated in the notice.
5. Continue to perform Professional's obligations for the portions of the Work not suspended.

(b) As full compensation for such suspension, Professional will be reimbursed for the following costs, reasonably incurred, without duplication of any item, to the extent that such costs actually result from such suspension of Work.

1. A reasonable standby charge to be negotiated between OWNER and the Professional sufficient to compensate Professional for keeping (to the extent required in the notice) its organization and equipment committed to the Work in a standby status.
2. All reasonable costs associated with demobilization of Professional's facility, forces, and equipment.
3. A reasonable amount to be negotiated between OWNER and the Professional to reimburse the Professional for the cost of maintaining and protecting that portion of the Work upon which activities have been suspended.
4. All billable time reasonably extended or portions of Work completed (as applicable) prior to the suspension, materials purchased, and if the Work includes construction profit on completed portions, and out-of-pocket costs that have been reasonable incurred by Professional.

(c) Upon receipt of notice to restart the suspended portion of the Work, Professional shall immediately resume performance on the suspended portion of the Work to the extent required in the notice. Within 14 calendar days after receipt of notice to restart the suspended portion of the Work, the Professional shall submit a revised schedule for approval by OWNER. If, as a result of any suspension, the cost to Professional of subsequently performing the Work or the time required to do so is changed, a claim for an adjustment in the contract price may be made. Any claim on the part of Professional for change in price or extension of time shall be made in accordance with this Agreement.

Article 25. Dispute Resolution

The Parties agree that in the event of a dispute concerning the performance or non-performance of any obligations flowing from or as a result of this Contract and prior to the initiation of any litigation, the Parties will voluntarily submit the dispute to the Travis County Dispute Resolution Center for mediation as though it were referred through the operation of the Texas Alternative Dispute Resolution Procedures Act, Title 7, Chapter 154, TEX. CIV. PRAC. & REM. ANN., (Vernon's 1986). No record, statement, or declaration resulting from or in connection with such alternate dispute resolution procedure may be used in evidence in subsequent litigation except to demonstrate that this article has been complied with in good faith by a party. The use of such center shall not be or constitute a waiver of venue.

Article 26. Notices

All notices or other communications required under this Contract may be made either by personal delivery in writing or by certified mail, postage prepaid, return receipt requested. Notice shall be deemed to have been given when delivered or mailed to the parties at their respective addresses as set forth below or when mailed to the last address provided in writing to the other party by the addressee.

Owner: Wayne S. Watts, P.E.
City Engineer
City Of Leander
P.O. Box 319
Leander, TX 78464-0319

Professional: _____

Article 27. Titles and Section Headings

The titles and section headings of this Contract are included for convenience only and shall not be deemed to constitute a part of this Contract.

Article 28. Interpretation and Reliance

While this Contract form was initiated by OWNER, Professional had the opportunity to take exception to and seek clarification of it. Thus, this Contract is the product of negotiations between the Parties. No presumption will apply in favor of any party in the interpretation of this Contract or in resolution of any ambiguity of any provision.

Article 29. Failure to Act

No action or failure to act by either party shall be a waiver of a right or duty afforded under the Contract, nor shall such action or failure to act constitute a breach of this Contract, except as specifically agreed to in writing.

Article 30. Contract Non-Exclusive

The Contract is not exclusive. Professional has the right to perform Work for others during the term of the Contract, and OWNER has the right to hire others to perform the same or similar tasks.

Article 31. Third Party Beneficiaries

There are no third party beneficiaries to this Contract and the provisions of this Contract shall not create any legal or equitable right, remedy or claim enforceable by any person, firm, or organization other than the Parties and their permitted successors and permitted assigns.

Article 32. Mitigation of Damages

In all cases the Party establishing or alleging a breach of contract or a right to be indemnified in accordance with this Contract shall be under a duty to take all necessary measures to mitigate the loss which has occurred, provided that it can do so without unreasonable inconvenience or cost.

Article 33. Severability

This Contract is severable and if any one or more parts of it are found to be invalid, such invalidity shall not affect the remainder of this Contract if it can be given effect without the invalid parts.

Article 34. Integration & Contract Modification

This Contract contains the entire and integrated agreement between Professional and OWNER as to its subject matter and supersedes all prior negotiations, correspondence, understandings, representations and agreements, written or oral, related to it. In case of conflict between the terms and conditions of this Contract and those of any standard sales forms presented by Professional or such forms appearing in or referenced by Professional's bid or proposal, the terms and conditions of this Contract shall prevail. The terms and conditions of this Contract can be modified only by a writing signed by an authorized representative of both Professional and OWNER.

Executed to be effective as of the ____ day of _____, 2014.

City of Leander: _____:

By: _____

Chris Fielder, Mayor

By _____

Name: _____

Title: _____

TASK ORDER FOR PROFESSIONAL SERVICES

TASK ORDER NO. WAL-1

This will constitute authorization by the City of Leander, Texas (Owner), for Walker Partners Engineering, Inc., Austin, Texas (Engineer), to proceed with the following described engineering services.

RAIDER WAY AND E. WOODVIEW DRIVE – DESIGN SERVICES (Crystal Falls Pkwy to TX-183A Toll Road)

A. PROJECT DESCRIPTION

The City of Leander has requested that Walker Partners Engineering, Inc. perform the design for improvements at Raider Way and Eastview Drive. The proposed project will include preliminary design, utility coordination and construction phases for project improvements which will include widening each roadway to a width of 45' of pavement with curb, gutter, storm sewer, street lighting, water quality services, 6' and 8' dual use sidewalks, turn lanes and possible signal modifications at Crystal Falls Parkway

B. SCOPE OF SERVICES

Walker Partners will provide design services as described in the attached Scope of Services.

C. DELIVERABLES

Walker Partners will provide deliverables as described in the attached Scope of Services.

D. BASIS OF COMPENSATION

The total compensation for the Raider Way and E. Woodview Drive project shall be on a full lump sum basis of \$755,360.00 (see Attachment 1 – Fee Schedule). The Engineer will review design schedule and prepare monthly progress reports for review by the City over the length of the contract period. Lump sum invoices for work performed, based on percent complete, will be submitted monthly by the engineer. Final payment shall be due upon completion of the services described.

E. TIME FOR COMPLETION

The Engineer will work expeditiously to complete the services described herein. Design phase services are anticipated to take approximately 4 months.

Walker Partners will begin work as soon as authorized and as services are requested. Design and construction phase services are anticipated to be completed within 16 months after notice to proceed.

APPROVED:

ACCEPTED:

CITY OF LEANDER, TEXAS

WALKER PARTNERS ENGINEERING, INC>

By _____
Kent Cagle
City Manager

By _____
John Lindner, P.E.
Chief Operating Officer

Attest _____

Attest _____

Date _____

Date _____

**SCOPE AND FEE AGREEMENT FOR
RAIDER WAY AND E. WOODVIEW DRIVE - DESIGN SERVICES
(CRYSTAL FALLS PKWY TO TX-183A TOLL ROAD.)**

SERVICES TO BE PROVIDED BY THE ENGINEER

GENERAL PROJECT OVERVIEW

The scope of services for this project shall include consideration of stormwater management, environmental assessment, and the preparation of project plans, specifications and estimates and related professional services for the City to construct improvements to Raider Way (from Crystal Falls Parkway to East Woodview Drive) and East Woodview Drive (from Raider Way to TX-183A Toll frontage road). Proposed project improvements will be based upon the existing alignment and will consist of widening each roadway to a width of 45' of pavement with curb, gutter, storm sewer, street lighting, water quality facilities, 6' and 8' dual use sidewalks, turn lanes and possible signal mast modifications at Crystal Falls Parkway. Other anticipated project items are overhead electric lines and existing utility lines will be placed into a duct bank. Existing water and wastewater lines will be relocated as necessary. Proposed storm line will be installed to capture and direct stormwater to a water quality and treatment area.

SCOPE OF SERVICES

1) SURVEYING SERVICES

- A. Topographic (Design) Survey (Phase 12)**
 - 1. Perform an on-the-ground field survey, approximately 100 foot wide, to obtain the topography (terrain data) and other visible and apparent surface features (manmade or natural), such as ditches, drainage structures, manholes, above-grade utility appurtenances, significant trees (hardwoods greater than 8 inches in diameter), pavements, fences, walks, walls, building structures, etc. For underground utilities, Walker Partners will coordinate with Texas 811. The approximate locations of underground utilities will be shown based upon utility locators' markings.**
 - 2. Establish vertical control along the alignment and place benchmarks based upon North American Vertical Datum of 1988 (NAVD88), unless otherwise specified by client.**
 - 3. Prepare a topographic map, from the topographic survey, depicting the physical features, as described above, and with elevation contours at a 1-foot interval.**
- B. Boundary Verification Survey (Phase 09)**
 - 1. Verify tract boundaries and location of existing easements along the proposed alignment. Please note, Walker Partners recommends a title company be contracted to prepare property reports to identify easements or other rights that may conflict with the proposed right-of-way widening. Currently the proposed widening affects 9 privately held tracts.**
- C. Right-of-Way Parcels (Phase 11)**
 - 1. Prepare 9 metes and bounds descriptions and exhibit drawings for the proposed rights-of-way parcels, this includes placement of monuments, marking boundaries of the right-of-way parcels.**

2) ENGINEERING SERVICES (30% DESIGN, PHASE 30)**A. Preliminary Design**

1. Perform site walks to collect data and inspect field conditions.
2. Establish proposed centerline
3. Review City system maps and "as-built" records
4. Prepare horizontal alignment of Raider Way and East Woodview Drive
5. Prepare profiles of proposed grade surface
6. Prepare removal sheets including locations, type and estimated quantities
7. Develop existing conditions hydrology
8. Evaluate hydrologic and hydraulic impacts to Raider Way and East Woodview Drive.
9. Prepare proposed conditions drainage area map
10. Prepare culvert and storm sewer layout
11. Prepare preliminary detention and water quality facility layout(s)
12. Prepare the Engineer's Opinion of Probable Cost.
13. Meet with Engineer of Record, for the signal masts located in the intersection of Raider Way and Crystal Falls Parkway, to evaluate impacts of longer signal mast on existing pier.
14. Compile standards, as needed, for the proposed construction elements and include in the plan set
15. Perform a quality assurance/ quality control on preliminary plans
16. Provide the City of Leander a set of preliminary plans and cost estimate for review and comment. Incorporate comments from City.
17. Submit the construction drawings to Texas Department Licensing and Registration (TDLR). Application fees shall be paid by the City of Leander

B. Utility Coordination

1. Identify existing utilities
2. Contact Texas 811, one-call location service
3. Send out a notification package to utility companies
4. Receive and assemble utility plans and prepare a utility layout
5. Preparation of SUE locational map/coordinate with SUE sub-consultant
6. Attend meetings with PEC and Telecom companies to coordinate duct bank design and details, (assumed 4 meetings).

C. Project Management

1. Kick-Off Meeting - Discuss development of project criteria, available project information, including existing and proposed utilities and general process discussions. The Engineer's Project Manager as well as other appropriate key personnel will participate in the Kick-Off Meeting. The project design schedule, communication protocols, and other project related processes will also be discussed at this time.
2. Scheduling - The Engineer will develop a project deliverables in accordance with the baseline design schedule (Exhibit B) indicating tasks, subtasks, critical dates, milestone events, deliverables, and review requirements. Progress will be reviewed monthly, and should these reviews indicate a substantial change in progress, the schedule will then be revised subject to the review and approval by the City.
3. Coordination with Williamson County - The Engineer will coordinate project development with Williamson County as deemed necessary by the City due to funding agreements or review of deliverables.
4. Progress Reports, Invoices and Billings - The Engineer will review the design schedule and prepare monthly progress reports for review by the

City over the length of the contract period. Lump sum invoices for work performed, based on percent complete, will be submitted monthly by the Engineer.

3) ENGINEERING SERVICES (60% DESIGN, PHASE 31)

- A. Engineering Design**
 - 1. Final Calculations and Design**
 - 2. 60% Plan Preparation**
 - 3. Updated Cost Estimate**
 - 4. QA/QC Plans**
 - 5. City and Utility Review and Plan Updates**
 - 6. Four (4) Coordination Meetings**

4) ENGINEERING SERVICES (90% DESIGN, PHASE 32)

- A. Engineering Design**
 - 1. 90% Plan Preparation**
 - 2. Prepare Project Specifications**
 - 3. Updated Cost Estimate**
 - 4. QA/QC Plans**
 - 5. City and Utility Review and Plan Updates**
 - 6. Four (4) Coordination Meetings**
- B. Storm Water Pollution Prevention Plan (SW3P)**
 - 1. Both the City and the Engineer understand that temporary storm water management devices will be necessary to minimize the sediment runoff during construction of this Project. The Engineer will develop a temporary erosion and sediment control plan for the length of the Project that complements the design and construction phasing of the Project, and will include notes that indicate that the construction contractor is responsible for detailed sequencing of the devices.**
 - 2. Permanent erosion control measures will be included on the above referenced erosion and sediment control plans as needed to achieve a stable site and attain full erosion protection of the ground surfaces. The Engineer will utilize appropriate regional seeding mixes and follow vegetation establishment techniques for this requirement.**
 - 3. Prepare SW3P documents in accordance with TCEQ Texas Pollution Discharge Elimination System ("TPDES") requirements.**

5) PERMITTING (PHASE 33)

- A. Central Texas Regional Mobility Authority (CTRMA)**
 - 1. Coordinate with CTRMA to obtain a permit to install utilities across TX-183A and for road construction in ROW of TX-183A**
 - 2. Four (4) Coordination Meetings**

6) ENGINEERING SERVICES (100% DESIGN, PHASE 40)

- A. Engineering Design**
 - 1. Prepare 100% construction documents for bid packages**
 - 2. Finalize and prepare project specifications for bid packages**

3. Provide a final cost estimate
4. QA/QC plans
5. City and utility review and plan updates
6. Two (2) coordination meetings

7) PREPARATION OF SPECIFICATIONS AND ESTIMATE FOR A BID PACKAGE (PHASE 50)

A. Bid Package

1. Prepare and assemble plans and specifications (Project Manual)
2. Prepare and submit newspaper advertisement to the City for bids
3. Distribute bidding documents to bidders and maintain a bidder's list
4. Hold a pre-bid conference
5. Issue addenda, if needed
6. Receive and evaluate bid packages
7. Tabulate and recommend award of bid

8) CONSTRUCTION ADMINISTRATION (PHASE 60)

A. Construction Administration

1. Hold a pre-construction meeting
2. Make periodic visits to the construction Site
3. Attend routine status meetings
 - a) Assumed twenty (20) meetings
4. Review submittals
5. Prepare any change orders
5. Respond to requests for information (RFI)
6. Project close out and Engineer's letter of concurrence
7. Gather as-built markups from contractor and prepare final as-built drawings

9) ADDITIONAL SERVICES - INCLUDED

The following services will be considered additional services and will be billed at an at cost basis as the projected requires and are given as allowances based on estimates made at this time based on the assumptions given below. Once the full extent of the work required for this scope of services have been determined, the ENGINEER will provided revised scope of services and fees to the CITY.

A. Subsurface Utility Exploration (SUE) – (See attached detailed scope from the Rios Group)

1. There are several utilities located along the project that may require additional SUE survey for proper verification and location. These utilities include city water and wastewater lines, as well as, several telecom crossings. The services will be described in the attached proposal from The Rios Group

B Environmental Consulting Services – (See attached detailed scope from SWCA)

1. Natural Resources - Identify and characterize vegetation types and provide vegetation and habitat descriptions. Prepare a Contributing Zone Plan for TCEQ.
2. Cultural Resources (Antiquities) - Conduct an inventory to determine the presence/absence of archeological/historical resources - the State of Texas requires compliance with Chapter 191 of the Texas Antiquities Code. Conduct a preliminary records search of the Texas Historical Commission's (THC) Archeological Sites.

3. **Land Use – Perform an Analysis of land uses in and adjacent to the project site.**
 4. **Waters of the U.S. – Perform a Desktop review and field assessment to check for compliance with United States Army Corps of Engineers (USACE) Section 404 permitting requirements. It is assumed this project will fall under a nationwide permit**
 5. **Perform a Phase 1 Environmental Assessment for Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980.**
- C. Geotechnical Subsurface Investigations Services – (See attached detailed scope from TSIT)**
1. **Borings - Drill Five (5) borings to a maximum depth of fifteen feet, or five feet into rock, whichever occurs first, in accordance with ASCE guidelines.**
 2. **Laboratory testing – Testing will be performed on representative samples to establish the pertinent engineering properties of the various strata. The anticipated tests are moisture content, dry density, unconfined compressive strength and Atterberg Limits and possibly swell testing.**
 3. **Testing Type - Perform Standard Penetration tests on sandy or cohesive soils. Unweathered bedrock will be evaluated using the Texas Highway Cone Penetrometer.**
 4. **Engineering Report - The results of all field and laboratory studies will be compiled into an engineering report with recommendations for pavement subgrade preparation and improvements and for pavement sections recommended for the project.**
 - a) **Logs of borings, laboratory test results, and groundwater observations.**
 - b) **Recommended subgrade preparation and improvement options as well as recommended pavement sections including construction materials specification recommendations for use in the project**
- D. ROW Documents**
1. **There are several properties/projects in the area that currently have preliminary plans and plats in the city for review and approval. Once the existing and proposed right of way has been determined and approved by the City, the Engineer shall prepare acquisition documents (metes and bounds and field notes) for the City to use in Acquisition. For this scope, it has been determined there will be nine (9) documents needed. If additional metes and bounds descriptions are needed the Engineer will bill the city based on the following costs:**
 - a) **\$4,300/Parcel Description**
 - b) **\$2,200/Easement Description**

10) ADDITIONAL SERVICES - EXCLUDED

The following professional services are not included in this scope of services, but can be provided by Walker Partners, LLC or its sub-consultants under a separate Task Order if the service is deemed necessary. Each change (addition or reduction in scope) in the services to be provided by the Engineer must be authorized by the City prior to commencing with the additional work.

- A. Additional Services**
1. **ROW acquisition services**

2. **Property reports regarding Title of affected tracts/lots**
3. **Public information or outreach effort**
4. **FEMA CLOMR/LOMR application preparation and processing**
5. **Traffic analysis or modeling**
6. **Signal engineering or design**
7. **Illumination design**
8. **Signing and pavement markings**
9. **Structural engineering**
10. **Construction engineering and construction inspection services**

Task Order WAL-1 executed to be effective as of the _____ day of _____, 2016.

City of Leander:

Walker Partners Engineering, Inc.:

By: _____

By: _____

Kent Cagle, City Manager

Name: John Lindner, P.E.

Title: Chief Operating Officer

**Scope of Services Attachment #1
 Fee Schedule**

Road Improvements for Raider Way and East Woodview Drive		
Phase	Survey Services	Total Fee
9	Boundary Verification Survey	\$15,500.00
11	Right-of-Way Parcels	\$23,000.00
12	Topographic (Design) Survey	\$16,000.00
Survey Sub-Total =		\$54,500.00
Phase	Engineering Services	Total Fee
30	30% Preliminary Design Phase	\$109,260.00
31	60% Design	\$153,430.00
32	90% Design	\$176,480.00
33	Permitting (CTRMA)	\$12,800.00
40	100 %Final Design Phase	\$97,740.00
50	Bidding Phase	\$17,700.00
60	Construction Administration	\$73,370.00
Engineering Sub-Total =		\$640,780.00
SURVEY & ENGINEERING TOTAL FEE =		\$695,280.00
Phase	Subconsultant Services	Total Fee
n/a	Geotechnical Services	\$12,000.00
n/a	Subsurface Utility Engineering	\$23,200.00
n/a	Environmental Engineering	\$24,880.00
Subconsultant Sub-Total =		\$60,080.00
TOTAL PROJECT FEE =		\$755,360.00

Notes: 1.) All Survey Services, with the exception of the Topographic Survey, are subject to tax.

**EXHIBIT C
RAIDER WAY ROAD**

Work Schedule:

City Issue Notice to Proceed	
Task 1 – Kickoff Meeting, Data Collection.....	2 weeks
Task 2 – Survey	6 weeks
Task 3 – Concept Design	4 weeks
Task 4 – Preliminary Design 30% Plans.....	12 weeks
City Review.....	1 week
Task 5 – Final Design 75% Plans, including Easement Documents	8 weeks
City Review.....	1 week
Task 6 – Final Design 100% Plans.....	10 weeks
<u>Design Phase Subtotal</u>	44 weeks
Task 7 – Bidding Phase.....	4 weeks
Task 8 – Contractor Selection & Award.....	2 weeks
City Contract Execution.....	4 weeks
Task 9 – Construction Phase.....	40 weeks
Task 10 – Final Inspection & Acceptance.....	2 weeks
<u>Bidding & Construction Phase Subtotal</u>	52 weeks
 Project Duration	 96 weeks



Executive Summary

July 7, 2016

Council Agenda Subject: Consideration of Amendment to Task Order HWL-1 with H. W. Lochner, Inc., for Professional Services for Bagdad Road North Improvements.

Background: Task Order HWL-1 provides for professional services for the design, advertising, bidding, and construction services for Bagdad Road North Improvements extending from 500 feet north of Old 2243 West to CR-280. The improvements will consist of widening the current two lane section to a five lane section with curb, gutter, and sidewalks. Compensation for the scope of work in Task Order HWL-1 is a combination of a lump sum amount of \$161,527.00 and time and materials not to exceed \$100,055.00, for a combined, initial contract total of \$261,582.00.

This proposed amendment covers changes in the scope of work as summarized the attached Bagdad Road Supplemental Fee Letter, which will be formatted into Amendment to Task Order HWL-1. The compensation for this scope of work is the lump sum amount of \$110,431.00.

Origination: Wayne S. Watts, P.E., CFM, City Engineer

Financial Consideration: \$110,431.00 from General Purpose CIP Fund, GL#40-04-8028

-

Recommendation: Staff requests authorization of the City Manager to negotiate and execute Amendment to Task Order HWL-1.

Attachments: Bagdad Road Supplemental Fee Letter (basis of Amendment to Task Order HWL-1)

Prepared by: Wayne S. Watts, P.E., CFM, City Engineer

LOCHNER

H.W. Lochner, Inc.
9801 Amberglen Boulevard, Bldg C
Suite 119
Austin, TX 78729

July 01, 2016

T 737.704.3080
F 737.704.3079

www.hwlochner.com

Mr. Wayne Watts, P.E.
City Engineer
City of Leander
200 West Willis
Leander, Texas 78646

Re: Bagdad Road Supplemental Fee

Dear Mr. Watts:

Please accept this letter fee proposal with Attachment B to this letter. The services outlined in this agreement are for the redesign and development of construction plans for the supplemental work to the Bagdad Road project from ~500' North of Old FM2243 to CR 280. Services included removal of a detention pond and redesign of environmental inline detention and associated changes to the TCEQ Contributing Zone Plan, the addition of signal design plans for two signals, a conceptual cost estimate of enclosing the ditch with a box culvert, redesign to 3-lane section north of San Gabriel Parkway and associated plan revisions which were not in the original scope or fee. The final task breakout is as below:

Task 9 - Miscellaneous Design Supplemental services. ~ Task shall be a lump sum fee of \$110,431.

- Signal design plans for San Gabriel Parkway and Bagdad Road
- Signal design plans for Collaborative Way and Bagdad Road
- Removal of detention pond and design of 3 new in-line water quality systems
- Adjustment of the Contributing Zone Plan due to the change in water quality system.
- Stormsewer adjustment associated with the change in water quality system
- Preliminary design and cost estimate of enclosing the large ditch between Brushy Creek and San Gabriel Parkway.
- Separate bid package for sidewalk.
- Design 3-lane section from "s" curve through Collaborative Way (including tcp, drainage, typicals, XS, signing, striping quantities, ROW, signal, sidewalks, etc.)

If you have any questions or require additional information, please contact our office.

Sincerely,
Lochner



Adam K. Fisher, PE
Project Manager

Enclosure

FEE & LABOR SCHEDULE
City of Leander, Texas
Bagdad Road

Section 9 - SUPPLEMENTAL SERVICES								
	Principal	PM	Proj. Eng.	EIT	Tech	Admin.	Total Hrs.	Total Cost
Signal design at San Gabriel Parkway and Bagdad Road		4	12	30	40		86	\$ 10,319
Signal design at Collaberative Way and Bagdad Road		8	20	40	40		108	\$ 13,413
Removal of detention pond and design of 3 new inline water quality systems		8	20	20	20		68	\$ 9,094
Adjustment of the Contributing Zone Plan		8	16	20	12		56	\$ 7,562
Stormsewer adjustment for water quality		2	8	20	12		42	\$ 5,058
Preliminary design and cost estimate of enclosing the ditch		8	16	16	16		56	\$ 7,615
Break out Sidewalk as a separate project and bidding package		16	24	40	40		120	\$ 15,727
Design 3 lane section (modify limits, tcp, drainage, typicals, XS, signing, striping, quantities, ROW, signal, sidewalk, etc.)		48	72	88	100		308	\$ 41,644
Subtotal Estimated Labor (Hrs.)	0	102	188	274	280	0	844	
Hourly Salary Cost (Including O/H and Profit)	\$310.80	\$212.38	\$153.78	\$101.43	\$114.52	\$81.80		
SUBTOTAL SALARY COSTS	\$ -	\$ 21,663	\$ 28,911	\$ 27,792	\$ 32,066	\$ -		\$ 110,431
SUBTOTAL PRELIMINARY ENGINEERING PHASE SERVICES								\$ 110,431



Executive Summary

July 7, 2016

Council Agenda Subject: Consider a variance to allow for construction activities outside of the normal hours of 7 a.m. to 9 p.m. for Suddenlink Communications on the Old 2243 Project.

Background:

Suddenlink Communications is requesting a variance to work at night on the Old 2243 Project to minimize disruption to the 911 System. The work is to occur from 12:00 a.m. (midnight) to 7:00 a.m. on Thursday, July 14th.

Suddenlink Communications has agreed to make every effort to communicate with properties neighboring the construction site and take all reasonable precautions to reduce late night disturbances. The City will also post a notice on its website regarding the dates and times of the nighttime operation.

Origination: Terri A. Crauford, P.E., Assistant City Engineer

Financial Consideration: Not Applicable

Recommendation: Staff recommends a variance to the construction noise ordinance to allow Suddenlink Communications to work at night in order to minimize disruption to the 911 System.

Attachments: Email Request and Location Map

Prepared by: Terri A. Crauford, P.E., Assistant City Engineer

Debbie Haile

From: Bow, Jeff <Jeff.Bow@Suddenlink.com>
Sent: Wednesday, June 29, 2016 11:16 AM
To: Terri Crauford; Flores, Eric
Cc: Wayne Watts; Lorraine Eldred
Subject: RE: Suddenlink Night Work

All,

Starting at 12:00 Am July 14th until 7:00 am, Suddenlink will require night maintenance for the Cut over of the FM 2243/Hero way project.

Due to the Customer Traffic and 911 Service of the telecom and modem services this work will be required to be performed during the night time hours to minimize customer impact.

We have submitted a CRQ Ticket (Internal Notification System) with the Suddenlink NOC (Network Operations Center) to notify all affected commercial customer and carrier customers of the outage. Due to the FCC regulations for TelCom we are required to maintain 0.999 uptime for phone commercial and residential customers. Suddenlink will be splicing multiple locations simultaneously to reduce the outage duration.

Thank You
Jeff

JEFF BOW

SouthWest Region
Construction Coordinator II

111 N. College St.
Georgetown, Texas 78626
O (512) 931-2966
C (512) 689-0909

jeffrey.bow@suddenlink.com

From: Terri Crauford [<mailto:tcrauford@leandertx.gov>]
Sent: Wednesday, June 29, 2016 11:04 AM
To: Bow, Jeff
Cc: Wayne Watts; Lorraine Eldred
Subject: Re: Suddenlink Night Work

Jeff,
Will you please provide a short statement as to why the night work is necessary? Timing of outage with 911?

Sent from my iPhone

On Jun 29, 2016, at 10:25 AM, Bow, Jeff <Jeff.Bow@Suddenlink.com> wrote:



Terri ..

Suddenlink will need a night work conformation for the morning of July 14th 12am to July 14th 7am to complete the cut over of FM 2243 West.

Thank You ..

Jeff

JEFF BOW

SouthWest Region

Construction Coordinator II

111 N. College St.

Georgetown, Texas 78626

O (512) 931-2966

C (512) 689-0909

jeffrey.bow@suddenlink.com

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NODE
G231A
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FM 2243

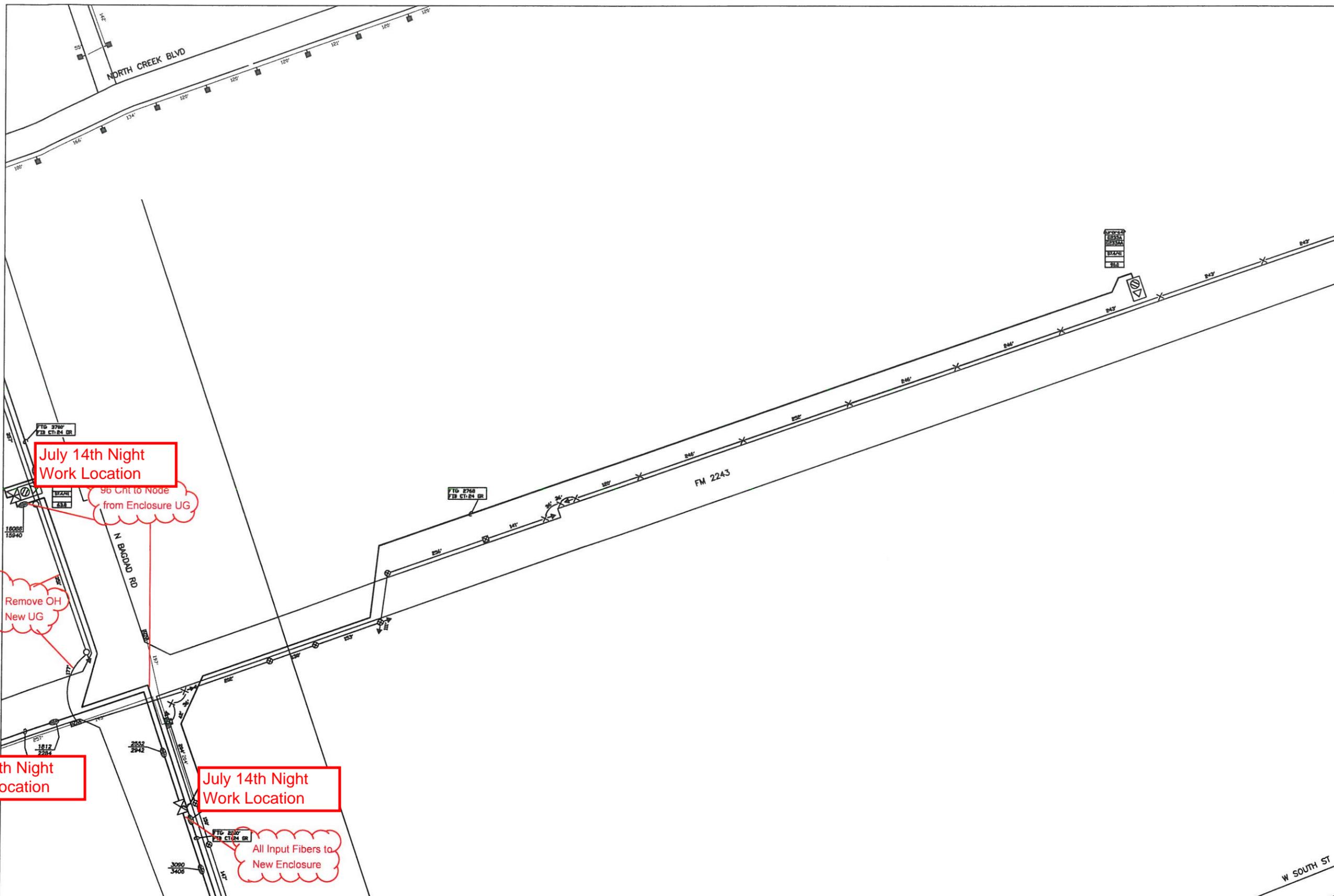
SUNTBROOK

Add Power Feed

July 14th Night
Work Location

Complete Vault Locations and Footage to Lakeline Blvd.
Per RTB submittal.

Add new enclosure- 96 Cnt
Terminates this location. Tie in to
existing fiber for Hawks landing Add
UGV.



July 14th Night Work Location

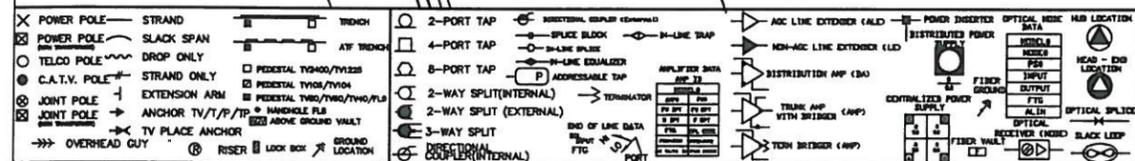
96 Cnt to Node from Enclosure UG

Remove OH New UG

July 14th Night Work Location

July 14th Night Work Location

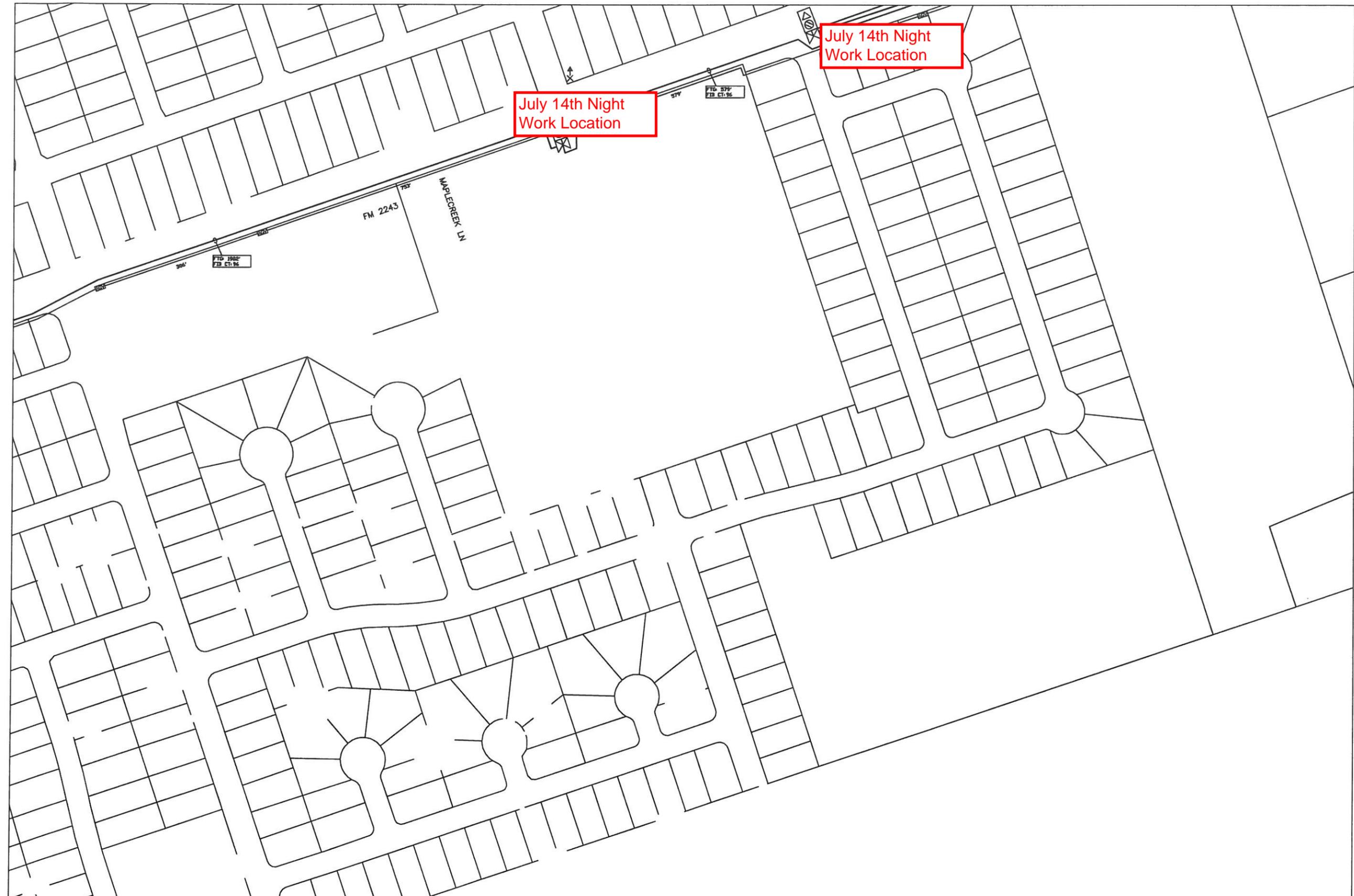
All Input Fibers to New Enclosure



CABLE LINETYPES		PLANT STATISTICS	
TYPE	DESCRIPTION	AMOUNT	UNIT
1.000	OPTIC FIBER	0	0
1.100	OPTIC FIBER	0	0
1.200	OPTIC FIBER	0	0
1.300	OPTIC FIBER	0	0
1.400	OPTIC FIBER	0	0
1.500	OPTIC FIBER	0	0
1.600	OPTIC FIBER	0	0
1.700	OPTIC FIBER	0	0
1.800	OPTIC FIBER	0	0
1.900	OPTIC FIBER	0	0
2.000	OPTIC FIBER	0	0
2.100	OPTIC FIBER	0	0
2.200	OPTIC FIBER	0	0
2.300	OPTIC FIBER	0	0
2.400	OPTIC FIBER	0	0
2.500	OPTIC FIBER	0	0
2.600	OPTIC FIBER	0	0
2.700	OPTIC FIBER	0	0
2.800	OPTIC FIBER	0	0
2.900	OPTIC FIBER	0	0
3.000	OPTIC FIBER	0	0
3.100	OPTIC FIBER	0	0
3.200	OPTIC FIBER	0	0
3.300	OPTIC FIBER	0	0
3.400	OPTIC FIBER	0	0
3.500	OPTIC FIBER	0	0
3.600	OPTIC FIBER	0	0
3.700	OPTIC FIBER	0	0
3.800	OPTIC FIBER	0	0
3.900	OPTIC FIBER	0	0
4.000	OPTIC FIBER	0	0
4.100	OPTIC FIBER	0	0
4.200	OPTIC FIBER	0	0
4.300	OPTIC FIBER	0	0
4.400	OPTIC FIBER	0	0
4.500	OPTIC FIBER	0	0
4.600	OPTIC FIBER	0	0
4.700	OPTIC FIBER	0	0
4.800	OPTIC FIBER	0	0
4.900	OPTIC FIBER	0	0
5.000	OPTIC FIBER	0	0

PROJECT NO.	
MAP #:	W234004
REVISION DATE:	02/29/16
RTB #:	2567482

SYSTEM: GEORGETOWN, TX
 SHEET # OF #
 02 OF 04



<p>POWER POLE SLACK SPAN DROP ONLY C.A.T.V. POLE JOINT POLE ANCHOR TV/T/P/TP TV PLACE ANCHOR OVERHEAD GUY</p>	<p>STRAND STRAND ONLY EXTENSION ARM ANCHOR TV/T/P/TP TV PLACE ANCHOR</p>	<p>TRENCH ATP TRENCH PEDestal TV2400/TV1200 PEDestal TV2400/TV1200/PL18 HANDHOLE FIBER ABOVE GROUND VAULT LOCK BOX GROUND LOCATION</p>	<p>2-PORT TAP 4-PORT TAP 8-PORT TAP 2-WAY SPLIT (INTERNAL) 2-WAY SPLIT (EXTERNAL) 3-WAY SPLIT DIRECTIONAL COUPLER (INTERNAL)</p>	<p>DIRECTIONAL EQUALIZER (EXTERNAL) SPLICE BLOCK IN-LINE SPLICE IN-LINE EQUALIZER ADDRESSABLE TAP TERMINATOR END OF LINE DATA FTO PORT</p>	<p>ACC LINE EXTENDER (ALE) NON-ACC LINE EXTENDER (LE) DISTRIBUTION AMP (DA) TRUNK AMP WITH BRINGER (AMP) TRUNK BRINGER (AMP)</p>	<p>POWER INSERTER RE-DISTRIBUTED POWER FIBER GROUND CONTROLLED POWER SUPPLY FIBER RECEPTOR (MOUSE) FIBER VAULT E/O</p>	<p>OPTICAL NODE HEAD - END LOCATION OPTICAL SPLIT BLACK LEAD</p>	<p>CABLE LINETYPES FIBER OPTIC FIBER GUY FIBER INPUT FIBER OUTPUT FIBER OPTICAL SPLIT RECEPTOR (MOUSE) BLACK LEAD</p>	<table border="1"> <thead> <tr> <th colspan="5">PLANT STATISTICS</th> </tr> <tr> <th></th> <th>INSTR</th> <th>CONDUIT</th> <th>WVC</th> <th>LOTS</th> </tr> </thead> <tbody> <tr> <td>AERIAL</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> </tr> <tr> <td>UNDERGROUND</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> </tr> <tr> <td>TOTALS</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> </tr> <tr> <td>COMPLEX</td> <td>BLDG</td> <td>UNITS</td> <td>FTL</td> <td></td> </tr> <tr> <td>AERIAL MDLS</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> </tr> <tr> <td>UNDERGROUND MDLS</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> </tr> <tr> <td>TOTALS</td> <td>0</td> <td>0</td> <td>0</td> <td>0</td> </tr> </tbody> </table>	PLANT STATISTICS						INSTR	CONDUIT	WVC	LOTS	AERIAL	0	0	0	0	UNDERGROUND	0	0	0	0	TOTALS	0	0	0	0	COMPLEX	BLDG	UNITS	FTL		AERIAL MDLS	0	0	0	0	UNDERGROUND MDLS	0	0	0	0	TOTALS	0	0	0	0	<p>PROJECT NO.</p>	<p>SYSTEM: GEORGETOWN, TX MAP #: GE4120-02 SHEET # OF # 04 OF 004</p>	<p>PROJECT NAME: HERO WAY PROJECT NUMBER 2567482</p>	<p>RTB #: 2567482 REVISION DATE: 02/29/16</p>	<p>04</p>
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Executive Summary

July 7, 2016

Agenda Subject: Discussion and possible action to approve an amendment to the Sales Tax Rebate Agreement for the Gateway Shopping Center between the City of Leander and Hayden Asset I, LLC, a Delaware limited liability company.

Background: This amendment modifies the agreement to end the sales tax rebate at the end of 2016 as opposed to the term in the current agreement which ends the end of 2018.

This amendment is conditioned upon the City agreeing that the project approvals allow for the construction of a Goodwill store in the shopping center.

Origination: Applicant: Chase Belew on behalf of Hayden Asset I, LLC, a Delaware limited liability company

Financial Consideration: The reduced term of the agreement will reduce the total sales tax rebates by approximately \$1,135,000.

Recommendation: Staff recommends approval of the amendment.

Attachments:

1. Development Agreement amendment
2. Location Exhibit

Prepared By: Tom Yantis, AICP
Assistant City Manager

06/29//2016

**AMENDMENT TO THE SALES TAX REBATE AGREEMENT
FOR THE GATEWAY SHOPPING CENTER**

This Amendment to the Sales Tax Rebate Agreement for the Gateway Shopping Center (the "Amendment") is made, entered into and effective as of _____ (the "Effective Date") by the City of Leander, Texas (the "City") and Hayden Assets I, LLC, a New York limited liability company (the "Developer"). The City and the Developer are herein referred to together as the "Parties".

Recitals:

WHEREAS, the Parties entered that certain Sales Tax Rebate Agreement for the Gateway Shopping Center dated effective as of the 6th day of April, 2007 (the "Rebate Agreement") , as well as that certain Development Agreement for the Gateway Shopping Center dated effective as of the 6th day of April, 2007 (the "Development Agreement");

WHEREAS, the Rebate Agreement was assigned to SY Loan Y, LP., a Delaware limited liability company, and was subsequently assigned to the Developer; and

WHEREAS, the Parties desire to amend the Rebate Agreement to provide for the Rebate Agreement to expire earlier than the original term;

NOW, THEREFORE, for and in consideration of the mutual agreements, covenants, and conditions contained herein, and other good and valuable consideration, the parties hereto agree as follows:

ARTICLE I. RECITALS; DEFINITIONS

Section 1. Recitals. The foregoing recitals are incorporated herein and made a part of this Amendment for all purposes.

Section 2. Definitions. Words and phrases used in this Amendment shall, if defined in the Rebate Agreement and not specifically modified by this Amendment, shall have the definition and meaning as provided in the Rebate Agreement.

Section 3. Amendments.

(a) Section 1(i) of the Rebate Agreement is hereby amended in its entirety to read as follows:

(i) Reserved.

(b) Section 1(k) of the Rebate Agreement is hereby amended in its entirety to read as follows:

(k) “Quarterly Incentive Payment” and “Quarterly Incentive Payments” mean the quarterly incentive payments for the four calendar quarters in each of the full Calendar Years that follow the Issuance Date through and including the last calendar quarter of Calendar Year 2016, as described in Section 3(a) below.

(c) Section 2 of the Rebate Agreement is hereby amended in its entirety to read as follows:

Section 2. Term. The term of this Rebate Agreement begins on the Effective Date and expires on the date of the City payment to Developer of the sales tax rebate amount due and payable for the last calendar quarter for Calendar Year 2016 (the “Term”). The change in the end of term from the original Rebate Agreement is contingent on the City signing a letter in the form attached hereto as Exhibit “A” stating that the PUD zoning applicable to the Property allows a Goodwill store to be built in the Gateway Shopping Center.

(d) Section 3(a)(i) of the Rebate Agreement is hereby amended in its entirety to read as follows:

(i) The Sales Tax received by the City for the first calendar quarter of the first Calendar Year following the Issuance Date and the Sales Tax thereafter received by the City for each calendar year up to and including the last calendar quarter of Calendar Year 2016 will be deposited into a special account of the City. The amounts deposited into the separate account will be paid to the Developer on or before the 30th day of the calendar month that follows the month in which the deposit is made. The Sales Tax received by the City for the calendar quarters through and including the last calendar quarter of Calendar Year 2016 following the Issuance Date will be deposited and paid out to the Developer in arrears. Such rebates will terminate on the first to occur of the Developer having received a rebate for each calendar quarter beginning with the first calendar quarter of the first Calendar Year following the Issuance Date through and including the last calendar quarter of Calendar Year 2016 or the Developer having received Sales Tax rebates equal (in the aggregate) to the Rebate Amount. The City will rebate to the Developer fifty percent (50%) of the City’s portion of the sales and use taxes that are collected (on the sales of taxable items by the Retail Occupants for sales occurring during the Calendar Years that follow the Issuance Date as provided in this Rebate Agreement) and remitted to the Comptroller of the State of Texas and paid to the City.

(e) Section 3(c) of the Rebate Agreement is hereby amended in its entirety to read as follows:

(c) Notwithstanding any other term or provision of this Rebate Agreement to the contrary, in no event shall the City rebate sales taxes to the Developer: (i) in a total amount that exceeds the Rebate Amount; or (ii) for sales taxes received by the City for a Calendar Year after Calendar Year 2016. The rebate of sales taxes shall

terminate on the earlier to occur of: (i) the payment to the City to the Developer of sales tax rebates in the aggregate to the Rebate Amount; or (ii) the payment to the Developer of the quarterly payments provided in Subsection 3(a) above.

(f) Section 8 of the Rebate Agreement is hereby amended in its entirety to read as follows:

Section 8. Representations, Covenants and Warranties by the City. The City represents and warrants that this Rebate Agreement is within the scope of its authority, and that it is duly authorized and empowered to enter into this Rebate Agreement.

(g) The first paragraph of Section 15 is hereby amended in its entirety to read as follows, and the second paragraph of Section 15 is not amended by this Amendment:

Section 15. Applicable Law. This Rebate Agreement is made and all obligations arising hereunder shall be construed and interpreted under the laws of the State of Texas, and venue for any dispute arising herefrom shall lie in Williamson County, Texas. It is the parties' intent that in the event a Quarterly Incentive Payment to be made to Developer as described herein has been mistakenly identified and/or designated by the parties hereto and the Developer is not in default under the Development Agreement or this Rebate Agreement, that the trier-of-fact shall broadly construe the such Payment so as to make the Payment to Developer valid under any law, rule, ordinance, regulations, or code then in effect; and to so construe the nature of the Payment, under law or in equity, so as to avoid a forfeiture by Developer of such Payment and/or to avoid unjustly enriching the City as a result of such forfeiture, including, but not limited to, designating the Payment as a rebate of sales tax, an economic development incentive, an annual grant, an economic grant, or as otherwise allowed by law, or, if Developer has not defaulted, to order restitution from the City to Developer payable from one-half the City Sales Taxes that are collected and paid to the City, from the Retail Occupants located in the Shopping Center for each calendar quarter beginning with the first calendar quarter of the first Calendar Year following the Issuance Date through and including the last calendar quarter of Calendar Year 2016; provided that in no event shall any such restitution amount ever exceed the lower of such one-half of such sales taxes or the actual cost of Developer in designing and constructing the Drainage Improvements. To the extent allowed by law, the parties agree to the reformation of this Rebate Agreement to the extent necessary in order to validate the payment to Developer under the terms and conditions hereunder or under any terms and conditions allowed by law, and the City waives all defenses to payment to Developer, except the defense of Developer's non-compliance and/or default under this Rebate Agreement.

Section 4. General Provisions.

(a) This Amendment, together with the Agreement, set forth the entire understanding of the parties and supersedes all prior agreements and understandings, whether written or oral, with Gateway Sales Tax Rebate Agreement Amendment – Draft 7/1/16

respect to the subject matter hereof.

- (b) The terms and provisions hereof shall be binding upon the Developer and its successors and assigns.
- (c) The Parties agree that, except as modified hereby, the Rebate Agreement remains valid, binding, and in full force and effect. If there is any conflict or inconsistency between this Amendment and the Rebate Agreement, this Amendment will control and modify the Rebate Agreement.
- (d) This Amendment may be executed in any number of counterparts, including, without limitation, facsimile counterparts, with the same effect as if the parties had signed the same document, and all counterparts will constitute one and the same agreement.

Executed as of ___ day of ___, 2016 and Effective upon execution by all Parties.

City of Leander, Texas

Christopher Fielder, Mayor

Attest:

City Secretary

[Additional Signature Pages Follow]

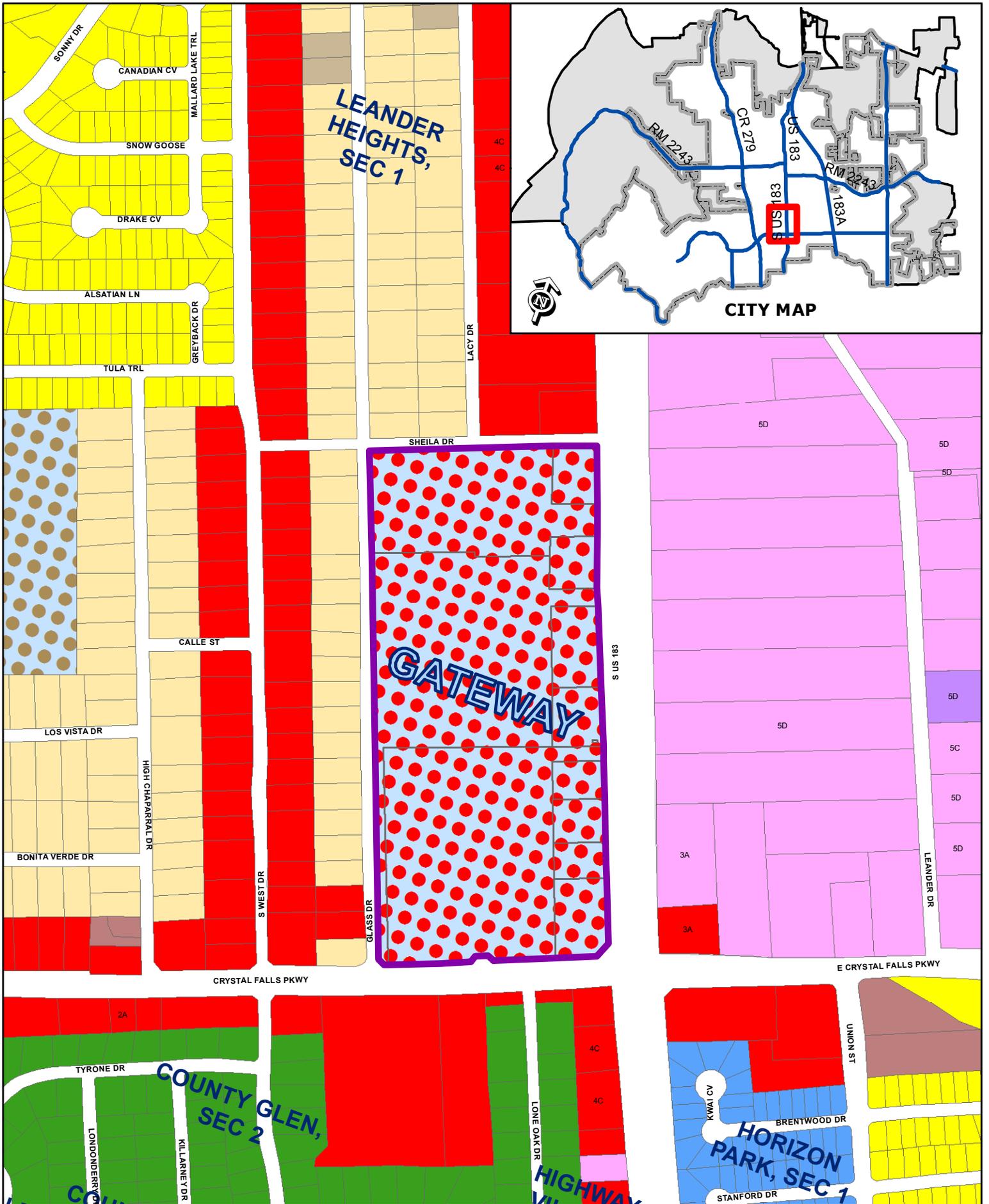
Hayden Asset I, LLC, a New York limited liability company

By: _____

Name: _____

Title: _____

Exhibit A



16-DA-004
Development Agreement

Attachment #2
 Location Exhibit
 Gateway

-  Subject Property
-  City Limits



0 200
 Feet



Executive Summary

July 7, 2016

Subject: Discussion and possible action to accept a Community Development Block Grant for the construction of a sidewalk on the east side of Bagdad Road

Background: Williamson County has awarded an \$180,000 Community Development Block Grant (CBDG) to the City to construct a 6' wide sidewalk on the east side of Bagdad Road from Los Vista to Sonny Drive. The total estimated cost of the project is \$225,300 and the City's share will be \$45,300. The City's share will pay for construction design and management (\$34,400) and the rest will be spent on construction.

Financial Consideration: \$45,300 from the General Fund

Recommendation: Staff respectfully recommends Council approval to accept the \$180,000 Community Development Block Grant. Staff further recommends authorization for the City Manager to execute all grant documents.

Attachments:

1. CBDG Grant Agreement
2. Information on HUD's new Affirmatively Furthering Fair Housing rule

Prepared by: Tom Yantis, Assistant City Manager

<https://www.federalregister.gov/articles/2015/07/16/2015-17032/affirmatively-furthering-fair-housing#h-23>

AFFIRMATIVELY FURTHERING FAIR HOUSING

III. Overview of Final Rule—Key Changes Made at Final Rule Stage

In the proposed rule, HUD solicited public comment on the new AFH process and included 19 issues for which HUD specifically solicited comment. In Section IV of this preamble, HUD provides a summary of the significant comments raised by the public comments and provides HUD's response to these issues. HUD received more than 1,000 public comments on the July 19, 2013, proposed rule. HUD appreciates all the questions raised, and suggestions and recommendations made by the public commenters. After review and consideration of the public comments and upon further consideration of issues by HUD, the following highlights key clarifications and changes made by HUD in this final rule.

The final rule:

Clarifies that HUD supports a balanced approach to affirmatively furthering fair housing by revising the “Purpose” section of the rule and the definition of “affirmatively furthering fair housing.” Also, HUD has created a new provision listing goals and priorities a program participant may take to affirmatively further fair housing, which may include, but are not limited to, place-based solutions and options to increase mobility for protected classes. (See §§ 5.150, 5.152, and 5.154.)

Replaces the term “proactive steps” in the definition of “affirmatively furthering fair housing” with the term “meaningful actions” and defines “meaningful actions.” (See § 5.152.)

Revises the definition of “Assessment Tool” to advise that the tool is not solely a single form or template, but refers to any form or template issued by HUD as an Assessment Tool for the AFH and includes instructions. The definition makes clear that HUD may issue different Assessment Tools for different types of program participants.

Clarifies, through the addition of a new § 5.151, that implementation of the new AFH process commences for a program participant when the Assessment Tool designated for use by the program participant has been approved by OMB, and the availability for use of such Assessment Tool is published in the Federal Register.

Adds a definition of “data” to collectively refer to “HUD-provided data” and “local data,” both of which terms are also defined. (See § 5.152.)

Replaces the term “determinant” with a more plain language term—“fair housing contributing factor” or simply “contributing factor.” (See § 5.152.)

Adds a definition of “disability.” (See § 5.152.)

Clarifies when disproportionate housing needs exist by revising the definition of “disproportionate housing needs.” (See § 5.152.)

Revises the definitions of “fair housing choice” and “fair housing issue” by removing outdated terminology (i.e., “handicap”) and making certain additional clarifying changes. (See § 5.152.)

Adds a definition of “geographic area” which refers to the area of analysis of a program participant that may be a jurisdiction, region, state, Core-Based Statistical Area (CBSA), or another applicable area, depending on the area served by the program participant. (See § 5.152.)

Adds a definition of “housing programs serving specified populations” to clarify that participation in HUD and Federal housing programs serving specified populations does not present a fair housing issue of segregation, provided that such programs comply with the program regulations and applicable Federal civil rights statutes and regulations. (See § 5.152.)

Revises the definition of “integration” to provide greater clarity as to the meaning of this term. (See § 5.152.)

Adds a definition of “local knowledge” based on and consistent with the description of such term in the Assessment Tool. (See § 5.152.)

Revises the definition of “segregation” to provide greater clarity. (See § 5.152.)

Adds a definition of “qualified PHA.” (See § 5.152.)

Revises and clarifies how the analysis of data and the identification of fair housing priorities and goals should be undertaken, including emphasizing that the program participant is responsible for establishing appropriate priorities and goals. (See § 5.154(d).)

Clarifies that although regionally collaborating program participants need not be contiguous and may cross state boundaries, regionally collaborating program participants should be located within the same CBSA, as defined by OMB at the time of submission of the regional AFH, but HUD allows for exceptions. (See § 5.156.)

Emphasizes that “acceptance” of an AFH means only that, for purposes of administering HUD program funding, HUD has determined that the program participant has provided an AFH that meets the required elements. Acceptance does not mean that the program participant has complied with its obligation to affirmatively further fair housing under the Fair Housing Act; has complied with other provisions of the Fair Housing Act; or has complied with other civil rights laws and regulations. (See § 5.162.)

Provides a staggered submission deadline for AFHs; that is, the rule specifies the order of submission by which program participants will submit their first AFH. The rule provides that entitlement jurisdictions receiving an FY 2015 CDBG grant of \$500,000 or less, States, Insular Areas, and PHAs will submit their first AFH in the second stage of submission, or at such time as the Assessment Tool specifically applicable to one of these program participants has been approved by OMB and announced by HUD as available for use. The Assessment Tool specifically applicable to a program participant will specify the first-AFH submission deadline, and will ensure the same level of transition as provided for entitlement jurisdictions, which will be the first program participants to submit an AFH. (See § 5.160(a).)

Allows PHAs, whether submitting an AFH as part of participation with their consolidated plan program participants, other PHAs, or on their own, to submit an AFH every 5 years, imposing on PHAs similar requirements to those placed on jurisdictions subject to the consolidated plan requirements. (See §§ 5.160 and 903.15.)

Provides that a program participant that undertook a Regional AI in connection with a grant awarded under HUD's FY 2010 or 2011 Sustainable Communities Competition is not required to undertake an AFH for the first AFH submission stage. (See § 5.160(a).)

Clarifies the conditions under which HUD may not accept an AFH, and provides examples of an AFH that is substantially incomplete with respect to the fair housing assessment, and examples of an AFH that is inconsistent with fair housing and civil rights requirements; and emphasizes that HUD will work with program participants to achieve an AFH that is accepted. (See § 5.162.)

Provides greater flexibility to program participants in determining when a program participant must revise an AFH, and specifies conditions when HUD may intervene and require a program participant to revise an AFH, but also provides program participants with the opportunity to disagree with HUD's determination. HUD also expands the time frame in which to revise an AFH. (See § 5.164.)

Revises for PHAs the three options provided in the proposed rule by which a PHA may conduct and submit an AFH. (See § 903.15.)

Adds a new "certification" provision, which clarifies that program participants must certify that they will affirmatively further fair housing when required by statutes and regulations governing their programs, and provides that challenges to the certifications will follow the procedures for consolidated plan program participants in 24 CFR part 91 and for PHA Plan program participants in 24 CFR part 903, as revised in this final rule. (See § 5.166.)

Moves fair housing-related material from § 903.2(d) to § 903.15(d).

In addition to these changes, HUD also corrected editorial and technical errors identified by the commenters. HUD believes that these changes, more fully discussed below, respond to commenters' requests that they be given more clarity, more flexibility, and more time in fair housing planning.

**AGREEMENT BETWEEN WILLIAMSON COUNTY
AND THE CITY OF LEANDER
FOR THE USE OF COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS
FISCAL YEAR 2015 FUNDING**

THIS AGREEMENT, entered into this ___ day of _____, 2016, by and between Williamson County ("County"), and the City of Leander ("Subrecipient");

WHEREAS, the County is the recipient of Community Development Block Grant (CDBG) funds granted by the U.S. Department of Housing and Urban Development (HUD) under Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301) and under the 1990 National Affordable Housing Act (Public Law 102-550); and

WHEREAS, the County wishes to utilize CDBG funds to assist Subrecipient in the construction of 1848' x 6' wide sidewalk from Los Vista Drive to Sony Drive. The project will take place in Leander, TX; and

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

PART I

1. PURPOSE AND SCOPE OF SERVICES:

- A. Subrecipient will perform the services described in Exhibit A attached to this Agreement pursuant to the project description, timeline and budget described in Exhibit A.
- B. Upon request, the County will provide technical assistance to the subrecipient concerning compliance with the terms of this Agreement. The subrecipient shall be responsible for all bidding procedures and subcontractual arrangements. All procedures shall be carried out in accordance with all Federal, State and local standards, and shall be monitored by the County.
- C. The Project shall be completed in compliance with all applicable state and local codes. Upon completion, this Project shall be operated in compliance with all applicable federal, state and local laws. Subrecipient agrees the funding shall be used solely for the purpose of costs as detailed in Part I.1.A. of this Agreement.

2. TIME OF PERFORMANCE:

Subrecipient shall perform according to the schedule described in Exhibit A. The schedule for performance is subject to change by mutual agreement of both parties in writing

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3. PROPOSED PROJECT BUDGET

See attached budget in Exhibit A.

4. **Objective and Outcome Statement:** Sustainability for the purpose of creating suitable living environments.

5. **Project Indicators:**

Indicators will be requested of the Subrecipient by the Williamson County Grants Coordinator and could include but is not limited to such items as amount of money leveraged; number of persons, households, businesses, unit or beds assisted, as appropriate; income levels of persons or households; race, ethnicity, and disability data. Subrecipient agrees to fulfill the Grants Coordinator's request in a reasonable time but not to extend past 15 days after request.

6. **COMPENSATION AND METHOD OF PAYMENT:**

The County shall pay and Subrecipient agrees to accept in full \$180,000 (Grant Amount – One Hundred Eighty Thousand Dollars and no/100) (hereinafter "Grant") for performance under this Agreement, as follows:

- A. Based on the approved budget, partial payments shall be made upon presentation of (i) architect's Certificates for Payment for applicable labor and construction materials and supplies purchased or billed from the contractor for progress payments for project work completed, and/or (ii) purchase agreements, invoices, executed lien waivers, and other supporting documents covering all amounts to be paid, and/or (iii) time sheets and other source documents. Payments will be made for eligible expenses actually incurred by Subrecipient, and not to exceed actual cash requirements.
- B. All payments under this agreement are subject to receipt by the County of sufficient federal funds for the CDBG program. CDBG funds shall be drawn from the U.S. Treasury by the County through the Integrated Disbursement and Information System (IDIS). The County shall retain exclusive direct access rights to the IDIS system. All access to the IDIS system will be by duly authorized persons designated by the County as approved by HUD. Any termination, reduction or delay of receipt of CDBG funds to the County shall, at the sole option of the County, result in the termination, reduction or delay of CDBG funds to the subrecipient.
- C. Subrecipient shall not hold funds. Any funds not immediately disbursed by the subrecipient shall be returned to the County and will be deposited in the U.S. Treasury, CDBG Trust Account. Any interest earned on cash advances from the U.S. Treasury and/or County of less than one hundred dollars (\$100.00) per year may be retained by the subrecipient and used for project expenses. Any interest in excess of one hundred dollars (\$100.00) per year shall be remitted promptly to the County.
- D. Subrecipient shall report all program income as defined at 24 CFR 570.500(a) generated by activities carried out with CDBG funds made available under this Agreement. The use of program income by Subrecipient shall comply with the requirements set forth at 24 CFR 570.504. Subrecipient may use such income during the contract period for activities permitted under this Agreement and shall reduce requests for additional funds by the amount of any such program income

balances on hand. All unused program income shall be returned to the County at the end of the Agreement period. Any interest earned on cash advances from the U.S. Treasury is not program income and shall be remitted promptly to the County.

7. **TERMS AND CONDITIONS:**

- A. Subrecipient agrees to comply with all applicable federal, state, and local laws and regulations governing the funds provided under this Agreement.
- B. The County shall have no responsibility or liability for the maintenance, operation or program funding for Subrecipient.
- C. Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. Subrecipient shall at all times remain independent with respect to the services to be performed under this Agreement. The County shall be exempt from payment of all unemployment compensation, FICA, retirement, life and/or medical insurance and workers' compensation insurance.
- D. During the period of this Agreement, effective as of the start of the Project, the Subrecipient and/or contractor and/or subcontractor performing any portion of the work on the Project that involves any construction trade (hereinafter collectively referred to in this provision as "Construction Trade Participant(s)") shall, at their own expense, procure and maintain all-risk property damage and liability insurance. For the term of this Agreement, Construction Trade Participant(s) shall list the County as an additional insured on said all-risk property damage and liability insurance. Property damage coverage shall not be less than the current market value of the property. Liability coverage shall include contractual insurance as well as comprehensive form insurance, and shall provide coverage of not less than \$1,000,000 bodily injury per person, \$1,000,000 bodily injury per occurrence, and \$500,000 property damage. Subrecipient, on behalf of itself and on behalf of any other Construction Trade Participant(s), shall furnish the County with a certificate of insurance before any work is started by any such party. The certificate of insurance shall include a statement guaranteeing that the insurance policy shall not be cancelled, non-renewed or materially changed without thirty (30) days advance written notice being given to the Grants Coordinator. Construction Trade Participant(s) shall provide Workers' Compensation Insurance coverage as required by Texas law for all employees involved in the performance of this Agreement. The insurance company providing the insurance must be licensed to do business in the State of Texas and rated as A or better by A.M. Best. The Subrecipient hereby acknowledges and agrees that it shall be the responsibility of the Subrecipient to ensure that all Construction Trade Participant(s) comply with the herein stipulated minimum insurance requirements. Furthermore, the Subrecipient hereby agrees to include and require that the language of this provision be included in all contracts or subcontracts relating to the Project.

- E. Until at least the date determined in Exhibit A of this Agreement (Monitoring Period), Subrecipient shall fulfill its stated purpose in a manner satisfactory to the County as outlined in Exhibit A (Project Description and Scope of Services) of this Agreement and provide continued service. All records and public information created in connection with this Agreement or the Project shall be retained by Subrecipient until at least the date determined in Exhibit A (Monitoring Period).
- F. In the event Subrecipient discontinues its services and/or the Project funded under this Agreement prior to the date determined in Exhibit A (Monitoring Period) of this Agreement, the value of the pro-rated portion of real and personal property (tangible and intangible) secured with the CDBG funds, if applicable, under this Agreements shall revert to the County. If said property has been disposed of, then the County will be reimbursed in the amount of the current fair market value of the property less any portion of the fair market value attributable to non- County CDBG funds. (Personal property includes, but is not limited to, equipment, furnishings, and vehicles.)
- G. Except as provided herein, the terms of this Agreement shall be effective from the date of execution through and including the date determined in Exhibit A of this Agreement (Monitoring Period).

PART II

1. **PERFORMANCE AND REPORTING:**

- A. Subrecipient shall direct all notices, reports, insurance policies, and other communications related to or required by this Agreement to the office of the Williamson County Grants Coordinator, 710 Main Street, Ste 101 Georgetown, TX 78626. Notice by both Subrecipient and County shall be given by ordinary mail. All reports shall comply with relevant state and federal regulations, including but not limited to OMB Circular A-133.
- B. Until the completion of the Project and expenditure of all CDBG funds disbursed under this Agreement, Subrecipient shall submit monthly reports describing progress of the project activities.
- C. Not later than date determined in Exhibit A of this Agreement (Project Completion Date), Subrecipient shall provide the County with a Certified Statement of the Expenditure of Funds disbursed under this Agreement.
- D. Following completion of the Project, Subrecipient shall submit annual reports by the first day of October of each contract year until the date determined in Exhibit A (Monitoring Period) of this Agreement. The annual report shall, at a minimum, include statistics pertaining to the number, race, disability, household income, household size and place of residence of clients served at Subrecipient's Facility.

- E. No reporting requirements shall extend beyond the date determined in Exhibit A of this Agreement (Monitoring Period).

2. **OTHER REPORTS, AUDITS AND INSPECTIONS:**

- A. Subrecipient shall promptly furnish the County or HUD with such statements, records, data and information as the County or HUD may reasonably request pertaining to this Agreement.
- B. During the term of this Agreement, any time during normal business hours, Subrecipient shall make available to the County, HUD and/or the Comptroller General of the United States, or their duly authorized representatives, all of Subrecipient's records in order to permit examination of any audits, invoices, materials, payrolls, personnel records, conditions of employment, and other data relating to all matters covered by this Agreement.
- C. Subrecipient shall retain financial records, supporting documents, statistical records, and all other records pertaining to expenditures under this Agreement until the date determined in Part I Section 2(7).

3. **ADMINISTRATIVE REQUIREMENTS AND AUDIT REQUIREMENTS:**

A. Financial Management

1. Accounting Standards

Subrecipient agrees to comply with Attachment F of OMB Circular A-110 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred. All financial transactions and documentation must comply with the audit requirements in OMB Circular A-133. Procedures for Accounts Payable, Purchasing, and other accounting functions must meet all standards established by the Williamson County Auditor, and Subrecipient will provide any reports required by those standards.

2. Uniform Administrative Requirements

Subrecipient will comply with 24 CFR 570.502, Applicability of Uniform Administrative Requirements, Section (a), recipients and subrecipients that are governmental entities (including public agencies) and Section (b), subrecipients, except subrecipients that are governmental entities.

Subrecipients, except subrecipients that are governmental entities, shall comply with the requirements and standards of OMB Circular No. A-122, "Cost Principles for Non-profit Organizations", or OMB Circular No. A-21, "Cost Principles for Educational Institutions", as applicable, and OMB Circular A-133, "Audits of Institutions of Higher Education and Other Nonprofit Institutions" (as set forth in 24 CFR part 45). Such subrecipients shall also comply with the provisions of the Uniform Administrative requirements of OMB Circular A-110 (implemented at [24](#)

[CFR part 84](#), “Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations”) or the related CDBG provisions, and any subsequent amendments thereto.

Recipients and Subrecipients that are governmental entities (including public agencies) shall comply with the requirements and standards of OMB Circular No. A-87, “Cost Principles for State, Local, and Indian Tribal Governments”; OMB Circular A-133, “Audits of State and Local Governments” (implemented at 24 CFR part 44); and with sections of [24 CFR part 85](#) “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments” or other related CDBG provision, and any subsequent amendments thereto.

3. Audit Requirements

Subrecipient agrees to comply with the “Williamson County Community Development Block Grant Audit Requirements attached as Exhibit B to this Agreement.

Subrecipient agrees to comply with the applicable requirements and standards as set forth in OMB Circular A-133, Audits of States, Local Governments and Non-Profit organizations.

Subrecipient agrees to furnish County with a current Financial Report (financial statements) within six (6) months from the end of its fiscal year covering the period of this Agreement that includes detailed receipts and disbursement of payments to Subrecipient hereunder. **Grant funds will automatically be forfeited if the SUBRECIPIENT fails to submit a Financial Report.**

However, if Subrecipient expends Five Hundred Thousand Dollars (\$500,000.00) or more in federal funds (all sources), Subrecipient must, within nine (9) months from the end of its fiscal year, supply County with a single audit and is required to submit their audit report to the Federal Audit Clearinghouse (FAC) within the earlier of 30 days after the receipt of the auditor’s report, or within 9 months after the end of the audit period. **Grant funds will automatically be forfeited if the SUBRECIPIENT fails to submit an audit within the allotted time.**

If the Subrecipient expends less than Five Hundred Thousand Dollars (\$500,000.00) a year in federal funds (all sources), then they are exempt from the OMB Circular A-133 audit requirements for that year; however, records must be available for review or audit by appropriate officials of the federal agency, pass-through entity and the General Accounting Office.

Subrecipient is required to submit a 990 Tax Return (Return of Organization Exempt from Income Tax) for the most recent fiscal year within six (6) months if submitting a Financial Report or within nine (9) months if submitting a Financial Audit. If the Subrecipient is not classified as an exempt entity as defined in OMB Circular A-133, the Subrecipient will not be awarded grant funds.

If applicable, Subrecipient agrees to cooperate with County relating to any inquiries regarding the Financial Audit or Financial Report and Subrecipient acknowledges that a Financial Audit or Financial Report shall be provided to County at the expense of the Subrecipient. Financial Audit or Financial Report shall be available to County staff, and any and all applicable federal agencies, and be of unrestricted access, as listed in 24 CFR Part 85.42.

4. Cost Principles

Subrecipient shall administer its program in conformance with OMB Circulars A-122, "Cost Principles for Non-Profit Organizations;" A-21, "Cost Principles for Educational Institutions;" and/or A-133, "Audits of States, Local Governments, and Non-Profit Organizations," as applicable, for all costs incurred whether charged on a direct or indirect basis.

B. Documentation and Record-Keeping

1. Records to Be Maintained

Subrecipient shall maintain all records that are pertinent to the activities to be funded under this Agreement, including but not limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- c. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program; and
- d. Financial records as required by 24 CFR 570.502, and OMB Circular A-110.

2. Client Data

Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to a signed and dated verification of income statement, or other basis for determining eligibility, and description of service provided. Such information shall be made available to County monitors or their designees for review upon request.

3. National Objectives

Subrecipient agrees to maintain documentation that demonstrates that the activities carried out with funds provided under this Agreement benefit low/moderate income persons, as defined in 24 CFR 570.208.

C. Procurement

1. Compliance

Subrecipient shall comply with current County policy concerning the purchase of equipment and shall maintain an inventory record of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the County upon termination of this Agreement. The County Purchasing Department shall review and approve procurement procedures governing all purchases with grant funds, and shall have oversight authority in this area.

2. OMB Standards

Subrecipient shall procure materials in accordance with the requirements of A-133, A-122, OMB Circular A-110, Procurement Standards, and shall subsequently follow, Property Management Standards, covering utilization and disposal of property. Copies of said circulars are provided and by execution of this Agreement, Subrecipient acknowledges their receipt.

D. Amendments

The County or Subrecipient may amend this Agreement at any time provided that such amendments are executed in writing and signed by a duly authorized representative of both organizations.

4. **NON-DISCRIMINATION:**

No person shall be excluded from or denied the benefits of Subrecipient's service on the basis of age, race, color, religion, creed, national origin, gender identity, sex, marital status, disability, sexual orientation or, with respect to the sale, lease, rental, use or occupancy of real property or housing accommodations, the presence or absence of dependents, familial status or public assistance source of income. All current and prospective project beneficiaries must, however, be persons in need of the programs provided by Subrecipient.

5. **SECTION 504 COMPLIANCE:**

No otherwise qualified individual with handicaps shall, solely by reason of his/her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. This includes, but is not limited to, programs and/or activities related to housing, employment, and the delivery of services.

6. **EQUAL EMPLOYMENT OPPORTUNITY, FAIR HOUSING AND DRUG-FREE WORKPLACE:**

The subrecipient certifies that it is an "Equal Opportunity Employer" and that it will comply with the Texas Human Rights Commission Act, and all applicable HUD regulations pertaining to equal opportunity and affirmative action in employment. Further, the SUBRECIPIENT shall ensure that all contracts for work under this Agreement contain appropriate equal employment opportunity statements.

SUBRECIPIENT shall comply with all provisions of 24 CFR Part 100-115, which implement the Fair Housing Act. This Act prohibits discrimination in the sale or rental of housing, the financing of housing or the provision of brokerage services against any person on the basis of race, color, religion, sex, national origin, handicap or familial status.

In addition, SUBRECIPIENT certifies it will provide a drug-free workplace as defined in 24 CFR Part 24, subpart F and/or follow the requirements of 24 CFR 92.350.

7. **SECTION 3:**

Subrecipient agrees to comply with Section 3 requirements, the regulations set forth in 24 CFR 135, and to include the following language in all subcontracts executed under this Agreement:

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate

actions, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contract is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

8. **WOMEN AND MINORITY-OWNED BUSINESS ENTERPRISES:**

Subrecipient will use its best efforts to afford minority and women-owned business enterprises (at least fifty-one (51) percent owned and controlled by minority group members or women) the maximum practicable opportunity to participate in the performance of this Agreement.

9. **LABOR:**

Construction projects funded under the CDBG program in excess of \$2,000 shall comply with the labor provisions outlined in 24 CFR 570.603. Subrecipient will comply with Davis-Bacon Act (40 U.S.C. 276a-276a-5). Such contracts must also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332). The Subrecipient agrees to adhere to said provisions and will not use suspended or debarred contractors.

10. **ENVIRONMENTAL ASSESSMENT AND HISTORIC PRESERVATION:**

Subrecipient shall assist the County in complying with all applicable environmental assessment and historic preservation requirements of HUD and the State Historic Preservation Officer of Texas.

11. **LEAD-BASED PAINT POISONING PREVENTION:**

Subrecipient shall comply with requirements of Section 302 of the Lead-Based Paint Poisoning Prevention Act and HUD regulations thereunder (24 CFR Part 570) insofar as they apply to the performance of this Agreement.

12. **ELIGIBILITY RESTRICTIONS FOR CERTAIN RESIDENT ALIENS (570.613):**

1. Restriction The subrecipient agrees to comply with 24 CFR 570.613, which states that certain newly legalized aliens, as described in 24 CFR part 5 subpart E are not eligible to apply for benefits under covered activities funded by the County's CDBG programs. "Benefits" under this section means financial assistance, public services, jobs and access to new or rehabilitated housing and other facilities funded through the County's CDBG programs. "Benefits" do not include relocation services and payments to which displacees are entitled by law.

2. Covered Activities "Covered activities" under this section means activities meeting the requirements of Sec. 570.208(a) that either:

- a. Have income eligibility requirements limiting the benefits exclusively to low and moderate income persons; or
- b. Are targeted geographically or otherwise to primarily benefit low and moderate income persons (excluding activities serving the public at large, such as sewers, roads, sidewalks, and parks), and that provide benefits to persons on the basis of an application.

3. Limitation on Coverage

The restrictions under this section apply only to applicants for new benefits not being received by covered resident aliens as of the effective date of this agreement.

4. Compliance

Compliance can be accomplished by the subrecipient obtaining certification as provided in 24 CFR part 5 subpart E evidencing citizenship or eligible immigration status.

13. **TERMINATION OF AGREEMENT FOR CAUSE:**

If Subrecipient fails to fulfill its obligations under this Agreement in a timely and proper manner, or if Subrecipient violates any of the terms, agreements or stipulations of this Agreement, the County shall thereupon have the right to terminate this Agreement by giving written notice to Subrecipient of such termination, specifying the default or defaults, and stating that this Agreement shall be terminated 30 days after the giving of such notice unless such default or defaults are remedied within such cure period. The County shall be obligated to make no payment due hereunder after it gives said notice unless the defaults are remedied with said 30-day period. In the event of such termination, Subrecipient shall promptly repay to the County the full grant amount or that portion of the amounts that have been disbursed to Subrecipient prior to such termination.

14. **TERMINATION OF AGREEMENT FOR CONVENIENCE:**

This Agreement may be terminated in whole or in part upon the mutual agreement of the parties hereto, in which case the County and Subrecipient shall agree upon the termination conditions, including the effective date, the disposition of contract amounts, and in the case of partial termination, the portion to be terminated. However, if, in the case of partial termination, the County determines that the remaining portion of the award will not accomplish the purposes for which the award was made, and the award is terminated in its entirety, Subrecipient shall promptly repay to the County the full grant amount or that portion of the amount which has been disbursed to Subrecipient prior to such termination.

15. **INTEREST OF CERTAIN FEDERAL AND OTHER OFFICIALS:**

- A. No member or delegate to the Congress of the United States, and no resident Commissioner, shall be admitted to any share or part of this Agreement, or to any benefit to arise herefrom.
- B. No member of the governing body of the County, no officer, employee, official or agent of the County, or other local public official who exercises any functions or responsibilities in connection with the review, approval or carrying out of the Project to which this Agreement pertains, shall have any private interest, direct or indirect, in this Agreement.
- C. No federal funds appropriated under this Agreement shall be paid, by or on behalf of Subrecipient, to any person for influencing or attempting to influence a member of Congress, an officer or employee of Congress or any federal agency in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or agreement.
- D. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal agreement, Subrecipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- E. Subrecipient shall require that the language of this certification be included in the award documents for all sub-Subrecipients and that all sub-Subrecipients shall certify and disclose accordingly.

16. **CONFLICT OF INTEREST:**

Subrecipient covenants that it has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the services to be undertaken through this Agreement. Subrecipient further covenants that in the performance of this Agreement, no person having such an interest shall be employed by Subrecipient.

17. **GRANTOR RECOGNITION:**

All activities, facilities, and items utilized pursuant to this Agreement shall be prominently labeled as CDBG funded. In addition, Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

18. **ASSIGNABILITY:**

Subrecipient shall not assign or transfer any interest in this Agreement without the prior written approval of the County. Any assignment made without such consent shall be void. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

19. **HOLD HARMLESS PROVISION:**

Subrecipient shall indemnify, defend and hold harmless the County, its officers, employees and agents from all liability, loss, cost, damage and expense (including reasonable attorney's fees and court costs) resulting from or incurred by reason of any actions based upon the negligent acts or omissions of Subrecipient's employees or agents during the performance of this Agreement.

20. **SEVERABILITY CLAUSE:**

If any one or more of the provisions contained in this Agreement are held to be invalid, illegal, or unenforceable, this Agreement shall be deemed severable and the remainder of the Agreement shall remain in full force and effect.

21. **LIMITATIONS OF COUNTY LIABILITY - DISCLAIMER OF RELATIONSHIP:**

The County shall not be liable to Subrecipient, or to any party, for completion of or failure to complete any improvements which are parts of the Project. Nothing contained in this Agreement, nor any act or omission of the County or Subrecipient, shall be construed to create any special duty, relationship, third-party beneficiary, respondent superior, limited or general partnership, joint venture, or any association by reason of Subrecipient's involvement with the County.

EXHIBIT A

TO AGREEMENT BETWEEN WILLIAMSON COUNTY AND THE CITY OF LEANDER FOR THE USE OF COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS FISCAL YEAR 2015 FUNDING

1. PROJECT DESCRIPTION AND SCOPE OF SERVICES:

A. Construction of 1848' x 6' wide sidewalk from Los Vista Drive to Sony Drive. The project will take place in Leander, TX.

B. Upon request, the County will provide technical assistance to the subrecipient concerning compliance with the terms of this Agreement. The subrecipient shall be responsible for all bidding procedures and subcontractual arrangements. All procedures shall be carried out in accordance with all Federal, State and local standards, and shall be monitored by the County.

C. The Project shall be completed in compliance with all applicable state and local codes. Upon completion, this Project shall be operated in compliance with all applicable federal, state and local laws. Subrecipient agrees the funding shall be used solely for the purpose of costs as detailed in Part I.1.A. of this Agreement.

2. TIME OF PERFORMANCE:

Subrecipient shall perform according to the following schedule:

	<u>Program Element</u>
1. April 2016	Award of funds and contract with Williamson County
2. May 2016-September 2016	Environmental/Surveying/Engineering/Design
3. September 2016-October 2016	Bid/award of construction contract
4. October 2016-February 2017	Construction
5. Monitoring Period	To be determined based on statement below

Records are to be retained for four years from the date of submission of the County's CAPER in which the specific activity is reported for the last time, unless there is litigation, claims, audit, negotiation, or other actions involving the records, which has started before expiration of the four year period. In such cases, the records must be retained until completion of the action and resolution of all issues which arise from it or the end of the regular four year period, whichever is longer.

3. PROPOSED PROJECT BUDGET (see attached HUD budget):

	<u>CDBG Amount</u>	<u>Subrecipient Amount</u>
A. <u>Construction\Rehabilitation\Installation</u>	\$180,000	_____
B. <u>Eligible equipment</u> (as outlined in 24 CFR 570.207(1))	_____	_____
C. <u>Engineering, planning & administrative costs</u>	_____	_____
D. <u>Property Acquisition</u>	_____	_____
 CDBG Grant/Loan	 \$180,000	

EXHIBIT B
Williamson County Community Development Block Grant Audit Requirements

Williamson County Subrecipients will adhere to the following guidelines with regards to audit requirements:

Subrecipient agrees to comply with the applicable requirements and standards as set forth in OMB Circular A-133, Audits of States, Local Governments and Non-Profit organizations.

Subrecipient agrees to furnish County with a current Financial Report (financial statements) within six (6) months from the end of its fiscal year covering the period of this Agreement that includes detailed receipts and disbursement of payments to Subrecipient hereunder. Future and unused grant funds will automatically be forfeited if the Subrecipient fails to submit a Financial Report.

However, if Subrecipient expends Five Hundred Thousand Dollars (\$500,000.00) or more in federal funds (all sources), Subrecipient must, within nine (9) months from the end of its fiscal year, supply County with a single audit and is required to submit their audit report to the Federal Audit Clearinghouse (FAC) within the earlier of 30 days after the receipt of the auditor's report, or within 9 months after the end of the audit period. Grant funds will automatically be forfeited if the Subrecipient fails to submit an audit within the allotted time.

If the Subrecipient expends less than Five Hundred Thousand Dollars (\$500,000.00) a year in federal funds (all sources), then they are exempt from the OMB Circular A-133 audit requirements for that year; however, records must be available for review or audit by appropriate officials of the federal agency, pass-through entity and the General Accounting Office.

If applicable, Subrecipient is required to submit a 990 Tax Return (Return of Organization Exempt from Income Tax) for the most recent fiscal year within six (6) months if submitting a Financial Report or within nine (9) months if submitting a Financial Audit. If the Subrecipient is not classified as an exempt entity as defined in OMB Circular A-133, the Subrecipient will not be awarded grant funds.

If applicable, Subrecipient agrees to cooperate with County relating to any inquiries regarding the Financial Audit or Financial Report and Subrecipient acknowledges that a Financial Audit or Financial Report shall be provided to County at the expense of the Subrecipient. Financial Audit or Financial Report shall be available to County staff, and any and all applicable federal agencies, and be of unrestricted access, in accordance with 24 CFR Part 85.42 and 24 CFR Part 84.53 as applicable.

The Williamson County CDBG office will issue letters to remind Subrecipients of the audit requirements and request timely submission. Letters will be issued on or around January 5 of each year. If no response is received, a second letter will be issued on or around February 15 of each year. If no response is received, a third request will be made approximately two weeks following. If no response is received by March 15, a final notification will be issued advising the subrecipient of suspension of reimbursement and future funding pending receipt of requested information.

Failure to follow these guidelines could result in the forfeit of future Williamson County CDBG funds and/or repayment of Williamson County CDBG funds already utilized.

Upon receipt of the required audit documents, the Williamson County Community Development Block Grant office will do an initial review to identify findings that affect the Williamson County CDBG program or any cross-cutting

findings that could affect future funding. The CDBG office will also request a review by the Williamson County Auditor's office.

In the event of a finding, Williamson County will issue a letter requesting additional information regarding the finding and the intentions of the Subrecipient to remedy the finding. Working with the Williamson County Auditor's office, the CDBG office will determine next steps to ensure that all federal, state, or local laws/statutes are met.

If a Subrecipient is unable to provide required audit documentation and has utilized CDBG funding, Williamson County will have the option to request repayment and recapture unused funds. If a Subrecipient is unable to provide required audit documentation and has not utilized CDBG funding, Williamson County will not issue funding until requirements are met or will reallocate funds to an alternate project if necessary.



Executive Summary

July 7, 2016

Agenda Subject: Development Agreement Case #15-DA-006: Discussion and possible action to approve a development agreement between the City of Leander, Sixth Street Capital, LLC, a Texas limited liability company, and Devine Land Investments, LLC, a Nevada limited liability company for 208 acres more or less, generally located at southwest of the intersection of Bagdad Road and the future extension San Gabriel Parkway; City of Leander, Williamson County, Texas.

Background: The Development Agreement includes the following key provisions:

- establishes developer responsibility for right-of-way dedication and construction of a portion of the extension of San Gabriel Parkway
- provides for the developer to dedicate right-of-way for the Bagdad Road expansion
- establishes a fee in lieu of a traffic impact analysis in order to fund the westbound traffic signal at Bagdad and San Gabriel
- provides for the City to request the oversizing of a water line paralleling the extension of San Gabriel Parkway and for the developer to receive impact fee reimbursements for the cost of the oversizing
- provides for the City to request the oversizing of a gravity sewer line through the project to serve properties to the north and west
- provides for the City to assist, if necessary, in the acquisition of an off-site wastewater line easement
- provides for a modification to the riparian corridor setback requirements due to the project's adjacency to Devine Lake

Origination: Applicant: Gary Blackwell, Managing Member, Devine Land Investments, LLC

Financial

Consideration: The cost of the utility oversizing, once determined, will be presented to Council for approval..

Recommendation: Staff recommends approval of the development agreement.

Attachments:

1. Development Agreement
2. Exhibits

Prepared By: Tom Yantis, AICP
Assistant City Manager

06/29//2016

**DEVELOPMENT AGREEMENT
FOR THE DEVINE LAKE SUBDIVISION**

This Development Agreement for the Devine Lake Subdivision (the "Agreement") is made and entered into, effective as of the ___ day of _____, 2016, by and between the **City of Leander, Texas**, a Texas home rule municipal corporation (the "City"), **Sixth Street Capital, LLC**, a Texas limited liability company, and **Devine Land Investments, LLC**, a Nevada limited liability company (the "Developers"). The City and the Developer are sometimes referred to herein as the "Parties." The Parties agree as follows.

Article I. Purpose; Consideration.

1.01. Purpose. The Developer owns or has under contract the right to purchase that certain 208 acre tract located in Williamson County, Texas, being more particularly described in **Exhibit "A"** attached hereto and incorporated herein for all purposes (the "Property") and wishes to develop the Property as a mixed use development containing residential units and commercial uses (the "Subdivision"). The Developer desires to provide for the construction, operation and maintenance of certain water, wastewater, and drainage improvements as described herein. The Developer further desires to modify certain development standards applicable to the Subdivision as provide in Article V. The City desires that Developer oversize the water and wastewater facilities described herein so that such facilities may serve customers located outside the Property.

1.02. Benefits. Developer will benefit from the certainty and assurance of the obligations related to the construction, operation, and maintenance of water, wastewater, and drainage facilities provided for herein, and from the modification of certain development standards as provided in Article V. The City will benefit from this Agreement by virtue of the oversizing of water and wastewater infrastructure as provided herein.

1.03. Consideration. The benefits to the Parties set forth in this Article I, plus the mutual promises expressed herein, are good and valuable consideration for this Agreement, the sufficiency of which is hereby acknowledged by both Parties.

Article II. Term; Termination.

2.01. Term. The term of this Agreement shall be ten (10) years from the Effective Date hereof, subject to earlier termination as provided in this Agreement.

2.02. Termination. The Parties further mutually agree that this Agreement shall be in full force and effect upon the date above first written, provided that the City may terminate this Agreement if Developer fails to comply with this Agreement or fails to meet any deadlines imposed by this Agreement or the City's ordinances, after expiration of the cure period set forth in Section 9.01.

Article III. Right-of-Way Dedications and Improvements

3.01. San Gabriel Parkway. The Developer will dedicate right-of-way for the portions of San Gabriel Parkway (the “SGP ROW”) located within the boundaries of the Property along the route generally shown in the City’s Transportation Plan and **Exhibit “B”** and as will be more particularly shown on the approved construction plans and final plat for each phase of the Subdivision. Where one-half of the SGP ROW is located on the Property and one-half is located on the abutting property, the SGP ROW dedication shall not exceed 55 feet in width. For the remaining portions of the SGP ROW located on the Property, the SGP ROW dedication shall not exceed 110 feet in width. The SGP ROW right-of-way will be dedicated at the time right-of-way dedications are required to be made under Chapter 10 of the City’s Code of Ordinances (the “Subdivision Ordinance”). The Developer shall further design and construct San Gabriel Parkway, at Developer’s sole cost and expense, in accordance with this Agreement, the Subdivision Ordinance, the approved construction plans, applicable local, state, and federal regulations and good design and engineering practices; provided, that Developer is not obligated to construct more than one-half of the full roadway section of San Gabriel Parkway; provided that the Developer will be responsible for the full cost of the design and construction of the full width of San Gabriel Parkway at its intersection with Bagdad Road and the transition to the one-half of the full roadway section of San Gabriel Parkway.

3.02. Bagdad Road ROW Dedication. The Developer will dedicate the property described in **Exhibit “C”** attached hereto and incorporated herein for all purposes for right-of-way for Bagdad Road within thirty (30) days of written request by the City.

3.03. Signal Improvements. The Developer shall pay a fee in lieu of performing a traffic impact analysis for the Subdivision in the amount of \$126 per residential dwelling unit (the “TIA Fee”). The TIA Fee shall satisfy any obligation the Developer may have to construct or pay for construction of signal improvements for the intersection of San Gabriel Parkway and Bagdad Road (the “Signalization Improvements”) and any other off-site traffic improvements. The TIA Fee shall be paid prior to the time of recording of the final plat for each phase of the Subdivision. The TIA Fee shall be deposited in a city account that will be specifically dedicated for transportation improvements and shall be used for the Signalization Improvements and for other transportation improvements in the general vicinity of the Subdivision as determined appropriate by the director of public works.

Article IV. Developer’s Water and Wastewater Utility Projects

4.01. Water Line Project. The Water Line Project consists of the construction, installation, and extension of an eight inch (8”) water line, oversized to a twenty inch (“20”) water line, from the eastern right-of-way line of Bagdad Road to the western property line of the property as shown in **Exhibit “D”** (the “Water Line Project”). Where the Water Line Project is located through the two lots of the Subdivision as shown in **Exhibit “D”** (the “Water Line Lots”) and

under San Gabriel Parkway, the water line will be encased in steel encasement. The Developer shall grant the City a ten foot wide water line easement (the “Easement”) upon, over, and across the Water Line Lots, with five feet of the Easement being located on each lot, on the final plat that includes the Water Line Lots. The Water Line Project includes the water line and those facilities and equipment required for the water line to function efficiently, to provide service to the Property, and to comply with all applicable state and local rules, regulations and standards and good design and engineering practices.

4.02. Wastewater Line Project. The Wastewater Line Project consists of the construction, installation, and extension of an eight inch (8”) wastewater gravity line, oversized to a twenty-one inch (21”) wastewater gravity line, along the route approved by the City and generally shown in **Exhibit E**. The Wastewater Line Project includes the wastewater gravity line and those facilities and equipment required for the wastewater gravity line to function efficiently, to provide service to the Property, and to comply with all applicable state and local rules, regulations and standards and good design and engineering practices.

4.03. Standards for Utility Project. The Water Line Project or a phase thereof and the Wastewater Project or a phase thereof shall be referred to collectively as the “Utility Project”. Developer shall contract for, fund, and pay for the design, construction and installation the Utility Project in accordance with this Agreement, the approved construction plans, applicable local, state, and federal regulations, and good design and engineering practices. The Developer may construct the Utility Project in one or more phases. Each phase of the Utility Project shall be completed by Developer and Developer shall obtain City acceptance of the Utility Project in accordance with the procedures and time frames set forth in the Subdivision Ordinance. The Developer shall be entitled to water and wastewater impact fee rebates and if applicable City Cost Participation, as provided in Section 4.05, Section 4.06, 4.10 and Article VII, subject to the provisions and limitations set forth in this Agreement.

4.04. Utility Project Engineer. Developer will retain a licensed professional engineer to prepare the design, construction plans and specifications, and supporting documentation for the Utility Project in accordance with good engineering practices, the design and construction standards of all applicable state and local regulations and this Agreement (“Utility Project Engineer”). The Utility Project Engineer will work and coordinate with the City Engineer to obtain the timely review and approval by Developer, the City Engineer and the Director of Development Services of the design, plans, specifications and construction of the Utility Project or a phase thereof. The Developer shall obtain City Council approval of the Reimbursable Costs of the Utility Project or a phase thereof (defined in Section 4.06) before the Developer commences work on the Utility Project. Developer shall be responsible for ensuring that the Utility Project Engineer complies with the terms of this Agreement, including with regard to the responsibilities assigned to the Utility Project Engineer herein.

4.05. Bidding of the Utility Project.

- (a) The Project Engineer will advertise the Utility Project for sealed competitive bids in

compliance with the Texas Local Government Code based on the City Engineer approved design, plans and specifications, and recommend the lowest qualified bidder/contractor to Developer and the City. The Project Engineer will provide the City Engineer and the City's purchasing agent with: (i) prior written notice of the dates for solicitation of the bids and the opening of the responses to the bid; and (ii) a copy of the notice. Notwithstanding anything contained herein to the contrary, the Developer is responsible for bidding the Utility Project in compliance with Chapter 252, Texas Local Government Code. The Developer will utilize a unit price contract for the Utility Project. The Utility Project will be advertised for bids with alternate bids being required as follows:

- (1) For each phase of the Water Line Project will be advertised for bids with an alternate bid being required for a eight-inch water line ("Water Line Alternate #1") and an alternate bid being required for a twenty inch (20") waterline ("Water Line Alternate #2"), together with all equipment and related facilities and structures shown on the City approved plans and specifications for the Water Line Project.
 - (2) Each phase of the Wastewater Line Project will be advertised for bids with an alternate bid being required for an eight inch (8") wastewater gravity line ("Wastewater Line Alternate #1") and an alternate bid being required for a twenty-one inch (21") wastewater gravity line ("Wastewater Line Alternate #2"), together with all equipment and related facilities and structures shown on the City approved plans and specifications for the Wastewater Line Project.
 - (3) The responsive bids must clearly and separately demonstrate the amount bid for the Subdivision Improvements not being oversized that will be conveyed to the City upon completion and amounts bid for the Water Line Project (Alternates #1 and #2) and the amounts bid for the Wastewater Line Project (Alternates #1 and #2).
- (b) The City Engineer shall evaluate the bids for the Wastewater Line Alternate #1 and #2 to determine whether the bids are fair and balanced prior to accepting a recommendation of bid award. Any unbalanced or skewed bids, as determined by bid tabulations may be appropriately corrected or rejected by the City.
- (c) Within ten (10) business days of the City's receipt of the bids described in subsection 4.05(a), the City Engineer will notify Developer of his/her decision on whether to recommend to the City Council approval or rejection of the bids and whether the City elects to proceed with the oversizing of the Utility Projects. If the City Engineer recommends approval of the bid, then the approval of the bid will be placed on the next available City Council agenda for action, not to exceed sixty (60) business days from the date the City received the bids.

(d) Developer will contract for the construction of each Utility Project; provided, however, that Developer may, at Developer's sole discretion, elect to not proceed with awarding the construction contract or with the construction of the Utility Project; provided further that at such time that the Developer intends to proceed with design, bidding, and construction of Water Line Alternate #1 or Wastewater Line Alternate #2, the Developer will design, bid, contract for the construction of the Utility Project and cause the Utility Project to be completed and accepted by the City. The City will rebate Water Impact Fees and Wastewater Impact Fees as provided in Article VII below that are paid by: (a) Developer and third parties for retail water and wastewater service to lots and tracts within the Property; and (b) by third parties that obtain City water and wastewater utility service for other land and developments by utilizing the Utility Project. The aggregate total of such rebates shall be up to but shall not exceed the Reimbursable Costs for the Utility Project as competitively bid and constructed by Developer; provided that: (i) Water Impact Fees may only be used to reimburse the Developer for the Reimbursable Costs of the Water Line Project and Wastewater Impact Fees may only be used to reimburse the Developer for the Reimbursable Costs of the Wastewater Project; (ii) if the City elects in its sole discretion to make one or more lump sum payments to the Developer for Reimbursable Costs of the Utility Project as provided in Article VII, the aggregate total of such rebates plus said lump sum payment(s) from the City shall not exceed the Reimbursable Costs for the Utility Project; and (iii) if the City pays for a portion of the Wastewater Line Project with a lump sum payment as set forth in Section 4.10, the sum of such lump sum payment and the Wastewater Impact Fee Rebates shall not exceed the Reimbursable Costs for the Wastewater Line Project.

4.06. Reimbursable Costs. The "Reimbursable Costs" for the Utility Project, shall be:

- (a) The Reimbursable Costs for the Water Line Project, shall be the difference between the dollar amount of the approved bid for Water Line Alternate #1 and the dollar amount of the approved bid for Water Line Alternate #2; and
- (b) The Reimbursable Costs for the Wastewater Line Project shall be the difference between the dollar amount of the approved bid for the Wastewater Line Alternate #1 and the dollar amount of the approved bid for the Wastewater Line Alternate #2.

provided that all such sums and amounts shall have been approved by the City Council prior to the Developer commencing work on the bid Utility Project and paid by Developer and are reasonable, necessary and documented to and approved by the City Engineer and Director of Development Services, or the City Council, as applicable. Developer shall not receive or be entitled to receive any rebates or reimbursements for any of the costs attributable to any portion of the Utility Project that is not oversized and installed and constructed by Developer.

4.07. Construction Plan Review and Inspection Fees. The City's construction plan review and inspection fees will not be applied to the portion of construction costs for the Utility Project that

constitutes the Reimbursable Costs for the Utility Project.

4.08 Easement Acquisition. As shown on **Exhibit E**, a segment of the wastewater gravity line along Bagdad Road must be constructed on an adjacent parcel of land to connect to the City's existing 15 inch wastewater line in Brushy Creek ("Off-site Wastewater Line"). The Developer is primarily responsible for acquiring a permanent wastewater line easement, a temporary working space easement or similar rights ("Off-site Wastewater Line Easements"); however, the Parties agree to work cooperatively toward acquiring the Off-Site Wastewater Line Easements. As an example and not a limitation, in conjunction with the Bagdad Road capital improvement project, the City will take into consideration a possible assignment for the Off-site Wastewater Line within any easements or Bagdad right of way acquired by the City on the adjacent parcel of land. If Developer desires to proceed with the construction of the Off-site Wastewater Line prior to the City's acquisition of easements and Bagdad Road right of way on the adjacent parcel or the City determines that the Off-site Wastewater Line cannot be constructed within the available City easements and Bagdad Road right of way, then Developer will undertake commercially reasonable efforts to negotiate and acquire the Off-Site Wastewater Line Easements. The City agrees to cooperate and support Developers' acquisition of necessary easements from third parties.

4.09 Eminent Domain. The Offsite Wastewater Line and related easements are necessary and required by the City for the City to provide wastewater service to the Property, and for Developer to comply with the City Rules and obtain approval for the development of the Property. The Developer shall pay costs of the acquisition (including the City's costs of such acquisition by condemnation or conveyance in lieu thereof) of any easements or land necessary for the construction of the Offsite Wastewater Line. The City Council has found the development of Property in compliance with this Agreement will serve a public purpose and benefit the economy of the City and the public welfare. Therefore, if Developer determines that it may be necessary for the City to use its eminent domain powers to acquire property or an interest in property to install the Offsite Wastewater Line required by the City pursuant to this Agreement, Developer will make a request to the City to proceed with the acquisition of the easement in compliance with applicable law. In any such event, the City proceeding to acquire such easement shall be subject to a finding by the City Council that such easement is required by the City and is necessary to accomplish a public purpose. The Parties agree to work cooperatively toward allowing the initiation of construction of the Offsite Wastewater Line on an easement being acquired by the City at the earliest time lawfully permitted. Developer shall be responsible for all costs incurred, and for security and deposits required by the City, for or with respect to any such acquisition.

4.10 City Cost Participation. If the City elects to proceed with the construction of the Wastewater Line Alternate #2 pursuant to Section 4.05(c) and if the Reimbursable Costs for the Wastewater Line Project exceeds thirty percent (30%) of the approved bid for Wastewater Line Alternate #1, then the City will pay the Reimbursable Costs for the Wastewater Line Project as follows: (i) Reimbursable Costs for the Wastewater Line equal to an amount that is thirty percent (30%) of the approved bid for Wastewater Line Alternate #1 shall be paid through

rebates of Wastewater Impact Fees as provided in Article VII; and (ii) the portion of the Reimbursable Costs for the Wastewater Line Project that exceed thirty percent (30%) of the approved bid for Wastewater Line Alternate #1 shall be paid by the City in lump sum payment within thirty days after the City's acceptance of the Wastewater Line Alternate #2, or phase thereof, as appropriate. If the Reimbursable Costs for the Wastewater Line Project are equal to or less than thirty percent (30%) of the approved bid for Wastewater Line Alternate #1, then the Reimbursable Costs for the Wastewater Line Project will be paid through rebates of Wastewater Impact Fees as provided in Article VII.

Article V. Development of the Subdivision

5.01. Subdivision Improvements. Developer will finance, design, construct and install all required water facilities, streets, drainage facilities and other amenities and improvements within the Property, or outside the boundaries of the Property, at Developer's sole cost and expense (collectively the "**Subdivision Improvements**"), except as otherwise provided in this Agreement. Developer shall plan, plat, build-out, and complete development and construct and install the Subdivision Improvements in compliance with good design and engineering practices, the applicable local, state, and federal regulations, the City Charter, Code of Ordinances and the rules and regulations of the City as amended by this Agreement, this Agreement, and the environmental regulations otherwise applicable to the Property, as amended from time to time.

5.02. Riparian Corridor. The riparian corridor setback for the Subdivision is shown in the attached **Exhibit "F"**.

Article VI. Additional Agreements and Performance

6.01. The City hereby agrees:

- (a) to coordinate with the Utility Project Engineer on specific design requirements and specifications; and to review, and to approve and sign the plans and specifications for the Utility Project in a timely manner, as appropriate;
- (b) to review and approve the plans, specifications and bids for construction of the Utility Project as obtained for and on behalf of the City by Engineer and Developer, as appropriate;
- (c) during the course of the Utility Project, to review, approve and sign necessary and appropriate change orders in a timely manner; to perform all inspections of the Utility Project in a timely manner; and to approve the Utility Project in a timely manner if constructed in accordance with the City approved plans and specifications;
- (d) after completion and final acceptance by the City of the Utility Project as constructed, to accept the Utility Project as part of the City's water and wastewater utility systems, as appropriate;
- (e) after Developer completes construction and obtains City acceptance of the Utility Project and upon Developer completing construction of a phase or section of the

Subdivision in compliance with this Agreement and the City giving final acceptance of that phase or section, the City will approve connections to the water system and the wastewater system, as appropriate, and provide such services within the completed phase or section of the Subdivision on the same terms and conditions as then provided within other areas of the City;

- (f) to review and process the applications made, and the plans and specifications submitted, by Developer with respect to the Subdivision in accordance with City regulations; and
- (g) to timely take such actions as necessary to comply with Chapter 395, Texas Local Government Code to make the Water Impact Fee Rebate and Wastewater Impact Fee Rebate payments.

6.02. Developer hereby agrees:

- (a) to contract with the Utility Project Engineer for the design, preparation of the plans and specifications, and the provision of the services anticipated to be performed by the Utility Project Engineer for the Utility Project pursuant to and in compliance with Article IV;
- (b) to review and approve the plans and specifications for the Utility Project (including the estimated cost of the Utility Project), identify any design errors, defects or insufficiencies, and to advise the City Engineer as to any perceived error, defect or insufficiency prior to approving any such plans and specifications;
- (c) to work and coordinate with the City, and to assure the improvements constituting the Utility Project are eligible for funding with capital impact fees pursuant to the City's capital impact fee ordinance, prior to the execution of any contract for construction;
- (d) to enter into a contract with an appropriate contractor approved by the City pursuant to competitive bids approved by the City and Developer for construction of the Utility Project;
- (e) that any construction or development within the Subdivision shall comply with the City's standards, rules, regulations and ordinances, or better;
- (f) for itself and its grantees, successors and assigns, to pay the water and wastewater capital recovery/impact fees the City establishes by ordinance for each lot, tract, parcel or building site in the Subdivision prior to utility service being provided to such lot, tract, parcel or building site, unless the City has elected instead to credit some or all of the amount of the unreimbursed Reimbursable Costs, as herein defined, against the amount of such fees that would otherwise be owed to the City, in which event Developer, its grantees, successors and assigns shall pay the amount of such fees not credited;
- (g) to pay to the City all fees and charges provided for or established by the codes, ordinances, rules and regulations of the City, as amended from time to time, for or with respect to the development of the Property, including, but not limited to, zoning and subdivision application fees, building permit fees, water and wastewater tap and use fees and capital recovery/impact fees (subject to the other terms of this Agreement), except as otherwise provided by this Agreement; and

- (h) to pay to the City all legal fees incurred by the City in negotiating and drafting of this Agreement.

Article VII. Collection and Payment of Impact Fees

7.01. Payment of Impact Fees. Developer, its grantees, successors, assigns, and subsequent purchasers of any portion of the Property, agree that each lot, tract, parcel or building site within the Property that will be provided water service or wastewater service by the City shall be required to pay the City's water impact fee (the "Water Impact Fee") and wastewater impact fee (the "Wastewater Impact Fee"), established pursuant to Chapter 395 of the Texas Local Government Code, in the amount that is established by the City Capital Improvements Plan and City ordinance, as amended, from time to time, and that is in effect when the fee is paid. The Water Impact Fee and Wastewater Impact Fee are referred to collectively as the "Impact Fees." The Impacts Fee shall be payable with respect to a lot, tract, parcel, or building site at the time the building permit for each building or structure is applied for or, if no building permit is required, then upon the first to occur of the following: (a) the date construction of the building or structure is first commenced, (b) the date an application is made to the City for a water connection to serve the building or structure, or (c) the date water service is requested for the lot, tract or parcel of land.

7.02. Impact Fee Rebates.

- (a) Subject to the terms, conditions and limitations of this Agreement, during the Term of this Agreement Developer shall receive a rebate of sixty percent (60%) of the Water Impact Fees paid to the City for connections to the City water utility system within: (i) the Property; and (ii) within land or developments that connect to the Water Line Project by a direct connection or by a water line that is not listed and included in the City Capital Improvements Plan and ordinance that establishes the Water Impact Fees (the "**Water Impact Fee Rebates**"). The Water Impact Fee Rebates will terminate upon the Developer receiving Water Impact Fee Rebates, or a combination of Water Impact Fee Rebates and one or more payments from the City, equal to the Reimbursable Costs for the Water Line Project. The City may at any time, in its sole discretion, pay the Developer all or a portion of the Reimbursable Costs for the Water Line Project from any source of funds available to the City in one or more lump sum payments.
- (b) Subject to the terms, conditions and limitations of this Agreement, during the Term of this Agreement Developer shall receive a rebate of sixty percent (60%) of the Wastewater Impact Fees paid to the City for connections to the City wastewater utility system within: (i) the Property; and (ii) within land or developments that connect to the Wastewater Project by a direct connection or by a wastewater line that is not listed and included in the City Capital Improvements Plan and ordinance that establishes the Wastewater Impact Fees (the "**Wastewater Impact Fee Rebates**"). The Wastewater Impact Fee Rebates will terminate upon the Developer receiving Wastewater Impact Fee Rebates, or a combination of Wastewater Impact Fee Rebates and one or more payments from the City. The City

may at any time, in its sole discretion, pay the Developer all or a portion of the Reimbursable Costs for the Wastewater Project from any source of funds available to the City in one or more lump sum payments.

- (c) Upon the City's acceptance for ownership, operation and maintenance of a Water Line Project or a phase thereof or a Wastewater Line Project or a phase thereof that is eligible an Impact Fee Rebate, the City's obligation to pay the applicable Water Impact Fee Rebate or Wastewater Impact Fee Rebate and, if applicable, the City Cost Participation Amount will survive the City's termination of this Agreement pursuant to Section 2.01 or 2.02.

7.03. Escrow Accounts.

(a) Commencing on the Effective Date and continuing until the Water Impact Fee Rebates are terminated pursuant to this Agreement, the City will maintain a separate escrow account for the Water Impact Fees (the "Water Escrow Account"). The City will deposit into the Water Escrow Account sixty percent (60%) of the Water Impact Fees paid to and received by the City for connections listed in this Article. The Water Escrow Account will be held by the City and the Water Impact Fee Rebates paid out to Developer as provided in this Agreement. Payments of Water Impact Fee Rebates to Developer shall begin after Developer completes and obtains City acceptance of the Water Line Project.

(b) Commencing on the Effective Date and continuing until the Wastewater Impact Fee Rebates are terminated pursuant to this Agreement, the City will maintain a separate escrow account for the Wastewater Impact Fees (the "Wastewater Escrow Account"). The City will deposit into the Wastewater Escrow Account sixty percent (60%) of the Wastewater Impact Fees paid to and received by the City for connections listed in this Article. The Wastewater Escrow Account will be held by the City and the Wastewater Impact Fee Rebates paid out to Developer as provided in this Agreement. Payments of Wastewater Impact Fee Rebates to Developer shall begin after Developer completes and obtains City acceptance of the Wastewater Project.

7.04. Payment of Rebates. Impact Fee Rebates will be paid by the City to Developer quarterly in arrears. Impact Fee Rebates will be paid on or before the 15th day of each April, July, October and January following the date the City receives the Impact Fees. The payments will be in an amount equal to sixty percent (60%) of the Impact Fees collected by City during the three (3) calendar months preceding the month the scheduled payment is due and payable. Notwithstanding any other term or provision of this Agreement, the City will discontinue rebating: (a) Water Impact Fees at such time, if any, as Developer, its grantees, successors and assigns, have been paid Water Impact Fees, or a combination of Water Impact Fee Rebates and one or more payments from the City, in an amount equal to the Reimbursable Costs of the Water Line Project; and (b) Wastewater Impact Fees at such time, if any, as Developer, its grantees, successors and assigns, have been paid Wastewater Impact Fees, or a combination of Wastewater Impact Fee Rebates and one or more payments from the City, in an amount equal to the Reimbursable Costs of the Wastewater Project.

Article XIII. Assignment of Commitments and Obligations; Binding Agreement.

8.01. Assignment. The Developer's rights and obligations under this Agreement may be assigned in whole or part, to persons purchasing all of the Property or a part of the Property but not to an individual purchaser of lots within a recorded final plat. In the event Developer(s) assign all of their respective rights under this Agreement in conjunction with the conveyance of any unplatted portion of the Property, a written assignment of developer status must be filed of record in the Official Public Records of Williamson County, Texas in order to be effective. Any assignment of Developer's rights and obligations hereunder will not release Developer(s) of their respective obligations under this Agreement for the assigned portion of the Property until the City has approved the written assignment; provided, however, the City shall not unreasonably deny, delay, or condition its approval of the assignment. Notwithstanding the foregoing, the Developer may assign to a third party or otherwise encumber its rights to receive the City Cost Participation Amount, Water Impact Fee Rebates and Wastewater Impact Fee Rebates without the approval of the City; provided Developer must notify the City of the assignment and any change in the name and addressee of the payee.

8.02. Binding Obligations. This Agreement shall be binding upon and inure to the benefit of the parties, their successors, and assigns. A fully executed copy of this Agreement shall be recorded in the Official Public Records of Williamson County, Texas within ninety days after the Effective Date. Nothing in this Agreement is intended to impose the Developer's obligations on individual owners that purchase lots for their personal use.

Article IX. Default and Related Provisions

9.01. Default. Notwithstanding anything herein to the contrary, no party shall be deemed to be in default hereunder until the passage of thirty (30) business days after receipt by such party of notice of default from the other party. Upon the passage of thirty (30) business days without cure of the default, such party shall be deemed to have defaulted for purposes of this Agreement; provided that if the nature of the default is that it cannot reasonably be cured within the thirty (30) business day period, the defaulting party shall have a longer period of time as may be reasonably necessary to cure the default in question; but in no event more than sixty (60) days. In the event of default, the non-defaulting party to this Agreement may pursue the remedy of specific performance or other equitable or legal remedy not inconsistent with this Agreement or applicable state law. All remedies will be cumulative and the pursuit of one authorized remedy will not constitute an election of remedies or a waiver of the right to pursue any other authorized remedy.

9.02. Reservation of Rights. To the extent not inconsistent with this Agreement, each party reserves all rights, privileges, and immunities under applicable laws, and neither party waives any legal right or defense available under law or in equity.

9.03. Attorney's Fees. A party shall not be liable to the other party for attorney fees or costs incurred in connection with any litigation between the parties, in which a party seeks to obtain a

remedy from the other party, including appeals and post judgment awards.

9.04. Waiver. Any failure by a party to insist upon strict performance by the other party of any provision of this Agreement will not, regardless of length of time during which that failure continues, be deemed a waiver of that party's right to insist upon strict compliance with all terms of this Agreement. In order to be effective as to a party, any waiver of default under this Agreement must be in writing, and a written waiver will only be effective as to the specific default and as to the specific period of time set forth in the written waiver. A written waiver will not constitute a waiver of any subsequent default, or of the right to require performance of the same or any other provision of this Agreement in the future.

9.05. Force Majeure.

- (a) The term "force majeure" as employed herein shall mean and refer to acts of God; strikes, lockouts, or other industrial disturbances; acts of public enemies, orders of any kind of the government of the United States, the State of Texas, Williamson County, the City of Leander or any civil or military authority; insurrections; riots; epidemic; landslides; lightning, earthquakes; fires, hurricanes; storms, floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accidents to machinery, pipelines, or canals; or other causes not reasonably within the control of the party claiming such inability.
- (b) If, by reason of force majeure, any party hereto shall be rendered wholly or partially unable to carry out its obligations under this Agreement, then such party shall give written notice of the full particulars of such force majeure to the other party within ten (10) days after the occurrence thereof. The obligations of the party giving such notice, to the extent effected by the force majeure, shall be suspended during the continuance of the inability claimed, except as hereinafter provided, but for no longer period, and the party shall endeavor to remove or overcome such inability with all reasonable dispatch. Any force majeure attributable to the City shall extend the term of this Agreement one day for each day of the force majeure delay.
- (c) It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require that the settlement be unfavorable in the judgment of the party having the difficulty.

Article X. Notices

10.01. Notice. Any notice to be given hereunder by any party to another 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 the City shall be addressed:

City of Leander
Attn: City Manager
200 West Willis
P.O. Box 319
Leander, Texas 78646-0319

with copy to:

Knight & Partners
Paige H. Saenz
223 W. Anderson Lane, Suite A105
Austin, Texas 78752

Any notice mailed to the Developer shall be addressed:

Devine Land Investments, LLC
Attn: Gary Blackwell
12345 Ventura Boulevard, Suite H
Studio City, California 91604

With copy to:

Sneed, Vine & Perry, PC
Attn: Robert Kleeman
900 Congress Ave., Suite 300
Austin, Texas 78701

Any party may change the address for notice to it by giving notice of such change in accordance with the provisions of this section.

Article XI. Miscellaneous Provisions

11.01. The Parties acknowledge the mutual promises and obligations of the Parties expressed herein are good, valuable and sufficient consideration for this Agreement. The Parties further acknowledge the City and Developer voluntarily elected the benefits and obligations of this Agreement, as opposed to the benefits available were Developer to have elected to develop the Property without the benefits and obligations of this Agreement, pursuant to and in compliance with the applicable City ordinances. Therefore, save and except the right to enforce the obligations of the City to perform each and all of the City's duties and obligations under this Agreement, Developer hereby waives any and all claims or causes of action against the City

Developer may have for or with respect to any duty or obligation undertaken by Developer pursuant to this Agreement, including any benefits that may have been otherwise available to Developer but for this Agreement.

11.02. This Agreement, together with any exhibits attached hereto, constitutes the entire agreement between Parties and may not be amended except by a writing approved by the City Council of the City that is signed by all Parties and dated subsequent to the date hereof.

11.03. The terms of this Agreement are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The City, its past, present and future officers, elected officials, employees and agents, do not assume any responsibilities or liabilities to any third party in connection with the development of the Property. The City enters into this Agreement in the exercise of its public duties and authority to provide for development of property within the City pursuant to its police powers and for the benefit and protection of the public health, safety, and welfare. With respect to the construction of the Utility Project or any phase thereof and the payment of the Impact Fee Rebates and the City Cost Participation Amount, this Agreement is subject to Subchapter I, Chapter 271, Texas Local Government Code.

11.04. This Agreement is not intended, nor will it be construed, to create any third-party beneficiary rights in any person or entity who is not a party, unless expressly provided otherwise herein, or in a written instrument executed by both the City and the third party. Absent a written agreement between the City and third party providing otherwise, if a default occurs with respect to an obligation of the City under this Agreement, any notice of default or action seeking a remedy for such default must be made by the Developer.

11.05. The Effective Date of this Agreement is the defined date set forth in the first paragraph.

11.06. This Agreement or a memorandum of Agreement acceptable to the City and Developer shall be recorded in the Official Public Records of Williamson County, Texas.

11.07. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Williamson County, Texas. Venue shall lie exclusively in Williamson County, Texas.

11.08. It is acknowledged and agreed by the Parties that time is of the essence in the performance of this Agreement.

11.09. Exhibits. The following exhibits are attached to this Agreement, and made a part hereof for all purposes:

- Exhibit A – Property Description
- Exhibit B – San Gabriel Parkway Right of Way
- Exhibit C – Bagdad Road Right of Way
- Exhibit D – Water Line Project

Exhibit E – Wastewater Line Project
Exhibit F – Riparian Corridor

EXECUTED in multiple originals this the ____ day of _____, 2016.

CITY:
City of Leander, Texas
a Texas home-rule municipal corporation

Attest:

By: _____
Name: Debbie Haile
Title: City Secretary

By: _____
Name: Christopher Fielder
Title: Mayor

THE STATE OF TEXAS §
COUNTY OF WILLIAMSON §

This instrument was acknowledged before me on this ____ day of _____, 2016, by Christopher Fielder, Mayor of the City of Leander, Texas, a Texas home-rule municipal corporation, on behalf of said corporation.

(SEAL)

Notary Public, State of Texas

DEVELOPER/OWNER:
Devine Land Investments, LLC, a Texas limited liability company

By: _____
Name: _____
Title: _____

THE STATE OF _____ §
COUNTY OF _____ §

This instrument was acknowledged before me on this ____ day of _____, 2016, by _____, _____ of Devine Land Investments, LLC, a Nevada limited liability company, on behalf of said corporation.

(SEAL)

Notary Public, State of Texas

Sixth Street Capital, LLC, a Texas limited liability company

By: _____

Name: _____

Title: _____

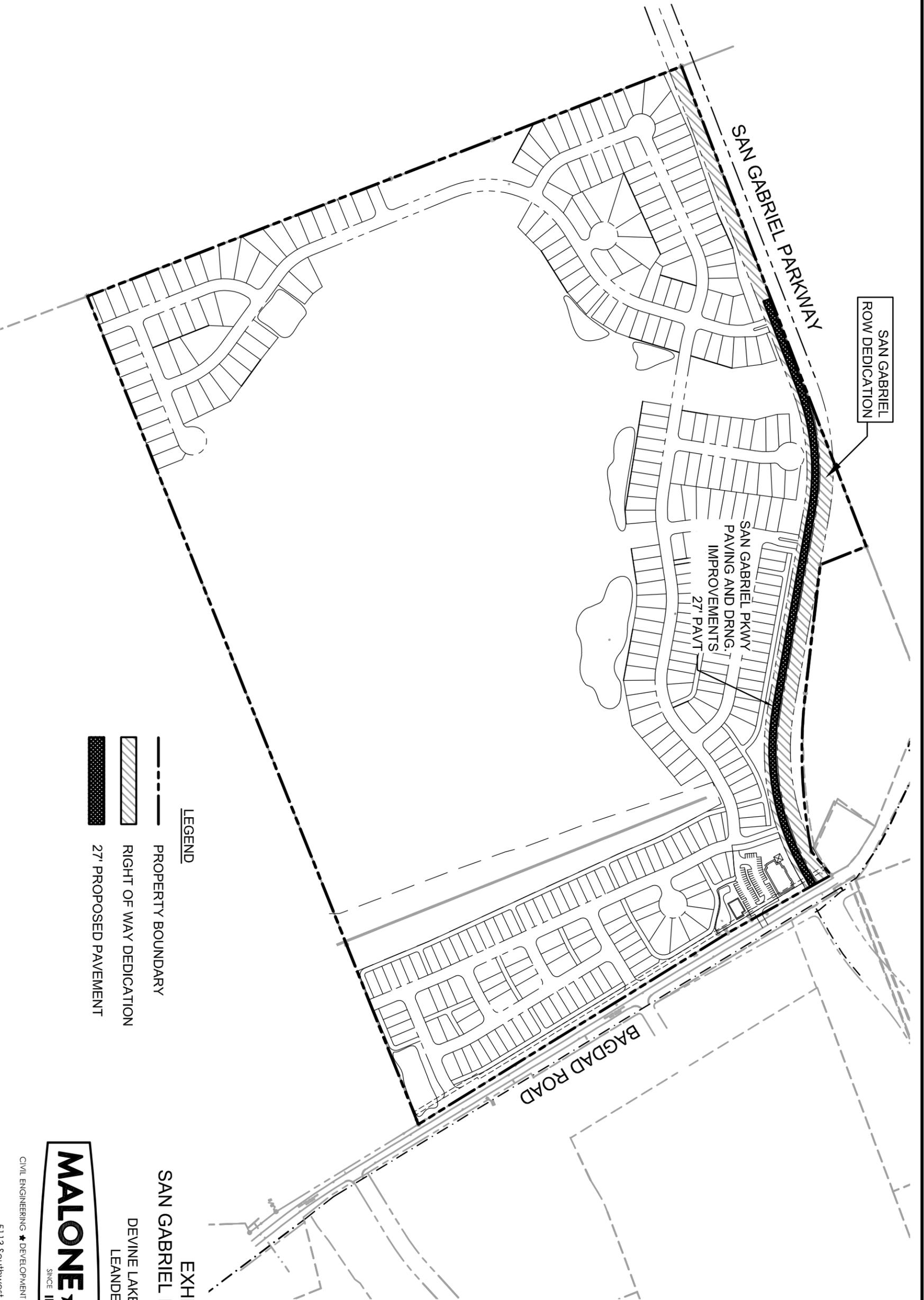
THE STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on this ____ day of _____, 2016, by _____, _____ of Sixth Street Capital, LLC, a Texas limited liability company, on behalf of said corporation.

(SEAL)

Notary Public, State of Texas



SAN GABRIEL ROW DEDICATION

SAN GABRIEL PARKWAY

SAN GABRIEL PKWY PAVING AND DRNG. IMPROVEMENTS 27' PAVT

BAGDAD ROAD

LEGEND

- PROPERTY BOUNDARY
- - - RIGHT OF WAY DEDICATION
- ▨ 27' PROPOSED PAVEMENT

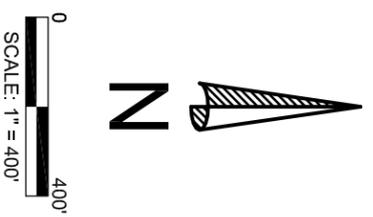


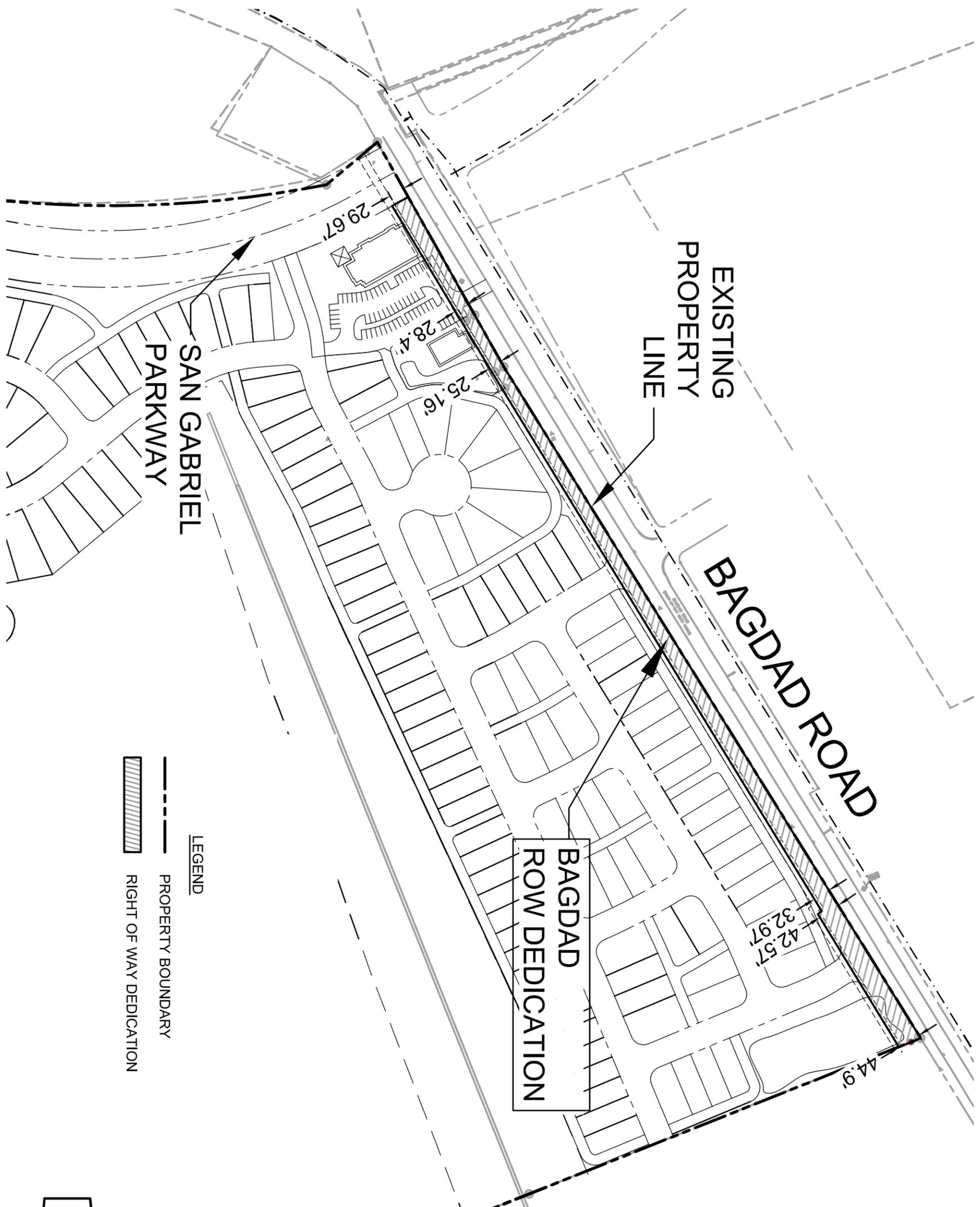
EXHIBIT B
SAN GABRIEL PARKWAY ROW

DEVINE LAKE SUBDIVISION
 LEANDER, TEXAS



CIVIL ENGINEERING ★ DEVELOPMENT CONSULTING ★ PROJECT MANAGEMENT

5113 Southwest Parkway, Suite 260
 Austin, Texas 78735
 Phone: (512) 899-0601 Fax: (512) 899-0655
 Firm Registration No. F-786



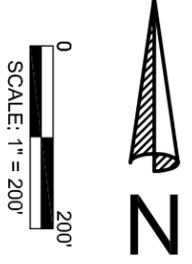
EXISTING
PROPERTY
LINE

BAGDAD ROAD

BAGDAD
ROW DEDICATION

SAN GABRIEL
PARKWAY

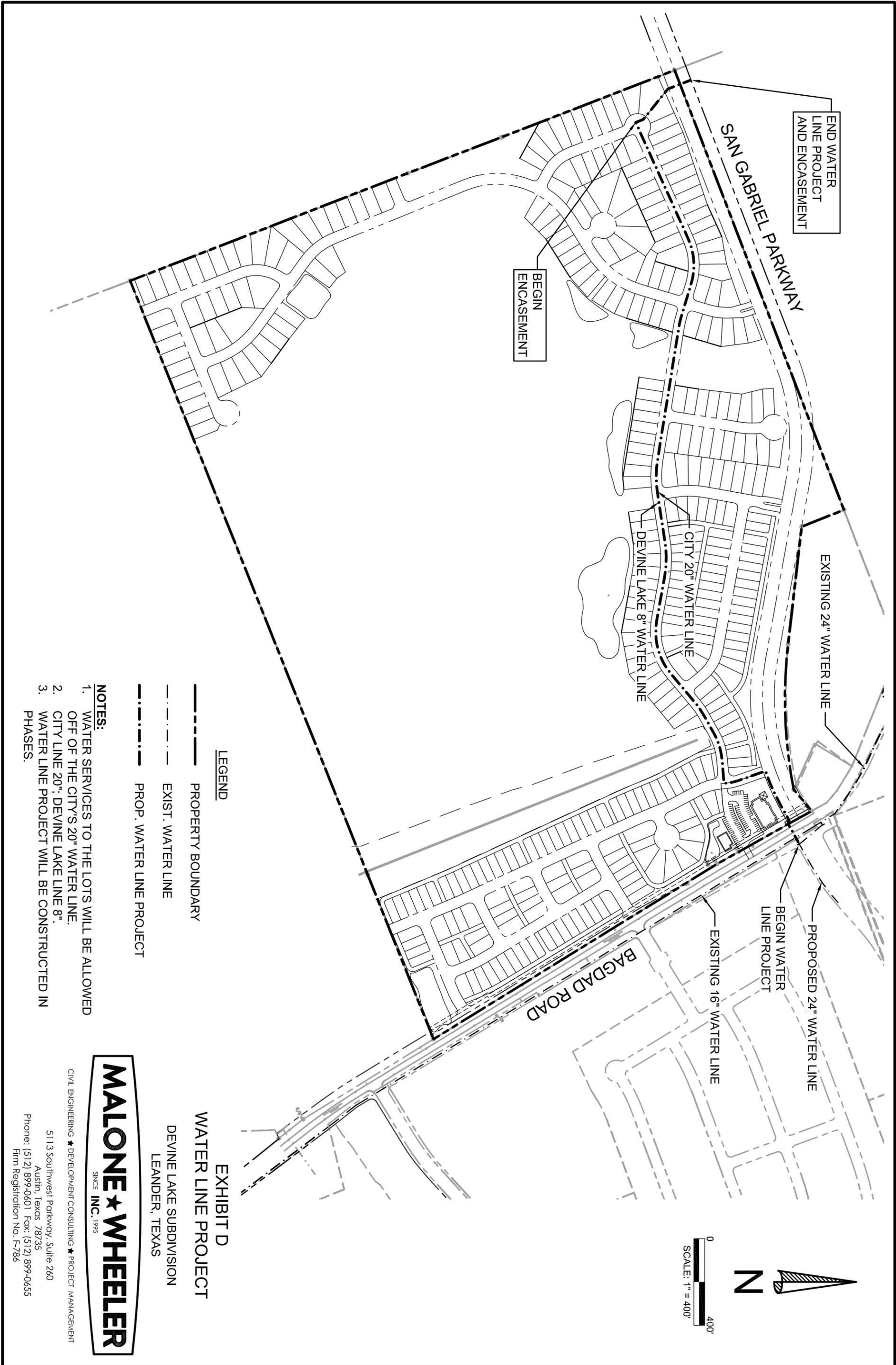
- LEGEND**
- — — — — PROPERTY BOUNDARY
 - ▨ RIGHT OF WAY DEDICATION



MALONE ★ WHEELER
SINCE 1995 INC.

EXHIBIT C-1
BAGDAD RIGHT OF WAY
DEVINE LAKE SUBDIVISION
LEANDER, TEXAS

CIVIL ENGINEERING ★ DEVELOPMENT CONSULTING ★ PROJECT MANAGEMENT
5113 Southwest Parkway, Suite 260
Austin, Texas 78735
Phone: (512) 899-0601 Fax: (512) 899-0655
Firm Registration No. F-786



END WATER
LINE PROJECT
AND ENCASMENT

SAN GABRIEL PARKWAY

BEGIN
ENCASMENT

EXISTING 24" WATER LINE

CITY 20" WATER LINE
DEVINE LAKE 8" WATER LINE

BEGIN WATER
LINE PROJECT

PROPOSED 24" WATER LINE

EXISTING 16" WATER LINE

BAGDAD ROAD

LEGEND

- PROPERTY BOUNDARY
- - - EXIST. WATER LINE
- · - · - · - PROP. WATER LINE PROJECT

NOTES:

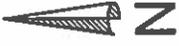
1. WATER SERVICES TO THE LOTS WILL BE ALLOWED OFF OF THE CITY'S 20" WATER LINE.
2. CITY LINE 20"; DEVINE LAKE LINE 8".
3. WATER LINE PROJECT WILL BE CONSTRUCTED IN PHASES.

MALONE ★ WHEELER
SINCE 1995

CIVIL ENGINEERING ★ DEVELOPMENT CONSULTING ★ PROJECT MANAGEMENT

5113 Southwest Parkway, Suite 260
Austin, Texas 78735
Phone: (512) 899-0601 Fax: (512) 899-0655
Firm Registration No. F-786

EXHIBIT D
WATER LINE PROJECT
DEVINE LAKE SUBDIVISION
LEANDER, TEXAS



0 400'
SCALE: 1" = 400'

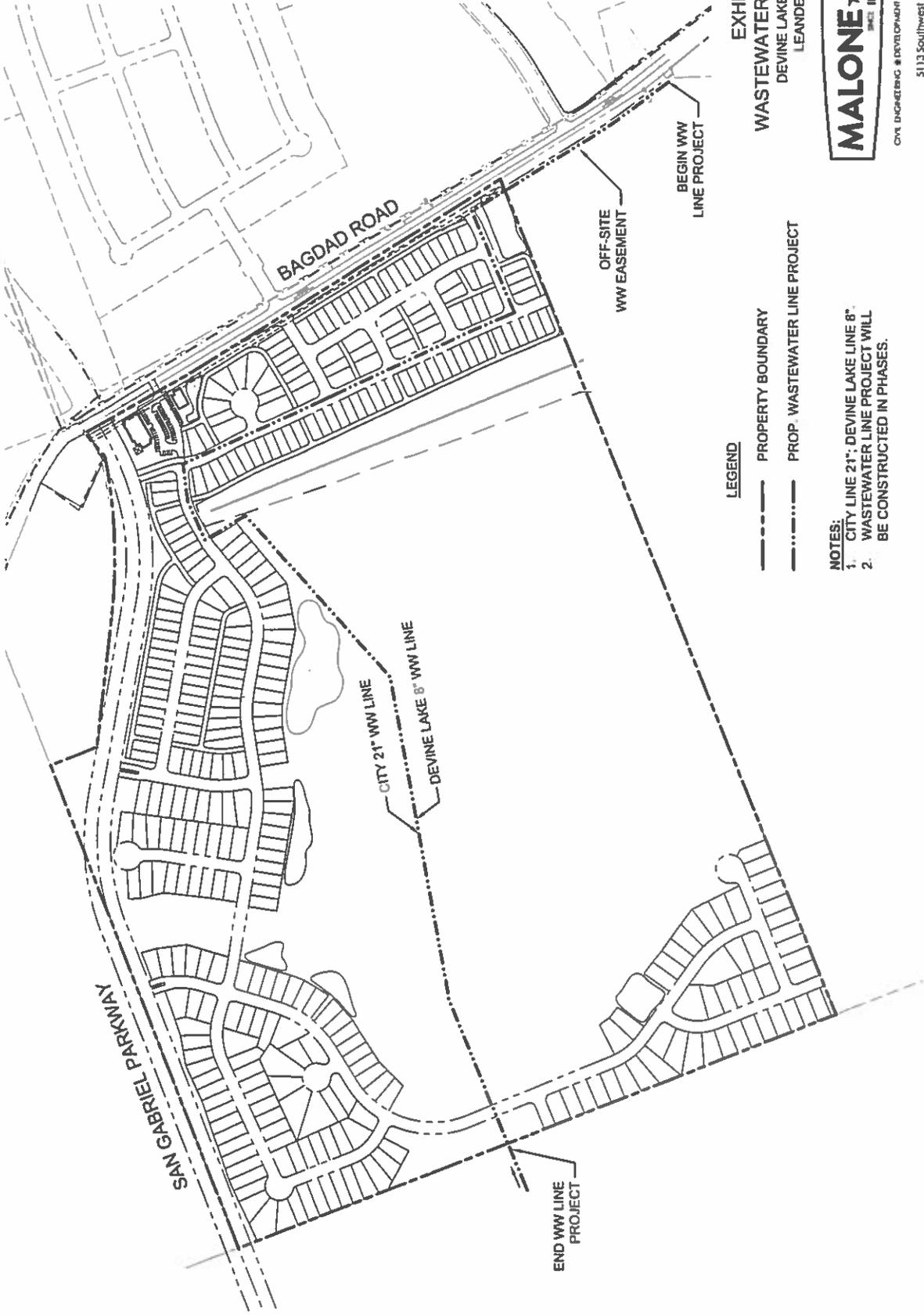


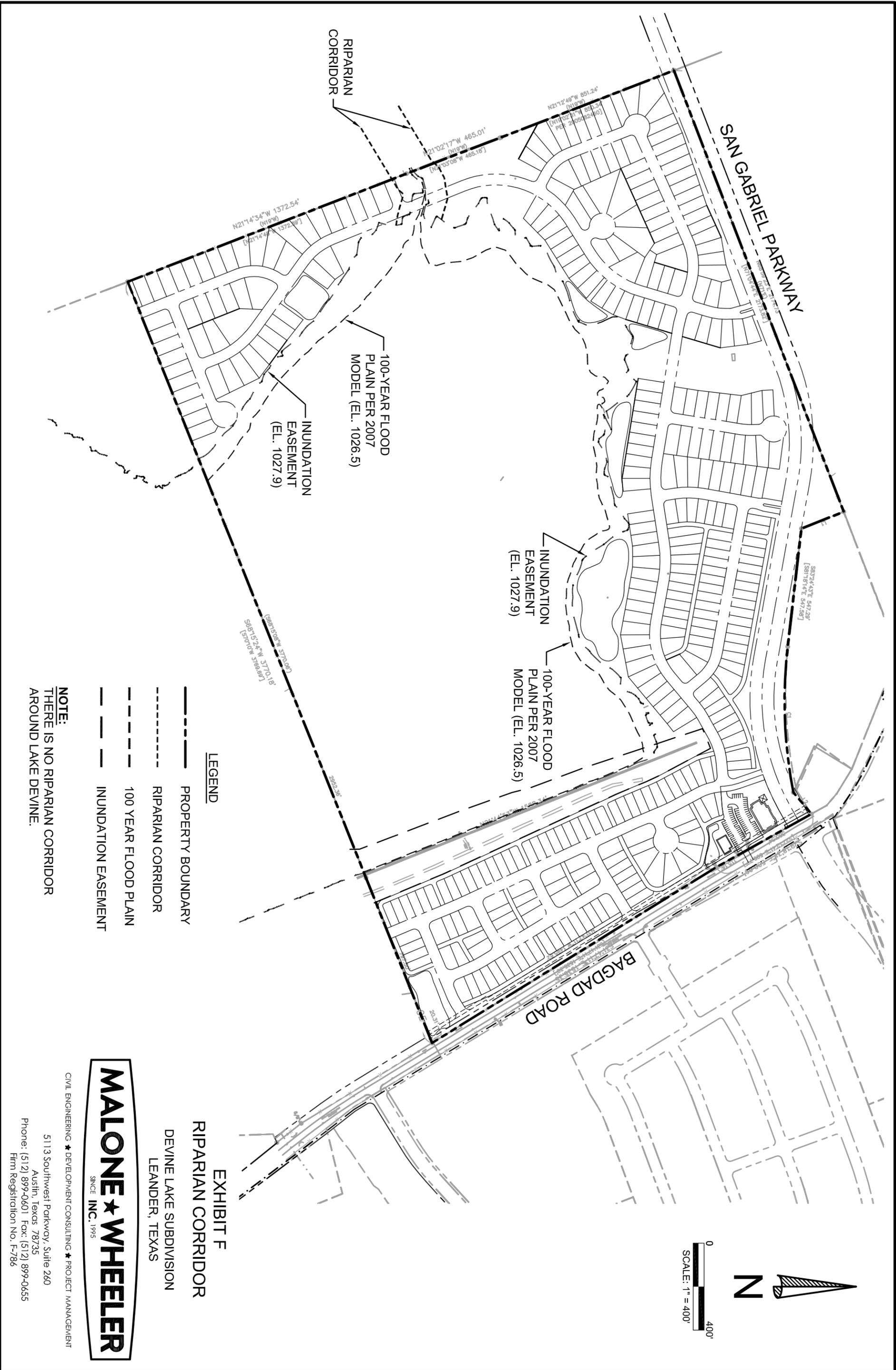
EXHIBIT E
WASTEWATER LINE PROJECT
DEVINE LAKE SUBDIVISION
LEANDER, TEXAS

- LEGEND**
- PROPERTY BOUNDARY
 - - - - - PROP. WASTEWATER LINE PROJECT

- NOTES:**
1. CITY LINE 21" DEVINE LAKE LINE 8"
 2. WASTEWATER LINE PROJECT WILL BE CONSTRUCTED IN PHASES.

MALONE ★ WHEELER
SINCE 1975

CIVIL ENGINEERING • DEVELOPMENT CONSULTING • PROJECT MANAGEMENT
5113 Southwest Parkway, Suite 260
Austin, Texas 78735
Phone: (512) 899-0601 Fax: (512) 899-0655
Firm Registration No. F-7186



0 400'
SCALE: 1" = 400'

LEGEND

- PROPERTY BOUNDARY
- - - RIPARIAN CORRIDOR
- - - 100 YEAR FLOOD PLAIN
- - - INUNDATION EASEMENT

NOTE:
THERE IS NO RIPARIAN CORRIDOR
AROUND LAKE DEVINE.

MALONE ★ WHEELER
SINCE 1995

EXHIBIT F
RIPARIAN CORRIDOR
DEVINE LAKE SUBDIVISION
LEANDER, TEXAS

CIVIL ENGINEERING ★ DEVELOPMENT CONSULTING ★ PROJECT MANAGEMENT
5113 Southwest Parkway, Suite 260
Austin, Texas 78735
Phone: (512) 899-0601 Fax: (512) 899-0655
Firm Registration No. F-786



Executive Summary

July 7, 2016

Council Agenda Subject: Consideration of resolution authorizing the City Manager to release funds totaling \$840,380 to effectuate final settlement of pending eminent domain litigation to acquire a 5.217 acre tract owned by Gary and Cathy Gross (“Gross”) and also to execute a Declaration of Covenants, Conditions and Restrictions concerning the 5.217 acre tract for a deep water intake maintenance site, on terms subject to review and approval by the City Attorney and Special Counsel.

Background: The proposed Resolution approves the final settlement agreement and payment provisions for the acquisition of the Gary and Cathy Gross property on half of the BCRUA for the site of the Phase Two Deep Water Intake. The total price for this 5.217 acre tract is \$2,565,000.00. Previously, the City had deposited \$1,724,620.00 in the registry of Travis County Court at Law No. 2, leaving a balance of \$840,380.00 for the final settlement payment. This Resolution also includes approval of certain site development restrictions (Declaration of Covenants, Conditions and Restrictions) for the Phase Two Deep Water Intake Site, which were negotiated in the settlement process and approved by the BCRUA Operations Committee. The City’s legal counsel, Mr. Kent Sick, will be available along with City Staff to answer any questions or concerns of City Council. The City Councils of Cedar Park and Round Rock and the BCRUA Board have previously approved this action.

Origination: Wayne S. Watts, P.E., CFM, City Engineer

Financial Consideration: Approximately 43% of \$840,380 from Utility Fund, GL# TBD (with approximately 57% refunded to Leander by BCRUA partner Cities of Cedar Park and Round Rock)

Recommendation: Staff requests approval of the Resolution.

Attachments: Resolution and Exhibits

Prepared by: Wayne S. Watts, P.E., CFM, City Engineer

RESOLUTION NO. _____

Regarding Leander consent to final resolution of Gross matter pursuant to settlement agreement and release of additional funds related to settlement

WHEREAS, in order to promote the public health, safety and welfare, it is necessary for the City of Leander to acquire a site for a permanent raw water intake facility and related appurtenances; and

WHEREAS, the City of Leander has previously determined that a parcel of land owned by Gary Gross and Cathy Gross and situated in Travis County, Texas containing 5.217 acres, as more fully described in Exhibit "A," (the "Property") was suitable for the said intake facility; and

WHEREAS, the City of Leander filed a petition for condemnation to acquire the Property; and

WHEREAS, on March 11, 2016, the City of Leander and Gary and Cathy Gross reached a mediated settlement agreement ("MSA") for final resolution of the condemnation case, subject to the approval of the City Council of Leander, which MSA is attached in full and incorporated herewith as Exhibit "B;" and

WHEREAS, pursuant to the MSA the City of Leander and Gary Gross and Cathy Gross agreed to total compensation for all claims relating to acquisition of the Property of **Two Million Five Hundred Sixty-Five Thousand and No/100s Dollars (\$2,565,000.00)**; and

WHEREAS, pursuant to the MSA Leander agreed subject to approval of its Council to pay Gary and Cathy Gross additional funds of **Eight Hundred Forty Thousand Three Hundred Eighty and No/100s Dollars (\$840,380.00)**, which sum is the balance between the amount agreed to in the MSA and funds already paid in satisfaction of the Special Commissioners Award established in the case; and

WHEREAS, pursuant to the MSA Leander is to agree to a certain set of land use covenants, conditions, and restrictions concerning use of the 5.217 acre property; and

WHEREAS, it is necessary for Leander to disburse the final monetary compensation to effectuate its obligations pursuant to the MSA;

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF LEANDER TEXAS THAT:

- (1) The Council approves final resolution of the acquisition of the Property on terms consistent with the MSA, subject to an Agreed Judgment to be approved by the City Attorney and special counsel, and consistent therewith hereby authorizes the City Manager to release the sum of **Eight Hundred Forty Thousand Three Hundred Eighty and No/100s Dollars (\$840,380.00)** as directed by the City Attorney for the final cost of acquiring the Property pursuant to the MSA; and
- (2) The Council hereby authorizes the City Manager, as part of the MSA, to execute that certain “Declaration of Covenants, Conditions and Restrictions” concerning the Property and attached to the MSA as Exhibit “A.”

The Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

RESOLVED this 7th day of July, 2016.

CHRISTOPHER FIELDER, Mayor
City of Leander, Texas

ATTEST:

DEBBIE HAILE, Secretary

CAUSE NO. C-1-CV-14-007201

THE CITY OF LEANDER

IN THE COUNTY COURT AT LAW

v.

NO. 2

GARY L. GROSS and
CATHY GROSS, *et al.*

TRAVIS COUNTY, TEXAS

MEDIATED SETTLEMENT AGREEMENT

As a result of mediation conducted on March 11, 2016, the City of Leander (Leander) and Gary L. Gross and Cathy Gross (together referred to as Gross) agree to resolve all issues in dispute between them in the above styled and numbered cause on the following terms and conditions:

1. Leander agrees to pay Gross the total sum of \$2,565,000.00 in complete settlement of any and all claims which have been made or which could have been made in this litigation or as a result of the events giving rise to this litigation, including but not limited to the value of the part taken, damages to the remainder, and all other costs and expenses.
2. Payment shall be in the form of a check or checks made payable to "Barron & Adler, Trustees" and delivered to the office of Gross' undersigned attorney within 45 days of the date the judgment described in paragraph 5 below is signed by the court and filed. Barron & Adler will distribute the funds to the appropriate parties.
3. The Commissioners' Award of \$1,724,620.00 has been placed in the registry of the Court, but has not been withdrawn by Gross. Gross may now withdraw those funds. That amount shall be credited against the \$2,565,000.00 described in paragraph 1 above and shall reduce the amount of the check(s) described in paragraph 2 above by that amount.
4. The covenants, conditions and restrictions (CCR) attached hereto as Exhibit A shall likewise be attached to and incorporated in the judgment described in paragraph 5 below.
5. An agreed judgment reflecting the terms of this agreement, including the CCR referred to in paragraph 4, shall be prepared by the attorney for Leander and delivered to the attorney for Gross for approval as to form, which approval will not be unreasonably withheld. Once approved, the agreed judgment will be presented to the Court for approval, signature, and filing at a hearing on the parties' joint motion for entry of judgment for which all parties named in the petition will be given proper notice.



6. Gross shall be solely responsible for paying all other persons or entities who have been served with citation and who claim an interest in the subject property.
7. The Grosses water line on the property being taken will be moved at Leander or its assign's expense to another suitable location.
8. Leander agrees to support the Gross' request for the BCRUA to execute a letter agreement in which the BCRUA and its successors and assigns agree to not seek to enforce the 1,000 foot restricted zone in 30 Tex. Admin. Code s. 290.41(e)(2)(B) so as to preclude Gross or its successors and assigns from installing a residential boat dock on their remainder property accessible by the public.
9. This agreement may be filed as a Rule 11 agreement.
10. The parties acknowledge that this agreement is subject to the approval of the Leander City Council.

Signed this 11th day of March, 2016.



Gary L. Gross



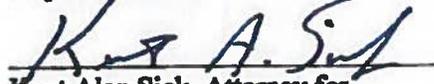
Cathy Gross



Christopher J. Oddo, Attorney for
Gary L. Gross and Cathy Gross

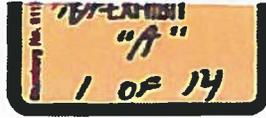


Wayne Watts, Authorized Representative
City of Leander



Kent Alan Sick, Attorney for
City of Leander





STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration of Covenants, Conditions and Restrictions (the "Declaration") is made and entered into as of the _____ day of _____, 2016, by and between the City of Leander ("City") and Gary L. Gross and Cathy L. Gross ("Gross").

RECITALS

A. Gross is the owner of that 5.217 acre tract of land located in Travis County, Texas, and more particularly described in Exhibit A attached hereto (the "5.2 Acres");

B. In an effort to settle the condemnation case styled *City of Leander vs. Gary L. Gross and Cathy L. Gross*, Cause No. C-1-CV-14-007201, pending in the Probate Court of Travis County, Texas, Gross has agreed to sell and the City has agreed to purchase the 5.2 Acres, provided that the City agrees that the herein described covenants, conditions and restrictions shall apply to the 5.2 Acres and shall be deemed covenants running with the land and shall be binding on the City and its successors and assigns;

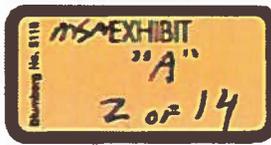
C. The 5.2 Acres is out of a 21.911 acre tract of land owned by Gross and after Gross conveys the 5.2 Acres to the City, Gross will own the 16.562 acres that is immediately adjacent to the 5.2 Acres. The 16.562 acres is described in Exhibit B attached hereto (the "16.6 Acres");

D. The City acknowledges and agrees that Gross would not have conveyed the 5.2 Acres to the City without the City's agreement to this Declaration and that the herein described covenants, conditions and restrictions shall apply to the 5.2 Acres.



RESTRICTIONS

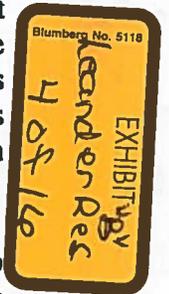
Now, therefore for a good and valuable consideration received by each of the undersigned, the receipt and sufficiency of which are hereby acknowledged, the City and Gross hereby covenant and agree that the 5.2 Acres shall be subject to the following covenants, conditions and restrictions:

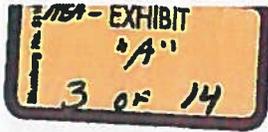


1. LAND ABOVE THE 722 CONTOUR

1.1 That portion of the 5.2 Acres located on or above the 722-foot Mean Sea Level Contour (herein called the "Land Above the 722 Contour") shall be used only for the following purposes and for no other purposes:

- (a) The construction, operation, maintenance, repair, upgrade, and/or replacement of a single above-ground maintenance facility and necessary appurtenances thereto, that meets the requirements set out below in Paragraph 1.2 and 1.4 (the "Maintenance Facility");
- (b) Parking and access drives necessary for the Maintenance Facility and access to the deep water intake facility (the "Deep Water Intake") to be constructed adjacent to the 5.2 acres;
- (c) Temporary use for construction staging, storage, and uses incident to the City's (or its assigns') establishment of both the Maintenance Facility and the Deep Water Intake; notwithstanding anything herein to the contrary, it is agreed that all temporary materials and equipment of any kind placed on the 5.2 Acres during construction of the Maintenance Facility, the Deep Water Intake or other improvements permitted by this Declaration shall be removed by the City (or its assign) from the 5.2 Acres within 90 days after completion of such construction;
- (d) A ground water well or wells, or other water intake facility not to exceed fifty gallons per minute (50 GPM) and attendant pump to supply water to the Maintenance Facility solely for operational purposes, including facilitation of supply of pollutant controls to the Deep Water Intake and landscape irrigation if necessary;
- (e) Emplacement of underground pipelines to transport water for operational purposes associated with distribution of pollutant control materials to the Deep Water Intake to be constructed adjacent to the 5.2 acres;
- (f) Emplacement of underground electrical lines and/or aboveground transformers to facilitate operation of the Maintenance Facility, and also electrical and communication lines between the Maintenance Facility and the Deep Water Intake;
- (g) Emplacement of security measures such as access control systems, cameras, and reasonable and necessary appurtenances thereto; and
- (f) A fence that encloses the Maintenance Facility and meets the





requirements set out below in paragraph 1.3 and 1.4 (the "Upper Fence").

No other use of any kind shall be permitted on the Land Above the 722 Contour.

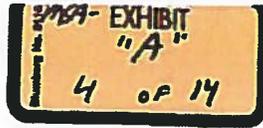
1.2 The Maintenance Facility building, which the City shall have the future right to expand if necessary, shall in no event ever exceed 3000 aggregate square feet in size exclusive of parking and access areas, whether as originally constructed or in the future expanded, and shall not exceed thirty-five (35) feet in height above the surface of the ground. It is agreed that the Maintenance Facility may have a single antenna, provided the antenna does not exceed thirty-five (35) feet in height above the surface of the ground. The outside walls of the Maintenance Facility shall be constructed entirely of brick, stone, EIFS, or similar material, with the exception of windows and doors, and its roof shall be constructed of tile, composition shingles, or non-reflective standing seam metal roof panels. No tin or shiny metal roof is permitted on the Maintenance Facility although a seamless colored metal roof is permitted. The Maintenance Facility shall be kept in a clean and well-maintained condition at all times at the expense of the owner or owners of the 5.2 Acres.

1.3 The Upper Fence shall not exceed 8 feet in height. If any outside feature of the Maintenance Facility has an industrial appearance, makes noise, or emits light, then the Upper Fence must be constructed of stone, brick, stucco, wood, or simulated wood or stone concrete panels. However, if the outside features of the Maintenance Facility do not have an industrial appearance, do not make noise, and do not emit light, then the Upper Fence shall be constructed of barbed wire, hog wire, stone, brick, stucco, wood, or simulated wood or stone concrete panels. In no event shall the Upper Fence be cyclone fencing or be made of exposed concrete blocks. The Upper Fence shall be kept in a clean and well-maintained condition at all times at the expense of the owner or owners of the 5.2 Acres. Section 5.5 of this Declaration is incorporated by reference as if restated herein with regards to the Maintenance Building, Upper Fence, or other improvements established upon the 5.2 Acres.



1.4 The Maintenance Facility shall be set back (a) at least 50 feet from the common boundary of the 5.2 Acres and the 16.6 Acres (the southern boundary of the 5.2 Acres), and (b) at least 50 feet from the northern and eastern boundaries of the 5.2 Acres. The entire Maintenance Facility and Upper Fence shall be located on the Land Above the 722 Contour. The Upper Fence shall be set back (a) at least 50 feet from the common boundary of the 5.2 Acres and the 16.6 Acres (the southern boundary of the 5.2 Acres), and (b) at least 10 feet from the northern and eastern boundaries of the 5.2 Acres.

1.5 Lights may be placed only on the Maintenance Facility and the Upper Fence, however, such lighting shall be limited as follows: all lighting shall contain shields so as to cast the lighting downward and no lights shall be mounted high on poles to create widespread nighttime lighting. Except as specifically set out above, no other permanent outdoor lighting of any kind is permitted on any part of the 5.2 Acres.

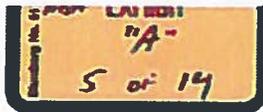


2.1 There shall be no buildings, structures, roads, lighting or improvements of any kind located on that portion of the 5.2 Acres located below the 722-foot Mean Sea Level Contour (herein called the "Land Below the 722 Contour") except as provided herein.

2.2 The Land Below the 722 Contour shall be used only for the following purposes and for no other purposes:

- (a) The construction, operation, maintenance, repair, upgrade, and/or replacement of an underground pipeline or pipelines and necessary appurtenances thereto to convey pollutant control materials and water solely to facilitate operation of the Deep Water Intake that meet the requirements set out below in Paragraph 2.3;
- (b) The construction, operation, maintenance, repair, upgrade, and/or replacement of an underground line or lines necessary to provide electrical and data communication services between the Maintenance Building and the Deep Water Intake that meet the requirements set out below in Paragraph 2.3, all facilities emplaced pursuant to Secs 2.2(a) and (b) being referred to hereafter as "Underground Facilities;"
- (c) A single concrete or asphalt roadway ("Roadway") extending from the Land Above the 722 Contour for purposes of constructing, accessing, maintaining, operating, repairing, upgrading, or replacing the Deep Water Intake or any facilities constructed by the City or its assigns on the 5.2 Acres that meets the requirements set out below in Paragraph 2.4;
- (d) Temporary use for construction staging, storage, and uses incident to the City's (or its assigns') establishment of both the Maintenance Facility and the Deep Water Intake, including clearing of whatever areas deemed necessary by the City or its assigns for effectuation of the Deep Water Intake, Maintenance Building, and appurtenances, or any future need for similar use in the event the Deep Water Intake or appurtenances thereto installed within the 5.2 Acres require maintenance, upgrade, repair, or replacement; notwithstanding anything herein to the contrary, it is agreed that all materials and equipment of any kind placed on the 5.2 Acres during construction of the Maintenance Facility, the Deep Water Intake or other improvements permitted by this Declaration shall be removed by the City (or its assign) from the 5.2 Acres within 90 days after completion of such construction;
- (e) Emplacement, operation, maintenance, repair, upgrade and replacement of security improvements for benefit of both the Maintenance Building and the Deep Water Intake, including but not





limited to security cameras, electronic monitoring apparatus, and access control mechanisms, along with reasonable and necessary appurtenances thereto; and

- (f) Fencing surrounding the 5.2 Acres below the 722 Contour (the "Lower Fence"), and said fencing shall be constructed of barbed wire or hog wire; however, in no event shall the Lower Fence be cyclone fencing or exposed concrete blocks.

2.3 The Underground Facilities shall all be buried at least 1 foot (1') below the surface of the ground. There shall be no aboveground appurtenances, boxes, facilities or lights for the Underground Facilities or the Roadway, other than at-grade manholes or other improvements necessary for construction or ongoing operation, maintenance, repair, upgrade, or replacement.

2.4 The Roadway shall not exceed 16 feet in width and shall be set back (a) at least 25 feet from the common boundary of the 5.2 Acres and the 16.6 Acres, and (b) at least 25 feet from the northwest boundary of the 5.2 Acres. The owner or owners of the 5.2 Acres (a) shall be solely responsible for the cost to construct and maintain the Underground Facilities and the Roadway, and (b) shall keep the Underground Facilities and the Roadway in a clean and well-maintained condition at all times.

3. PROHIBITED USES.

No part of the 5.2 Acres shall be used (a) for any public purpose except as specifically set out herein, or (b) for any recreational or park purposes; or (c) for any water supply reservoirs, towers, pumping plants or pumping facilities of any kind other than the pumps necessary to supply freshwater for operation of the Maintenance Facility's purpose of providing pollutant controls to the Deep Water Intake; or (d) for any uses other than those specifically permitted by Paragraphs 1 and 2 above.

4. RESIDENTIAL NEIGHBORHOOD.

The City and any subsequent owner of the 5.2 Acres acknowledge and agree that the 5.2 Acres is located entirely within a residential neighborhood and that the architecture of the Maintenance Facility, Upper Fence, Lower Fence, Roadway, or appurtenances thereto will all be residential in character and compatible with other residential uses in the neighborhood.

5. GENERAL.

5.1 The City agrees that covenants, conditions and restrictions contained within this Declaration are covenants running with the land and shall be binding on the City, its successors and assigns and any subsequent owner or owners of the 5.2 Acres, for a term beginning on the date a fully executed counterpart of this Declaration is recorded in the Official Public Records of Travis County, Texas, and continuing through and including



EXHIBIT
"A"
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January 1, 2036, after which time this Declaration shall be automatically extended for six successive periods of five (5) years each, unless the Declaration is terminated by the written approval of all the owners of the 5.2 Acres and all the owners of the 16.6 Acres.

5.2 In the event the City, or its successors or assigns, violates any of the restrictions, covenants, or agreements contained herein, then any owner of all or any part of the 16.6 Acres may enforce these restrictions by injunctive relief and/or other applicable legal or equitable remedies.

5.3 It is agreed that the covenants, conditions and restrictions contained herein shall apply only to the 5.2 Acres and that no covenants, conditions or restrictions are being placed on the 16.6 Acres.

5.4 This Declaration may be amended only with the express written consent of all the owners of the 5.2 Acres and all the owners of the 16.6 Acres as evidenced by a written amendment executed by all the owners of the 5.2 Acres and the 16.6 Acres and recorded in the Real Property Records of Travis County, Texas.

5.5 It is further agreed that in the event the City or its assigns, through no solicitation or urging of the City of Cedar Park, the City of Leander, or the City of Round Rock or their assigns, shall be required by any applicable federal, state or local law or regulation to add or modify a feature or construct any facility associated with operation, maintenance, repair, upgrade, or replacement of any facilities constructed upon the 5.2 Acres that is not substantially similar to the site plan attached hereto as Exhibit C, such requirement of law shall prevail over these restrictions. However, in no event will any development restrictions or regulations enacted by the City of Cedar Park, the City of Leander, or the City of Round Rock prevail over this Declaration.

Blumberg No. 5118
EXHIBIT B-1
Leander Res
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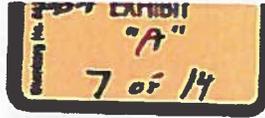
Executed effective as of the _____ day of _____, 2016.

The City of Leander, Texas

By: _____
Name: _____
Title: _____

Cathy L. Gross

Gary L. Gross



ACKNOWLEDGEMENTS

STATE OF TEXAS §
 §
COUNTY OF WILLIAMSON §

This instrument was acknowledged before me on the _____ day of _____, 2016, by _____, _____ of The City of Leander, Texas, and on behalf of The City of Leander, Texas.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the _____ day of _____, 2016, by Cathy L. Gross.

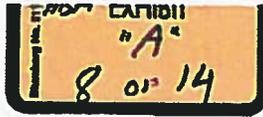
Notary Public, State of Texas



STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the _____ day of _____, 2016, by Gary L. Gross.

Notary Public, State of Texas



**METES AND BOUNDS DESCRIPTION
OF A
5.217 ACRE TRACT OF LAND
SITUATED IN THE JOHN STEWART SURVEY NO. 551
AND THE ROBERT FOSTER SURVEY NO. 31,
TRAVIS COUNTY, TEXAS**

BEING A 5.217 ACRE (227,259 SQUARE FOOT) TRACT OF LAND SITUATED IN THE JOHN STEWART SURVEY NO. 551 AND THE ROBERT FOSTER SURVEY NO. 31, TRAVIS COUNTY, TEXAS; SAID 5.217 ACRE TRACT BEING COMPRISED OF A PORTION OF TRACT 1, ALL OF TRACT 2 (CALLED 1.069 ACRES) AND A PORTION OF TRACT 3 (CALLED 10.068 ACRES) WITH ALL 3 TRACTS BEING DESCRIBED IN A WARRANTY DEED TO GARY L. GROSS AND WIFE, CATHY L. GROSS, AS RECORDED IN VOLUME 11546, PAGE 1498 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS (R.P.R.T.C.T.), AND ALSO BEING A PORTION OF THAT CERTAIN CALLED 5.163 ACRE TRACT OF LAND DESCRIBED IN A SPECIAL WARRANTY DEED TO GARY L. GROSS AND WIFE, CATHY L. GROSS, AS RECORDED IN VOLUME 12817, PAGE 1043, R.P.R.T.C.T.; SAID 5.217 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

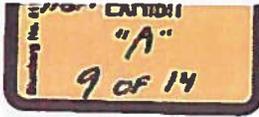
BEGINNING at a 1/2-inch iron rod found for the northernmost corner of the herein described tract and said Tract 2, same being the easternmost corner of Lot 1, Lake Travis Subdivision No. 6, recorded in Volume 4, Page 157 of the Plat Records of Travis County, Texas (P.R.T.C.T.), and also being on the westerly right-of-way (R.O.W.) line of Bernard Street (having a width of 50 feet at this location), and being located at Texas State Plane Coordinate grid position N=10,135,754.8226 and E=3,057,450.2885;

THENCE, South 28 degrees 30 minutes 50 seconds West, with the common westerly R.O.W. line of said Bernard Street and the easterly line of said Tract 2, same being the easterly line of said Lot 1, a distance of 104.96 feet to a 1/2-inch iron rod found for a corner of the herein described tract and marking the northernmost corner of said Tract 1, same being the northernmost corner of Lot 12, Lake Travis Subdivision No. 2, recorded in Volume 4, Pages 82-83, P.R.T.C.T., said point also marking the intersection of the westerly R.O.W. line of said Bernard Street and the southwesterly R.O.W. line of Jackson Street (having a width of 50 feet at this location);

THENCE, South 33 degrees 24 minutes 12 seconds East, with the common southwesterly R.O.W. line of said Jackson Street and the northeasterly line of said Tract 1, same being the northeasterly line of said Lot 12, a distance of 170.19 feet to a 1/2-inch iron rod with orange plastic cap stamped "Wallace Group" set for a corner of the herein described tract;

THENCE, South 51 degrees 48 minutes 33 seconds West, departing the southwesterly R.O.W. line of said Jackson Street, traveling partway across the interior of said Tract 1, same being said Lot 12, partway across the interior of said Tract 3, same being said 10.068 acre tract, and partway across the interior of said 5.163 acre tract, a distance of 910.86 feet to a 1/2-inch iron rod with orange plastic cap stamped "Wallace Group" set for the southernmost corner of the herein described tract and being on the southwesterly line of said 5.163 acre tract;





Description of a 5.217 acre tract (continued)

THENCE, with the southwesterly line of said 5.163 acre tract, the following three (3) courses and distances:

- 1) North 09 degrees 54 minutes 18 seconds West, a distance of 53.10 feet to a 1/2-inch iron rod found for a corner of said 5.163 acre tract and the herein described tract;
- 2) North 33 degrees 22 minutes 57 seconds West, a distance of 70.89 feet to a 1/2-inch iron rod found for a corner of said 5.163 acre tract and the herein described tract;
- 3) North 15 degrees 24 minutes 59 seconds West, a distance of 189.50 feet to a 1/2-inch iron rod found for the westernmost corner of said 5.163 acre tract and the herein described tract, same marking the southernmost corner of that certain called 2.763 acre tract of land described in a Special Warranty Deed to Jean I. Ringer, as recorded in Volume 13203, Page 148, R.P.R.T.C.T.;

THENCE, with the common northwesterly line of said 5.163 acre tract and the southeasterly line of said 2.763 acre tract, the following two (2) courses and distances:

- 1) North 56 degrees 56 minutes 36 seconds East, a distance of 98.46 feet to a 1/2-inch iron rod found for a corner of the herein described tract;
- 2) North 56 degrees 49 minutes 43 seconds East, a distance of 428.18 feet to a 1/2-inch iron rod found for a corner of the herein described tract, said point marking the common northernmost corner of said 5.163 acre tract, the easternmost corner of said 2.763 acre tract, and the westernmost corner of said 1.069 acre tract;



THENCE, North 56 degrees 52 minutes 06 seconds East, with the northwesterly line of said 1.069 acre tract, and traveling across the interior of said Lot 1, a distance of 393.94 feet to the POINT OF BEGINNING and containing 5.217 acres (227,259 square feet) of land, more or less, based on the survey and drawing made by The Wallace Group, Inc., Round Rock, Texas in July of 2013.

That I, Daniel M. Flaherty, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground under my direction and supervision.

Daniel M. Flaherty

Daniel M. Flaherty, R.P.L.S. No. 5004
The Wallace Group, Inc.
One Chisholm Trail, Suite 130
Round Rock, Texas 78681
Ph. (512) 248-0065
22951-FN05.doc

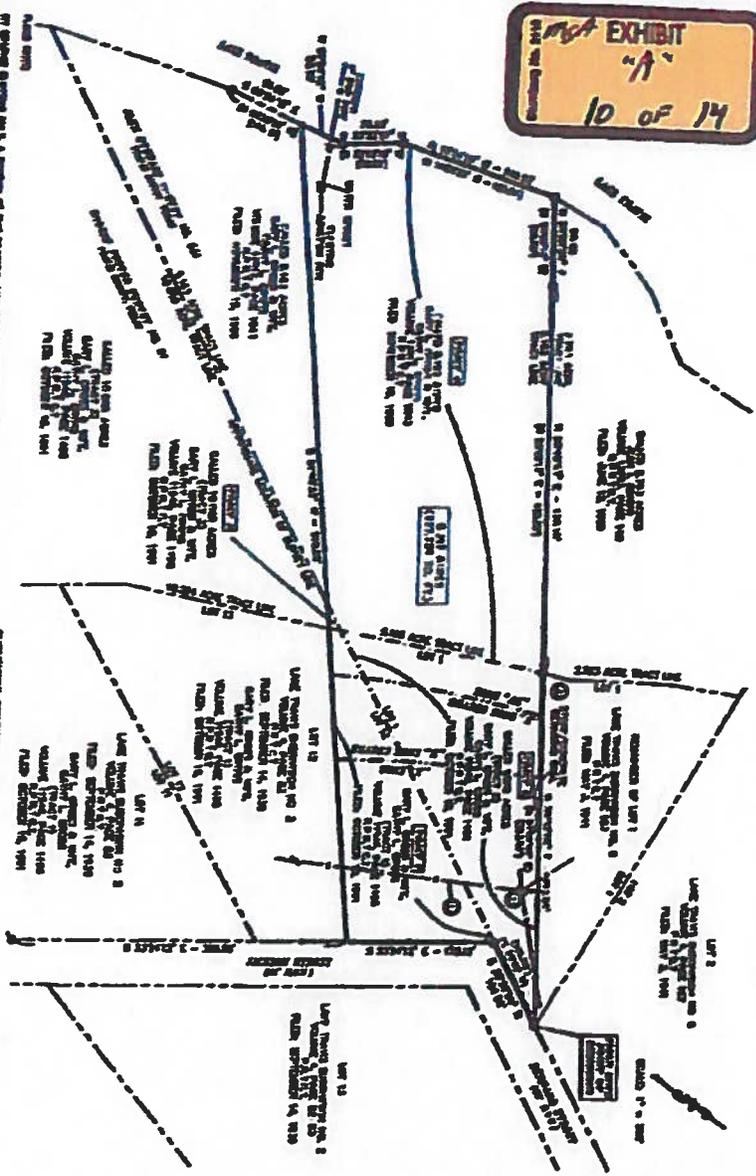


07-29-2013
Date



EXHIBIT
"A"
10 of 14

Blumberg No. 5118
EXHIBIT "B"
Leander Ret
12/25/16



1. The surveying instrument used in this survey was a Leica TCR110 total station, which is a precision instrument used for measuring distances and angles. The instrument was used to measure the bearings and distances between the corners of the lots shown on this map. The instrument was used to measure the bearings and distances between the corners of the lots shown on this map. The instrument was used to measure the bearings and distances between the corners of the lots shown on this map.

2. The surveying instrument used in this survey was a Leica TCR110 total station, which is a precision instrument used for measuring distances and angles. The instrument was used to measure the bearings and distances between the corners of the lots shown on this map. The instrument was used to measure the bearings and distances between the corners of the lots shown on this map. The instrument was used to measure the bearings and distances between the corners of the lots shown on this map.

3. The surveying instrument used in this survey was a Leica TCR110 total station, which is a precision instrument used for measuring distances and angles. The instrument was used to measure the bearings and distances between the corners of the lots shown on this map. The instrument was used to measure the bearings and distances between the corners of the lots shown on this map. The instrument was used to measure the bearings and distances between the corners of the lots shown on this map.

[Handwritten Signature]
5/7/29/13



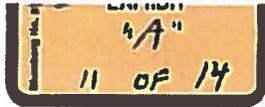
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LAND TITLE SURVEY

LAND TRACT SURVEY NO. 1
LAND TRACT SURVEY NO. 2

The Wallace Group, Inc.
Surveyors
10000 West Loop West, Suite 1000
Houston, Texas 77042
Phone: 713-865-1100
Fax: 713-865-1101
www.wallacegroup.com

EXHIBIT
"A"
3093



Steven Warner Womack, RPLS, PLS, NCEES

National Council of Examiners for Engineering and Surveying #1928
Texas Registered Professional Land Surveyor #5026
North Carolina Professional Land Surveyor #L-5043
E-Mail: SWRPLS@gmail.com
(512) 638-0220

METES AND BOUNDS DESCRIPTION

16.562 ACRES OF LAND SITUATED IN THE ROBERT FOSTER SURVEY No. 31 AND THE JOHN STEWART SURVEY No. 551 IN TRAVIS COUNTY, TEXAS BEING ALL OF LOT 11, LAKE TRAVIS SUBDIVISION No. 2 ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 4, PAGE 82 OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS AND A 1.757 ACRE PORTION OF LOT 12, LAKE TRAVIS SUBDIVISION No. 2 ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 4, PAGE 82 OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS AND THE REMAINDER OF A CALLED 10.068 ACRE TRACT CONVEYED TO GARY AND CATHY GROSS BY INSTRUMENT OF RECORD IN VOLUME 11546, PAGE 1498 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS AND THE REMAINDER OF A CALLED 5.163 ACRE TRACT CONVEYED TO GARY AND CATHY GROSS BY INSTRUMENT OF RECORD IN VOLUME 12817, PAGE 1043 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS AND AS SHOWN ON THE ATTACHED SKETCH:

Beginning at an iron rod found at the southwest corner of the intersecting right-of-ways of Jackson Street and Arren Terrace, being also the northeast corner of the said Lot 11, for the northeast corner and Point of Beginning of the herein described tract;

Thence S 16 deg 44 min 15 sec W 511.43 feet to an iron rod found at the southeast corner of the said Lot 11, being also the northeast corner of the said 10.068 acre tract, for a point on the east line of the herein described tract;

Thence S 16 deg 45 min 04 sec W 808.91 feet to a point submerged under the waters of Lake Travis on the approx. 670 foot contour line, being also on the northeast line of a 53.547 acre tract conveyed to Gary and Cathy Gross by instrument of record in Document No. 2006050569 in the Official Public Records of Travis County, Texas, for the southeast corner of the herein described tract;

Thence N 18 deg 16 min 56 sec W 448.95 feet to a point submerged under the waters of Lake Travis, being also on the northeast line of the said 53.547 acre tract, for a point on the southwest line of the herein described tract;

Thence N 55 deg 42 min 56 sec W 332.00 feet to a point submerged under the waters of Lake Travis, being also on the northeast line of the said 53.547 acre tract, for a point on the southwest line of the herein described tract;

Thence N 29 deg 01 min 10 sec W 121.48 feet to a point submerged under the waters of Lake Travis, being also at the northwest corner of the said 53.547 acre tract, being also the southwest corner of the said 10.068 acre tract and the southeast corner of the said 5.163 acre tract, for a point on the southwest line of the herein described tract;

Thence N 15 deg 13 min 01 sec W 221.99 feet to a point submerged under the waters of Lake Travis, being also on the southwest line of the said 5.163 acre tract, for a point on the southwest line of the herein described tract;

Thence N 09 deg 54 min 18 sec W 91.09 feet to a point submerged under the waters of Lake Travis, being also on the southwest line of the said 5.163 acre tract and being the southeast corner of a 3.067 acre tract conveyed to the City of Leander, for the southwest corner of the herein described tract;

Thence N 51 deg 48 min 33 sec E 531.18 feet to a point on the northwest line of the said 10.068 acre tract, being also on the east line of the said 5.163 acre tract and being also on the southeast line of the said 3.067 acre tract, for a point on the northwest line of the herein described tract;



"A"
12 of 14

Thence N 51 deg 48 min 33 sec E 28.07 feet to a point on the northeast line of the said 10.068 acre tract, being also on the southwest line of the said Lot 12 and being also on the southeast line of the said 3.067 acre tract, for a point on the northwest line of the herein described tract;

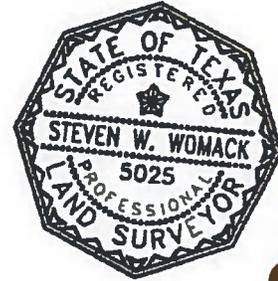
Thence N 51 deg 48 min 33 sec E 351.61 feet to an iron rod found at the southeast corner of the said 3.067 acre tract, being also on the northeast line of the said Lot 12 and being also on the southerly unimproved right-of-way of Jackson Street, for the northeast corner of the herein described tract;

Thence S 33 deg 24 min 12 sec E 104.32 feet to an iron pipe found at the northwest corner of the said Lot 11, for a point on the northeast line of the herein described tract;

Thence S 33 deg 24 min 12 sec E 281.75 feet to the Point of Beginning and containing 16.562 acres of land, more or less.

Steven W. Womack
Registered Professional Land Surveyor
No. 5025, State of Texas

26 April 2016
Date



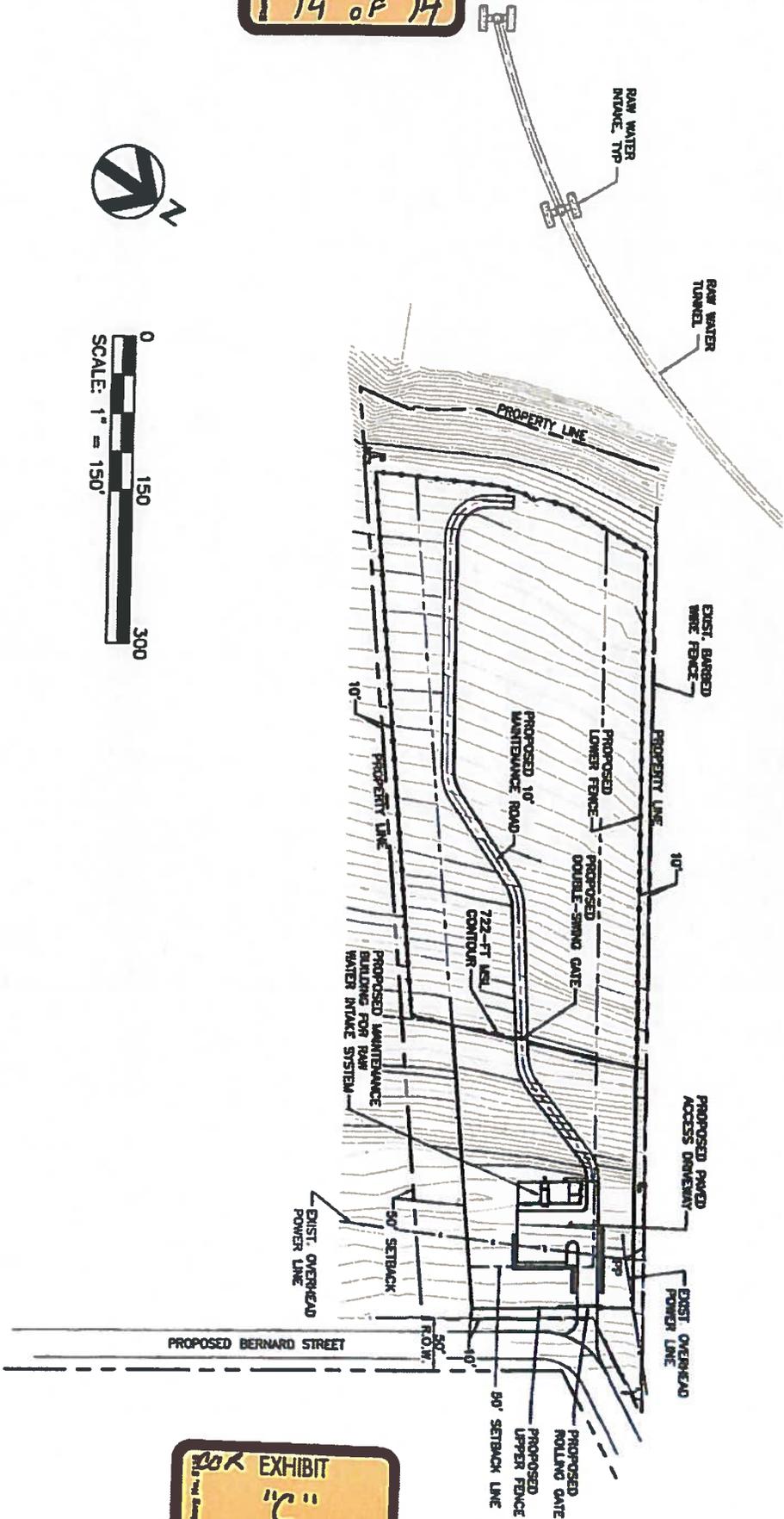
Blumberg No. 5118
EXHIBIT "B"
Records Res
17 of 16

CCR EXHIBIT
"B"
2 of 3

MSA EXHIBIT
"A"
14 OF 14



EXHIBIT C



Blumberg No. 5118
EXHIBIT "B"
Leander Res
11/6 of 11/6

EXHIBIT
"C"

**METES AND BOUNDS DESCRIPTION
OF A
5.217 ACRE TRACT OF LAND
SITUATED IN THE JOHN STEWART SURVEY NO. 551
AND THE ROBERT FOSTER SURVEY NO. 31,
TRAVIS COUNTY, TEXAS**

BEING A 5.217 ACRE (227,259 SQUARE FOOT) TRACT OF LAND SITUATED IN THE JOHN STEWART SURVEY NO. 551 AND THE ROBERT FOSTER SURVEY NO. 31, TRAVIS COUNTY, TEXAS; SAID 5.217 ACRE TRACT BEING COMPRISED OF A PORTION OF TRACT 1, ALL OF TRACT 2 (CALLED 1.069 ACRES) AND A PORTION OF TRACT 3 (CALLED 10.068 ACRES) WITH ALL 3 TRACTS BEING DESCRIBED IN A WARRANTY DEED TO GARY L. GROSS AND WIFE, CATHY L. GROSS, AS RECORDED IN VOLUME 11546, PAGE 1498 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS (R.P.R.T.C.T.), AND ALSO BEING A PORTION OF THAT CERTAIN CALLED 5.163 ACRE TRACT OF LAND DESCRIBED IN A SPECIAL WARRANTY DEED TO GARY L. GROSS AND WIFE, CATHY L. GROSS, AS RECORDED IN VOLUME 12817, PAGE 1043, R.P.R.T.C.T.; SAID 5.217 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2-inch iron rod found for the northernmost corner of the herein described tract and said Tract 2, same being the easternmost corner of Lot 1, Lake Travis Subdivision No. 6, recorded in Volume 4, Page 157 of the Plat Records of Travis County, Texas (P.R.T.C.T.), and also being on the westerly right-of-way (R.O.W.) line of Bernard Street (having a width of 50 feet at this location), and being located at Texas State Plane Coordinate grid position N=10,135,754.8226 and E=3,057,450.2885;

THENCE, South 28 degrees 30 minutes 50 seconds West, with the common westerly R.O.W. line of said Bernard Street and the easterly line of said Tract 2, same being the easterly line of said Lot 1, a distance of 104.96 feet to a 1/2-inch iron rod found for a corner of the herein described tract and marking the northernmost corner of said Tract 1, same being the northernmost corner of Lot 12, Lake Travis Subdivision No. 2, recorded in Volume 4, Pages 82-83, P.R.T.C.T., said point also marking the intersection of the westerly R.O.W. line of said Bernard Street and the southwesterly R.O.W. line of Jackson Street (having a width of 50 feet at this location);

THENCE, South 33 degrees 24 minutes 12 seconds East, with the common southwesterly R.O.W. line of said Jackson Street and the northeasterly line of said Tract 1, same being the northeasterly line of said Lot 12, a distance of 170.19 feet to a 1/2-inch iron rod with orange plastic cap stamped "Wallace Group" set for a corner of the herein described tract;

THENCE, South 51 degrees 48 minutes 33 seconds West, departing the southwesterly R.O.W. line of said Jackson Street, traveling partway across the interior of said Tract 1, same being said Lot 12, partway across the interior of said Tract 3, same being said 10.068 acre tract, and partway across the interior of said 5.163 acre tract, a distance of 910.86 feet to a 1/2-inch iron rod with orange plastic cap stamped "Wallace Group" set for the southernmost corner of the herein described tract and being on the southwesterly line of said 5.163 acre tract;



Description of a 5.217 acre tract (continued)

THENCE, with the southwesterly line of said 5.163 acre tract, the following three (3) courses and distances:

- 1) North 09 degrees 54 minutes 18 seconds West, a distance of 53.10 feet to a 1/2-inch iron rod found for a corner of said 5.163 acre tract and the herein described tract;
- 2) North 33 degrees 22 minutes 57 seconds West, a distance of 70.89 feet to a 1/2-inch iron rod found for a corner of said 5.163 acre tract and the herein described tract;
- 3) North 15 degrees 24 minutes 59 seconds West, a distance of 189.50 feet to a 1/2-inch iron rod found for the westernmost corner of said 5.163 acre tract and the herein described tract, same marking the southernmost corner of that certain called 2.763 acre tract of land described in a Special Warranty Deed to Jean I. Ringer, as recorded in Volume 13203, Page 148, R.P.R.T.C.T.;

THENCE, with the common northwesterly line of said 5.163 acre tract and the southeasterly line of said 2.763 acre tract, the following two (2) courses and distances:

- 1) North 56 degrees 56 minutes 36 seconds East, a distance of 98.46 feet to a 1/2-inch iron rod found for a corner of the herein described tract;
- 2) North 56 degrees 49 minutes 43 seconds East, a distance of 428.18 feet to a 1/2-inch iron rod found for a corner of the herein described tract, said point marking the common northernmost corner of said 5.163 acre tract, the easternmost corner of said 2.763 acre tract, and the westernmost corner of said 1.069 acre tract;

THENCE, North 56 degrees 52 minutes 06 seconds East, with the northwesterly line of said 1.069 acre tract, and traveling across the interior of said Lot 1, a distance of 393.94 feet to the **POINT OF BEGINNING** and containing 5.217 acres (227,259 square feet) of land, more or less, based on the survey and drawing made by The Wallace Group, Inc., Round Rock, Texas in July of 2013.

That I, Daniel M. Flaherty, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground under my direction and supervision.



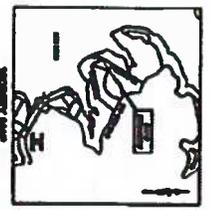


Daniel M. Flaherty, R.P.L.S. No. 5004
The Wallace Group, Inc.
One Chisholm Trail, Suite 130
Round Rock, Texas 78681
Ph. (512) 248-0065
22951-FN05.doc



07-29-2013
Date

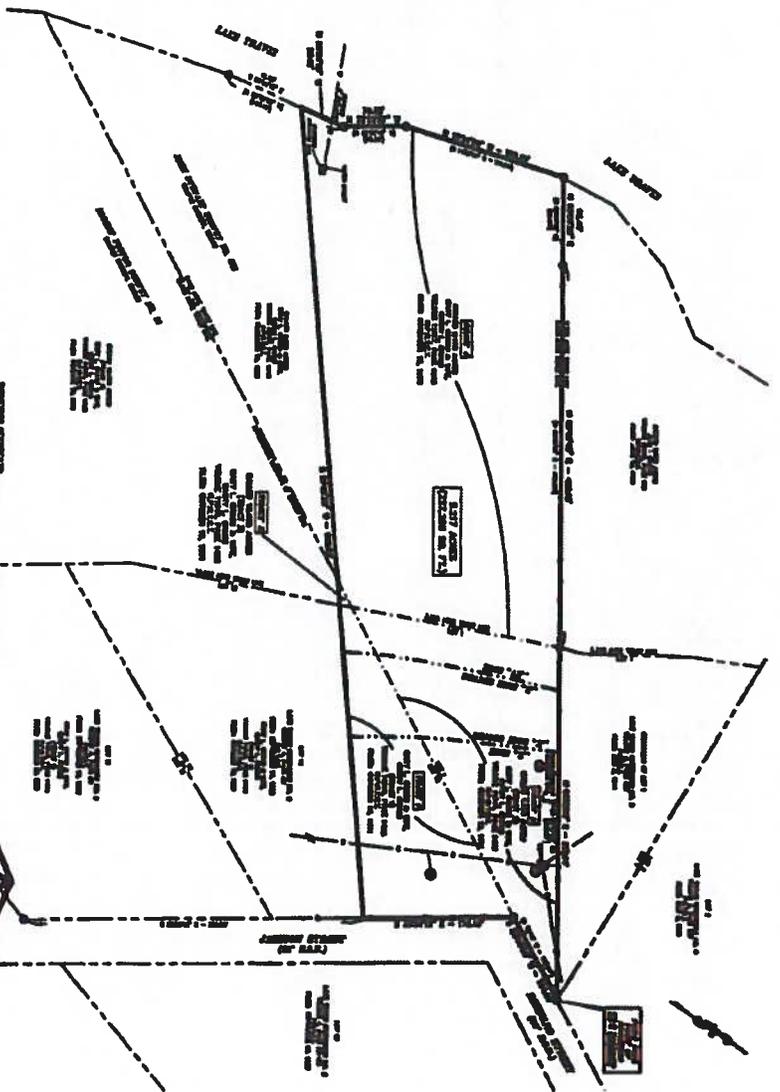
Blumberg No. 5118
 EXHIBIT "A"
 Leander Res
 3 of 3



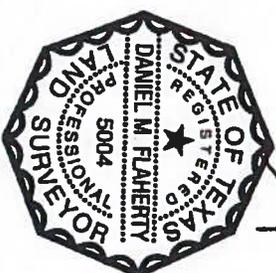
THIS SURVEY WAS MADE FOR THE PURPOSE OF DIVIDING THE LAND DESCRIBED IN THE FOREGOING INTO LOTS AND TRACTS OF MORE OR LESS ACCORDING TO THE PLAN HEREON SHOWN. THE SURVEY WAS MADE BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND TO THE BEST OF MY KNOWLEDGE AND BELIEF THE SAME IS TRUE AND CORRECT.

LEGEND

--- Dashed line showing boundary of land surveyed
 --- Dashed line showing boundary of land owned by Daniel M. Flaherty
 --- Dashed line showing boundary of land owned by others
 --- Dashed line showing boundary of land owned by the State of Texas



Daniel M. Flaherty



DATE	11/7/8	BY	D.M.F.
PROJECT	Leander Res	SCALE	AS SHOWN
SECTION	10	TOWNSHIP	10N
RANGE	10E	COUNTY	LEANDER
STATE	TEXAS	COMMISSION	1979

THIS SURVEY WAS MADE FOR THE PURPOSE OF DIVIDING THE LAND DESCRIBED IN THE FOREGOING INTO LOTS AND TRACTS OF MORE OR LESS ACCORDING TO THE PLAN HEREON SHOWN. THE SURVEY WAS MADE BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND TO THE BEST OF MY KNOWLEDGE AND BELIEF THE SAME IS TRUE AND CORRECT.

- 1. ALL LOTS AND TRACTS ARE TO BE CONVEYED TO THE STATE OF TEXAS.
- 2. ALL LOTS AND TRACTS ARE TO BE CONVEYED TO THE STATE OF TEXAS.

LAND TITLE SURVEY
 CLAY LANE
 DANIEL M. FLAHERTY
 REGISTERED PROFESSIONAL LAND SURVEYOR
 NO. 5004

The Wallace Group, Inc.
 ENGINEERS & ARCHITECTS
 10000 West Loop West, Suite 1000
 Houston, Texas 77042

CAUSE NO. C-1-CV-14-007201

CITY OF LEANDER, TEXAS
Plaintiff

v.

GARY L. GROSS and CATHY L. GROSS
Defendants

§
§
§
§
§
§
§

PROCEEDING IN EMINENT DOMAIN

IN THE COUNTY COURT AT LAW NO. 2

TRAVIS COUNTY, TEXAS

AGREED FINAL JUDGMENT

BE IT REMEMBERED, that on the ____ day of _____, 2016, came on to be heard the above-entitled and numbered cause and came Plaintiff, **City of Leander, Texas** and Defendants, **spouses Gary L. Gross and Cathy L. Gross** (both referred to jointly hereafter as “**Gross**”), and announced ready for trial. All other parties, having been duly served with notice, did not appear.

I.

Prior to commencement of trial of this cause, **Gross** admitted and stipulated in open Court that the Plaintiff, **City of Leander** and **Gross** had reached a settlement of this cause in connection with the condemnation of the hereinafter-described tract of land; and that, for purposes of settlement of this cause, this Court has jurisdiction of all such issues and this cause of action.

II.

From the papers heretofore filed in this cause, the evidence introduced upon the trial of this cause, and the agreements and stipulations made by the parties upon the trial of this cause, the Court finds:

(1) That under and by its Original Petition in Condemnation filed in Probate Court No. 1 of Travis County, Texas, on the 31st day of July, 2014, Plaintiff **City of Leander** sought and prayed for the fee simple acquisition of the tract of land described in Exhibit “A,” for the public use of excavating for, laying, constructing, operating, maintaining, replacing, removing, upgrading, and repairing a permanent raw water intake facility and related appurtenances, including but not limited to a subsurface tunnel, maintenance building, electrical lines and communication lines, and further for the use of any and all excavated materials from the taken property through condemnation of the following described tracts of land located in Travis County, Texas, to-wit:

That certain parcel of land situated in Travis County, Texas containing 5.217 acres, more or less, and being specifically described by metes and bounds and sketch in Exhibit “A,” attached hereto and incorporated for all purposes.

Provided, however, there is excluded from said estate to be condemned, all the oil, gas, minerals, and groundwater rights which can be removed from beneath said tract of land without any right whatever remaining to the owner, his heirs, assigns or successors in interest of such oil, gas, minerals, and groundwater, rights of ingress to or egress from the surface of said tract of land for the purpose of exploring, developing, drilling or mining of the same;

(2) That pursuant to said Original Petition in Eminent Domain, said Judge appointed three disinterested freeholders who reside in Travis County, Texas, as Special Commissioners, who subsequently met, took their oaths of office, set a date of hearing before said Commissioners, and caused notice thereof to be duly served, as prescribed by law, and that said Special Commissioners duly held said hearing;

(3) That upon said hearing Plaintiff the **City of Leander** and Defendants **Gross** appeared. That after such hearing, said Special Commissioners made and rendered their decision and Award in writing, and filed said Award with the Judge of this Court on October 1, 2014;

(4) That by said written Award, said Special Commissioners jointly awarded to all Defendants herein, for the fee simple interest in the property described in Exhibit “A” the total sum of **ONE MILLION SEVEN HUNDRED TWENTY FOUR THOUSAND SIX HUNDRED TWENTY AND NO/100s DOLLARS (\$1,724,620.00)**; and

(5) That **Gross** duly and timely filed an objection and exception to such Award of said Special Commissioners.

III.

The parties the **City of Leander** and **Gross** have announced to the Court they have reached through mediation a settlement agreement (“**MSA**”), a full copy of which is attached as Exhibit “B” and incorporated herewith by reference as if fully set out. The parties have previously jointly agreed pursuant to the **MSA** that **Gross** shall have and recover from the **City of Leander** the total sum of **TWO MILLION FIVE HUNDRED SIXTY FIVE THOUSAND DOLLARS AND NO/100 DOLLARS (\$2,565,000.00)**, inclusive of claims for pre-judgment and post-judgment interest, if any, representing the total amount of monetary compensation to which the Defendants are all jointly entitled by virtue of the condemnation of said property and compensable damages to Defendants’ remaining properties; and

That **Gross** agreed to settle this cause based on the promises and representations made by the **City of Leander** in the **MSA** and **Gross’s** agreement to this judgment is conditioned upon

the **City of Leander's** fulfillment of the promises and representations made in the **MSA**; that the parties, therefore, recognize and agree that **Gross** shall receive certain other non-monetary compensation detailed within the **MSA** as additional compensation for this condemnation; and

That the **City of Leander** has previously paid **ONE MILLION SEVEN HUNDRED TWENTY FOUR THOUSAND SIX HUNDRED TWENTY AND NO/100s DOLLARS (\$1,724,620.00)** into the registry of the Court; and

That upon the City of Leander's payment to Defendants of the differential between the Special Commissioners' Award and the agreed MSA settlement amount, which difference totals **EIGHT HUNDRED TWENTY-FOUR THOUSAND SIX HUNDRED TWENTY AND NO/100s DOLLARS (\$840,380.00)**, the City of Leander shall stand fully discharged of its constitutional obligation to pay Defendants all sums due as a result of this taking.

IV.

Based upon the agreement of the parties as to total monetary and non-monetary compensation due for this condemnation, and the evidence and arguments submitted, upon due consideration the Court finds and determines the following:

(1) That all proceedings necessary to vest this Court with jurisdiction of the subject matter and the parties of this cause have been instituted, maintained and complied with as required by law,

(2) That **Gross** hereby stipulates and admits that for purposes of settlement and in connection with this cause only the Court has jurisdiction over this matter and that, therefore, this Court has jurisdiction of the parties hereto and of the subject matter set forth in this case;

(3) That the Defendants were the owners in fee simple of the property described in Exhibit "A" on the date of taking, and that together with the other named Defendants owned one hundred percent (100%) of the property rights in and to both the fee simple taking tract described in Exhibit "A" and that the **City of Leander**, as Plaintiff, is condemning and the **City of Leander** is acquiring under and by virtue of these condemnation proceedings, the fee simple title in and to the tract of land described in Exhibit "A" and that the **City of Leander** is authorized to acquire said property;

(4) That from the pleadings, evidence and the agreement of the parties, the Defendants should all jointly have and recover of and from the Plaintiff, **City of Leander**, the total monetary sum and amount of **TWO MILLION FIVE HUNDRED SIXTY FIVE THOUSAND DOLLARS AND NO/100 DOLLARS (\$2,565,000.00)**, inclusive of interest on the Award/Settlement differential, together with the non-monetary items set out below, as compensation for said property condemned and taken;

(5) That the **City of Leander**, in turn, should have and recover from all of the Defendants the fee simple title in and to the tracts of land described in Exhibit "A;"

(6) That the Plaintiff, **City of Leander**, has already paid the sum of **ONE MILLION SEVEN HUNDRED TWENTY FOUR THOUSAND SIX HUNDRED TWENTY AND NO/100 DOLLARS (\$1,724,620.00)** and said amount has been deposited with the Clerk of this Court with **City of Leander** check number 060264 in the amount described above on the 10th day of March, 2015.

(7) That upon payment to Defendants of the additional mutually-agreed amount of **EIGHT HUNDRED TWENTY-FOUR THOUSAND SIX HUNDRED TWENTY AND**

NO/100s DOLLARS (\$840,380.00) the City of Leander shall stand discharged of its constitutional obligation to pay just and adequate compensation for this taking; and

(8) That all costs of Court incurred herein should be taxed against the Plaintiff, **City of Leander**, which costs shall be paid only to the County Clerk of Travis County, Texas.

V.

It is therefore ORDERED, ADJUDGED, AND DECREED that the **City of Leander** does have and recover of and from all Defendants the fee simple title in and to the tract of land described in Exhibit "A," save and except the subsurface minerals beneath said land, without any right whatsoever remaining in Defendants to enter onto the surface of said land to remove any minerals, and that the Defendants have and are jointly entitled to judgment from the **City of Leander** in the total sum of **TWO MILLION FIVE HUNDRED SIXTY FIVE THOUSAND DOLLARS AND NO/100 DOLLARS (\$2,565,000.00)**, inclusive of both the already-paid Special Commissioner's Award and any interest on the Award/Settlement differential, and that the **City of Leander** must also provide the non-monetary items set out above and as specified in the **MSA**, all as just and adequate compensation for all interests in said property herein acquired in fee simple.

VI.

It is further ORDERED, ADJUDGED, AND DECREED that the fee simple title in and to the tracts of land described in Exhibit "A" is hereby decreed to and vested in the **City of Leander**; provided, however, there is excluded from said estate vested in the **City of Leander** all the oil, gas, minerals, and groundwater rights which can be removed from beneath said land aforesaid without any right whatsoever remaining to the owner, his heirs, assigns, or successors in interest of such oil, gas, minerals, groundwater and rights of ingress to or egress from the surface of said land for the purpose of exploring, drilling, developing or mining of the same.

IX.

It is further ORDERED, ADJUDGED and DECREED by the Court that all costs of this proceeding be and they are hereby taxed against Plaintiff, the **City of Leander**, which costs shall be paid only to the County Clerk of Travis County, Texas.

SIGNED this the ____ day of _____, 2016.

JUDGE PRESIDING

APPROVED AS TO SUBSTANCE AND FORM:

KENT A. SICK
State Bar No. 18339300

LAW OFFICES OF KENT ALAN SICK
4611 Bee Caves Road, Suite 110
Austin, Texas 78746
Telephone: (512) 472-8022
Facsimile: (888) 774-1322
Email: kent@kentsick.com

PAIGE H. SAENZ
State Bar No. 24026513
KNIGHT & PARTNERS
223 West Anderson Lane, Suite A-105
Austin, Texas 78752
Telephone: (512) 323-5778
Facsimile: (512) 323-5773
Email: paige@cityattorneytexas.com

**ATTORNEYS FOR PLAINTIFF
CITY OF LEANDER**

CHRISTOPHER J. ODDO
State Bar No. _____
BARRON & ADLER, L.L.P.
808 Nueces Street
Austin, Texas 78701
Telephone: (512) 474-4995
Facsimile: (512) 478-6022
Email: oddo@barronadler.com

**COUNSEL FOR DEFENDANTS
GARY L. GROSS AND SPOUSE, CATHY L. GROSS**