



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

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

Thursday ~ January 29, 2015 at 7:00 PM



**Mayor – Christopher Fielder  
Place 1 – Andrea Navarrette  
Place 2 – Kirsten Lynch  
Place 3 – Simon Garcia (Mayor Pro Tem)**

**Place 4 – Ron Abruzzese  
Place 5 – Jason Dishongh  
Place 6 – David Siebold  
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*
5. Recognition of members of the Mayor's Council of People with Disabilities
6. Presentation by Leander Chamber of Commerce

**CONSENT AGENDA: ACTION**

7. Approval of the minutes: January 15, 2015
8. Second Reading of an Ordinance on Zoning Case #14-Z-032: amending Ordinance #05-018, the Composite Zoning Ordinance for the property located at 190 Bagdad Road, Leander, Williamson County, Texas
9. Second Reading of an Ordinance on Zoning Case #14-Z-033: amending Ordinance #05-018, the Composite Zoning Ordinance for the property located at 602 and 604 Horseshoe, Leander, Williamson County, Texas
10. License Agreement for the installation and maintenance of irrigation, installation of landscaping, hardscape, and signage within the City rights-of-way.
11. Contract Awards to Lease Golf Course Maintenance Equipment
12. Accept resignation of Jason Dishongh for Place 5 of the Leander City Council
13. Accept resignation of Simon Garcia for Place 3 of the Leander City Council
14. Accept Subdivision Infrastructure Improvements for Borho, Phase 3, Subdivision

**PUBLIC HEARING: NO ACTION**

15. Second public hearing on the proposed annexation of a certain area of land being 35.48 acres, more or less, located in Williamson County, Texas, comprised of three (3) parcels of land being 21.690 acres, more or less, 12.580 acres, more or less, and 1.210 acres, more or less, and being generally located south of Highway 29, east of Ronald Reagan Boulevard and north of Kauffman Loop

16. Second public hearing on the proposed annexation of a certain area of land being 261.17 acres, More or less, located in Williamson County, Texas, comprised of four (4) parcels of land being 63.729 acres, more or less, 63.619 acres, more or less, and 127.269 acres, more or less, and 6.553 acres, more or less, and being generally located east of County Road 279, north of Collaborative Way and the Savannah Ranch Subdivision

### REGULAR AGENDA

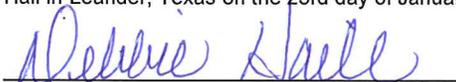
17. Consider Revised Standard Professional Services Agreement and Task Order FNI-2 with Freese and Nichols, Inc., for professional services for Traffic Signal(s) for the Intersection at Bagdad Road and Municipal Drive/Vista Ridge Drive
18. Consider an Ordinance setting Speed Limits for Ronald W. Reagan Boulevard
19. Zoning & Subdivision Cases 14-Z-017, 14-CP-008, & 14-PP-007: Consider action on a proposed extension for the second reading and approval of the Red Oak Valley Concept Plan and Preliminary Plat for 113.372 acre tract of land, more or less, located at 17680 Ronald Reagan. Currently, the property is zoned Interim SFR-1-B (Single Family Rural) and the applicant is proposing to zone the property PUD (Planned Unit Development), Leander, Williamson County, Texas.
20. Consider an Ordinance ordering and establishing procedures for the May 9, 2015 General Election
21. Consider an Ordinance ordering and establishing procedures for the May 9, 2015 Special Elections
22. Consider appointment of Mayor Pro-Tem for unexpired term

### EXECUTIVE SESSION

23. Convene into executive session 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 a dispute concerning the Development and Annexation Agreement for Global Village
24. Reconvene into open session to take action as deemed appropriate in the City Council's discretion regarding a dispute concerning the Development and Annexation Agreement for Global Village
25. Council Members Closing Statements
26. 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 23rd day of January, 2015 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 ~ January 15, 2015 at 7:00 PM

**Mayor – Christopher Fielder**

**Place 1 – Andrea Navarrette**

**Place 2 – Kirsten Lynch**

**Place 3 – Simon Garcia (Mayor Pro Tem)**

**Place 4 – Ron Abruzzese**

**Place 5 – Jason Dishongh**

**Place 6 – David Siebold**

**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 Lynch 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*  
**No citizens comments**
5. Administer Oath of Office to Associate Municipal Judge.  
**Judge Travis Lucas administered the oath of Office to Associate Municipal Judge Cathy Riedel**
6. Recognition of Robbie K Taylor on his retirement from the United States Army  
*Sponsored by Mayor Fielder*  
**Mayor Fielder recognized Robbie K. Taylor for his retirement from the United States Army and presented him with a Certificate of Recognition**
7. Presentation by LandDesign regarding the process and schedule for the Comprehensive Plan update  
**Kate Pearce with LandDesign gave a presentation regarding the Comprehensive Plan Update**

**CONSENT AGENDA: ACTION**

8. Approval of the minutes: December 18, 2014
9. Dedication and Acceptance of Subdivision Infrastructure Improvements for Hazlewood 3
10. Dedication and Acceptance of Subdivision Infrastructure for Savanna Ranch 3

11. Second Reading of Ordinance on Zoning Case #14-Z-031: amending Ordinance #05-018, the Composite Zoning Ordinance for the property located to the northwest of the intersection of South Bagdad Road and Marsala Circle, Leander, Williamson County, Texas

**Motion made by Council Member Navarrette to approve the consent agenda. Second by Council Member Dishongh. Motion passes, all voting "aye"**

**Mayor Fielder moved to Agenda Item # 23 at this time**

**PUBLIC HEARING: NO ACTION**

12. Second Public Hearing on the proposed annexation of a certain area of land being 166.47 acres, more or less, in Williamson County, Texas, and being generally located north of Crystal Falls Parkway, south of Old 2243 W and west of Bagdad Road, also known as the Falcon Oaks area  
**Tom Yantis, Assistant City Manager explained**

**Laurie Faucet - spoke against the annexation**

13. First public hearing on the proposed annexation of a certain area of land being 35.48 acres, more or less, located in Williamson County, Texas, comprised of three (3) parcels of land being 21.690 acres, more or less, 12.580 acres, more or less, and 1.210 acres, more or less, and being generally located south of Highway 29, east of Ronald Reagan Boulevard and north of Kauffman Loop  
**Tom Yantis, Assistant City Manager explained**

**No speakers**

14. First public hearing on the proposed annexation of a certain area of land being 261.17 acres, more or less, located in Williamson County, Texas, comprised of four (4) parcels of land being 63.729 acres, more or less, 63.619 acres, more or less, and 127.269 acres, more or less, and 6.553 acres, more or less, and being generally located east of County Road 279, north of Collaborative Way and the Savannah Ranch Subdivision  
**Tom Yantis, Assistant City Manager explained**

**No speakers**

**PUBLIC HEARING: ACTION**

15. **Public Hearing** on the issuance of an amount not to exceed \$30,000,000 "City of Leander, Texas Combination Tax and Revenue Certificates of Obligation, Series 2015"  
**Robert Powers, Finance Director explained**

**Action** on an Ordinance authorizing the issuance of an amount not to exceed \$30,000,000 "City of Leander, Texas Combination Tax and Revenue Certificates of Obligation, Series 2016"; Authorizing the Sale Thereof; and Enacting Provisions Incident and Related to the Issuance of Said Certificates

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

**Mayor Fielder called for a break at 7:40 pm  
Council reconvened at 7:47 pm**

16. **Public Hearing** on Zoning Case #14-Z-032: Consider a zoning change for a 2.53 acre tract of land, more or less, located at 190 Bagdad Road from SFU-2-B, Single Family Urban to HC-4-D, Heavy Commercial, Leander, Williamson County, Texas

*Applicant: Mike Elmore on behalf of MPE Realty*

**Tom Yantis, Assistant City Manager explained**

**Action** on Zoning Case #14-Z-032: amending Ordinance #05-018, the Composite Zoning Ordinance for the property located at 190 Bagdad Road, Leander, Williamson County, Texas

**Motion made by Council Member Siebold to approve staff recommendation as approved by Planning & Zoning for the HC-3-C. Second by Council Member Dishongh. Motion passes, all voting “aye”**

17. **Public Hearing** on Zoning Case #14-Z-033: Consider a zoning change for a 5.06 acres, , more or less, located at 602 and 604 Horseshoe from SFU/MH-2-B, Single Family Urban/Manufactured Homes to TF-2-B, Two-Family, Leander, Williamson County, Texas

*Applicant: David W. Coombs, P.E. on behalf of Akram Amani*

**Tom Yantis, Assistant City Manager explained**

**Action** on Zoning Case #14-Z-033: amending Ordinance #05-018, the Composite Zoning Ordinance for the property located at 602 and 604 Horseshoe, Leander, Williamson County, Texas

**Motion made by Council Member Navarrette to approve. Second by Council Member Lynch. Motion passes, all voting “aye”**

## REGULAR AGENDA

18. Presentation and discussion regarding the creation of a Municipal Utility District for the proposed Springwoods subdivision

**Tom Yantis, Assistant City Manager explained**

**Terry Guerin, Developer gave a presentation**

**Fred Lockwood, Lockwood Engineers explained**

19. Discussion and possible action regarding the City's participation in the Texas City Lab project

**Tom Yantis, Assistant City Manager explained**

**Motion made by Council Member Navarrette to approve. Second by Council Member Siebold. Motion passes, all voting “aye”**

20. Consider a Resolution authorizing the City Manager to execute an Interlocal Agreement with the Texas Department of Transportation/Department of Motor Vehicles relating to Motor Vehicle Registration Refusal, “Scofflaw Services Contract”

**Robert Powers, Finance Director explained**

**Motion made by Council Member Navarrette to approve. Second by Council Member Siebold. Motion passes, all voting “aye”**

21. Consider an Ordinance releasing approximately 1.4 acres from Leander's Extraterritorial Jurisdiction to Cedar Park's Extraterritorial Jurisdiction and authorizing the City Manager to negotiate and execute an amendment to the Boundary Agreement between Leander and Cedar Park  
**Wayne Watts, City Engineer explained**

**David Singleton, Developer explained the request**

**Motion made by Council Member Navarrette to release the property. Second by Council Member Dishongh. Motion passes, 4 to 2 with Council Members Abruzzese and Lynch voting against**

22. Consider reappointments to the Board of Adjustment/Appeal for Gil Debner, Mary Orton, Antonio Martinez and Tim Luke

**Motion made by Council Member Siebold to reappoint Gil Debner, Mary Orton, Antonio Martinez and Tim Luke to the Board of Adjustment/Appeal. Second by Council Member Lynch.**

**Motion passes, all voting "aye"**

23. Consider appointment to the Veterans Park Committee

**Mayor Fielder appointed Wilson Early to the Veterans Park Committee**

**Mayor Fielder returned to item # 12 at this time**

24. Consider an Ordinance establishing a filing fee for filing an application for a place on the ballot  
**Kent Cagle, City Manager explained**

**Motion made by Council Member Abruzzese to approve a filing fee of \$50.00 or petition, in lieu of filing fee, with 25 signatures (or ½ of 1%) of total votes from last Mayoral election, whichever is greater and 5 days for the city secretary to verify the signatures. Second by Council Member Dishongh. Motion passes, all voting "aye".**

25. Council Members Closing Statements

**Council Members gave their closing statements**

**Council Member Dishongh resigned his position on the council effective immediately. He will stay in the position until the position is filled.**

26. Adjournment

**With there being no further business, the meeting adjourned at 9:08 pm**

Attest:

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Christopher Fielder, Mayor

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Debbie Haile, TRMC, City Secretary



**Executive Summary**

**January 15, 2015**

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**Agenda Subject:** Zoning Case 14-Z-032: Consider action on the rezoning of a parcel of land, for 2.53 acres more or less, located at 190 Bagdad Road, WCAD Parcel R522925. Currently, the property is zoned SFU-2-B (Single Family Urban) the applicant is proposing to zone the property to HC-4-D (Heavy Commercial), Leander, Williamson County, Texas.

**Background:** This request is the final step in the rezoning process.

**Origination:** Applicant: Mike Elmore on behalf of MPE Realty.

**Financial Consideration:** None

**Recommendation:** See Planning Analysis. The Planning & Zoning Commission unanimously recommended approval of the staff recommendation of denial of the requested HC-4-D (Heavy Commercial) district and approval of the HC-3-C (Heavy Commercial) district with the modification of the subject property boundaries to only include the area to the north of the floodplain as shown in Attachment 6 at the January 08, 2015 meeting. The City Council unanimously approved the Planning & Zoning Commission recommendation at the January 15, 2015 meeting.

**Attachments:**

1. Planning Analysis
2. Current Zoning Map
3. Proposed Zoning Map
4. Aerial Map
5. Letter of Intent
6. Staff Recommendation Exhibit
7. Ordinance

**Prepared By:** Tom Yantis, AICP  
Assistant City Manager

01/20/2015



## PLANNING ANALYSIS

ZONING CASE 14-Z-032  
190 S BAGDAD ROAD

### GENERAL INFORMATION

**Owner:** MPE Realty

**Current Zoning:** SFU-2-B (Single-Family Urban)

**Proposed Zoning:** HC-4-D (Heavy Commercial)

**Size and Location:** The property is located at 190 S Bagdad Road and includes approximately 2.53 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	HC-4-D SFU-2-B	Developed Office Warehouse Uses Cemetery
EAST	SFU-2-B	Detention Pond associated with the Westview Meadows Subdivision
SOUTH	LC-2-B	Undeveloped Property Zoned for Local Commercial Uses
WEST	HC-4-D GC-3-C	Undeveloped Property & Developed Office Warehouse Uses Undeveloped Property Zoned for General Commercial Uses

**COMPOSITE ZONING ORDINANCE & SMARTCODE INTENT STATEMENTS**

**HC – HEAVY COMMERCIAL:**

*Features:* Any use in GC plus commercial laundry, contractor storage yard, lumber yards, indoor manufacture, assembly and processing, mini-warehouse, RV, trailer and boat storage, testing and research, warehouse and distribution, wholesale, wrecker impoundment.

*Intent:* Development of a variety of light manufacturing, assembly and processing businesses, storage, warehouses and lumber sales. Access should be provided by an industrial or commercial collector street.

**TYPE 4 (non-residential only):**

*Features:* Accessory buildings up to 60% of primary building; drive-thru service; outdoor fueling and washing of vehicles; overhead service doors; maximum outdoor display; substantial outdoor storage; outdoor entertainment venues and animal boarding.

*Intent:*

- (1) The Type 4 site component is intended to be utilized in combination with GC, LI or HI components where appropriate for moderately intense outdoor site requirements and a need to utilize the outdoor site area for significant outdoor display, storage and accessory buildings and similar permitted uses.
- (2) This site component is intended only for industrial or heavy commercial uses and may be utilized only with GC, LI or HI use components.
- (3) This site component is not intended for retail or office development not requiring the available limits of outdoor storage and accessory buildings or adjacent to residential neighborhoods where not adequately buffered from residential uses.

**TYPE D (non-residential only):**

*Features:* 35% masonry (60% street facing); metal siding for remainder not facing a street; 2 or more architectural features.

*Intent:*

- (1) This architectural component is intended only for industrial warehouse, heavy commercial service and other similar applications and shall be utilized only with GC, HC or HI use components.
- (2) This component is not intended to be utilized with the majority of GC districts.
- (3) This component is not intended for retail or office development or adjacent to residential neighborhoods where not adequately buffered from residential uses.
- (4) This site component is discouraged along major thoroughfares and is intended to be utilized within industrial park development.

**COMPREHENSIVE PLAN STATEMENTS:**

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

- Plan for continued growth and development that improves the community's overall quality of life and economic viability.
- Find suitable districts for industrial development so that the City may recruit additional employers and avoid locating industrial development near neighborhoods without adequate buffering.
- Residential neighborhoods are the predominate land use within the City and it's ETJ. Neighborhoods are primarily composed of single-family detached housing and include other compatible uses including parks, schools, and places of worship. Neighborhoods may be low to moderate density depending upon the topography and the feasibility of providing organized sewer service. Areas with steep topography, flood plain or other natural features that are intended to be preserved and served by on-site sewage systems will be the lowest density while areas that are relatively flat and where organized sewer systems are feasible will be of medium density. Residential neighborhoods provide connections to each other and to neighborhood, community and town center nodes. A variety of lot and house sizes are encouraged within residential neighborhoods.

**ANALYSIS:**

The applicant is requesting to rezone the property to HC-4-D (Heavy Commercial) in order to continue the development of an office warehouse complex at this location. There is an established single-family neighborhood located to the east with commercial zoning located along Bagdad Road. The applicant has submitted site development plans for this property. The western portion of the property is zoned appropriately for office warehouse uses, but the remainder is zoned for single-family.

The proposed HC use component would permit the development of general commercial uses as well as a variety of light manufacturing, assembly and processing businesses, storage, warehouses and lumber sales uses. Access to properties zoned with this use component should be provided by a collector street or higher classification.

The Type 4 site component would permit accessory buildings, drive-thru service lanes, outdoor fueling and washing of vehicles, overhead service doors, unlimited outdoor display, substantial outdoor storage, outdoor entertainment venues, and animal boarding. This site component is not intended for retail or office development not requiring the available limits of outdoor storage and accessory buildings or adjacent to residential neighborhoods where not adequately buffered from residential uses.

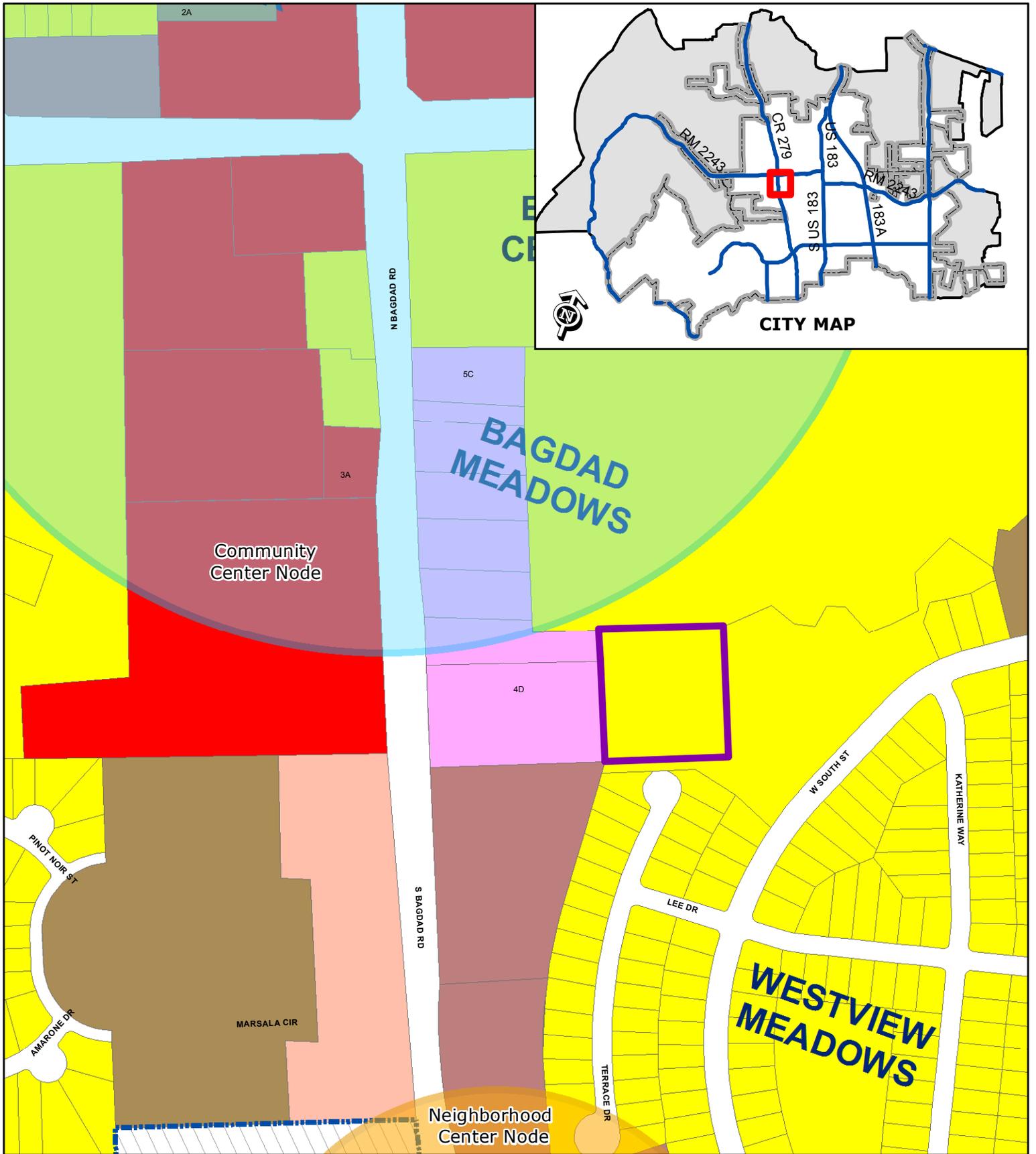
The Type D architectural component requires that the buildings consist of thirty-five (35%) percent masonry and sixty (60%) percent masonry for street facing walls. Metal siding is permitted for the remaining walls not facing a street. This site component is not intended for retail or office development or adjacent to residential neighborhoods where not adequately buffered from residential uses and is discouraged along major thoroughfares.

This property is located within an area designated for residential neighborhoods on the Future Land Use Map. Residential neighborhoods are the predominate land use within the City and it's ETJ. Neighborhoods are primarily composed of single-family detached housing and include other compatible uses including parks, schools, and places of worship. Neighborhoods may be low to moderate density depending upon the topography and the feasibility of providing organized sewer service. Residential neighborhoods provide connections to each other and to neighborhood, community and town center nodes. A variety of lot and house sizes are encouraged within residential neighborhoods.

The Comprehensive Plan includes areas designated for Industrial. This zoning district would be required to be located within the Industrial District. The Industrial District land use category is intended to be located in close proximity to major transportation systems including highways, tollways, railroads, etc. These areas are intended for industrial and employment land uses that may generate traffic and noise and that may require outdoor areas for storage or manufacturing/assembly. These are important for the City's economic development and should be developed in a way to minimize negative impacts on surrounding uses. Industrial land uses should be concentrated in the areas shown on the Future Land Use map in order to create synergy among similar land uses and to encourage coordinated design and the potential for shared infrastructure such as parking, drainage facilities and utilities. Industrial uses should be developed with attention to aesthetics through the provision of landscaping along street frontages, screening of outdoor storage and assembly areas, and high quality building design and materials where buildings are visible from roadways or adjacent residential development areas.

**STAFF RECOMMENDATION:**

Staff recommends denial of the requested HC-4-D district. This property is not located within an industrial district identified on the Future Land Use Map. The Comprehensive Plan does not support this zoning district within the residential neighborhood area. In addition, the requested site and architectural components are not in compliance with the intent statements of the Composite Zoning Ordinance. The intent statements discourage the Type 4 and Type D components when adjacent to residential uses. Staff recommends that the subject property boundaries are modified to include the area to the north of the floodplain as shown in Attachment 6. In addition, staff recommends approval of HC-3-C due to the adjacency to the established residential districts. The Type 3 site component includes limited outdoor storage and display and the Type C architectural component includes higher architectural standards than the proposed Type D.



**ZONING CASE 14-Z-032**

**Attachment #2**

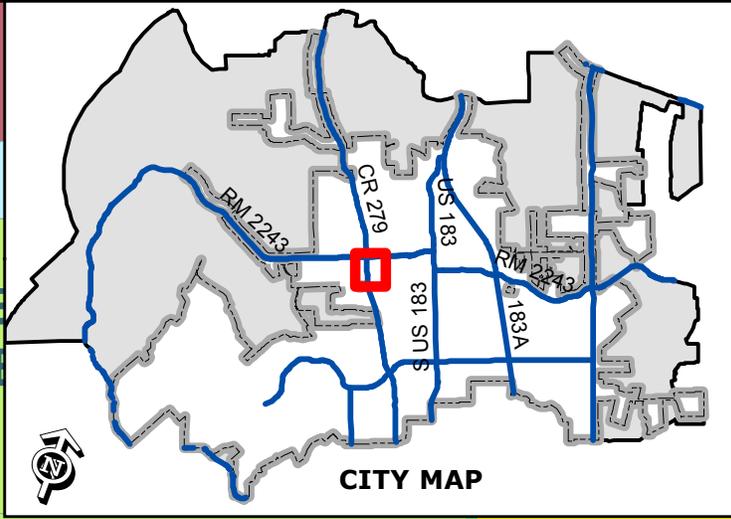
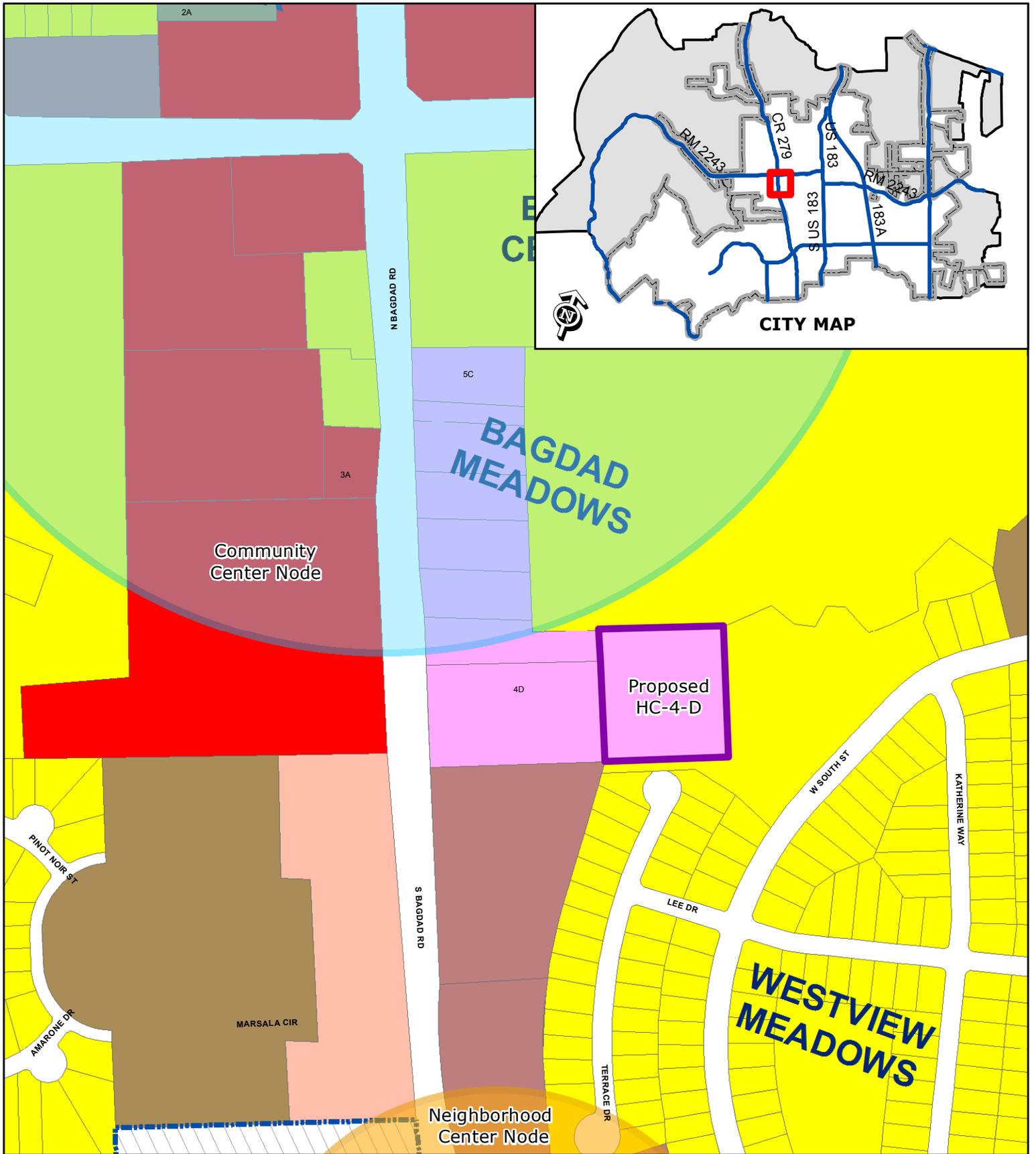
Current Zoning Map  
190 S Bagdad Road



-  Subject Property
-  City Limits

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





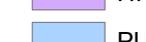
**ZONING CASE 14-Z-032**

**Attachment #2**

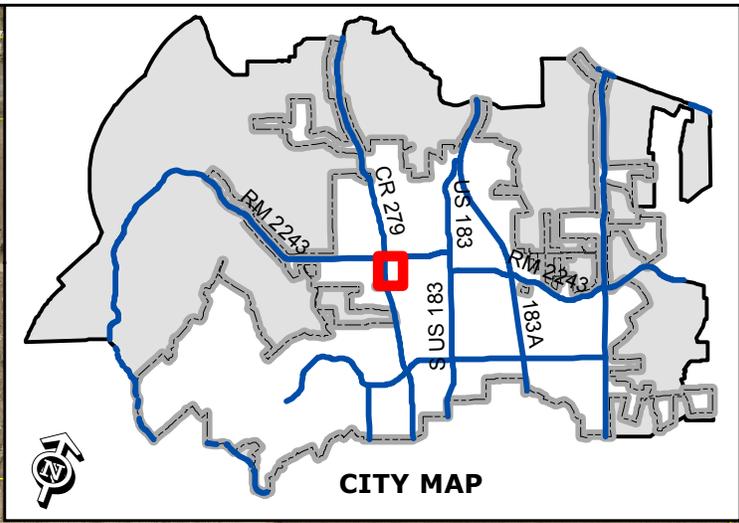
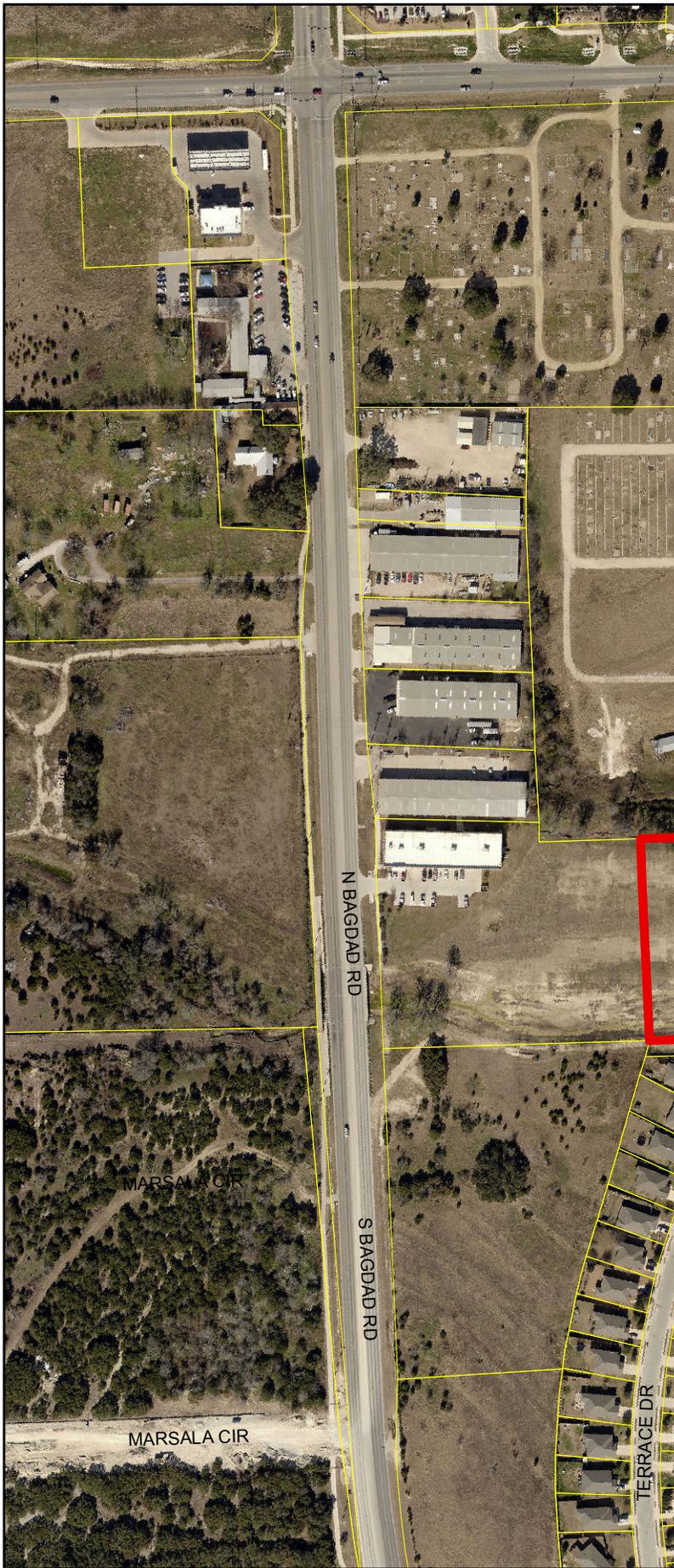
Proposed Zoning Map  
190 S Bagdad Road



-  Subject Property
-  City Limits

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

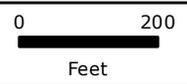




CITY MAP

### ZONING CASE 14-Z-032 Attachment #4

Aerial Exhibit - Approximate Boundaries  
190 S Bagdad Road



-  Subject Property
-  City Limits

# MPE Realty

December 8, 2014

City of Leander  
PO Box 319  
Leander, Texas 78641

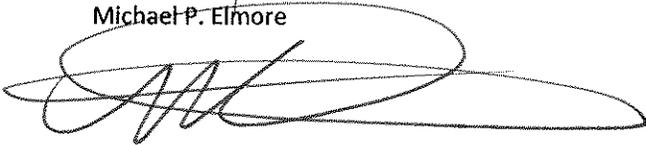
Attention: Martin Siwek  
Re: Letter of Intention

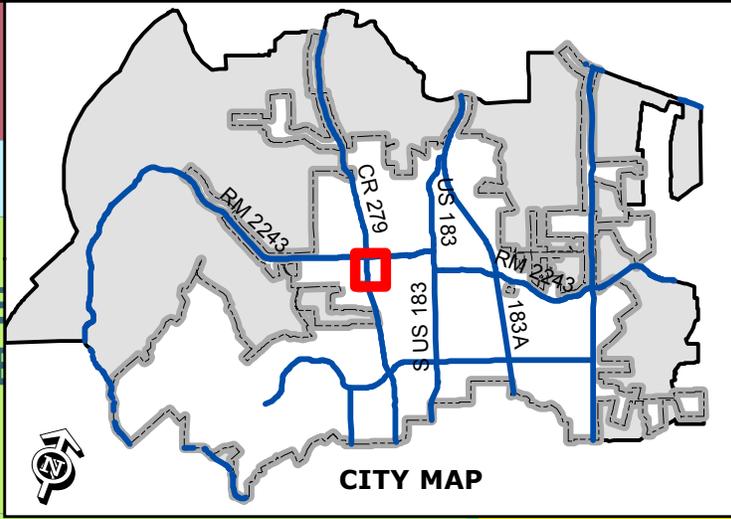
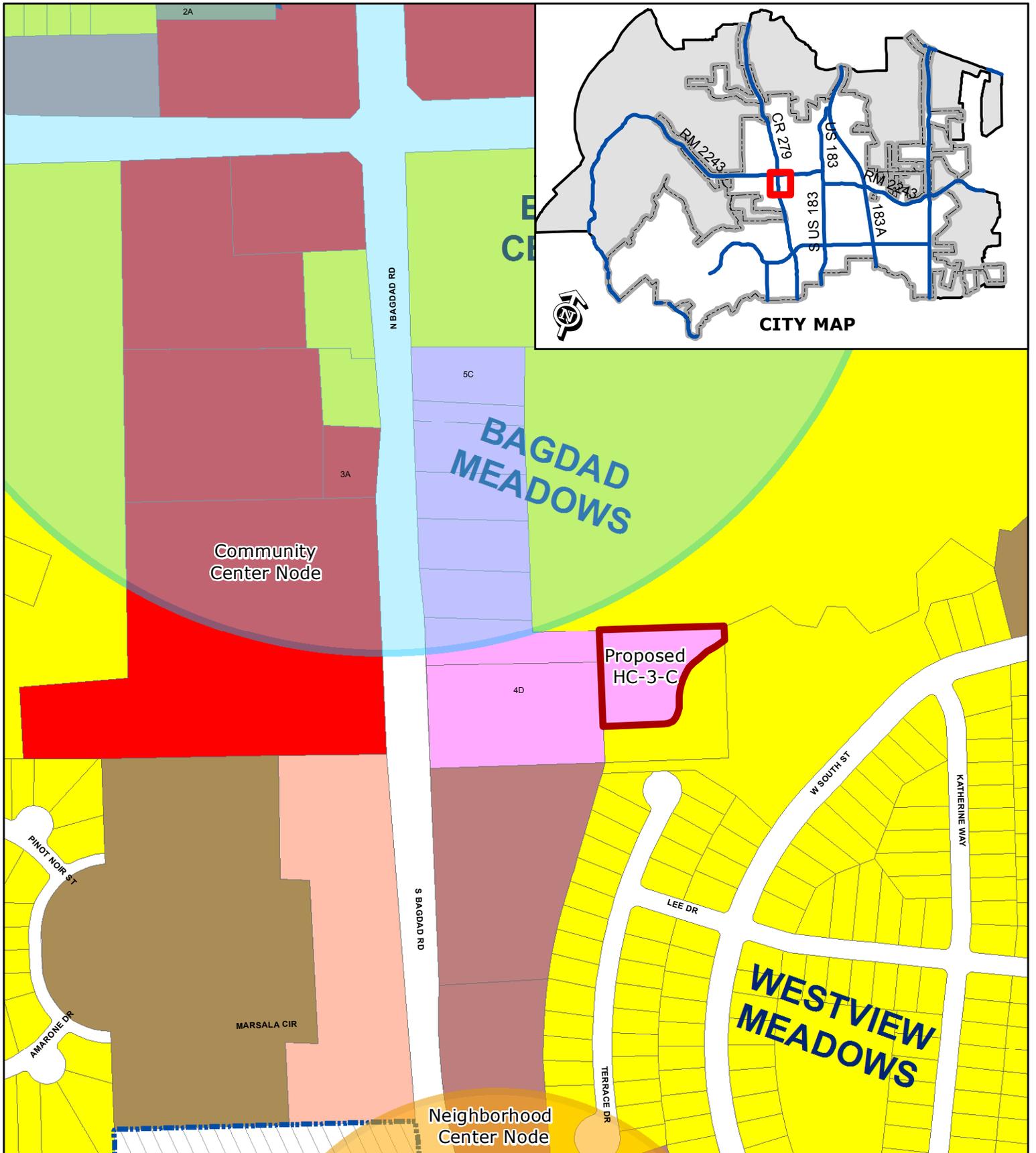
Dear Martin,

Our intended use for this property is to build office warehouse space. We ask to change the zoning from SFU-2-B to HC-4-D to comply with land use.

Sincerely,

Michael P. Elmore

A handwritten signature in black ink, appearing to read 'MPE', is written over a large, loopy scribble that extends across the width of the signature line.



**ZONING CASE 14-Z-032**

**Attachment #6**

Proposed Zoning Map  
190 S Bagdad Road



-  Staff Recommendation
-  City Limits

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



**ORDINANCE NO #**

**ORDINANCE OF THE CITY OF LEANDER, TEXAS, AMENDING THE ZONING ORDINANCE BY REZONING A PORTION OF A TRACT OF LAND FROM SFU-2-B (SINGLE-FAMILY URBAN) TO HC-4-D (HEAVY COMMERCIAL); MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS.**

**Whereas**, the owner of the property described herein after (the "Property") has requested that the Property be rezoned;

**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 Zoning Ordinance.** Ordinance No. 05-018, as amended, the City of Leander Composite Zoning Ordinance (the "Zoning Ordinance" or "Code"), is hereby modified and amended by rezoning the Property as set forth in Section 3.

**Section 3. Applicability.** This ordinance applies to the following portion of a parcel of land, which is herein referred to as the "Property." That certain portion of a parcel of land being 2.53 acres, more or less, located at 190 Bagdad Road in Leander, Williamson County, Texas, being more particularly described in Exhibit "A", legally described as 2.53 acres out of Lot 5a, Bagdad Meados Unit 2 Replat; identified by tax identification number R522925.

**Section 4. Property Rezoned.** The Zoning Ordinance is hereby amended by changing the zoning district for the Property from SFU-2-B (Single-Family Urban) to HC-4-D (Heavy Commercial) as shown in Exhibit "A".

**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 15<sup>th</sup> day of January, 2015.  
**FINALLY PASSED AND APPROVED** on this the 29<sup>th</sup> day of January, 2015.

**THE CITY OF LEANDER, TEXAS**

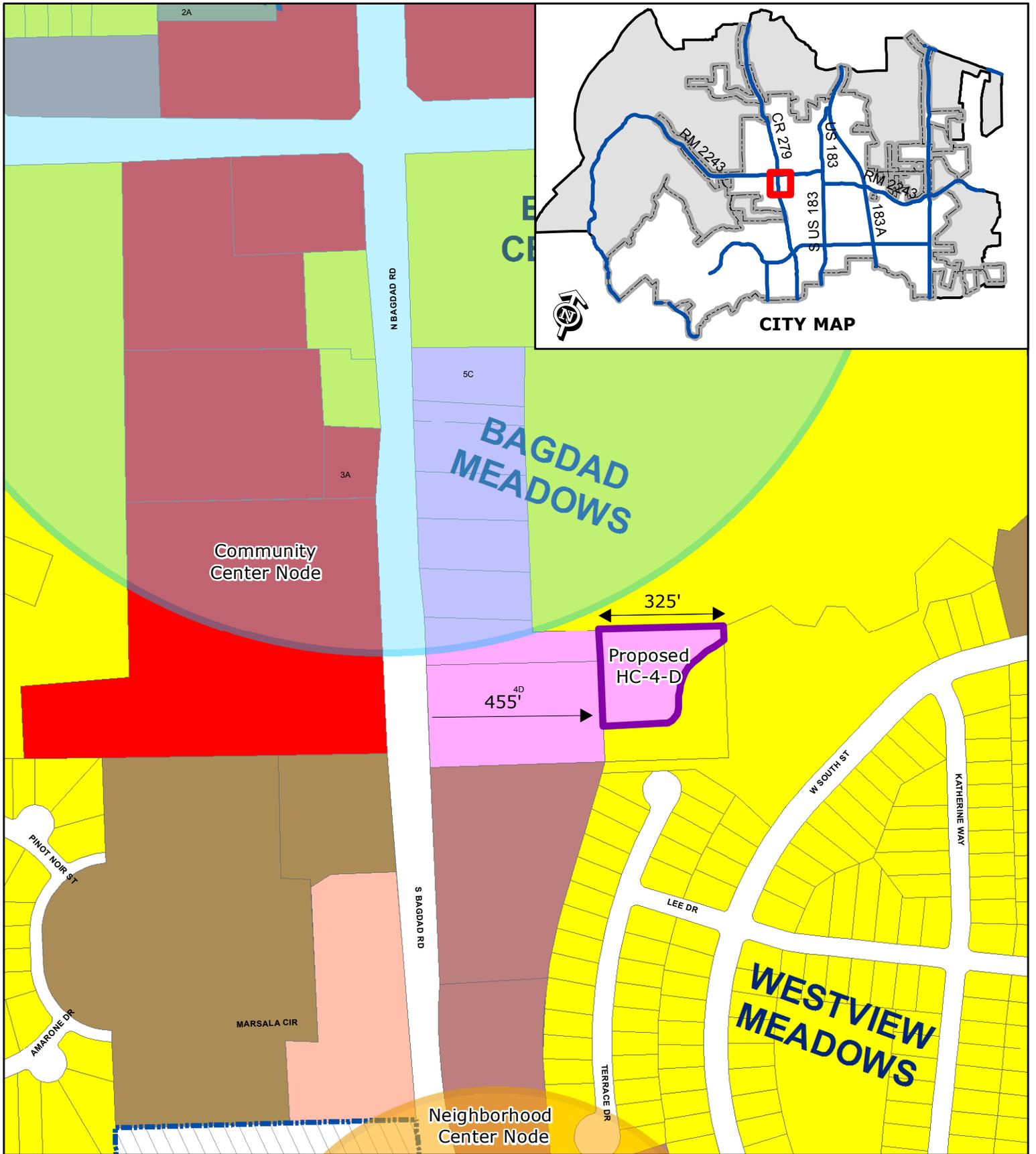
**ATTEST:**

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Christopher Fielder, Mayor

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Debbie Haile, City Secretary



**ZONING CASE 14-Z-032**

**Exhibit A**

Proposed Zoning Map  
190 S Bagdad Road



-  Subject Property
-  City Limits

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





**Executive Summary**

**January 15, 2015**

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**Agenda Subject:** Zoning Case 14-Z-033: Consider action on the rezoning of a parcel of land, for 5.06 acres more or less, located at 602 and 604 Horseshoe, WCAD Parcel R036456. Currently, the property is zoned SFU/MH-2-B (Single Family Urban/Manufactured Homes) the applicant is proposing to zone the property to TF-2-B (Two-Family), Leander, Williamson County, Texas.

**Background:** This request is the final step in the rezoning process.

**Origination:** Applicant: David W. Coombs, P.E. on behalf of Akram Amani.

**Financial Consideration:** None

**Recommendation:** See Planning Analysis. The Planning & Zoning Commission recommendation will be available at the meeting

**Attachments:**

1. Planning Analysis
2. Current Zoning Map
3. Proposed Zoning Map
4. Aerial Map
5. Letter of Intent
6. Ordinance

**Prepared By:** Tom Yantis, AICP  
Assistant City Manager

12/10/2014



## PLANNING ANALYSIS

ZONING CASE 14-Z-033  
602 and 604 Horseshoe Dr

### GENERAL INFORMATION

**Owner:** Akram Amani

**Current Zoning:** SFU/MH-2-B (Single-Family/Manufactured Home)

**Proposed Zoning:** TF-2-B (Two-Family)

**Size and Location:** The property is at 602 & 604 Horseshoe Dr and is approximately 5.06 acres in size.

**Staff Contact:** Martin Siwek, AICP, GISP  
Planner

### ABUTTING ZONING AND LAND USE:

The table below lists the abutting zoning and land uses.

	ZONING	LAND USE
NORTH	SFU/MH-2-B MF-3-A	Developed Single Family Home Vacant Property
EAST	SFU/MH-2-B	Developed Single Family Home
SOUTH	SFU-2-B	Vacant Property (Proposed Magnolia Creek Subdivision)
WEST	SFU/MH-2-B	Developed Single Family Home

<b>COMPOSITE ZONING ORDINANCE INTENT STATEMENTS</b>
---

**USE COMPONENTS:****SFU/MH – SINGLE-FAMILY URBAN, MANUFACTURED HOME:**

*Features:* 7,200 sq. ft. lot min.; 1,200 sq. ft. living area min. for site built; 720 sq. ft. min. for manufactured home.

*Intent:* Development of single-family homes and manufactured homes on moderate sized lots and for other uses that are compatible and complimentary to such uses on moderate sized lots. Such components are also intended to create more variety in housing opportunities.

**TF – TWO-FAMILY:**

*Features:* 9,000 sq. ft. lot min.; 1,200 sq. ft. for s.f. home, 900 sq. ft. per unit for 2 - family.

*Intent:* Development of two-family dwelling structures on intermediate sized lots and for other uses that are compatible and complimentary to intermediate sized lots and two-family dwellings. Such components are generally intended to provide an orderly transition and serve as a buffer between larger lot neighborhoods and more intensive uses and to create more variety in housing opportunities and in the fabric of the neighborhoods. The goal is to avoid more than ten acres of contiguous land having a two-family component. This component should include or be located within six hundred feet of parkland or other recreational open space. To avoid street congestion due to additional on-street parking, access to lots shall be provided by a street with a ROW of fifty-six (56) feet or greater and a pavement width of thirty-six (36) feet or greater unless lots average at least one hundred feet in width or unless garage access is from an alley.

**SITE COMPONENT:****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 LI 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.

**ARCHITECTURAL COMPONENTS:****TYPE B**

*Features:* 85% masonry 1<sup>st</sup> floor, 50% overall; 4 or more architectural features.

*Intent:*

- (1) The Type B architectural component is intended to be utilized for the majority of residential development except that which is intended as a Type A architectural component.
- (2) Combined with appropriate use and site components, this component is intended to help provide for harmonious land use transitions.
- (3) This component may be utilized to raise the building standards and help ensure compatibility for non-residential uses adjacent to property that is more restricted.
- (4) This component is intended for the majority of the LO and LC use components except those meeting the intent of the Type A or C architectural components.

<b>COMPREHENSIVE PLAN STATEMENTS:</b>
---------------------------------------

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

- Provide Opportunities for coordinated, well-planned growth and development that are consistent with the Comprehensive Plan.
- Plan for continued growth and development that improves the community's overall quality of life and economic viability.
- Plan for future development that is compatible with existing residential neighborhoods.
- Provide for a variety of sustainable housing options for all age groups and economic levels. Determine ways to successfully integrate this variety within neighborhoods so as to accommodate the different needs of families throughout their life cycle. Create more desirable and livable neighborhoods while respecting the goal of maintaining stable real estate values and housing marketability.

<b>ANALYSIS:</b>
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The property is presently zoned SFU/MH-2-B (Single-Family/Manufactured Home) district, and the applicant is requesting to rezone the property to TF-2-B (Two-Family) district for a proposed duplex project. It is generally located approximately 1,100 ft. west from the southwest corner of the intersection of S. West Dr. and Horseshoe Dr. The adjacent properties to the east and west are existing manufactured homes, and the property to the north of this site is a developed single family home. South of this property is a vacant SFU-2-B (Single-Family Urban) zoned property. The Commission recently reviewed and recommended approval of PUD for a four and six-plex project at the intersection of Horseshoe Dr. and Powell Dr. in September.

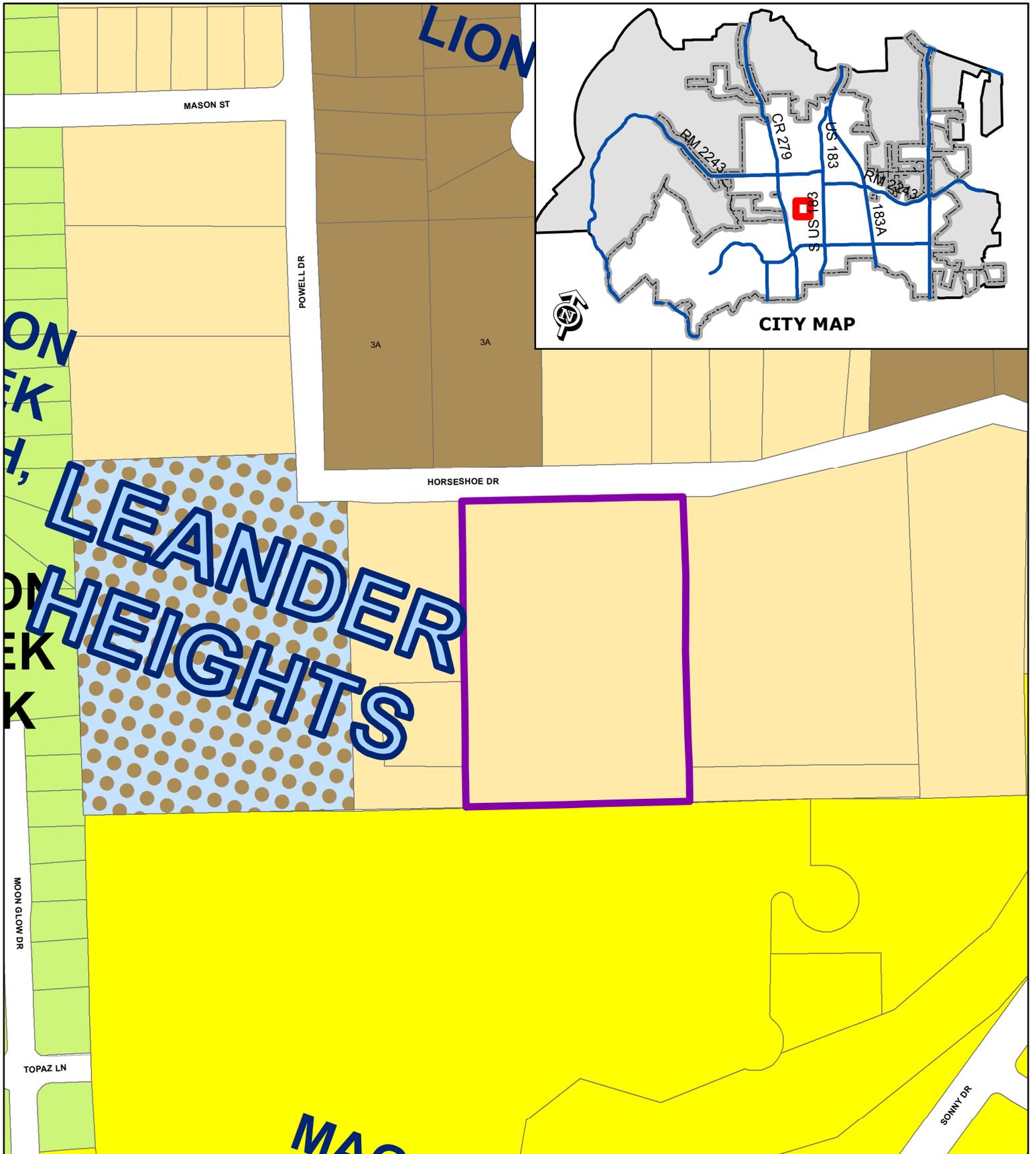
The Future Land Use Map designates this area as residential, and it is not located within a Town Center, Community, or Neighborhood Node. The intent statement for the TF district specifically references that the district is meant to provide an orderly transition and serve as a buffer between larger lot neighborhoods and other more intensive land uses. Additionally the intent statements note that property with this zoning designation should be located along streets with at least 56 ft. of R.O.W. and 36 ft. of street pavement. Furthermore, the intent statements note that property with the TF designation should be located within 600 ft. of parkland or other recreational open space.

For the applicant to meet the intent statements of the ordinance, they would need to provide the adequate R.O.W. and paving standards of the TF intent statement at the time of subdividing the property as Horseshoe Dr. has approximately 60 ft. of R.O.W. and 25 ft. of street pavement. Additionally, the applicant would need to include a park or open space lot at the time of platting to satisfy the intent statement speaking to a TF district being located within 600 ft of park or recreational open space.

The Type 2 site component and Type B architectural component would be appropriate for the applicant's zoning request as the property's location adheres to the intent statements of the site and architectural components summarized under the above intent statement section. Additionally, the majority of the properties in this area are under the Type 2 site and Type B architectural components of the Composite Zoning Ordinance.

**STAFF RECOMMENDATION:**

The applicant's request meets the main intent statements for the Two-Family district. It would provide a buffer between single family districts to the south and buffer more intensive developments immediately to the north. The property is approximately five acres, and avoids forming a ten acre contiguous tract of Two-Family zoning. However, the property is located on a residential class street, and fails to meet the intent statement for locating Two-Family districts on roads with a minimum street pavement section of 36 ft, and being located within 600 ft. of park or recreational open space. The applicant would have to address these provisions of the intent statement by providing it at the time of platting. Staff recommends approval of this request, as the proposed request does satisfy the majority of the intent statements outlined in the Composite Zoning Ordinance.



**ZONING CASE 14-Z-033**

**Attachment #2**

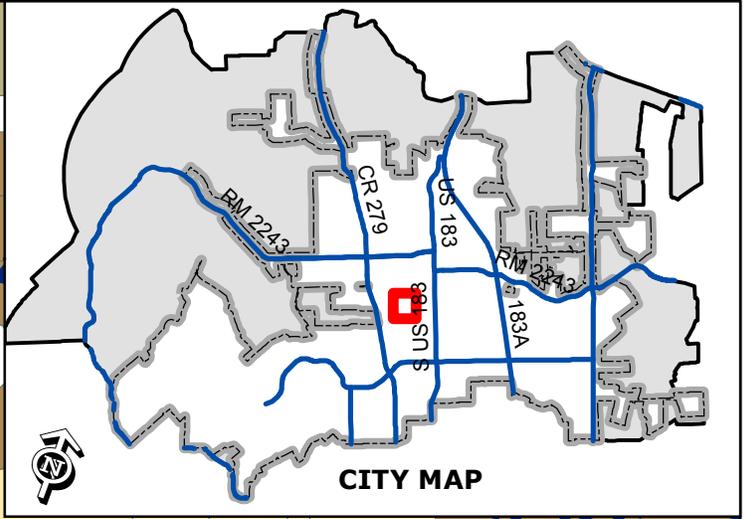
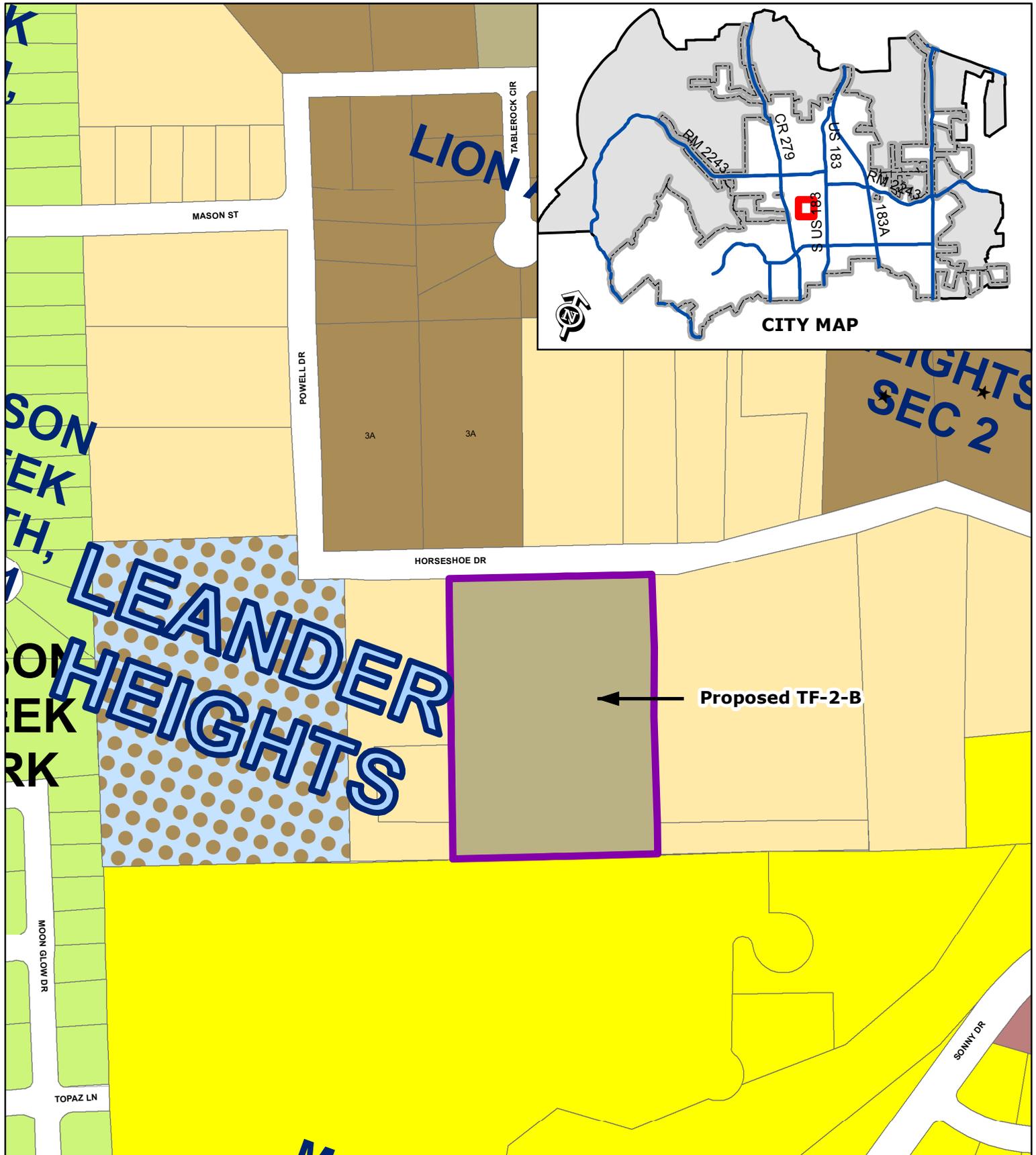
Current Zoning Map  
602 and 604 Horseshoe Dr



-  Subject Property
-  City Limits

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





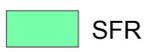
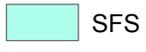
**ZONING CASE 14-Z-033**

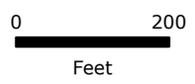
**Attachment #3**

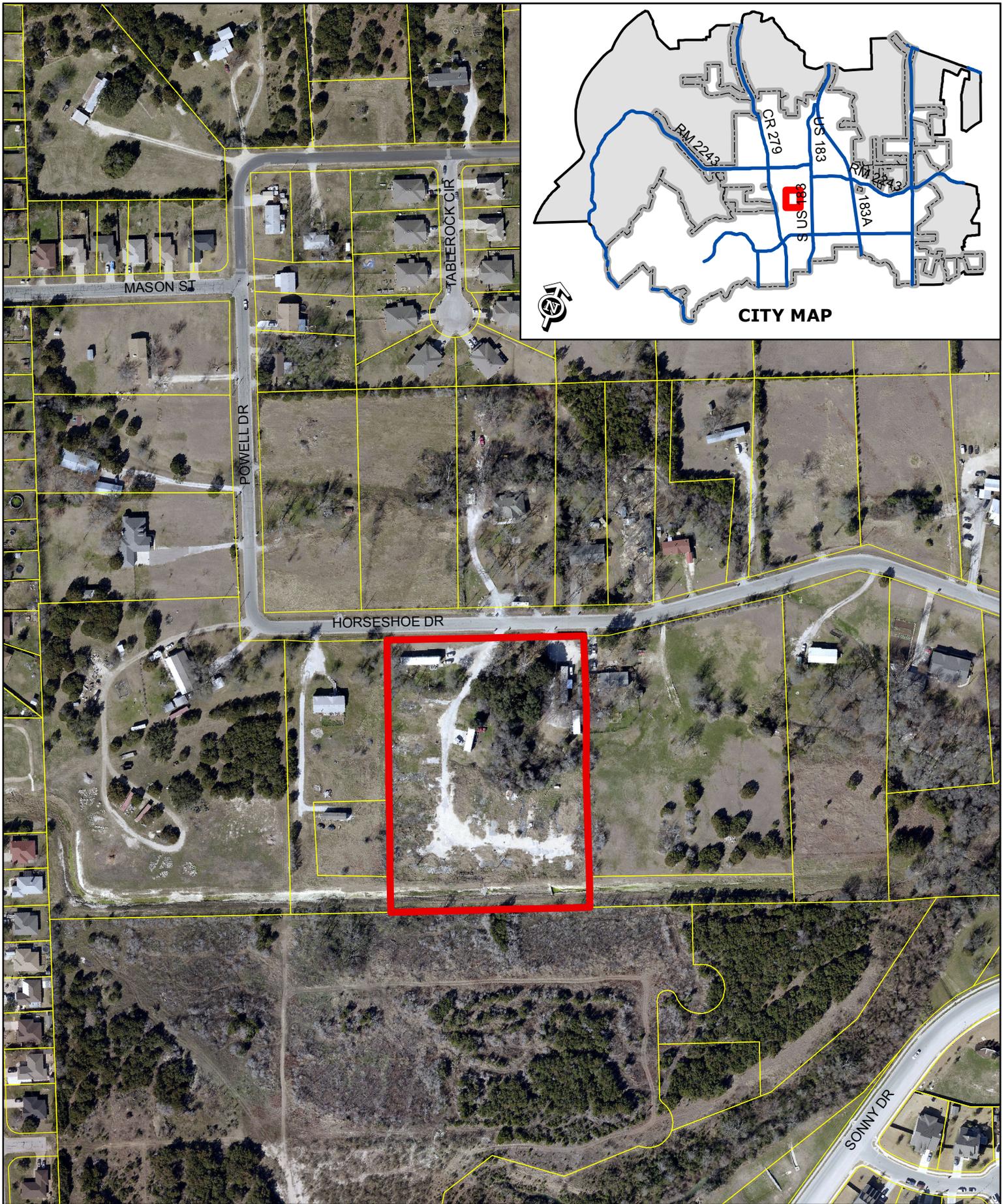
Proposed Zoning Map  
602-604 Horseshoe Dr



-  Subject Property
-  City Limits

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



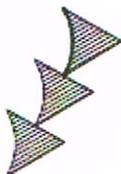


# ZONING CASE 14-Z-033 Attachment #4

Aerial Exhibit - Approximate Boundaries  
602-604 Horseshoe Dr



-  Subject Property
-  City Limits

**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

December 19, 2014

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

Attention: Tom Yantis,  
Development Services Director

Subject: Zoning Change Application for 602 & 604 Horseshoe Drive;  
Lots 18 & 19, Blk A, Leander Heights Sec. 2

Dear Mr. Yantis,

The attached application and supporting documents are to request a zoning change for the subject property from the existing SFU/MF-2-B Single Family Urban, Mobile Home use to the proposed TF-2-B, Two Family use.

As you know, the mobile home park that operated on the site for many years has been mostly destroyed by fires. The new land owner, Akram Amani, proposes to re-develop the site as individual lots with residential duplex units. We feel this is an appropriate use for this evolving neighborhood: there are recent and current moderate to high-density residential developments in the immediate area and there is also a similar duplex development 1 block away, on Lion Drive.

The 5.06 acre property is presently in two lots, with two mobile homes situated on each lot. There are several large live oaks and other hardwood trees along the shallow, deserted drainage swale through the center of the lots. At the south side of the property is a large existing regional drainage channel. The site generally slopes gently from west to east.

If you have any comments regarding this application, please call my office at (512) 763-1600.

Sincerely,  
Coombs Environmental Engineering, Inc.

David W. Coombs, P.E.

Attachments



**ORDINANCE NO #**

**ORDINANCE OF THE CITY OF LEANDER, TEXAS, AMENDING THE ZONING ORDINANCE BY REZONING A PARCEL OF LAND FROM SFU/MH-2-B (SINGLE-FAMILY URBAN/MANUFACTURED HOME) TO TF-2-B (TWO-FAMILY); MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS.**

**Whereas**, the owner of the property described herein after (the "Property") has requested that the Property be rezoned;

**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 Zoning Ordinance.** Ordinance No. 05-018, as amended, the City of Leander Composite Zoning Ordinance (the "Zoning Ordinance" or "Code"), is hereby modified and amended by rezoning the Property as set forth in Section 3.

**Section 3. Applicability.** This ordinance applies to the following parcel of land, which is herein referred to as the "Property." That certain portion of a parcel of land being 5.06 acres, more or less, located at 602 and 604 Horseshoe Drive in Leander, Williamson County, Texas, being more particularly described in Exhibit "A", legally described as Lots 18 & 19, Block A of the Leander Heights Subdivision; identified by tax identification number R036456.

**Section 4. Property Rezoned.** The Zoning Ordinance is hereby amended by changing the zoning district for the Property from SFU/MH-2-B (Single-Family Urban/Manufactured Home) to TF-2-B (Two-Family) as shown in Exhibit "A".

**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 15<sup>th</sup> day of January, 2015.  
**FINALLY PASSED AND APPROVED** on this the 29<sup>th</sup> day of January, 2015.

**THE CITY OF LEANDER, TEXAS**

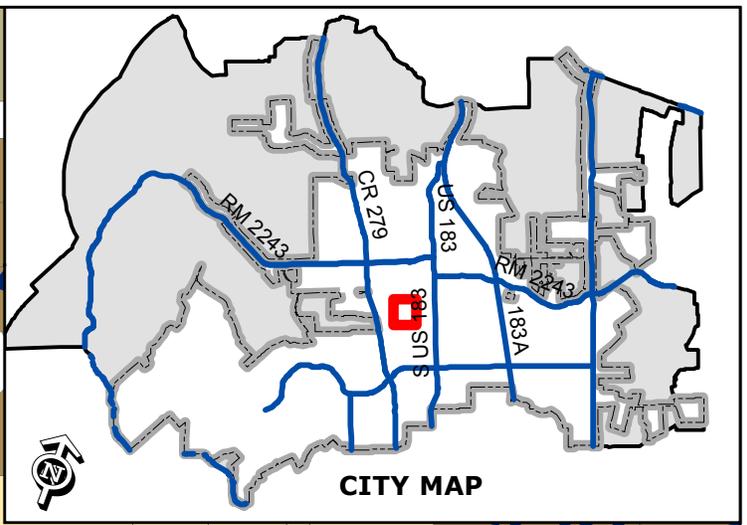
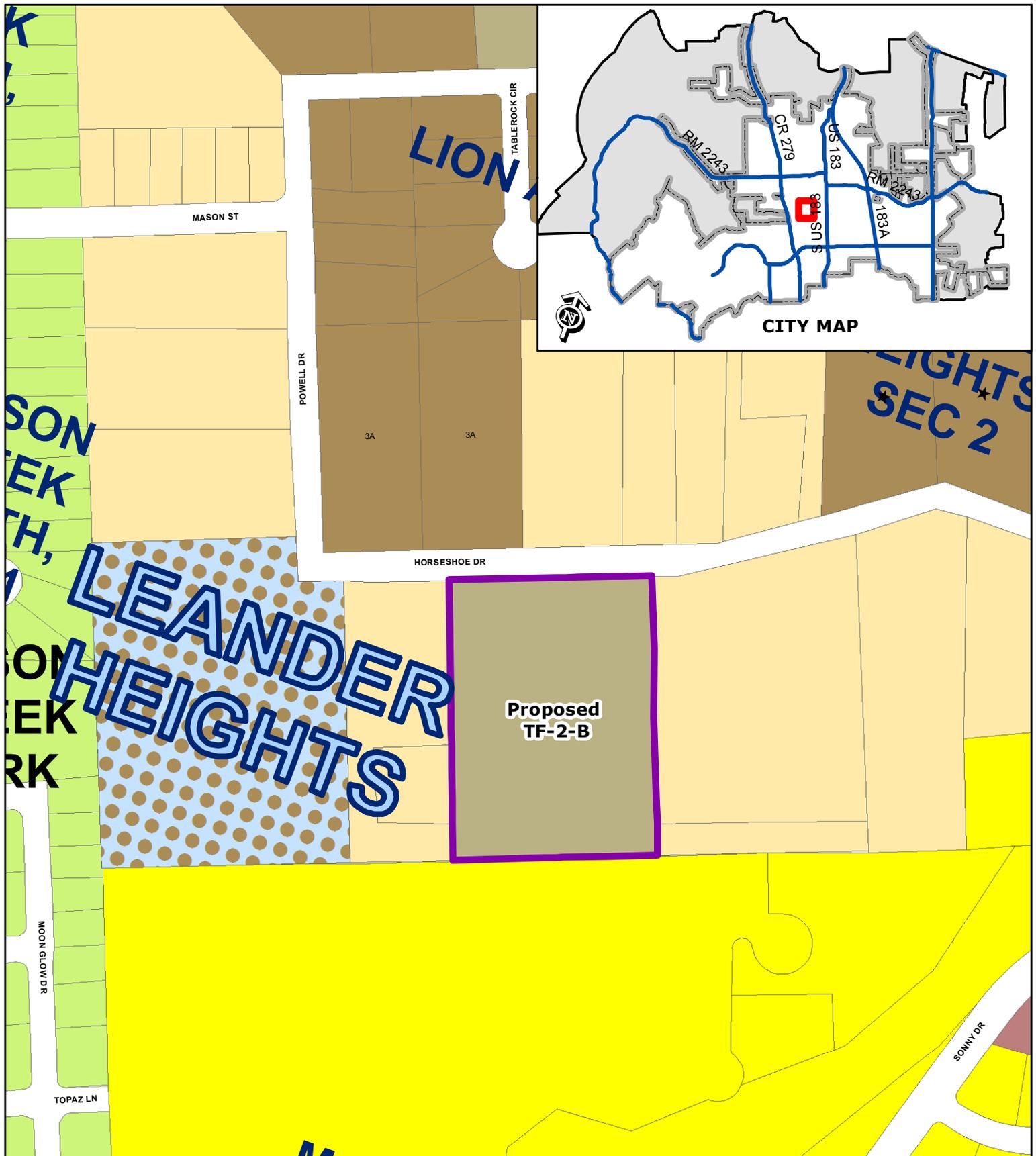
**ATTEST:**

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Christopher Fielder, Mayor

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Debbie Haile, City Secretary



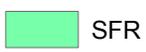
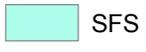
**ZONING CASE 14-Z-033**

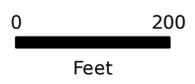
**Exhibit A**

Proposed Zoning Map  
602-604 Horseshoe Dr



-  Subject Property
-  City Limits

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





**Executive Summary**

**January 29, 2015**

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**Agenda Subject:** Consideration of a License Agreement for the installation and maintenance of irrigation, installation of landscaping, hardscape, and signage within the City rights-of-way.

**Background:** Mason Hills Master Community has requested a license agreement to construct, install, and maintain (1) irrigation system for landscaping; (2) landscaping; (3) hardscape; and (4) signage in the rights of way in the Mason Ranch Subdivision as shown in Exhibit A.

**Origination:** Applicant: James Blamey on behalf KB Home.

**Financial Consideration:** None

**Recommendation:** Staff recommends approval of the license agreement.

**Attachments:**

1. License Agreement
2. Exhibit A
3. Insurance Certificate
4. Mason Ranch Location Exhibit

**Prepared By:** Tom Yantis, AICP  
Assistant City Manager

01/20/2015

## **LICENSE AGREEMENT**

The City of Leander, Texas a municipal corporation and political subdivision of the State of Texas situated in Williamson County, Texas (“the City” or “Licensor”), and the Mason Hills Master Community, Inc., a Texas non-profit corporation, (“Licensee”) enter into this License Agreement (“Agreement”) on this the 29<sup>th</sup> day of January, 2015, upon the terms and conditions set forth below.

**I. PURPOSE OF LICENSE AGREEMENT.** The City grants to Licensee permission to use the licensed property for the following purposes only:

Construction, installation, and maintenance of the following improvements for the Mason Ranch Subdivision (the “Subdivision”) located in the North Lakeline Boulevard right-of-way of the Subdivision, Leander, Williamson County, Texas being: landscaping, irrigation, hardscape, and signage; hereinafter referred to as the “Improvements”. The locations of the rights-of-way containing the Improvements are more particularly shown in Exhibit “A” attached hereto and incorporated herein for all purposes.

The above-described properties, hereinafter referred to as the “licensed property”, are further shown in Exhibit “A” attached to this Agreement and incorporated by reference for all purposes.

The City makes this grant solely to the extent of its right, title and interest in the licensed property, without any express or implied warranties.

Licensee agrees that: (A) the construction of the Improvements permitted by this Agreement shall be done in compliance with all applicable City, County, State and/or Federal laws, ordinances, regulations and policies now existing or later adopted; (B) that all construction and installation of the Improvements will be completed in a timely manner without delay; (C) the Licensee will construct the Improvements according to plans filed with the City. Any changes in construction plans must be approved by the City; and (D) any Improvements located in the City’s right-of-way shall be subject to City approval prior to placement and installation. Any provision herein to the contrary notwithstanding, Licensee shall be liable for, and shall indemnify and hold the City harmless from all damages, causes of action, and claims arising out of or in connection with Licensee's installation, operation, maintenance or removal of the improvements permitted under this Agreement.

**II. FEE.** No annual fee shall be due in connection with this Agreement.

**III. THE CITY'S RIGHTS TO LICENSED PROPERTY.** This Agreement is expressly subject and subordinate to the present and future right of the City, its successors, assigns, lessees, grantees, and Licensees, to construct, install, establish, maintain, use, operate, and renew any public utilities facilities, franchised public utilities, rights-of-way, roadways, or streets on, beneath, or above the surface of the licensed property.

Said uses of the licensed property by the City are permitted even though such use may substantially

interfere with or destroy Licensee's use of the licensed property, or the Improvements. In case of a declared emergency, damage to or destruction of Licensee's property shall be at no charge, cost, claim, or liability to the City, its agents, contractors, officers, or employees.

Notwithstanding any provisions in this Agreement to the contrary, the City retains the right to enter upon the licensed property, at any time and without notice, assuming no obligation to Licensee, to remove any of the licensed Improvements or alterations thereof whenever such removal is deemed necessary for: (a) exercising the City's rights or duties with respect to the licensed property; (b) protecting persons or property; or (c) the public health or safety with respect to the licensed property.

**IV. INSURANCE.** Licensee shall, at its sole expense, provide a commercial general liability insurance policy, written by a company acceptable to the City and licensed to do business in Texas, with a combined single limit of not less than \$600,000.00, which coverage may be provided in the form of a rider and/or endorsement to a previously existing insurance policy. Such insurance coverage shall include the City as an additional-insured. This insurance coverage shall cover all perils arising from the activities of Licensee, its officers, employees, agents, or contractors, relative to this Agreement, or otherwise within the public right-of-way and property within the licensed property. Licensee shall be responsible for any deductibles stated in the policy. A certificate of insurance evidencing such coverage shall be delivered to the City Secretary of the City within thirty (30) days of the effective date of this Agreement.

Licensee shall not cause any insurance to be canceled nor permit any insurance to lapse. All insurance certificates shall include a clause to the effect that the policy shall not be canceled, reduced, restricted or otherwise limited until forty-five (45) days after the City has received written notice as evidenced by a return receipt of registered or certified mail.

**V. INDEMNIFICATION.** Licensee shall indemnify, defend, and hold harmless the City and its officers, agents and employees against all claims, suits, demands, judgments, expenses, including attorney's fees, or other liability for personal injury, death, or damage to any person or property which arises from or is in any manner caused by the Licensee's construction or maintenance of the Improvements or use of the licensed property. This indemnification provision, however shall not apply to any claims, suits, damage, costs, losses, or expenses arising solely from the negligent or willful acts of the City; provided that for the purposes of the foregoing, the City's act of entering into this Agreement shall not be deemed to be a "negligent or willful act."

## **VI. CONDITIONS.**

A. Licensee's Responsibilities. Licensee will be responsible for any damage to or repair of the Improvements. Further, Licensee shall reimburse the City for all costs of replacing or repairing any property of the City or of others which was damaged or destroyed as a result of activities under this Agreement by, or on behalf of, Licensee.

B. Maintenance. Licensee shall maintain the licensed property and the Improvements in good condition and making any necessary repairs to the Improvements at its expense.

C. Modification of Improvements. Licensee agrees that modification of the Improvements shall be at Licensee's expense. Licensee shall obtain the proper permits prior to any modification of the Improvements and any such modification shall be at Licensee's sole discretion, except where otherwise provided by this Agreement. This Agreement, until its expiration or revocation shall run as a covenant with the land, and the terms and conditions of this Agreement shall be binding on the grantees, successors and assigns of Licensee. Licensee shall cause any immediate successors-in-interest to have actual notice of this Agreement.

D. Default. In the event that Licensee fails to maintain the licensed property or otherwise comply with the terms or conditions as set forth herein, then the City shall give Licensee written notice thereof, by registered or certified mail, return receipt requested, to the address set forth below. Licensee shall have thirty (30) days from the date of receipt of such notice to take action to remedy the failure complained of, and, if Licensee does not satisfactorily remedy the same within the thirty (30) day period, the City may terminate this Agreement.

**Licensee Address**

Mason Hills Master Community  
c/o Southwest Management Services  
P.O. Box 342585  
Austin, Texas 78734

**Licensor Address**

City of Leander  
Attention: City Manager  
P.O. Box 319  
Leander, Texas 78641

**VII.COMMENCEMENT AND TERMINATION.** This Agreement shall begin with the effective date and continue thereafter for so long as Licensee is constructing or maintaining the Improvements as set forth herein. If Licensee abandons construction or maintenance of all or any part of the Improvements or licensed property as set forth in this Agreement, then this Agreement, shall expire and terminate following thirty (30) days written notice to the Licensee if such abandonment has not been remedied by the Licensee within such period. The City shall thereafter have the same complete title to the licensed property so abandoned as though this Agreement had never been made and shall have the right to enter the licensed property and terminate the rights of Licensee, its successors and assigns hereunder. All installations of Licensee not removed shall be deemed property of the City as of the time abandoned.

**VIII. TERMINATION.**

A. Termination by Licensee. This Agreement may be terminated by Licensee by delivering written notice of termination to the City not later than thirty (30) days before the effective date of termination. If Licensee so terminates, then it shall remove all installations, other than the Improvements, that it made from the licensed property within the thirty day notice period at its sole cost and expense. Failure to do so shall constitute a breach of this Agreement.

B. Termination by City. Subject to prior written notification to Licensee or its successor-in-interest, this Agreement is revocable by the City if:

1. The licensed Improvements, or a portion of them, interfere with the City's right-of-way;

2. Use of the right-of-way area becomes necessary for a public purpose;
3. The licensed Improvements, or a portion of them, constitute a danger to the public which the City deems not be remediable by alteration or maintenance of such Improvements;
4. Despite thirty (30) days written notice to Licensee, maintenance or alteration necessary to alleviate a danger to the public has not been made; or
5. Licensee fails to comply with the terms and conditions of this Agreement including, but not limited to any insurance or license fee requirements specified herein.

**IX. EMINENT DOMAIN.** If eminent domain is exerted on the licensed property by paramount authority, then the City will, to the extent permitted by law, cooperate with Licensee to effect the removal of Licensee's affected installations and Improvements thereon, at Licensee's sole expense. Licensee shall be entitled to retain all monies paid by the condemning authority to Licensee for Licensee's installations taken, if any.

**X. INTERPRETATION.** Although drawn by the City, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against either party.

**XI. APPLICATION OF LAW.** This Agreement shall be governed by the laws of the State of Texas. If the final judgment of a court of competent jurisdiction invalidates any part of this Agreement, then the remaining parts shall be enforced, to the extent possible, consistent with the intent of the parties as evidenced by this Agreement.

**XII. VENUE.** Venue for all lawsuits concerning this Agreement will be in the Williamson County, Texas.

**XIII. COVENANT RUNNING WITH LAND; WAIVER OF DEFAULT.** This Agreement and all of the covenants herein shall run with the land; therefore, the conditions set forth herein shall inure to and bind each party's successors and assigns. Either party may waive any default of the other at any time, without affecting or impairing any right arising from any subsequent or other default.

**XIV. ASSIGNMENT; HOMEOWNER'S ASSOCIATION.** (a) Licensee shall not assign, sublet or transfer its interest in this Agreement without the written consent of the City, which consent shall not be unreasonably withheld.

(b) The City Manager may approve an assignment, sublease, or transfer of interest in this Agreement to a home owner's association for the Subdivision (the "HOA") that meets the requirements of this paragraph. The HOA must have been legally established; maintenance obligations for the Improvements must have been assigned to the HOA; and the HOA must have a binding, continuing responsibility for the maintenance and operation of the Improvements and

shall establish adequate funding for such maintenance and operation. The HOA's maintenance obligation shall be noted on the plat for the Subdivision and in the restrictive covenants filed of record for the Subdivision in a form that is acceptable to the City. The restrictive covenants shall provide for a monthly or annual assessment sufficient to fund the maintenance and operation of the Improvements, shall give the City the authority to judicially enforce the covenants requiring adequate assessments to be made and collected and the streets to be maintained and repaired; and shall provide for the City to recover any attorney's fees and expenses incurred in judicial enforcement; provided that nothing herein shall obligate the City to maintain and repair the Improvements. This Agreement may not be assigned, sublet, or transferred until the Licensee or the HOA submits proof to the City of compliance with this paragraph and the insurance requirements under this Agreement. Subject to compliance with this paragraph and the insurance requirements set forth herein, if any, Licensee shall furnish to the City a copy of any such assignment or transfer of any of Licensee's rights in this Agreement, including the name, address, and contact person of the assignee, along with the date of assignment or transfer.

ACCEPTED, this the 29<sup>th</sup> day of January 2015.

**LICENSOR: CITY OF LEANDER, TEXAS**

By: \_\_\_\_\_  
Name: Kent Cagle  
Title: City Manager

**LICENSEE: Mason Hills Master Community, Inc.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: President

**THE STATE OF TEXAS           §**  
**COUNTY OF WILLIAMSON       §**

This instrument was acknowledged before me on this the \_\_\_\_ day of \_\_\_\_\_, 2015, by Kent Cagle, City Manager for the City of Leander, Texas, on behalf of the City.

\_\_\_\_\_  
Notary Public - State of Texas

**THE STATE OF TEXAS           §**  
**COUNTY OF WILLIAMSON       §**

This instrument was acknowledged before me on this the \_\_\_\_ day of \_\_\_\_\_, 2015, by \_\_\_\_\_, \_\_\_\_\_ of the \_\_\_\_\_, on behalf of said entity.

\_\_\_\_\_  
Notary Public - State of Texas



MASON HILLS ROW EXHIBIT

**KB HOME**  
 LEANDER, TEXAS



# CERTIFICATE OF LIABILITY INSURANCE

MASON-3

OP ID: C8

DATE (MM/DD/YYYY)

06/18/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Watkins Insurance Group-Austin 3834 Spicewood Springs Rd, St Austin, TX 78759 Patrick L. Watkins, CIC, CRM	<b>CONTACT NAME:</b> Patrick L. Watkins, CIC, CRM	
	<b>PHONE (A/C, No, Ext):</b> 512-452-8877	<b>FAX (A/C, No):</b> 512-452-0999
<b>E-MAIL ADDRESS:</b>		
<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
<b>INSURER A :</b> Cincinnati Insurance Company		
<b>INSURED</b> Mason Hills Master Community c/o Southwest Mgmt Services PO Box 342585 Austin, TX 78734	<b>INSURER B :</b>	
	<b>INSURER C :</b>	
	<b>INSURER D :</b>	
	<b>INSURER E :</b>	
	<b>INSURER F :</b>	

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

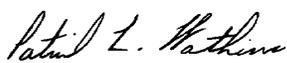
INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> <b>Incls H&amp;NO Auto</b> GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	X		BOUND	05/30/2014	01/01/2015	EACH OCCURRENCE \$ <b>1,000,000</b>
	DAMAGE TO RENTED PREMISES (Ea occurrence) \$ <b>100,000</b>						
							MED EXP (Any one person) \$ <b>5,000</b>
							PERSONAL & ADV INJURY \$ <b>1,000,000</b>
							GENERAL AGGREGATE \$ <b>2,000,000</b>
							PRODUCTS - COMP/OP AGG \$ <b>2,000,000</b>
							\$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	X					COMBINED SINGLE LIMIT (Ea accident) \$
							BODILY INJURY (Per person) \$
							BODILY INJURY (Per accident) \$
							PROPERTY DAMAGE (PER ACCIDENT) \$
							\$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$
							AGGREGATE \$
							\$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N <input checked="" type="checkbox"/> N/A If yes, describe under DESCRIPTION OF OPERATIONS below						<input type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
							E.L. EACH ACCIDENT \$
							E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$
A	Property			BOUND	05/30/2014	01/01/2015	Property <b>3,600,000</b>
A	Replacement Cost			SPECIAL FORM			Ded <b>2,500</b>

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Directors & Officers \$1,000,000 Limit \$1,000 Ded Liberty Agency Underwriters  
 Crime/Fidelity \$100,000 Limit \$1,000 Ded  
 Certificate Holder is an additional Insured as required by written contract

\*Certificate Subject to Policy Terms and Conditions

**CERTIFICATE HOLDER****CANCELLATION**

<b>CITLE02</b>  City of Leander, TX P.O. Box 319 Leander, TX 78646	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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**Executive Summary  
January 29, 2015**

**Subject:** Consider Contract Awards to Lease Golf Course Maintenance Equipment

**Background:** Three (3) qualified vendors submitted bids on December 22, 2014 for the 48-month lease of eleven (11) pieces of new golf course maintenance equipment and four (4) pieces of surplus trade-in equipment that the staff is considering selling.

**Financial Consideration:** Funds are budgeted in the Golf Course Grounds Maintenance Equipment Leases Budget 05-01-5626 in the amount of \$60,300 per year. The total lease amount for the 48-month period is \$203,384.80.

**Recommendation:** Staff respectfully recommends that the Council award contracts for the specified equipment and terms to the following vendors. The JD Fairway Mower and Dakota Topdresser Trade-In Equipment recommended for “No Award” will be transferred to the Parks and Recreation Department and the golf course will retain the JD Aerator.

Item #	Golf Course Maintenance Equipment 48-Month Lease	Award Recommendation	Bid Price
1	Fairway Mower	C&M Equipment	\$39,688.80
2	Fairway Mower Units	C&M Equipment	\$39,688.80
3	One set of (5) Verticut Units	C&M Equipment	\$5,734.08
4	Triplex Mower (Greens/Tee Mower)	Austin Turf and Tractor	\$27,936.00
5	200 Gallon Sprayer With Work Vehicle	Austin Turf and Tractor	\$29,113.92
6	Work Vehicle (Gator)	Austin Turf and Tractor	\$6,668.16
7	Rough Mower	Professional Turf and Tractor	\$24,071.04
8	Trim Surround Mower	Austin Turf and Tractor	\$4,675.20
9	Front Mower	Austin Turf and Tractor	\$3,774.24
10	Greens Aerator	Austin Turf and Tractor	\$12,897.76
11	Pro Gator Bed Mouted Topdresser	C&M Equipment	\$9,136.80
		<b>Total</b>	<b>\$203,384.80</b>
Item #	Surplus Trade-In Equipment	Award Recommendation	Bid Price
12	John Deere Fairway Mower	No Award	\$0.00
13	John Deere 7400 Mower	C&M Equipment	\$2,500.00
14	John Deere Aercore 800 Aerator	No Award	\$0.00
15	Dakota 410 Topdresser	No Award	\$0.00

**Attachments:** Bid tabulations and recommendation memo from Purchasing Agent.

**Prepared by:** Steve Bosak, Parks and Recreation Director  
Grant Collyns, Golf Course Operations Manager  
Joy Simonton, Purchasing Agent

Bid Info: City of Leander

Golf Course Maintenance Equipment Schedule #2

Solicitation No. #S15-013

Opening: 12/22/2014

EVALUATION CRITERIA		Max Points	 C&M Equipment	 Austin Turf and Tractor	 PROFESSIONAL TURF PRODUCTS Professional Turf Products
<b>Price and Score</b>		<b>70</b>	<b>70</b>	<b>68</b>	<b>68</b>
Item #1	Fairway Mower Unit		\$39,688.80	\$40,533.12	\$40,712.64
Item #2	Fairway Mower Unit		\$39,688.80	\$40,533.12	\$40,710.72
Item #3	One Set of Five (5) Verticut Units		\$5,734.08	\$6,014.40	\$6,774.24
<b>TOTAL</b>			<b>\$85,111.68</b>	<b>\$87,080.64</b>	<b>\$88,197.60</b>
<b>Reputation of Bidder/ Goods and Services and Quality of Goods and Service</b>		<b>10</b>	<b>10</b>	<b>10</b>	<b>10</b>
<b>Responsiveness</b>			Vendor is engaged in sale of golf course maintenance equipment.	Vendor is engaged in sale of golf course maintenance equipment.	Vendor is engaged in sale of golf course maintenance equipment.
<b>Meets City's Needs</b>		<b>20</b>			
Item meets specifications, warranty length, replacement parts available.			Meets specification.	Meets specification.	Meets specification.
<b>TOTAL:</b>		<b>100</b>			

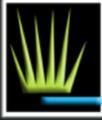
**AWARD**

Bid Info: City of Leander

Golf Course Maintenance Equipment Schedule #2

Solicitation No. #S15-013

Opening: 12/22/2014

EVALUATION CRITERIA	Max Points	 C&M Equipment	 Austin Turf and Tractor	 PROFESSIONAL TURF PRODUCTS Professional Turf Products
Price and Score	70	65	70	60
Item #4 Triplex Mower		\$30,189.12	\$27,936.00	\$32,586.24
Reputation of Bidder/ Goods and Services and Quality of Goods and Service	10	10	10	10
Responsiveness		Vendor is engaged in sale of golf course maintenance equipment.	Vendor is engaged in sale of golf course maintenance equipment.	Vendor is engaged in sale of golf course maintenance equipment.
Meets City's Needs	20		20	
Item meets specifications, warranty length, replacement parts available.		Meets specification.	Meets specification.	Meets specification.
<b>TOTAL:</b>	<b>100</b>		<b>100</b>	

**AWARD**

Bid Info: City of Leander

Golf Course Maintenance Equipment Schedule #2

Solicitation No. #S15-013

Opening: 12/22/2014

EVALUATION CRITERIA	Max Points	 C&M Equipment	 Austin Turf and Tractor	 PROFESSIONAL TURF PRODUCTS Professional Turf Products
Price and Score	70	70	64	60
Item #5 200 Gallon Sprayer with Work Vehicle		\$26,422.08	\$29,113.92	\$30,708.00
Reputation of Bidder/ Goods and Services and Quality of Goods and Service	10	10	10	10
Responsiveness		Vendor is engaged in sale of golf course maintenance equipment.	Vendor is engaged in sale of golf course maintenance equipment.	Vendor is engaged in sale of golf course maintenance equipment.
Meets City's Needs	20	0		
Item meets specifications, warranty length, replacement parts available.		No locking rear differential for traction control. Does not meet spec. Sprayer features manual control not automatic per specification. Sprayer also does not feature foam marker kit per specification.	Meets specification.	Meets specification.
TOTAL:	100	80	74	70

**AWARD**

Bid Info: City of Leander

Golf Course Maintenance Equipment Schedule #2

Solicitation No. #S15-013

Opening: 12/22/2014

EVALUATION CRITERIA	Max Points	 C&M Equipment	 Austin Turf and Tractor	 PROFESSIONAL TURF PRODUCTS Professional Turf Products
Price and Score	70	70	70	62
Item #6 Work Vehicle		\$6,713.76	\$6,668.16	\$7,543.68
Reputation of Bidder/ Goods and Services and Quality of Goods and Service	10	10	10	10
Responsiveness		Vendor is engaged in sale of golf course maintenance equipment.	Vendor is engaged in sale of golf course maintenance equipment.	Vendor is engaged in sale of golf course maintenance equipment.
Meets City's Needs	20	20	20	20
Item meets specifications, warranty length, replacement parts available.		Meets specification.	Meets specification.	Meets specification.
TOTAL:	100	100	100	92

**AWARD**

Bid Info: City of Leander

Golf Course Maintenance Equipment Schedule #2

Solicitation No. #S15-013

Opening: 12/22/2014

EVALUATION CRITERIA	Max Points	 C&M Equipment	 Austin Turf and Tractor	 PROFESSIONAL TURF PRODUCTS Professional Turf Products
Price and Score	70	48	65	70
Item #7 Rough Mower		\$35,243.04	\$26,106.72	\$24,071.04
Reputation of Bidder/ Goods and Services and Quality of Goods and Service	10	10	10	10
Responsiveness		Vendor is engaged in sale of golf course maintenance equipment.	Vendor is engaged in sale of golf course maintenance equipment.	Vendor is engaged in sale of golf course maintenance equipment.
Meets City's Needs	20	20	20	20
Item meets specifications, warranty length, replacement parts available.		Meets specification.	Meets specification.	Meets specification.
<b>TOTAL:</b>	<b>100</b>	<b>78</b>	<b>95</b>	<b>100</b>

**AWARD**

Bid Info: City of Leander

Golf Course Maintenance Equipment Schedule #2

Solicitation No. #S15-013

Opening: 12/22/2014

EVALUATION CRITERIA	Max Points	 C&M Equipment	 Austin Turf and Tractor	 PROFESSIONAL TURF PRODUCTS Professional Turf Products
Price and Score	70	35	70	0
Item #8 Trim Surround Mower		\$9,404.64	\$4,675.20	NO BID
Reputation of Bidder/ Goods and Services and Quality of Goods and Service	10	10	10	10
Responsiveness		Vendor is engaged in sale of golf course maintenance equipment.	Vendor is engaged in sale of golf course maintenance equipment.	Vendor is engaged in sale of golf course maintenance equipment.
Meets City's Needs	20	20	20	0
Item meets specifications, warranty length, replacement parts available.		Meets specification.	Meets specification.	NO BID
<b>TOTAL:</b>	<b>100</b>	<b>65</b>	<b>100</b>	<b>0</b>

**AWARD**

Bid Info: City of Leander

Golf Course Maintenance Equipment Schedule #2

Solicitation No. #S15-013

Opening: 12/22/2014

EVALUATION CRITERIA		Max Points	 C&M Equipment	 Austin Turf and Tractor	 PROFESSIONAL TURF PRODUCTS Professional Turf Products
Price and Score		70	0	70	0
Item #9	Front Mower		NO BID	\$3,774.24	NO BID
Reputation of Bidder/ Goods and Services and Quality of Goods and Service		10	10	10	10
Responsiveness			Vendor is engaged in sale of golf course maintenance equipment.	Vendor is engaged in sale of golf course maintenance equipment.	Vendor is engaged in sale of golf course maintenance equipment.
Meets City's Needs		20			
Item meets specifications, warranty length, replacement parts available.			NO BID	Meets specification.	NO BID
	<b>TOTAL:</b>	<b>100</b>			<b>0</b>

**AWARD**

Bid Info: City of Leander

Golf Course Maintenance Equipment Schedule #2

Solicitation No. #S15-013

Opening: 12/22/2014

EVALUATION CRITERIA	Max Points	 C&M Equipment	 Austin Turf and Tractor	 PROFESSIONAL TURF PRODUCTS Professional Turf Products
Price and Score	70	70	54	29
Item #10 Greens Aerator		\$9,853.92	\$12,758.40	\$23,897.76
Reputation of Bidder/ Goods and Services and Quality of Goods and Service	10	10	10	10
Responsiveness		Vendor is engaged in sale of golf course maintenance equipment.	Vendor is engaged in sale of golf course maintenance equipment.	Vendor is engaged in sale of golf course maintenance equipment.
Meets City's Needs	20	10	20	20
Item meets specifications, warranty length, replacement parts available.		HP does not meet specification.	Meets specification.	Exceeds specification.
TOTAL:	100	90	84	59

**AWARD**

Bid Info: City of Leander

Golf Course Maintenance Equipment Schedule #2

Solicitation No. #S15-013

Opening: 12/22/2014

EVALUATION CRITERIA	Max Points	 C&M Equipment	 Austin Turf and Tractor	 PROFESSIONAL TURF PRODUCTS Professional Turf Products
Price and Score	70	55	54	70
Item #11 Pro Gator Bed Mounted Topdresser		\$9,136.80	\$9,328.32	\$7,215.36
Reputation of Bidder/ Goods and Services and Quality of Goods and Service	10	10	10	10
Responsiveness		Vendor is engaged in sale of golf course maintenance equipment.	Vendor is engaged in sale of golf course maintenance equipment.	Vendor is engaged in sale of golf course maintenance equipment.
Meets City's Needs	20	20	10	10
Item meets specifications, warranty length, replacement parts available.		Meets specification.	Does not meet spec on angle of discharge control.	Does not meet spec on angle of discharge control.
TOTAL:	100	85	74	90

**AWARD**

Bid Info: City of Leander

Golf Course Maintenance Equipment Schedule #2

Solicitation No. #S15-013

Opening: 12/22/2014

<b>EVALUATION CRITERIA - TRADE IN EQUIPMENT (SURPLUS SALE)</b>		 C&M Equipment	 Austin Turf and Tractor	 PROFESSIONAL TURF PRODUCTS Professional Turf Products
<b>PRICE</b>				
Item #12	John Deere Fairway Mower	NO BID	\$2,240.00	NO BID
			<b>NO AWARD Transfer to PARD</b>	
Item #13	John Deere 7400 Mower	\$2,500.00	\$2,400.00	NO BID
		<b>AWARD</b>		
Item #14	John Deere Aercore 800 Aerator	\$750.00	\$1,600.00	NO BID
			<b>NO AWARD Transfer to PARD</b>	
Item #15	Dakota 410 Topdresser	\$1,750.00	\$2,500.00	\$4,000.00
				<b>NO AWARD Transfer to PARD</b>



# INTEROFFICE MEMO

DATE: January 13, 2015

TO: Steve Bosak; Grant Collyns

FROM: Joy Simonton

RE: Recommendation for Awards for Solicitation #S15-013 Golf Course Maintenance Equipment

The Purchasing Division recommends the following split award (document attached) for the lease of golf course maintenance equipment in accordance with the Best Value Evaluation Process.

Three (3) responses were received. Two (2) HUBS were notified of the solicitation.

Item #	Golf Course Maintenance Equipment 48-Month Lease	Award Recommendation	Bid Price
1	Fairway Mower	C&M Equipment	\$39,688.80
2	Fairway Mower Units	C&M Equipment	\$39,688.80
3	One set of (5) Verticut Units	C&M Equipment	\$5,734.08
4	Triplex Mower (Greens/Tee Mower)	Austin Turf and Tractor	\$27,936.00
5	200 Gallon Sprayer With Work Vehicle	Austin Turf and Tractor	\$29,113.92
6	Work Vehicle (Gator)	Austin Turf and Tractor	\$6,668.16
7	Rough Mower	Professional Turf and Tractor	\$24,071.04
8	Trim Surround Mower	Austin Turf and Tractor	\$4,675.20
9	Front Mower	Austin Turf and Tractor	\$3,774.24
10	Greens Aerator	Austin Turf and Tractor	\$12,897.76
11	Pro Gator Bed Mouted Topdresser	C&M Equipment	\$9,136.80
		<b>Total</b>	<b>\$203,384.80</b>
Item #	Surplus Trade-In Equipment	Award Recommendation	Bid Price
12	John Deere Fairway Mower	No Award	\$0.00
13	John Deere 7400 Mower	C&M Equipment	\$2,500.00
14	John Deere Aercore 800 Aerator	No Award	\$0.00
15	Dakota 410 Topdresser	No Award	\$0.00

JB

CC: FILE



**Executive Summary**  
**January 29, 2015**

**Agenda Subject:** Accept resignation of Jason Dishongh for Place 5 of the Leander City Council

**Background:** At the January 15, 2015 City Council meeting, Council Member Dishongh resigned his position on the Leander City Council. According to state statute, once the letter of resignation is received by the Mayor, the resignation becomes effective 8 days later. The 8<sup>th</sup> day will be January 23<sup>rd</sup>. Just to be on the safe side, since council will be calling the special election to fill this position at the January 29<sup>th</sup> meeting and to be consistent with the resignation of Place 3, staff felt it would be better to have council accept the resignation by vote.

**Origination:** Debbie Haile TRMC, City Secretary

**Recommendation:** Staff recommends acceptance of resignation.

**Attachments:** Resignation letter

**Prepared by:** Debbie Haile TRMC, City Secretary

Jason Dishongh  
1825 Wolf Dancer  
Leander, TX 78641  
January 15, 2015

Mayor Christopher Fielder,  
Members of the Leander City Council and Staff  
City of Leander  
200 W Willis  
Leander, TX 78641

Dear Mayor Fielder, City Council and Staff:

It is with regret that I tender my resignation from the City of Leander City Council, effective January 15, 2015. I will continue to stay seated in my current position until my successor is elected. With my change in employment, I have made this decision to resign to avoid any ethical conflicts.

I am very honored and grateful for the opportunity that I have had to serve our community and the residents of Leander. I would like to thank the residents of Leander for the trust and belief in me to represent them. This experience has been very rewarding, and at times humbling. I am very pleased with the accomplishments that this council has achieved during my tenure.

The City of Leander has a very bright future and I am glad that I will continue to be a part of it as a resident.

Sincerely,



Jason Dishongh  
Leander City Councilmember Place 5



**Executive Summary**

**January 29, 2015**

**Agenda Subject:** Accept resignation of Simon Garcia, Place 3 of the Leander City Council

**Background:** On January 20<sup>th</sup>, Mayor Fielder received an email from Mayor Pro Tem Garcia resigning his position on City Council for Place 3. Because state statute states that the resignation will be effective on the 8<sup>th</sup> day following notice to the Mayor, council will need to accept the resignation by vote in order to call the special election for Place 3 on January 29, 2015. If the special election is called on the 29<sup>th</sup>, both Place 3 and Place 5 will be placed on the May 9<sup>th</sup> ballot with the general election.

**Origination:** Debbie Haile TRMC, City Secretary

**Recommendation:** Staff recommends acceptance of resignation.

**Attachments:** Resignation email

**Prepared by:** Debbie Haile TRMC, City Secretary

From: Place Three <place3@leandertx.gov>

Date: January 21, 2015 at 2:56:25 PM CST

To: Chris Fielder <Cfielder@leandertx.gov>

Subject: Simon Garcia

Mr. Mayor, City Council, City Staff,

Due to new opportunities in my career which involve moving, I must resign my seat on City Council effective January 29, 2015. I do this with a heavy heart in that I love serving the citizens of Leander. I will be moving out of state for career and family ,but will always consider Leander home. I thank city staff for their efficient work, our city Manager for his guidance, City Council for their professionalism, Mayor Fielder for his leadership and vision, but most important our citizens for allowing me to serve as their councilman. Leander is in good hands.

Respectfully,

Mayor Pro-Tem Simon Garcia



**Executive Summary**

**January 29, 2015**

**Council Agenda Subject:** Consider Dedication and Acceptance of Subdivision Infrastructure Improvements for Borho, Phase 3, Subdivision

**Background:** The subdivision infrastructure improvements required for Borho, Phase 3, Subdivision 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 January 29, 2015 which will provide warranty and maintenance coverage for the infrastructure improvements through January 29, 2017. 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.

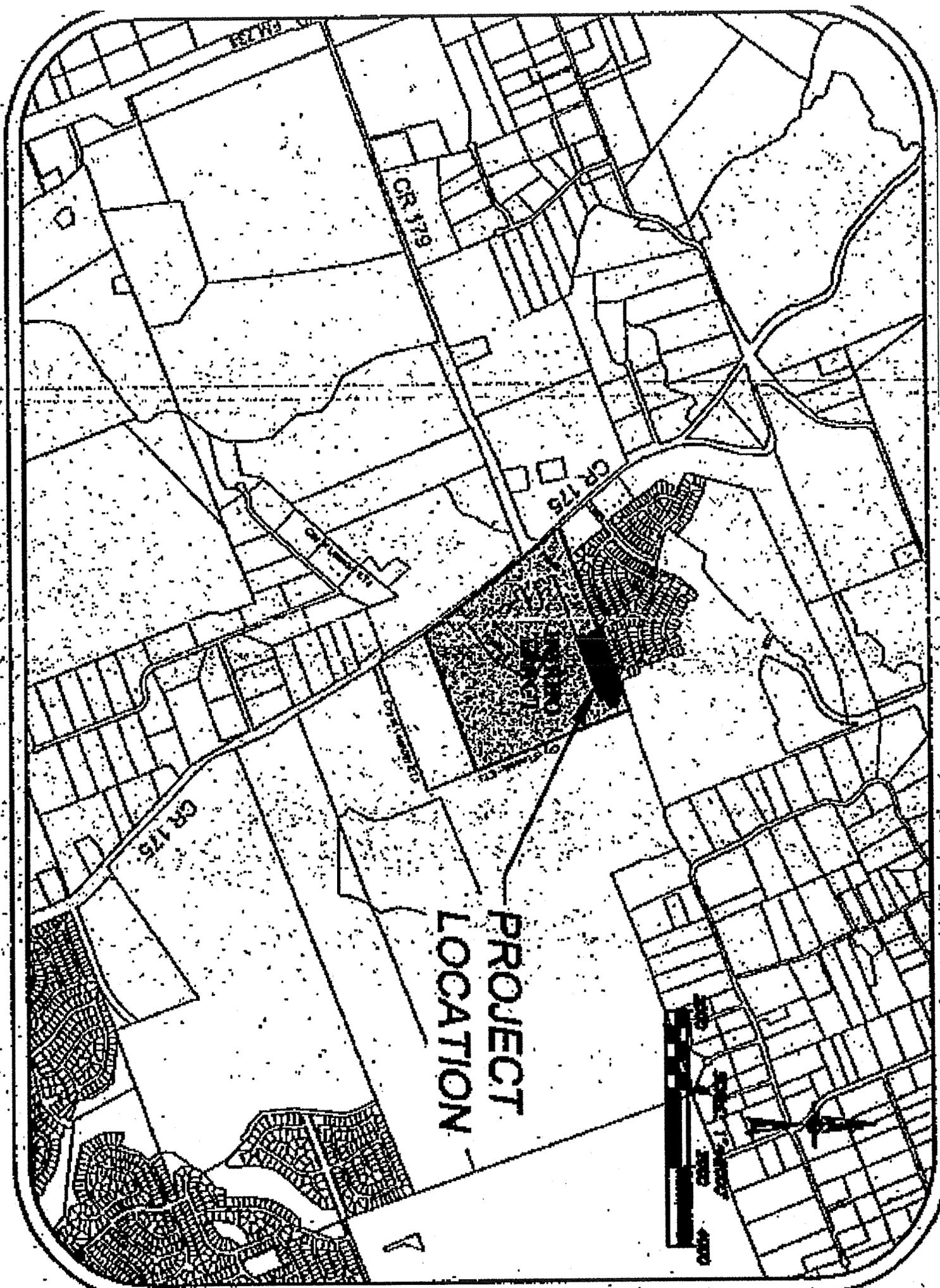
**Origination:** Wayne S. Watts, P.E., CFM, City Engineer

**Financial Consideration:** N/A

**Recommendation:** Staff recommends City Council's formal acceptance of the subdivision infrastructure improvements for Borho, Phase 3, Subdivision.

**Attachments:** Location Map, 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



PROJECT  
LOCATION



ENGINEER'S CONCURRENCE  
FOR  
PROJECT ACCEPTANCE

PROJECT: Borho Phase 3  
Street, Drainage, Water and Wastewater

Date: January 09, 2015

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 December 11, 2014, 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.

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(SEAL)



*James A. Huffcut, Jr.*

Signature

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

Typed Name

55253

Texas Registration No.



3636 Executive Center Drive  
Suite 100  
Austin, Texas 78731  
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. 3 TAS Re-Inspection – No Violations  
Transmittal Letter

December 16, 2014

Danny Taliaferro  
Meritage Corporation, Austin Division  
8920 Business Park Drive, #250  
Austin, Texas 78759

Re: Trails of Shady Oaks, Ph. 3  
Leander, Texas

**RE-INSPECTION – NO VIOLATIONS**

Dear Mr. Taliaferro,

The referenced project has been re-inspected to verify completion of corrective modifications. We are pleased to inform you that all items now appear to be in substantial compliance with the requirements of the Texas Government Code, Chapter 469.

Due to this project not subject to TDLR review, the re-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 project.

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  
TDLR # 245

MAINTENANCE BOND  
Subdivision Improvements

Bond No. 1036803

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 Fifty Three Thousand Nine Hundred eleven & 29/100's Dollars (\$53,911.29) 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 Section 3: Water, Wastewater, Streets and Drainage (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 6<sup>th</sup> day of January, 2015 .

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 as officers were duly affixed and subscribed to said instrument by the authority and direction of said Corporations.

**BARBARA A. GARLICK**  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires Sept. 21, 2018

*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 6th day of Jan 2015.

**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](mailto: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 com-  
pany 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 con-  
dition 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](mailto:ConsumerProtection@tdi.state.tx.us)

**DISPUTAS SOBRE PRIMAS O RECLAMOS:**

Si tiene una disputa concniente a su prima o a un rec-  
lamo, 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.

# APPLICATION AND CERTIFICATE FOR PAYMENT/ DNT Construction

TO (OWNER): **Heritage Homes Of Texas, LLC**  
 8920 Business Park Dr.  
 Austin, TX 78759

PROJECT: **Trails at Shady Oak- Phase 3**

APPLICATION NO: **7**

Retainage **\$ -**  
 Distribution **\$ -**

PERIOD TO: **12/31/2014**

CONTRACT NUMBER: **45755113**

ENGINEER: **Pape-Dawson Engineers**  
 7800 Shoal Creek Blvd., Suite 220- West  
 Austin, TX 78757

DNT CONSTRUCTION, LLC  
 P O Box 6210  
 Round Rock, Texas 78683

DNT CONSTRUCTION  
 INVOICE NO: **10.1478.14-7**  
 CONTRACT DATE:

CHANGE ORDER SUMMARY		
Change orders approved in previous months by Owner	ADDITIONS	DEDUCTIONS
TOTAL	\$0.00	\$0.00
Approved this Month		
Number	Date Approved	
1	17-Nov-14	\$7,147.58
2	12-Dec-14	\$88,658.75
3	18-Dec-14	\$8,470.00
4		
TOTALS	\$104,276.33	\$0.00

Net change by Change Orders \$104,276.33

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: **DNT CONSTRUCTION, LLC**  
 By: *[Signature]* Date: **1/8/15**

## ENGINEER CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, the Engineer certifies to the Owner that to the best of the Engineer's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

The Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

- 1 ORIGINAL CONTRACT SUM \$ 539,112.90
- 2 Net change by Change Orders \$ 104,276.33
- 3 CONTRACT SUM TO DATE \$ 643,389.23
- 4 TOTAL COMPLETED & STORED TO DATE (Column G on J703) \$ 643,389.23
- 5 Retainage:
  - a. 10 % of Cpt Wk \$ -
  - (Column D + E on J703)
  - b. 10 % of Stored Mtl \$ -
  - (Column F on J703)
- Total Retainage (Line 5a + 5b or (Total in Column 1 of J703) \$ -
- 6 TOTAL EARNED LESS RETAINAGE \$ 643,389.23
- (Line 4 less 5 Total)
- 7 LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificates) \$ 579,050.31
- 8 CURRENT PAYMENT DUE \$ 64,338.92
- 9 BALANCE TO FINISH, PLUS RETAINAGE (Line 3 less Line 6) \$ -

State of: TEXAS County of: TRAVIS

Subscribed and sworn to before me this 18 day of Jan, 2015

Notary Public: **Mary Morrison**  
 My Commission expires: 7/16/2016

By: *[Signature]* Date: **1/09/15**



*[Signature]* **Juan C. Brizuela**  
 1/09/15

DNT CONSTRUCTION MONTHLY PROGRESS PAYMENT

CONTRACT: Trails at Shady Oak - Phase 3  
 CONTRACTOR: DNT CONSTRUCTION, LLC  
 P O Box 6210  
 Round Rock, Texas 78663

PROGRESS PAYMENT NO: 7  
 PROGRESS PAYMENT PERIOD: 12/31/2014

10.1478.14-1

ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	CONTRACT AMOUNT	PREVIOUS QTY	PREVIOUS THISES	QTY TO DATE	COST TO DATE	PREVIOUS COST	COST THIS ESTIMATE	%
1	Revise Stand Alone Clear & Grub Unit See 1-1C below for detail	1.5	AC	\$ 23,246.30	\$34,869.45	1.50	0.00	1.50	\$34,869.45	\$34,869.45	\$0.00	100%
2	Embankment (includes streets, lot grading)	278	CY	\$ 1.87	\$519.86	278.00	0.00	278.00	\$519.86	\$519.86	\$0.00	100%
3	Revised Excavation (includes streets, lot grading)	2312	CY	\$ 5.58	\$12,900.96	2312.00	0.00	2312.00	\$12,900.96	\$12,900.96	\$0.00	100%
4	Revised NEW - Subgrade Prep See 4-4A for detail	4502	SY	\$ 2.29	\$10,309.58	4502.00	0.00	4502.00	\$10,309.58	\$10,309.58	\$0.00	100%
5	Revised 8" Flexible Base See 5-5A below for detail	3142	SY	\$ 8.79	\$27,618.18	3142.00	0.00	3142.00	\$27,618.18	\$27,618.18	\$0.00	100%
6	NEW - 4" Flexible Base (Temporary Turn Around)	904	SY	\$ 4.84	\$4,375.36	904.00	0.00	904.00	\$4,375.36	\$4,375.36	\$0.00	100%
7	1.5" H.M.A.C. (Temporary Turn Around)	2495	SY	\$ 8.94	\$22,305.30	2495.00	0.00	2495.00	\$22,305.30	\$22,305.30	\$0.00	100%
8	1.5" H.M.A.C. (Temporary Turn Around)	904	SY	\$ 8.94	\$8,081.76	904.00	0.00	904.00	\$8,081.76	\$8,081.76	\$0.00	100%
9	6" Standard Curb & Gutter	1654	LF	\$ 11.43	\$19,019.52	1654.00	0.00	1654.00	\$19,019.52	\$19,019.52	\$0.00	100%
10	Sawcut and Tie Into Existing Street/ Remove Street	27	LF	\$ 2.30	\$62.10	27.00	0.00	27.00	\$62.10	\$62.10	\$0.00	100%
11	Material Increases See Attached detail;	1	LS	\$ 16,341.21	\$16,341.21	1.00	0.00	1.00	\$16,341.21	\$16,341.21	\$0.00	100%
					\$156,403.28				\$156,403.28	\$156,403.28	\$0.00	100%

ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	CONTRACT AMOUNT	PREVIOUS QTY	PREVIOUS THISES	QTY TO DATE	COST TO DATE	PREVIOUS COST	COST THIS ESTIMATE	%
1	10" Type I Curb inlet	8	EA	\$ 5,282.30	\$42,258.40	8.00	0.00	8.00	\$42,258.40	\$42,258.40	\$0.00	100%
2	18" Class III R.C.P.	123	LF	\$ 51.04	\$6,277.92	123.00	0.00	123.00	\$6,277.92	\$6,277.92	\$0.00	100%
3	24" Class III R.C.P.	484	LF	\$ 59.53	\$28,812.52	484.00	0.00	484.00	\$28,812.52	\$28,812.52	\$0.00	100%
4	36" Class III R.C.P.	273	LF	\$ 105.63	\$28,836.99	273.00	0.00	273.00	\$28,836.99	\$28,836.99	\$0.00	100%
5	5' x 5' Junction Box	2	EA	\$ 4,615.71	\$9,231.42	2.00	0.00	2.00	\$9,231.42	\$9,231.42	\$0.00	100%
6	Trench Safety	880	LF	\$ 994.40	\$884,400.00	880.00	0.00	880.00	\$884,400.00	\$884,400.00	\$0.00	100%
7	NEW - Connect To Existing 36" RCP	1	EA	\$ 546.09	\$546.09	1.00	0.00	1.00	\$546.09	\$546.09	\$0.00	100%
					\$116,957.74				\$116,957.74	\$116,957.74	\$0.00	100%

ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	CONTRACT AMOUNT	PREVIOUS QTY	PREVIOUS THISES	QTY TO DATE	COST TO DATE	PREVIOUS COST	COST THIS ESTIMATE	%
1	Revised 8" PVC DR 14 CS90 Water Line See 1-1A below for detail	895	LF	\$ 33.49	\$27,984.15	895.00	0.00	895.00	\$27,984.15	\$27,984.15	\$0.00	100%
2	8" Gate Valves	1	EA	\$ 1,275.22	\$1,275.22	1.00	0.00	1.00	\$1,275.22	\$1,275.22	\$0.00	100%
3	Raise Valves	1	EA	\$ 138.48	\$138.48	1.00	0.00	1.00	\$138.48	\$138.48	\$0.00	100%
4	Fittings	0.5	TON	\$ 322.16	\$161.08	0.50	0.00	0.50	\$161.08	\$161.08	\$0.00	100%
5	Fire Hydrant Assembly w/ Gate Valve; Lead: 6"x8"	1	EA	\$ 4,191.52	\$4,191.52	1.00	0.00	1.00	\$4,191.52	\$4,191.52	\$0.00	100%
6	NEW - 8" Water Wet Connection	1	EA	\$ 879.99	\$879.99	1.00	0.00	1.00	\$879.99	\$879.99	\$0.00	100%
7	8" Plug & Bury	1	EA	\$ 107.55	\$107.55	1.00	0.00	1.00	\$107.55	\$107.55	\$0.00	100%
8	Trench Safety	835	LF	\$ 0.58	\$484.30	835.00	0.00	835.00	\$484.30	\$484.30	\$0.00	100%
9	Revised Double Service Long See 9-9A below for detail	7	EA	\$ 2,214.54	\$15,501.78	7.00	0.00	7.00	\$15,501.78	\$15,501.78	\$0.00	100%
10	Revised Double Service Short See 10-10A for detail	7	EA	\$ 1,525.41	\$10,677.87	7.00	0.00	7.00	\$10,677.87	\$10,677.87	\$0.00	100%
11	2" Blow-Off Valve	1	EA	\$ 942.04	\$942.04	1.00	0.00	1.00	\$942.04	\$942.04	\$0.00	100%
12	NEW - Remove 2" Blow-Off Valve	1	EA	\$ 494.72	\$494.72	1.00	0.00	1.00	\$494.72	\$494.72	\$0.00	100%
					\$62,818.70				\$62,818.70	\$62,818.70	\$0.00	100%

ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	CONTRACT AMOUNT	PREVIOUS QTY	PREVIOUS THISES	QTY TO DATE	COST TO DATE	PREVIOUS COST	COST THIS ESTIMATE	%
1	Revised 6" SDR-26 Wastewater Line 8'-10' Deep See 1-1a below for detail	356	LF	\$ 49.20	\$17,515.20	356.00	0.00	356.00	\$17,515.20	\$17,515.20	\$0.00	100%
2	Revised 8" SDR - 26 10-12'	391	LF	\$ 54.00	\$21,114.00	391.00	0.00	391.00	\$21,114.00	\$21,114.00	\$0.00	100%
3	Revised 8" SDR-26 Wastewater Line 12'-14' Deep	118	LF	\$ 58.65	\$6,920.70	118.00	0.00	118.00	\$6,920.70	\$6,920.70	\$0.00	100%
4	8" SDR-26 Wastewater Line 14'-16' Deep	32	LF	\$ 56.15	\$1,796.80	32.00	0.00	32.00	\$1,796.80	\$1,796.80	\$0.00	100%
5	Trench Safety	1664	LF	\$ 1.15	\$1,913.60	1664.00	0.00	1664.00	\$1,913.60	\$1,913.60	\$0.00	100%
6	4" Diam. Standard Manhole	2	EA	\$ 4,656.38	\$9,312.76	2.00	0.00	2.00	\$9,312.76	\$9,312.76	\$0.00	100%
7	NEW - 4" Diam. Standard Drop Manhole	2	EA	\$ 4,618.22	\$9,236.44	2.00	0.00	2.00	\$9,236.44	\$9,236.44	\$0.00	100%
8	Extra Depth Manhole (Standard/Drop)	22	VF	\$ 160.44	\$3,529.68	22.00	0.00	22.00	\$3,529.68	\$3,529.68	\$0.00	100%
9	Double Service Long	8	EA	\$ 1,996.91	\$15,975.28	8.00	0.00	8.00	\$15,975.28	\$15,975.28	\$0.00	100%
10	Double Service Short	7	EA	\$ 1,548.47	\$10,839.29	7.00	0.00	7.00	\$10,839.29	\$10,839.29	\$0.00	100%

DNT CONSTRUCTION MONTHLY PROGRESS PAYMENT

CONTRACT: Trails at Shady Oak, Phase 3  
 CONTRACTOR: DNT CONSTRUCTION, LLC  
 P O Box 6210  
 Round Rock, Texas 78683

PROGRESS PAYMENT NO: 7  
 PROGRESS PAYMENT PERIOD: 12/31/2014

11	NEW - Tie to Existing Line	EA	\$	966.50	\$996.50	1.00	0.00	1.00	\$996.50	\$996.50	100%	100%
				\$99,150.25	\$99,150.25					\$0.00	\$0.00	100%

ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	CONTRACT AMOUNT	PREVIOUS QTY	PREVIOUS UNIT PRICE	THIS EST. QTY	THIS EST. UNIT PRICE	TODAY QTY	TODAY UNIT PRICE	PREVIOUS COST ESTIMATE	COST THIS ESTIMATE
1	Stabilized Construction Entrance	1	EA	\$ 1,058.15	\$1,058.15	1.00	1.00	0.00	1.00	1.00	\$1,058.15	\$1,058.15	\$0.00
2	Silt Fence	1450	LF	\$ 2.94	\$4,263.00	1450.00	1450.00	0.00	1450.00	1450.00	\$4,263.00	\$4,263.00	\$0.00
3	Inlet Protection	10	EA	\$ 68.47	\$684.70	10.00	10.00	0.00	10.00	10.00	\$684.70	\$684.70	\$0.00
4	Diversion Dike	380	LF	\$ 2.16	\$820.80	380.00	380.00	0.00	380.00	380.00	\$820.80	\$820.80	\$0.00
5	Revegetation	2350	SF	\$ 1.94	\$4,559.00	2350.00	2350.00	0.00	2350.00	2350.00	\$4,559.00	\$4,559.00	\$0.00
				\$11,385.65	\$11,385.65							\$0.00	\$0.00

ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	CONTRACT AMOUNT	PREVIOUS QTY	PREVIOUS UNIT PRICE	THIS EST. QTY	THIS EST. UNIT PRICE	TODAY QTY	TODAY UNIT PRICE	PREVIOUS COST ESTIMATE	COST THIS ESTIMATE
1	Mobilization, Supervision, Layout	1	LS	\$ 10,000.00	\$10,000.00	1.00	1.00	0.00	1.00	1.00	\$10,000.00	\$10,000.00	\$0.00
2	Joint Trench Excavation	1290	LF	\$ 12.00	\$15,480.00	1290.00	1290.00	0.00	1290.00	1290.00	\$15,480.00	\$15,480.00	\$0.00
3	Non-Joint Trench Excavation	830	LF	\$ 10.00	\$8,300.00	830.00	830.00	0.00	830.00	830.00	\$8,300.00	\$8,300.00	\$0.00
				\$33,780.00	\$33,780.00							\$0.00	\$0.00

ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	CONTRACT AMOUNT	PREVIOUS QTY	PREVIOUS UNIT PRICE	THIS EST. QTY	THIS EST. UNIT PRICE	TODAY QTY	TODAY UNIT PRICE	PREVIOUS COST ESTIMATE	COST THIS ESTIMATE
1	3" SCH 40 Conduit	2300	LF	\$ 3.50	\$8,050.00	2300.00	2300.00	0.00	2300.00	2300.00	\$8,050.00	\$8,050.00	\$0.00
2	Transformer Pads	3	EA	\$ 1,225.00	\$3,975.00	3.00	3.00	0.00	3.00	3.00	\$3,975.00	\$3,975.00	\$0.00
3	Above Ground Secondary Pedestal	15	EA	\$ 500.00	\$7,500.00	15.00	15.00	0.00	15.00	15.00	\$7,500.00	\$7,500.00	\$0.00
				\$19,525.00	\$19,525.00							\$0.00	\$0.00

ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	CONTRACT AMOUNT	PREVIOUS QTY	PREVIOUS UNIT PRICE	THIS EST. QTY	THIS EST. UNIT PRICE	TODAY QTY	TODAY UNIT PRICE	PREVIOUS COST ESTIMATE	COST THIS ESTIMATE
1	3/4" Poly	630	LF	\$ 3.00	\$1,890.00	630.00	630.00	0.00	630.00	630.00	\$1,890.00	\$1,890.00	\$0.00
2	4" Poly	800	LF	\$ 8.25	\$6,600.00	800.00	800.00	0.00	800.00	800.00	\$6,600.00	\$6,600.00	\$0.00
3	Hot Tie-In	1	EA	\$ 2,100.00	\$2,100.00	1.00	1.00	0.00	1.00	1.00	\$2,100.00	\$2,100.00	\$0.00
4	Service Taps	15	EA	\$ 125.00	\$1,875.00	15.00	15.00	0.00	15.00	15.00	\$1,875.00	\$1,875.00	\$0.00
5	2" Gas Sleeve	400	LF	\$ 4.00	\$1,600.00	400.00	400.00	0.00	400.00	400.00	\$1,600.00	\$1,600.00	\$0.00
				\$14,065.00	\$14,065.00							\$0.00	\$0.00

ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	CONTRACT AMOUNT	PREVIOUS QTY	PREVIOUS UNIT PRICE	THIS EST. QTY	THIS EST. UNIT PRICE	TODAY QTY	TODAY UNIT PRICE	PREVIOUS COST ESTIMATE	COST THIS ESTIMATE
1	Clear & Grub	245	AC	\$ 3,500.00	\$8,610.00	246	246	0.00	246	246	\$8,610.00	\$8,610.00	\$0.00
2	Excavation	889	CY	\$ 2.15	\$1,911.35	889.00	889.00	0.00	889.00	889.00	\$1,911.35	\$1,911.35	\$0.00
3	Embankment	3919	CY	\$ 1.87	\$7,328.53	3919.00	3919.00	0.00	3919.00	3919.00	\$7,328.53	\$7,328.53	\$0.00
4	Finish Grade Lot Fill Area	11906	SY	\$ 0.40	\$4,762.40	11906.00	11906.00	0.00	11906.00	11906.00	\$4,762.40	\$4,762.40	\$0.00
5	Rear Lot Pins	28	EA	\$ 86.25	\$2,415.00	28.00	28.00	0.00	28.00	28.00	\$2,415.00	\$2,415.00	\$0.00
				\$25,027.28	\$25,027.28							\$0.00	\$0.00

ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	CONTRACT AMOUNT	PREVIOUS QTY	PREVIOUS UNIT PRICE	THIS EST. QTY	THIS EST. UNIT PRICE	TODAY QTY	TODAY UNIT PRICE	PREVIOUS COST ESTIMATE	COST THIS ESTIMATE
1	Single WW Service Long	1	LS	\$ 2,324.06	\$2,324.06	1.00	1.00	0.00	1.00	1.00	\$2,324.06	\$2,324.06	\$0.00
2	Single WW Service Short	1	LS	\$ 1,249.73	\$1,249.73	1.00	1.00	0.00	1.00	1.00	\$1,249.73	\$1,249.73	\$0.00
3	Single Water Service Long	1	LS	\$ 2,324.06	\$2,324.06	1.00	1.00	0.00	1.00	1.00	\$2,324.06	\$2,324.06	\$0.00
4	Single Water Service Short	1	LS	\$ 1,249.73	\$1,249.73	1.00	1.00	0.00	1.00	1.00	\$1,249.73	\$1,249.73	\$0.00
				\$7,147.58	\$7,147.58							\$0.00	\$0.00

ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	CONTRACT AMOUNT	PREVIOUS QTY	PREVIOUS UNIT PRICE	THIS EST. QTY	THIS EST. UNIT PRICE	TODAY QTY	TODAY UNIT PRICE	PREVIOUS COST ESTIMATE	COST THIS ESTIMATE
1	Parkland cleanup, Box and Haul	1	LS	\$ 22,165.00	\$22,165.00	1.00	1.00	0.00	1.00	1.00	\$22,165.00	\$22,165.00	\$0.00
2	Mobilization, Supervision, Layout	1	LS	\$ 10,000.00	\$10,000.00	1.00	1.00	0.00	1.00	1.00	\$10,000.00	\$10,000.00	\$0.00

**DNT CONSTRUCTION MONTHLY PROGRESS PAYMENT**

CONTRACT: Trails at Shady Oak- Phase 3  
 CONTRACTOR: **DNT CONSTRUCTION, LLC**  
 P O Box 6210  
 Round Rock, Texas 78683

PROGRESS PAYMENT NO: 7  
 PROGRESS PAYMENT PERIOD: 12/31/2014

		10.1478.14-1										
QTY	UNIT	PRICE	AMOUNT	PREVIOUS TO DATE	DIFFERENCE	CUMULATIVE	PREVIOUS TO DATE	DIFFERENCE	CUMULATIVE	PREVIOUS TO DATE	DIFFERENCE	CUMULATIVE
3	Joint Trench Excavation	LF	\$ 12.00	\$15,480.00	1290.00	0.00	1290.00	0.00	1290.00	\$15,480.00	\$0.00	100%
4	Non Joint Trench Excavation	LF	\$ 10.00	\$8,300.00	830.00	0.00	830.00	0.00	830.00	\$8,300.00	\$0.00	100%
5	Trench Excavation	LF	\$ 9.00	\$9,171.00	1019.00	0.00	1019.00	0.00	1019.00	\$9,171.00	\$0.00	100%
6	2" SCH 40	LF	\$ 2.25	\$2,292.75	1019.00	0.00	1019.00	0.00	1019.00	\$2,292.75	\$0.00	100%
7	Street Lights	EA	\$ 2,900.00	\$14,500.00	5.00	0.00	5.00	0.00	5.00	\$14,500.00	\$0.00	100%
8	Furnish and Install Wire	LS	\$ 4,250.00	\$4,250.00	1.00	0.00	1.00	0.00	1.00	\$4,250.00	\$0.00	100%
9	Service Meter/HOA Panel	EA	\$ 2,500.00	\$2,500.00	1.00	0.00	1.00	0.00	1.00	\$2,500.00	\$0.00	100%
				<b>\$88,658.75</b>						<b>\$88,658.75</b>	<b>\$0.00</b>	<b>100%</b>

CHARGE ORDER 3	DESCRIPTION	QTY	UNIT	PRICE	AMOUNT	PREVIOUS TO DATE	DIFFERENCE	CUMULATIVE	PREVIOUS TO DATE	DIFFERENCE	CUMULATIVE	PREVIOUS TO DATE	DIFFERENCE	CUMULATIVE
1	Additional Lot Clearing	1	LS	\$ 8,470.00	\$8,470.00	0.00	0.00	1.00	0.00	1.00	\$8,470.00	\$0.00	100%	
					<b>\$8,470.00</b>						<b>\$8,470.00</b>	<b>\$0.00</b>	<b>100%</b>	
<b>TOTAL CONTRACT</b>					<b>\$643,389.23</b>						<b>\$643,389.23</b>	<b>\$0.00</b>	<b>100%</b>	

TOTAL COMPLETED TO DATE	\$ 643,389.23
TOTAL COMPLETED/ STORED TO DATE	\$ 643,389.23
RETAINAGE HELD	\$ -
TOTAL CPLT LESS RETAINAGE	\$ 643,389.23
LESS PREVIOUS BILLINGS	\$ 579,050.31
CURRENT PAYMENT DUE	\$ 64,338.92

ORIGINAL CONTRACT AMOUNT	\$ 539,112.90
CONTRACT CHANGES	\$ 104,276.33
TOTAL CONTRACT W/ CHANGES	\$ 643,389.23
WORK COMPLETED TO DATE	\$ 643,389.23
BALANCE TO COMPLETE	\$ -



January 9, 2015

Michael O'Neal  
Engineering Department  
City of Leander  
200 W. Willis St.  
Leander, Texas 78641

RE: Borho Phase 3 - Inspection Fees

Dear Mr. O'Neal:

As part of the subdivision improvements acceptance process, inspection fees shall be checked to determine if there was an under or over payment. The inspection fees were paid prior to construction based on our Engineer's Opinion of Probable Cost (OPC). The inspection fees have now been re-calculated based on the Contractor's final pay application. The following is a summary of the inspection fee comparison:

	Estimated Cost	Fee %	Fees Paid	Final Cost	Fee %	Fees Required	Settle-Up Amount
Construction Improvements	\$364,971	3.5%	\$12,773.99	\$453,863.20	3.5%	\$15,885.21	\$3,111.22
						<b>Balance Due</b>	<b>\$3,111.22</b>

*\$2,423.00*

Based on the above comparison there is a net balance due of \$3,111.22.

For Borho Phase 5, Meritage has a credit for ~~\$3,382.11~~ for Construction Fee Paid (see attachment). If acceptable, Meritage would like to apply this credit to pay the balance due for Phase 3 for \$3,111.22 leaving a credit of ~~\$270.89~~ for future Phases Fees.

*↑ -\$688.23 (owed)*

Please contact me if you have any questions or need additional information.

Sincerely,  
Pape-Dawson Engineers, Inc.  
Texas Board of Professional Engineers, Firm Registration #470

*Juan C. Brizuela*  
Juan Brizuela, P.E.  
Project Manager

H:\projects\507\51\53\970 Const Admin\Documents\Project Closeout\Borho Phase 3 - Inspection Fee Settle Up Letter.doc

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

STATE OF TEXAS  
COUNTY OF

Date: 1/15/2015

Owner: **Meritage Homes of Texas, LLC**

Contractor/Material  
Provider ("Affiant"): **DNT Construction, LLC**

Project : **Trails at Shady Oaks – Phase 3**

This is to acknowledge and certify that Affiant has completed the construction of all improvements for the project noted above and that they have been paid in full for all labor and material provided to the above-noted construction project, and acknowledge and certify 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 pursuant to the Contract.

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 pending City acceptance and subsequent retainage payment by Meritage Homes of Texas, LLC.

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.

SUBSCRIBED AND SWORN TO BY Affiant on this 15 January 2015

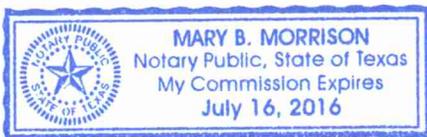
**AFFIANT:**

Signature: \_\_\_\_\_



Typed Name: Dean Tomme

Title: President



Initialed: \_\_\_\_\_

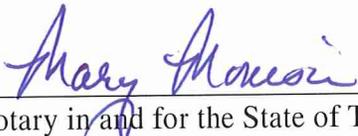
STATE OF TEXAS

COUNTY OF Travis

BEFORE ME the undersigned authority on this day personally appeared Dean Tomme, President, 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 15 January 2015

[S E A L]

  
\_\_\_\_\_  
Notary in and for the State of Texas

Name: Mary Morrison

My commission expires: July 16, 2016

Initialed: \_\_\_\_\_



**Executive Summary**

**January 29, 2015**

**Agenda Subject:** Second public hearing on the proposed annexation of a certain area of land being 35.48 acres, more or less, located in Williamson County, Texas, comprised of three (3) parcels of land being 21.690 acres, more or less, 12.580 acres, more or less, and 1.210 acres, more or less, and being generally located south of Highway 29, east of Ronald Reagan Boulevard and north of Kauffman Loop..

**Background:** The City Council approved the resolution accepting the petition for voluntary annexation for the subject tracts at its December 4, 2014 meeting. The properties include three tracts of land totaling approximately 35.48 acres along Ronald W. Reagan Blvd. south of Highway 29 at the intersection of Kaufman Loop and part of the Wedemeyer Ranch. The resolution set the two public hearings for January 15, 2015 and January 29, 2015. The first reading of the ordinance is scheduled for February 19, 2015 and the second and final reading is scheduled for March 5, 2015.

This is a voluntary annexation consistent with the development agreement for the Wedemeyer Ranch property.

**Origination:** Applicants

**Recommendation:** Staff recommends conducting the second public hearing.

**Attachments:**

1. Annexation schedule
2. Location maps
3. Annexation service plan

**Prepared by:** Tom Yantis, AICP  
Assistant City Manager

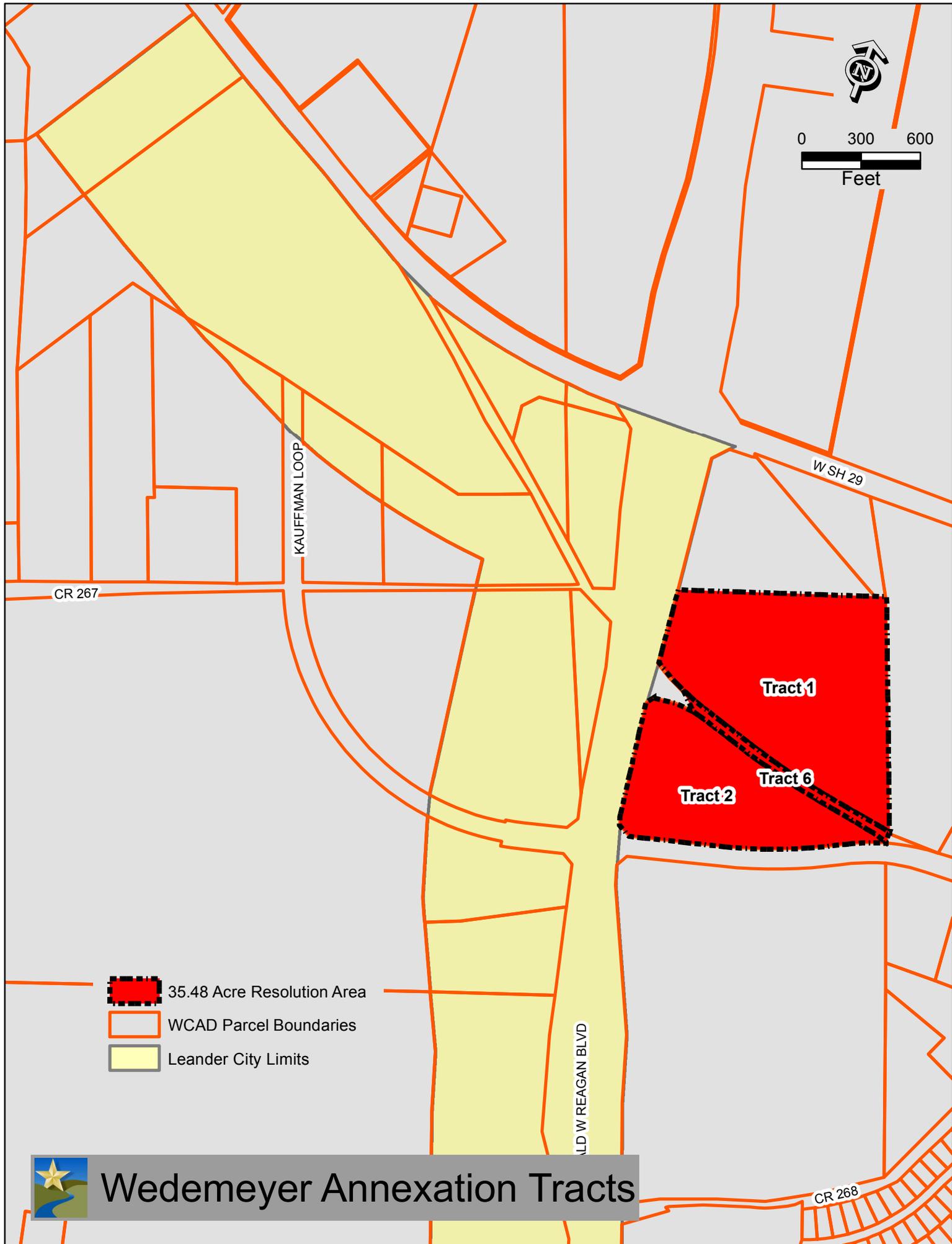
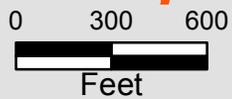
1/7//2015

**SCHEDULE FOR VOLUNTARY ANNEXATION  
WEDEMEYER PROPERTY**

<b>DATE</b>	<b>ACTION/EVENT</b>	<b>LEGAL AUTHORITY</b>
November 20, 2014	<b>COUNCIL BY WRITTEN RESOLUTION</b> Directs notification to land owners; and sets two (2) Public Hearings <b>January 15, 2015 and January 29, 2015</b> ; Council directs development of service plan for area to be annexed.	Loc. Gov't Code, §§ 43.063 & 43.065; Public Hearings: are on or after the 40th day but before 20th day before institution of proceedings.
<b>By December 15, 2014</b>	<b>NOTICE TO</b> property owners & utility providers	Loc. Gov't Code § 43.062(a)
<b>December 31, 2014**</b> Publish notice of First Public Hearing and send school district notice	<b>NEWSPAPER NOTICES RE: FIRST AND SECOND PUBLIC HEARINGS</b> ; (If applicable, certified Notice to Railroad). <b>POST NOTICE OF HEARINGS ON CITY'S WEBSITE AND MAINTAIN UNTIL HEARINGS COMPLETE</b>	Not less than 10 days nor more than 20 days before 1st and 2nd public hearings. Loc. Gov't Code, §43.063 (c).
<b>January 14, 2015**</b> Publish notice of Second Public Hearings	<b>SCHOOL DISTRICT NOTICE</b> (notify each school district of possible impact w/in the period prescribed for publishing the notice of the First Public Hearing.)	Loc. Gov't Code § 43.905; send school district notice not less than 10 days nor more than 20 days before the First Public Hearing.
Ten days after the date the first notice of Public Hearing is published	<b>LAST DAY FOR SUBMISSION OF WRITTEN PROTEST BY RESIDENTS</b> (10 days after first newspaper notice)	Site hearing required if 10% of adult residents of tracts protest within 10 days after 1st newspaper notice. Loc. Gov't Code, § 43.063 (b)
<b>January 15, 2015*</b>	<b>1st PUBLIC HEARING AND PRESENT SERVICE PLAN</b> (Not more than 40 days before the 1st reading of ordinance) <i>REGULAR MEETING</i>	Not less than 20 days nor more than 40 days before reading of ordinance. Loc. Gov't Code, §§ 43.063(a) & 43.065.
<b>January 29, 2015*</b>	<b>2nd PUBLIC HEARING AND PRESENT SERVICE PLAN</b> (At least 20 days before 1st reading of ordinance.) <i>REGULAR MEETING</i>	Not less than 20 days nor more than 40 days before reading of ordinance. Loc. Gov't Code, §§ 43.063(a) & 43.065.
Institution Date <b>February 19, 2015*</b>	<b>FIRST READING OF ORDINANCE</b> <i>REGULAR MEETING</i>	Date of institution of proceedings. Not less than 20 days from the second public hearing nor more than 40 days from the first public hearing.
March 5, 2015; Or at a special called meeting after the 1st First Reading	<b>SECOND-FINAL READING OF ORDINANCE</b> <i>REGULAR MEETING</i>	Not more than 90 days after 1 <sup>st</sup> reading of Ordinance § 43.064.
<b>Within 30 days of Second Reading</b>	<b>CITY SENDS COPY OF MAP</b> showing boundary changes to County Voter Registrar in a format that is compatible with mapping format used by registrar	Elec. Code §42.0615
Within 60 days of Second Reading	<b>CITY PROVIDES CERTIFIED COPY OF ORDINANCE AND MAPS TO:</b>  <ol style="list-style-type: none"> <li>1. County Clerk</li> <li>2. County Appraisal District</li> <li>3. County Tax Assessor Collector</li> <li>4. 911 Addressing</li> <li>5. Sheriff's Office</li> <li>6. City Department Heads</li> <li>7. State Comptroller</li> <li>8. Franchise Holders</li> </ol>	

\*Dates in **BOLD** are **MANDATORY** dates to follow this schedule. Please advise if deviation.

\*\*Newspaper notices to paper by 5p.m. the preceding Wednesday.



-  35.48 Acre Resolution Area
-  WCAD Parcel Boundaries
-  Leander City Limits



# Wedemeyer Annexation Tracts

CR 268



**Executive Summary**

**January 29, 2015**

**Agenda Subject:** Second public hearing on the proposed annexation of a certain area of land being 261.17 acres, more or less, located in Williamson County, Texas, comprised of four (4) parcels of land being 63.729 acres, more or less, 63.619 acres, more or less, and 127.269 acres, more or less, and 6.553 acres, more or less, and being generally located east of County Road 279, north of Collaborative Way and the Savannah Ranch Subdivision.

**Background:** The Council approved the resolution accepting the petition for voluntary annexation for the subject tracts of land at its November 20, 2014 meeting. The properties include the four tracts of land totaling approximately 261.17 acres north of San Gabriel Blvd and east of Bagdad Road. The resolution set the two public hearings for January 15, 2015 and January 29, 2015. The first reading of the ordinance is scheduled for February 19, 2015 and the second and final reading is scheduled for March 5, 2015.

This is a voluntary annexation.

**Origination:** Applicants

**Recommendation:** Staff recommends conducting the second public hearing

**Attachments:**

1. Annexation Schedule
2. Location maps
3. Annexation service plan

**Prepared by:** Tom Yantis, AICP  
Assistant City Manager

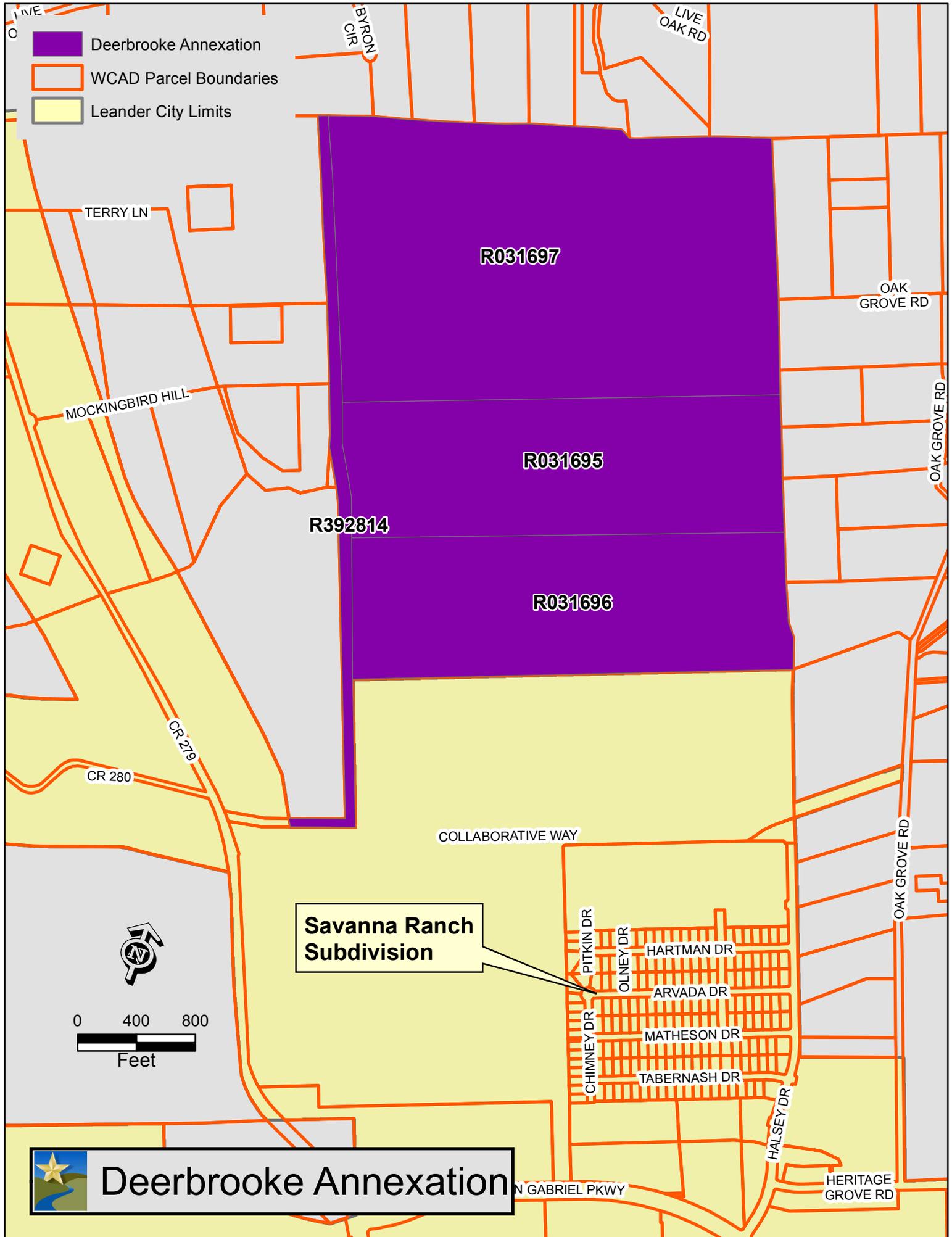
1/7/2015

**SCHEDULE FOR VOLUNTARY ANNEXATION  
DEERBROOKE SUBDIVISION +/- 261.17 ACRES**

<b>DATE</b>	<b>ACTION/EVENT</b>	<b>LEGAL AUTHORITY</b>
November 20, 2014	<b>COUNCIL BY WRITTEN RESOLUTION</b> Directs notification to land owners; and sets two (2) Public Hearings <b>January 15, 2015 and January 29, 2015</b> ; Council directs development of service plan for area to be annexed.	Loc. Gov't Code, §§ 43.063 & 43.065; Public Hearings: are on or after the 40th day but before 20th day before institution of proceedings.
<b>By December 15, 2014</b>	<b>NOTICE TO</b> property owners & utility providers	Loc. Gov't Code § 43.062(a)
<b>December 31, 2014**</b> Publish notice of First Public Hearing and send school district notice	<b>NEWSPAPER NOTICES RE: FIRST AND SECOND PUBLIC HEARINGS</b> ; (If applicable, certified Notice to Railroad). <b>POST NOTICE OF HEARINGS ON CITY'S WEBSITE AND MAINTAIN UNTIL HEARINGS COMPLETE</b>	Not less than 10 days nor more than 20 days before 1st and 2nd public hearings. Loc. Gov't Code, §43.063 (c).
<b>January 14, 2015**</b> Publish notice of Second Public Hearings	<b>SCHOOL DISTRICT NOTICE</b> (notify each school district of possible impact w/in the period prescribed for publishing the notice of the First Public Hearing.)	Loc. Gov't Code § 43.905; send school district notice not less than 10 days nor more than 20 days before the First Public Hearing.
Ten days after the date the first notice of Public Hearing is published	<b>LAST DAY FOR SUBMISSION OF WRITTEN PROTEST BY RESIDENTS</b> (10 days after first newspaper notice)	Site hearing required if 10% of adult residents of tracts protest within 10 days after 1st newspaper notice. Loc. Gov't Code, § 43.063 (b)
<b>January 15, 2015*</b>	<b>1st PUBLIC HEARING AND PRESENT SERVICE PLAN</b> (Not more than 40 days before the 1st reading of ordinance) <i>REGULAR MEETING</i>	Not less than 20 days nor more than 40 days before reading of ordinance. Loc. Gov't Code, §§ 43.063(a) & 43.065.
<b>January 29, 2015*</b>	<b>2nd PUBLIC HEARING AND PRESENT SERVICE PLAN</b> (At least 20 days before 1st reading of ordinance.) <i>REGULAR MEETING</i>	Not less than 20 days nor more than 40 days before reading of ordinance. Loc. Gov't Code, §§ 43.063(a) & 43.065.
Institution Date <b>February 19, 2015*</b>	<b>FIRST READING OF ORDINANCE</b> <i>REGULAR MEETING</i>	Date of institution of proceedings. Not less than 20 days from the second public hearing nor more than 40 days from the first public hearing.
March 5, 2015; Or at a special called meeting after the 1st First Reading	<b>SECOND-FINAL READING OF ORDINANCE</b> <i>REGULAR MEETING</i>	Not more than 90 days after 1 <sup>st</sup> reading of Ordinance § 43.064.
<b>Within 30 days of Second Reading</b>	<b>CITY SENDS COPY OF MAP</b> showing boundary changes to County Voter Registrar in a format that is compatible with mapping format used by registrar	Elec. Code §42.0615
Within 60 days of Second Reading	<b>CITY PROVIDES CERTIFIED COPY OF ORDINANCE AND MAPS TO:</b>  1. County Clerk 2. County Appraisal District 3. County Tax Assessor Collector 4. 911 Addressing 5. Sheriff's Office 6. City Department Heads 7. State Comptroller 8. Franchise Holders	

\*Dates in **BOLD** are **MANDATORY** dates to follow this schedule. Please advise if deviation.

\*\*Newspaper notices to paper by 5p.m. the preceding Wednesday.



Deerbrooke Annexation  
WCAD Parcel Boundaries  
Leander City Limits

R031697

R031695

R031696

R392814

Savanna Ranch  
Subdivision



Deerbrooke Annexation

0 400 800  
Feet



**Executive Summary**

**January 29, 2015**

**Council Agenda Subject:** Consideration of Revised Standard Professional Services Agreement and Task Order FNI-2 with Freese and Nichols, Inc., for professional services for Traffic Signal(s) for the Intersection at Bagdad Road and Municipal Drive/Vista Ridge Drive

**Background:** Task Order FNI-2 provides for professional services for the design, advertising, bidding, and construction phase services for new traffic signals at the intersection of Bagdad Road and Municipal Drive/Vista Ridge Drive. The scope of services is detailed in the attached draft engineering services agreement, which will be reformatted into Task Order FNI-2. Total compensation for interim design phase services, final engineering design phase services, bidding phase services, and construction administration phase services is a lump sum amount of \$51,224.00. The attached Standard Professional Services Agreement is required as the term of the Standard Professional Services Agreement executed by Freese and Nichols, Inc., in 2010 has lapsed. The proposed traffic signal is necessitated by the additional pedestrian and school traffic associated with the August of 2015 opening of the elementary school currently under construction on Municipal Drive.

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

**Financial Consideration:** \$51,224.00 from General Purpose CIP Fund, GL# TBD

**Recommendation:** Staff requests authorization of the City Manager to negotiate and execute Task Order FNI-2 and the Standard Professional Services Agreement.

**Attachments:** Draft Agreement for Engineering Services to be reformatted into Task Order FNI-2 with supporting documents and Standard Professional Services Agreement

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

# To Be Reformatted into Task

## AGREEMENT FOR ENGINEERING SERVICES

# Order FNI-2

THIS AGREEMENT, made and entered into by and between City of Leander, Texas, hereinafter referred to as the "City" and/or "Owner", and Freese and Nichols, Inc. (FNI) with offices located at 10431 Morado Circle, Suite 300, Austin, Texas, hereinafter referred to as the "Engineer" and/or "Consultant."

WITNESSETH:

WHEREAS, the Owner desires to have the Consultant provide professional engineering services for the "Bagdad Road Traffic Signals", hereinafter referred to as the "Project".

WHEREAS, the Owner has selected the Consultant to perform the services as described herein.

NOW, THEREFORE, the Owner and the Consultant in consideration of their mutual covenants herein agree in matters pertaining to the performance or furnishing of professional engineering services by the Consultant with respect to the Project and the payment for those services by the Owner as set forth below. This Agreement will become effective on the date first above written.

### ARTICLE I

#### CONSULTANT'S RESPONSIBILITIES

The Consultant shall perform or furnish to the Owner professional engineering and related services in all phases of the Project to which this Agreement applies as hereinafter provided. The Consultant shall serve as the Owner's prime design professional. The Consultant may employ subconsultants as Consultant deems necessary to assist in the performance or furnishing of professional engineering and related services hereunder. The Consultant shall not be required to employ any subconsultants which are unacceptable to the Consultant.

The standard of care for all professional engineering and related services performed or furnished by the Consultant under this Agreement will be the care and skill ordinarily used by members of the Consultant's profession, practicing under similar conditions at the same time and in the same locality. The Consultant makes no warranties, expressed or implied, under this Agreement or otherwise, in connection with the Consultant's services.

### ARTICLE II

#### SCOPE OF SERVICES

#### TO BE PROVIDED BY THE CONSULTANT

#### General

The Project generally includes adding traffic signals at the intersection of Bagdad Road at Municipal Drive/Vista Ridge. The scope of services provided by Consultant will include Preliminary Engineering, Geotechnical Analysis, Subsurface Utility Engineering, Plans, Specifications, and Estimates (PS&E), as

well as the aspects of the work set forth in the following scope items. The parameters for design of the improvements shall generally include the following:

1. Development of a new location traffic signal on Bagdad Road at Municipal Drive/Vista Ridge.
2. Add pedestrian ramps per TxDOT criteria.
3. Provide a work zone traffic control plan utilizing TxDOT Standards.
4. Scale of plans shall be in U.S. customary units
5. All design work will be prepared in electronic format, with files submitted to City upon final record drawings submittal by contractor.
6. Submittals to City of work-in-progress shall be at Interim (60%), and Final (100%) stages of completion. For each stage of review, four (4) sets of 11x17 drawings will be furnished to City.
7. Standard and/or typical construction details provided by City or other acceptable agency may be referred to in the specifications and/or on the plans rather than recreating the standard detail.
8. Special details that are not included as a standard by City shall be included in the plans or specifications.
9. Coordinate the services of a qualified firm to conduct geotechnical investigation and analysis.
10. Coordinate the services of a qualified firm to conduct topographic design surveying.
11. Coordinate the services of a qualified firm to conduct subsurface utility engineering (SUE) services.

The construction documents will contain the drawings, details and applicable standards required to describe the traffic signals, and pedestrian ramps for this construction project. The PS&E package will be suitable for the bidding and award of a contract.

The designs included in the above described PS&E will be in general accordance with the requirements of the 2004 edition of AASHTO's A POLICY ON GEOMETRIC DESIGN OF HIGHWAYS AND STREETS, TEXAS MANUAL OF UNIFORM TRAFFIC CONTROL DEVICES, TxDOT's ROADWAY DESIGN MANUAL, and other TxDOT design guides and manuals as required for the design of this Project.

Engineer will be the single point of contact between the City and any subconsultants. Engineer will provide management of the subconsultants, including coordination of applicable meetings, review of documents provided by the subconsultants, as well as delivery and submission of documents, products, and reports. Engineer will furnish the applicable equipment, materials, supplies, and incidentals required to perform the above mentioned work, except as otherwise specified herein. Engineering, surveying, and other related services shall include the tasks more specifically described in the following task descriptions.

#### TASK DESCRIPTIONS:

##### A. Traffic Signal Plan Development

1. Topographic Survey — See attached proposal from Gorrondona & Associates for details.
2. Geotechnical Investigation — See attached proposal from Raba-Kistner for details.
3. Subsurface Utility Engineering — See attached proposal from Cardno for details.
4. Pre-Design Conference— Consultant will provide one meeting with City engineering staff to review project requirements, design criteria, communication procedures, project scheduling, personnel, and other pertinent matters that may impact the Project.

5. Prepare signalization plans, specifications, and estimate (PS&E) for the traffic signal and pedestrian ramp improvements on Bagdad Road at Municipal Drive/Vista Ridge to include four (4) traffic signals with pedestrian signal heads, VIVDS, illumination, and internally lighted street name signs (ILSNs).
6. Provide pedestrian ramps at all four corners of the intersection as required. TDLR review and inspection (if required) will be an additional service.
7. Conduct a site visit to review the existing conditions.
8. Plans will be developed using TxDOT format, utilizing TxDOT standards, specifications, bid codes and descriptions.
9. Cost estimate will be developed utilizing locally advertised average low bid unit prices.

**B. Interim Design Phase Services**

1. Prepare engineering plans with submittals for Interim Design at sixty percent (60%) completion. The interim design phase will include the following: title page, general notes, traffic signal layout, TxDOT traffic signal standards, TxDOT traffic control standards, and traffic signal summary.
2. Initiate utility coordination of affected franchise utilities to obtain accurate information for horizontal and vertical data of existing facilities and identify those to be protected or relocated.
3. Prepare updated estimated construction quantities and opinion of probable construction costs for sixty percent (60%) submittals.
4. Submit four (4) sets of interim 11x17 plans and pdf files and costs to the City for review. 60% submittals will entail plan and profile sheets.
5. Meet with the City to discuss interim plans and costs.
6. Upon completion of Item 10 above, Interim Design Services shall be complete. Consultant will proceed with Final Engineering Project services upon receiving a notice to proceed from the Owner.

**C. Final and Final Engineering**

Incorporating comments from the interim design review by the City, franchise utilities, and other regulatory parties, prepare final engineering plans and specifications with submittals at one-hundred percent (final, 100%) completion. The final engineering design plans will include the following:

1. Finalize design for traffic signals.
2. Update, revise and complete drawings.
3. Incorporate standard details into the plans and prepare additional details as required.
4. Final engineering plan sheets will meet TxDOT standard criteria.
5. Prepare project manual including bidding documents, contract document, general conditions, and technical specifications.
6. Prepare updated estimated construction quantities and opinion of probable construction costs and submit four (4) sets of engineering plans, including pdf files, and project manual to City for review. Submittals will occur at one hundred percent (100%) completion stages.
7. Upon final review of one-hundred percent (100%) construction documents, supply two (2) sets of plans (hardcopy) and bid documents to the City for use during the bid phase.
8. Supply Notice to Bidders/Invitation to Bid (both hard copy and electronic copy) to City Purchasing department prior to advertisement.
9. Upon completion of Item 5 above, Final Engineering Design Services shall be complete. Consultant will proceed with Bidding Phase Services upon receiving a notice to proceed from the Owner.

**D. Bidding Phase Services**

The Consultant agrees to perform the following Bidding Phase Services listed

1. Assist the Owner in notifying Contractors and Suppliers, through the Invitation to Bid, of the availability of the Contract Documents.
2. Advertising of plans will be via online advertisement. A PDF of the plans will be made available free of charge to potential bidders and plan rooms.
3. Attend one pre-bid meeting to present the project to interested bidders.
4. Prepare and issue addenda as may be required to modify the Contract Documents before or after they have been issued to prospective Bidders.
5. Prepare a current opinion of probable construction costs to be presented at the Bid Opening.
6. Attend the Bid Opening, prepare bid tabulation sheets, and assist the Owner in evaluating the bids received.
7. Assist the Owner in preparing and distributing the construction contract documents to the selected Bidder. Consultant will distribute four (4) copies to contractor at no additional cost, Additional copies will be supplied at the price stipulated in the Project contract documents.

#### **E. Construction Administration Phase Services**

The Consultant agrees to perform the following Construction Administration Phase Services listed below.

1. Interpretation. During construction Consultant's Project Manager or Design Staff shall be available for interpretation of the Drawings, Specifications, or Bidding Documents.
2. Preconstruction Conference. Provide representation for the Owner at a preconstruction review conference with the selected Contractor(s).
3. Project Submittals. Review all Contractor submitted Shop Drawings, material samples, equipment drawings, and other data submittals required by the Contract Documents for conformance with the applicable sections of the Documents.
4. Payment Requests. Coordinate the measurement and computation of quantities for pay items, and process pay requests by Contractor with Owner.
5. Change Orders. Coordinate Change Orders and Change of Work Directives with Owner as appropriate, and assist in the preparation of Change Orders and Change of Work Directives as required.
6. Final Review. Assist the Owner in conducting a final review of the completed construction in an effort to determine if the final construction is in conformance with the Contract Documents.
7. Project Progress Meeting. The Consultant will attend six (6) construction progress meetings.

#### **F. Construction Observation**

No construction observation services shall be provided by the Consultant on the Project. Consultant will provide clarification or render opinion to the Client when so requested by the Client.

#### **G. Services Not Provided**

The scope of this proposal specifically excludes the following items, however, these services can be provided if necessary with a revision to scope of work and fees:

1. Hazardous materials screenings and/or environmental remediation;
2. Fees for permits and bid advertising;
3. Floodplain reclamation plans or floodplain analysis;
4. Construction Observation/Inspection;
5. Designs for Trench Safety;

6. Quality control and testing services during construction;
7. Alternate additions not included in the original scope;
8. Improvements outside the project limits;
9. Engineering design for utility improvements/relocations excluding limited adjustments for storm sewer clearance within the Project limits
10. Additional printing of the contract documents for distribution to the Contractor;
11. Construction staking
12. Research to obtain prior deeds or deeds adjacent to the subject properties for use in resolution of boundary conflicts
13. Additional field surveys to determine the extent of and to aid in the resolution of boundary conflicts;
14. Additional field surveying for obscured areas or areas outside the Project limits;
15. Staking of the proposed Engineers centerline/baseline
16. Preparation and/or revision of right-of-way survey documents
17. Staking and clearing the proposed right of way line;
18. Wetland permitting which would include completion of an Individual Permit application
19. Conceptual and final design plans for wetland mitigation site(s) and necessary mitigation coordination to accomplish mitigation.
20. Endangered Species Surveys(screenings supplied in above scope item)
21. Endangered Species Section 7 Formal Consultation and/or the preparation of Biological Assessment or assistance with a Biological Opinion
22. Historic/Archaeological coordination involving National Register Testing and/or Data Recovery level excavation or mitigation or Section 106 coordination
23. TDLR submission, review and inspection
24. Roadway improvement.
25. Signing and pavement marking plans.
26. Traffic signal warrant.

### ARTICLE III OWNER'S RESPONSIBILITIES

The Owner shall provide and/or do the following in a timely manner so as not to delay the services of the Consultant and shall bear all costs thereto:

1. Make available to the Consultant all existing "as-built" drawings related to the Project, records, maps, and other information possessed by Owner which are relevant to the Consultant in the completion of the work under this Agreement.
2. Provide all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, performance requirements, any budgetary limitations; and furnish copies of all standard forms, design standards and construction standards which Owner will require to be included in the Plans and Specifications.
3. Provide project management and inspection services.
4. Provide right-of-way procurement, if applicable.
5. Provide prompt review and comments for milestone submittals.
6. Provide traffic signal warrant.

7. Furnish existing relevant property descriptions and zoning, deed and other land use restrictions. Arrange for access to and make all provisions for the Consultant to enter upon public and private property as required for Consultant to perform services under this Agreement.
8. Examine all alternate and/or optional solutions, sketches, plans, specifications, proposals and other documents presented by the Consultant and render in writing decisions pertaining thereto.
9. Attend the pre-bid conference, bid opening, pre construction conference, construction progress and other Project-related meetings and final inspections.
10. Give prompt written notice to Consultant whenever Owner observes or otherwise becomes aware of any development that affects the Scope of Services or the Time Schedule of the Consultant in the performance or furnishing of the required services for the Project, or any defect or nonconformance in the Consultant's services or in the work of any Contractor.

#### ARTICLE IV TIME SCHEDULE

##### **A. Interim Design Phase Services**

Consultant shall deliver the Interim Design drawings to the Owner for review and comments with forty-two (42) calendar days of receiving the notice to proceed. This Phase shall terminate and the services to be rendered under this Phase shall be considered complete upon commencement of the Final Engineering Phase Services

##### **B. Final Engineering Phase Services**

Upon receiving written review comments on the Interim Design drawings from the Owner, the Consultant shall proceed with the Final Design and will deliver the Final Design drawings to the Owner for review and comments within fourteen (14) calendar days of receiving the notice to proceed. This Phase shall terminate and the services to be rendered under this Phase shall be considered complete upon commencement of the Bidding Phase Services.

##### **C. Bidding Phase Services**

After approval and acceptance by Owner of the Construction Documents and upon receiving a written notice to proceed by the Owner, the Consultant shall proceed with performance of the services called for in the Bidding Phase. Consultant will coordinate the Project bidding schedule with the Owner. This Phase shall terminate and the services to be rendered under this Phase shall be considered complete upon commencement of the Construction Administration Phase Services.

##### **D. Construction Administration Phase Services**

The Construction Administration Phase will commence with the execution of the construction contract for the work of the Project, and will terminate upon written recommendation by Consultant of final payment to the Contractor.

#### ARTICLE V COMPENSATION

##### **A. Interim Design Phase Services**

The Owner agrees to pay the Consultant the fixed sum of Twenty Eight Thousand Nine Hundred and No Cents (\$28,900) for completion of the work, which includes the services described in Section B. — Interim Design Phase Services, under Article II— Scope of Services. The above fee breakdown is as follows:

• Surveying	\$4,025.00
• Geotechnical Exploration	\$3,220.00
• Subsurface Utility Engineering	\$9,764.00
• <u>Interim Design &amp; Coordination Services</u>	<u>\$11,891.00</u>
• TOTAL — Interim Design Phase Services	\$ 28,900.00

Payment for Interim Design Phase Services shall be made in installments billed not more frequently than once each month upon receipt of invoices from the Consultant. Invoices will be shown as a percentage of work complete.

C. Final Design Phase Services

The Owner agrees to pay the Consultant the fixed sum of Six Thousand Six Hundred Thirty Eight and no cents (\$6,638.00) for completion of the work, which includes the services described in Section C. — Final Design Phase Services, under Article II — Scope of Services. The above fee breakdown is as follows:

• <u>Final Design Services</u>	<u>\$ 6,638.00</u>
• TOTAL — Pre-Final & Final Design Services	\$ 6,638.00

Payment for Final Design Phase Services shall be made in installments billed not more frequently than once each month upon receipt of invoices from the Consultant. Invoices will be shown as a percentage of work complete.

D. Bidding Phase Services The compensation for this phase shall be Nine Thousand Six Hundred Seventy Seven Dollars and No Cents (\$9,677.00)

E. Construction Administration Phase Services The compensation for this phase shall be Six Thousand Nine Dollars and No Cents (\$6,009.00).

~~ARTICLE VI  
GENERAL PROVISIONS~~

~~1. Times for Rendering Services: The Consultant's services and compensation under this Agreement have been agreed to in anticipation of orderly and continuous progress of the Project through completion of the Surveying, Design, Bidding, Construction, and the Construction Observation~~

Phases. Specific periods of time for rendering services are set forth in Article IV, Time Schedule, in this Agreement, by which times defined services are to be completed. If such periods of time are changed through no fault of the Consultant, the rates and amounts of compensation provided for therein shall be subject to equitable adjustment.

If the Owner fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, or does not proceed in an orderly and continuous progression, the Consultant shall be entitled to equitable adjustment of rates and amounts of compensations to reflect reasonable costs incurred by Consultant as a result of the delay or changes in the various elements that comprise such rates of compensation.

2. Change in Scope: The Scope of the Work described in Article II, Scope of Services, shall be subject to modification or supplement upon the written agreement of the Owner and the Consultant. At the time of such modification of scope, equitable adjustments, agreeable to both parties, shall be made in the time of performance and the compensation to be paid for the services.
3. Reuse of Documents: All documents including Plans and Specifications provided or furnished by the Consultant pursuant to this Agreement are instruments of service in respect of the Project and Consultant shall retain an ownership and property interest therein whether or not the Project is completed. The Owner may make and retain copies for the use of the Project by Owner and others; however, such documents are not intended or suitable for reuse by Owner or others on extension of the Project or on any other Project. Any such reuse without written approval or adaptation by the Consultant for the specific purpose intended will be at the Owner's sole risk and without liability to the Consultant, and the Owner shall indemnify and hold harmless the Consultant from all claims, damages, losses and expenses including attorney's fees arising out of or resulting therefrom.
4. Insurance: The Consultant shall procure and maintain insurance for protection from claims under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom.

The Owner shall require the Contractors to purchase and maintain general liability and other insurance as specified in the Contract Documents and to list the Consultant as an additional insured with respect to such liability, property and other insurance purchased and maintained by the Contractors. All policies of property insurance shall contain provisions to the effect that the Consultant's interests are covered and that, in the event of payment of loss or damage, the insurers will have no rights of recovery against any of the insured or additional insured thereunder.

5. Termination: This Agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party; provided, however, that in any such case, the Consultant shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the payment provisions of this Agreement, Copies of all completed or partially completed designs, plans and specifications prepared under this Agreement shall be delivered to the Owner when and if this Agreement is terminated, but it is mutually agreed by the parties that the Owner will use them solely in connection with this Project, except with the written consent of the Consultant.

6. Controlling Law: This Agreement is to be governed by the law of the principal place of business of the Consultant, Williamson County, Texas

7. Allocation of Risks-Indemnification To the fullest extent permitted by law, the Consultant shall indemnify and hold harmless the Owner and its officers, directors, partners, employees and agents from and against any and all claims, costs, losses and damages (including, but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of the Consultant or the Consultant's officers, directors, employees, agents and subconsultants in the performance and furnishing of Consultant's services under this Agreement. The Owner agrees that the Consultant's professional liability for negligence or breach of warranty in the performance or furnishing of designs, Plans, Specifications, the designation of materials and equipment, the selection and supervision of personnel, or the performance of any other services in connection with this Agreement shall in no event exceed the amount of total compensation received by the Consultant for services rendered in connection with this Agreement.

To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Consultant and the Consultant's officers, directors, employees, agents and subconsultants from and against any and all claims, costs, losses and damages (including, but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of the Owner or the Owner's officers, directors, partners, employees, or agents with respect to this Agreement or the Project.

8. Dispute Resolution: In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, the Owner and the Consultant agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation, unless the parties mutually agree otherwise.

The Owner and the Consultant further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

9. Severability: Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the Owner and the Consultant, who agree that the Agreement shall be reformed to

replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10. Notices: Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears on the signature page to this Agreement (as modified in writing from time to time by such party) and given personally, by registered or certified mail, return receipt requested, by facsimile or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

11. Successors and Assigns: The Owner and Consultant each is hereby bound and the principals, successors, executors, administrators, legal representatives and assigns of Owner and Consultant are hereby bound to the other party to this Agreement and to the principals, successors, executors, administrators, legal representatives and assigns of such other party in respect of all covenants and obligations of this Agreement.

Neither the Owner nor the Consultant may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

Nothing in this Agreement shall be construed to create, impose or give rise to any duty owed by the Consultant to any Contractor, subcontractor, supplier, other person or entity, or to any surety for or employee of any of them, or give any rights in or benefits under this Agreement to anyone other than the Owner and the Consultant.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first above written.

OWNER:  
CITY OF LEANDER, TEXAS

CONSULTANT:  
Freese and Nichols, Inc.

By: \_\_\_\_\_ By: \_\_\_\_\_  
Kent Cagle  
Title: City Manager Title: \_\_\_\_\_

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

Address for giving notices:  
Contact Person: Wayne Watts, City Engineer  
City of Leander  
200 W. Willis Street  
Leander, TX 7864

Address for giving notices:  
Contact Person: Jessica Rodriguez  
Freese and Nichols, Inc.  
10431 Morado Circle, Suite 300  
Austin, TX 78759

January 12, 2015  
15TX207



Jessica Rodriguez, PE  
Senior Project Manager  
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Email [suesurvey@cardno.com](mailto:suesurvey@cardno.com)

[www.Cardno.com](http://www.Cardno.com)

Re: Bagdad Rd at Municipal Dr Intersection – Leander, TX  
Subsurface Utility Engineering Services

Dear Ms. Rodriguez:

Cardno is pleased to submit our proposal for Subsurface Utility Engineering (SUE) services for the above referenced project to Freese & Nichols, Inc.(Client). This proposal is based on a scoping information provided by email correspondence on 1/9/15 between Ms. Jessica Rodriguez (Client) and Mr. Travis Isaacson (Cardno).

### **Scope of Services**

Using the information discussed during our conversation, Cardno has developed a general scope of work required for this project. The scope of work may be modified, with the Clients' concurrence, so long as there are mutual gains during the performance of the work, if warranted by actual field findings. All SUE services provided by Cardno for this project will be completed in conformance with the ASCE/CI 38-02 "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data".

Based upon our understanding of the project's requirements the general description of the scope of work involves Cardno researching available existing utility records and **performing in-field utility designating (Quality Level B)** with the objective of finding and mapping the horizontal location of existing utilities within specified limits of the Bagdad Rd at Municipal Dr intersection project located in Leander, TX. The limits of the utility designating investigation are shown within the red lined area on the plan exhibit included as Attachment "A" to this proposal. The scope also includes **four (4) test holes (Quality Level A)** on various utilities to determine the vertical location of existing utilities within the project limits. Proposed test hole locations will be recommended by Cardno and approved by the Client prior to Cardno beginning test hole work at the site. To accomplish this scope of work Cardno will perform the following tasks.

I. As part of the Records Research effort Cardno will perform the following:

- Contact the applicable "one call" agency and acquire records from all available utility owners including local municipalities (cities, counties, etc.), and Client.

- Perform in-field visual site inspection. Compare utility record information with actual field conditions. Record indications of additional utility infrastructure and visual discrepancies with record drawings.
- Interview available utility owners for needed clarification, resolution of found discrepancies, and details not provided on the record drawings.

II. As part of the Designating Effort Cardno will perform the following:

- Select and employ the appropriate suite of industry standard geophysical equipment to search for existing utilities within the limits specified on the project. For metallic/conductive utilities (e.g. steel pipe, electrical cable, telephone cable) electromagnetic induction, and magnetic equipment will be employed. Cardno will attempt to designate non-metallic/non-conductive utilities using other proven methods, such as rodding, probing, and Ground Penetrating Radar (GPR). As agreed to with the Client, this scope of work includes mapping of the following utilities: water, wastewater, natural gas, gas/oil pipelines, electric, telephone, fiber, duct banks, cable TV, and storm sewer. Unless specifically requested, utility service lines and irrigation lines are not included in this scope.
- Interpret the surface geophysics, and mark the indications of utilities with paint or pin flags on the ground surface for subsequent depiction on deliverable utility maps. The existing utilities will be designated within the project limits as shown in Attachment "A".
- Record all marks on electronic field sketches and correlate such data with utility records and above ground appurtenances obtained from visual inspection to resolve differences and discrepancies. Denote any utilities found where ownership/utility type is not available from records as "unknown" facilities.
- Coordinate with the Client's survey subconsultant for survey of the utility designating once all field work has been completed.
- We do not anticipate maintenance of traffic for lane closures will be required for completion of designating (Quality Level B) work on this project. Cardno will acquire the services of a qualified MOT Subcontractor and ensure that adequate traffic control is provided during this phase of the project. Normal traffic control, included within Quality Level B service, is considered standard placement of traffic cones and freestanding warning signage. Traffic control requiring lane closures, traffic detouring, police support, flagpersons, etc. is considered additional and may be added to the scope of work at the request of the client.

III. As part of the Locating Effort Cardno will perform the following:

- Employ vacuum excavation to verify the horizontal and vertical location of the existing utilities at the **four (4) test hole locations estimated** on the project at Client approved locations. Once each utility is located, Cardno will record the utility type, size, material, depth to top and general direction. Each test hole will be assigned a unique ID number and will be marked with rebar/cap. Test hole numbers will be painted in the field next to each completed test hole. A survey lath labeled with the test hole ID number and other pertinent utility information will be placed at each test hole location. If rock or concrete is encountered during the excavation and Cardno is not able to excavate through our normal test hole procedures then the client will be immediately notified of the field condition. Excavation in rock or to a depth greater than 15 feet is considered beyond the scope of this proposal and can be estimated for the Client on a case by case basis. Cardno will vacuum down to obtain the required information, and then replace fill

with what was originally removed in 6-inch lifts being tamped all of the way to the base material. Base material will be replaced by Cardno and the placing and tamping of the cold asphalt or concrete will be completed as needed. If restoration efforts are needed beyond what is described above Cardno shall be notified in writing prior to mobilizing to the field.

- Coordinate with the Client's survey subconsultant for survey of the test hole locations once all field work has been completed.
- We **do not** anticipate excavation permits from the City of Leander will be required for completion of test holes on this project.
- We **do not** anticipate maintenance of traffic for lane closures and sidewalk closures will be required for completion of test holes on this project. Normal traffic control, included within Quality Level A service, is considered standard placement of traffic cones and freestanding warning signage. Traffic control requiring lane closures, traffic detouring, police support, flagpersons, etc. is considered additional and may be added to the scope of work at the request of the client.
- We **do not** anticipate that coring of asphalt/concrete pavement will be required for completion of the test holes on this project. If test holes are selected within paved areas, Cardno can estimate the cost of coring and repair work on a case by case basis.
- Cardno's field crews and equipment are not equipped or prepared to work in any area that possibly are, or may have been contaminated with hazardous materials at any time.

### **Deliverable(s)**

Cardno will provide the following as final Deliverables to the Client:

- 11"x17" SUE Plan Sheets depicting all designated and located utilities. These plans will be signed and sealed by a Professional Engineer and delivered to the Client in hard copy (2 originals) and electronic PDF form.
- 8.5"x11" Test Hole Data forms for all test hole locations completed. These plans will be signed and sealed by a Professional Engineer and delivered to the Client in hard copy (2 originals) and electronic PDF form.
- One (1) CD copy containing electronic AutoCAD or MicroStation files depicting all designated and located utilities, PDF plans sheets, and any record maps obtained from utility owners.
- In addition to the hard copy plans, paint, survey flags, and test hole monuments will be placed on the ground marking utility locations at the site.

**Client Shall Provide the Following**

- An electronic AutoCAD or MicroStation file of the existing background topography survey for input of the utility data into electronic field sketches and final SUE plan deliverable.
- Survey of all utility designating and utility test holes
- The Client shall provide Cardno access to the job-site for our equipment and personnel including Right of Entry letters, permits or any other pertinent documentation, if needed. Any construction or clearing activities required for access to perform field services will be considered beyond the scope of this proposal.

**Schedule**

Cardno is prepared to proceed with the scope described above within ten (10) working days after receipt of a written notice to proceed from the Client.

It will take an estimated **three (3) working days** for the field services described above to be completed. All hard copy/CADD deliverables will be delivered within **ten (10) working days** of completion of the field work. However, the schedule may be modified due to unforeseen circumstances due to the following: inclement weather, waiting for information from client, subcontractor availability, etc. In the event the schedule has to change, Cardno will notify the Client and provide an updated schedule.

**Basis for Compensation**

Cardno proposes to perform this work utilizing our standard rates for a not to exceed amount of **\$8,490.00**. Our estimate for this project can be seen in the attached Fee Schedule (Attachment "B") and is summarized in the breakdown below. All prices offered shall remain firm for sixty (60) calendar days from the date of this proposal.

Description	Estimated Costs
Quality Level "B" (Designating)	\$4,100.00
Quality Level "A" (Locating)	\$4,390.00
<b>Total Estimated Fee</b>	<b>\$8,490.00</b>

**Terms & Conditions:** Attached and included as a part of this proposal and its acceptance are "Cardno Terms and Conditions" which shall be incorporated by reference.

**Limitation of Warranty & Standard of Care:** Subsurface Utility Engineering is a professional service defined by the American Society of Civil Engineers (ASCE.) Cardno conducts utility investigations in accordance with ASCE 38-02: Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data. Identifying and mapping underground utilities is a result of gathering evidence and therefore exact utility locations are not guaranteed unless visually exposed and surveyed, and then only at those specific exposed locations. Cardno warrants only that the services provided under this proposal will meet the prevailing standard of care and does not guarantee that all utilities can or will be identified, detected or precisely mapped.

Cardno looks forward to working with you on this very important project. We are confident that our services will be a great benefit to you and keep your project on schedule and on budget. If you agree to this proposal, please sign and date below and return to me by email. Your signature below will also serve as written acceptance of the proposal. If required, Cardno's Standard Contract will be sent to you for your execution. If you have any questions or require additional information, please feel free to contact me at any time.

Sincerely,



Travis S. Isaacson, PE  
Regional Manager  
Texas / Oklahoma Utilities

**Accepted on:** *Month* \_\_\_\_\_ *Day* \_\_\_\_\_ *Year* \_\_\_\_\_

**Company** \_\_\_\_\_

**Print Name** \_\_\_\_\_

**Signature** \_\_\_\_\_

**Title** \_\_\_\_\_

Attachment A



Google earth



ATTACHMENT "B" - FEE SCHEDULE

Cardno, Inc.

Bagdad Rd at Municipal Dr Intersection - Leander, TX  
Freese & Nichols, Inc.

Subsurface Utility Engineering Services  
Cardno, Inc.  
1/12/2015  
15TX207

Phase 1 - Designating (Quality Level B)

PHASE 1 - LABOR COSTS	LABOR CLASS.	PROJECT ENGINEER	PROJECT MANAGER	SUE MANAGER	CADD TECH	ADMIN/ CLERICAL	TOTAL HOURS
		\$180.00	\$165.00	\$88.00	\$90.00	\$65.00	
Records Research					1.0		1.0
Production/Review of SUE plan deliverables		1.0	2.0		5.0		8.0
Project Meetings / Safety Orientation							0.0
Contract Administration			1.0			1.0	2.0
		1.0	3.0	0.0	6.0	1.0	11.0
		\$180.00	\$495.00	\$0.00	\$540.00	\$65.00	\$1,280.00
<b>PHASE 1 - CREW &amp; DIRECT COSTS</b>							
		QTY	RATE	UNIT			TOTAL
Designating (Quality Level "B") (2-Man Crew & Equipment)		12	\$ 235.00	per hour			\$2,820.00
Mobilization - Designating Truck / Round Trip (includes crew & vehicle time, fuel)			\$ 2.50	mile			\$0.00
Single Lane Closure - Daily Rate (Includes Warning Signs & Cones, Arrow Board, Delivery & Pickup)			\$ 350.00	per day			\$0.00
Surveying Subcontractor (Includes 2-Man Crew & Equipment, mobilization, office data processing)			\$ 1,950.00	per day			\$0.00
							\$2,820.00
<b>PHASE 1 - TOTAL ESTIMATED FEE</b>							<b>\$4,100.00</b>

Phase 2 - Locating (Quality Level A - Test Holes)

PHASE 2 - LABOR COSTS	LABOR CLASS.	PROJECT ENGINEER	PROJECT MANAGER	SUE MANAGER	CADD TECH	ADMIN/ CLERICAL	TOTAL HOURS
		\$180.00	\$165.00	\$88.00	\$90.00	\$65.00	
Production/Review of SUE plan deliverables		1.0	1.0		2.0		4.0
Contract Administration						1.0	1.0
Permit Coordination/Acquisition							0.0
		1.0	1.0	0.0	2.0	1.0	5.0
		\$180.00	\$165.00	\$0.00	\$180.00	\$65.00	\$590.00
<b>PHASE 2 - CREW &amp; DIRECT COSTS</b>							
		QTY	RATE	UNIT			TOTAL
<b>Locating (Quality Level "A" - Test Holes) - Unit Rate</b>							
This unit price includes personnel and equipment for vacuum excavation and backfill							
			\$ 750.00	per hole			\$0.00
		4	\$ 950.00	per hole			\$3,800.00
			\$ 1,300.00	per hole			\$0.00
Locating (Air-Vacuum Excavation - Quality Level "A") (3-Man Crew & Equipment)			\$ 295.00	per hour			\$0.00
Mobilization - Vacuum Excavation Truck / Round Trip (includes crew & vehicle time, fuel)			\$ 3.50	per mile			\$0.00
Surveying Subcontractor (Includes 2-Man Crew & Equipment, mobilization, office data processing)			\$ 1,950.00	per day			\$0.00
<b>Miscellaneous Items</b>							
Replacement of Concrete Sidewalk (per panel, including sidewalk closure)			\$ 1,300.00	each			\$0.00
Asphalt/Concrete Coring & Pavement Repair			\$ 350.00	each			\$0.00
Per Diem (Includes Lodging)			\$ 135.00	per day			\$0.00
Permit / Inspection Fees			\$ 300.00	each			\$0.00
<b>Traffic Control</b>							
Single Lane Closure - Daily Rate (Includes Warning Signs & Cones, Arrow Board, Delivery & Pickup)			\$ 750.00	each			\$0.00
Single Lane Closure - w/ Flagging (Includes Warning Signs & Cones, Arrow Board, Delivery & Pickup)			\$ 1,350.00	each			\$0.00
Double Lane Closure (& Intersection) - Setup Per Day (Includes Warning Signs & Cones, Arrow Board, Delivery & Pickup)			\$ 2,450.00	each			\$0.00
Police Escort (required for lane closures on TxDOT roadways)			\$ 35.00	hour			\$0.00
							\$3,800.00
<b>PHASE 2 - TOTAL ESTIMATED FEE</b>							<b>\$4,390.00</b>
<b>TOTAL PROJECT ESTIMATED FEE</b>							<b>\$8,490.00</b>

Cardno shall perform the services proposed for the stated fee in accordance with these terms and conditions:

- 1) **Access To Site (if applicable):** Upon execution of this Agreement, the Client represents that they have secured legal rights to access the property and authorizes Cardno staff to access the site for activities necessary for the performance of the services.
- 2) **Payment:** Invoices for Cardno's services shall be submitted on a monthly basis. Invoices shall be payable within thirty (30) days after the invoice date. In the event that the Client disputes any portion of an invoice, client shall notify Cardno of such disputed items within ten (10) days of invoice date. Retainers/deposits shall be credited on the final invoice. Failure to make any payment when due is a material breach of this Agreement and will entitle Cardno, at its option, to suspend or terminate this Agreement and the provision of the Services. Interest will accrue on accounts overdue by 30 days at the lesser of 1.5 percent per month (18 percent per annum) or the maximum legal rate of interest allowable. In the event any invoice has not been paid in full within ninety (90) days of the invoice date, Cardno shall have the right to immediately suspend all or any portion of the Services hereunder indefinitely pending payment in full of such invoice(s).
- 3) **Indemnification:** Cardno and Client shall indemnify and hold harmless each other from and against damages, liabilities, costs and expenses, including but not limited to reimbursement of reasonable attorney fees arising out of damages or injuries to persons or property to the extent caused by the negligence, gross negligence or willful misconduct by the other party or anyone acting under its direction or control or on its behalf in the course of its performance under this Agreement; provided that each party's aforesaid indemnity agreement shall not be applicable to any liability based upon willful misconduct or negligence of the other party. In no event shall either party be responsible for any form of consequential damages, including, but not limited to loss of sales, loss of profits, and attorney fees thereon. For purposes of this Paragraph, the duty to indemnify does not include the duty to pay for or to provide an up-front defense against unproven claims or allegations. Where any claim results from the joint negligence, gross negligence or willful misconduct by Client and Cardno, the amount of such damage for which Client or Cardno is liable as indemnitor under this Paragraph shall equal (i) the proportionate part that the amount of such claim attributable to such indemnitor's negligence, gross negligence or willful misconduct bears to (ii) the amount of the total claim attributable to the joint negligence, gross negligence or willful misconduct at issue.
- 4) **Limitation of Liabilities:** Notwithstanding any other provision in this Agreement, the Client agrees to strictly limit Cardno's liability under this Agreement or arising from the performance or non-performance of the Services under any theory of law, including but not limited to claims for negligence, negligent misrepresentation and breach of contract, to the lesser of the fees paid to Cardno for the Services or \$ 25,000.00. No claim may be brought against Cardno in contract or tort more than two (2) years after the cause of action arose. Any claim, suit, demand or action brought under this Agreement shall be directed and/or asserted only against Cardno and not against any of Cardno's employees, shareholders, officers or directors. Cardno's liability with respect to any claims arising out of this Agreement shall be limited as provided herein to direct damages arising out of the performance of the Services and Cardno shall not be held responsible or liable whatsoever for any consequential damages, injury or damage incurred by the actions or inactions of the Client, including but not limited to claims for loss of use, loss of profits and loss of markets.
- 5) **Termination:** Subject to Paragraph 2, this Agreement will continue in effect until terminated by either party upon thirty (30) days written notice to the other party. In the event of any termination, Cardno shall be paid for all services rendered and reimbursables incurred through the date of notice of termination. In the event of termination, the Client shall pay all additional costs reasonably related to termination of the project and a proportionate amount of the consideration hereunder commensurate with the portion of the project accomplished.
- 6) **Force Majeure:** Any suspension, temporary or permanent, in the performance of this Agreement caused by any of the following events and without fault or negligence on the part of the defaulting party shall not constitute a breach of contract: labor strikes, riots, war, acts of governmental authorities, unusually severe weather conditions or other natural catastrophic events, or any other similar event beyond the reasonable control or contemplation of either party.
- 7) **Assignment:** Neither party to this Agreement shall, without the prior written consent, of the other party, which shall not be unreasonably withheld, assign the benefit or in any way transfer any claim or obligation under this Agreement or any part hereof. This Agreement shall inure to the benefit of and be binding upon the parties hereto, and except as otherwise provided herein, upon their executors, administrators, successors, and assigns.
- 8) **Ownership of Documents:** All report documents produced by Cardno under this Agreement shall be made available to the Client upon receipt of full payment for services rendered. Cardno shall retain ownership of all field notes, computer files and project files used to produce the work products and may make copies of all work products.
- 9) **Governing Law:** The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be interpreted and governed by the laws of the State of Texas.
- 10) **Legal Construction:** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof. This Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.
- 11) **Notices:** Any notices or written statements hereunder shall be deemed to have been given when mailed by certified or registered mail or via email, with receipt of reply, to the party entitled thereto at its address noted at the top of this Agreement or at such other latest address as it may designate in writing to the other party for this purpose.
- 12) **Entire Agreement:** This Agreement includes Cardno's proposed scope and budget and these terms and conditions. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties relating to the subject matter of this Agreement and is the entire understanding and agreement related thereto. This Agreement may be amended by mutual consent of the parties in writing to be attached hereto and incorporated herein, executed by Cardno's and the Client's respective representatives.
- 13) **Non-Solicitation:** Neither party shall knowingly solicit, recruit, hire or otherwise employ or retain the employees of the other working under this Agreement during the term of this Agreement and for one (1) year following the termination or expiration of this Agreement without the prior written consent of the other party.
- 14) **Waiver:** Failure by one party to notify the other party of a breach of any provision of this Agreement shall not constitute a waiver of any continuing breach. Failure by one party to enforce any of its rights under this Agreement shall not constitute a waiver of those rights. The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or any other provision hereof.



## Gorrondona & Associates, Inc.

Land Surveying • Aerial Surveying & Mapping/LIDAR • Geotechnical Engineering • Construction  
Materials Testing • Geographic Information Systems

December 4, 2014

Freese and Nichols, Inc.  
10431 Morado Circle  
Building 5, Suite 300  
Austin, Texas 78759  
Attn: Ms. Jessica Rodriguez, P.E.

**Re: CITY OF LEANDER – BAGDAD ROAD & MUNICIPAL DRIVE  
City of Leander, Texas**

Dear Ms. Rodriguez:

Gorrondona & Associates, Inc. (G&AI) is pleased to submit this proposal for professional land surveying services for the above referenced project. The total linear feet of surveying required is approximately 700 linear feet of proposed traffic signalization improvements at the intersection of Bagdad Road and Municipal Drive (Vista Ridge). The following itemized surveying services are to be provided by Gorrondona & Assoc. Inc.:

- I. DESIGN SURVEY**
  - 1.) Research parcels/lots along the project and obtain copies of subdivision plats and metes & bounds deeds. Prepare a deed sketch to locate property corners and establish existing right-of-way at the tie in points. Analyze and calculate the right-of-way and property lines of adjoining parcels. Addresses of parcels/lots shall be obtained and shown on the final design drawing.
  - 2.) Establish horizontal and vertical control for the project. Set 2 Primary monuments and secondary monuments at the intervals, as noted below. The horizontal control shall be on NAD83, Texas Central Zone Grid, and shall be set at 300-foot intervals. The vertical control shall be tied to existing County/LCRA Vertical Datum and temporary benchmarks shall be set every 300 feet for construction.
  - 3.) Tie all improvements (including SUE markings-by others) X, Y & Z (water valves, storm drains, manholes, driveways, curbs, signs, buildings, power poles, lane striping, etc.). Provide flowline elevations of all sanitary sewer, storm drainage inlets, and manholes. The project survey shall include 50-foot cross-sections extending 75 feet left and right of the street centerlines or provide a 150-foot wide survey as directed by engineer, plus all grade breaks. The topographic survey shall also include locating property corners on both sides of existing Bagdad and Municipal Drive to establish the existing right-of-way(s).

4201 West Parmer Lane B-100 • Austin, Texas 78727 • Phone 512.719.9933 • Fax 512.922.9995  
*Committed to Client Satisfaction Through Excellence in Project Delivery*  
T.B.P.L.S. Firm No. 10106900

- 4.) Prepare a final design/topographic drawing in a digital format (MicroStation V8) showing all features located in the field, property lines & right-of-way lines, ownership information, one-foot interval contours and a TIN. Deliverables shall also include a copy of the field notes, an ASCII coordinate file of all points located in the field and a hard copy of the coordinates.

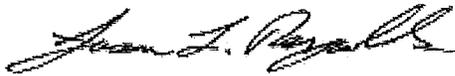
**DESIGN SURVEY TOTAL AMOUNT**

**\$3,500.00**

Gorrondona & Associates, Inc. can complete the above itemized surveying tasks for a lump sum fee of \$3,500.00 If you have any questions or need additional information please contact me at (512) 719-9933.

Sincerely,

**GORRONDONA & ASSOCIATES, INC.**



Jason L. Reynolds, RPLS  
Area Manager



[Delivery by US Mail and Email: [jessica.rodriquez@freese.com](mailto:jessica.rodriquez@freese.com)]

Proposal No.: PAA15-007-00  
January 13, 2015, Revision No. 1

Jessica Rodriguez, P.E.  
Freese and Nichols, Inc.  
10431 Morado Circle  
Building 5, Suite 300  
Austin, Texas 78759

Raba Kistner  
Consultants, Inc.  
8100 Cameron Road, Suite B-150  
Austin, TX 78754  
[www.rkci.com](http://www.rkci.com)

P 512 :: 339 :: 1745  
F 512 :: 339 :: 6174  
TBPE Firm F-3257

**RE: Geotechnical Data Report  
Traffic Signal – Intersection at Bagdad Road and Municipal Drive  
Leander, Texas**

Dear Ms. Rodriguez:

In accordance with your request, RABA KISTNER Consultants Inc. (RKCI) is pleased to submit this proposal for Geotechnical Engineering Services to for the referenced project. The broad objectives of our study will be to determine soil conditions at the site, characterize the subsurface soils, and provide a boring log visually depicting the subsurface conditions encountered. Described in this letter are:

- our understanding of pertinent project characteristics;
- our proposed scope for field and laboratory study;
- our proposed scope for engineering evaluation and reporting;
- our tentative project schedule; and
- our lump sum study cost.

### **Project Description**

We understand that plans are being made to install traffic signal light poles at the intersection of Bagdad Road and Municipal Drive.

### **Field Study**

Per the client's requests, we propose to drill one boring to a depth of 20 ft below the existing ground surface.

Samples will be taken using conventional Shelby tube and split-spoon sampling techniques. Where rock is encountered, the boring will be extended using Nx coring techniques. Representative portions of all samples will be sealed and packaged for transportation to our laboratory.

### **Laboratory Study**

Upon completion of the subsurface exploration, a testing program will be designed to define the strength and classification characteristics of the pavement soils. The testing program may likely include moisture content tests, Atterberg Limits (plasticity tests), and grain size analyses.



### **Engineering Data Report**

The results of the field and laboratory phases of the study will be reviewed by our staff of engineers and geologists. The results of our review, together with the supporting field and laboratory data, will be presented in a written, engineering data report. The engineering data report will include the following information and recommendations, if applicable:

- A summary of the field and laboratory sampling and testing program;
- Boring logs and laboratory testing results;
- A review of general site conditions including descriptions of the site, the subsurface stratigraphy, groundwater conditions, and the presence and condition of fill materials, if encountered.

### **Tentative Project Schedule**

Based on our current schedule, we anticipate we can begin staking the boring location within 2 to 3 working days of receiving your written authorization and anticipate we can begin drilling activities within a few days of staking the borings. The field exploration and laboratory testing phase of the study is expected to take approximately 3 to 8 working days to complete. Preparation of the engineering data report is expected to be completed within 1 to 2 weeks of completion of our field activities.

### **Project Cost**

The total lump sum cost of the study scope outlined herein is **\$2,800**. This assumes access to our drill rig will be provided.

We have assumed that the site will be accessible to our truck-mounted drilling rig. If access is limited due to other constraints such as the presence of brush we will notify you and provide a fee estimate for providing selective brush clearing.

Should unusual geologic conditions be encountered in the field that indicates the desirability of significantly broadening the scope of the study, we will contact you to receive authorization before proceeding with any additional work. Additional services will be billed on a unit basis in accordance with our standard fees as indicated on the attached Schedule of Fees for Professional Services.

We request that the Client provide RKCI with a recent plat of the project site, a drawing illustrating existing and proposed construction locations, and preliminary site grading plans prior to the start of our field exploration services.

The CLIENT shall be responsible for providing the location of all underground utilities and other structures in the vicinity of our borings or excavations. RKCI will not accept responsibility and will not be liable for affecting or damaging any underground utility, underground storage tank, or other subsurface condition not previously identified and located, or properly located, by the CLIENT, a utility, or a utility locating company. RKCI will assist in placing a request for utility line locators through the TEXAS ONE CALL system

and meet with utility line locators to provide them the location of the proposed boring locations, if necessary.

It should also be noted that our study scope (and project cost) does not include earthwork and foundation construction testing and observations during the construction of the project. However, plan review and construction observation costs should be included in the project budget.

CLIENT may provide or direct RKCI to utilize or rely upon certain information in the performance of RKCI's services. RKCI will not conduct an independent evaluation of the accuracy or completeness of such information and shall not be responsible for any errors or omissions in such information.

**Acceptance**

We appreciate the opportunity of submitting this proposal and look forward to working with you in the development of this project, which will be carried out in accordance with this letter and the following attachments:

<u>Attachment</u>	<u>Description</u>
I	Standard Terms and Conditions
II	Schedule of Fees

Please return one signed copy of this letter proposal to provide written authorization for our firm to complete work on the services outlined herein. Our invoices are due and payable upon receipt at P.O. Box 971037, Dallas, Texas 75397-1037.

RKCI considers the data and information contained in this proposal to be proprietary. This statement of qualifications and any information contained herein shall not be disclosed and shall not be duplicated or used in whole or in part of any purpose other than to evaluate this proposal.

Very truly yours,

**RABA KISTNER CONSULTANTS, INC.**



Gabriel Ornelas, Jr., P.E., PMP  
Vice President

GO: tlc

Attachments I & II

Copies Submitted: Above (1)

Accepted

By:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



## STANDARD TERMS AND CONDITIONS

1. **SERVICES.** Raba Kistner, Inc., by and through one of its subsidiaries (Raba Kistner Consultants, Inc., Raba Kistner Environmental, Inc., Raba Kistner Facilities, Inc. or Raba Kistner Infrastructure, Inc.) (the relevant subsidiary, being engaged to provide the services to CLIENT in connection with the delivery of this instrument, is referred to as "RK" herein) is being engaged by the CLIENT to render professional services ("Services") involving only RK's advice, judgment and opinion. RK may subcontract all or a portion of the Services performed hereunder. RK shall apply professional judgment in determining the extent to which RK complies with any given standard identified in RK's instruments of professional services. CLIENT expressly acknowledges that RK makes no warranties or guarantees, expressed or implied, regarding the Services.
2. **INFORMATION PROVIDED BY CLIENT.** CLIENT may provide or direct RK to utilize or rely upon certain information ("CLIENT Information") in the performance of RK's services. RK shall be entitled to rely upon such CLIENT Information. RK will not conduct an independent evaluation of the accuracy or completeness of such CLIENT Information and shall not be responsible for any errors or omissions in such information. . RK's report, as well as any recommendations, findings, and conclusions made by RK, are dependent on information received from CLIENT. Changes or modifications to the information provided by CLIENT can affect RK's evaluation, recommendations, findings and conclusions, and CLIENT agrees—as a material term of this Agreement—to notify RK immediately, in writing, if CLIENT becomes aware of any such changes or modifications, including changes to the size, scope, location, or other material characteristics of CLIENT's project. The CLIENT shall be responsible for providing the location of all underground utilities and other structures in the vicinity of RK borings or excavations. RK will not accept responsibility and will not be liable for affecting or damaging any underground utility, underground storage tank, or other subsurface condition not previously identified and located, or improperly located, by the CLIENT, a utility, or a utility locating agency.
3. **SITE ACCESS AND SITE SAFETY.** CLIENT shall provide right-of-entry to the buildings and sites which are the subjects of RK's services. CLIENT represents that it possesses authority for such right-of-entry and that the building/site operator(s) possess the necessary permits and licenses for current activities at the site. RK shall be responsible for supervision and site safety measures of its own employees and subconsultants, but shall not be responsible for the supervision or health and safety precautions of any other parties, including CLIENT, CLIENT'S contractors, subcontractors, or other parties present at the site.
4. **SUBSURFACE EXPLORATIONS.** Subsurface conditions throughout the site may vary from those depicted on logs of discrete borings, test pits, or other exploratory services. CLIENT understands RK's layout of boring and test locations is approximate and that RK may deviate a reasonable distance from those locations. RK will take reasonable precautions to reduce damage to the site when performing services; however, CLIENT accepts that invasive services such as drilling or sampling may damage or alter the site. Site restoration is not provided unless specifically included in the scope of services.
5. **CHANGED CONDITIONS.** If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to RK are uncovered or revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks or other material terms of this Agreement, RK may call for renegotiation of appropriate portions of this Agreement. RK shall notify the CLIENT of the changed conditions necessitating renegotiation, and RK and the CLIENT shall promptly and in good faith enter into renegotiation of this Agreement to address the changed conditions. If changes cannot be agreed to with respect to changed conditions, the parties shall utilize the Dispute Resolution/Litigation procedures in this Agreement.
6. **TESTING AND OBSERVATIONS.** CLIENT understands that testing and observation are discrete sampling procedures, and that such procedures indicate conditions only at the depths, locations, and times the procedures were performed. RK will provide test results and opinions based on tests and field observations only for the work tested. CLIENT understands that testing and observation are not continuous or exhaustive, and are conducted to reduce – not eliminate – project risk. CLIENT agrees to the level or amount of testing performed and the associated risk. CLIENT is responsible (even if delegated to contractor) for notifying and scheduling RK so RK can perform these services. RK shall not be responsible for the quality and completeness of contractor's work or their adherence to the project documents, and RK's performance of testing and observation services shall not relieve contractor in any way from its responsibility for defects discovered in its work, or create a warranty or guarantee. CLIENT acknowledges that RK will not supervise or direct the work performed by contractor or its subcontractors and is not responsible for their means and methods.
7. **ESTIMATE OF FEES FOR CONSTRUCTION AND MATERIALS TESTING SERVICES.** If included as part of RK's proposal, RK will, to the best of its ability, perform the scope of services related to Construction and Materials Testing Services within the proposed fee estimate provided by RK. RK's proposal fees are based upon an estimate of the services required to meet the specifications for the project and following generally accepted engineering practices. The CLIENT recognizes that unforeseen circumstances along with changes in scope and project/contractor's schedules can influence the successful completion of the scope of services within the estimated proposed fees. Because the contractor has sole control over the project and determines the means and methods used to build/construct the project, RK's service fees are estimates and not lump sum or guaranteed maximum fees. The CLIENT is fully responsible for payment of all services provided, including retests of contractor's failed areas.
8. **REPORTS.** RK may provide CLIENT with written reports in connection with the Services performed. Such reports will present such findings and conclusions as RK may reasonably make with the information gathered while performing its services, and provided by CLIENT. The reports may be copied for inclusion in other documents related to the project provided it is reproduced in its entirety; however reports and other instruments of service are prepared for, and made available for, the sole use of the CLIENT, and the contents thereof may not be used or relied upon by others without the express written authorization of RK. Any unauthorized use or distribution shall be at the CLIENT's sole risk and without liability to RK..
9. **TOXIC AND HAZARDOUS MATERIALS.** CLIENT shall provide RK with all information within CLIENT'S possession or knowledge as to the potential or presence of toxic or hazardous materials or pollutants at the site. CLIENT agrees that RK neither created nor contributed to the creation or existence of any toxic or hazardous

materials or pollutants. In no event shall RK be required to sign a hazardous waste manifest or take ownership of any toxic or hazardous materials or pollutants. If unanticipated toxic or hazardous materials or pollutants are encountered while performing RK's services, RK reserves the right to stop field operations and notify the CLIENT and CLIENT assumes responsibility to notify appropriate regulatory agencies. RK and CLIENT must mutually agree to remobilize.

10. **NO THIRD-PARTY BENEFICIARIES.** The services and any report(s) prepared under this Agreement are for the sole benefit and sole use of CLIENT and are not for the use of any other party or person. Only CLIENT may rely upon the services and any report or work product. Nothing in this Agreement, or any subsequent amendments or modifications, or in any report issued under this Agreement, shall create a contractual relationship with or a cause of action in the favor of any third party against either RK or CLIENT. If CLIENT provides a copy of any report prepared by RK to others, it shall advise the recipient that the information contained in the report is provided for information only and is not to be relied upon by third parties.
  11. **LEED PROJECTS.** Unless specifically addressed elsewhere in this agreement, RK has no responsibility or liability, including duty to defend or duty to indemnify, any party (including but not limited to CLIENT, owner, owner's agents, architects, engineers, contractors, construction managers, subcontractors) for the LEED certification process including: developing, producing, or retaining any documentation relating to the calculation of LEED points; and attainment of LEED certification points or LEED ratings.
  12. **STANDARD OF CARE.** RK shall perform its professional services in accordance with the standard of care and diligence normally practiced by professional firms in performing services of a similar nature, in the same locality, under similar circumstances. CLIENT expressly acknowledges that RK makes no other warranties or guarantees, expressed or implied, regarding its professional services or its work product.
  13. **RISK ALLOCATION.** RK will be responsible only for its own work, and that of its sub-consultants, and not for defects in the work designed or built by others.
  14. **LIMITATION OF LIABILITY.** CLIENT AND RK HAVE EVALUATED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, INCLUDING RK'S FEE RELATIVE TO THE RISKS ASSUMED, AND AGREE TO ALLOCATE CERTAIN OF THE RISKS SO, TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF RK (AND ITS RELATED ENTITIES, EMPLOYEES, OWNERS, AGENTS, AND REPRESENTATIVES) TO CLIENT (AND THIRD PARTIES GRANTED RELIANCE ON RK'S WORK PRODUCT, OR OTHERWISE SEEKING RECOVERY UNDER THIS AGREEMENT) IS LIMITED TO THE GREATER OF \$100,000 OR THE FEE PAID RK UNDER THIS AGREEMENT, FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES) ARISING OUT OF RK'S SERVICES OR THIS AGREEMENT REGARDLESS OF CAUSE(S) OR THE THEORY OF LIABILITY,
  15. **CONSEQUENTIAL DAMAGES.** Neither CLIENT nor RK will be liable to the other for any special, consequential, indirect, incidental or penal losses or damages of any kind, nor will CLIENT or RK be liable to the other for losses, damages, or claims, regardless of how defined, related to: lost profits; unavailability of property or facilities; shutdowns or service interruptions; loss of use, revenue, opportunity, or inventory; use charges, carrying costs, cost of substitute facilities, goods, or services; cost of capital, or claims of any other party and/or its customers.
  16. **SUSPENSION OF SERVICES.** If the CLIENT fails to make payments when due or otherwise is in breach of this Agreement, RK may suspend performance of services upon seven (7) calendar days' notice to the CLIENT. RK shall have no liability whatsoever to the CLIENT for any costs or damages as a result of such suspension. Upon payment in full by the CLIENT, RK may resume services under this Agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for RK to resume performance. Payment of invoices shall not be subject to any discounts or set-offs by the CLIENT unless agreed to in writing by RK. Payment to RK for services rendered and expenses incurred will be due and payable regardless of any subsequent suspension or termination of this Agreement by either party.
  17. **WAIVER OF SUBROGATION.** To the extent damages are covered by property insurance, or any other available insurance coverage, CLIENT and RK waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages. CLIENT agrees that CLIENT shall procure, or cause to be procured builder's risk insurance or other property insurance for its project. RK and CLIENT waive all rights against each other and any of their consultants, contractors, subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, flood, or other causes of loss to the extent covered by CLIENT's or CLIENT's Contractor's builder's risk insurance, or other available insurance coverage. The policies shall provide waivers of subrogation by endorsement or otherwise. CLIENT shall require of its contractors, consultants, agents and employees similar waivers in favor of RK and its subconsultants. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.
  18. **OWNERSHIP OF DOCUMENTS.** R-K's reports, drawings, plans, specifications, and other documents and deliverables are instruments of professional service ("Instruments of Service") developed by RK in contemplation of a wide array of project-specific variables, including how the documents will be used and by whom. RK shall be the author, owner and custodian of the Instruments of Service, and shall retain all common law, statutory, and other reserved rights, including copyright. By execution of this Agreement, RK grants to CLIENT a limited, nonexclusive license to use the Instruments of Service for purposes of constructing, using, and maintaining the project for which the services are performed, provided CLIENT substantially performs its obligations, including prompt payment of all sums when due, under this agreement.
- Upon completion of the services, and payment in full of all monies due RK, CLIENT may retain copies of all such documents. THE INSTRUMENTS OF SERVICE ARE NOT INTENDED NOR REPRESENTED TO BE SUITABLE FOR REUSE ON EXTENSIONS, MODIFICATIONS, OR ADAPTATIONS OF THE PROJECT, OR ANY OTHER PROJECT, ANY REUSE OF SUCH DOCUMENTS, WITHOUT WRITTEN VERIFICATION OR ADAPTATION BY RK FOR THE SPECIFIC PURPOSE INTENDED, WILL BE AT CLIENT'S SOLE RISK WITHOUT LIABILITY OR LEGAL EXPOSURE TO RK, AND CLIENT AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY, DEFEND, AND HOLD HARMLESS RK, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND CONSULTANTS AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES, DEFENSE COSTS, AND COURT COSTS) ARISING FROM OR ALLEGEDLY ARISING FROM OR IN ANY WAY CONNECTED WITH THE UNAUTHORIZED REUSE OR MODIFICATION OF THE DOCUMENTS BY CLIENT OR ANY PERSON OR ENTITY THAT ACQUIRES OR OBTAINS THE DOCUMENTS FROM OR THROUGH THE CLIENT WITHOUT THE WRITTEN AUTHORIZATION OF R-K REGARDLESS OF WHETHER SUCH CLAIMS, DEMANDS, OR ACTIONS ARE FOUNDED IN WHOLE OR IN PART UPON ALLEGED NEGLIGENCE OF RK, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR CONSULTANTS.
- Parties other than CLIENT and RK may apply to use an instrument, using a form prepared by RK for that purpose. Others' use of an instrument shall be permitted only when CLIENT and RK both so agree; either shall have the right to forbid use by others. IN

addition, R-K shall make its permission contingent upon the satisfaction of certain conditions when, in RK's professional judgment, such a contingency is necessary.

19. **DISPUTE RESOLUTION/LITIGATION.** All claims, disputes, and other controversy between RK and CLIENT arising out of or in any way related to the services provided by RK shall be submitted to mediation, before and as a condition precedent to other remedies provided by law. If a dispute at law arises related to these services and that dispute requires litigation as provided above, the CLIENT assents to personal jurisdiction in the State of Texas; the claim will be brought and tried in Bexar County, the county where RK's principal place of business is located, and CLIENT waives the right to remove or transfer the action to any other county or jurisdiction. The prevailing party will be entitled to recovery of all court costs, attorneys' fees, and other legally recoverable claim-related expenses. As a condition precedent to mediation of any claim arising out of the services provided under this Agreement, CLIENT shall obtain the written opinion from a registered, independent, and reputable professional engineer that RK has violated the standard of care applicable to RK's performance of services, in a form that meets the requirements of Texas Civil Practice & Remedies Code Chapter 150.
20. **TERMINATION OF CONTRACT.** CLIENT and RK may terminate services at any time upon ten (10) calendar days' written notice. In the event of termination, CLIENT agrees to fully compensate RK for services performed including reimbursable expenses through the termination date, as well as reasonable demobilization expenses. RK will terminate services without waiving any claims or incurring any liability.
21. **STATUTE OF LIMITATIONS.** Any applicable statute of limitations will commence to run and any cause of action shall be deemed to have accrued not later than the earlier of the following: (1) the date of the report issued by RK giving rise to the cause of action; (2) the date on which RK issues its last report under this Agreement; or (3) if RK is retained to perform construction observation, the date of substantial completion of the project.
22. **FORCE MAJEURE.** Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control ("Force Majeure") including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected. Force Majeure may not be claimed as a cause for delay in payment of money due and payable hereunder.
23. **NO ASSIGNMENT.** Neither RK nor CLIENT shall assign, sublet, or transfer its interest in this Agreement without the express written consent of the other.
24. **SEVERABILITY.** Each provision of this Agreement is intended to be severable. If any terms or provisions of this agreement shall be held to be invalid, illegal, or unenforceable for any reason whatsoever, the validity, legality, and enforceability of the remaining provisions hereof shall remain in full force and effect and shall not in any way be affected or impaired thereby. Moreover, to the maximum extent allowed by law, the Parties hereto stipulate that any offending provisions will be modified or altered, as necessary, so as to give such provision the maximum permissible effect and application intended.
25. **ENTIRE AGREEMENT.** This Agreement, and all of its attachments, constitutes the entire, integrated Agreement between the Parties to it, and this Agreement supersedes all other Agreements, oral or written between the Parties, concerning the subject set forth in this Agreement. This Agreement may not be amended except in writing, with that amendment being signed by both Parties.



**SCHEDULE OF FEES FOR PROFESSIONAL SERVICES**

**PERSONNEL:**

Principal.....	\$135 to \$250/hour
Professional.....	\$70 to \$200/hour
Auto Cad Operator.....	\$65 to \$110/hour
Technical/Clerical/Administrative .....	\$40 to \$80/hour

The specific hourly rate within each classification listed above depends on the experience, special training, and qualifications of the personnel needed for the project. For projects requiring work at any hazardous waste site, there will be a \$10 per hour surcharge added to the normal billing rate for all personnel. Consultants to Raba Kistner (RK) will be charged according to their professional classification.

**EXPENSES:** Use of company automobiles will be charged at \$1.00 per mile. Automobiles and light trucks assigned to field sites will be charged at \$70.00 per day, plus \$1.00 per mile over 50 miles per day. Copies will be charged at \$0.25 per page.

Other project specific charges for use of RK equipment or for RK testing will be in accordance with established fee schedules. All other project specific, third-party costs will be charged at cost plus 15 percent.

Invoices will be submitted monthly for work in progress in our standard format. They are due and payable upon receipt and become past due 30 days after the billing date. Past due invoices may be subject to late charges at the rate of 1-1/2 percent per month (18 percent per annum). In the event that the State of Texas legislates a sales tax on Professional Services, the amount of the tax will be PAYMENT added to the appropriate service rate charged. Our invoices are due and payable upon receipt at P.O. Box 971037, Dallas, Texas 75397-1037.

Preparation of non-standard invoice will be charged on a time and materials basis in accordance with the rates in this fee schedule.

**CONDITIONS:** Services will be performed in accordance with our Standard Terms and Conditions.

The proposal to which this schedule is an attachment is valid for 90 days from the date of the proposal.

## Lorraine Eldred

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**From:** Jessica Rodriguez <Jessica.Rodriguez@freese.com>  
**Sent:** Monday, January 19, 2015 2:58 PM  
**To:** Wayne Watts  
**Cc:** Lorraine Eldred; Terri Crauford; Linda Huff; Sean Barry  
**Subject:** San Gabriel Pkwy revised SOW/contract  
**Attachments:** San Gabriel draft SOW\_rev 1\_01142014.docx

**Importance:** High

Wayne,

Per our meeting discussions, attached is the revised subject document. Please review and/or contact the developer so we can schedule a meeting to review with them. I turned on the track changes feature so it will be easier to review, I hope.

Let me know if you have any questions. Thanks.

**Jessica Rodriguez, P.E.**  
Senior Project Manager

**Freese and Nichols, Inc.**  
10431 Morado Circle  
Building 5, Suite 300  
Austin, Texas 78759  
W: 512-617-3141  
C: 512-202-5432  
F: 512-617-3101  
[jessica.rodriguez@freese.com](mailto:jessica.rodriguez@freese.com)

[www.freese.com](http://www.freese.com)

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## **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 and Professional.

### **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 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 against OWNER 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 indemnitees shall seek indemnification, the indemnitees 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 indemnitees, 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 suppliers of Professional for reasons other than Force Majeure;
2. Delays in approval of documentation because of inadequate performance by Professional;
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 Contract, 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 \_\_\_\_\_, 2015.

**City of Leander:** \_\_\_\_\_:

By: \_\_\_\_\_

By \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_



**Executive Summary**

**January 29, 2015**

**Council Agenda Subject:** Consideration of Ordinance setting Speed Limits for Ronald W. Reagan Boulevard

**Background:** A Speed Zone Study for Ronald Reagan Boulevard has been completed by the Engineering Department. The sealed, signed Speed Study Strip Map for Ronald Reagan Boulevard supporting the proposed speed limit is attached to the proposed ordinance as Exhibit “A”. The existing speed limit is currently 60 mph for all of Ronald Reagan Boulevard based on the 60 mph design speed of the construction plans. There are three vertical curves (hills) north of Hero Way which meet sight distance requirements for a 60 mph travel speed but do not meet sight distance for a 65 mph speed travel speed. Each of these three vertical curves will be provided with cautionary 55 mph speed advisory signs and other supplementary cautionary signage as deemed appropriate by the City Engineer and Public Works Director. At this time, cautionary signs W7-1a (HILL) and W13-1P (55 MPH) are recommended for placement placed 100 feet in advance of each of the three vertical curves north of Hero Way for both northbound and southbound directions. The proposed 65 mph speed limit begins at the southern City Limit approximately 5/8 miles south of the intersection of Journey Parkway and Ronald W. Reagan Boulevard and extends to the northern City Limit at the intersection of State Highway 29 and Ronald W. Reagan Boulevard. The speed study for Ronald W. Reagan Boulevard supports the increase in the speed limit from 60 mph to 65 mph along with the addition of 55 mph cautionary speed advisory signs and other appropriate cautionary signage for the three identified vertical curves based on 85<sup>th</sup> percentile travelling speed and crash history data. As the Reagan Corridor in Leander develops in the future, periodic speed studies should be performed to validate or revise speed limits as roadway conditions and traffic congestion change.

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

**Financial Consideration:** Cost of speed limit signage and installation by Street Department is estimated at \$2,000.00.

**Recommendation:** Staff requests approval of the proposed ordinance setting speed limits on Ronald W. Reagan Boulevard at 65 mph

**Attachments:** Proposed Ordinance with Exhibit A and Exhibit B

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

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF LEANDER, TEXAS, AUTHORIZING AND DIRECTING THE INSTALLATION AND ERECTION OF SPEED CONTROL SIGNS FOR THE ZONING OF TRAFFIC AND RATE OF SPEED THEREON, IN THE CITY LIMITS OF LEANDER; DEFINING SPEEDING AND FIXING A PENALTY THEREFOR; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER THEREOF.**

**Whereas**, the regulation of traffic, motor vehicles and conveyances upon all public streets, roadway and right-of-ways constituting a speed zone within the City limits is essential and necessary to protect and to preserve the public safety of the City of Leander, Texas (the “City”);

**Whereas**, an Engineer for the City has conducted traffic studies and analyses resulting in the recommendations for the installation and erection of speed control signs along certain roadways in the City, as detailed in Exhibit A; and

**Whereas**, after review, the City Council has found that the installation and erection of speed control signs along designated stretches of roadway as hereinafter set forth and listed in this Ordinance are reasonable and necessary for the public safety and are supported by sound and accepted public safety and traffic engineering criteria;

**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. Speed Zone(s).** The Speed Zone(s), as further detailed in Exhibit “B”, are established as follows:

**SPEED ZONE: RONALD W. REAGAN BOULEVARD**

**FOR SOUTHBOUND TRAFFIC**

Beginning at the intersection Ronald W. Reagan Blvd and State Highway 29, continuing southward until the Leander city limit approximately 5/8 miles south of Journey Parkway, there being established a prima facie maximum speed limit of 65 miles per hour.

## **FOR NORTHBOUND TRAFFIC**

Beginning at the Leander city limit approximately 5/8 miles south of Journey Parkway, continuing northward until the intersection of Ronald W. Reagan Blvd and State Highway 29, there being established a prima facie maximum speed limit of 65 miles per hour.

**Section 3. Ratification and Confirmation.** The installation, placement, erection of speed control signs as deemed appropriate and the enforcement of the traffic along the roadways set forth herein and as further detailed in Exhibit "B" are hereby confirmed and ratified by the City Council. Each speed control location, column one (I), listed in Exhibit "B" shall require traffic or motor vehicles operating in the zone indicated in column two (II) to adhere to such requirements and shall be in effect at all times. Signs will be erected giving notice of the prima facie speed limit so declared to be as indicated in column three (III) unless otherwise changed by any other traffic control device duly placed, such as a school speed zone.

**Section 4. Traffic Control Speed Signs.** The City Council hereby orders and directs that the traffic Speed Zone signs hereinafter set forth in Exhibit "B" be placed, installed and erected at the locations designated herein, and that each such sign and device be hereafter maintained and enforced by the City. The signs indicate the prima facie speed limit in the direction facing the sign. Exhibit "B" is incorporated hereby as though fully transcribed herein for all purposes. In Exhibit "B", the term "controlled" as listed in column two refers to the street which the speed control sign for that line shall regulate and control traffic passing the location of the device indicated in column one. Each speed control sign placed along the location listed in column one of Exhibit "B" shall require traffic traveling on the section of roadway listed in the second column to observe the prima facie maximum speed limit which is in effect at all times unless otherwise charged by another traffic control device.

**Section 5. Prima Facia Speed.** Unless otherwise posted and designated, the maximum prima facia reasonable and prudent speed upon any roadway constituting an urban district shall be 30 miles per hour upon any roadway within the City limits and 15 miles per hour upon any alley within the City limits.

**Section 6. Violation and Penalties.** It shall be unlawful for any person to drive or operate a motor vehicle that enters the Speed Zones identified herein and further detailed in Exhibit "B" without observing the prima facie maximum speed limit which shall remain in effect at all times unless changed by another traffic control device duly placed. It shall be unlawful for any person to drive or operate a motor vehicle upon any roadway being unmarked with a speed control sign at a speed of greater than 30 miles per hour or upon any alley being unmarked with a speed control sign at a speed of greater than 15 miles per hour. Further, it shall be unlawful for any person to tamper with, alter, remove, destroy, cover or hinder the visibility, of any traffic device control device erected by this Ordinance in a manner which is inconsistent with its use as a traffic control device. Any person

who violates this Ordinance or part thereof shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than \$1.00 nor more than \$200.00.

**Section 7. Repeal of Conflicting Ordinances.** All parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict only. 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 the most restrictive ordinance shall govern.

**Section 8. Effective Date.** This Ordinance shall take effect immediately from and after its passage.

**Section 9. 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 in 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 10. 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** on this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**ATTEST:**

**THE CITY OF LEANDER, TEXAS**

\_\_\_\_\_  
Debbie Haile, City Secretary

\_\_\_\_\_  
Christopher Fielder, Mayor

**Exhibit "A"**

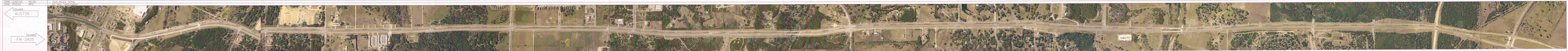
**(Sealed, signed Speed Study Strip Map is Attached)**

**EXHIBIT “B”**

**Established Speed Zones  
City of Leander, Texas**

<b>Column I</b>	<b>Column II</b>	<b>Column III</b>
Street Location and Direction	Limits of Speed Zone Controlled by sign(s)	Speed Limit
Ronald W. Reagan Boulevard, southbound	Intersection of Ronald W. Reagan Blvd and State Highway 29 to city limit approximately 5/8 miles south of Journey Parkway	65 mph
Ronald W. Reagan Boulevard, northbound	City limit approximately 5/8 miles south of Journey Parkway to intersection of Ronald W. Reagan Blvd. and State Highway 29	65 mph

DEVELOPMENT	ALL RURAL
RES. SIGHT DISTANCE	NONE
BALL BANK or ADVISORY SPEED	NONE
CURVES OVER 2 DEGREES	
GRADES OVER 3%	
SURFACE WIDTH AND TYPE	54.5 FT EACH WAY W/ 12FT LEFT TURN LANES
R.O.W. AND RDBD WIDTH	TYP. 200, VARIES
ACCIDENTS	
ZONE LENGTHS MILES	7.69 MILES TOTAL
ZONE SPEEDS MPH	65 MPH THROUGHOUT



NI - NOT INJURED  
PI - POSSIBLE INJURY  
INC - INCAPACITATING INJURY

Wayne S. Watts  
01/21/15  
Professional Engineer  
No. 86134  
State of Texas



**Executive Summary**

**January 29, 2015**

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**Agenda Subject:** Zoning & Subdivision Cases 14-Z-017, 14-CP-008, & 14-PP-007: Consider action on a proposed extension for the second reading and approval of the Red Oak Valley Concept Plan and Preliminary Plat for 113.372 acre tract of land, more or less, located at 17680 Ronald Reagan, WCAD Parcels #R021708, R021709, R021710, R489942, and R489943. Currently, the property is zoned Interim SFR-1-B (Single Family Rural) and the applicant is proposing to zone the property PUD (Planned Unit Development), Leander, Williamson County, Texas.

**Background:** The Planning & Zoning Commission unanimously recommended approval of rezoning the subject property to PUD with the condition that the height of the homes located in the MF-2-A portion of the property is limited to two stories. They also recommended approval of the Conceptual Site Layout and Land Use Plan as the Concept Plan and Preliminary Plat for the property.

The City Council unanimously approved the request with the Planning & Zoning Commission recommendations at the November 6, 2014 meeting. The applicant requested to postpone the second reading of the ordinance before the November 20, 2014 meeting.

The applicant has requested an additional extension in order to finalize the proposed development agreement that includes the offsite utility extensions. They are proposing the second reading of the ordinance to be scheduled no later than May 21, 2015.

**Origination:** Applicant: Jones & Carter, Inc on behalf of Mary Ann Garlock and Pamela Christianson.

**Financial Consideration:** None

**Recommendation:** The development agreement associated with the offsite utilities is currently under review. Staff recommends approval of the request as long as the extension does not extend past May 21, 2015.

**Attachments:** 1. Extension Request Letter

**Prepared By:** Tom Yantis  
Assistant City Manager

01/22/2015





**Executive Summary**  
**January 29, 2015**

**Agenda Subject:** Consider an Ordinance ordering and establishing procedures for the May 9, 2015 General Election

**Background:** On May 9, 2015 a General Election will be held for City Council Place 2, Place 4, Place 6 and Mayor to serve a term of three (3) years each. The City will be contracting with both Williamson County and Travis County to serve as the Elections Administrators. This Ordinance will establish the procedures and provide for notice of the election.

**Origination:** Debbie Haile TRMC, City Secretary

**Recommendation:** Staff recommends Council approval of this Ordinance.

**Attachments:** Ordinance

**Prepared by:** Debbie Haile TRMC, City Secretary

## ORDINANCE NO

**AN ORDINANCE ORDERING AND ESTABLISHING PROCEDURES FOR THE 2015 GENERAL ELECTION IN THE CITY OF LEANDER TO ELECT COUNCILMEMBERS FOR PLACE 2, PLACE 4, PLACE 6 AND MAYOR; PROVIDING FOR NOTICE OF THE ELECTION; PROVIDING ELECTION PRECINCT AND POLLING PLACES; PROVIDING FOR EARLY VOTING; PROVIDING AN EFFECTIVE DATE AND OPEN MEETINGS CLAUSE; AND PROVIDING FOR RELATED MATTERS.**

**WHEREAS**, on May 9, there shall be elected the following officials for this City: Councilmember Place 2; Councilmember Place 4; and Councilmember Place 6 and Mayor.

**WHEREAS**, the Texas Election Code is applicable to said election and this ordinance establishes procedures consistent with the Code, and designates the voting place for the election;

**WHEREAS**, the City of Leander lies within the boundaries of Williamson and Travis Counties;

**WHEREAS**, the City of Leander, Texas (hereinafter the "City") approves and agrees to conducting the City General Election jointly with other political subdivisions in Williamson and Travis Counties in accordance with *Tex. Elec. Code, Chapter 271*; and

**WHEREAS**, the City is making provision to contract with the Williamson County Elections Administrator to conduct the City's election for Williamson County voters, and with the Travis County Elections Administrator to conduct the City's election for the Travis County voters, pursuant to *Chapter 31, Tex. Elec. Code, and Chapter 791, Tex. Gov't Code* (the "Election Services Contracts");

**NOW, THEREFORE, BE IT ORDAINED AND ORDERED BY THE CITY COUNCIL OF THE CITY OF LEANDER, TEXAS:**

**Section 1. General Election.** The General Election of the City shall be held on Saturday, May 9, 2015 to elect Councilmembers from the city at large for Mayor, Place 2, Place 4, and Place 6 to serve a term of three (3) years each. Candidates for the above offices shall file their application with the City Secretary of the City, at City Hall, 200 W. Willis, Leander, Texas, between 8:00 a.m. on January 28, 2015 and 5:00 p.m. on February 27, 2015 excluding weekends and holidays. All applications for candidacy shall be on a form as prescribed by the *Tex. Elec. Code*. The order in which the names of the candidates for each office are to be printed on the ballot shall be determined by a drawing conducted by the City Secretary. The drawing will be held at **9:00 am** on March 5, 2015 in the City Secretary's Office, at City Hall, 200 West Willis, Leander, Texas.

**Section 2. Ballots.** The ballots used for the general election shall comply with the *Texas Election Code* and be in the form provided by the City to the Williamson County Elections Administrator

and the Travis County Elections Administrator for use on the respective voting devices used by each such jurisdiction.

**Section 3. Printed Materials.** The official ballots, together with such other election materials as are required by the *Tex. Elec. Code*, as amended, shall be printed in both the English and Spanish languages and shall contain such provisions, markings and language as required by law.

**Section 4. Notice of Election.** Notice of the election shall be given in the manner as provided in the *Tex. Elec. Code* and the *City Charter*. A notice containing a substantial copy of this ordinance shall be posted on the bulletin board used for posting notice of meetings of the governing body at City Hall and at the aforesaid polling place not later than the twenty-first (21st) day before the election, and by publishing said Notice of Election at least one time, not earlier than thirty (30) days nor later than ten (10) days prior to said election, in an English and Spanish newspaper in general circulation in the City. The Williamson County Elections Administrator and the Travis County Elections Administrator are authorized and shall give all notices for their respective jurisdictions required for the election.

**Section 5. Conduct of Election.** The Williamson County Elections Administrator and his/her employees and appointees, and the election judges, alternate judges and clerks properly appointed for the election, shall hold and conduct the election for the portion of the City in Williamson County, pursuant to the contract for election services between the City and Williamson County. The Travis County Elections Administrator and his/her employees and appointees, and the election judges, alternate judges and clerks properly appointed for the election, shall hold and conduct the election for the portion of the City in Travis County, pursuant to the contract for election services between the City and Travis County. The election shall be held and conducted in compliance with state law and the respective Election Services Contracts.

**Section 6. Joint Election.** The City agrees to conduct a joint election with other political subdivisions within Williamson County and Travis County, provided that such political subdivisions hold an election on May 9, 2015 in all or part of the same territory as the City (the "Political Subdivisions"). The joint election for Political Subdivisions in Williamson County and Travis County will be conducted in accordance with state law, this ordinance, and the respective Election Services Contracts.

**Section 7. Election Precincts and Election Day Polling Places.** The election precincts in the portion of the City located in Williamson County shall be the election precincts established by Williamson County, provided that each shall contain and include geographic area that is within the City. The election precincts in the portion of the City located in Travis County shall be the election precincts established by Travis County, provided that each shall contain and include geographic area that is within the City. The polling place for each election precinct shall be the polling place established by Williamson County or Travis County, as appropriate. The polls shall remain open on the day of the election from 7:00 a.m. to 7:00 p.m. The returns will be provided by precinct and the Williamson County Elections Administrator shall tabulate and provide the election returns for votes cast in Williamson County, the Travis County Elections Administrator shall tabulate and provide the election returns for votes cast in Travis County.

**Section 8. Early Voting.** Early voting, both by personal appearance and by mail, will be conducted by the Williamson County Elections Administrator for the portions of the City located in Williamson County, who is hereby designated and appointed as an Early Voting Clerk for the general election for City residents residing in Williamson County in accordance with the *Texas Election Code*. Early voting, both by personal appearance and by mail, will be conducted by the Travis County Elections Administrator for the portions of the City located in Travis County, who is hereby designated and appointed as an Early Voting Clerk for the general election for City residents residing in Travis County in accordance with the *Texas Election Code*.

Early voting shall commence on Monday, April 27, 2015, and continue through Tuesday, May 5, 2015 and early voting polls shall remain open for the time specified by the *Texas Election Code*. Early voting for City residents residing in Williamson County shall also be held at any time and location authorized by the Williamson County Elections Administrator. Early voting by City residents residing in Williamson County may be conducted at any early voting location and any location exclusively designated by the Williamson County Elections Administrator for City residents residing in Williamson County. Early voting for City residents residing in Travis County shall also be held at any time and location authorized by the Travis County Elections Administrator. Early voting by City residents residing in Travis County may be conducted at any early voting location and any location exclusively designated by the Travis County Elections Administrator for City residents residing in Travis County.

**Section 9. Election Judges and Clerks.** The presiding judges, alternate presiding judges and clerks for the election shall be selected and appointed by Williamson County and Travis County, as appropriate, in compliance with the requirements of state law, and are hereby designated and appointed election officers for the holding of said election. The presiding judges, alternate presiding judges and clerks shall perform the functions and duties of their respective positions that are provided by state law.

**Section 10. City Secretary Assistance.** The City Secretary is hereby authorized and instructed to aide the Williamson and Travis County Elections Administrators in the acquisition and furnishing of all election supplies and materials necessary to conduct the election. The City Secretary is further authorized to assist with the giving of notices required for the election, and to take such other and further action as is required to conduct the election in compliance with the *Texas Election Code*; provided that, pursuant to the respective Election Services Contracts between the City and the Williamson and Travis County Elections Administrators, the Williamson and Travis County Elections Administrators shall have the duty and be responsible for organizing and conducting the election in compliance with the *Texas Election Code*; and for providing all services specified to be provided in the respective Election Services Contracts.

**Section 11. General.** The general election shall be held and conducted by the Williamson and Travis County Elections Administrators in compliance with the *Tex. Elec. Code* and, to the extent not inconsistent therewith, the *City Charter*, and only resident qualified voters of the City shall be eligible to vote at the election. The Elections Administrators are hereby authorized and instructed to provide and furnish all necessary election supplies to conduct said election. Returns of the election shall be made known as soon as possible after the closing of the polls; and the election returns shall be canvassed by the City Council not earlier than May 17, 2015, nor later than May 20, 2015.

**Section 12. Effective Date; Election Code.** This ordinance shall be in full force and effect from and after its passage on the date shown below; provided that if any term or provision of this Ordinance conflicts with, or is inconsistent with, the Texas Elections Code, the Texas Election Code shall govern and control and the Williamson and the Travis County Elections Administrators shall comply with the Texas Elections Code.

**Section 13. Open Meetings.** It is 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 *Chapt. 551, Tex. Gov't. Code.*

**PASSED, ADOPTED AND APPROVED** on this the 29<sup>th</sup> day of January, 2015.

**CITY OF LEANDER, TEXAS**

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Christopher Fielder, Mayor

Attest:

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Debbie Haile, City Secretary



**Executive Summary**  
**January 29, 2015**

**Agenda Subject:** Consideration of an Ordinance ordering and establishing procedures for the May 9, 2015 Special Elections

**Background:** Mayor Pro Tem Garcia has resigned his position on City Council, Place 3 and Council Member Dishongh has resigned his position on City Council, Place 5.

This ordinance is to call for special elections to be held on May 9, 2015 for Place 3 and Place 5 to be held in conjunction with the general election. The period for filing an application for a place on the ballot for the special elections will be January 30, 2015 through March 9, 2015. This dates are determined by statute.

**Origination:** Debbie Haile TRMC, City Secretary

**Recommendation:** Staff recommends Council approval of this Ordinance.

**Attachments:** Ordinance

**Prepared by:** Debbie Haile TRMC, City Secretary

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF LEANDER, TEXAS, ORDERING SPECIAL ELECTIONS FOR SATURDAY, MAY 9, 2015, TO FILL VACANCIES IN PLACE 3 AND PLACE 5 OF THE CITY COUNCIL; AND PROVIDING FOR RELATED MATTERS**

**WHEREAS**, vacancies exist in Place 3 and Place 5 of the City Council of the City of Leander, Texas (the "City") by reason of resignation;

**WHEREAS**, the Texas Constitution, the Texas Election Code, and the City Charter are applicable to said election, and in order to comply with applicable laws, a special election must be held on a Saturday within 120 days of the vacancies to fill such vacancies;

**WHEREAS**, Saturday, May 9, 2015, is a uniform election day that is within 120 days of the effective date of each of the vacancies;

**WHEREAS**, the City of Leander, Texas (hereinafter the "City") has made provision to contract with Williamson and Travis Counties to conduct the City's election, pursuant to *Chapter 31, Tex. Elec. Code, and Chapter 791, Tex. Gov't Code* (the "Election Agreement" or "contract"), and to hold joint elections with political subdivisions that hold elections on the same day in all or part of the same territory as authorized in *Chapter 271, Tex. Elec. Code*;

**WHEREAS**, by Ordinance No. [REDACTED] the City ordered the May 9, 2015 general election and established the procedures therefore;

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

**SECTION 1.** Special elections shall be held on May 9, 2015, to fill the unexpired terms of Councilmember, Place 3 and Councilmember, Place 5, of the City Council of the City of Leander, Texas.

**SECTION 2.** Candidates to fill the unexpired term of Councilmember, Place 3 and Councilmember, Place 5 shall file their applications between 8:00 a.m. on January 30, 2015 and no later than 5:00 p.m. on March 9, 2015. All candidates for said office shall file their application to become candidates with the City Secretary, at City Hall, 200 W. Willis, Leander, Texas 78646. All applications for candidacy shall be on a form as prescribed by the *Tex. Elec. Code* and the City Charter. The order in which the names of the candidates for each office are to be printed on the ballot shall be determined by a drawing conducted by the City Secretary held at City Hall, at least 72 hours after the City Secretary posts notice of such drawing.

**SECTION 3.** The special elections shall be held in accordance with the procedures for the general election set forth by Ordinance No. [REDACTED], which is hereby incorporated herein by reference, provided that the deadline for filing an application set forth in Section 2 shall control with respect to

persons applying for candidacy to fill the unexpired terms of Councilmember, Place 3 and Councilmember, Place 5. The special elections shall be held and conducted by the Williamson County Elections Administrator and the Travis County Elections Administrator in compliance with state law, Ordinance No.           , the Election Agreement, and to the extent not inconsistent therewith, the City Charter, in all respects.

**SECTION 4.** It is hereby officially found and determined that this meeting was open to the public, and public notice of the time, place and purpose of said meeting was given, all as required by the Open Meetings Act, *Chapter 551, Texas Government Code*.

**PASSED AND APPROVED** this the 29<sup>th</sup> day of January, 2015.

**CITY OF LEANDER, TEXAS**

\_\_\_\_\_  
Christopher Fielder, Mayor

ATTEST:

\_\_\_\_\_  
Debbie Haile, City Secretary



**Executive Summary**

**January 29, 2015**

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**Agenda Subject:** Consider appointment of Mayor Pro-Tem

**Background:** Each year following the General Election date the City Council elects one of its members to be Mayor Pro-Tem for a one (1) year term. Council Member Garcia was elected as Mayor Pro Tem at the June 19, 2014 council meeting. He has resigned his position on the City Council leaving the position of Mayor Pro Tem vacant until the first meeting following the general election date when his term will expire. Council will need to elect from its members a Mayor Pro Tem to serve the remainder of this unexpired term.

**Financial Consideration:** None

**Recommendation:** A member of the City Council will be selected to serve as Mayor Pro-Tem for the remainder of the unexpired term.

**Attachments:** None

**Prepared By:** Debbie Haile TRMC  
City Secretary