AGENDA
REGULAR CITY COUNCIL MEETING
CITY OF LEANDER, TEXAS

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

Thursday ~ November 1, 2012 at 7:00 PM

Mayor – Christopher Fielder

Place 1 – Andrea Navarrette | **Place 4 – Michell Cantwell (Mayor Pro Tem)**
Place 2 – Kirsten Lynch | **Place 5 – Jason Dishongh**
Place 3 – Simon Garcia | **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. Proclamation designating November as "Hope Alliance Month" in the City of Leander

CONSENT AGENDA: ACTION

6. Approval of the minutes: Regular Meeting: October 18, 2012

7. Approve recommendations from the City Manager for the compensation rates for the Municipal Judge and Associate Judge for FY 2012-13

PUBLIC HEARING

8. First Public Hearing on annexation of a 1.26 acre tract, more or less, located in Williamson County, generally located to the southwest of the intersection of RM 2243 and Ronald W. Reagan Blvd., iincluding the abutting streets, roadways and rights-of-way

9. First Public Hearing on annexation of a 2.02 acre tract, more or less, located in Williamson County, generally located to the southwest of the intersection of RM 2243 and Ronald W. Reagan Blvd., iincluding the abutting streets, roadways and rights-of-way

PUBLIC HEARING: ACTION

10. **Public Hearing** on Zoning Case #12-Z-025: Consider a zoning change for 1.62 acres, more or less. For the property located at 17400 Ronald Reagan Blvd. from GC-2-B, General Commercial to GC-3-A, General Commercial, Leander, Williamson County, Texas.
    Applicant: Stefan Pharis, on behalf of Vince Giaco
    Applicant has requested that this application be postponed

11. **a. Public Hearing:** on Zoning Case # 12-Z-024: Consider a zoning change for 1.00 acres, more or less, for the property located at 1551 County Road 269 from Interim zoning SFR-1-B, Single Family Rural to LI-4-D, Light Industrial, Leander, Williamson County, Texas.
    Applicant: Jefferson H. Wand on behalf of Barry J. & Leticia Wand

    b. Action on Zoning Case #12-Z-024: amending Ordinance #05-018, the Composite Zoning Ordinance for the property located at 1551 County Road 269, Leander, Williamson County, Texas

REGULAR AGENDA

12. Consider first amendment to the Development Agreement for Nameless Valley Ranch

13. Consider first amendment to the Facilities Agreements entered into initially by Lookout Partners, LP, (Lookout), a Texas Limited Partnership, and Key Deer Holdings, (Key-Deer) LP, a Texas Limited Partnership (Lookout and Key-Deer collectively, "Owner"), and the City of Leander

14. Consider Development and Annexation Agreement for the Borho Tract

15. Consider approval of a Drainage and Detention Basin Easement and Agreement between the City of Leander, Oryx Holdings, LLC, and DDC Merritt Legacy, Ltd. (Connelly's Crossing Subdivision)

16. Consider Escrow Agreement and Special Warranty Deed with Oryx Holdings, LLC for conveyance of land to the City

17. Consider a Resolution Authorizing the Submission of a Project Nomination to the Statewide Transportation Enhancement Program

18. Consider authorization for Mayor to execute documents for the Development Agreement between the City of Leander and Leander 183A Development II, LLC

19. Consider authorization for Mayor to execute documents related to the Development Agreement between the City of Leander and Leander 183A Development II, LLC, specifically , the Ordinance for Municipal Utility District (MUD) creation and its associated Facilities Agreement

20. Consider authorization for Mayor to execute Warranty Deed dedication for Rights-of-Way (ROW) for the US 183 – 183A intersection improvement from Williamson County

EXECUTIVE SESSION

21. Convene into executive session pursuant to Section 551.071, Tex. Gov't Code, and Section 1.05 Tex. Disciplinary Rules of Professional Responsibility to consult with legal counsel regarding the Memorandum of Understanding (MOU) with the Village of Volente

22. Reconvene into open session

23. Consider a Resolution approving the Memorandum of Understanding (MOU) by and between the Brushy Creek Regional Utility Authority and the Village of Volente

24. Council Members Closing Statements

25. 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 telecommunications 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 26th day of October, 2012 by 5:00 pm pursuant to Chapter 551 of the Texas Government Code.

_____

Debbie Haile, TRMC, City Secretary

AGENDA ITEM # 5

PROCLAMATION

WHEREAS, on September 6, 2012, the Leander City Council voted unanimously to designate every other month to support a Local Charity benefiting the citizens of Leander; and

WHEREAS, the City Council encourages all residents of Leander to support Local Charities with donations of their goods, money and time; and

WHEREAS, the City of Leander benefits from the services provided by a variety of local charities; and

WHEREAS, when residents support local charities it helps build a sense of community;

NOW, THEREFORE; the City of Leander does hereby proclaim November 2012 as:

"HOPE ALLIANCE" MONTH

WHEREAS, Hope Alliance staff and volunteers in our community are working to provide a continuum of care to domestic violence survivors through a 24-hour hotline, emergency shelter, counseling, support groups, advocacy, medical care and education; and

WHEREAS, Hope Alliance serves as an Advocate for the creation of an environment where violence and abuse are not tolerated in the community; and

WHEREAS, Hope Alliance provides education, violence prevention services and crisis intervention to victims of family and sexual violence.

WHEREAS, Hope Alliance seeks the support and resources necessary to achieve the agency mission of "**Developing partnerships and providing services that renew hope, highlight possibilities and change the futures of those whose lives have been affected by family and sexual violence".**

Signed this 1st day of November, 2012.

Attest:

Christopher Fielder, Mayor

Debbie Haile, TRMC City Secretary

AGENDA ITEM # 6

MINUTES
REGULAR CITY COUNCIL MEETING
CITY OF LEANDER, TEXAS

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

Thursday ~ October 18, 2012 at 7:00 PM

Mayor – Christopher Fielder
Place 1 – Andrea Navarrette **Place 4 – Michell Cantwell (Mayor Pro Tem)**
Place 2 – Kirsten Lynch **Place 5 – Jason Dishongh**
Place 3 – Simon Garcia **Place 6 – David Siebold**
City Manager – Kent Cagle

1. Open meeting, Invocation, Pledges of Allegiance
   Mayor Pro Tem Cantwell opened the meeting at 7:00 p.m. and welcomed those in attendance. Council Member Lynch delivered the invocation.

2. Roll Call
   All present except Mayor Fielder

3. Staff Comments: Fire Chief Gardner – Fire Dept. Haunted House
   Bill Gardner, Fire Chief reminded Council of the upcoming Haunted House Event, Firefighter for a Day and October as Breast Cancer Awareness Month

   Wayne Watts, City Engineer, informed Council that the Texas Water Development Board reaffirmed their commitment to the BCRUA project for Phase II, Deep Water Intake Project.

4. Citizen Comments: Three (3) minutes allowed per speaker
   Please turn in speaker request form before the meeting begins.
   No speakers

CONSENT AGENDA: ACTION

5. Approval of the minutes: Regular Meeting: October 4, 2012
   Special Meeting: October 11, 2012

6. Second reading of the ordinance on annexation of a 253.07 acre parcel, more or less, located in Williamson County, Texas, generally located along the east side of Ronald Reagan Boulevard north of F.M. 2243 and south of the San Gabriel River including the abutting streets, roadways, and rights-of-way.

7. Second Reading of an Ordinance for Zoning Case #12-Z-022: amending Ordinance #05-018, the Composite Zoning Ordinance for nine parcels generally located near the northeast corner of the intersection of RM 2243 and Ronald Reagan Boulevard, Leander, Williamson County, Texas

8. Receive Quarterly Investment Report.
   Motion made by Council Member Siebold to approve. Second by Council Member Garcia. Motion passes, all voting "aye"

REGULAR AGENDA

9. Consider a Resolution authorizing the filing with the Texas Comptroller of Public Accounts a letter stating that the City of Leander is authorized by the State to exercise the Power of Eminent Domain and providing a list of all authorities for the use of Eminent Domain
Robert Powers, Finance Director explained

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

10. Consider a Resolution commencing the annexation of nine tracts of land surrounded by the City Limits totaling 1289.31 acres, more or less, located in Williamson County, Texas and setting an annexation schedule.
Jim Bechtol, Director of Development Services explained

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

11. Consider termination of the Development and Reimbursement Agreement for the Villages of Messina
Pix Howell, Urban Design Officer explained

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

12. Consider acceptance and authorize Mayor to execute Warranty Deed Dedication for Rights-of-Way for the US 183 – 183A intersection improvement from MJAG Partnership, Ltd.
Pix Howell, Urban Design Officer explained

Motion made by Council Member Siebold to approve. Second by Council Member Lynch. Motion passes, all voting "aye"

13. Consider acceptance and authorize Mayor to execute Warranty Deed dedications for Rights-of-Way and Temporary Drainage Easements for the Leander "T" from RB 270 and The Southwestern Foundation
Pix Howell, Urban Design Officer explained

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

14. Consider a Joint Venture with the City of Cedar Park for Interim Raw Water Intake Facilities Relocation Activities
Wayne Watts, City Engineer explained

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

15. Council Members Closing Statements
Council Members gave their closing statements

16. Adjournment
With there being no further business, the meeting adjourned at 7:20 p.m.

Attest:

Christopher Fielder, Mayor

Debbie Haile, TRMC, City Secretary

AGENDA ITEM # 7

Executive Summary

November 1, 2012

Council Agenda Subject: Approve Recommendation from the City Manager for the compensation rates for the Municipal Judge and Associate Judge for FY 2012-13.

Background: Section 7.11 of the City's Home Rule Charter states, in part, that the compensation for the municipal judge and associate judge shall be approved by the City Council upon recommendation from the City Manager. The City Manager recommends that the Municipal Judge's monthly rate be increased by 2.5% from $2,838 to $2,910 and that the Associate Judge's compensation remain at $125 per hour.

Origination: Robert G. Powers, Finance Director

Financial Consideration: $864.00 increase (provided for in the FY12-13 budget)

Recommendation: Approval of recommendation from the City Manager

Attachments: n/a

Prepared by: Robert G. Powers, Finance Director

Executive Summary

November 1, 2012

Council Agenda Subject: First public hearing on annexation of a 1.26 acre parcel, more or less, located in Williamson County, Texas, generally located to the southwest of the intersection of RM 2243 and Ronald W. Reagan Boulevard including the abutting streets, roadways, and rights-of-way.

Background: The Resolution setting the two public hearings for November 1, 2012 and **November 8, 2012** was approved by City Council on September 20, 2012. The first reading of the Ordinance is scheduled for December 6, 2012 and the second reading of the Ordinance is scheduled for December 20, 2012. This is a voluntary annexation whereas the property owner is requesting the property to be annexed into the city limits. **(Dates in bold indicate"Special Council Meetings")**

Origination: Development Services Department

Attachments: Resolution

Petition for Annexation

Exhibit "A" – Property Descriptions

Exhibit "B" – Municipal Services Plan

Schedule for Voluntary Annexation

Prepared by: Jim Bechtol, Director of Development Services

RESOLUTION NO. 12-021-00

A RESOLUTION OF THE CITY OF LEANDER, TEXAS, ACCEPTING THE PETITION FOR ANNEXATION OF A 1.26, MORE OR LESS, ACRE PARCEL, INCLUDING THE ABUTTING STREETS, ROADWAYS, AND RIGHTS-OF-WAY, LOCATED IN WILLIAMSON COUNTY, TEXAS; SETTING AN ANNEXATION SCHEDULE; PROVIDING FOR OPEN MEETINGS AND OTHER RELATED MATTERS.

WHEREAS, the owner of certain property located within Williamson County, Texas, has petitioned the City of Leander, Texas, (herein the "City"), a home-rule City, for annexation of said property, more particularly described herein (the "subject property"), into the City limits;

WHEREAS, the subject property is contiguous and adjacent to the corporate limits of the City and the owners have made application for annexation;

WHEREAS, after review and consideration of such petition for annexation, the City Council finds that the property is exempt from the City's annexation plan pursuant to § 43.052 (h)(2) of the *Local Government Code*; and,

WHEREAS, the petitioner has agreed and consented to the annexation of the subject property by the City and further agreed to be bound by all acts, ordinances, and all other legal action now in force and effect within the corporate limits of the City and all those which may be hereafter adopted;

NOW, THEREFORE, BE IT RESOLVED 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. Proceedings. The petition for annexation of the following property, including the abutting streets, roadways, and rights of way, and the draft services plan shown in Exhibit "B", submitted by Petitioner, are hereby accepted:

> All that certain tract or parcel of land, located in Williamson County, Texas, being 1.26 acres, more or less, out of the E.D. Harmon Survey, Abstract No. 6, recorded under Document No. 2003006077 of the Official Public Records, Williamson County, Texas and being more particularly described and shown in Exhibit "A" attached hereto and incorporated herein for all purposes.

Two public hearings are set for the dates of November 1, 2012 and November 15, 2012. Notice of such hearings shall be posted and the hearings shall be open to the public to accept public comment on the annexation request.

Section 3. **Severability.** Should any section or part of this Resolution be held unconstitutional, illegal, or invalid, or the application to any person or circumstance thereof ineffective or inapplicable, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portion or portions thereof; but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this Resolution are declared to be severable.

Section 4. **Open Meetings.** It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, *Chapt. 551, Tex. Gov't. Code.*

PASSED AND APPROVED this the 20th day of September, 2012.

ATTEST:

Debbie Haile

Debbie Haile, City Secretary

THE CITY OF LEANDER, TEXAS

Christopher Fielder, Mayor

CITY OF LEANDER
ESTABLISHED 1853 INCORPORATED 1874
STATE OF TEXAS

STATE OF TEXAS §
§
COUNTY OF WILLIAMSON §

REQUEST & PETITION TO THE CITY COUNCIL OF THE CITY OF LEANDER FOR ANNEXATION OF PROPERTY

WHEREAS, the undersigned is the owner of a certain tract of property located within Williamson County, Texas, such property more particularly described hereinafter by true and correct legal description (referred to herein as the "subject property");

WHEREAS, the undersigned has sought the annexation of the subject property by the City of Leander, Texas, (hereinafter sometimes referred to as "City"), in order to obtain the benefits of City services to the subject property by the City;

WHEREAS, the subject property is contiguous and adjacent to the corporate limits of the City;

WHEREAS, the City, pursuant to *§43.021, Tex. Loc. Gov't. Code* and the request of the property owner, is authorized to annex the subject property; and,

WHEREAS, the undersigned agrees and consents to the annexation of the subject property by the City and further agrees to be bound by all acts, ordinances, and all other legal action now in force and effect within the corporate limits of the City and all those which may be hereafter adopted.

NOW THEREFORE, the undersigned by this Request and Petition:

SECTION ONE: Requests the City Council of the City to commence annexation proceedings and to annex into the corporate limits of the City of Leander, Texas, of all portions of the subject property, including the abutting streets, roadways, and rights-of-way, not previously annexed into the City and further described as follows,:

> All that certain tract or parcel of land, located in Williamson County, Texas, being 1.26 acres, more or less, out of the E.D. Harmon Survey, Abstract No. 6, recorded under Document No. 2003006077 of the Official Public Records, Williamson County, Texas and being more particularly described and shown in Exhibit "A" attached hereto and incorporated herein for all purposes.

SECTION TWO: Requests that after annexation the City provide such services as are legally permissible and provided by the City, including sanitation, water and general governmental services as set forth in the municipal services plan.

SECTION THREE: Acknowledges and represents having received, read and understood the attached "draft" Service Plan, attached hereto as Exhibit "B", (proposed to be applicable to and adopted for the subject property) and that such "draft" Service Plan is wholly adequate and acceptable to the undersigned who hereby requests the City Council to proceed with the annexation

and preparation of a final Municipal Service Plan and publish notice and hold the requisite public hearings thereon, in accordance with the applicable laws of the State of Texas.

SECTION FOUR: Acknowledges that the undersigned understands and agrees that all city services to the subject property will be provided by the City on the same terms and conditions as provided to other similarly situated areas of the City and as provided in the Municipal Service Plan.

SECTION FIVE: Agrees that a copy of this Request and Petition may be filed of record in the offices of the City of Leander and in the real property records of Williamson County, Texas, and shall be notice to and binding upon all persons or entities now or hereafter having any interest in the subject property.

FILED, this 21st day of August 2012, with the City Secretary of the City of Leander, Williamson County, Texas.

Petitioner: Williamson County, Texas

By: [signature]
Name: Dan A Gattis
Title: 08-21-2012

STATE OF TEXAS §
§
COUNTY OF WILLIAMSON §

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared Dan A. Gattis, _____ of Williamson County, Texas, and Petitioner herein, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that they had authority to bind the entity and that they executed the same for the purposes therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 21st day of August 2012.

(SEAL)

[signature]
Notary Public-State of Texas

LISA DWORACZYK
Notary Public, State of Texas
My Commission Expires
September 29, 2014

Exhibit "A"

DESCRIPTION OF THE SUBJECT PROPERTY

FIELD NOTES
JOB NO. 11040–xx
DATE: July 25, 2012

1.26 ACRES

Being 1.26 acres of land situated in Williamson County, Texas, out of the E.D. Harmon Survey, Abstract No. 6, being a portion of that tract to illiamson County, Texas (Tract 2) in a Special Warranty Deed, dated January 5, 2003 and recorded under Document No. 2003006077, Official Public Records, Williamson County, Texas, described as being a portion of Lot 6, Block 3, Ridgmar Landing, a Williamson County subdivision recorded in Cabinet D, Slide 67, Plat Records, Williamson County, Texas, save and except that portion described in Warranty Deed, dated August 25, 1994, to Robert L. Haddock, et ux, and recorded in Volume 2598, Page 526, Official Records, Williamson County, Texas and being described by metes and bounds as follows:

BEGINNING at a calculated point in the west line of said Williamson County, Texas (Tract 2) tract and the east line of that tract described as 12.88 acres in a Special Warranty Deed with Vendor's Lien, dated May 27, 2011, to Beasley Tract, L.P., a Texas limited partnership, and recorded under Document No. 2011035206 of said official public records, from which a 5/8 inch iron pin found for the northwest corner of said Lot 6, Block 3, also being the northwest corner of said Williamson County, Texas (Tract 2) tract and the southwest corner of Lot 1, Block 3, also being the southwest corner of that tract described as 1.37 acres (Tract 4C) in a Warranty Deed, dated May 27, 2011, to Beasley Tract, L.P., a Texas limited partnership, and recorded under Document No. 2011035210 of said official public records bears N 05°22'30" E 341.19 feet;

THENCE: into said Williamson County, Texas (Tract 2) tract and with the east line of the herein described tract in the following two (2) courses:

1. S 25°34'13" E 283.71 feet to a calculated point,
2. S 20°24'46" E 208.96 feet to a calculated point in the north line of said Haddock Jr (Tract 2) tract and the south line of said Williamson County, Texas (Tract 2) for the southeast corner of the herein described tract;

THENCE: with the south line of said Williamson County, Texas (Tract 2) and the herein described tract in the following two (2) courses:

1. S 86°57'15" W 53.64 feet with the north line of said Haddock Jr. (Tract 2) to a calculated point for the most westerly corner of said Haddock Jr. (Tract 2), the northwest corner of Lot 3, Block 2 of said Ridgmar Landing, and the northeast corner of Lot 2, Block 2 of said Ridgmar Landing,
2. N 82°41'30" W 183.84 feet with the north line of said Lot 2, Block 2 to a calculated point for the southeast corner of said Beasley (2011035206) tract and the southwest corner of said Williamson County, Texas (Tract 2) tract and the herein described tract;

THENCE: N 05°22'30" E with the east line of said Beasley (2011035206) tract and the west line of said Williamson County, Texas (Tract 2) tract and the herein described tract, at 10.00 feet passing a 1 inch iron rod found in concrete and continuing in all 433.13 feet to the **Point of Beginning** and containing 1.26 acres of land.

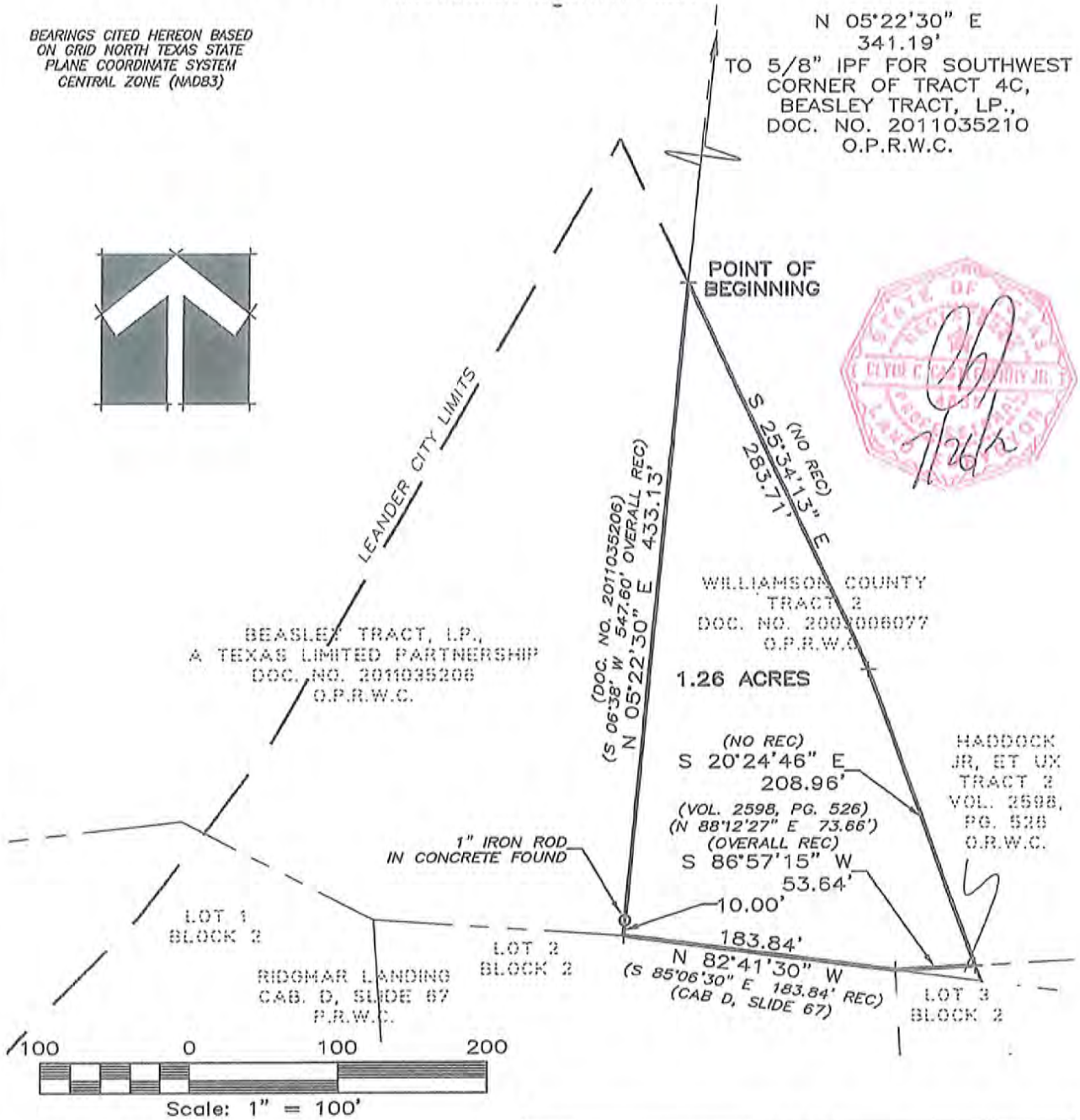
This document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

Bearings cited hereon based on Grid North Texas State Plane Coordinate System (Central Zone) NAD83.

Clyde C. Castleberry, Jr., R.P.L.S. No. 4835
Castleberry Surveying, Ltd.
3613 Williams Drive, Suite 903
Georgetown, Texas 78628

CCC/crh

SKETCH TO ACCOMPANY FIELD NOTES FOR
1.26 ACRES OUT OF THE E.D. HARMON SURVEY, ABSTRACT NO. 6
WILLIAMSON COUNTY, TEXAS



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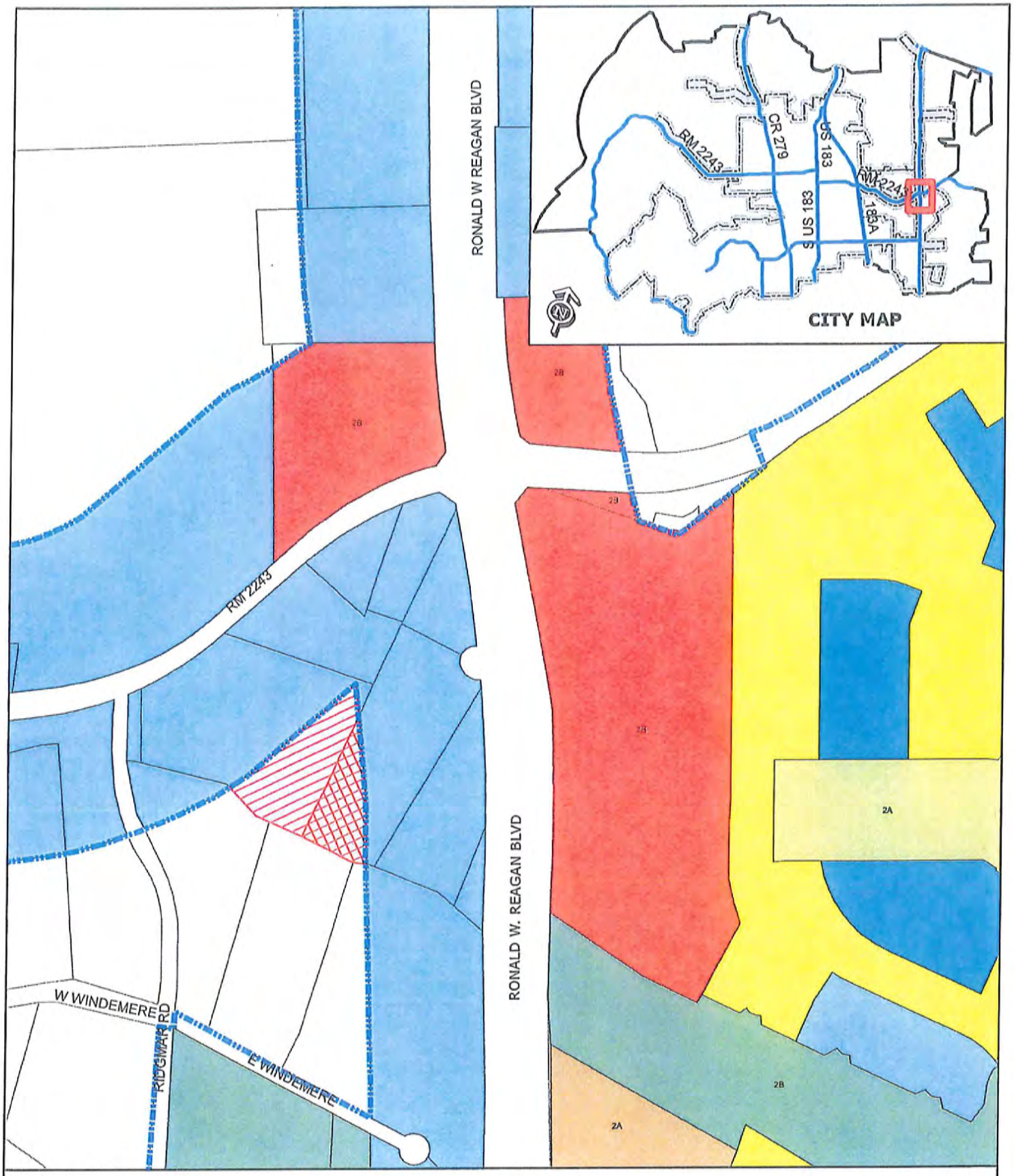
LEGEND	
+	CALCULATED POINT
P.R.W.C.	PLAT RECORDS WILLIAMSON COUNTY
O.P.R.W.C.	OFFICIAL PUBLIC RECORDS WILLIAMSON COUNTY
O.R.W.C.	OFFICIAL RECORDS WILLIAMSON COUNTY

Castleberry Surveying, Ltd.
3613 Williams Drive, Suite 903 – Georgetown, Texas 78628
(512) 930-1600/(512) 930-9389 fax
www.castleberrysurveying.com

DRAWING FILE: S:\2011_PROJECTS\11040 HARMON E. D. SVY 13 ACRE ALTA RRB & 2243\11040-XX LEANDER CITY LIMITS\ 11040-XX_LEANDER CITY LIMITS-WILCO_20120



DEVELOPMENT & ANNEXATION EXHIBIT

Location Exhibit

Southwest Corner of RR 2243 & Ronald W. Reagan Blvd

0 200
Feet

City Limits
Williamson County
Beasley Tract, LP

Exhibit "B"

MUNICIPAL SERVICES PLAN
FOR PROPERTY TO BE
ANNEXED INTO THE CITY OF LEANDER

WHEREAS, the City of Leander, Texas (the "City") intends to institute annexation proceedings for a tract of land described more fully hereinafter (referred to herein as the "subject property");

WHEREAS, *Section 43.056, Loc. Gov't. Code,* requires a service plan be adopted with the annexation ordinance;

WHEREAS, the subject property is not included in the municipal annexation plan and is exempt from the requirements thereof;

WHEREAS, infrastructure provided for herein and that existing are sufficient to service the subject property on the same terms and conditions as other similarly situated properties currently within the City limits and no capital improvements are required to offer municipal services on the same terms and conditions as other similarly situated properties within the City; and

WHEREAS, it is found that all statutory requirements have been satisfied and the City is authorized by *Chapt. 43, Loc. Gov't. Code*, to annex the subject property into the City;

NOW, THEREFORE, the City agrees to provide the following services for the subject property on the effective date of annexation:

(1) **General Municipal Services.** Pursuant to the requests of the owner and this Plan, the following services shall be provided immediately from the effective date of the annexation:

A. Police protection as follows:

Routine patrols of areas, radio response to calls for police service and all other police services now being offered to the citizens of the City.

B. Fire protection and Emergency Medical Services as follows:

Fire protection by the present personnel and equipment of the City fire fighting force and the volunteer fire fighting force with the limitations of water available. Radio response for Emergency Medical Services with the present personnel and equipment.

C. Solid waste collection services as follows:

Solid waste collection and services as now being offered to the citizens of the City.

D. Animal control as follows:

Service by present personnel, equipment and facilities or by contract with a third party, as provided within the City.

E. Maintenance of parks and playgrounds within the City.

F. Inspection services in conjunction with building permits and routine City code enforcement services by present personnel, equipment and facilities.

G. Maintenance of other City facilities, buildings and service.

H. Land use regulation as follows:

On the effective date of annexation, the zoning jurisdiction of the City shall be extended to include the annexed area, and the use of all property therein shall be grandfathered; and shall be temporarily zoned "SFR-1-B" with the intent to rezone the subject property upon request of the landowner or staff. The Planning & Zoning Commission and the City Council will consider rezoning the subject property at future times in response to requests submitted by the landowner(s) or authorized city staff.

(2) **Scheduled Municipal Services.** Due to the size and vacancy of the subject property, the plans and schedule for the development of the subject property, the following municipal services will be provided on a schedule and at increasing levels of service as provided in this Plan:

A. Water service and maintenance of water facilities as follows:

(i) Inspection of water distribution lines as provided by statutes of the State of Texas.

(ii) In accordance with the applicable rules and regulations for the provision of water service, water service will be provided to the subjects properties, or applicable portions thereof, by the utility holding a water certificate of convenience and necessity ("CCN") for the subject properties, or portions thereof as applicable, or absent a water CCN, by the utility in whose jurisdiction the subject properties, or portions thereof as applicable, are located, in accordance with all the ordinances, regulations, and policies of the City in effect from time to time for the extension of water service. If connected to the City's water utility system, the subject properties' owner shall construct the internal water lines and pay the costs of line extension and construction of such facilities necessary to provide water service to the subject properties as required in City ordinances. Upon acceptance of the water lines within the subject properties and any off-site improvements, water service will be provided by the City utility department on the same terms, conditions and requirements as are applied to all similarly situated areas and customers of the City; subject to all the ordinances, regulations and policies of the City in effect from time to time. The system will be accepted and maintained by the City in accordance with its usual acceptance and maintenance policies. New water line extensions will be installed and extended upon request under the same costs and terms as with other similarly situated customers of the City. The ordinances of the City in effect at the time a request for service is submitted shall govern the costs and request for

service. The continued use of a water well that is in use on the effective date of the annexation and is in compliance with applicable rules and regulations shall be permitted and such use may continue until the subject properties' owner requests and is able to connect to the City's water utility system.

B. Wastewater service and maintenance of wastewater service as follows:

(i) Inspection of sewer lines as provided by statutes of the State of Texas.

(ii) In accordance with the applicable rules and regulations for the provision of wastewater service, wastewater service will be provided to the subjects properties, or applicable portions thereof, by the utility holding a wastewater CCN for the subject properties, or portions thereof as applicable, or absent a wastewater CCN, by the utility in whose jurisdiction the subject properties, or portions thereof as applicable, are located, in accordance with all the ordinances, regulations, and policies of the City in effect from time to time for the extension of wastewater service. If connected to the City's wastewater utility system, the subject properties' owner shall construct the internal wastewater lines and pay the costs of line extension and construction of facilities necessary to provide wastewater service to the subject properties as required in City ordinances. Upon acceptance of the wastewater lines within the subject properties and any off-site improvements, wastewater service will be provided by the City utility department on the same terms, conditions and requirements as are applied to all similarly situated areas and customers of the City, subject to all the ordinances, regulations and policies of the City in effect from time to time. The wastewater system will be accepted and maintained by the City in accordance with its usual policies. Requests for new wastewater line extensions will be installed and extended upon request under the same costs and terms as with other similarly situated customers of the City. The ordinances in effect at the time a request for service is submitted shall govern the costs and request for service. The continued use of a septic system that is in use on the effective date of the annexation and is in compliance with all applicable rules and regulations shall be permitted and such use may continue until the subject property owner requests and is able to connect to the City's wastewater utility system.

C. Maintenance of streets and rights-of-way as appropriate as follows:

(i) Provide maintenance services on existing public streets within the subject property and other streets that are hereafter constructed and finally accepted by the City. The maintenance of the streets and roads will be limited as follows:

(A) Emergency maintenance of streets, repair of hazardous potholes, measures necessary for traffic flow, etc.; and

(B) Routine maintenance as presently performed by the City.

(ii) The City will maintain existing public streets within the subject property, and following installation and acceptance of new roadways by the City as provided by city ordinance, including any required traffic signals, traffic signs, street markings, other

traffic control devices and street lighting, the City will maintain such newly constructed public streets, roadways and rights-of-way within the boundaries of the subject property, as follows:

(A) As provided in C(i)(A)&(B) above;

(B) Reconstruction and resurfacing of streets, installation of drainage facilities, construction of curbs, gutters and other such major improvements as the need therefore is determined by the governing body under City policies;

(C) Installation and maintenance of traffic signals, traffic signs, street markings and other traffic control devices as the need therefore is established by appropriate study and traffic standards; and

(D) Installation and maintenance of street lighting in accordance with established policies of the City;

(iii) The outer boundaries of the subject property abut existing roadways. The property owner agrees that no improvements are required on such roadways to service the property.

(3) **Capital Improvements.** Construction of the following capital improvements shall be initiated after the effective date of the annexation: None. Upon development of the subject property or redevelopment, the landowner will be responsible for the development costs the same as a developer in a similarly situated area under the ordinances in effect at the time of development or redevelopment. No additional capital improvements are necessary at this time to service the subject property the same as similarly situated properties.

(4) **Term.** If not previously expired, this service plan expires at the end of ten (10) years.

(5) **Property Description.** The legal description of the subject property is as set forth in exhibits attached to the Annexation Ordinance to which this Service Plan is attached.

SCHEDULE FOR VOLUNTARY ANNEXATION – SWC RR 2243 & Ronald Reagan – Wilco – 1.26 Acres +/-

DATE	ACTION/EVENT	LEGAL AUTHORITY
September 20, 2012	**COUNCIL BY WRITTEN RESOLUTION** Directs notification to land owners; and sets two (2) Public Hearings: **November 1, 2012 and November 8, 2012**; 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.
By October 1, 2012	**NOTICE TO** property owners & utility providers	Loc. Gov't Code § 43.062(a)
October 17, 2012* Publish notice of First Public Hearing **October 24, 2012*** Publish notice of Second Public Hearings	**NEWSPAPER NOTICES** RE: FIRST AND SECOND PUBLIC HEARINGS; (If applicable Notice to Railroad) **SCHOOL DISTRICT NOTICE** (notify each school district of possible impact) POST NOTICE ON WEB SITE and MAINTAIN UNTIL COMPLETE	Not less than 10 days nor more than 20 days before 1st and 2nd public hearings. Loc. Gov't Code, §43.063 (c).
Ten days after the date the first notice of Public Hearing is published	LAST DAY FOR SUBMISSION OF WRITTEN PROTEST BY RESIDENTS (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)
Nov. 1, 2012*	**1st PUBLIC HEARING** AND PRESENT SERVICE PLAN (Not more than 40 days before the 1st reading of ordinance) *REGULAR MEETING*	Not less than 20 days nor more than 40 days before reading of ordinance. Loc. Gov't Code, §§ 43.063(a) & 43.065.
Nov. 8, 2012*	**2nd PUBLIC HEARING** AND PRESENT SERVICE PLAN (At least 20 days before 1st reading of ordinance.) *SPECIAL CALLED MEETING*	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 **December 6, 2012***	**FIRST READING** OF ORDINANCE *REGULAR MEETING*	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.
December 20, 2012 Or at a special called meeting after the First Reading	**SECOND-FINAL READING** OF ORDINANCE *REGULAR MEETING*	Not more than 90 days after 1st reading of Ordinance § 43.064.
December 31, 2012 Or as soon as documents are received from City	FILE FOR VOTING RIGHTS ACT **PRECLEARANCE**	42 U.S.C. §1973c; Loc. Gov't Code, §43.906;
Within 30 days of Second Reading	**CITY SENDS COPY OF MAP** showing boundary changes to County Voter Registrar in a format that is compatible with mapping format used by registrar	Elec. Code §42.0615
Upon receipt of DOJ Preclearance or 60 days after DOJ's receives submission	**IMPLEMENT ANNEXATION** for voting purposes (Upon preclearance from Justice Dept.) **Send certified copy of ordinance and maps** to State Comptroller and any franchise holders	42 U.S.C. §1973c.
After DOJ Preclearance	**CITY PROVIDES CERTIFIED COPY OF ORDINANCE AND MAPS TO:** 1. County Clerk 2. County Appraisal District 3. County Tax Assessor Collector 4. 911 Addressing 5. Sheriff's Office 6. City Department Heads	

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

***Newspaper notices to paper by 10 a.m. the preceding Friday**

Executive Summary

November 1, 2012

Council Agenda Subject: First public hearing on annexation of a 2.02 acre parcel, more or less, located in Williamson County, Texas, generally located to the southwest of the intersection of RM 2243 and Ronald W. Reagan Boulevard including the abutting streets, roadways, and rights-of-way.

Background: The Resolution setting the two public hearings for November 1, 2012 and **November 8, 2012** was approved by City Council on September 20, 2012. The first reading of the Ordinance is scheduled for December 6, 2012 and the second reading of the Ordinance is scheduled for December 20, 2012. This is a voluntary annexation whereas the property owner is requesting the property to be annexed into the city limits. **(Dates in bold indicate"Special Council Meetings")**

Origination: Development Services Department

Attachments: Resolution

Petition for Annexation

Exhibit "A" – Property Descriptions

Exhibit "B" – Municipal Services Plan

Schedule for Voluntary Annexation

Prepared by: Jim Bechtol, Director of Development Services

RESOLUTION NO. 12-022-00

A RESOLUTION OF THE CITY OF LEANDER, TEXAS, ACCEPTING THE PETITION FOR ANNEXATION OF A 2.02, MORE OR LESS, ACRE PARCEL, INCLUDING THE ABUTTING STREETS, ROADWAYS, AND RIGHTS-OF-WAY, LOCATED IN WILLIAMSON COUNTY, TEXAS; SETTING AN ANNEXATION SCHEDULE; PROVIDING FOR OPEN MEETINGS AND OTHER RELATED MATTERS.

WHEREAS, the owner of certain property located within Williamson County, Texas, has petitioned the City of Leander, Texas, (herein the "City"), a home-rule City, for annexation of said property, more particularly described herein (the "subject property"), into the City limits;

WHEREAS, the subject property is contiguous and adjacent to the corporate limits of the City and the owners have made application for annexation;

WHEREAS, after review and consideration of such petition for annexation, the City Council finds that the property is exempt from the City's annexation plan pursuant to § 43.052 (h)(2) of the *Local Government Code*; and,

WHEREAS, the petitioner has agreed and consented to the annexation of the subject property by the City and further agreed to be bound by all acts, ordinances, and all other legal action now in force and effect within the corporate limits of the City and all those which may be hereafter adopted;

NOW, THEREFORE, BE IT RESOLVED 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. Proceedings. The petition for annexation of the following property, including the abutting streets, roadways, and rights of way, and the draft services plan shown in Exhibit "B", submitted by Petitioner, are hereby accepted:

> All that certain tract or parcel of land, located in Williamson County, Texas, being 2.02 acres, more or less, out of the E.D. Harmon Survey, Abstract No. 6, recorded under Document No. 2011035206 of the Official Public Records, Williamson County, Texas and being more particularly described and shown in Exhibit "A" attached hereto and incorporated herein for all purposes.

Two public hearings are set for the dates of November 1, 2012 and November 15, 2012. Notice of such hearings shall be posted and the hearings shall be open to the public to accept public comment on the annexation request.

Section 3. **Severability.** Should any section or part of this Resolution be held unconstitutional, illegal, or invalid, or the application to any person or circumstance thereof ineffective or inapplicable, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portion or portions thereof; but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this Resolution are declared to be severable.

Section 4. **Open Meetings.** It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, *Chapt. 551, Tex. Gov't. Code.*

PASSED AND APPROVED this the 20th day of September, 2012.

ATTEST:

Debbie Haile

Debbie Haile, City Secretary

THE CITY OF LEANDER, TEXAS

Christopher Fielder, Mayor

CITY OF LEANDER
ESTABLISHED 1882
INCORPORATED 1918
STATE OF TEXAS

STATE OF TEXAS §
§
COUNTY OF WILLIAMSON §

REQUEST & PETITION TO THE CITY COUNCIL OF THE CITY OF LEANDER FOR ANNEXATION OF PROPERTY

WHEREAS, the undersigned is the owner of a certain tract of property located within Williamson County, Texas, such property more particularly described hereinafter by true and correct legal description (referred to herein as the "subject property");

WHEREAS, the undersigned has sought the annexation of the subject property by the City of Leander, Texas, (hereinafter sometimes referred to as "City"), in order to obtain the benefits of City services to the subject property by the City;

WHEREAS, the subject property is contiguous and adjacent to the corporate limits of the City;

WHEREAS, the City, pursuant to *§43.021, Tex. Loc. Gov't. Code* and the request of the property owner, is authorized to annex the subject property; and,

WHEREAS, the undersigned agrees and consents to the annexation of the subject property by the City and further agrees to be bound by all acts, ordinances, and all other legal action now in force and effect within the corporate limits of the City and all those which may be hereafter adopted.

NOW THEREFORE, the undersigned by this Request and Petition:

SECTION ONE: Requests the City Council of the City to commence annexation proceedings and to annex into the corporate limits of the City of Leander, Texas, of all portions of the subject property, including the abutting streets, roadways, and rights-of-way, not previously annexed into the City and further described as follows,:

> All that certain tract or parcel of land, located in Williamson County, Texas, being 2.02 acres, more or less, out of the E.D. Harmon Survey, Abstract No. 6, recorded under Document No. 2011035206 of the Official Public Records, Williamson County, Texas and being more particularly described and shown in Exhibit "A" attached hereto and incorporated herein for all purposes.

SECTION TWO: Requests that after annexation the City provide such services as are legally permissible and provided by the City, including sanitation, water and general governmental services as set forth in the municipal services plan.

SECTION THREE: Acknowledges and represents having received, read and understood the attached "draft" Service Plan, attached hereto as Exhibit "B", (proposed to be applicable to and adopted for the subject property) and that such "draft" Service Plan is wholly adequate and acceptable to the undersigned who hereby requests the City Council to proceed with the annexation

and preparation of a final Municipal Service Plan and publish notice and hold the requisite public hearings thereon, in accordance with the applicable laws of the State of Texas.

SECTION FOUR: Acknowledges that the undersigned understands and agrees that all city services to the subject property will be provided by the City on the same terms and conditions as provided to other similarly situated areas of the City and as provided in the Municipal Service Plan.

SECTION FIVE: Agrees that a copy of this Request and Petition may be filed of record in the offices of the City of Leander and in the real property records of Williamson County, Texas, and shall be notice to and binding upon all persons or entities now or hereafter having any interest in the subject property.

FILED, this 17th day of August 2012, with the City Secretary of the City of Leander, Williamson County, Texas.

Petitioner: Beasley Tract L.P.
By Beasley Tract GP, LLC

By: _____
Name: Jeremy Smithea
Title: Manager of General Partner

STATE OF TEXAS §
§
COUNTY OF WILLIAMSON §

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared Jeremy Smithea, Manager of Beasley Tract L.P., a Texas limited partnership and Petitioner herein, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that they had authority to bind the entity and that they executed the same for the purposes therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 17th day of August 2012.

(SEAL)

CHRISTINA L. YOUNG
Notary Public, State of Texas
My Commission Expires
March 03, 2013

Christina L. Young
Notary Public-State of Texas

Exhibit "A"

DESCRIPTION OF THE SUBJECT PROPERTY

FIELD NOTES
JOB NO. 11040–xx
DATE: July 25, 2012
PAGE 1 OF 3

2.02 ACRES

Being 2.02 acres of land situated in Williamson County, Texas, out of the E.D. Harmon Survey, Abstract No. 6, being a portion of that tract described as 12.88 acres in a Special Warranty Deed with Vendor's Lien, dated May 27, 2011, to Beasley Tract, L.P., a Texas limited partnership, and recorded under Document No. 2011035206, Official Public Records, Williamson County, Texas and being described by metes and bounds as follows:

BEGINNING at a calculated point in the east line of said Beasley (2011035206) tract and the west line of that tract to Williamson County, Texas (Tract 2) in a Special Warranty Deed, dated January 5, 2003 and recorded under Document No. 2003006077 of said official public records, described as being a portion of Lot 6, Block 3, Ridgmar Landing, a Williamson County subdivision recorded in Cabinet D, Slide 67, Plat Records, Williamson County, Texas, save and except that portion described in Warranty Deed, dated August 25, 1994, to Robert L. Haddock, et ux, and recorded in Volume 2598, Page 526, Official Records, Williamson County, Texas for the northeast corner of the herein described tract, from which a 5/ 8 inch iron pin found for the northwest corner of said Lot 6, Block 3, also being the northwest corner of said Williamson County, Texas (Tract 2) and the southwest corner of Lot 1, Block 3, also being the southwest corner of that tract described as 1.37 acres (Tract 4C) in a Warranty Deed, dated May 27, 2011, to Beasley Tract, L.P., a Texas limited partnership, and recorded under Document No. 2011035210 of said official public records bears N 05°22'30" E 341.19 feet;

THENCE: S 05°22'30" W with the east line of said Beasley (2011035206) tract and the herein described tract and with the west line of said Williamson County, Texas (Tract 2 - 2003006077) tract, at 423.13 feet passing a 1 inch iron rod found in concrete found and continuing in all 433.13 feet to a calculated point in the north line of Lot 2, Block 2 of said Ridgmar Landing for the southwest corner of said Williamson County, Texas (Tract 2 – 2003006077) tract and the southeast corner of said Beasley (2011035206) tract and the herein described tract;

THENCE: with the south line of said Beasley (2011035206) tract and the herein described tract in the following two (2) courses:

1. N 86°19'24" W 168.33 feet with the north line of said Lot 2, Block 2 to a calculated point for the northwest corner of said Lot 2, Block 2 and the northeast corner of Lot 1, Block 2 of said Ridgmar Landing,
2. N 63°19'24" W 127.62 feet with the north line of said Lot 1, Block 2 to a calculated point for the southwest corner of the herein described tract;

THENCE: into said Beasley (2011035206) tract and with the west line of the herein described tract in the following two (2) courses:

1. N 37°25'06" E 71.09 feet to a calculated point,
2. N 30°07'30" E 465.27 feet to a calculated point for the northwest corner of the herein described tract;

THENCE: S 25°36'18" E 106.18 feet, continuing into said Beasley (2011035206) tract and with the north line of the herein described tract to the **Point of Beginning** and containing 2.02 acre of land.

This document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

Bearings cited hereon based on Grid North Texas State Plane Coordinate System (Central Zone) NAD83.

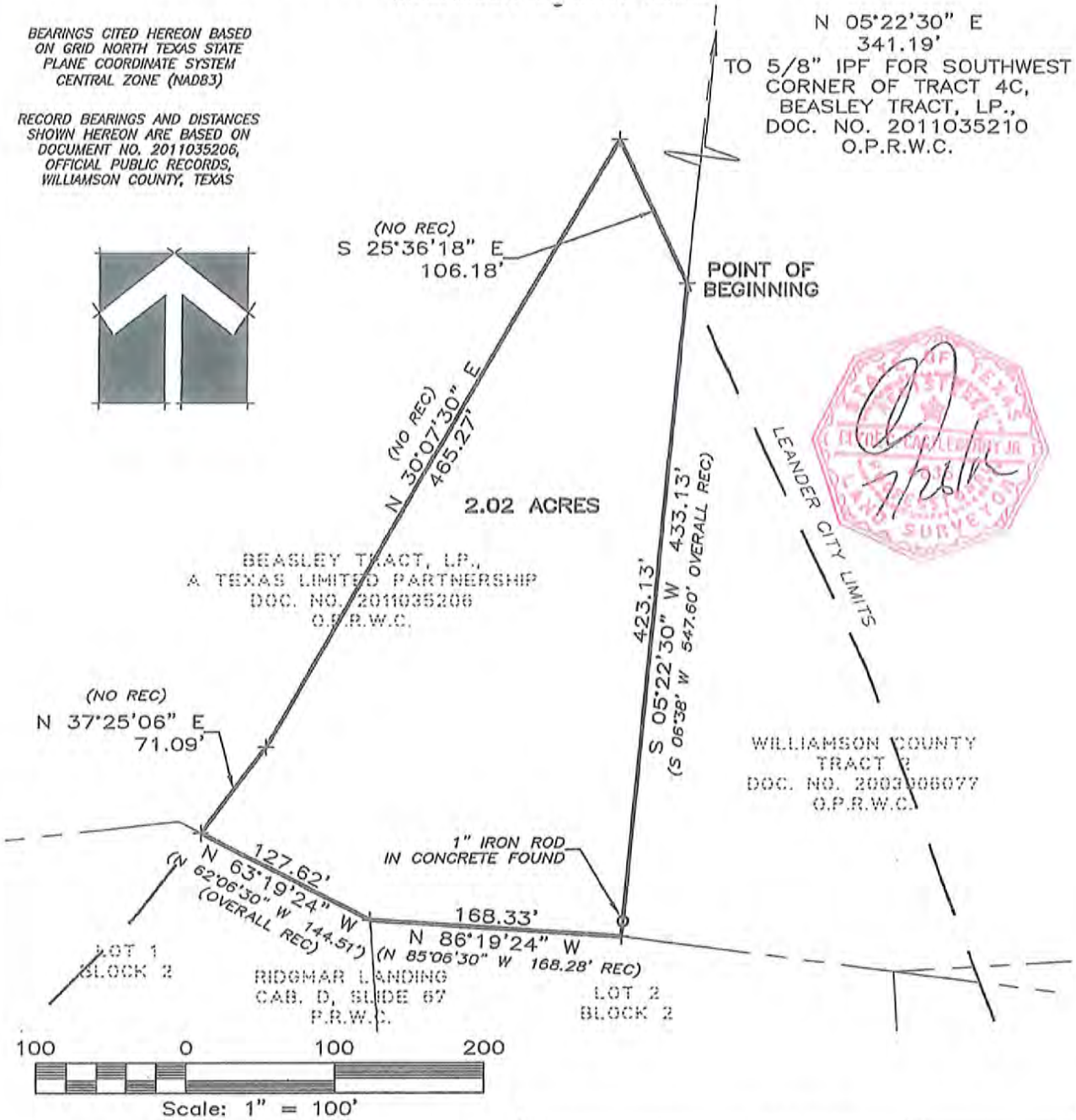
7/26/12

Clyde C. Castleberry, Jr., R.P.L.S. No. 4835
Castleberry Surveying, Ltd.
3613 Williams Drive, Suite 903
Georgetown, Texas 78628

STATE OF TEXAS REGISTERED CLYDE C. CASTLEBERRY JR. 4835 PROFESSIONAL LAND SURVEYOR

CCC/crh

SKETCH TO ACCOMPANY FIELD NOTES FOR
2.02 ACRES OUT OF THE E.D. HARMON SURVEY, ABSTRACT NO. 6
WILLIAMSON COUNTY, TEXAS

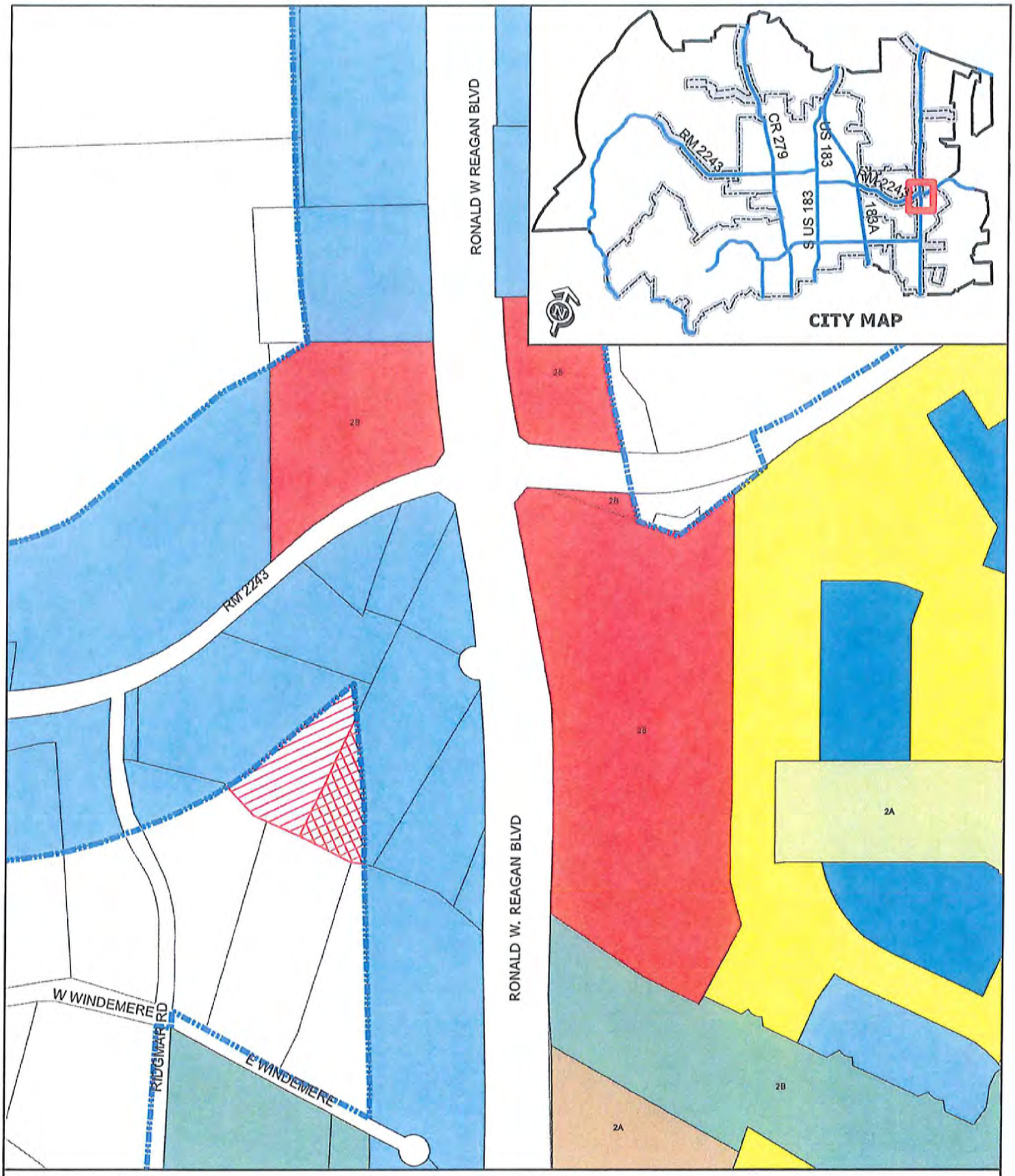


This document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

LEGEND	
+	CALCULATED POINT
P.R.W.C.	PLAT RECORDS WILLIAMSON COUNTY
O.P.R.W.C.	OFFICIAL PUBLIC RECORDS WILLIAMSON COUNTY

Castleberry Surveying, Ltd.
3613 Williams Drive, Suite 903 – Georgetown, Texas 78628
(512) 930-1600/(512) 930-9389 fax
www.castleberrysurveying.com

DRAWING FILE: S:\2011_PROJECTS\11040 HARMON E. D. SVY 13 ACRE ALTA RRB & 2243\11040-XX LEANDER CITY LIMITS\ 11040-XX_LEANDER CITY LIMITS-BEASLEY_201



DEVELOPMENT & ANNEXATION EXHIBIT

Location Exhibit

Southwest Corner of RR 2243 & Ronald W. Reagan Blvd

0 200
Feet

City Limits
Williamson County
Beasley Tract, LP

Exhibit "B"

MUNICIPAL SERVICES PLAN
FOR PROPERTY TO BE
ANNEXED INTO THE CITY OF LEANDER

WHEREAS, the City of Leander, Texas (the "City") intends to institute annexation proceedings for a tract of land described more fully hereinafter (referred to herein as the "subject property");

WHEREAS, *Section 43.056, Loc. Gov't. Code*, requires a service plan be adopted with the annexation ordinance;

WHEREAS, the subject property is not included in the municipal annexation plan and is exempt from the requirements thereof;

WHEREAS, infrastructure provided for herein and that existing are sufficient to service the subject property on the same terms and conditions as other similarly situated properties currently within the City limits and no capital improvements are required to offer municipal services on the same terms and conditions as other similarly situated properties within the City; and

WHEREAS, it is found that all statutory requirements have been satisfied and the City is authorized by *Chapt. 43, Loc. Gov't. Code*, to annex the subject property into the City;

NOW, THEREFORE, the City agrees to provide the following services for the subject property on the effective date of annexation:

(1) **General Municipal Services.** Pursuant to the requests of the owner and this Plan, the following services shall be provided immediately from the effective date of the annexation:

A. Police protection as follows:

Routine patrols of areas, radio response to calls for police service and all other police services now being offered to the citizens of the City.

B. Fire protection and Emergency Medical Services as follows:

Fire protection by the present personnel and equipment of the City fire fighting force and the volunteer fire fighting force with the limitations of water available. Radio response for Emergency Medical Services with the present personnel and equipment.

C. Solid waste collection services as follows:

Solid waste collection and services as now being offered to the citizens of the City.

D. Animal control as follows:

Service by present personnel, equipment and facilities or by contract with a third party, as provided within the City.

E. Maintenance of parks and playgrounds within the City.

F. Inspection services in conjunction with building permits and routine City code enforcement services by present personnel, equipment and facilities.

G. Maintenance of other City facilities, buildings and service.

H. Land use regulation as follows:

On the effective date of annexation, the zoning jurisdiction of the City shall be extended to include the annexed area, and the use of all property therein shall be grandfathered; and shall be temporarily zoned "SFR-1-B" with the intent to rezone the subject property upon request of the landowner or staff. The Planning & Zoning Commission and the City Council will consider rezoning the subject property at future times in response to requests submitted by the landowner(s) or authorized city staff.

(2) **Scheduled Municipal Services.** Due to the size and vacancy of the subject property, the plans and schedule for the development of the subject property, the following municipal services will be provided on a schedule and at increasing levels of service as provided in this Plan:

A. Water service and maintenance of water facilities as follows:

(i) Inspection of water distribution lines as provided by statutes of the State of Texas.

(ii) In accordance with the applicable rules and regulations for the provision of water service, water service will be provided to the subjects properties, or applicable portions thereof, by the utility holding a water certificate of convenience and necessity ("CCN") for the subject properties, or portions thereof as applicable, or absent a water CCN, by the utility in whose jurisdiction the subject properties, or portions thereof as applicable, are located, in accordance with all the ordinances, regulations, and policies of the City in effect from time to time for the extension of water service. If connected to the City's water utility system, the subject properties' owner shall construct the internal water lines and pay the costs of line extension and construction of such facilities necessary to provide water service to the subject properties as required in City ordinances. Upon acceptance of the water lines within the subject properties and any off-site improvements, water service will be provided by the City utility department on the same terms, conditions and requirements as are applied to all similarly situated areas and customers of the City; subject to all the ordinances, regulations and policies of the City in effect from time to time. The system will be accepted and maintained by the City in accordance with its usual acceptance and maintenance policies. New water line extensions will be installed and extended upon request under the same costs and terms as with other similarly situated customers of the City. The ordinances of the City in effect at the time a request for service is submitted shall govern the costs and request for

service. The continued use of a water well that is in use on the effective date of the annexation and is in compliance with applicable rules and regulations shall be permitted and such use may continue until the subject properties' owner requests and is able to connect to the City's water utility system.

B. Wastewater service and maintenance of wastewater service as follows:

(i) Inspection of sewer lines as provided by statutes of the State of Texas.

(ii) In accordance with the applicable rules and regulations for the provision of wastewater service, wastewater service will be provided to the subjects properties, or applicable portions thereof, by the utility holding a wastewater CCN for the subject properties, or portions thereof as applicable, or absent a wastewater CCN, by the utility in whose jurisdiction the subject properties, or portions thereof as applicable, are located, in accordance with all the ordinances, regulations, and policies of the City in effect from time to time for the extension of wastewater service. If connected to the City's wastewater utility system, the subject properties' owner shall construct the internal wastewater lines and pay the costs of line extension and construction of facilities necessary to provide wastewater service to the subject properties as required in City ordinances. Upon acceptance of the wastewater lines within the subject properties and any off-site improvements, wastewater service will be provided by the City utility department on the same terms, conditions and requirements as are applied to all similarly situated areas and customers of the City, subject to all the ordinances, regulations and policies of the City in effect from time to time. The wastewater system will be accepted and maintained by the City in accordance with its usual policies. Requests for new wastewater line extensions will be installed and extended upon request under the same costs and terms as with other similarly situated customers of the City. The ordinances in effect at the time a request for service is submitted shall govern the costs and request for service. The continued use of a septic system that is in use on the effective date of the annexation and is in compliance with all applicable rules and regulations shall be permitted and such use may continue until the subject property owner requests and is able to connect to the City's wastewater utility system.

C. Maintenance of streets and rights-of-way as appropriate as follows:

(i) Provide maintenance services on existing public streets within the subject property and other streets that are hereafter constructed and finally accepted by the City. The maintenance of the streets and roads will be limited as follows:

(A) Emergency maintenance of streets, repair of hazardous potholes, measures necessary for traffic flow, etc.; and

(B) Routine maintenance as presently performed by the City.

(ii) The City will maintain existing public streets within the subject property, and following installation and acceptance of new roadways by the City as provided by city ordinance, including any required traffic signals, traffic signs, street markings, other

traffic control devices and street lighting, the City will maintain such newly constructed public streets, roadways and rights-of-way within the boundaries of the subject property, as follows:

(A) As provided in C(i)(A)&(B) above;

(B) Reconstruction and resurfacing of streets, installation of drainage facilities, construction of curbs, gutters and other such major improvements as the need therefore is determined by the governing body under City policies;

(C) Installation and maintenance of traffic signals, traffic signs, street markings and other traffic control devices as the need therefore is established by appropriate study and traffic standards; and

(D) Installation and maintenance of street lighting in accordance with established policies of the City;

(iii) The outer boundaries of the subject property abut existing roadways. The property owner agrees that no improvements are required on such roadways to service the property.

(3) **Capital Improvements.** Construction of the following capital improvements shall be initiated after the effective date of the annexation: None. Upon development of the subject property or redevelopment, the landowner will be responsible for the development costs the same as a developer in a similarly situated area under the ordinances in effect at the time of development or redevelopment. No additional capital improvements are necessary at this time to service the subject property the same as similarly situated properties.

(4) **Term.** If not previously expired, this service plan expires at the end of ten (10) years.

(5) **Property Description.** The legal description of the subject property is as set forth in exhibits attached to the Annexation Ordinance to which this Service Plan is attached.

SCHEDULE FOR VOLUNTARY ANNEXATION – SWC RR 2243 & Ronald Reagan – Beasley – 2.02 Acres +/-

DATE	ACTION/EVENT	LEGAL AUTHORITY
September 20, 2012	**COUNCIL BY WRITTEN RESOLUTION** Directs notification to land owners; and sets two (2) Public Hearings: **November 1, 2012 and November 8, 2012**; 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.
By October 1, 2012	**NOTICE TO** property owners & utility providers	Loc. Gov't Code § 43.062(a)
October 17, 2012* Publish notice of First Public Hearing **October 24, 2012*** Publish notice of Second Public Hearings	**NEWSPAPER NOTICES** RE: FIRST AND SECOND PUBLIC HEARINGS; (If applicable Notice to Railroad) **SCHOOL DISTRICT NOTICE** (notify each school district of possible impact) POST NOTICE ON WEB SITE and MAINTAIN UNTIL COMPLETE	Not less than 10 days nor more than 20 days before 1st and 2nd public hearings. Loc. Gov't Code, §43.063 (c).
Ten days after the date the first notice of Public Hearing is published	LAST DAY FOR SUBMISSION OF WRITTEN PROTEST BY RESIDENTS (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)
Nov. 1, 2012*	**1st PUBLIC HEARING** AND PRESENT SERVICE PLAN (Not more than 40 days before the 1st reading of ordinance) *REGULAR MEETING*	Not less than 20 days nor more than 40 days before reading of ordinance. Loc. Gov't Code, §§ 43.063(a) & 43.065.
Nov. 8, 2012*	**2nd PUBLIC HEARING** AND PRESENT SERVICE PLAN (At least 20 days before 1st reading of ordinance.) *SPECIAL CALLED MEETING*	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 **December 6, 2012***	**FIRST READING** OF ORDINANCE *REGULAR MEETING*	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.
December 20, 2012 Or at a special called meeting after the First Reading	**SECOND-FINAL READING** OF ORDINANCE *REGULAR MEETING*	Not more than 90 days after 1st reading of Ordinance § 43.064.
December 31, 2012 Or as soon as documents are received from City	FILE FOR VOTING RIGHTS ACT **PRECLEARANCE**	42 U.S.C. §1973c; Loc. Gov't Code, §43.906;
Within 30 days of Second Reading	**CITY SENDS COPY OF MAP** showing boundary changes to County Voter Registrar in a format that is compatible with mapping format used by registrar	Elec. Code §42.0615
Upon receipt of DOJ Preclearance or 60 days after DOJ's receives submission	**IMPLEMENT ANNEXATION** for voting purposes (Upon preclearance from Justice Dept.) **Send certified copy of ordinance and maps** to State Comptroller and any franchise holders	42 U.S.C. §1973c.
After DOJ Preclearance	**CITY PROVIDES CERTIFIED COPY OF ORDINANCE AND MAPS TO:** 1. County Clerk 2. County Appraisal District 3. County Tax Assessor Collector 4. 911 Addressing 5. Sheriff's Office 6. City Department Heads	

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

***Newspaper notices to paper by 10 a.m. the preceding Friday**

AGENDA ITEM # 10

Executive Summary

November 1, 2012

Agenda Subject:	Zoning Case #12-Z-025: Hold a public hearing and consider action on the rezoning of one parcel located at 17400 Ronald Reagan Blvd; 1.62 acres more or less; Parcels #R334861. Currently, the property is zoned, GC-2-B (General Commercial). The property is proposed to be zoned GC-3-A (General Commercial) Leander, Williamson County, Texas.
Background:	This request is the first step in the rezoning process.
Origination:	Applicant: Stefan Pharis, on behalf of Vince Giaco
Financial Consideration:	None
Recommendation:	None. Applicant has requested that this application be postponed.
Attachments:	1. Postponement Letter
Prepared By:	Robin M. Griffin, AICP Planner 10/15/2012

ATTACHMENT #1

Robin Griffin

From: spharisdesign@gmail.com on behalf of stefan pharis [stefan@pharisdesign.net]
Sent: Wednesday, October 10, 2012 1:05 PM
To: Robin Griffin
Subject: Giaco tract

Robin,

We wish to postpone the hearing for the Giaco tract. We do not currently have a date set for moving forward, but will stay in touch.

Thanks.

Stefan Pharis

Stefan Pharis

Executive Summary

November 1, 2012

Agenda Subject:	Zoning Case #12-Z-024: Hold a public hearing and consider action on the rezoning of one parcel located at 1551 County Road 269; 1.00 acres more or less; Parcels #R031289. Currently, the property is zoned, Interim SFR-1-B (Single Family Rural). The property is proposed to be zoned LI-4-D (Light Industrial) Leander, Williamson County, Texas.
Background:	This request is the second step in the rezoning process.
Origination:	Applicant: Jefferson H. Wand on behalf of Barry J & Leticia Wand
Financial Consideration:	None
Recommendation:	See Planning Analysis. The Planning & Zoning Commission unanimously recommended approval of the zoning request at the October 25, 2012 meeting.
Attachments:	1. Planning Analysis 2. Current Zoning Map 3. Aerial Map 4. Letter of Intent 5. Ordinance 6. Minutes – Planning & Zoning Commission October 25, 2012
Prepared By:	Robin M. Griffin, AICP Planner 10/26/2012

PLANNING ANALYSIS

ZONING CASE 12-Z-024

GENERAL INFORMATION

Owner: Barry J & Leticia Wand

Current Zoning: Interim SFR-1-B (Single-Family Rural)

Proposed Zoning: LI-4-D (Light Industrial)

Size and Location: The property is located at 1551 CR 269 and is approximately 1.00 acre in size.

Staff Contact: Robin M. Griffin, AICP
Planner

ABUTTING ZONING AND LAND USE:

The table below lists the abutting zoning and land uses.

	ZONING	LAND USE
NORTH	Interim SFR-1-B	Established Single-Family Home (zoning application has been submitted for commercial zoning)
EAST	LI-4-D	Established Light Industrial Use (LES Construction)
SOUTH	LI-4-D	Established Light Industrial Use (LES Construction)
WEST	Interim SFR-1-B PUD/TOD	Undeveloped Property & Commercial Property

COMPOSITE ZONING ORDINANCE INTENT STATEMENTS

USE COMPONENTS:

LI – LIGHT INDUSTRIAL:

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.

SITE COMPONENTS:

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.

ARCHITECTURAL COMPONENTS:

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, LI 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:

- Provide Opportunities for coordinated, well-planned growth and development that are consistent with the Comprehensive Plan.
- Find suitable districts for industrial development so that the City may recruit additional employers and avoid locating industrial development near neighborhoods without adequate buffering.

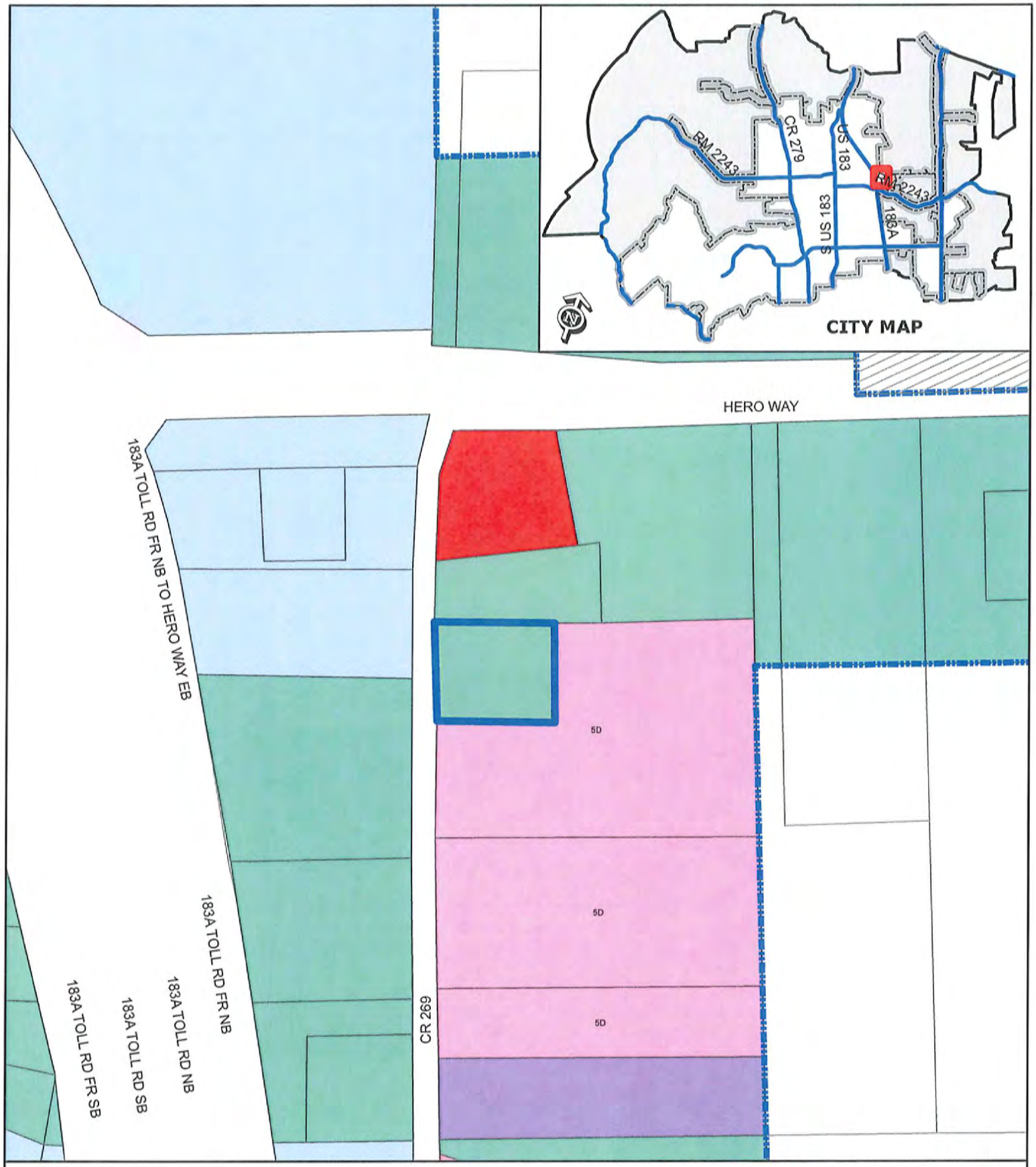
ANALYSIS:

The subject property was part of the CR 269 Involuntary Annexation that was completed October 21, 2010. Upon annexation the property received an Interim SFR-1-B zoning designation. The property is currently utilized as single-family home.

The adjacent property to the north is currently utilized as a single-family home, however, they have submitted a rezoning application requesting a commercial district. The remaining properties to the south and east are established industrial uses. This area is predominately industrial and the proposed zoning change is consistent with surrounding zoning along this corridor.

RECENT CR 269 ZONING CHANGES:

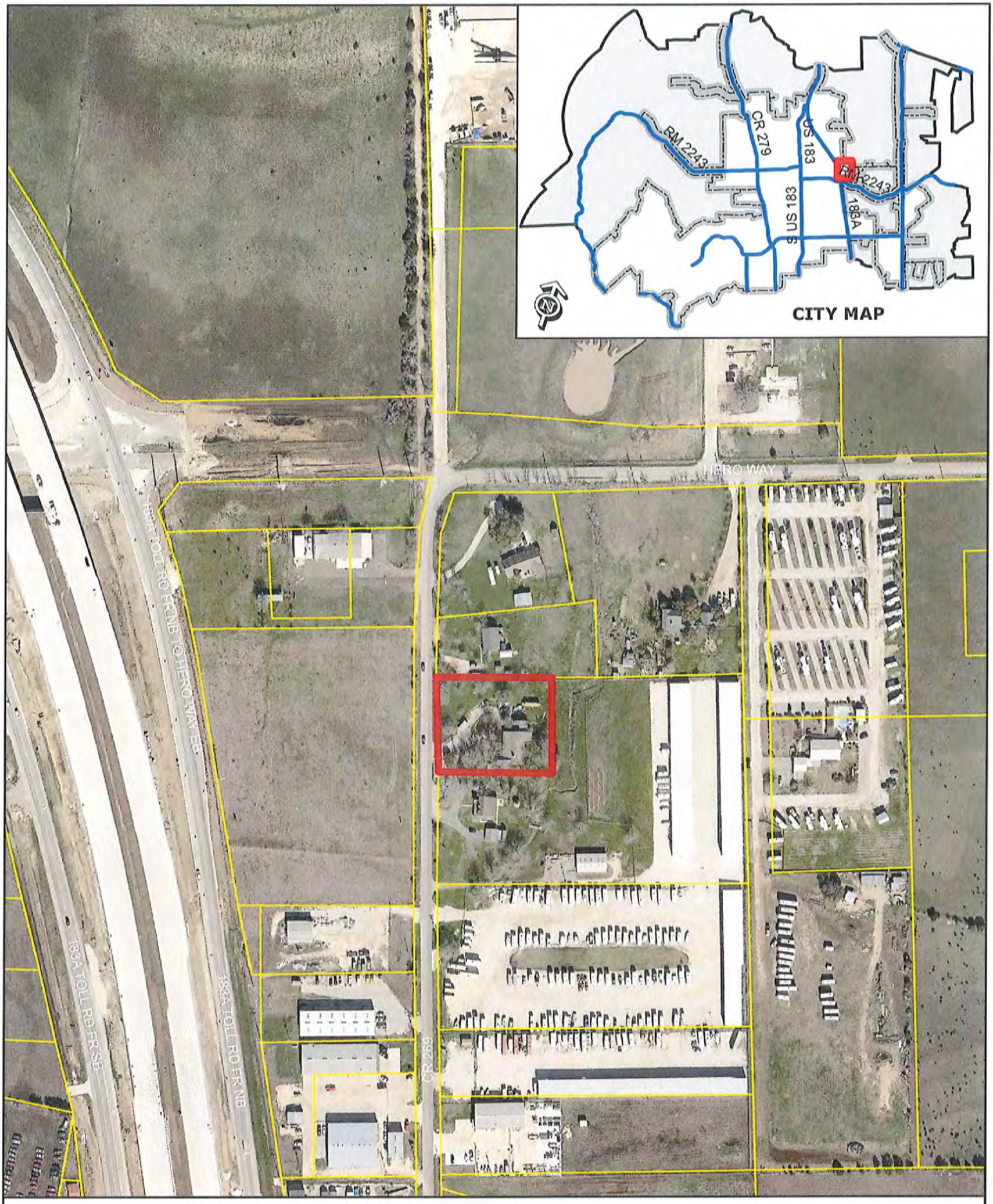
FROM	TO	ADDRESS
Interim SFR-1-B	GC-3-C	1501 CR 269
Interim SFR-1-B	LI-5-D	1565 CR 269 & 1621 CR 269
Interim SFR-1-B	LI-5-D	1725 CR 269
Interim SFR-1-B	HI-5-D	1731 CR 269



ZONING CASE 12-Z-024

Attachment #2

Current Zoning Map
1551 CR 269



ZONING CASE 12-Z-024, Attachment #3

Aerial Exhibit - Approximate Boundaries
1551 CR 269

0 200
Feet

Subject Property

ATTACHMENT #4

Sept 3, 2012

To: Whom it may concern

We are requesting a zoning change for 1551 County Road 269, Leander, TX, 78641 under the legal description of: AW0008 HARMON, E. D. SUR., ACRES 1.0.

Property physical description:
The property is gently sloping on the western side with a retaining wall approximately 2 foot high along the north east of the house. The front porch is level with the ground and the back porch is approximately 2 feet above ground, with granite steps. There are two structures on the property:: a single story, single family residence, 4 bedroom, 3 bathroom, 2 car garage, built in 1984, measuring approximately 2240 sq ft. there is also An 18' x 16' room in the attic, accessible by a staircase in the garage. There is also a tool storage shed, formerly a well house, near the southwest corner of the house.

Barry J Wand Leticia C. Wand
Barry J and Leticia C Wand..

ORDINANCE NO

ORDINANCE OF THE CITY OF LEANDER, TEXAS, AMENDING THE ZONING ORDINANCE BY REZONING ONE PARCEL OF LAND FROM INTERIM SFR-1-B (SINGLE-FAMILY RURAL) TO LI-4-D (LIGHT INDUSTRIAL); 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. Rezoned property. The Zoning Ordinance is hereby amended by changing the zoning district for one parcel located at 1551 CR 269. The property is approximately 1.0 acre more or less in size and includes parcel #R031289. This parcel is hereby zoned LI-4-D (Light Industrial); Leander, Williamson County, Texas. (See Exhibit A).

Section 4. 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 1st day of November, 2012.
FINALLY PASSED AND APPROVED on this the 15th day of November, 2012.

THE CITY OF LEANDER, TEXAS

Christopher Fielder, Mayor

ATTEST:

Debbie Haile, City Secretary

Minutes

PLANNING & ZONING COMMISSION MEETING
CITY OF LEANDER, TEXAS
Pat Bryson Municipal Hall ~ 201 North Brushy Street
Leander, Texas

Thursday ~ October 25, 2012 at 7:00 pm

Place 1 Michelle Stephenson
Place 2 Chris Tovar – Chairman
Place 3 Ronald Abruzzese
Place 4 Sid Sokol
Place 5 Richard Allen
Place 6 Betty Saenz – Vice Chairman
Place 7 Jeff Seiler

1. Call to Order
   Vice Chairman Saenz called the meeting to order at 7:21 p.m.

2. Roll Call
   All Commissioners were present except Chairman Tovar and Commissioner Allen.

3. Approval of Minutes:
   Regular Planning & Zoning Meeting: October 11, 2012
   Motion made by Commissioner Abruzzese to approve the minutes, seconded by Commissioner Sokol. Motion passed unanimously.

4. Citizen Communications - Three (3) minutes of time is allowed, per speaker
   No Citizens wished to speak.

Public Hearing

5. Zoning Case #12-Z-025: Hold a public hearing and consider action on the rezoning of one parcel located at 17400 Ronald Reagan Blvd; 1.62 acres more or less; Parcels #R334861. Currently, the property is zoned, GC-2-B (General Commercial). The property is proposed to be zoned GC-3-A (General Commercial) Leander, Williamson County, Texas. Applicant: Stefan Pharis, on behalf of Vince Giaco

Applicant Request Postponement

a) Staff Presentation
b) Applicant Presentation
c) Open Public Hearing
d) Close Public Hearing
e) Discussion
f) Consider Action

6. Zoning Case #12-Z-024: Hold a public hearing and consider action on the rezoning of one parcel located at 1551 County Road 269; 1.00 acres more or less; Parcels #R031289. Currently, the property is zoned, Interim SFR-1-B (Single Family Rural). The property is proposed to be zoned LI-4-D (Light Industrial) Leander, Williamson County, Texas. Applicant: Jefferson H. Wand on behalf of Barry J & Leticia Wand

Vice Chairman Saenz recused herself from this agenda item and Commissioner Abruzzese led the meeting.

a) Staff Presentation

Robin Griffin, Planner, described request & discussed surrounding land uses.

b) Applicant Presentation

Applicant was not present.

c) Open Public Hearing

Commissioner Abruzzese opened the public hearing
No Citizens wished to speak.

d) Close Public Hearing

Commissioner Abruzzese closed the public hearing

e) Discussion

No discussion took place

f) Consider Action

Commissioner Abruzzese motion to approve, Commissioner Seiler seconded the motion. Motion passed unanimously.

Vice Chairman Saenz came back into the room and led the meeting.

7. Subdivision Case #12-PP-010: Hold a public hearing and consider action on the Pecan Creek Preliminary Plat for 73.32 acres more or less; WCAD Parcel # R031572; generally located at 451 CR 179; Williamson County, Texas. Applicant/Agent: Randall Jones & Associates on behalf of Robert Katusak.

a) Staff Presentation

Robin Griffin, Planner, stated that staff reviewed the request and it has staff approval.

b) Applicant Presentation

Chris Lynch gave presentation on Pecan Creek Preliminary plat.

c) Open Public Hearing

Vice Chairman Saenz opened the public hearing
No Citizens wished to speak.

d) Close Public Hearing

Vice Chairman Saenz closed the public hearing
No Citizens wished to speak.

e) Discussion

Discussion took place

f) Consider Action

Commissioner Abruzzese motion to approve, Commissioner Seiler seconded the motion. Motion passed unanimously.

8. Meeting adjourned
Meeting adjourned 7:30 PM

_____
Chairman Tovar

ATTEST:
Ellen Pizalate

AGENDA ITEM # 12

Executive Summary

November 1, 2012

Council Agenda Subject: Consideration of First Amendment to Development Agreement for Nameless Valley Ranch

Background: This First Amendment to the Development Agreement between Nameless Valley Ranch and the City of Leander is necessary in order to allow several modifications to the original agreement executed between the City and Lookout Partners, L.P. and Key-Deer Partners, L.P. and its General Partner, Morningside Land and Cattle Company, LLC. The agreement provides for (1) the relocation of the proposed Fire Station site to a location more suitable for egress and ingress to the major boulevard and (2) the reduction in treatment capacity for the Water Reclamation Facility by phase three to 790,000 gallons per day. The total treatment capacity will remain as originally planned with a future phase added subject to T.C.E.Q approval. These amendments have been reviewed and approved by staff, legal and management.

Origination: Jim Bechtol, Director of Development Services

Financial Consideration: per Agreement

Recommendation: Staff recommends approval

Attachments: Development Agreements and Exhibits

Prepared by: Jim Bechtol, Director of Development Services

FIRST AMENDMENT TO
DEVELOPMENT AGREEMENT-NAMELESS VALLEY RANCH

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

This **First Amendment to Development Agreement - Nameless Valley Ranch ("First Amendment")** is made and entered into by and between the **City of Leander, Texas**, a home-rule municipal corporation, acting by and through its authorized City Manager (the "**City**"); and **Lookout Partners, L.P.**, a Texas limited partnership, and **Key-Deer Holdings, L.P.**, Texas limited partnership, each acting by their General Partner, Morningside Land & Cattle Company, LLC, a Texas limited liability company (collectively, the "**Owner**" as hereinafter defined). The City and Owner are sometimes referred to collectively as the "Parties", and individually as a "Party".

RECITALS

A. The Parties have entered into a "Development Agreement-Nameless Valley Ranch, effective May 3, 2012 (the "Development Agreement"), regarding the Property, that provides, among other things, for the acquisition, construction, and financing of certain Public Improvements.

B. All of the capitalized terms used in this First Amendment shall have the meanings ascribed to them in the Development Agreement unless otherwise defined herein.

C. The Parties desire to amend the Development Agreement on a mutually acceptable basis in order to address certain changes in facts and circumstances regarding certain infrastructure required in connection with development of the Property pursuant to the Development Agreement.

D. The Development Agreement can be amended only by written instrument approved by the City Council and signed by the Parties as provided by Section 12.10 of the Development Agreement.

E. This Amendment is entered into pursuant to the provisions of the City Charter and applicable Texas law including, without limitation, Section 212.172, Texas Local Government Code.

NOW, THEREFORE, for and in consideration of the mutual agreements, covenants, and conditions contained in this First Amendment, and other good and valuable consideration, the Parties incorporate the above and foregoing Recitals into this First Amendment as if incorporated herein verbatim, and the City and Owner agree as follows:

ARTICLE I
AMENDMENTS

Section 1.01.

(a) The Parties hereby amend the provisions of Section 5.03 of the Development Agreement relating to the location of the Fire Station Site to provide that the Fire Station Site will consist of Lot 1, Block J of Crystal Falls West – Section 1, as shown on the Preliminary Plat thereof attached to this First Amendment as Exhibit "A". Section 5.03 is hereby further amended to provide that those portions of Sky Country Blvd. and that unnamed road to be located along the northwest boundary of the Fire Station Site that actually abut the Fire Station Site shown on Exhibit "A" hereto will be constructed by Owner in connection with the phase of development of the Property next succeeding the Initial Project Phase. In lieu of completing such construction as a condition of approval of the final plat for the phase of development next succeeding the Initial Project Phase, prior to the time that the final plat for the phase of development next succeeding the Initial Project Phase is approved, Owner may deposit financial security arrangements with the City in an amount sufficient to fund such construction in a form satisfactory to the City; provided that Owner shall either deposit such financial security or complete construction of said streets in accordance with the Applicable requirements and this Agreement and obtain the City's acceptance of such streets as a condition of final plat approval.

(b) The Parties hereby amend Section 6.02(b)(1) of the Development Agreement to read as follows:

> "(b) City Wastewater Facilities:
>
> (1) Water Reclamation Plant. The Water Reclamation Plant (City Wastewater CIP #'s 7, 14 and 23) and Appurtenant Facilities (the "WRP") as described and listed in the City CIP. The WRP will be constructed in phases in amounts as permitted by the TCEQ with each phase having a total cumulative treatment capacity as follows: (i) Phase I, 0.25 million gallons per day ("MGD"); (ii) Phase II, 0.52 MGD; and (iii) Phase III not less than 0.79 MGD. Owner will construct subsequent phases to the WRP to provide a total treatment capacity up to 0.950 MGD as may be necessary to serve the Property and 500 LUEs of service to the City of Jonestown as permitted by the TCEQ. Notwithstanding any term contained herein to the contrary, Owner will design, construct, install, and obtain City acceptance of sufficient capacity in the WRP to serve the Property and 500 LUEs (hereinafter defined) of service to the City of Jonestown. Each phase of the WRP will be designed and constructed in accordance with the TCEQ 75/90 Rule and designed to deliver effluent at 5/5/2/1, or better if required by the TCEQ, to the Project Water Reclamation Facilities (as defined in Section 6.03(b), with odor controls and sufficient land within the Property for the expansion of the WRP to 2 MGD;"

(c) The Parties hereby amend the second paragraph of Section 6.04(a) of the Development Agreement to read as follows:

> "The ultimate development of the Property and provision of 500 LUEs of service to the City of Jonestown could require as much as 0.950 MGD wastewater treatment capacity. Further, the development of the "Kutscher Tract" and all other property within the basin could require as much as 2.0 MGD of wastewater treatment capacity. The WRP will be constructed by the Owner in phases as permitted by the TCEQ pursuant to Section 6.02(b)(1), to serve the Property and the 500 LUEs of service to the City of Jonestown. Expansion of the WRP to a capacity of more than an amount necessary to serve the Property and the 500 LUEs of service to the City of Jonestown may be permitted and constructed by the City, at City cost, to serve the "Kutscher Tract" and all other property within the basin."

ARTICLE II
MISCELANEOUS

Section 2.01. First Amendment Binds Successors and Runs with the Land. This First Amendment shall bind and inure to the benefit of the Parties, their successors and assigns. The terms of this First Amendment shall constitute covenants running with the Property and shall be binding on all future developers and owners of the Property. The Memorandum of Agreement, in the form attached as **Exhibit "B"**, shall be recorded in the Official Public Records of Travis County, Texas, within ninety days after the effective date hereof. Nothing in this First Amendment is intended to impose the Owner's development obligations on individual owners that purchase lots for their personal use.

Section 2.02. Counterparts. This First Amendment may be executed in multiple counterparts which shall be construed together as a single original instrument as though all Parties had signed one instrument, and, when executed, each counterpart shall be binding upon and inure to the benefit of the Parties executing the instrument whether or not all other Parties have executed same.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

EXECUTED in multiple originals and effective as of the ____ day of _____, 2012, the date approved by the City Council of the City of Leander, Texas.

City of Leander, Texas

Attest:

By:_____
Name: Debbie Haile
Title: City Secretary

By: _____
Name: Christopher Fielder
Title: Mayor

Lookout Partners, L.P.,
By: its General Partner,
Morningside Land & Cattle Company, LLC

By:_____
Name: William R. Hinckley
Title: ~~Manager~~ Operating Manager

Key-Deer Partners, L.P.
By: its General Partner,
Morningside Land & Cattle Company, LLC

By:_____
Name: William R. Hinckley
Title: ~~Manager~~ Operating Manager

EXHIBIT "A"

PRELIMINARY PLAT

Crystal Falls West – Section 1
Travis County, Texas

CRYSTAL FALLS WEST - Section 1

PRELIMINARY PLAT

IN THE CITY OF LEANDER, TRAVIS COUNTY, TEXAS

STREET INFORMATION

STREET NAME	LENGTH	ROW WIDTH	ROAD WIDTH	DESIGN SPEED
SKY COUNTRY BLVD. (West Lane)	2800 L.F.	90' (Min.)	27' F-F	40 MPH
SKY COUNTRY BLVD. (East Lane)	2800 L.F.	90' (Min.)	27' F-F	40 MPH
GOOD COMPANY DRIVE	2375 L.F.	50'	28' F-F	30 MPH
COCO KID CIRCLE	337 L.F.	50'	28' F-F	30 MPH
MAGIC PONY LOOP	1160 L.F.	50'	28' F-F	30 MPH
LAST STAND LOOP	711 L.F.	50'	28' F-F	30 MPH
COTTON TAIL CIRCLE	456 L.F.	50'	28' F-F	30 MPH
NIGHT HORSE DRIVE	1216 L.F.	50'	28' F-F	30 MPH
KICKAPOO CREEK COURT	456 L.F.	50'	28' F-F	30 MPH
WESTERN FRONTIER COURT	261 L.F.	50'	28' F-F	30 MPH
DURANGO HILLS DRIVE	320 L.F.	60'	40' F-F	30 MPH
PRIVATE DRIVE (A)	658 L.F.	30'	20' F-F	–
PRIVATE DRIVE (B)	180 L.F.	30'	20' F-F	–
PRIVATE DRIVE (C)	159 L.F.	30'	20' F-F	–
GOOD NIGHT TRAIL	2765 L.F.	60'	40' F-F	30 MPH
FLAT IRON COURT	967 L.F.	50'	28' F-F	30 MPH
SPEAKING ROCK DRIVE	423 L.F.	50'	28' F-F	30 MPH

CRYSTAL FALLS WEST SECTION 1

Zoning Designation: SFS-2A & SFE-2A

	BLOCK A	BLOCK B	BLOCK C	BLOCK D	BLOCK E	BLOCK F	BLOCK G	TOTAL LOTS	TOTAL AC.
RESIDENTIAL LOTS	20	59	35	20	3	28	0	220	101.63
NON-RESIDENTIAL LOTS	4	2	0	2	2	1	1	12	43.89
POCKET PARK	0	0	1	0	0	0	0	1	0.10

	BLOCK H	BLOCK I	BLOCK J	BLOCK K	BLOCK L	BLOCK M	BLOCK N		
RESIDENTIAL LOTS	0	0	0	0	0	0	0	0	0.0
NON-RESIDENTIAL LOTS	1	1	1	0	0	0	0	3	10.18
POCKET PARK	0	0	0	1	1	1	1	4	0.71
								220	156.56

Total Acreage = 156.56 Ac.

..... = Sidewalks

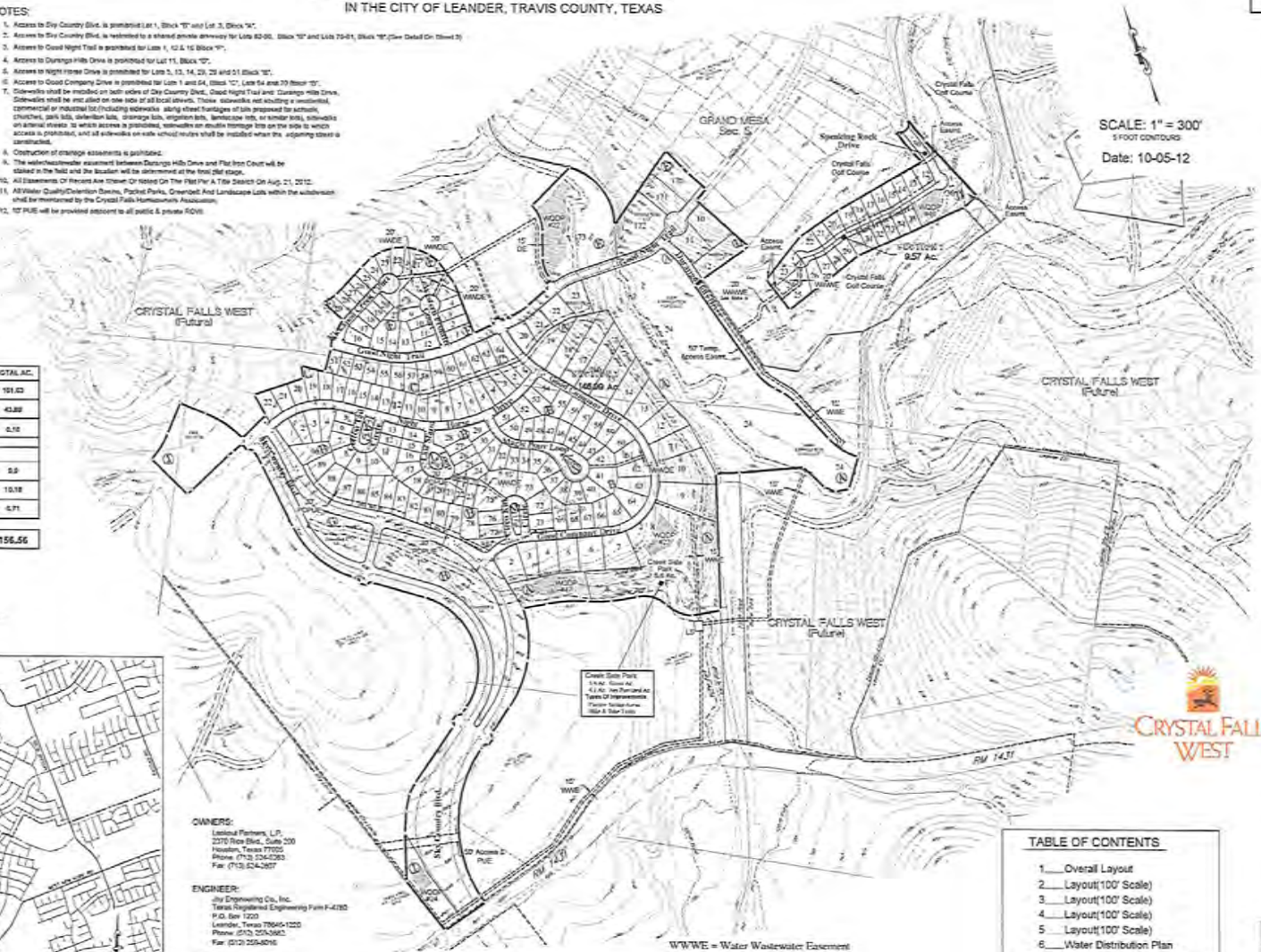
Sky Country Blvd. - 8' Sidewalks

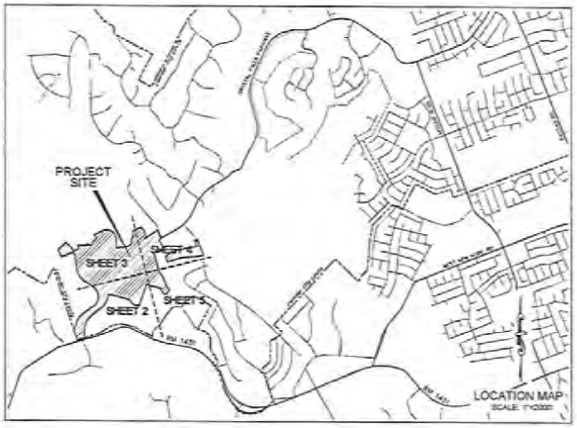
Good Night Trail & Durango Hills - 5' Sidewalks

All Remaining Streets - 4' Sidewalks

NOTES:

1. Access to Sky Country Blvd. is prohibited Lot 1, Block "B" and Lot 3, Block "A".
2. Access to Sky Country Blvd. is restricted to a shared private driveway for Lots 82-00, Block "D" and Lots 79-81, Block "B" (See Detail On Sheet 3)
3. Access to Good Night Trail is prohibited for Lots 1, 12 & 16 Block "F".
4. Access to Durango Hills Drive is prohibited for Lot 11, Block "D".
5. Access to Night Horse Drive is prohibited for Lots 5, 13, 14, 23, 25 and 51 Block "E".
6. Access to Good Company Drive is prohibited for Lots 1 and 54, Block "C", Lots 54 and 70 Block "D".
7. Sidewalks shall be installed on both sides of Sky Country Blvd., Good Night Trail and Durango Hills Drive. Sidewalks shall be installed on one side of all local streets. Those sidewalks not abutting a residential, commercial or industrial lot (including sidewalks along street frontages of lots proposed for schools, churches, park lots, detention lots, drainage lots, irrigation lots, landscape lots, or similar lots), sidewalks on arterial streets to which access is prohibited, sidewalks on double frontage lots on the side to which access is prohibited, and all sidewalks on cul-de-sac school routes shall be installed when the adjoining street is constructed.
8. Construction of drainage easements is prohibited.
9. The water/wastewater easement between Durango Hills Drive and Flat Iron Court will be staked in the field and the location will be determined at the final plat stage.
10. All Easements Of Record Are Shown Or Noted On The Plat Per A Title Search On Aug. 21, 2012.
11. All Water Quality/Detention Ponds, Pocket Parks, Greenbelt And Landscape Lots within the subdivision shall be maintained by the Crystal Falls Homeowners Association.
12. 10' PUE will be provided adjacent to all public & private ROW.





OWNERS:
Lexinal Partners, L.P.
2370 Rice Blvd., Suite 200
Houston, Texas 77005
Phone: (713) 524-2383
Fax: (713) 524-2667

ENGINEER:
Jay Engineering Co., Inc.
Texas Registered Engineering Firm F-4280
P.O. Box 1220
Leander, Texas 78646-1220
Phone: (512) 259-3882
Fax: (512) 259-8016

SURVEYOR:
G & R Surveying, LLC
1905 Quartz Drive
Austin, Texas 78728
Phone: (512) 267-7430
Fax: (512) 836-8385

DEVELOPMENT RESERVE - FUTURE USE UNDETERMINED; USES SHALL BE LIMITED TO THOSE ALLOWED BY THE ZONING DISTRICT

BUFFER ZONES - SHALL REMAIN FREE OF CONSTRUCTION, DEVELOPMENT, OR OTHER ALTERATIONS EXCEPT FOR UTILITY AND ROADWAY CROSSINGS

WWWE = Water Wastewater Easement
WRP = Water Reclamation Plant
LS = Lift Station
WQDP = Water Quality Detention Pond
WE = Water Easement
WWDE = Wastewater/Drainage Easement
PDPUE = Private Drive & Public Utility Easement

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CRYSTAL FALLS WEST SEC. 1 PRELIMINARY PLAT

OVERALL LAYOUT

THE LOOKOUT GROUP

SCALE: AS NOTED DWN: JJD DESIGN: TCK DATE: OCT 2012 JOB NO. 157-041-03

EXHIBIT "B"

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

MEMORANDUM OF FIRST AMENDMENT TO DEVELOPMENT AGREEMENT – NAMELESS VALLEY RANCH
(Crystal Falls West)

This **First Amendment to Memorandum of Development Agreement – Nameless Valley Ranch** ("Memorandum") is made effective as of the ___ day of _____, 2012, by **Lookout Partners, L.P.**, a Texas limited partnership ("Lookout"), and **Key-Deer Holdings, L.P.**, a Texas limited partnership ("Key"), (Lookout and Key collectively, "**Owner**"), each acting by its General Partner, **Morningside Land & Cattle Company, LLC**, a Texas limited liability company, and the **City of Leander, Texas** ("**City**").

1. The Owner, as the owner of the property described in **Exhibit "A"** attached hereto and incorporated herein for all purposes (the "Property"), and the City executed that "Development Agreement – Nameless Valley Ranch", dated as of May 3, 2012 (the "Agreement"), regarding the Property and its development as "**Crystal Falls West**".

2. The Owner and the City executed that "First Amendment to Development Agreement-Nameless Valley Ranch", dated as of _____, 2012 (the "First Amendment"), pursuant to which the Owner and City have amended certain obligations, requirements, agreements and/or rights under the Agreement.

3. This Memorandum is being filed in the Real Property Records of Travis County, Texas, to comply with Article 212.172, Local Government Code, as applicable, and in order to place third parties on notice of the existence of the First Amendment, and the obligations, requirements, agreements and/or rights contained therein.

4. A fully executed, original copy of the First Amendment is on file at the Office of the City Secretary of the City of Leander, Texas, 200 West Willis Street, Leander, Williamson County, Texas, or such other location to which the Office of the City Secretary may be relocated during the Term of the Agreement. All persons having an interest in the Property or otherwise having any interest in or with respect to the First Amendment may examine, or obtain a copy of, the Agreement at the Office of the City Secretary of the City of Leander.

5. The provisions set forth in the First Amendment are hereby incorporated into this Memorandum by reference and made a part hereof. In the event of conflict between the terms of this Memorandum and the terms of the First Amendment, the terms of the First Amendment shall govern.

Executed this the ___ day of _____, 2012, and effective as of _____, 2012.

OWNER:

Lookout Partners, L.P.,
by its General Partner,
Morningside Land &
Cattle Company, LLC

By:_____
Name: William R. Hinckley
Title: ~~Manager~~ Operating Manager

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

BEFORE ME the undersigned authority on this day personally appeared William R. Hinckley, Operating Manager of Morningside Land & Cattle Company, LLC, a Texas limited liability company, the General Partner of Lookout Partners, L.P., a Texas limited partnership, who acknowledged that he is fully authorized to execute the foregoing document, and that he executed such document for the purposes and consideration therein expressed and in the capacity therein stated.

_____
Notary Public – State of Texas

Key-Deer Holdings, L.P.,
by its General Partner,
Morningside Land &
Cattle Company, LLC

By:_____
Name: William R. Hinckley
Title: ~~Manager~~ Operating Manager

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

BEFORE ME the undersigned authority on this day personally appeared William R. Hinckley, Operating Manager of Morningside Land & Cattle Company, LLC, a Texas limited liability company, the General Partner of Key-Deer Holdings, L.P., a Texas limited partnership, who acknowledged that he is fully authorized to execute the foregoing document, and that he executed such document for the purposes and consideration therein expressed and in the capacity therein stated.

_____
Notary Public – State of Texas

CITY:

The City of Leander, Texas

By:_____

By:_____
Name:_____
Title: City Manager

STATE OF TEXAS §
§
COUNTY OF WILLIAMSON §

This instrument was acknowledged before me on the ____ day of _____, 2012, by _____, City Manager of the City of Leander, Texas, on behalf of the City of Leander, Texas.

_____
Notary Public – State of Texas

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

G&R SURVEYING, LLC
"Accurate by Design"

CRYSTAL FALLS WEST
CONCEPT PLAN

Metes and Bounds Description for a 2,118.6 Acre Tract of Land in the J.A. Ybarbo Survey 421, Abstract 840, the C.S. Mason Survey 204, Abstract 2551, the C. Ybarbo Survey 422, Abstract 839, the P.T. Stroud Survey, Abstract 2128, the McKinney & Williams Survey 175, Abstract 2199, the C.W. Owens Survey 71, Abstract 2289, the J.M. Frame Survey, Abstract 303, the J.H. Harris Survey, Abstract 2150, the S. Hamilton Survey, Abstract 357, the L. Carter Survey, Abstract 2209, the B.F. Davis Survey 73, Abstract 2280, the R.F. Hart Survey 56, Abstract 2682, the C.G. Settle Survey 632, Abstract 2201, the I.A. Hampton Survey, Abstract 361, the C.C. Chafin Survey 78, Abstract 2276 and the C. Ybarbo Survey 420, Abstract 838, Travis County, Texas. Being All or a Portion of the following Tracts of Land Conveyed to Lookout Partners, L.P. and Key-Deer Holdings, L.P.: a 925.6 Acre Tract of Land Recorded in Document No. 2007010035, Official Public Records, Travis County, Texas, a 1,013.55 Acre Tract of Land Recorded in Document No. 2000162836, Official Public Records, Travis County, Texas, a 135.653 Acre Tract of Land Recorded in Document No. 2000086311, Official Public Records, Travis County, Texas, a 142.311 Acre Tract of Land Recorded in Volume 13343, Page 323, Real Property Records, Travis County, Texas, a 20.12 Acre Tract of Land Recorded in Document No. 2008113260, Official Public Records, Travis County, Texas, a 186.299 Acre Tract of Land Recorded in Volume 13122, Page 1933, Real Property Records, Travis County, Texas, a 0.303 Acre Tract of Land Recorded in Document No. 2006016672, Official Public Records, Travis County, Texas, a 0.66 Acre Tract of Land Recorded in Document No. 2001002660, Official Public Records, Travis County, Texas, a 24.842 Acre Tract of Land Recorded in Document No. 2001002660, Official Public Records, Travis County, Texas, a 56.765 Acre Tract of Land Recorded in Document No. 2005086917, Official Public Records, Travis County, Texas, a 15.163 Acre Tract of Land Recorded in Document No. 2006054664, Official Public Records, Travis County, Texas, a 1,115.523 Acre Tract of Land Recorded in Volume 13085, Page 1927, Real Property Records, Travis County, Texas, a 5.85 Acre Tract of Land and a 5.69 Acre Tract of Land Recorded in Document No. 2001002662, Official Public Records, Travis County, Texas, and a 580.5211 Acre Tract of Land Recorded in Document No. 2005071849, Official Public Records, Travis County, Texas.

Beginning in the northeast right of way line of Nameless Road at the south corner of said 925.6 acre tract for the southwest corner of this tract;

Thence with the west line of said 925.6 acre tract the following sixty-two (62) courses and distances:

1. N 56°55'14" W, a distance of 1101.67 feet;
2. N 84°44'14" W, a distance of 163.65 feet;
3. N 64°29'14" W, a distance of 297.22 feet;
4. N 45°44'14" W, a distance of 377.78 feet;
5. N 24°29'14" W, a distance of 100.56 feet;
6. N 69°21'14" W, a distance of 49.57 feet;
7. N 33°58'14" W, a distance of 654.50 feet;
8. N 33°09'14" W, a distance of 177.64 feet;
9. N 23°27'14" W, a distance of 308.88 feet;

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10. N 19°27'14" W, a distance of 133.33 feet;
11. N 15°57'14" W, a distance of 155.56 feet;
12. N 12°27'14" W, a distance of 651.67 feet;
13. N 12°57'14" W, a distance of 38.33 feet;
14. N 31°59'14" W, a distance of 56.94 feet;
15. N 41°59'14" W, a distance of 56.94 feet;
16. N 51°59'14" W, a distance of 56.94 feet;
17. N 56°59'14" W, a distance of 239.72 feet;
18. N 52°57'14" W, a distance of 74.17 feet;
19. N 43°57'14" W, a distance of 93.06 feet;
20. N 37°14'14" W, a distance of 101.42 feet;
21. N 23°57'14" W, a distance of 55.56 feet;
22. N 14°57'14" W, a distance of 130.56 feet;
23. N 08°57'14" W, a distance of 156.34 feet;
24. with a curve to the left having a radius of 1145.00 feet, an arc length of 403.68 feet, and a chord length of 401.59 feet bearing N 19°03'14" W;
25. N 29°09'14" W, a distance of 88.54 feet;
26. with a curve to the left having a radius of 573.00 feet, an arc length of 112.23 feet, and a chord length of 112.05 feet bearing N 34°45'14" W;
27. N 42°40'46" E, a distance of 189.48 feet;
28. N 05°59'14" W, a distance of 339.73 feet;
29. N 61°52'14" W, a distance of 100.13 feet;
30. N 28°08'46" E, a distance of 1650.02 feet;
31. N 27°47'46" E, a distance of 629.83 feet;
32. N 27°58'46" E, a distance of 724.89 feet;
33. S 62°05'14" E, a distance of 827.61 feet;
34. N 15°25'14" W, a distance of 55.80 feet;
35. N 23°00'14" W, a distance of 71.97 feet;
36. N 13°10'46" E, a distance of 93.91 feet;
37. N 44°32'46" E, a distance of 178.03 feet;
38. N 31°33'46" E, a distance of 126.19 feet;
39. N 03°53'46" E, a distance of 165.87 feet;
40. N 25°27'14" W, a distance of 243.08 feet;
41. N 45°10'14" W, a distance of 344.70 feet;
42. N 19°44'46" E, a distance of 56.75 feet;
43. N 38°00'46" E, a distance of 122.78 feet;
44. N 24°37'46" E, a distance of 203.93 feet;
45. N 19°28'14" W, a distance of 397.57 feet;
46. N 18°39'14" W, a distance of 136.15 feet;
47. N 04°42'46" E, a distance of 123.84 feet;
48. N 04°42'46" E, a distance of 59.25 feet;
49. N 42°21'46" E, a distance of 362.98 feet;
50. N 21°06'46" E, a distance of 843.99 feet;
51. N 24°48'46" E, a distance of 153.09 feet;
52. N 26°35'46" E, a distance of 114.81 feet;
53. N 01°47'14" W, a distance of 332.87 feet;
54. N 08°17'14" W, a distance of 147.88 feet;

55. N 18°04'46" E, a distance of 167.47 feet;
56. N 26°38'46" E, a distance of 192.37 feet;
57. N 31°16'46" E, a distance of 104.63 feet;
58. N 63°03'46" E, a distance of 224.13 feet;
59. N 83°16'46" E, a distance of 127.11 feet;
60. N 79°23'46" E, a distance of 199.22 feet;
61. S 70°27'14" E, a distance of 177.24 feet;
62. N 65°03'46" E, a distance of 121.02 feet to the west line of said 1,013.55 acre tract;

Thence with the west line of said 1,013.55 acre tract the following two (2) courses and distances:
1. N 21°46'06" E, a distance of 248.82 feet;
2. N 01°42'17" E, a distance of 249.55 feet to the northwest corner of this tract;

Thence through said 1,013.55 acre tract the following forty-three (43) courses and distances:
1. N 61°47'23" E, a distance of 89.78 feet;
2. S 05°39'08" E, a distance of 2.37 feet;
3. S 20°44'20" E, a distance of 36.03 feet;
4. S 32°03'11" E, a distance of 156.11 feet;
5. S 42°42'15" E, a distance of 229.54 feet;
6. S 34°55'32" E, a distance of 36.10 feet;
7. S 43°12'16" E, a distance of 53.80 feet;
8. S 27°51'11" E, a distance of 26.85 feet;
9. S 11°49'53" E, a distance of 32.56 feet;
10. S 28°25'20" E, a distance of 83.21 feet;
11. S 18°53'25" E, a distance of 46.18 feet;
12. S 08°11'29" E, a distance of 82.61 feet;
13. S 02°33'35" W, a distance of 179.91 feet;
14. S 15°06'38" E, a distance of 143.97 feet;
15. S 28°30'47" E, a distance of 130.55 feet;
16. S 50°49'55" E, a distance of 104.90 feet;
17. S 65°18'21" E, a distance of 78.76 feet;
18. S 89°39'14" E, a distance of 223.35 feet;
19. S 43°18'24" E, a distance of 144.30 feet;
20. N 71°18'27" E, a distance of 178.65 feet;
21. S 73°31'47" E, a distance of 199.07 feet;
22. N 77°56'32" E, a distance of 241.18 feet;
23. with a curve to the right having a radius of 204.42 feet, an arc length of 339.42 feet, and a chord length of 301.76 feet bearing S 53°58'21" E;
24. S 10°03'22" E a distance of 199.25 feet;
25. with a curve to the left having a radius of 134.88 feet, an arc length of 300.75 feet, and a chord length of 242.20 feet bearing N 89°32'15" E,;
26. with a curve to the right having a radius of 206.10 feet, an arc length of 531.80 feet, and a chord length of 396.07 feet bearing S 84°27'30" E;
27. with a curve to the left with a radius of 261.59 feet, an arc length of 266.45 feet, and a chord length of 255.08 feet bearing S 34°19'47" E;
28. with a curve to the right with a radius of 697.75 feet, an arc length of 284.15 feet, and a chord length of 282.19 feet bearing S 50°25'00" E;

29. with a curve to the left having a radius of 1032.63 feet, an arc length of 798.23 feet, and a chord length of 778.51 feet bearing S 58°07'28" E;
30. with a curve to the right having a radius of 73.07 feet, an arc length of 95.00 feet, and a chord length of 88.45 feet bearing S 42°27'15" E;
31. with a curve to the left having a radius of 1368.45 feet, an arc length of 456.47 feet, and a chord length of 454.36 feet bearing S 16°12'14" E;
32. with a curve to the left having a radius of 102.57 feet, an arc length of 98.77 feet, and a chord length of 95.00 feet bearing S 49°18'55" E;
33. S 80°29'32" E, a distance of 201.66 feet;
34. with a curve to the left having a radius of 172.72 feet, an arc length of 157.38 feet, and a chord length of 151.99 feet bearing N 69°55'50" E;
35. with a curve to the right having a radius of 71.76 feet, an arc length of 135.23', and a chord length of 116.09 feet bearing S 83°16'34" E;
36. S 22°42'23" E, a distance of 250.66 feet;
37. with a curve to the left having a radius of 1055.22 feet, an arc length of 399.59 feet, and a chord length of 397.21 feet bearing S 38°27'34" E;
38. S 46°49'03" E, a distance of 189.95 feet;
39. S 46°49'29" E, a distance of 333.37 feet;
40. with a curve to the right having a radius of 44.96 feet, an arc length of 53.90 feet, and a chord length of 50.73 feet bearing S 08°41'29" E;
41. with a curve to the left having a radius of 176.18 feet, an arc length of 291.28', and a chord length of 259.22 feet bearing S 23°10'51" E;
42. S 82°08'27" E, a distance of 302.68 feet;
43. with a curve to the left having a radius of 1812.74 feet, an arc length of 436.86 feet, and a chord length of 435.80 feet bearing S 87°40'55" E to the east line of said 1,013.55 acre tract;

Thence with the east line of said 1,013.55 acre tract the following ten (10) courses and distances:

1. S 66°20'32" E, a distance of 151.30 feet;
2. S 46°52'43" E, a distance of 82.52 feet;
3. S 27°43'28" E, a distance of 88.97 feet;
4. S 13°35'49" W, a distance of 195.97 feet;
5. S 36°59'59" W, a distance of 135.93 feet;
6. S 85°17'08" W, a distance of 115.45 feet;
7. S 62°55'14" W, a distance of 91.15 feet;
8. S 22°26'13" W, a distance of 67.46 feet;
9. S 38°56'53" W, a distance of 37.30 feet;
10. S 15°38'55" W, a distance of 281.01 feet to the west line of said 186.299 acre tract;

Thence through said 186.299 acre tract the following sixteen (16) courses and distances:

1. S 00°04'46" W, a distance of 769.00 feet;
2. with a curve to the left having a radius of 130.45 feet, an arc length of 244.30 feet, and a chord length of 210.13 feet bearing S 48°31'04" E;
3. N 57°13'51" E, a distance of 157.46 feet;
4. with a curve to the right having a radius of 414.96 feet, an arc length of 170.01 feet, and a chord length of 168.82 feet bearing N 71°04'32" E;
5. with a curve to the right having a radius of 60.09 feet, an arc length of 51.95 feet, and a

chord length of 50.35 feet bearing S 80°33'37" E;

6. with a curve to the right having a radius of 153.14 feet, an arc length of 146.77 feet, and a chord length of 141.22 feet bearing S 09°34'37" E;
7. S 17°39'41" W, a distance of 220.88 feet;
8. with a curve to the left having a radius of 272.94 feet, an arc length of 382.40 feet, and a chord length of 351.88 feet bearing S 24°14'30" E;
9. S 57°26'00" E, a distance of 240.67 feet;
10. with a curve to the right having a radius of 357.70 feet, an arc length of 469.97 feet, and a chord length of 436.89 feet bearing S 17°36'51" E;
11. N 54°28'24" E, a distance of 536.82 feet;
12. S 23°55'28" E, a distance of 142.30 feet;
13. with a curve to the left having a radius of 525.00 feet, an arc length of 44.27 feet, and a chord length of 44.26 feet bearing S 26°20'23" E;
14. S 28°45'20" E, a distance of 141.36 feet;
15. S 60°23'12" W, a distance of 89.38 feet;
16. S 28°55'39" E, a distance of 407.24 feet to the east line of said 186.299 acre tract;

Thence S 71°45'02" W, a distance of 38.37 feet to connect a deed overlap (S 61°24'46" W, 35.69 feet, Record Calculated);

Thence with the east line of said 186.22 acre tract the following five (5) courses and distances:

1. S 74°56'24" W, a distance of 300.06 feet;
2. S 14°54'30" E, a distance of 620.14 feet;
3. S 60°12'16" E, a distance of 217.59 feet;
4. N 57°59'15" E, a distance of 275.24 feet;
5. S 76°49'09" E, a distance of 214.37 feet to the northwest corner of said 0.303 acre tract;

Thence N 83°51'23" E with the north line of said 0.303 acre tract, a distance of 167.44 feet to the north line of said 24.842 acre tract;

Thence with the north line of said 24.842 acre tract the following three (3) courses and distances:

1. N 62°13'24" E, a distance of 209.63 feet;
2. N 69°13'24" E, a distance of 499.18 feet;
3. N 81°09'24" E, a distance of 20.00 feet to the northeast corner of said 24.842 acre tract;

Thence N 82°29'11" E to connect a deed gap, a distance of 11.96 feet to the west line of said 1,115.523 acre tract;

Thence through said 1,115.523 acre tract the following two (2) courses and distances:

1. N 75°55'44" E, a distance of 39.19 feet;
2. N 74°29'07" E, a distance of 0.74 feet to the southeast corner of a 20.5826 acre City of Leander Golf Course tract recorded in Volume 10833, Page 1355, Real Property Records, Travis County, Texas;

Thence with the east line of said 20.5826 acre tract the following ten (10) courses and distances:

1. N 23°07'03" W, a distance of 197.17 feet;
2. S 84°32'22" W, a distance of 196.19 feet;
3. S 85°21'16" W, a distance of 495.21 feet;
4. S 71°27'48" W, a distance of 518.09 feet;
5. N 17°29'15" W, a distance of 226.36 feet;
6. N 57°47'56" E, a distance of 325.00 feet;
7. N 75°26'37" E, a distance of 279.42 feet;
8. N 79°32'04" E, a distance of 567.23 feet;
9. N 22°54'52" W, a distance of 78.50 feet;
10. with a curve to the right having a radius of 1418.73 feet, an arc length of 156.77 feet, and a chord length of 156.69 feet bearing N 19°49'25" W;

Thence through said 186.299 acre tract passing the east line of said 186.299 acre tract and the west line of said 1,115.523 acre tract with a curve to the left having a radius of 52.53 feet, an arc length of 135.30 feet, and a chord length of 100.88 feet bearing N 63°40'45" E;

Thence S 20°42'17" E to connect a deed gap, a distance of 3.50 feet to the west line of a 99.1236 acre City of Leander Golf Course tract recorded in Volume 10833, Page 1355, Real Property Records, Travis County, Texas;

Thence with the west line of said 99.1236 acre tract the following two (2) courses and distances:

1. with a curve to the left having a radius of 1336.22 feet, an arc length of 162.60 feet, and a chord length of 162.50 feet bearing S 19°34'01" E;
2. S 23°03'11" E, a distance of 653.79 feet to the south corner of said 99.1236 acre tract;

Thence with the east line of said 99.1236 acre tract the following fifteen (15) courses and distances:

1. N 67°51'12" E, a distance of 196.02 feet;
2. N 05°49'53" E, a distance of 1026.24 feet;
3. N 27°56'43" E, a distance of 220.00 feet;
4. N 50°16'46" E, a distance of 940.97 feet;
5. N 37°38'47" E, a distance of 587.58 feet;
6. S 82°39'58" E, a distance of 213.07 feet;
7. S 37°42'05" E, a distance of 141.54 feet;
8. S 76°43'20" E, a distance of 106.73 feet;
9. S 81°19'26" E, a distance of 85.00 feet;
10. N 82°35'14" E, a distance of 57.23 feet;
11. S 66°57'53" E, a distance of 123.24 feet;
12. N 38°25'57" E, a distance of 262.54 feet;
13. N 50°17'31" W, a distance of 726.48 feet;
14. N 14°05'39" E, a distance of 129.80 feet;
15. N 60°12'52" E, a distance of 1286.21 feet;

Thence N 52°07'52" E to connect a deed gap, a distance of 38.22 feet to the west line of a 436.9248 acre tract recorded in Document No. 2010094028, Official Public Records, Travis County, Texas;

Thence with the west line of said 436.9248 acre tract the following sixty-nine (69) courses and distances:

1. S 39°13'45" E, a distance of 664.93 feet;
2. N 48°13'56" E, a distance of 376.53 feet to the northeast corner of this tract;
3. S 47°29'03" E, a distance of 133.80 feet;
4. S 05°26'41" E, a distance of 302.29 feet;
5. S 10°02'17" E, a distance of 136.53 feet;
6. S 01°20'52" E, a distance of 238.56 feet;
7. S 51°43'27" W, a distance of 281.29 feet;
8. N 71°09'46" W, a distance of 274.57 feet;
9. N 26°37'26" W, a distance of 229.50 feet;
10. N 62°23'14" W, a distance of 73.93 feet;
11. N 78°51'44" W, a distance of 97.11 feet;
12. N 74°46'25" W, a distance of 68.75 feet;
13. N 19°04'34" W, a distance of 233.27 feet;
14. N 66°09'56" W, a distance of 92.44 feet;
15. S 28°48'15" W, a distance of 97.91 feet;
16. S 55°03'26" W, a distance of 385.41 feet;
17. S 35°16'39" E, a distance of 338.29 feet;
18. S 32°27'33" E, a distance of 122.34 feet;
19. S 59°11'05" E, a distance of 133.75 feet;
20. S 39°08'39" E, a distance of 241.72 feet;
21. S 53°51'05" E, a distance of 191.68 feet;
22. S 54°11'42" E, a distance of 278.31 feet;
23. S 44°20'04" E, a distance of 292.50 feet;
24. S 55°27'28" E, a distance of 205.21 feet;
25. S 01°45'41" E, a distance of 143.50 feet;
26. S 49°28'44" W, a distance of 73.14 feet;
27. S 10°02'58" E, a distance of 155.46 feet;
28. N 69°29'08" W, a distance of 243.59 feet;
29. S 61°45'49" W, a distance of 128.97 feet;
30. N 51°13'01" W, a distance of 226.66 feet;
31. S 62°06'35" W, a distance of 183.32 feet;
32. N 58°46'16" W, a distance of 231.51 feet;
33. S 40°23'49" W, a distance of 156.02 feet;
34. N 31°44'10" W, a distance of 53.51 feet;
35. N 71°29'44" W, a distance of 160.71 feet;
36. N 29°00'06" W, a distance of 174.77 feet;
37. N 54°30'52" W, a distance of 123.32 feet;
38. N 70°37'36" W, a distance of 547.57 feet;
39. N 81°47'32" W, a distance of 103.72 feet;
40. S 48°26'46" W, a distance of 187.63 feet;
41. S 26°03'04" W, a distance of 213.77 feet;
42. S 30°15'14" W, a distance of 152.81 feet;
43. S 35°12'20" W, a distance of 70.58 feet;
44. S 54°05'15" W, a distance of 117.64 feet;
45. S 13°43'58" W, a distance of 196.40 feet;

46. S 23°30'58" W, a distance of 197.56 feet;
47. S 41°39'20" W, a distance of 65.36 feet;
48. S 25°44'02" E, a distance of 199.30 feet;
49. S 84°45'44" W, a distance of 171.08 feet;
50. S 67°03'44" W, a distance of 549.62 feet;
51. S 03°14'42" W, a distance of 3.50 feet;
52. S 03°08'47" E, a distance of 278.08 feet;
53. S 40°32'21" W, a distance of 148.93 feet;
54. S 61°18'15" E, a distance of 659.29 feet;
55. N 16°25'42" E, a distance of 987.35 feet;
56. S 20°39'02" E, a distance of 122.16 feet;
57. S 13°06'05" E, a distance of 244.19 feet;
58. S 85°00'01" E, a distance of 133.58 feet;
59. N 82°44'44" E, a distance of 248.46 feet;
60. S 22°59'48" E, a distance of 138.17 feet;
61. N 89°35'30" E, a distance of 350.31 feet;
62. S 76°15'12" E, a distance of 138.24 feet;
63. S 07°09'04" E, a distance of 331.68 feet;
64. S 84°16'36" E, a distance of 449.17 feet;
65. N 87°12'09" E, a distance of 176.65 feet;
66. S 63°17'35" E, a distance of 290.88 feet;
67. S 70°42'05" E, a distance of 207.99 feet;
68. S 88°23'50" E, a distance of 315.14 feet;
69. S 78°46'13" E, a distance of 238.77 feet to the east line of said 1,115.523 acre tract;

Thence with the east line of said 1,115.523 acre tract the following twenty-two (22) courses and distances:

1. S 42°52'30" W, a distance of 587.90 feet;
2. S 43°23'26" W, a distance of 7.46 feet;
3. N 16°46'40" W, a distance of 29.44 feet;
4. N 31°33'53" W, a distance of 39.47 feet;
5. N 60°56'31" W, a distance of 46.30 feet;
6. S 53°30'39" W, a distance of 39.40 feet;
7. S 25°26'22" W, a distance of 38.64 feet;
8. S 10°36'31" W, a distance of 46.78 feet;
9. S 17°12'31" W, a distance of 128.40 feet;
10. S 42°12'18" E, a distance of 24.15 feet;
11. S 42°56'56" W, a distance of 173.94 feet;
12. S 42°54'41" W, a distance of 120.07 feet;
13. S 42°47'25" W, a distance of 120.21 feet;
14. S 42°47'15" W, a distance of 108.40 feet;
15. S 42°43'24" W, a distance of 131.67 feet;
16. S 42°43'22" W, a distance of 120.10 feet;
17. S 42°49'17" W, a distance of 148.02 feet;
18. S 42°34'46" W, a distance of 92.01 feet;
19. S 43°01'19" W, a distance of 206.75 feet;
20. S 42°49'44" W, a distance of 301.25 feet;

21. S 47°34'32" E, a distance of 410.51 feet;
22. S 42°54'27" W, a distance of 185.92 feet;

Thence through said 1,115.523 acre tract the following seven (7) courses and distances:
1. S 61°01'15" W, a distance of 340.42 feet;
2. S 00°11'45" E, a distance of 601.12 feet;
3. S 10°07'15" W, a distance of 200.02 feet;
4. S 58°28'15" W, a distance of 208.41 feet;
5. S 28°11'18" W, a distance of 250.81 feet;
6. S 55°31'45" E, a distance of 36.54 feet;
7. with a curve to the right having a radius of 237.82 feet, an arc length of 151.92 feet, and a chord length of 149.35 feet bearing S 37°09'45" E to the east line of said 1,115.523 acre tract;

Thence with the east line of said 1,115.523 acre tract the following two (2) courses and distances:
1. S 18°45'25" E, a distance of 798.51 feet;
2. with a curve to the right having a radius of 20.00 feet, an arc length of 26.10 feet, and a chord length of 24.29 feet bearing S 18°37'55" W to the new northeast right of way line of R.M. 1431 for the southeast corner of this tract;

Thence with said new northeast right of way line of R.M. 1431 the following fourteen (14) courses and distances:
1. with a curve to the left having a radius of 622.96 feet, an arc length of 159.85 feet, and a chord length of 159.41 feet bearing of S 48°38'21" W;
2. S 41°17'17" W, a distance of 147.53 feet;
3. with a curve to the right having a radius of 1200.00 feet, an arc length of 273.45 feet, and a chord length of 272.86 feet bearing S 86°31'12" W;
4. N 03°02'54" E, a distance of 50.00 feet;
5. with a curve to the right having a radius of 1150.00 feet, an arc length of 1342.41 feet, and a chord length of 1267.48 feet bearing N 53°30'39" W;
6. N 45°03'45" E, a distance of 27.67 feet;
7. N 24°32'50" W, a distance of 199.86 feet;
8. N 24°32'50" W, a distance of 190.72 feet;
9. N 24°32'50" W, a distance of 219.85 feet;
10. S 72°47'11" W, a distance of 148.40 feet;
11. with a curve to the left having a radius of 1195.92 feet, an arc length of 50.68 feet, and a chord length of 50.68 feet bearing N 36°21'28" W;
12. N 72°47'11" E, a distance of 114.50 feet;
13. with a curve to the left having a radius of 1450.00 feet, an arc length of 138.13 feet, and a chord length of 138.08 feet bearing N 41°21'58" W;
14. N 44°05'43" W, a distance of 109.72 feet to the west line of said 1,115.523 acre tract;

Thence with the west line of said 1,115.523 acre tract the following nineteen (19) courses and distances:
1. N 09°07'49" W, a distance of 22.02 feet;
2. N 15°11'10" W, a distance of 58.26 feet;
3. N 19°51'29" W, a distance of 54.61 feet;
4. N 35°47'23" W, a distance of 218.12 feet;

5. N 19°20'26" W, a distance of 69.60 feet;
6. N 12°07'20" W, a distance of 112.79 feet;
7. N 03°11'38" E, a distance of 105.70 feet;
8. N 00°30'23" W, a distance of 51.36 feet;
9. N 08°26'54" E, a distance of 66.93 feet;
10. N 15°08'46" W, a distance of 85.64 feet;
11. N 16°51'17" W, a distance of 25.03 feet;
12. N 19°40'46" W, a distance of 25.03 feet;
13. N 25°52'14" W, a distance of 25.01 feet;
14. N 43°45'39" W, a distance of 146.47 feet;
15. N 52°15'08" W, a distance of 27.21 feet;
16. N 69°47'18" W, a distance of 94.70 feet;
17. N 68°04'55" W, a distance of 196.90 feet;
18. N 28°33'43" E, a distance of 973.27 feet;
19. N 60°47'38" W, a distance of 212.89 feet to the southeast corner of said 24.842 acre tract;

Thence with the south line of said 24.842 acre tract the following two (2) courses and distances:
1. N 60°59'36" W, a distance of 133.92 feet;
2. N 62°40'36" W, a distance of 338.02 feet to the northeast corner of said 56.765 acre tract;

Thence S 54°22'19" W with the east line of said 56.765 acre tract, a distance of 251.47 feet to the northeast corner of said 15.163 acre tract;

Thence with the east and south lines of said 15.163 acre tract the following twelve (12) courses and distances:
1. S 54°16'51" W, a distance of 154.89 feet;
2. S 33°14'56" W, a distance of 92.21 feet;
3. S 32°52'51" W, a distance of 93.00 feet;
4. N 85°38'09" W, a distance of 165.80 feet;
5. S 77°19'51" W, a distance of 167.03 feet;
6. S 37°16'51" W, a distance of 384.61 feet;
7. S 30°01'51" W, a distance of 92.78 feet;
8. S 37°42'51" W, a distance of 319.03 feet;
9. S 42°44'51" W, a distance of 295.99 feet;
10. S 08°52'51" W, a distance of 174.88 feet to the north right of way line of R.M. 1431;
11. with a curve to the right having a radius of 2804.79 feet, an arc length of 221.60 feet, and a chord length of 221.54 feet bearing N 65°35'23" W;
12. N 63°19'33" W, a distance of 80.01 feet to the southwest corner of said 15.163 acre tract and the southeast corner of said 56.765 acre tract;

Thence with the south line of said 56.765 acre tract and the north right of way line of said R.M. 1431 the following eight (8) courses and distances:
1. N 63°17'40" W, a distance of 179.65 feet;
2. N 53°20'42" W, a distance of 101.33 feet;
3. N 62°38'56" W, a distance of 105.41 feet;

4. N 62°38'56" W, a distance of 48.63 feet;
5. N 78°02'14" W, a distance of 179.45 feet;
6. with a curve to the left having a radius of 686.78 feet, an arc length of 283.40 feet, and a chord length of 281.39 feet bearing N 80°19'02" W;
7. S 87°44'59" W, a distance of 60.77 feet;
8. with a curve to the left having a radius of 766.34 feet, an arc length of 119.55 feet, and a chord length of 119.43 feet bearing S 83°18'04" W to the southwest corner of said 56.765 acre tract and the southeast corner of said 20.12 acre tract;

Thence with the south line of said 20.12 acre tract and the north right of way line of said R.M. 1431 the following three (3) courses and distances:

1. with a curve to the left having a radius of 761.40 feet, an arc length of 335.75 feet, and a chord length of 333.04 feet bearing S 66°07'02" W;
2. S 53°29'37" W, a distance of 139.13 feet;
3. with a curve to the right having a radius of 982.85 feet, an arc length of 358.20 feet, and a chord length of 356.22 feet bearing S 63°58'39" W to the southwest corner of said 20.12 acre tract and the southeast corner of said 142.311 acre tract;

Thence S 74°23'08" W with the south line of said 142.311 acre tract and the north right of way line of said R.M. 1431, a distance of 636.90 feet to the southwest corner of said 142.311 acre tract;

Thence N 18°27'27" W with the west line of said 142.311 acre tract, a distance of 2672.52 feet to the west line of said 142.311 acre tract and the east line of said 135.653 acre tract;

Thence S 27°32'00" W with the east line of said 135.653 acre tract, a distance of 634.80 feet;

Thence with the south line of said 135.653 acre tract the following nine (9) courses and distances:

1. N 60°33'33" W, a distance of 426.90 feet;
2. N 60°58'17" W, a distance of 351.89 feet;
3. N 61°44'47" W, a distance of 60.85 feet;
4. N 60°37'26" W, a distance of 126.42 feet;
5. N 58°31'54" W, a distance of 75.27 feet;
6. N 56°21'21" W, a distance of 140.14 feet;
7. N 35°52'29" E, a distance of 40.41 feet;
8. N 61°34'08" W, a distance of 133.07 feet;
9. N 65°11'24" W, a distance of 48.85 feet to the southwest corner of said 135.653 acre tract and the east line of said 925.6 acre tract;

Thence with the east line of said 925.6 acre tract the following eight (8) courses and distances:

1. N 61°58'14" W, a distance of 42.67 feet;
2. S 28°53'46" W, a distance of 572.05 feet;
3. S 73°07'46" W, a distance of 83.40 feet;
4. N 74°28'14" W, a distance of 38.38 feet;
5. S 21°05'46" W, a distance of 66.61 feet;
6. S 21°05'46" W, a distance of 10.33 feet;
7. S 26°56'46" W, a distance of 2507.40 feet;
8. S 28°53'46" W, a distance of 1407.20 feet to the Point of Beginning;

Containing 2,118.6 acres of land, more or less.

Basis of Bearing: The angular relationship of the bearings stated hereon is the same as the deeds of record recited above. Bearings stated hereon are based on a deed compilation of all properties owned by Lookout Partners, L.P.and Key-Deer Holdings, L.P. in this area and rotated to fit the newly aligned right of way of R.M. 1431 per TxDOT right of way maps and deeds and shown to be based on the Texas Coordinate System, NAD 83, Central Zone.

This document was prepared under 22 TAC 663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

STATE OF TEXAS
REGISTERED
AARON SCOTT BURRELL
5689
PROFESSIONAL
LAND SURVEYOR

2-28-12

Aaron S. Burrell, R.P.L.S. No. 5689
G & R Surveying, LLC
State of Texas

G&R Surveying project no. 11211

1805 Ouida Drive, Austin, TX 78728
Phone (512)267-7430 • Fax (512)836-8385

AGENDA ITEM # 13

Executive Summary

November 1, 2012

Council Agenda Subject: Consideration of First Amendment to Facilities Agreements entered into initially by LOOKOUT PARTNERS, L.P. ("Lookout"), a Texas limited partnership, and KEY-DEER HOLDINGS, L.P. ("Key-Deer"), a Texas limited partnership (Lookout and Key-Deer collectively, "Owner"), and the city of Leander.

Background: This First Amendment to the Facilities Agreements between the owner and the City of Leander is necessary in order to clarify and provide consistency with regard to certain definitions in the original Agreement. These Facilities Agreements are provided subsequent to the creation by the Texas Commission on Environmental Quality (T.C.E.Q.), Travis County Municipal Utility Districts Nos. 19, 20 and 21 which will become party to this First Amendment.

Origination: Jim Bechtol, Director of Development Services

Financial Consideration: per Agreement

Recommendation: Staff recommends approval

Attachments: Facilities Agreements for Travis County MUD's 19, 20 and 21.

Prepared by: Jim Bechtol, Director of Development Services

FIRST AMENDMENT TO
FACILITIES AGREEMENT

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

THIS FIRST AMENDMENT TO FACILITIES AGREEMENT ("First Amendment") is made and entered into as of _____, 2012, initially by LOOKOUT PARTNERS, L.P. ("Lookout"), a Texas limited partnership, and KEY-DEER HOLDINGS, L.P. ("Key-Deer"), a Texas limited partnership (Lookout and Key-Deer collectively, "Owner"), and the CITY OF LEANDER, TEXAS ("City"), a home rule municipal corporation. Subsequent to its creation by the Texas Commission on Environmental Quality (the "TCEQ"), TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 19, a municipal utility district created and operating pursuant to Article XVI, Section 59 of the Texas Constitution and Chapters 49 and 54, Water Code (the "District"), will become a party to this First Amendment. The Owner, the City, and the District are sometimes hereinafter referred to singularly, as "Party", and collectively, as "Parties".

RECITALS

WHEREAS, the Owner and the City have entered into a "Facilities Agreement", effective July 20, 2012 (the "Facilities Agreement"), regarding certain land located within the City;

WHEREAS, all of the capitalized terms used in this First Amendment shall have the meanings ascribed to them in the Facilities Agreement unless otherwise defined herein;

WHEREAS, the Parties desire to enter into this First Amendment in order to clarify and provide consistency with regard to certain definitions contained therein; and

WHEREAS, the Facilities Agreement may be amended only with the written consent of all Parties in accordance with Section 9.10 thereof.

NOW THEREFORE, for and in consideration of the mutual agreements, covenants, and conditions hereinafter set forth, the Parties contract and agree as follows:

Section 1.01. Amendment.

(a) The definition of the term "Agreement" appearing in Article I of the Facilities Agreement is hereby amended to provide as follows:

"Agreement' shall mean this Facilities Agreement, as may be amended from time to time in accordance with its terms."

(b) The definition of the term "Development Agreement" appearing in Article I of the Facilities Agreement is hereby amended to provide as follows:

"'Development Agreement' means the Development Agreement-Nameless Valley Ranch, dated May 3, 2012, by and between City and Owner, as may be amended from time to time in accordance with its terms."

(c) The definition of the term "Benchmark Tax Rate" appearing in Article I of the Facilities Agreement, is hereby amended to provide as follows:

"'Benchmark Tax Rate' means a District annual aggregate ad valorem tax rate per $100 of assessed value of taxable property in the District (consisting of its debt service, maintenance, and contract tax rates) calculated by subtracting the City's Tax Rebate Amount for that year from $1.20."

Section 1.02. Counterpart Originals. This First Amendment may be executed in multiple counterparts, each of which shall be deemed to be an original.

[SIGNATURES ON FOLLOWING PAGES]

THE CITY OF LEANDER, TEXAS

By:_____
Name:_____
Title:_____

Date:_____

ATTEST

By:_____
Name:_____
Title:_____

Date:_____

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the ___ day of _____, 2012, by _____, _____ of the City of Leander, Texas, on behalf of said city.

_____
Notary Public, State of Texas
Printed Name:_____
My Commission Expires:_____

LOOKOUT PARTNERS, L.P.
a Texas limited partnership,

By: Morningside Land & Cattle Company, LLC,
a Texas limited liability company,
its general partner

By: _____
Name: William R. Hinckley
Title: Operating Manager

Date: October 24, 2012

STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me, on the 24th day of October, 2012, by William R. Hinckley, Operating Manager of Morningside Land & Cattle Company, LLC, a Texas limited liability company and general partner of Lookout Partners, L.P., a Texas limited partnership, on behalf of said limited partnership.

Sharee S. Robertson
Notary Public, State of Texas
Printed Name: Sharee S. Robertson
My Commission Expires: 12/15/2013

NOTARY PUBLIC STATE OF TEXAS
SHAREE S. ROBERTSON
My Commission Expires
December 15, 2013

KEY-DEER PARTNERS, L.P.
a Texas limited partnership,

By: Morningside Land & Cattle Company, LLC,
a Texas limited liability company,
its general partner

By: _____
Name: William R. Hinckley
Title: Operating Manager

Date: October 24, 2012

STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me, on the 24th day of October, 2012, by William R. Hinckley, Operating Manager of Morningside Land & Cattle Company, LLC, a Texas limited liability company and general partner of Key-Deer Partners, L.P., a Texas limited partnership, on behalf of said limited partnership.

Sharee S. Robertson
Notary Public, State of Texas
Printed Name: Sharee S. Robertson
My Commission Expires: 12/15/2013

NOTARY PUBLIC STATE OF TEXAS
SHAREE S. ROBERTSON
My Commission Expires
December 15, 2013

Pursuant to _____ hereof and following the District Creation Date, the District has executed the Agreement.

TRAVIS COUNTY MUNICIPAL UTILITY
DISTRICT NO. 19

By:_____
Name:_____
Title: President, Board of Directors

Date:_____

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

This instrument was acknowledged before me, on the ___ day of _____, 2012, by _____, President of the Board of Directors of the Travis County Municipal Utility District No. 19, on behalf of said entity.

_____
Notary Public, State of Texas
Printed Name:_____
My Commission Expires:_____

SEAL

L:\Crystal Falls MUD(s)\No. 19\1st Amendment to Facilities Agreement (10-23-12).docx

FIRST AMENDMENT TO
FACILITIES AGREEMENT

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

THIS FIRST AMENDMENT TO FACILITIES AGREEMENT ("First Amendment") is made and entered into as of _____, 2012, initially by LOOKOUT PARTNERS, L.P. ("Lookout"), a Texas limited partnership, and KEY-DEER HOLDINGS, L.P. ("Key-Deer"), a Texas limited partnership (Lookout and Key-Deer collectively, "Owner"), and the CITY OF LEANDER, TEXAS ("City"), a home rule municipal corporation. Subsequent to its creation by the Texas Commission on Environmental Quality (the "TCEQ"), TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 20, a municipal utility district created and operating pursuant to Article XVI, Section 59 of the Texas Constitution and Chapters 49 and 54, Water Code (the "District"), will become a party to this First Amendment. The Owner, the City, and the District are sometimes hereinafter referred to singularly, as "Party", and collectively, as "Parties".

RECITALS

WHEREAS, the Owner and the City have entered into a "Facilities Agreement", effective July 20, 2012 (the "Facilities Agreement"), regarding certain land located within the City;

WHEREAS, all of the capitalized terms used in this First Amendment shall have the meanings ascribed to them in the Facilities Agreement unless otherwise defined herein;

WHEREAS, the Parties desire to enter into this First Amendment in order to clarify and provide consistency with regard to certain definitions contained therein; and

WHEREAS, the Facilities Agreement may be amended only with the written consent of all Parties in accordance with Section 9.10 thereof.

NOW THEREFORE, for and in consideration of the mutual agreements, covenants, and conditions hereinafter set forth, the Parties contract and agree as follows:

Section 1.01. Amendment.

(a) The definition of the term "Agreement" appearing in Article I of the Facilities Agreement is hereby amended to provide as follows:

"Agreement' shall mean this Facilities Agreement, as may be amended from time to time in accordance with its terms."

(b) The definition of the term "Development Agreement" appearing in Article I of the Facilities Agreement is hereby amended to provide as follows:

"'Development Agreement' means the Development Agreement-Nameless Valley Ranch, dated May 3, 2012, by and between City and Owner, as may be amended from time to time in accordance with its terms."

(c) The definition of the term "Benchmark Tax Rate" appearing in Article I of the Facilities Agreement, is hereby amended to provide as follows:

"'Benchmark Tax Rate' means a District annual aggregate ad valorem tax rate per $100 of assessed value of taxable property in the District (consisting of its debt service, maintenance, and contract tax rates) calculated by subtracting the City's Tax Rebate Amount for that year from $1.20."

Section 1.02. Counterpart Originals. This First Amendment may be executed in multiple counterparts, each of which shall be deemed to be an original.

[SIGNATURES ON FOLLOWING PAGES]

THE CITY OF LEANDER, TEXAS

By:_____
Name:_____
Title:_____

Date:_____

ATTEST

By:_____
Name:_____
Title:_____

Date:_____

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the ___ day of _____, 2012, by _____, _____ of the City of Leander, Texas, on behalf of said city.

_____
Notary Public, State of Texas
Printed Name:_____
My Commission Expires:_____

LOOKOUT PARTNERS, L.P.
a Texas limited partnership,

By: Morningside Land & Cattle Company, LLC,
a Texas limited liability company,
its general partner

By: _____
Name: William R. Hinckley
Title: Operating Manager

Date: October 24, 2012

STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me, on the 24th day of October, 2012, by William R. Hinckley, Operating Manager of Morningside Land & Cattle Company, LLC, a Texas limited liability company and general partner of Lookout Partners, L.P., a Texas limited partnership, on behalf of said limited partnership.

Sharee S. Robertson
Notary Public, State of Texas
Printed Name: Sharee S. Robertson
My Commission Expires: 12/15/2013

NOTARY PUBLIC STATE OF TEXAS
SHAREE S. ROBERTSON
My Commission Expires
December 15, 2013

KEY-DEER PARTNERS, L.P.
a Texas limited partnership,

By: Morningside Land & Cattle Company, LLC,
a Texas limited liability company,
its general partner

By: _____
Name: William R. Hinckley
Title: Operating Manager

Date: October 24, 2012

STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me, on the 24th day of October, 2012, by William R. Hinckley, Operating Manager of Morningside Land & Cattle Company, LLC, a Texas limited liability company and general partner of Key-Deer Partners, L.P., a Texas limited partnership, on behalf of said limited partnership.

Sharee S. Robertson
Notary Public, State of Texas
Printed Name: Sharee S. Robertson
My Commission Expires: 12/15/2013

NOTARY PUBLIC STATE OF TEXAS
SHAREE S. ROBERTSON
My Commission Expires
December 15, 2013

Pursuant to _____ hereof and following the District Creation Date, the District has executed the Agreement.

TRAVIS COUNTY MUNICIPAL UTILITY
DISTRICT NO. 20

By:_____
Name:_____
Title: President, Board of Directors

Date:_____

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

This instrument was acknowledged before me, on the ___ day of _____, 2012, by _____, President of the Board of Directors of the Travis County Municipal Utility District No. 20, on behalf of said entity.

_____
Notary Public, State of Texas
Printed Name:_____
My Commission Expires:_____

SEAL

L:\Crystal Falls MUD(s)\No. 19\1st Amendment to Facilities Agreement (10-23-12).docx

FIRST AMENDMENT TO
FACILITIES AGREEMENT

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

THIS FIRST AMENDMENT TO FACILITIES AGREEMENT ("First Amendment") is made and entered into as of _____, 2012, initially by LOOKOUT PARTNERS, L.P. ("Lookout"), a Texas limited partnership, and KEY-DEER HOLDINGS, L.P. ("Key-Deer"), a Texas limited partnership (Lookout and Key-Deer collectively, "Owner"), and the CITY OF LEANDER, TEXAS ("City"), a home rule municipal corporation. Subsequent to its creation by the Texas Commission on Environmental Quality (the "TCEQ"), TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 21, a municipal utility district created and operating pursuant to Article XVI, Section 59 of the Texas Constitution and Chapters 49 and 54, Water Code (the "District"), will become a party to this First Amendment. The Owner, the City, and the District are sometimes hereinafter referred to singularly, as "Party", and collectively, as "Parties".

RECITALS

WHEREAS, the Owner and the City have entered into a "Facilities Agreement", effective July 20, 2012 (the "Facilities Agreement"), regarding certain land located within the City;

WHEREAS, all of the capitalized terms used in this First Amendment shall have the meanings ascribed to them in the Facilities Agreement unless otherwise defined herein;

WHEREAS, the Parties desire to enter into this First Amendment in order to clarify and provide consistency with regard to certain definitions contained therein; and

WHEREAS, the Facilities Agreement may be amended only with the written consent of all Parties in accordance with Section 9.10 thereof.

NOW THEREFORE, for and in consideration of the mutual agreements, covenants, and conditions hereinafter set forth, the Parties contract and agree as follows:

Section 1.01. Amendment.

(a) The definition of the term "Agreement" appearing in Article I of the Facilities Agreement is hereby amended to provide as follows:

"'Agreement' shall mean this Facilities Agreement, as may be amended from time to time in accordance with its terms."

(b) The definition of the term "Development Agreement" appearing in Article I of the Facilities Agreement is hereby amended to provide as follows:

"'Development Agreement' means the Development Agreement-Nameless Valley Ranch, dated May 3, 2012, by and between City and Owner, as may be amended from time to time in accordance with its terms."

(c) The definition of the term "Benchmark Tax Rate" appearing in Article I of the Facilities Agreement, is hereby amended to provide as follows:

"'Benchmark Tax Rate' means a District annual aggregate ad valorem tax rate per $100 of assessed value of taxable property in the District (consisting of its debt service, maintenance, and contract tax rates) calculated by subtracting the City's Tax Rebate Amount for that year from $1.20."

Section 1.02. Counterpart Originals. This First Amendment may be executed in multiple counterparts, each of which shall be deemed to be an original.

[SIGNATURES ON FOLLOWING PAGES]

THE CITY OF LEANDER, TEXAS

By:_____
Name:_____
Title:_____

Date:_____

ATTEST

By:_____
Name:_____
Title:_____

Date:_____

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the ___ day of _____, 2012, by _____, _____ of the City of Leander, Texas, on behalf of said city.

_____
Notary Public, State of Texas
Printed Name:_____
My Commission Expires:_____

LOOKOUT PARTNERS, L.P.
a Texas limited partnership,

By: Morningside Land & Cattle Company, LLC,
a Texas limited liability company,
its general partner

By: _____
Name: William R. Hinckley
Title: Operating Manager

Date: October 24, 2012

STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me, on the 24th day of October, 2012, by William R. Hinckley, Operating Manager of Morningside Land & Cattle Company, LLC, a Texas limited liability company and general partner of Lookout Partners, L.P., a Texas limited partnership, on behalf of said limited partnership.

Sharee S. Robertson
Notary Public, State of Texas
Printed Name: Sharee S. Robertson
My Commission Expires: 12/15/2013

NOTARY PUBLIC STATE OF TEXAS
SHAREE S. ROBERTSON
My Commission Expires
December 15, 2013

KEY-DEER PARTNERS, L.P.
a Texas limited partnership,

By: Morningside Land & Cattle Company, LLC,
a Texas limited liability company,
its general partner

By: _____
Name: William R. Hinckley
Title: Operating Manager

Date: October 24, 2012

STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me, on the 24th day of October, 2012, by William R. Hinckley, Operating Manager of Morningside Land & Cattle Company, LLC, a Texas limited liability company and general partner of Key-Deer Partners, L.P., a Texas limited partnership, on behalf of said limited partnership.

Sharee S. Robertson
Notary Public, State of Texas
Printed Name: Sharee S. Robertson
My Commission Expires: 12/15/2013

NOTARY PUBLIC STATE OF TEXAS
SHAREE S. ROBERTSON
My Commission Expires
December 15, 2013

Pursuant to _____ hereof and following the District Creation Date, the District has executed the Agreement.

TRAVIS COUNTY MUNICIPAL UTILITY
DISTRICT NO. 21

By:_____
Name:_____
Title: President, Board of Directors

Date:_____

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

This instrument was acknowledged before me, on the ___ day of _____, 2012, by _____, President of the Board of Directors of the Travis County Municipal Utility District No. 21, on behalf of said entity.

_____
Notary Public, State of Texas
Printed Name:_____
My Commission Expires:_____

SEAL

L:\Crystal Falls MUD(s)\No. 21_formerly No. 18\1st Amendment to Facilities Agreement (10-23-12).docx

AGENDA ITEM # 14

Executive Summary

November 1, 2012

Council Agenda Subject: Consideration of Development and Annexation Agreement for the Borho Tract

Background: This proposed Development Agreement establishes the terms and conditions for the residential development and voluntary annexation of approximately 105.93 acres of land along the east side of Sam Bass Road at CR 179. This agreement provides for the development of a mixed lot subdivision with a total of 380 units. The developer will finance, design and construct and install all require water and wastewater facilities. The agreement also provides for the voluntary annexation of the property and the approval of the Concept Plan.

Origination: Jim Bechtol, Director of Development Services

Financial Consideration: N/A

Recommendation: Staff recommends approval of this Development Agreement.

Attachments: Development Agreement with exhibits

Prepared by: Jim Bechtol, Director of Development Services

DEVELOPMENT AND ANNEXATION AGREEMENT FOR THE BORHO TRACT

This Development Agreement and Annexation Agreement for the Borho Tract (this "**Agreement**") is made, entered into, and effective, as of the ___ day of _____, 2012 (the "**Effective Date**") by and between the City of Leander, a Texas home-rule municipal corporation (the "**City**"), and Meritage Homes of Texas, LLC, a Texas limited liability company, its authorized and approved successors and assigns ("**Developer**"). The City and the Developer are sometimes referred to herein as the "**Parties**." The Parties hereby contract, covenant and agree as follows.

Purposes, Consideration, Term and Termination

1.01. Property and Concept Plan. Developer owns or has under contract with the right to develop upon closing, 105.9301 acres of land, more or less, described in Exhibit "A" attached hereto and incorporated herein for all purposes (the "**Property**"). In addition, the Developer has entered into an agreement with the owner of a separate tract ("the Contiguity Tract") to represent that owner in presenting to the City an authorized petition for annexation of the Contiguity Tract, which is more particularly described in Exhibit "B". The Property and the Contiguity Tracts are located within the extraterritorial jurisdiction ("ETJ") of the City. The Contiguity Tract is subject to this Agreement only to the extent that it is to be annexed to the City as a way to provide contiguity between the Property and the existing city limits of the City. This Agreement does not address the zoning, use, or development of the Contiguity Tract. The Property is proposed for development as a single-family subdivision with a mix of lot sizes, developed in compliance with the SFU-2-A requirements for the Single-Family Urban Zoning District and the SFS-2-B requirements for the Single-Family Suburban Zoning District, as shown on the concept plan and park plan attached hereto as Exhibit "C" and incorporated herein for all purposes (the "**Concept Plan**"). Developer will subdivide and develop the Property and obtain water and wastewater service and other City services for the Property at the Developer's expense in accordance with good engineering practices, the plans and specifications approved by the City, and the Applicable Regulations, as defined in Section 3.01.

1.02. General Benefits. Developer will benefit from the certainty and assurance of the development regulations applicable to the development of the Property and by virtue of the services that will be made available to the Property pursuant to the terms of this Agreement. The City will provide water and wastewater service to the Property on the same terms and conditions as such services are provided to similarly situated properties within the City. The City will benefit from this Agreement by virtue of its control over the development standards for the Property.

1.03. Acknowledgement of Consideration. The benefits to the Parties set forth above, plus the mutual promises expressed herein, are good and valuable consideration for this Agreement, the sufficiency of which is hereby acknowledged by the Parties. The City acknowledges that Developer will, during the term of this Agreement, proceed with the development of the Property in reliance upon the terms of this Agreement. The Parties agree that all permits and approvals required or authorized by the City for the development of the Property, including but not limited to preliminary plats, final plats, engineering design plans, infrastructure construction permits, and site development plans or permits, shall be approved if they are in accordance with the Concept Plan, the Applicable Regulations and this Agreement. Subject to the terms and conditions of this Agreement, the City confirms, acknowledges and agrees that Developer has vested authority to develop the Property in accordance with this Agreement and the Applicable

Regulations notwithstanding subsequently adopted ordinances, rules or regulations, or changes or modifications to the City's ordinances, rules and regulations. The Parties expressly confirm and agree that development of the Property will be best accomplished through this Agreement and will substantially advance the legitimate interests of the City. The City, by approval of this Agreement, further finds the execution and implementation of this Agreement is not inconsistent or in conflict with any of the policies, plans, or ordinances of the City.

1.04. Term of Agreement; Termination. The term of this Agreement shall be ten (10) years from the Effective Date, and upon the expiration of this Agreement any and all rights pursuant to this Agreement shall expire; provided this Agreement will terminate and expire earlier if Developer defaults in the performance of this Agreement and the default is not timely cured as provided in this Agreement or the Property is fully developed and built-out by Developer. Notwithstanding any term herein to the contrary, the City may terminate this Agreement if Owner fails to submit a annexation petition to the City as provided in Section 2.02 without providing notice of default as provided in Section 6.01.

Land Uses, Densities, Zoning, and Annexation; Sequence of Events

2.01. Land Uses, Densities, and Zoning. The Property will have no more than 380 single-family lots, as well as parks and hike and bike trails and an amenity center as planned by Developer and shown on the Concept Plan. The permitted land uses of the Property are shown on the Concept Plan. The densities of the developed tracts of the Property shall be as established in the Concept Plan. The application for zoning of the Property will be to zone a portion of the Property SFU-2-A and a portion of the Property SFS-2-B, as shown on proposed zoning map for the Property attached hereto as Exhibit "D" and incorporated herein for all purposes. It is the intent of the City to zone the Property for SFU-2-A and SFS-2-B as shown on Exhibit "D", and it is acknowledged that Developer and the Property are entitled to the benefits of Chapter 245 of the Texas Local Government Code ("**Chapter 245**") with respect to this Agreement, including the Concept Plan. The zoning of the Property shall be subject to the process, notices, hearings and procedures applicable to all other properties within the City. If the City does not zone the Property as provided in this Section, unless Developer substantially amends or abandons the Concept Plan, defaults under this Agreement, or permits its Chapter 245 rights to expire, the Property shall be and remain entitled to the rights and benefits provided in this Agreement, including, but not limited to, the development standards and uses permitted in the SFU-2-A Zoning District and the SFS-2-B Zoning District as of the Effective Date as to the respective sections of land shown in Exhibit "D".

2.02. Annexation. Owner consents to and requests that the City approve annexation of the Property and the Contiguity Tract by City. Owner will present the City with a valid and legally sufficient petition for the annexation of the Property and the Contiguity Tract into the corporate limits of the City, using the Annexation Petition form here attached as Exhibit "E", within five working days of the date that the City Council approves this Agreement. Owner accepts the municipal services plan for the Property attached as Exhibit "F" and the municipal services plan for the Contiguity Tract attached as Exhibit "G" as good, sufficient and acceptable. The Property will be annexed into the corporate limits of the City in accordance with the provisions of this Agreement, subject to the discretion of the City Council of the City and compliance with the applicable notice and hearing requirements. Owner requests annexation and zoning of the Property within one-hundred twenty (120) days after the Effective Date.

2.03. Contemplated Sequence of Events. The sequence of events contemplated by this Agreement is as follows:

(a) Approval of this Agreement by the City and Developer and execution of the Annexation Petition and submission of the Annexation Petition and Municipal Services Plan to the City, and approval of the Concept Plan by the terms of the Agreement;

(b) Submission of the zoning application by Developer;

(c) City acceptance of annexation petition and beginning of public hearings and process to adopt the annexation ordinance;

(d) Second and final reading of ordinance annexing the Property, and second and final reading of an ordinance zoning the Property.

(e) Submittal and approval of preliminary plans, construction plans, and final plats.

Development of the Property

3.01. Applicable Regulations. Developer shall plan, plat, build-out and complete development and infrastructure on the Property in compliance with good engineering practices, the applicable federal and state laws, rules and regulations, the Concept Plan, the land uses and development standards for zoning district SFS-2-B and zoning district SFU-2-A, the City Charter, Code of Ordinances and the rules and regulations of the City, this Agreement, and the environmental regulations otherwise applicable to the Property, as they exist on the Effective Date of this Agreement ("**Applicable Regulations**").

3.02. Approval of Concept Plan. The Concept Plan has been reviewed and recommended for approval by City staff, and is hereby approved.

3.03. Design and Construction. Developer will finance, design, construct and install all required water facilities, wastewater facilities, streets, drainage facilities and other amenities and improvements within the Property, or outside the boundaries of the Property, at Developer's sole cost and expense (collectively the "**Subdivision Improvements**"). Developer shall construct and install the Subdivision Improvements in compliance with the Applicable Regulations and plans and specifications approved by the City.

3.04. Parkland Dedication. Developer shall dedicate to the City at a minimum the number of acres of parkland shown on the Concept Plan on or before the approval of the final plat for each phase or section of the Subdivision. Developer's dedication of parkland as provided in this section will be accepted by the City as satisfaction of, and compliance by Developer with, the requirements for dedication of parkland.

Additional Agreements and Performance

4.01. Additional City Agreements. The City hereby agrees:

(a) the City will review and process the applications made, and the plans and specifications submitted, by Developer with respect to the Property.

5.02. Binding Obligations. This Agreement shall be binding upon and inu(b) that Developer, at its option, may prepay any or all of the fees referenced in Section 4.02., except for professional or consultant fees. (Developer shall not be obligated to pay any increases in the fees which have been prepaid).

4.02. Additional Developer Agreements. Developer hereby agrees:

(a) to develop and construct the Property and all related infrastructure for built-on-the-lot single-family homes in compliance with the Applicable Regulations;

(b) to establish a homeowners association pursuant to appropriate articles and bylaws reviewed and approved by the City;

(c) the fees and charges currently provided for in the Applicable Regulations may be amended by the City from time to time, and Developer, its grantees, successors and assigns, shall pay to the City such fees and charges, as amended, for or with respect to the development of the Property, including, but not limited to, zoning and subdivision application fees, building permit fees, water and wastewater impact, tap and use fees, and the reasonable costs and expenses incurred by the City for legal services with respect to this Agreement and the Subdivision;

(d) this Agreement does not waive the requirements of any Applicable Regulations;

(e) to timely perform and complete each task, duty and responsibility of Developer set forth in this Agreement; and

(f) to pay to the City $126.00 per single-family lot platted within each phase or section of the Subdivision, in lieu of preparing a Traffic Impact Analysis ("TIA"), prior to recording the final plat of each phase or section of the Subdivision or alternatively Developer can provide a TIA instead of paying the fee, provided that the TIA shall be submitted prior to or with the preliminary plat for the first phase or section of the subdivision.

Assignment of Commitments and Obligations

5.01. Developer Assignment of Agreement. Developer's rights and obligations under this Agreement may be assigned by Developer to one (1) or more purchasers of all or part of the Property; provided the City Council of the City must first approve and consent to any such assignment by Developer of this Agreement or of any right or duty of Developer pursuant to this Agreement, which consent shall not be unreasonably withheld or delayed.

re to the benefit of the parties, their successors, and assigns. The Memorandum of Agreement, in the form attached as Exhibit "H", shall be recorded in the Official Public Records of Williamson County, Texas within ninety days after the Effective Date. Nothing in this Agreement is intended to impose the Developer's obligations on individual owners that purchase lots for their

personal use.

Default; Reservation of Rights; Attorneys Fees; Waiver

6.01.Default. Notwithstanding anything herein to the contrary, no party shall be deemed to be in default hereunder until the passage of fourteen (14) business days after receipt by such party of notice of default from the other party. Upon the passage of fourteen (14) business days without cure of the default, such party shall be deemed to have defaulted for purposes of this Agreement; provided that if the nature of the default is that it cannot reasonably be cured within the fourteen (14) business day period, the defaulting party shall have a longer period of time as may be reasonably necessary to cure the default in question; but in no event more than sixty (60) days. In the event of default, the non-defaulting party to this Agreement may pursue the remedy of specific performance or other equitable legal remedy not inconsistent with this Agreement. All remedies will be cumulative and the pursuit of one authorized remedy will not constitute an election of remedies or a waiver of the right to pursue any other authorized remedy.

6.02. Reservation of Rights. To the extent not inconsistent with this Agreement, each party reserves all rights, privileges, and immunities under applicable laws, and neither party waives any legal right or defense available under law or in equity.

6.03. Attorneys Fees. A party shall not be liable to the other party for attorney fees or costs incurred in connection with any litigation between the parties, in which a party seeks to obtain a remedy from the other party, including appeals and post judgment awards.

6.04. Waiver. Any failure by a party to insist upon strict performance by the other party of any provision of this Agreement will not, regardless of length of time during which that failure continues, be deemed a waiver of that party's right to insist upon strict compliance with all terms of this Agreement. In order to be effective as to a party, any waiver of default under this Agreement must be in writing, and a written waiver will only be effective as to the specific default and as to the specific period of time set forth in the written waiver. A written waiver will not constitute a waiver of any subsequent default, or of the right to require performance of the same or any other provision of this Agreement in the future.

Force Majeure

7.01. Definition. The term "force majeure" as employed herein shall mean and refer to acts of God; strikes, lockouts, or other industrial disturbances: acts of public enemies, orders of any kind of the government of the United States, the State of Texas or any civil or military authority; insurrections; riots; epidemic; landslides; lightning, earthquakes; fires, hurricanes; storms, floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accidents to machinery, pipelines, or canals; or other causes not reasonably within the control of the party claiming such inability.

7.02. Notice of Default. If, by reason of force majeure, any party hereto shall be rendered wholly or partially unable to carry out its obligations under this Agreement, then such party shall give written notice of the full particulars of such force majeure to the other party within ten (10) days after the occurrence thereof. The obligations of the party giving such notice, to the extent effected by the force majeure, shall be suspended during the continuance of the inability claimed, except as hereinafter provided, but for no longer period, and the party shall endeavor to remove or overcome such inability with all reasonable dispatch.

7.03. Settlements and Strikes. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require that the settlement be unfavorable in the judgment of the party having the difficulty.

Notices

8.01. Method of Notice. Any notice to be given hereunder by a party to another party shall be in writing and may be effected by personal delivery or by sending said notices by registered or certified mail, return receipt requested, to the addresses set forth below. Notice shall be deemed given when deposited with the United States Postal Service with sufficient postage affixed.

Any notice mailed to the City shall be addressed:

City of Leander
Attn: City Manager
200 West Willis
P.O. Box 319
Leander, Texas 78646-0319
Telephone: (512) 528-2700
Facsimile: (512) 528-2831
Email: kcagle@leandertx.gov

with copy to:

McKamie Krueger, LLP
Attorneys at Law
223 West Anderson Lane, #A105
Austin, Texas 77852
Telephone: (512) 323-5778
Facsimile: (512) 323-5773
Email: attorneys@cityattorneytexas.com

Any notice mailed to Developer shall be addressed:

Meritage Homes of Texas, LLC
8920 Business Park Drive, Suite 250
Austin TX 78759
Attention: Charlie Coleman
Telephone: (512) 615-6424
Facsimile. (512) 610-6750
E-Mail: charlie.coleman@meritagehomes.com

and with a copy to: Meritage Homes of Texas, LLC
8920 Business Park Drive, Suite 250
Austin TX 78759
Attention: Tony Wyman
Telephone: 512-610-4853
Facsimile: 512-610-6424

E-Mail: tony.wyman@meritagehomes.com

and with a copy to: Meritage Homes Corporation
17851 North 85th Street, Suite 300
Scottsdale, Arizona 85255
Attention: Jennifer S. Lee, Esq.
Telephone: (480) 515-8014
Facsimile: (480) 375-2905
E-Mail: jennifer.lee@meritagehomes.com

with copy to:

Armbrust & Brown, PLLC
Attn: David Armbrust
100 Congress Avenue, Suite 1300
Austin, Texas 78701
Telephone: (512) 435-2301
Facsimile: (512) 435-2360
Email: darmbrust@abaustin.com

Any party may change the address for notice to it by giving notice of such change in accordance with the provisions of this section.

Waiver and Release

9.01. Waiver of Alternative Benefits. The Parties acknowledge the mutual promises and obligations of the Parties expressed herein are good, valuable and sufficient consideration for this Agreement. The Parties further acknowledge the City and Developer voluntarily elected the benefits and obligations of this Agreement, as opposed to the benefits available were Developer to have elected to develop the Property without the benefits and obligations of this Agreement, pursuant to and in compliance with the applicable City ordinances. Therefore, save and except the right to enforce the obligations of the City to perform each and all of the City's duties and obligations under this Agreement, Developer hereby waives any and all claims or causes of action Developer may have for or with respect to any duty or obligation undertaken by Developer pursuant to this Agreement, including any benefits that may have been otherwise available to Developer but for this Agreement. Developer specifically releases any equitable or legal claim that it may have regarding, or with respect to, the requirement to install or construct any project or obligation undertaken by Developer pursuant to this Agreement.

The foregoing waivers and releases, however, shall not be construed to waive or release the failure of the City to perform its obligations under this Agreement, or of any rights that may accrue to Developer as a result of the failure of the City to comply with any applicable federal or state law, statute, rule or regulation in its performance of this Agreement.

Entire Agreement

10.01. Agreement and Amendment. This Agreement, together with any exhibits attached hereto, constitutes the entire agreement between Parties and may not be amended except by a writing approved by the City Council of the City that is signed by all Parties and dated subsequent to the date hereof.

No Joint Venture; No Third Party Beneficiary

11.01. No Joint Venture. The terms of this Agreement are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The City, its past, present and future officers, elected officials, employees and agents, do not assume any responsibilities or liabilities to any third party in connection with the development of the Property. The City enters into this Agreement in the exercise of its public duties and authority to provide for development of property within the City and its ETJ pursuant to its police powers and for the benefit and protection of the public health, safety, and welfare.

11.02. No Third Party Beneficiary. This Agreement is not intended, nor will it be construed, to create any third-party beneficiary rights in any person or entity who is not a party, unless expressly provided otherwise herein, or in a written instrument executed by both the City and the third party. Absent a written agreement between the City and third party providing otherwise, if a default occurs with respect to an obligation of the City under this Agreement, any notice of default or action seeking a remedy for such default must be made by the Owner.

Effective Date

12.01. Effective Dates. The Effective Date of this Agreement is the defined date set forth in the first paragraph.

Texas Law Governs

13.01. Texas Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Williamson County, Texas. Venue shall lie exclusively in the State District Courts of Williamson County, Texas.

Time of the Essence

14.01. Timely Performance. It is acknowledged and agreed by the Parties that time is of the essence in the performance of this Agreement.

EXECUTED in multiple originals, and in full force and effect as of the Effective Date.

CITY:

City of Leander, Texas
a Texas home-rule municipal corporation

Attest:

By:_____
Name: Debbie Haile
Title: City Secretary

By:_____
Name: Christopher Fielder
Title: Mayor

THE STATE OF TEXAS §

COUNTY OF WILLIAMSON §

This instrument was acknowledged before me on this ____ day of _____, 2012, by Christopher Fielder, Mayor of the City of Leander, Texas, a Texas home-rule municipal corporation, on behalf of said corporation.

(SEAL) _____
Notary Public, State of Texas

DEVELOPER:

Meritage Homes of Texas, LLC, a Texas limited liability company

By: Charlie Coleman
Name: Charlie Coleman
Title: Division President

THE STATE OF TEXAS §

COUNTY OF Bexar §

This instrument was acknowledged before me on this 26th day of October, 2012, by Charlie Coleman, President of Meritage Homes of Texas, LLC, a Texas limited liability company, on behalf of said limited liability company.

(SEAL) PATRICIA WARREN SEGUIN
Notary Public, State of Texas
My Commission Expires
June 14, 2016

Patricia Warren Seguin
Notary Public, State of Texas

EXHIBIT "H"

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement is made and entered into by and between the City of Leander, Texas, a home-rule municipal corporation (the "City"), and Meritage Homes of Texas, LLC, a Texas limited liability company, its authorized and approved successors and assigns ("Developer"). The City and the Developer are sometimes referred to herein as the "Parties."

1. The Parties have entered into that Development and Annexation Agreement for the Borho Tract dated effective _____ (the "Agreement"), relating to the development of the real property described in Exhibits "A-1" and "A-2" attached hereto and incorporated herein by reference (the "Property").

2. This Memorandum does not alter, amend or modify the terms of the Agreement, but is executed solely for the purpose of giving notice of the existence of the Agreement. A copy of the Agreement is in the possession of the City and may be examined at its offices.

IN WITNESS WHEREOF, this instrument is executed as of _____, 2012.

CITY:
City of Leander, Texas
a Texas home-rule municipal corporation

Attest:

By:_____
Name: Debbie Haile
Title: City Secretary

By:_____
Name: Christopher Fielder
Title: Mayor

THE STATE OF TEXAS §

COUNTY OF WILLIAMSON §

This instrument was acknowledged before me on this ____ day of _____, 2012, by Christopher Fielder, Mayor of the City of Leander, Texas, a Texas home-rule municipal corporation, on behalf of said corporation.

(SEAL)

_____
Notary Public, State of Texas

DEVELOPER:
Meritage Homes of Texas, LLC, a Texas limited liability company

By: Charlie Coleman
Name: Charlie Coleman
Title: Division President

THE STATE OF TEXAS §

COUNTY OF Bexar §

This instrument was acknowledged before me on this 26th day of October, 2012, by Charlie Coleman, President of Meritage Homes of Texas, LLC, a Texas limited liability company, on behalf of said limited liability company.

(SEAL)

PATRICIA WARREN SEGUIN
Notary Public, State of Texas
My Commission Expires
June 14, 2016

Notary Public, State of Texas

EXHIBIT "A"

105.998 ACRE TRACT

FIELD NOTES

FOR

A 105.998 acre, or 4,617,263 square feet more or less, tract of land, being out of a called 107.462 acre tract described in conveyance to Curtis C. Borho in Partition Deed recorded in Volume 2542, Pages 838-843 of the Official Records of Williamson County, Texas, out of the Anastasha Carr Survey, Abstract 122, Williamson County, Texas. Said 105.998 acre tract being more fully described as follows, with bearings based on the North American Datum of 1983 (CORS 1996), from the Texas Coordinate System established for the Central Zone:

BEGINNING: At a found ½" iron rod with a cap marked "Haynie", on the east right-of-way line of Williamson County Road 175, a variable width right-of-way, the northwest corner of a 28.280 acre tract, recorded in Volume 2542, Pages 838-843 of the Official Records of Williamson County, Texas, the southwest corner of said 107.462 acre tract;

THENCE: Along and with the east right-of-way line of said Williamson County Road 175, the west line of said 107.462 acre tract, the following calls and distances:

N 34°37'32" W, a distance of 549.88 feet to a found ½" iron rod with a cap marked "Haynie";

S 50°02'23" W, a distance of 5.38 feet to a found ½" iron rod with a cap marked "Haynie";

N 37°09'17" W, a distance of 404.06 feet to a found ½" iron rod with a cap marked "Haynie";

N 18°27'47" W, a distance of 15.43 feet to a found ½" iron rod with a cap marked "Haynie";

N 37°06'10" W, a distance of 50.29 feet to a found ½" iron rod with a cap marked "Haynie";

N 55°41'02" W, a distance of 15.84 feet to a found ½" iron rod with a cap marked "Haynie";

N 37°26'24" W, a distance of 96.44 feet to a found ½" iron rod with a cap marked "Haynie";

N 38°17'56" W, a distance of 233.25 feet to a found ½" iron rod with a cap marked "Haynie";

N 39°25'12" W, a distance of 877.50 feet to a cut "X" in a concrete drain, the southwest corner of Lot 1A, Block A, a Drainage and Landscape Easement, dedicated in the Parkside at Mayfield Ranch Section 1 Subdivision recorded in Cabinet DD, Slides 325-326 of the Plat Records of Williamson County, Texas, the northwest corner of said called 107.462 acre tract;

THENCE: N 68°50'55" E, departing the east right-of-way line of said Williamson County Road 175, along and with the south line of said Parkside at Mayfield Ranch Section 1 Subdivision, the north line of said called 107.462 acre tract, a distance of 595.33 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson", the southwest corner of Lot 11, Block A of the Parkside at Mayfield Ranch Section 2 Subdivision recorded in Cabinet EE, Slides 4-5 of the Plat Records of Williamson County, Texas, the southeast corner of Lot 9 of said Block A;

THENCE: Along and with the south line of said Parkside at Mayfield Ranch Section 2 Subdivision, the north line of said called 107.462 acre tract, the following calls and distances:

N 68°50'55" E, a distance of 147.63 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

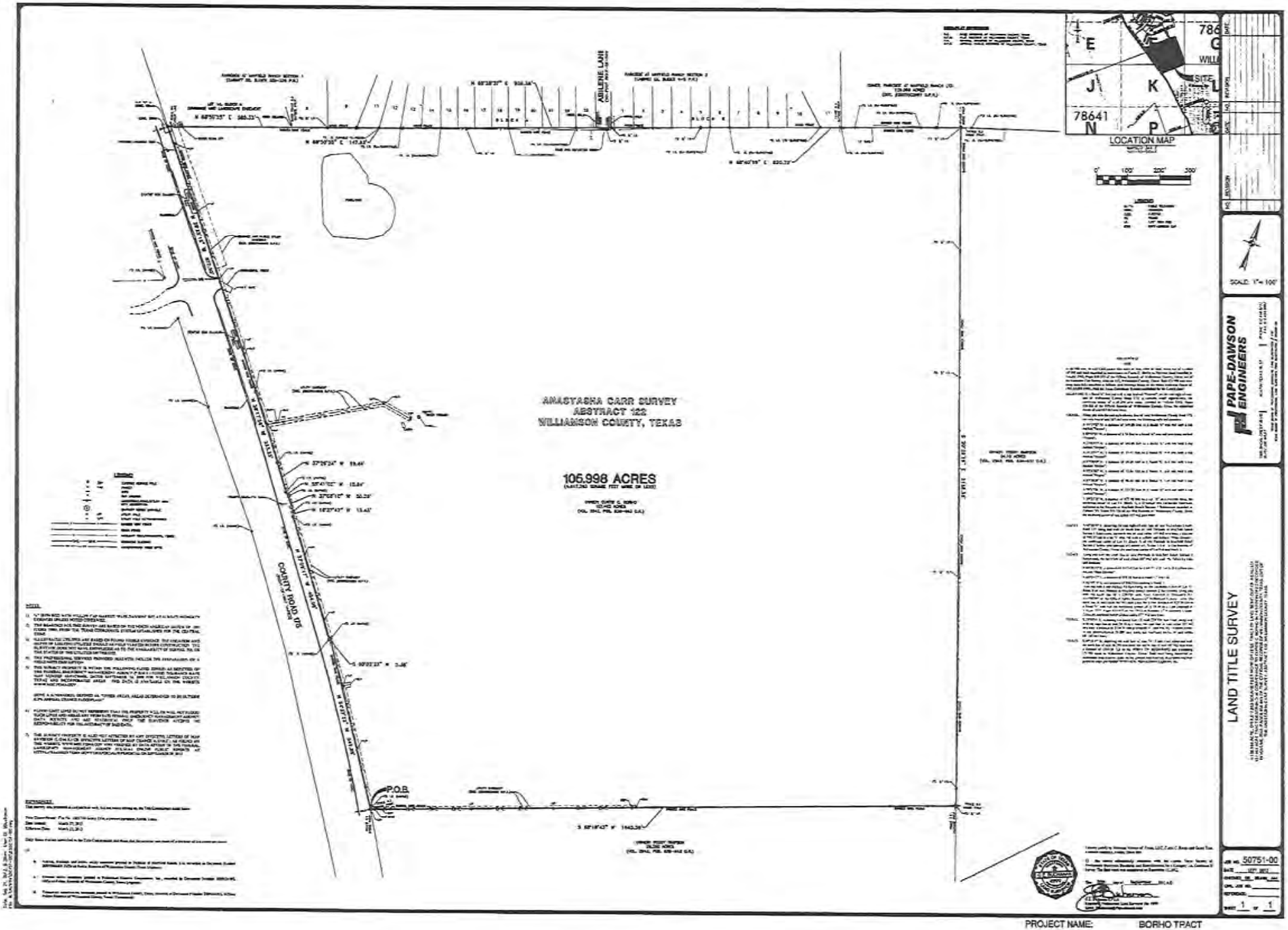
N 68°28'37" E, a distance of 938.38 feet to a found ½" iron rod;

N 68°40'19" E, at a distance of 440.2 feet passing a found ½ iron rod with a cap marked RJ-Surveying, at the southeast corner of Lot 11, Block B of said Parkside at Mayfield Ranch Section 2 Subdivision, along and with the south line of a 229.556 acre tract recorded in Document No. 2007002997 of the Official Public Records of Williamson County, Texas, the north line of said called 107.462 acre tract, for a total distance of 820.29 feet to a found ½" iron rod, the northwest corner of a 54.10 acre tract recorded in Volume 2542, Pages 834-837 of the Official Records of Williamson County, Texas, the northeast corner of said called 107.462 acre tract;

THENCE: S 20°39'19" E, departing the south line of said 229.556 acre tract, along and with the west line of said 54.10 acre tract, the east line of said called 107.462 acre tract, a distance of 2138.36 feet to a found ½" iron rod, the northeast corner of the aforementioned 28.280 acre tract, the southeast corner of said called 107.462 acre tract;

THENCE: S 68°18'43" W, departing the west line of said 54.10 acre tract, along and with the north line of said 28.280 acre tract, the south line of said 107.462 acre tract, a distance of 1845.59 feet to the POINT OF BEGINNING and containing 105.998 acres in Williamson County, Texas. Said tract being described in accordance with a survey made on the ground and a survey description and map prepared under job number 50751-00 by Pape-Dawson Engineers, Inc.

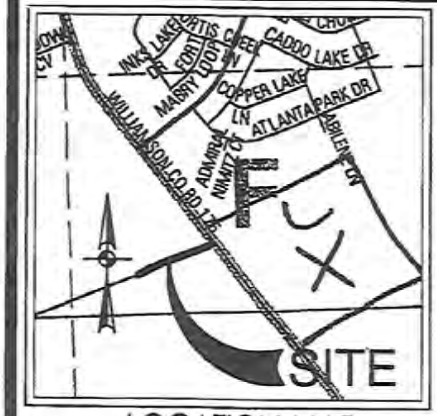
PREPARED BY: Pape-Dawson Engineers, Inc.
DATE: September 20, 2012
JOB No.: 50751-00
DOC.ID.: N:\AUSTIN\50751-00\WORD\50751-00FN.docx
TBPE Firm Registration #470
TBPLS Firm Registration #100288-00



PROJECT NAME: BORHO TRACT

EXHIBIT "B"

CONTIGUITY TRACT



LOCATION MAP

MAPSCO MAP GRID: 344 F
NOT-TO-SCALE

LEGEND:

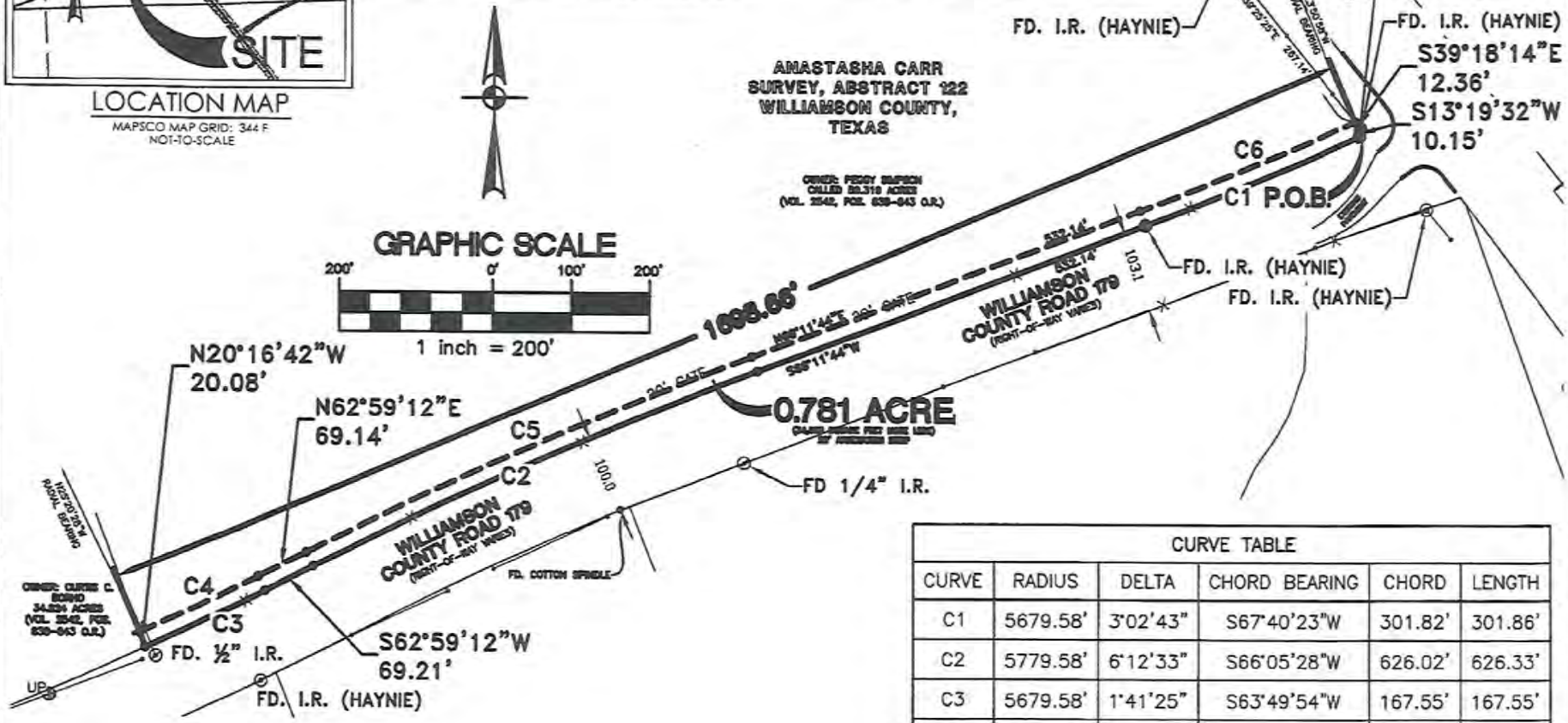
DR DEED RECORDS OF WILLIAMSON COUNTY, TEXAS
OR OFFICIAL RECORDS OF WILLIAMSON COUNTY, TEXAS
PR PLAT RECORDS OF WILLIAMSON COUNTY, TEXAS

NOTES:

1. THE PROFESSIONAL SERVICES PROVIDED HEREWITH INCLUDE THE PREPARATION OF A FIELD NOTE DESCRIPTION.
2. THE BEARINGS ARE BASED ON THE NORTH AMERICAN DATUM OF 1983 (CORS 1996), FROM THE TEXAS COORDINATE SYSTEM ESTABLISHED FOR THE SOUTH CENTRAL ZONE.

EXHIBIT
OF A
CONTIGUITY TRACT

A 0.781 ACRE, OR 34,008 SQUARE FEET MORE OR LESS, TRACT OF LAND, BEING OUT OF A CALLED 59.319 ACRE TRACT DESCRIBED IN CONVEYANCE TO PEGGY SIMPSON IN PARTITION DEED RECORDED IN VOLUME 2542, PAGES 838-843 OF THE OFFICIAL RECORDS OF WILLIAMSON COUNTY, TEXAS, OUT OF THE ANASTASHA CARR SURVEY, ABSTRACT 122, WILLIAMSON COUNTY, TEXAS.



CURVE TABLE					
CURVE	RADIUS	DELTA	CHORD BEARING	CHORD	LENGTH
C1	5679.58'	3°02'43"	S67°40'23"W	301.82'	301.86'
C2	5779.58'	6°12'33"	S66°05'28"W	626.02'	626.33'
C3	5679.58'	1°41'25"	S63°49'54"W	167.55'	167.55'
C4	5659.58'	1°40'23"	N63°49'21"E	165.26'	165.26'
C5	5799.58'	6°12'33"	N66°05'28"E	628.19'	628.49'
C6	5659.58'	3°04'26"	N67°39'31"E	303.60'	303.63'

PAPE-DAWSON ENGINEERS

7800 SHOAL CREEK BLVD SUITE 220 WEST | AUSTIN TEXAS 78757 | PHONE: 512.454.8711 FAX: 512.459.8867

TBPE BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470
TEXAS BOARD OF PROFESSIONAL LAND SURVEYORS, FIRM REGISTRATION # 10028800

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OCTOBER 23, 2012

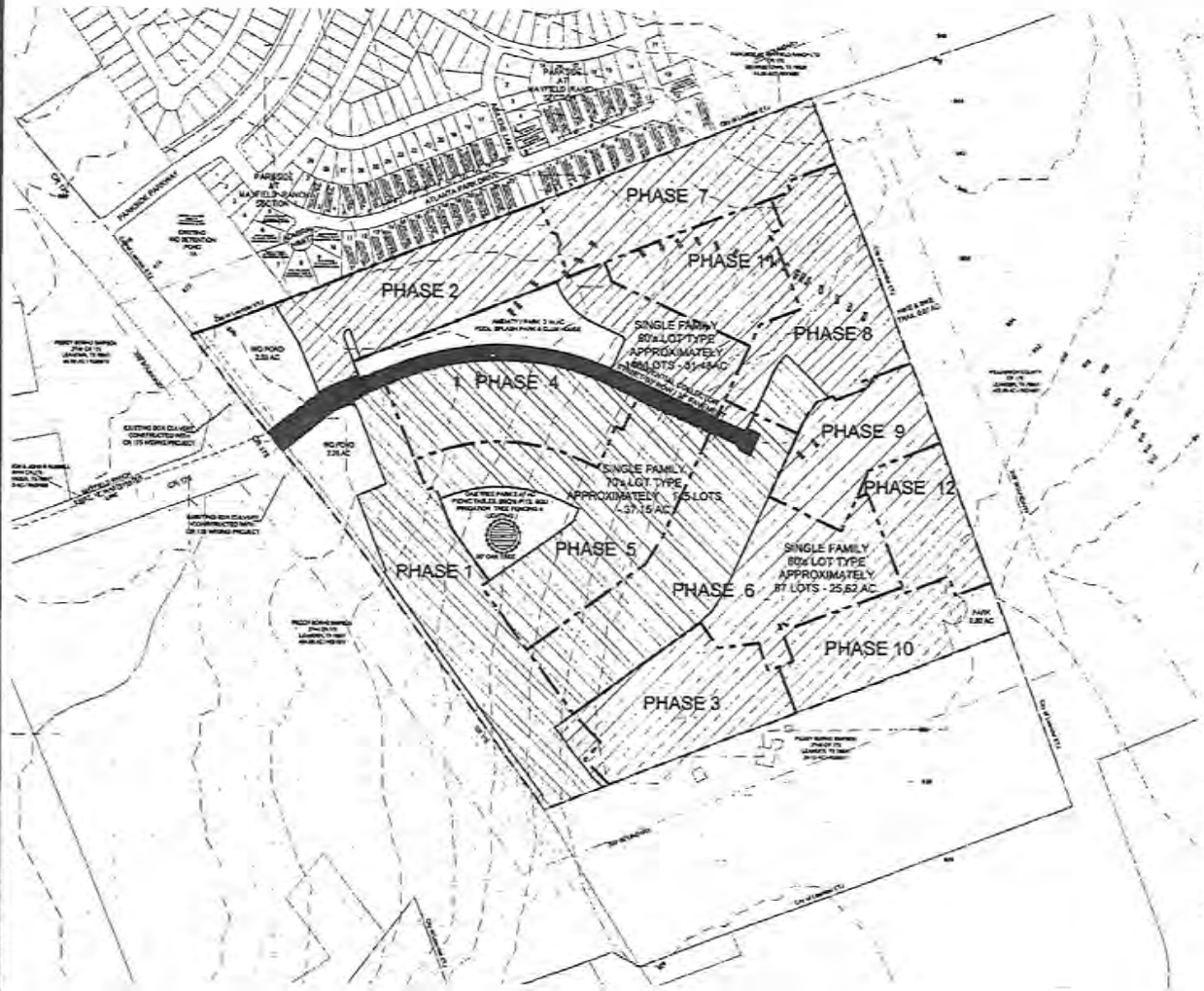
SHEET 1 OF 1

JOB No.: 50751-00

Date: Oct 23, 2012, 3:49pm User ID: WPrimeau
File: N:\AUSTIN\50751-00\ESMT\CONTIGUITY TRACT.dwg

EXHIBIT "C"

CONCEPT PLAN


PHASE 1
PHASE 2
PHASE 3
PHASE 4
PHASE 5
PHASE 6
PHASE 7
PHASE 8
PHASE 9
PHASE 10
PHASE 11
PHASE 12
SINGLE FAMILY
60'x LOT TYPE
APPROXIMATELY
148 LOTS - 31.44 AC
SINGLE FAMILY
70'x LOT TYPE
APPROXIMATELY
145 LOTS
37.15 AC
SINGLE FAMILY
80'x LOT TYPE
APPROXIMATELY
87 LOTS - 25.62 AC
PARKSIDE AT MAYFIELD RANCH SECTION 1
PARKSIDE AT MAYFIELD RANCH SECTION 2
PARKSIDE PARKWAY
ATLANTA PARK DRIVE
CR 175
CR 179
SCALE: 1" = 200'
200 0 200 400
LEGEND
1,948.40 LF OF RESIDENTIAL COLLECTOR
60'-148 MAX. # of LOT's
70'-145 MAX. # of LOT's
80'- 87 MAX. # of LOT's
360 MAX. # of TOTAL LOT'S
LEANDER
VICINITY MAP
NOT TO SCALE
60'x LOT TYPE 7,200 SF
70'x LOT TYPE 8,400 SF
80'x LOT TYPE 9,600 SF
Proposed Lot Type
PARK LAND NOTES:
PROPOSED PARK LAND
3.14 ACRES AMENITY SITE WITH POOL, SPLASH PARK AND CLUB HOUSE
2.47 ACRES AROUND 30" OAK TREE WITH PICNIC TABLES, BBQ'S PITS, SOD IRRIGATION, TREE FENCING AND LIGHTING FOR NEIGHBORHOOD USE WITH POSSIBLY A GAZEBO.
EST TOTAL ACRES
0.50 & 0.07 ACRES-CONDITIONAL ACCEPTANCE ADDITIONAL PARK LAND WITH PEDESTRIAN ACCESS TO WILLIAMSON COUNTY REGIONAL PARK TO BE ALLOWED ONLY IF WRITTEN APPROVAL WITH CONDITIONS (IF ANY) IS RECEIVED FROM WILLIAMSON COUNTY.
0.57 ACRES POSSIBILITY
REQUIRED PARK LAND FOR 360 LOTS SHALL BE 13.3 ACRES
ACCEPTABLE PARK DEDICATION - 5.81 ACRES
7.58 ACRES
IF ALLOWED 0.57 ACRES PEDESTRIAN CONNECTION - 0.57 ACRES
8.02 TOTAL ACRES
FEE-IN-LIEU OF PARK LAND REQUIRED $ 181,264 FOR 7.58 ACRES (ACCEPTABLE PARK LAND)
$ 165,157 FOR 0.50 ACRES (IF CONDITIONAL PARK LAND IS ACCEPTED)
THE ESTIMATES COST OF IMPROVEMENTS TO THE AMENITY CENTER AND OAK TREE PARK ARE PROJECTED TO BE $500,000 WHICH EXCEEDS THIS $135,000 REQUIREMENTS.
NOTES:
1. THERE IS NO ONE HUNDRED YEAR FEMA FLOOD PLAIN ON THIS PROPERTY AS DEPICTED ON PANEL NO. 48491C0465F.
2. AT THE TIME OF FINAL PLAT, THE APPLICATION WILL PROVIDE A PAYMENT TO THE CITY IN THE AMOUNT OF $126.00 PER RESIDENTIAL UNIT FOR THE FEE IN-LIEU OF TIA.
3. THIS PROJECT WILL BE DEVELOPED IN ACCORDANCE WITH THE CITY OF AUSTIN TRANSPORTATION CRITERIA MANUAL, AS ADOPTED BY THE CITY OF LEANDER.
4. PHASING AS FOLLOWS:

PHASE	NO. OF LOTS	YEARS
1, 2 & 3	60 LOTS	Q2-2013
4 & 11	54 LOTS	Q4-2013
5	51 LOTS	Q4-2014
6 & 8	47 LOTS	Q4-2014
7	32 LOTS	Q1-2015
9	37 LOTS	Q2-2015
10 & 12	35 LOTS	Q3-2015
	326 TOTAL LOTS	

5. TOTAL AMOUNT OF LUE'S ARE APPROXIMATELY 350.
6. THE COLLECTOR ROAD IS PROPOSING TO HAVE A 90' ROW WIDTH AT THE INTERSECTION WITH CR-175 THAT WILL PROVIDE FOR TWO LANES IN EACH DIRECTION AND MEDIAN.
(approved as to form) STAFF
By Development Agreement
BORHO TRACT PARKLAND DEDICATION WORKSHEET
Sept. 2012

Phase	Total Lots	Parkland Required	Parkland Credited *	Parkland Deficit	Deficit Land Value **	Improvement Fee Required ***
1,2,3	60	2.8		2.8	$ 66,000.00	$ 28,000.00
4,11	54	1.89	3.14	-1.25	$ (29,464.00)	$ 15,300.00
9	33	2.765		2.765	$ 42,075.00	$ 17,850.00
6,8	47	2.940		2.940	$ 38,775.00	$ 16,450.00
7	32	1.12		1.12	$ 26,400.00	$ 11,200.00
5	51	1.275	3.47	-2.195	$ (37,006.00)	$ 12,950.00
10,12	35	0.98		0.98	$ 23,100.00	$ 9,800.00
TOTAL	326	1.755		1.755	$ 41,374.00	$ 17,850.00
Totals:	360	13.3	5.61	7.69	$ 181,264.00	$ 135,000.00

* Credit for acreages 0.5 and 0.07 are "trail head" parks dependent upon conditions and approval from Williamson County W&P.
** Deficit land value to be paid to City in lieu of required parkland acreage prior to plat approvals.
*** Fees to specify improvements in Oak Tree & Amenity Parks. Developer must provide adequate fiscal surety with each phase of development. The surety shall be in a form that shall not expire unless released by the City.

DEVELOPER:
MERITAGE HOMES
8920 BUSINESS PARK DRIVE SUITE 250
AUSTIN, TEXAS 78759
(512) 610-4853

OWNER:
CURTIS C. BORHO
2151 COUNTY ROAD 175
LEANDER, TEXAS 78641-1020

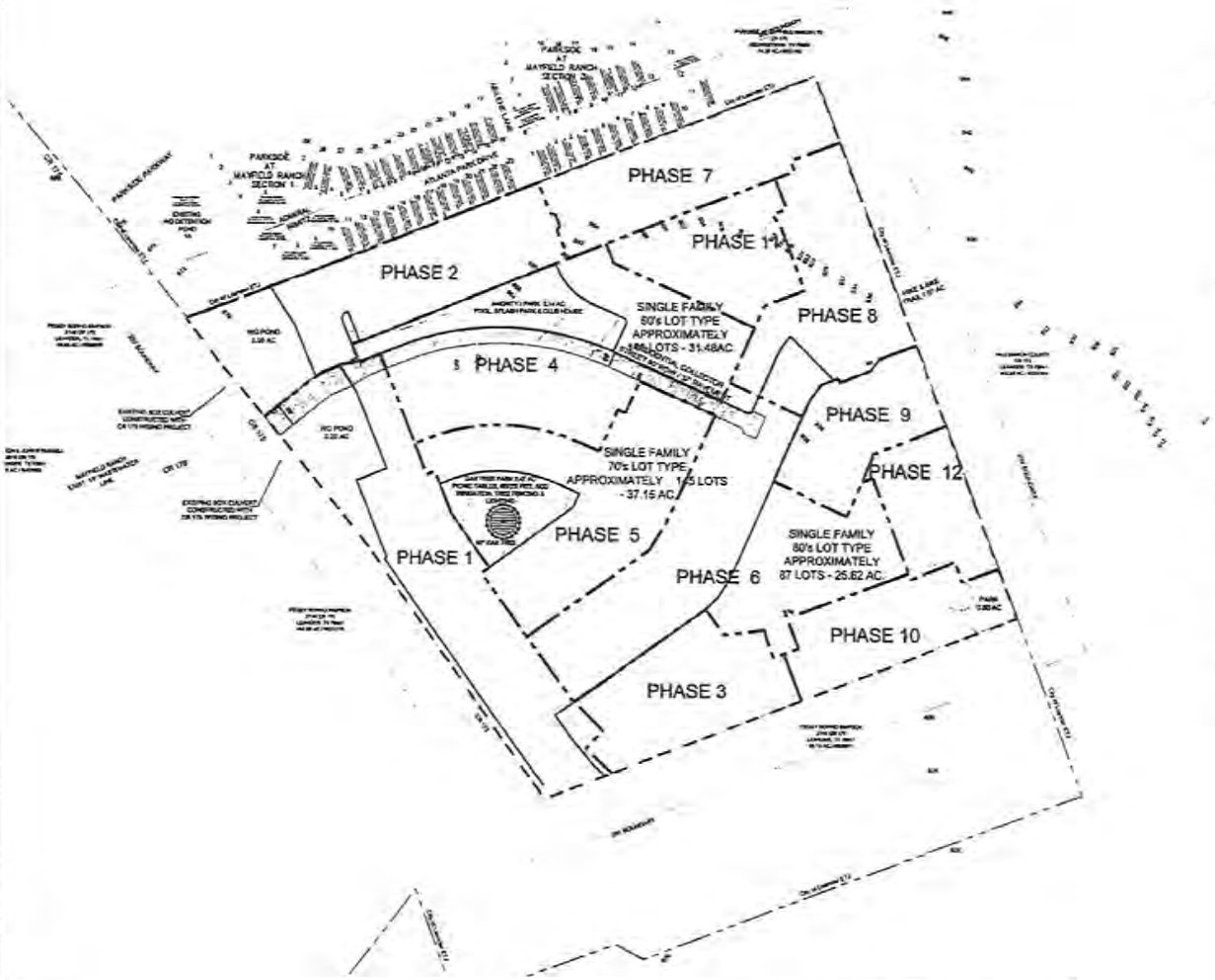
ENGINEER:
PAPE-DAWSON ENGINEERS, INC.
7800 SHOAL CREEK BLVD., SUITE 220-W
AUSTIN, TEXAS 78757
(512) 454-8711
FAX (512) 459-8867

PAPE-DAWSON ENGINEERS

BORHO TRACT
CONCEPTUAL PLAN
CITY OF LEANDER, TEXAS, WILLIAMSON COUNTY
SEPTEMBER 24, 2012
SECOND REVISION

SHEET 1 OF 1

9-27-12



VICINITY MAP
NOT TO SCALE

PARKLAND NOTES:

PROPOSED PARK LAND
3.14 ACRES AMENITY SITE WITH POOL, SPLASH PARK AND CLUB HOUSE
2.47 ACRES AROUND 50" OAK TREE WITH PICNIC TABLES, BBQ'S PITS, 2000 IRRIGATION, TREE FENCING AND LIGHTING FOR NEIGHBORHOOD USE, WITH POSSIBLY A GAZEBO
5.61 TOTAL ACRES
0.80 & 0.07 ACRES-CONDITIONAL ACCEPTANCE ADDITIONAL PARK LAND WITH PEDESTRIAN ACCESS TO WILLIAMSON COUNTY REGIONAL PARK TO BE ALLOWED ONLY IF WRITTEN APPROVAL WITH CONDITIONS (IF ANY) IS RECEIVED FROM WILLIAMSON COUNTY.

0.87 ACRES POSSIBILITY

REQUIRED PARK LAND FOR 380 LOTS SHALL BE	13.3 ACRES
ACCEPTABLE PARK DEDICATION	- 5.61 ACRES
	7.69 ACRES
IF ALLOWED 0.87 ACRES PEDESTRIAN CONNECTION	- 0.87 ACRES
	6.82 TOTAL ACRES

FEE-IN-LIEU OF PARK LAND REQUIRED $ 181,254 FOR 7.69 ACRES (ACCEPTABLE PARK LAND)
$ 160,757 FOR 6.82 ACRES (IF CONDITIONAL PARK LAND IS ACCEPTED)

THE ESTIMATED COST OF IMPROVEMENTS TO THE AMENITY CENTER AND OAK TREE PARK ARE PROJECTED TO BE $200,00 WHICH EXCEEDS THE $122,500 REQUIREMENTS.

BORHO TRACT PARKLAND DEDICATION WORKSHEET
Sept. 2012

Phase	Total Lots	Parkland Required	Parkland Credited *	Parkland Deficit	Deficit Land Value **	Improvement Fee Required ***
1,2,3	40	2.8		2.8	$ 66,500.00	$ 28,000.00
4,11	54	3.89	6.14	-2.25	$ (25,464.00)	$ 36,900.00
5	32	1.78		1.78	$ 42,075.00	$ 17,800.00
6,9	47	1.44		1.44	$ 38,775.00	$ 14,400.00
7	32	1.13		1.13	$ 26,420.00	$ 11,300.00
8	87	3.206	2.47	1.175	$ (27,696.00)	$ 32,060.00
10,12	28	0.98		0.98	$ 23,100.00	$ 9,800.00
TBD	21	1.75		1.75	$ 42,074.00	$ 17,500.00
Totals	380	13.3	8.62	7.68	$ 181,264.00	$ 122,000.00

* Credit for proposed 0.8 and 0.07 are "half-head" parks dependent upon conditions and approval from Williamson County PARD
** Deficit Land Value to be paid to City as fee in lieu of required parkland acreage prior to plat approvals.
*** Fees to be spent on improvements in Oak Tree & Amenity Parks. Developer must provide adequate fiscal surety with each phase of development. The surety shall be in a form that shall not expire unless released by the City.

PAPE-DAWSON ENGINEERS

BORHO TRACT

CONCEPTUAL PARK PLAN

CITY OF LEANDER, TEXAS, WILLIAMSON COUNTY
SEPTEMBER 21, 2012
SECOND REVISION

SHEET 1 OF 1

EXHIBIT "D"

PROPOSED ZONING MAP

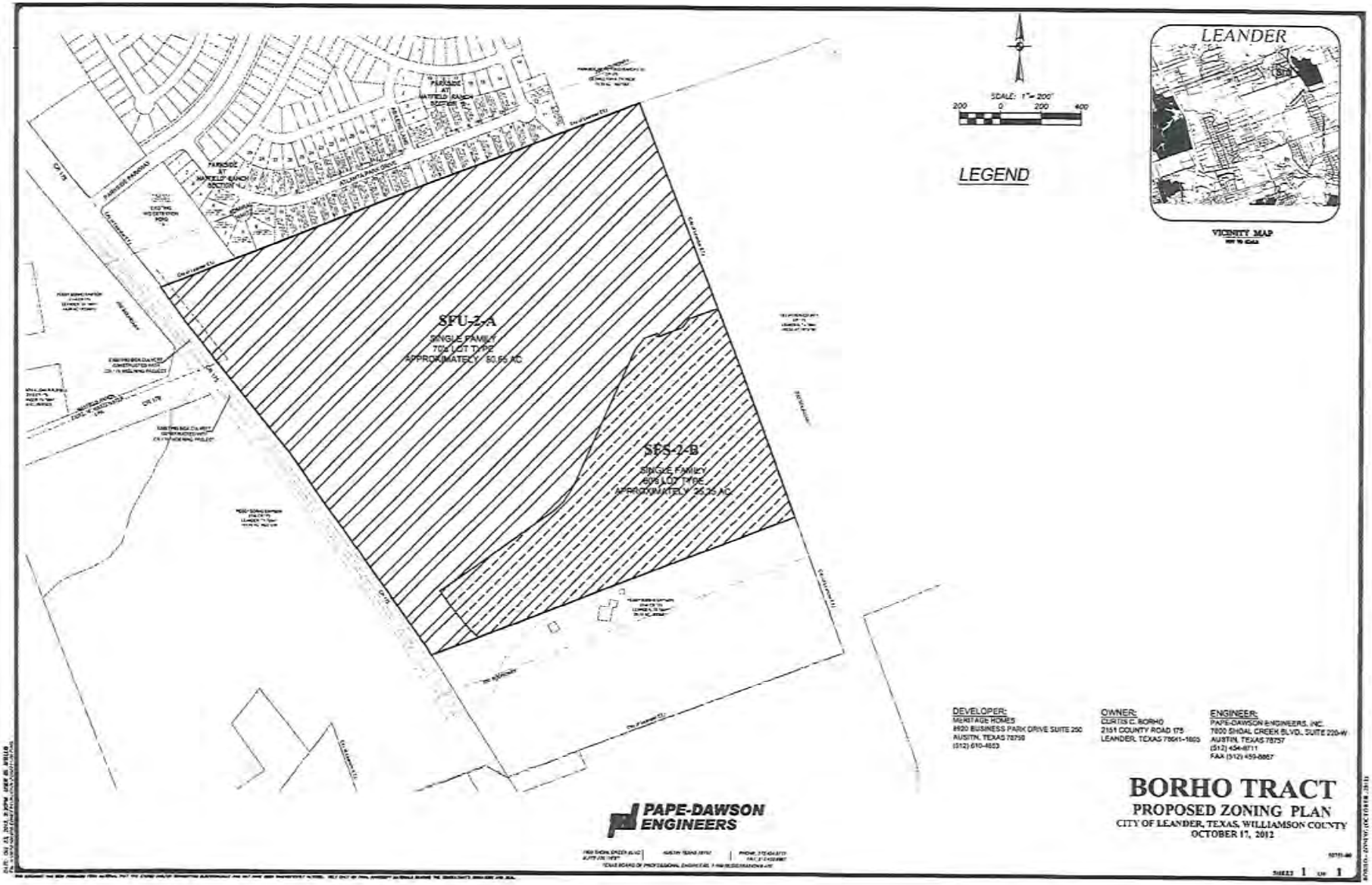

SFU-2-A
SINGLE FAMILY
70'S LOT TYPE
APPROXIMATELY 50.65 AC
SFS-2-B
SINGLE FAMILY
60'S LOT TYPE
APPROXIMATELY 26.35 AC
SCALE: 1" = 200'
200 0 200 400
LEGEND
LEANDER
VICINITY MAP
DEVELOPER:
MERITAGE HOMES
8920 BUSINESS PARK DRIVE SUITE 250
AUSTIN, TEXAS 78759
(512) 610-4853
OWNER:
CURTIS C. BORHO
2151 COUNTY ROAD 175
LEANDER, TEXAS 78641-1603
ENGINEER:
PAPE-DAWSON ENGINEERS, INC.
7800 SHOAL CREEK BLVD., SUITE 220-W
AUSTIN, TEXAS 78757
(512) 454-8711
FAX (512) 459-8867
PAPE-DAWSON ENGINEERS
BORHO TRACT
PROPOSED ZONING PLAN
CITY OF LEANDER, TEXAS, WILLIAMSON COUNTY
OCTOBER 17, 2012
SHEET 1 OF 1

EXHIBIT "E"

ANNEXATION PETITION

STATE OF TEXAS	§
	§
COUNTY OF WILLIAMSON	§

REQUEST & PETITION TO THE CITY COUNCIL OF THE CITY OF LEANDER FOR ANNEXATION OF PROPERTY

WHEREAS, the undersigned is the owner of a certain tract of property located within Williamson County, Texas, such property more particularly described hereinafter by true and correct legal description (referred to herein as the "subject property");

WHEREAS, the undersigned has sought the annexation of the subject property by the City of Leander, Texas, (hereinafter sometimes referred to as "City"), in order to obtain the benefits of City services to the subject property by the City;

WHEREAS, the subject property is contiguous and adjacent to the corporate limits of the City;

WHEREAS, the City, pursuant to *§43.021, Tex. Loc. Gov't. Code* and the request of the property owner, is authorized to annex the subject property; and,

WHEREAS, the undersigned agrees and consents to the annexation of the subject property by the City and further agrees to be bound by all acts, ordinances, and all other legal action now in force and effect within the corporate limits of the City and all those which may be hereafter adopted.

NOW THEREFORE, the undersigned by this Request and Petition:

SECTION ONE: Requests the City Council of the City to commence annexation proceedings and to annex into the corporate limits of the City of Leander, Texas, of all portions of the subject property, including the abutting streets, roadways, and rights-of-way, not previously annexed into the City and further described as follows:

All that certain tract or parcel of land, located in Williamson County, Texas, being ____ acres, more or less, and more particularly described in Exhibit "A" attached hereto and incorporated herein for all purposes.

SECTION TWO: Requests that after annexation the City provide such services as are legally permissible and provided by the City, including sanitation, water and general governmental services as set forth in the municipal services plan.

SECTION THREE: Acknowledges and represents having received, read and understood the attached "draft" Service Plan, attached hereto as Exhibit "B", (proposed to be applicable to and

adopted for the subject property) and that such "draft" Service Plan is wholly adequate and acceptable to the undersigned who hereby requests the City Council to proceed with the annexation and preparation of a final Municipal Service Plan and publish notice and hold the requisite public hearings thereon, in accordance with the applicable laws of the State of Texas.

SECTION FOUR: Acknowledges that the undersigned understands and agrees that all city services to the subject property will be provided by the City on the same terms and conditions as provided to other similarly situated areas of the City and as provided in the Municipal Service Plan.

SECTION FIVE: Agrees that a copy of this Request and Petition may be filed of record in the offices of the City of Leander and in the real property records of Williamson County, Texas, and shall be notice to and binding upon all persons or entities now or hereafter having any interest in the subject property.

FILED, this ___ day of _____ 2012, with the City Secretary of the City of Leander, Williamson County, Texas.

Petitioner: _____

By: _____
Name: _____
Title: _____

STATE OF TEXAS §
§
COUNTY OF _____ §

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared _____, _____ of _____, and Petitioner herein, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that they had authority to bind the entity and that they executed the same for the purposes therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the __day of _____ 2012.

(SEAL)

_____
Notary Public-State of Texas

EXHIBIT "F"

MUNICPAL SERVICES PLAN FOR THE PROPERTY

MUNICIPAL SERVICES PLAN
FOR PROPERTY TO BE
ANNEXED INTO THE CITY OF LEANDER

WHEREAS, the City of Leander, Texas (the "City") intends to institute annexation proceedings for a tract of land described more fully hereinafter (referred to herein as the "subject property");

WHEREAS, the owner of the subject property, or owner's authorized agent (the "Owner"), has requested annexation of the subject property and *Section 43.056, Loc. Gov't. Code*, requires a service plan be adopted with the annexation ordinance;

WHEREAS, the subject property is not included in the municipal annexation plan and is exempt from the requirements thereof;

WHEREAS, infrastructure shall be provided for the subject property pursuant to the terms and conditions of that certain Development and Annexation Agreement for the Borho Tract dated _____ (the "Development Agreement"); provided that, except for municipal service provided for in the Development Agreement, municipal services shall be provided on the same terms and conditions as such services are provided to other similarly situated properties currently within the City; and

WHEREAS, it is found that all statutory requirements have been satisfied and the City is authorized by *Chapt. 43, Loc. Gov't. Code*, to annex the subject property into the City;

NOW, THEREFORE, the City agrees to provide the following services for the subject property on the effective date of annexation:

(1) **General Municipal Services.** Pursuant to the requests of the owner and this Plan, the following services shall be provided immediately from the effective date of the annexation:

A. Police protection as follows:

Routine patrols of areas, radio response to calls for police service and all other police services now being offered to the citizens of the City.

B. Fire protection and Emergency Medical Services as follows:

Fire protection by the present personnel and equipment of the City fire fighting force and the volunteer fire fighting force with the limitations of water available. Radio response for Emergency Medical Services with the present personnel and equipment.

C. Solid waste collection services as follows:

Solid waste collection and services as now being offered to the citizens of the City.

D. Animal control as follows:

Service by present personnel, equipment and facilities or by contract with a third party, as provided within the City.

E. Maintenance of parks and playgrounds within the City.

F. Inspection services in conjunction with building permits and routine City code enforcement services by present personnel, equipment and facilities.

G. Maintenance of other City facilities, buildings and service.

H. Land use regulation as follows:

On the effective date of annexation, the zoning jurisdiction of the City shall be extended to include the subject property, and, until the zoning of the subject property is established by ordinance after annexation, the subject property shall be entitled to be developed with the land uses as more specifically provided in the Development Agreement. It is the City's intent to zone the subject property at the Owner's request in a manner that is not inconsistent with such uses, as provided in the Development Agreement. The Planning & Zoning Commission and the City Council will consider the applicant's request to process a zoning application and zone the subject property for such use and development following final annexation of the subject property.

I. Library service: Service by present personnel, equipment, and facilities within the City.

J. Storm Water Management: Owner/developr will provide storm water system as necessary at its own expense, which will be inspected by City Engineers at the time of completion. The City will then maintain the storm water system upon acceptance of the system by the City.

(2) **Scheduled Municipal Services.** Due to the size and vacancy of the subject property, the plans and schedule for the development of the subject property, the following municipal services will be provided on a schedule and at increasing levels of service as provided in this Plan:

A. Water service and maintenance of water facilities as follows:

(i) Inspection of water distribution lines as provided by statutes of the State of Texas.

(ii) The City intends to provide water services to the subject property pursuant to the Development Agreement. Save and except as provided in the Development Agreement, the City will provide water service in accordance with the applicable ordinances, rules, regulations, and policies of the City in effect from time to time for the extension of water service. The Owner shall construct the internal water lines and pay the costs of line extension and construction of such facilities necessary to provide water service to the subject property as required in City ordinances. Upon acceptance of the water lines within the subject property and any off-site improvements, water service will be provided by the City utility department on the same terms, conditions and requirements as are applied to all similarly situated areas and customers of the City; subject to all the ordinances, regulations and policies of the City in effect from time to time. The water system will be accepted and maintained by the City in accordance with its usual acceptance and maintenance policies. New water line extensions will be installed and extended upon request under the same costs and terms as with other similarly situated customers of the City. The ordinances of the City in effect at the time a request for service is submitted shall govern the costs and request for service. In the event of a conflict between this Municipal Services Plan and an approved and executed Development Agreement, the terms and provisions of the Development Agreement shall govern and control.

B. Wastewater service and maintenance of wastewater service as follows:

(i) Inspection of sewer lines as provided by statutes of the State of Texas.

(ii) Wastewater services to the subject property will be provided pursuant to the Development Agreement. Save and except as provided in the Development Agreement, the City will provide wastewater service in accordance with the applicable ordinances, rules, regulations, and policies of the City in effect from time to time for the extension of wastewater service. The Owner shall construct the internal wastewater lines and pay the costs of line extension and construction of facilities necessary to provide wastewater service to the subject property as required in City ordinances. Upon acceptance of the wastewater lines within the subject property and any off-site improvements, wastewater service will be provided by the City utility department on the same terms, conditions and requirements as are applied to all similarly situated areas and customers of the City, subject to all the ordinances, regulations and policies of the City in effect from time to time. The wastewater system will be accepted and maintained by the City in accordance with its usual policies. Requests for new wastewater line extensions will be installed and extended upon request under the same costs and terms as with other similarly situated customers of the City. The ordinances in effect at the time a request for service is submitted shall govern the costs and request for service. In the event of a conflict between this Municipal Services Plan and an approved and executed Development Agreement, the terms and provisions of the Development Agreement shall govern and control.

C. Maintenance of streets and rights-of-way as appropriate as follows:

(i) Provide maintenance services on existing public streets within the subject property and other streets that are hereafter constructed and finally accepted by the City. The maintenance of the streets and roads will be limited as follows:

(A) Emergency maintenance of streets, repair of hazardous potholes, measures necessary for traffic flow, etc.; and

(B) Routine maintenance as presently performed by the City.

(ii) The City will maintain existing public streets within the subject property, and following installation and acceptance of new roadways by the City as provided by city ordinance, including any required traffic signals, traffic signs, street markings, other traffic control devices and street lighting, the City will maintain such newly constructed public streets, roadways and rights-of-way within the boundaries of the subject property, subject to and except as provided within the terms, conditions and requirements of the Development Agreement, as follows:

(A) As provided in C(i)(A)&(B) above;

(B) Reconstruction and resurfacing of streets, installation of drainage facilities, construction of curbs, gutters and other such major improvements as the need therefore is determined by the governing body under City policies;

(C) Installation and maintenance of traffic signals, traffic signs, street markings and other traffic control devices as the need therefore is established by appropriate study and traffic standards; and

(D) Installation and maintenance of street lighting in accordance with established policies of the City;

(iii) The outer boundaries of the subject property abut existing roadways. The Owner agrees that no improvements are required by the City on such roadways to service the subject property.

(3) **Capital Improvements.** Construction of the following capital improvements shall be initiated after the effective date of the annexation: None. Upon development of the subject property, the Owner will be responsible for the development costs as provided in the Development Agreement, this Municipal Services Plan, and the applicable ordinances, rules, and policies of the City. Capital Improvements shall be designed, constructed and installed by the Owner as provided in the Development Agreement and this Municipal Services Plan.

(4) **Term.** If not previously expired, this service plan expires at the end of ten (10) years.

(5) **Property Description.** The legal description of the subject property is as set forth in exhibits attached to the Annexation Ordinance to which this Service Plan is attached.

EXHIBIT "G"

MUNICIPAL SERVICES PLAN
FOR PROPERTY TO BE
ANNEXED TO THE CITY OF LEANDER

WHEREAS, the City of Leander, Texas (the "City") intends to institute annexation proceedings for a tract of land described more fully hereinafter (referred to herein as the "subject property" or "the Property");

WHEREAS, *Section 43.056, Loc. Gov't. Code*, requires a service plan be adopted with the annexation ordinance;

WHEREAS, the subject property is not included in the municipal annexation plan and is exempt from the requirements thereof;

WHEREAS, infrastructure provided for herein and that existing are sufficient to service the subject property on the same terms and conditions as other similarly situated properties currently within the City limits; and

WHEREAS, it is found that all statutory requirements have been satisfied and the City is authorized by *Chapt. 43, Loc. Gov't. Code*, to annex the subject property into the City;

NOW, THEREFORE, the City agrees to provide the following services for the subject property on the effective date of annexation:

(1) **General Municipal Services.** Pursuant to the requests of the owner and this Plan, the following services shall be provided immediately from the effective date of the annexation:

A. Police protection as follows:

Routine patrols of areas, radio response to calls for police service and all other police services now being offered to the citizens of the City.

B. Fire protection and Emergency Medical Services as follows:

Fire protection by the present personnel and equipment of the City fire fighting force with the limitations of water available. Radio response for Emergency Medical Services with the present personnel and equipment.

C. Solid waste collection services as follows:

Solid waste collection and services as now being offered to the citizens of the City.

D. Animal control as follows:

Service by present personnel, equipment and facilities or by contract with a third party, as provided within the City.

E. Maintenance of parks and playgrounds within the City.

F. Inspection services in conjunction with building permits and routine City code enforcement services by present personnel, equipment and facilities.

G. Maintenance of other City facilities, buildings and service.

H. Land use regulation as follows:

On the effective date of annexation, the zoning jurisdiction of the City shall be extended to include the annexed area, and the use of all property therein shall be grandfathered; and shall be temporarily zoned "SFR-1-B" with the intent to rezone the property upon request of the landowner or staff. The Planning & Zoning Commission and the City Council will consider rezoning the property at future times in response to requests submitted by the landowners or authorized city staff.

(2) **Scheduled Municipal Services.** Due to the size of the Property and the plans and schedule for the development of the Property, the following municipal services will be provided on a schedule and at increasing levels of service as provided in this Plan:

A. Water service and maintenance of water facilities as follows:

(i) Inspection of water distribution lines as provided by statutes of the State of Texas.

(ii) The property owner shall construct the internal water lines and pay the costs of line extension and/or construct the facilities necessary to extend water service the property boundary as required in City ordinances and state law. Upon acceptance of the water lines within the subject property, water service will be provided by the City utility department on the same terms, conditions and requirements as are applied to all similarly situated areas and customers of the City; subject to all the ordinances, regulations and policies of the City in effect from time to time. The system will be accepted and maintained by the City in accordance with its usual acceptance and maintenance policies. Requests for new water line extensions will be installed and extended upon request under the same costs and terms as with other similarly situated customers of the City. The ordinances of the City in effect at the time a request for service is submitted shall govern the costs and request for service.

B. Wastewater service and maintenance of wastewater service as follows:

(i) Inspection of sewer lines as provided by statutes of the State of Texas.

(ii) The property owner shall construct the internal sewer water lines and pay the costs of line extension and/or construct the facilities necessary to extend wastewater service the

property boundary as required in City ordinances and state law. Upon acceptance of the sewer lines within the subject property, sewer service will be provided by the City utility department on the same terms, conditions and requirements as are applied to all similarly situated areas and customers of the City, subject to all the ordinances, regulations and policies of the City in effect from time to time. The system will be accepted and maintained by the City in accordance with its usual policies. Requests for new sewer line extensions will be installed and extended upon request under the same costs and terms as with other similarly situated customers of the City. The ordinances of the City in effect at the time a request for additional service is submitted shall govern the costs and request for service.

C. Maintenance, as appropriate, of existing public streets and rights-of-way that are within the maintenance jurisdiction of the City and other streets that are hereafter constructed and finally accepted by the City within the maintenance jurisdiction of the City as follows:

(i) Emergency maintenance of streets, repair of hazardous potholes, measures necessary for traffic flow, etc.;

(ii) Routine maintenance as presently performed by the City;

(iii) Reconstruction and resurfacing of streets, installation of drainage facilities, construction of curbs, gutters and other such major improvements as the need therefore is determined by the governing body under City policies;

(iv) Installation and maintenance of traffic signals, traffic signs, street markings and other traffic control devices as the need therefore is established by appropriate study and traffic standards; and

(v) Installation and maintenance of street lighting in accordance with established policies of the City.

(3) **Capital Improvements.** Construction of the following capital improvements shall be initiated after the effective date of the annexation: None. Upon development of the subject property or redevelopment, the landowner will be responsible for the development costs the same as a developer in a similarly situated area under the ordinances in effect at the time of development or redevelopment. No additional capital improvements are necessary at this time to service the subject property the same as similarly situated properties.

(4) **Term.** If not previously expired, this service plan expires at the end of ten (10) years.

(5) **Property Description.** The legal description of the subject property is as set forth in exhibits attached to the Annexation Ordinance to which this Service Plan is attached.

EXHIBIT "H"

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement is made and entered into by and between the City of Leander, Texas, a home-rule municipal corporation (the "City"), and Meritage Homes of Texas, LLC, a Texas limited liability company, its authorized and approved successors and assigns ("Developer"). The City and the Developer are sometimes referred to herein as the "Parties."

1. The Parties have entered into that Development and Annexation Agreement for the Borho Tract dated effective _____ (the "Agreement"), relating to the development of the real property described in Exhibits "A-1" and "A-2" attached hereto and incorporated herein by reference (the "Property").

2. This Memorandum does not alter, amend or modify the terms of the Agreement, but is executed solely for the purpose of giving notice of the existence of the Agreement. A copy of the Agreement is in the possession of the City and may be examined at its offices.

IN WITNESS WHEREOF, this instrument is executed as of _____, 2012.

CITY:
City of Leander, Texas
a Texas home-rule municipal corporation

Attest:

By:_____
Name: Debbie Haile
Title: City Secretary

By:_____
Name: Christopher Fielder
Title: Mayor

THE STATE OF TEXAS §

COUNTY OF WILLIAMSON §

This instrument was acknowledged before me on this ____ day of _____, 2012, by Christopher Fielder, Mayor of the City of Leander, Texas, a Texas home-rule municipal corporation, on behalf of said corporation.

(SEAL)

_____
Notary Public, State of Texas

DEVELOPER:
Meritage Homes of Texas, LLC, a Texas limited liability company

By:_____
Name: Charlie Coleman
Title: _____

THE STATE OF TEXAS §

COUNTY OF _____ §

This instrument was acknowledged before me on this ____ day of _____, 2012, by Charlie Coleman, _____ of Meritage Homes of Texas, LLC, a Texas limited liability company, on behalf of said limited liability company.

(SEAL)

_____
Notary Public, State of Texas

AGENDA ITEM # 15

Executive Summary

November 1, 2012

Council Agenda Subject: Consider approval of a Drainage and Detention Basin Easement and Agreement between City of Leander, Oryx Holdings, LLC, and DDC Merritt Legacy, Ltd. (Connelly's Crossing Subdivision)

Background: As part of the Connelly's Crossing subdivision, the developer, Oryx Holding, LLC has provided land for DDC Merritt Legacy, Ltd to construct, operate and maintain a water quality/detention wet pond to capture and treat runoff for the Merritt Legacy apartment project in an easement dedicated to the city. The property will also serve a dual use as a city park and future home of a Veterans Memorial Park. This agreement will serve to license the use and sets out rules for construction, operation and long term maintenance of the facility. The agreement indemnifies the city and provides provisions for access during and after construction, notice standards and insurance requirements.

Origination: Jim Bechtol, Director of Development Services

Financial Consideration: N/A

Recommendation: Staff requests approval of this agreement and authorization for the Mayor to execute the agreement with Oryx Holdings, LLC, and DDC Merritt Legacy, Ltd.

Attachments: Agreement

Prepared by: Jim Bechtol, Director of Development Services

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

DRAINAGE AND DETENTION BASIN EASEMENT AND AGREEMENT

Date: Dated to be effective as of November 1, 2012

Grantor: **ORYX HOLDINGS, LLC,**
a Texas Limited Liability Company

Grantor's Mailing Address: P.O. Box 302663
Austin, TX 78703
Travis, County

Grantee: **DDC Merritt Legacy, Ltd.,**
a Texas Limited Partnership

Grantee's Mailing Address: 1904 W. 35th Street
Austin, Texas 78703
Travis, County

Oryx Property:

Lot 2, Block A, of Connelly's Crossing Subdivision Phase 1A, a subdivision in Williamson County, Texas, according to the map or plat thereof recorded as Document No. 2012084407, Official Public Records of Williamson County, Texas.

Legacy Property:

Lot 1, Block A, of Connelly's Crossing Subdivision Phase 1A, a subdivision in Williamson County, Texas, according to the map or plat thereof recorded as Document No. 2012084407, Official Public Records of Williamson County, Texas.

Easement Tract:

The tract of land described identified as the "Drainage Easement" on Connelly's Crossing Subdivision Phase IA Final Plat, recorded as Document No. 2012084407, Official Public Records of Williamson County, Texas (the "**Plat**").

AGREEMENT

For good and valuable consideration, the receipt and sufficiency are hereby acknowledged, Grantor, Grantee, and the City of Leander, a Texas home rule municipality whose mailing address is P.O. Box 319, Leander, Williamson County, Texas 78646 (the "**City**") (collectively, the "**Parties**") agree as follows:

1. **Grant of Easement**:

   (a) Grantor, as fee owner of the Oryx Property and the Easement Tract, does hereby ESTABLISH, GIVE, GRANT and CONVEY to Grantee a perpetual easement (the "**Easement**") over, on, and across the Oryx Property and the Easement Tract for the Easement Purposes (hereinafter defined) and for the

benefit of the Legacy Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold the Easement to Grantee forever. Grantor binds Grantor and Grantor's heirs, successors, and assigns to warrant and forever defend Grantee's title to the Easement and the Easement Tract against every person whomsoever lawfully claiming or to claim the Easement, the Easement Tract or any part thereof, except as to the Exceptions to Warranty (hereinafter defined), to the extent that such claim arises by, through or under Grantor but not otherwise.

(b) Grantor granted a drainage easement to the public over, on, and across the Easement Tract in the Plat. The Oryx Property will be dedicated to the City as parkland on a date subsequent to the date of this Drainage and Detention Basin Easement Agreement (the "**Agreement**") as provided herein. The City hereby consents to Grantor's conveyance of the Easement to Grantee subject to the terms and conditions contained herein and acknowledges that its interest in the Oryx Property is subject to the terms and conditions contained herein.

2. **Easement Purpose:** This Agreement is intended to apply to the property that is identified as the "Drainage Easement" on the Plat, and to further define the rights and responsibilities of the Parties with respect to the Easement, the Easement Tract and the Oryx Property. Grantor grants the Easement to Grantee for the following purposes (collectively, the "**Easement Purposes**"):

(a) Permit the drainage of water, including without limitation, above-ground, below-ground, surface and storm water (collectively, the "**Water**") from the Legacy Property across the Oryx Property and into a storm water detention pond (the "**Wet Pond**"), and other above ground and/or below ground water quality facilities, including without limitation, berms, mounds, open and/or closed (or partially open and/or partially closed) above and/or below ground drainage channels, headwalls, culverts, splitter boxes, pipes, and any and all other improvements set forth or described on the Plat and/or in the approved Plans (hereinafter defined) and/or are necessary, desired or required to facilitate such drainage of the Water that are approved in writing by the City prior to construction (collectively, including without limitation the Wet Pond and any other improvements permitted by the City that Grantee constructs within the Easement Tract, the "**Facilities**").

(b) To permit Grantee, and Grantee's agents, employees, contractors and invitees, the right of ingress/egress on, over and under the Oryx Property and the Easement Tract for the acts of installing, constructing, maintaining, repairing, servicing, operating, upgrading and removing the Facilities.

(c) To permit Grantee, and Grantee's agents, employees, contractors and invitees, the right of ingress and egress on, over and under the Oryx Property and the Easement Tract for the acts of installing, constructing, maintaining, repairing, servicing, operating, upgrading, and removing pipes and/or irrigation equipment associated with a water well (the "**Water Well**") located on the Legacy Property used to service and maintain the Facilities, as well as needed to install, construct, maintain, repair, service, operate, upgrade, and remove the Water Well and pipes and irrigation equipment associated therewith.

3. **Character of Easement**. The Easement is appurtenant to and runs with all and any portion of the Legacy Property, whether or not the Easement is referenced or described in any conveyance of all or any portion of the Legacy Property.

4. **Exceptions to Warranty:** The term "**Exceptions to Warranty**" shall mean instruments that are recorded in the Real Property Records of Williamson County, Texas, and which affect the Easement Tract on the date hereof.

5. **Grantor's Right to Use Easement Tract**. To the extent permitted by applicable law, including without limitation the Plat, Grantor hereby reserves the right to construct improvements within the Oryx Property, including without limitation, the Easement Tract, provided such improvements do not unreasonably or materially interfere with Grantee's use of the Easement Tract for the Easement Purposes and the City (and its successors and assigns) provides its written approval for all landscaping, buildings, fences, and other improvements to be situated in the Drainage Easement prior to their construction. Grantor's rights under this paragraph shall terminate upon conveyance of the Oryx Property to the City, unless the City authorizes otherwise in writing.

6. **Costs of Improvements, Repairs and Maintenance of Easement Tract:**

   (a) Grantee shall be solely responsible for all costs associated with the construction, repair and maintenance of the Facilities and the Water Well. The Facilities constructed by Grantee within the Easement Tract shall be constructed and maintained in accordance with (a) good engineering practices; (b) the Subdivision Construction Plans for Connelly's Crossing Phase I, dated September 27, 2012, prepared by Austin Civil Engineering, Inc. and bearing Job No. 12-004 the "**Plans**") and approved by the City; and (c) all applicable federal, state, regional and/or local laws, rules, regulations, and ordinances of any governmental or quasi-governmental entity having jurisdiction over the Easement Tract, including without limitation, the City of Leander and the Texas Commission on Environmental Quality Tract (collectively, "**Applicable Law**"). Grantee shall maintain the Wet Pond in a good and orderly condition in accordance with the terms of the Plat and Applicable Law. The Facilities shall not be modified in any material respect from the Plans or removed without the prior written consent of the City.

   (b) After conveyance of the Oryx Property to the City, Grantee shall make good faith efforts to coordinate with the City when repairing, maintaining, modifying, or removing the Facilities and the Water Well so as to minimize interference with the use of the Oryx Property as a public park, as well as events held at the Oryx Property, and to ensure the safety of the public, including but not limited to giving the City at least 30 days prior written notice of Grantee's intent to enter the Easement Tract to perform work on the Facilities or the Water Well that involves dredging the Facilities, excavating lines, or performing similar repair or maintenance work on the Facilities. Grantee shall further, at its own expense, take precautionary measures as may be necessary to protect and warn individuals of the potential hazards created by the performance of such work. Notwithstanding the foregoing and/or any other provisions in this Agreement to the contrary, Grantee shall have the right to enter the Oryx Property (to the extent otherwise permitted by this Agreement) and the Easement Tract (i) to perform routine repairs and maintenance that does not unreasonably interfere with the use of the Oryx Property or events held at the Oryx Property; and (ii) in any situation in

which, due to an emergency or otherwise, the health, welfare or safety of any individual or physical condition of the Facilities and the intended use of the Legacy Property would be materially and unreasonably jeopardized if Grantee does not take prompt action.

7. **Restoration and Repair of Easement Tract**. Upon the completion of construction, maintenance and/or repair of the Facilities or the Water Well by Grantee, Grantee shall restore and repair any damage done to the Oryx Property and the Easement Tract, and any improvements located on the Oryx Property and/or the Easement Tract, to a condition equal to the condition said property and improvements existed prior to Grantee's construction, maintenance and/or repair of the Facilities.

8. **Taxes on the Oryx Property**. Except as otherwise provided in this Agreement or in any other agreement executed by the Parties, Grantor shall pay, in a timely manner, all taxes, charges, and assessments of every kind applicable to the Oryx Property, including without limitation the Easement Tract, so as not to affect Grantee's right and ability to enjoy the Easement as herein granted.

9. **Equitable Rights of Enforcement**.

   (a) This Agreement may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the Parties; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.

   (b) In the event that Grantee fails to repair or maintain the Facilities or otherwise comply with the terms or conditions as set forth herein, the City shall give Grantee written notice thereof, by registered or certified mail, return receipt requested, to the address set forth herein. Grantee shall have thirty (30) days from the date of receipt of such notice to take action to remedy the failure complained of, and, if Grantee does not satisfactorily remedy the same within the thirty (30) day period, the City may perform the work or contract for the completion of the work. Grantee agrees to pay, within thirty (30) days of written demand by the City, all reasonable costs expenses incurred by the City in completing the work (the "**City Expenditures**"). If Grantee fails to reimburse the City for the City Expenditures after notice and demand, then, in that event, the City may at its option file a lien equal to the value of the City Expenditures against the Legacy Property, in addition to pursing any other equitable legal remedy. Notwithstanding anything to the contrary set forth in this Agreement, provided Grantee is using reasonably diligent and commercial efforts to repair or maintain the Facilities or otherwise comply with the terms and conditions as set forth herein, Grantee shall have such additional time to perform hereunder if any delay is caused by matters outside Grantee's control, including without limitation, (i) strike, lock-out or other labor troubles, (ii) governmental restrictions or limitations, (iii) failure or shortage of electrical power, gas, water, fuel oil, or other utility or service, (iv) riot, war, insurrection, acts of terror or other national or local emergency, (v) accident, flood, fire or other casualty, (vi) adverse weather conditions, and/or (g) any other act of God.

(c) All remedies will be cumulative and the pursuit of one authorized remedy will not constitute an election of remedies or a waiver of the right to pursue any other authorized remedy.

10. **Successors and Assigns**. This Agreement binds and inures to the benefit of Grantee and Grantee's heirs, successors, and assigns, and any other party that at any time owns all or any portion of the Legacy Property, or any interest in the Legacy Property. This Agreement binds and inures to the benefit of Grantor and Grantor's heirs, successors and assigns, and any other party that at any time owns all or any portion of the Oryx Property or the Easement Tract, or any interest in the Oryx Property or the Easement Tract. This Agreement binds and inures to the benefit of the City's successors, and assigns.

11. **Attorneys' Fees**. If any Party retains an attorney to enforce this Agreement, the Party prevailing in litigation is entitled to recover reasonable attorneys' fees and court and other costs from the non-prevailing Party; provided that attorneys' fees and cost may not be recovered against the City.

12. **Choice of Law**. This Agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Jurisdiction and venue for all claims made under or in connection with this Agreement shall lie exclusively in the state and federal courts with local jurisdiction over Leander, Texas.

13. **Counterparts**. This Agreement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

14. **Waiver of Default**. It is not a waiver of or consent to a default if the non-defaulting party fails to declare a default or delays in taking any action. Pursuit of any remedies set forth in this Agreement does not preclude pursuit of other remedies in this Agreement or provided by law.

15. **Further Assurances**. Each Party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this Agreement and all transactions contemplated by this Agreement.

16. **Indemnities**.

(a) **Except as otherwise provided in a written agreement executed by the Parties, Grantor agrees to indemnify and hold Grantee and the City harmless from and against all reasonable damages, loss, cost and expense of whatsoever nature (including reasonable attorneys' fees) caused to persons or property by, or arising out of, (i) the use of the Easement Tract and/or the Oryx Property by Grantor and/or any of Grantor's guests, tenants, contractors, lessees, customers, employees, agents, licensees and invitees, and any guest or invitee of a tenant of the Oryx Property (collectively, the "Grantor Parties"); (ii) default in the performance of the terms and conditions of this Agreement by Grantor; or (iii) failure of any Grantor Party to comply with Applicable Law. Notwithstanding any provision contained herein to the contrary, this Section 16(iii) is not binding up on the City.**

(b) **Except as otherwise provided in a written agreement executed by Parties, Grantee agrees to indemnify and hold Grantor harmless from and against all reasonable damages, loss, cost and expense of whatsoever nature (including reasonable attorneys' fees) caused to persons or property by, or arising out of, (i) the use of the Easement Tract and/or the Oryx Property by Grantee and/or any of Grantee's guests, tenants, contractors, lessees, customers, employees, agents, licensees and invitees, and any guest or invitee of a tenant of the Legacy Property (collectively, the "Grantee Parties"); (ii) default in the performance of the terms and conditions of this Agreement by Grantee; or (iii) failure of any Grantee Party to comply with Applicable Law.**

(c) **Grantee further agrees to indemnify and hold the City, and its officers, agents and employees, harmless from and against all damages, loss, cost and expense of whatsoever nature (including reasonable attorneys' fees) caused to persons or property by, or arising out of, (i) the use of the Easement Tract and/or the Oryx Property by Grantee and/or any of Grantee's guests, tenants, contractors, lessees, customers, employees, agents, licensees and invitees, and any guest or invitee of a tenant of the Legacy Property (collectively, the "Grantee Parties"); (ii) default in the performance of the terms and conditions of this Agreement by Grantee; or (iii) failure of any Grantee Party to comply with Applicable Law.**

17. **Insurance.** Grantee 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 $1,000,000.00, which coverage may be provided in the form of a rider and/or endorsement to a previously existing insurance policy. The City may require the Grantee to increase the combined single limit of such coverage from time to time in the discretion of the City up to a maximum of $2,000,000.00. Such insurance coverage shall specifically name the City as an additional-insured. The insurance shall cover all perils arising from the activities of Grantee, its guests, tenants, lessees, customers, invitees, officers, employees, agents, or contractors, relative to this Agreement. Grantee shall be responsible for any deductibles stated in the policy. A true copy of each such policy shall be delivered to the City Manager of City on or before the dedication of the Oryx Tract to the City.

Grantee 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 thirty (30) days after the City has received written notice as evidenced by a return receipt of registered or certified mail.

Compliance with this Section 17 shall be a condition of issuance of the Certificate of Completion for the site development improvements on the Legacy Property, and shall further be a condition of any development approvals sought by the Grantee from the City subsequent to the final inspection of the site development improvements on the Legacy Property.

18. **Legal Construction.** If any provision in this Agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the Parties, the unenforceability will not affect any other provision

hereof, and this Agreement will be construed as if the unenforceable provision had never been a part of this Agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Section headings in this Agreement are for reference only and are not intended to restrict or define the text of any section. This Agreement will not be construed more or less favorably between the Parties by reason of drafting this Agreement.

19. **Notices**. Any notice required or permitted under this Agreement must be in writing. Any notice required by this Agreement will be deemed to be delivered (whether actually received or not) three (3) business days after being deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Agreement. Notice may also be given by personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered to the other Party.

20. **Recitals**. Any recitals in this Agreement are represented by the Parties to be accurate, and constitute a part of the substantive portion of this Agreement.

21. **Time**. Time is of the essence. Unless otherwise specified, all references to "days" mean calendar days. Business days exclude Saturdays, Sundays, and legal public holidays. If the date for performance of any obligation falls on a Saturday, Sunday, or legal public holiday, the date for performance will be the next following regular business day.

22. **Entire Agreement; Amendments or Modifications**. This Agreement contains the entire agreement between the Parties relating to the Easement. Any oral representations or oral modifications concerning this Agreement shall be of no force and effect. All amendments or modifications hereto must be in writing and signed by Grantor, Grantee and their respective lienholders (if applicable).

23. **No Merger**. In the event Grantor and Grantee are at any time the same entity, its interests as Grantor and Grantee and the estates held as Grantor and Grantee shall not merge, but shall remain distinct interests in real property and this Agreement shall continue in existence.

24. **No Public Grant**. Nothing contained in this Agreement shall be deemed to be a gift or a dedication of any portion of the Oryx Property, the Legacy Property, or the Easement Tract to the general public or for any public use or purpose whatsoever, it being the intention of the Parties that nothing in this Agreement, expressed or implied, shall confer upon any person, other than the Parties and, their respective heirs, successors and assigns, any rights or remedies under, or by reason of, this Agreement.

25. **Dedication of Oryx Property**. Grantor shall grant the Oryx Property free and clear of all mortgages and liens to the City by Special Warranty Deed at or prior to final inspection of the site development improvements on the Legacy Property. Notwithstanding the foregoing, compliance with this Section 25 shall not be a condition of issuance of the Certificate of Completion for the site development improvements on the Legacy Property, and shall not be a condition of any development approvals sought by the Grantee from the City subsequent to the final inspection of the site development improvements on the Legacy Property.

Compliance with this Section 25 shall be a condition of any development approvals sought by the Grantor from the City. Failure of Grantor to satisfy this condition shall not affect the Easement or Grantee's rights under this Agreement.

[Signatures and Acknowledgments begin on the following page]

EXECUTED to be effective as of the date first set forth above.

Grantor:

Oryx Holdings, LLC,
a Texas limited liability company

By:_____
Blake A. Rue, Managing Member

Grantee:

DDC Merritt Legacy, Ltd.,
a Texas limited partnership

By: DDC Merritt Legacy GP, LLC,
a Texas limited liability company,
its general partner

By: DDC Operations, LLC,
a Texas limited liability company,
its sole member

By:_____
Colby W. Denison, its member

THE CITY OF LEANDER, TEXAS

By:_____
Christopher Fielder, Mayor

STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 25th day of October, 2012, by Blake A. Rue, Managing Member of **Oryx Holdings, LLC**, a Texas limited liability company, on behalf of said limited liability company.

[SEAL]

INA K SPOKAS
My Commission Expires
May 20, 2016

Notary Public, State of Texas

STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 25th day of October, 2012, by Colby W. Denison, member of DDC Operations, LLC, a Texas limited liability company, sole member of DDC Merritt Legacy, GP, LLC, a Texas limited liability company, general partner of **DDC Merritt Legacy, Ltd**, a Texas limited partnership, on behalf of said limited partnership.

[SEAL]

Notary Public, State of Texas

INA K SPOKAS
My Commission Expires
May 20, 2016

STATE OF TEXAS §
§
COUNTY OF WILLIAMSON §

This instrument was acknowledged before me on this _____ day of October 2012, by Christopher Fielder, the Mayor of **THE CITY OF LEANDER, TEXAS**, on behalf of said city.

S E A L

_____
Notary Public, State of Texas

MAILING ADDRESS OF GRANTOR AND AFTER RECORDING, RETURN TO:

Locke Lord LLP
100 Congress Avenue, Suite 300
Austin, Texas 78701
Attention: Richard D. Morrow

Executive Summary

November 1, 2012

Council Agenda Subject: Consider Escrow Agreement and Special Warranty Deed with Oryx Holdings, LLC for conveyance of land to the city.

Background: Oryx Holding, LLC proposes to dedicate land to the city by Special Warranty Deed for land including and adjacent to the proposed drainage and water quality/ detention facility associated with the Connelly's Crossing subdivision.

Origination: Development Services

Financial Consideration: N/A

Recommendation: Approve the Escrow Agreement and authorize acceptance of Special Warranty Deed.

Attachments: Escrow Agreement

Prepared by: Jim Bechtol, Director of Development Services

EXHIBIT A

SPECIAL WARRANTY DEED

THE STATE OF TEXAS §
COUNTY OF WILLIAMSON § **KNOW ALL PERSONS BY THESE PRESENTS:**

That Oryx Holdings, LLC, a Texas limited liability company, hereinafter called **"Grantor,"** for and in consideration of the sum of Ten and No/100 Dollars ($10.00), together with other good and valuable consideration, to Grantor cash in hand paid by **The City of Leander, Texas**, a Texas municipal corporation, hereinafter called **"Grantee"**, the receipt of which is hereby acknowledged, has **GRANTED, SOLD** and **CONVEYED**, and by these presents does **GRANT, SELL** and **CONVEY** unto the said **Grantee**, all that certain lot, tract or parcel of land known and described as follows:

> Lot 2, Block A, of Connelly's Crossing Subdivision Phase 1A, a subdivision in Williamson County, Texas, according to the map or plat thereof recorded as Document No. 2012084407, Official Public Records of Williamson County, Texas.

This conveyance is expressly made subject to the restrictions, covenants and easements, if any, apparent on the ground, and utility easements, if any, in use by the City or any other public utility, or now in force and existing of record in the office of the County Clerk of Williamson County, Texas, to which reference is here made for all purposes.

TO HAVE AND TO HOLD the above described premises, together with all and singular, the rights and appurtenances thereto in anywise belonging, unto the said Grantee, **The City of Leander, Texas**, its successors and assigns forever, and Grantor does hereby bind their successors and assigns to **WARRANT AND FOREVER DEFEND**, all and singular, the said premises unto **The City of Leander, Texas**, the said Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof same by, through or under the Grantors, but not otherwise.

EXECUTED at Austin, Travis County, Texas, this the 25th day of October 2012.

GRANTOR:
Oryx Holdings, LLC,
a Texas limited liability company

By: _____
Blake A. Rue, Managing Member
P.O. Box 302663
Austin, Williamson County, Texas 78703

THE STATE OF TEXAS §

COUNTY OF Travis §

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared Blake A. Rue, Managing Member, Oryx Holdings, LLC, a Texas limited liability company, Grantor herein, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 25th day of Oct 2012.

_____
Notary Public-State of Texas

NOTARY PUBLIC STATE OF TEXAS
INA K SPOKAS
My Commission Expires
May 20, 2016

ACCEPTED BY THE CITY OF LEANDER, TEXAS (Grantee):

_____
Christopher Fielder, Mayor
Mailing Address: P.O. Box 319
Leander, Williamson County, Texas 78641

THE STATE OF TEXAS §

COUNTY OF WILLIAMSON §

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared Christopher Fielder, Mayor, City of Leander, Texas, Grantee herein, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the __ day of ____ 2012.

_____
Notary Public-State of Texas

AFTER RECORDING PLEASE RETURN TO:
City of Leander
City Secretary
P.O. Box 319
Leander, Texas 78641

ORYX

October 25, 2012

City of Leander
c/o Kent Cagle
200 W. Willis
P.O. Box 319
Leander, TX 78646-0319

Re: Conveyance of Lot 2, Block A, of Connelly's Crossing Subdivision Phase 1A (the "**Property**"), for Public Park.

Dear Mr. Watts:

This letter agreement ("**Agreement**") is entered into by and between the City of Leander, Texas (the "**City**") and Oryx Holdings, LLC, a Texas limited liability company ("**Oryx**"), for the purpose of establishing the terms and conditions under which (a) Oryx shall convey the Property to the City by Special Warranty Deed, free and clear of all mortgages and liens, at or prior to final inspection of the site development improvements (the "**Merritt Improvements**") to be located on the Property and the adjacent tract described as Lot 1, Block A, of Connelly's Crossing Subdivision Phase 1A, a subdivision in Williamson County, Texas, according to the map or plat thereof recorded as Document No. 2012084407, Official Public Records of Williamson County, Texas (the "**Merritt Tract**; and (b) and the City will hold an executed copy of the Deed in order to ensure the Property is so conveyed to the City. The City and Oryx are sometimes referred to hereinafter as the "**Parties**" and individually as a "**Party**."

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the

Parties hereby contract, covenant and agree as follows:

1. Oryx hereby deposits the Deed with the City to secure the timely conveyance of the Property to the City.

2. The City will hold the Deed in escrow until the following conditions are met (the "Conditions"):
   a. The City finally inspects and approves the Merritt Improvements, as evidenced by written certification to the City from a licensed engineer or contractor indicating that the Merritt Improvements have been completed (the "**Certification**"). The Merritt Improvements shall include the improvements to be constructed on the Property (including landscaping) in accordance with the Subdivision Construction Plans for Connelly's Crossing Phase I, dated September 27, 2012, prepared by Austin Civil Engineering, Inc. and bearing Job No. 12-004 the "**Plans**") and approved by the City and the approved site development plans for the Merritt Tract.

512-636-6076 • P.O. Box 302663 Austin, TX 78703

b. The City accepts the park improvements to be constructed on the Property by Oryx.

c. The City receives a copy of the insurance policy demonstrating compliance with Section 17 of that certain Drainage and Detention Basin Easement and Agreement entered between the City, Oryx, and DDC Merritt Legacy, Ltd., dated November 1, 2012.

3. Upon the City's delivery of written notice to Oryx that the Conditions have been met, Oryx hereby consents to the City's recording of the Deed in the Real Property Records of Williamson County, Texas, without the necessity of any further consent from Oryx.

4. Oryx shall grant the Oryx Property to the City at or prior to final inspection of the site development improvements on the Legacy Property. Compliance with this section shall be a condition of any development approvals sought by Oryx from the City.

5. Upon the full execution of this Agreement by both Parties Oryx shall deliver to the City an executed copy of the Deed, in the form attached hereto and labeled Exhibit A, to be held and recorded by the City in accordance with the terms hereof.

6. This Agreement is governed by the laws of the State of Texas, and may be executed in several counterparts, each of which so executed shall be an original.

IN WITNESS WHEREOF, we have cause this Agreement to be executed by our duly authorized representatives effective as of the 25th day of October, 2012.

State of Texas
County of Travis

INA K SPOKAS
My Commission Expires
May 20, 2016

10/25/12

Oryx Holdings, LLC,
a Texas limited liability company

By: _____
Name: Blake Rue
Title: Managing Member

AGREED AND ACCEPTED:

The City of Leander, Texas

By: _____
Name: _____
Title: _____

Executive Summary

November 1, 2012

Subject: Consideration of a Resolution Authorizing the Submission of a Project Nomination to the Statewide Transportation Enhancement Program

Background: The Texas Department of Transportation is calling for candidate projects for the Transportation Enhancement Program. The program utilizes federal funds and a 20% local match is required. The total cost of the project is estimated to be $1,015,800. That amount includes design services ($128,000), construction ($772,000), and TxDot administration ($115,800), but only construction costs are eligible for Program assistance. The City share of funding for the project will be $305,560, but it is not anticipated that any or all of these funds will be needed in FY 2012-13.

Staff respectfully requests Council authorization to submit a nomination to construct the 0.88 mile missing segment of the sidewalk-trail on the west side of Bagdad Road from Crystal Falls Parkway to Eagles Way. This project is identified as a high priority on the *City Roadway Plan* and *Parks, Recreation & Open Space Master Plan.*

Financial Consideration: $305,560

Recommendation: Staff respectfully recommends approval of a resolution certifying local funding and support for the submission of a project nomination to the Statewide Transportation Enhancement Program.

Attachments: Resolution; Project Map; Cost Estimate

Prepared by: Stephen Bosak, Parks & Recreation Director

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF LEANDER TEXAS TO CERTIFY LOCAL FUNDING AND SUPORT TO THE STATEWIDE TRANSPORTATION ENHANCEMENT PROGRAM FOR FUNDING COMPETITION IN THE TEXAS DEPARTMENT OF TRANSPORTATION 2012 PROGRAM CALL FOR PROJECTS

Whereas, the Texas Department of Transportation issued a call for nominations in September 2012 for communities to apply for federal highway funding assistance made available through the Transportation Enhancement Program; and

Whereas, Leander Bagdad Road Sidewalk project will provide improved access and safety for bicyclist and pedestrians to join Leander High School, the Mason Homestead, Public Library, Bledsoe and Benbrook Ranch Parks and six residential neighborhoods; and

Whereas, the program requires a minimum 20% local funding match plus 100% of any cost overruns above the project estimate of $1,015,800.

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

Section 1: The City supports funding this project as shown in the nomination budget and commits to the project development, implementation, construction, maintenance, management and financing.

Section 2: That the City adopts this Resolution approving the submission of the project nomination; and the support and funding of the project should it receive federal funds.

Section 3: That the City Manager is hereby authorized to act on behalf of the City in all matters relating to this funding nomination and to execute all necessary applications, assurances, certifications and other documents relative to the submission, later acceptance and administration of such funds.

Section 4: That it is hereby officially found and determined that this meeting at which this resolution is passed is open to the public as required by law and that public notice of the time, place and purpose of said meeting was given as required.

PASSED AND APPROVED ON THE 1ST DAY OF NOVEMBER 2012.

City of Leander, Texas

_____ ATTEST: _____

Christopher Fielder, Mayor Debbie Haile, City Secretary

KSA ENGINEERS
4833 Spicewood Springs Rd. Suite 204
Austin, Texas 78759
T.512-342-6868 F.512-342-6877
www.ksaeng.com

PROPOSED SIDEWALK
BAGDAD RD || EAGLE WAY TO CRYSTAL FALLS PKWY
LEANDER, TX

200' 0 200' 400'
GRAPHIC SCALE IN FEET

CITY OF LEANDER
BAGDAD ROAD SIDEWALK - EAGLES WAY TO CRYSTAL FALLS PKWY
PRELIMINARY OPINION OF PROBABLE PROJECT COST

	Item	Description	Quan	Unit	Unit $	Subtotal $	Total $
1	BAGDAD RD SIDEWALK EXTENSION						
	1.01	PREP ROW	5,000	LF	$2.00	$10,000.00	
	1.02	EXCAVATION	1,000	CY	$15.00	$15,000.00	
	1.03	EMBANKMENT	800	CY	$11.00	$8,800.00	
	1.04	REMOVE TREE (12" TO 24")	10	EA	$600.00	$6,000.00	
	1.05	CONC SIDEWALKS, 8' WIDE, 4" THICK	4,200	SY	$39.00	$163,800.00	
	1.06	CONC TOE WALL WITH CURB, 6"	2,200	LF	$28.00	$61,600.00	
	1.07	CONC DRIVEWAYS	200	SY	$56.00	$11,200.00	
	1.08	CURB RAMP, TY 7	14	EA	$900.00	$12,600.00	
	1.09	RETAINING WALL, STONE	600	LF	$60.00	$36,000.00	
	1.10	PEDESTRIAN HANDRAIL	500	LF	$110.00	$55,000.00	
	1.11	PEDESTRIAN BRIDGE, 140' SPAN, 8' WIDE	1	EA	$165,000.00	$165,000.00	
	1.12	PEDESTRIAN BRIDGE, 30' SPAN, 8' WIDE	1	EA	$28,000.00	$28,000.00	
	1.13	BRIDGE ABUTMENT, 140' SPAN	2	EA	$9,500.00	$19,000.00	
	1.14	BRIDGE ABUTMENT, 30' SPAN	2	EA	$4,000.00	$8,000.00	
	1.15	COMPLAINCE WITH SWPPP	1	LS	$4,000.00	$4,000.00	
	1.16	TEMP FILTER FABRIC FENCE	800	LF	$3.00	$2,400.00	
	1.17	BLOCK SODDING, WATER, FERTILIZER	3,600	SY	$6.00	$21,600.00	
	1.18	BARRICADES, SIGNS, AND TRAFFIC HANDLING	4	MO	$2,500.00	$10,000.00	
	1.19	MOBILIZATION	1	LS	$34,000.00	$34,000.00	
							$672,000.00
	1.20	CONSTRUCTION CONTINGENCIES			15%	$100,000.00	
							$772,000.00
2	NON-CONSTRUCTION COSTS						
	2.01	PERMITTING	0	LS	$0.00	$0.00	N/A
	2.02	PUBLIC MEETINGS	0	LS	$0.00	$0.00	N/A
	2.03	DESIGN SURVEY	1	LS	$11,000.00	$11,000.00	
	2.04	EASEMENT PREPARATION	0	LS	$0.00	$0.00	N/A
	2.05	GEOTECHNICAL INVESTIGATION	1	LS	$7,500.00	$7,500.00	
	2.06	ENGINEERING - STUDY & REPORT	0	LS	$0.00	$0.00	N/A
	2.07	ENGINEERING - ENVIRONMENTAL	1	LS	$7,000.00	$7,000.00	
		DESIGN FEE CURVE OF ESTIMATED CONSTRUCTION COST			*7.9%*		
	2.08	ENGINEERING - PRELIMINARY DESIGN	1	LS	30%	$18,300.00	
	2.09	ENGINEERING - FINAL DESIGN	1	LS	40%	$24,400.00	
	2.10	ENGINEERING - BIDDING	1	LS	10%	$6,100.00	
	2.11	ENGINEERING - CONSTRUCTION ADMIN	1	LS	20%	$12,200.00	
	2.12	ENGINEERING - CLOSEOUT & OPERATIONAL	1	LS	$1,200.00	$1,200.00	
	2.13	STORMWATER POLLUTION PREVENTION PLAN	1	LS	$1,500.00	$1,500.00	
	2.14	CONSTRUCTION MATERIALS TESTING	1	LS	$4,300.00	$4,300.00	
	2.15	CONSTRUCTION BENCHMARKS	1	LS	$3,000.00	$3,000.00	
	2.16	RESIDENT PROJECT REPRESENTATIVE	400	HR	$65.00	$26,000.00	T&E
	2.17	PRINTING & REIMBURSABLES	1	LS	$2,500.00	$2,500.00	
	2.18	GRANT ADMINISTRATION	1	LS	$3,000.00	$3,000.00	
							$128,000.00
3	ENGINEER'S PRELIMINARY OPINION OF PROBABLE PROJECT COST						**$900,000.00**

Executive Summary

November 1, 2012

Council Agenda Subject: Approve and authorize Mayor to execute documents for the Development Agreement between the City of Leander and Leander 183A Development II LLC.

Background: On October 18th, 2012 the City Council voted to terminate the Development Agreement with the Villages of Messina. This same property is now owned by Leander 183A Development II LLC (Leander 183A Development) and they have proposed to fund and build the same infrastructure under a new agreement.

This agreement includes:

- Development and Reimbursement Agreement for Leander 183A Development II LLC, with exhibits (LDRA) and under separate agenda item;
    - Ordinance of the City of Leander, Texas Giving Consent to the Creation of a Municipal Utility District (MUD), with exhibits
    - Facilities Agreement, with exhibits

Summary

This agreement includes over 297 acres with approximately 16 acres of school property and approximately 40 acres of commercial. The term of the LDRA is generally the life of the Leander TIRZ No. 1. This property is within the Leander TOD and is primarily "conventional zone" which means it complies with all standard subdivision requirements of the City with the additional architectural requirements laid out in Article 8 of the Leander SmartCode. This agreement identifies the projects eligible for reimbursement include major water, wastewater, storm water, water quality and a roadway improvement, all major public facilities. It identifies the reimbursement sources which include TIRZ No. 1 at 80% of the increment value for the subject property, 2.5% of the overall increment collection of the Leander TIRZ No. 1, as well as up to, 60% of impact fees for named major facilities.

This agreement also makes note of the Ordinance Giving Consent to Create a MUD and the Facilities Agreement that is part of the MUD scope.

This proposed Development Agreement and its parts were approved by a unanimous vote of the Leander TIRZ No. 1 Board of Directors.

Origination: Pix Howell, Urban Design Officer

Financial Consideration: 80% of the increment value for the subject property, 2.5% of the overall increment collection of the TIRZ and up to 60% of impact fees for named major facilities.

Recommendation: Approve the Development Agreement and authorize the Mayor to execute.

Attachments: Development and Reimbursement Agreement for Leander 183A Development II LLC, with exhibits

Prepared by: Pix Howell, AICP, CNU – UDO

DEVELOPMENT AND REIMBURSEMENT AGREEMENT
FOR LEANDER 183A DEVELOPMENT II LLC

This Development and Reimbursement Agreement for the Leander 183A Development II LLC ("**Agreement**") is made, entered into and effective as of the _____ day of _____, 2012 (the "**Effective Date**") by the Leander Development Authority, a non-profit corporation formed pursuant to Subchapter D, Chapter 431, Texas Transportation Code and the City Charter of the City of Leander (the "**Authority**"); Leander 183A Development II LLC, a Texas limited liability company ("**Developer**"); and the City and TIRZ #1 (as hereinafter defined) for the limited purposes set forth herein. The City of Leander, Texas (the "**City**"), a Texas home-rule municipal corporation, executes this Agreement for the limited purposes of the City Council of the City ("**Council**") approving this Agreement as a contractual obligation of the Authority, and agreeing that the City will, during the Term of this Agreement, pay the Rebate Amounts (as hereinafter defined) to a separate TIRZ #1 account and the Property Tax Increment Receipts (as hereinafter defined) to the Tax Increment Fund established in Section 6 of Ordinance No. 06-029-00 that created Reinvestment Zone Number One, City of Leander, Texas ("**TIRZ #1**"), and to certain other matters as expressly set forth herein. TIRZ #1, a legal entity created by the City pursuant to Chapter 311, Texas Tax Code, executes this Agreement for the limited purposes of the Board of Directors of TIRZ #1 ("**Board**") approving this Agreement as a contractual obligation of the Authority, and agreeing that TIRZ #1 will promptly transfer to the Authority for payment to Developer the Rebate Amounts deposited into a separate TIRZ #1 account by the City and the Property Tax Increment Receipts deposited in the Tax Increment Fund by the City. The Authority, the Developer, the City, and TIRZ #1 are sometimes referred to herein as the "**Parties**."

RECITALS

WHEREAS, the City created the Authority to contract for the construction of projects in the TIRZ #1 Financing Plan, subject to such contracts being approved by the Council and the Board;

WHEREAS, the City created and established the TIRZ #1 boundaries;

WHEREAS, the Council zoned the land area within TIRZ #1 as a Planned Unit Development ("**PUD**") and approved the Master Plan as the zoning map and PUD Plan of the Leander Transportation Oriented Development District Planned Unit Development (the "**TODD PUD**");

WHEREAS, the City and Williamson County have agreed that fifty percent (50%) of their respective ad valorem taxes collected on the increase in the appraised value over the Base Value of property within TIRZ #1 will be dedicated to TIRZ #1, and deposited into the Tax Increment Fund for the use by TIRZ #1;

WHEREAS, the City has agreed to remit to TIRZ #1 sixty percent (60%) of the water and wastewater impact fees ("**Impact Fees**") received by the City for connection to water and wastewater facilities that are constructed pursuant to an authorized contract with the Authority, and identified in both the TIRZ #1 Financing Plan and the City's water and wastewater impact fee ordinance;

WHEREAS, TIRZ #1 has agreed to remit to the Authority the Property Tax Increment Receipts and the Rebate Amounts to fund and pay costs and expenses to be paid by the Authority pursuant to a contract executed by the Authority and approved by the Council and the Board;

WHEREAS, to facilitate Developer's intended development of the Property in a market-competitive manner, Developer has requested the Council consent to the creation of a municipal utility district that will include land located within the Project (as hereinafter defined) and that will design, construct and install certain Subdivision Improvements (as described in Section 3.7 below) and incur and/or pay other expenses necessary for Developer's development of the Property; and

WHEREAS, by this Agreement, the Authority is contracting with the Developer for the construction and completion of water and wastewater and other infrastructure projects that are identified and listed in the approved TIRZ #1 Financing Plan;

NOW, THEREFORE, for and in consideration of the above stated premises and the terms, conditions and covenants set forth herein, the Parties hereby contract, covenant and agree as follows:

ARTICLE 1
PURPOSES, TERM AND CONSIDERATION

1.1 **Project Defined**. Developer owns, or has the legal authority to develop approximately 300 acres of land located between State Highway 183A ("**Hwy 183A**") and County Road 270 ("**CR 270**"), said land being more particularly described in the attached **Exhibit "A"** which is made a part hereof for all purposes (the "**Property**"). Developer will make application for the review and approval of a Concept Plan (as hereinafter defined) that includes the subdivision and development of the Property, a copy of which is attached hereto and incorporated herein for all purposes as **Exhibit "B"** . The Concept Plan includes approximately thirty-eight (38) acres of commercial development ("**Commercial Area**"), a 15.83 acre school site and 243.35 acres of single family development ("**Single Family Area**"), and open space, parkland and drainage areas (all collectively the "**Project**" or "**Subdivision**"). The Property is within the boundaries of the TODD PUD and TIRZ #1. Developer desires to develop a portion of the Property, defined below, as the first phase of the Project, to obtain regulatory development approvals from the City necessary to develop the Project, and to plat and develop the remainder of the Property as subsequent phases or sections for uses consistent with the Concept Plan, as finally approved by the City, and permitted within the respective zoning districts.

1.2 **Commercial Project**. The Commercial Area will be developed pursuant to and in compliance with State law, the Leander TODD PUD Ordinance, the Leander Smart Code

adopted by the City, and the applicable building and construction codes of the City (collectively "**TODD Regulations**").

1.3 **Single Family Project**. The Single Family Area will be developed pursuant to and in compliance with State law, the Composite Zoning Ordinance and the subdivision regulations and other applicable rules, regulations, codes and ordinances of the City (the "**Conventional Regulations**").

1.4 **Development Incentives**. The Authority desires to promote development within the TIRZ #1 by providing financial assistance for the construction of projects that are listed in the TIRZ #1 Financing Plan approved by the City. The City will consider any further requests for approval necessary for the development and operation of the Project based solely on the Applicable Regulations, as provided in this Agreement.

1.5 **Requested Reimbursements**. Developer has requested the Authority reimburse Developer for costs associated with the construction of certain water, wastewater, drainage, water quality, road and other facilities listed in Article 3, that are included in the TIRZ #1 Financing Plan and required for the development of the Project and other property within TIRZ #1.

1.6 **Financing Plan**. TIRZ #1 has adopted a Financing Plan that identifies certain water, wastewater, drainage, water quality, road and other facilities within and outside of the TIRZ #1 that are eligible for reimbursement funding from the TIRZ #1. The Authority finds that the projects defined herein and listed in Article 3 ("**TODD Projects**") are consistent with and included in the Financing Plan, and are appropriate for reimbursement pursuant to this Agreement.

1.7 **Benefits**. Developer will benefit from being reimbursed certain development costs and by virtue of the improved feasibility for current development of the Property, the financial benefit of the reimbursements, the City services that will be made available to the Property, and predictability regarding the City's regulations applicable to development. The Authority, TIRZ #1 and the City will benefit from the construction of the TODD Projects, the initial development within the TODD PUD, the enhancement of land values in properties that will be served by the TODD Projects constructed by Developer, and resulting tax revenues that the City and Williamson County will realize.

1.8 **Consideration**. The benefits to the Parties set forth in Section 1.7, plus the mutual promises expressed herein, are good and valuable consideration for this Agreement, the sufficiency of which is hereby acknowledged by both Parties.

1.9 **Term**. The term of this Agreement shall be for the later to occur of (a) the life of TIRZ #1 or (b) unless terminated sooner upon either Developer's receipt of all reimbursement amounts due hereunder or, subject to the terms of this Agreement, upon the Authority's termination of this Agreement after Developer has defaulted in the performance of this Agreement and such default is not cured in a timely manner after notice as provided herein.

1.10 **Developer Default**. The following shall constitute events of Developer's default subject to a Developer's right to cure:

(a) if Developer does not make application for City approval of a preliminary plat ("**Preliminary Plat**") for approximately 150 residential lots ("**Phase 1**") consistent (as applicable) with the Concept Plan and this Agreement, within two (2) years after the US 183/183A Intersection Completion Date (as hereinafter defined);

(b) If Developer does not start construction of Phase 1 within one (1) year after the Preliminary Plat is finally approved by all applicable governmental entities;

(c) if Developer does not complete the construction of the offsite wastewater facilities described in Section 3.2(b) below within four (4) years after the US 183/183A Intersection Completion Date;

(d) if Developer does not complete the design and construction of the Project Entry Road (as hereinafter defined) within four (4) years after the US 183/183A Intersection Completion Date; or

(e) if Developer otherwise defaults in the performance of this Agreement and fails to timely cure such default after notice and opportunity to cure as provided herein.

1.11 **Intent of the Parties.** It is the intent of this Agreement that the Project will generally be laid out, planned, developed and constructed in compliance with the Concept Plan according to and in compliance with the requirements of the Applicable Regulations, as applicable, authorizing the construction, use and occupancy of improvements and buildings within the Property, approved by the Council, and the applicable building codes and the plats and site development plans approved by the City. Notwithstanding the foregoing, nothing in this Agreement is intended or shall be construed as limiting Developer's right to apply to the City for an amendment to the Concept Plan, an approved preliminary plan, or any other governmental permit or approval.

ARTICLE 2
DEFINITIONS

2.1 **"Acceptance Date"** means the date on which the City accepts a TODD Project for ownership, operation and maintenance.

2.2 **"Applicable Regulations"** means State law (including but not limited to *Article III, Section 52-a of the Texas Constitution, Section 380.001 of the Texas Local Government Code, and Chapter 311 and Section 351.101 of the Texas Tax Code*), and the City Rules, Conventional Regulations and TODD Regulations that exist on the Effective Date, except as specifically modified by this Agreement.

2.3 **"Authority Revenue"** means the Property Tax Increment Receipts and Rebate Amounts that are received by the Authority and available to reimburse Developer pursuant to this Agreement; provided that:

(a) when applicable to a TODD Project listed in Sections 3.3, 3.4 or 3.5 below, the term "Authority Revenue" shall not include any Rebate Amount;

(b) when applicable to a wastewater project listed in Section 3.2 below, the terms "Authority Revenue" and "Rebate Amount" shall not include any rebate of any part of an Impact Fee that is paid to the City for connecting to water service;

(c) when applicable to a water project listed in Section 3.2 below, the terms "Authority Revenue" and "Rebate Amount" shall not include any rebate of any part of an Impact Fee that is paid to the City for connecting to wastewater service;

(d) all water impact fees included in the Rebate Amount shall be applied solely to the Project Costs of the Water Utility Projects listed in Section 3.2 below; and

(e) all wastewater impact fees included in the Rebate Amount shall be applied solely to the Project Costs of the Wastewater Utility Projects listed in Section 3.2 below.

2.4 **"City Rules"** mean the entirety of the Code of Ordinances of the City, and all ordinances, rules, regulations, technical manuals and official policies of the City.

2.5 **"Concept Plan"** means **Exhibit "B"** as modified or amended, or approved without modification or amendment, by the Planning & Zoning Commission of the City.

2.6 **"County"** means Williamson County, Texas.

2.7 **"Encumbered Account"** means a separate account established by the City and the Board within the Tax Increment Fund for the deposit of Property Tax Increment Receipts and Rebate Amounts received after the Effective Date and prior to the Initial Acceptance Date, and reserved for payment to the Authority and payment by the Authority to Developer as provided in this Agreement.

2.8 **"Initial Acceptance Date"** means the date on which the City accepts the first TODD Project constructed and installed by Developer, for ownership, operation, and maintenance pursuant to Section 6.1(i) below.

2.9 **"Payment Account"** means a separate account established by the City and the Board within the Tax Increment Fund for the deposit of the Property Tax Increment Receipts and Rebate Amounts received after the Initial Acceptance Date, and reserved for payment to the Authority and payment by the Authority to Developer as provided in this Agreement.

2.10 **"Project Plan"** or **"Financing Plan"** means the Financing Plan for TIRZ #1 adopted pursuant to Chapter 311, Texas Tax Code, including all amendments thereto, that lists the capital improvement projects eligible for financing by TIRZ #1.

2.11 **"Project Entry Road"** means the entry road connection from the US 183/Hwy 183A Intersection to Phase 1, as identified and depicted on the Concept Plan and the Preliminary Plat.

2.12 **"Property Tax Amount"** means eighty percent (80%) of the Tax Increment Receipts that are received and collected by the City and by the County on the Property and paid to TIRZ#1 for remittance to the Authority for the benefit of Developer pursuant to Article 4 of this Agreement.

2.13 **"Property Tax Increment Receipts"** means the Property Tax Amount and the Property Tax Additional Amount.

2.14 **"Property Tax Additional Amount"** means two and one-half percent (2.5%) of the Tax Increment Receipts that result from ad valorem taxes collected on all real property within TIRZ #1 (excluding the Property) that are received by the City and the County and paid to TIRZ #1 for remittance to the Authority for the benefit of Developer pursuant to Article 4 of this Agreement.

2.14 **"Rebate Amounts"** means (a) sixty percent (60%) of the Impact Fees that are paid to the City for connecting to water and/or wastewater services within the Property, and (b) sixty percent (60%) of the Impact Fees that are paid to the City for water services within the TODD Offsite Water Line Service Area, and reserved to reimburse Developer for the construction costs of the Utility Projects described in Section 3.2 below pursuant to Article 4 of this Agreement.

2.15 **"Reimbursable Amount(s)"** means the actual Project Costs of the individual TODD Projects that are incurred and paid by Developer.

2.16 **"Reimbursement"** means the Rebate Amounts that are payable to Developer for credit against the cost and expense of designing and installing the Utility Projects described in Section 3.2 below, and the Property Tax Amounts and the Property Tax Additional Amounts that are payable to Developer for credit against the cost and expense of designing and installing the TODD Projects.

2.17 **"Tax Increment Receipts"** means the ad valorem taxes collected on the tax increment, which is the ad valorem taxes collected on the increase in the appraised taxable value of the tracts and parcels of real estate within TIRZ #1 over the tax base value of the tracts and parcels of real estate within TIRZ #1, that is received by the Authority from TIRZ #1.

2.18 **"TODD Area"** means the Commercial Area within the Property, and other land that is outside the boundaries of the Property but within the boundaries of TIRZ #1. The Single Family Area is not within the TODD Area.

2.19 **"TODD Enhancements"** means the amenity centers, playgrounds, trails, pathways, plazas, street lights, greenbelts, and green space treatments constructed within the Project, that exceed the minimum requirements of the Smart Code.

2.20 **"TODD Project(s)"** means one or more of the public improvements and/or enhancing projects referenced and described in Section 3.1 below, that are eligible for reimbursement under this Agreement.

2.21 **"US 183/Hwy 183A Completion Date"** means the date on which construction of the grade separated intersection of US Hwy 183 and State Hwy 183A, as identified and depicted on the Concept Plan, is completed and the intersection is open for public use.

ARTICLE 3
SUBJECT TO REIMBURSEMENT

3.1 **Eligible TODD Projects**. The TODD Projects for which Developer will be eligible for reimbursement under this Agreement include (a) the Utility Projects defined in Section 3.2; (b) the Drainage and Water Quality Facilities defined in Section 3.3; (c) the Road Improvements defined in Section 3.4; and (d) the TODD Enhancements defined in Section 3.5.

3.2 **Utility Projects**. The water and wastewater projects (collectively the **"Utility Projects"**) for which Developer will be eligible to receive a reimbursement of Project Costs under the terms of this Agreement are:

(a) TODD Lift Station No.1, as defined in City of Leander Transit Oriented Development Sector Water and Wastewater Master Plan dated May 2006 by Bury & Partners, will have a capacity of at least 1,354 gallons per minute at full build-out and will be located at the Northeastern boundary of the Project. The Lift Station will be designed and constructed to adjust the lift station's capacity as wastewater flows increase. The lift station provides service to approximately 508 acres within the TODD PUD.

(b) Offsite Wastewater Lines consist of approximately 7,000 LF of 12-inch (12") force main pipe, 1,300 LF of 12-inch (12") gravity interceptor, and 4,500 LF of 15-inch (15") gravity interceptor. The wastewater lines will have the capacity to convey wastewater from the TODD Lift Station No. 1 through the Property to US Hwy 183, then south along US 183 to tie in with the existing North Brushy Creek (NBC-I) interceptor.

(c) North Wastewater Interceptor is a gravity interceptor consisting of approximately 1,500 linear feet (LF) of 8-inch (8") pipe and 3,500 LF of 10-inch (10") pipe traveling from the TODD Area north of the creek to the TODD Lift Station No. 1. This interceptor is designed to have a capacity of 425 LUEs from the TODD Area and 281 LUEs from the Single Family Area.

(d) South Wastewater Interceptor is a gravity interceptor consisting of 2,700 LF of 8-inch (8") pipe, 1,400 LF of l0-inch (10") pipe, and 1,800 LF of 12-inch (12") pipe extending from the TODD Area south of the creek to the TODD Lift Station No. 1. This interceptor is designed to have a capacity of 425 LUEs from the TODD Area and 523 LUEs from the Single Family Area, including 54 LUEs for the school site and 10 LUEs for the Project amenity center.

(e) Offsite Water Line consists of 2,800 LF of 24-inch (24") pipe that will tie into the City's existing water grid, as shown in the Transit Oriented Development Sector Water and Wastewater Master Plan prepared Bury+Partners, dated May 2006 (shows 24-inch (24") along Hwy 183A in exhibit but not report).

(f) TODD Offsite Water Line consists of approximately 5,000 LF of 24-inch (24") pipe, 2,400 LF of 18-inch (18") pipe, and 3,800 LF of 16 inch (16") pipe as shown in the Transit Oriented Development Sector Water and Wastewater Master Plan prepared by Bury+Partners, dated May 2006 shows 24-inch (24") along Hwy 183A. The route of this infrastructure is along San Gabriel Parkway and then north along Hwy 183A to the Project site. The final line sizing is to be determined by the City.

The wastewater lines and facilities described above in Subsections 3.2(a),(b),(c) and (d) are sometimes referred to collectively herein as the "**Wastewater Utility Projects**". The water lines and facilities described above in Subsections 3.2(e) and (f) are sometimes referred to collectively herein as the "Water Utility Projects".

3.3 **Drainage and Water Quality Facilities**. The drainage and water quality improvements (collectively the "**Drainage and Water Quality Facilities**") for which Developer will be eligible to receive reimbursements for Project Costs include:

(a) Detention/Water Quality Pond 3 located at the Northwest corner of the Project, as shown on the attached **Exhibit "C"**, is a wet pond that provides regional detention and water quality for approximately 15 acres of the TODD Area and approximately 15 acres of the Single Family Area.

(b) Detention/Water Quality Pond 4 located along the future Project Entry Road, as shown on the attached **Exhibit "C"**, is a wet pond that provides regional detention and water quality for approximately 65.5 acres of the TODD Area and approximately 17.3 acres of the Single Family Area.

(c) Detention/Water Quality Pond 5, located as shown on the attached **Exhibit "C"**, is a wet pond that operates in a series with Pond 4. Pond 5 provides regional detention and water quality for approximately 65.5 acre of the TODD Area and approximately 130 acres of the Single Family Area.

3.4 **Road Improvements**. The following road improvements ("Road Improvements") for which Developer will be eligible to receive reimbursements for Project Costs include:

(a) Hwy 183A/Project Entry Road Intersection (the "Intersection") consists of constructing the road connection at the intersection(s) of the Project Entry Road, Hwy 183A and US 183, including both northbound and southbound turn-arounds and two four-way traffic signal lights. The Parties acknowledge that Developer has already paid and contributed approximately $250,000 to the cost of such Intersection.

(b) The initial entryway ("Initial Entryway") from the Intersection into the Bonnet Tract (as hereinafter defined), which shall be designed and constructed as not less than a four (4) lane divided roadway in accordance with applicable regulations of, and as approved by, the Texas Department of Transportation and the City.

(c) Project Entry Road is the entryway connecting the Initial Entryway with Phase 1.

3.5 **Enhancements**. Developer will be eligible to receive Reimbursements for the TODD Enhancements approved by the Urban Design Officer ("UDO").

3.6 **Specific Exclusions**. The TODD Projects do not include any water or wastewater lines, roads or other facilities within the Property that are required by regulatory authorities with jurisdiction over the Property and that are reasonably necessary to serve the residential lots within the Property ("Subdivision Improvements") other than those described in Sections 3.2 through 3.5. The Developer is eligible to receive Reimbursements only for the TODD Projects. The Project Costs of the TODD Projects do not include the cost or expense of any Subdivision Improvements other than those described in Sections 3.2 through 3.5, and the Reimbursable Amount for the Utility Projects and the Drainage and Water Quality Facilities shall not include reimbursement for any capacity therein necessary to serve the Property, except as provided in Article 4 below.

3.7 **Subdivision Improvements.** Developer shall, at Developer's expense, construct the Subdivision Improvements, as and when Developer determines except as otherwise specifically provided herein; provided that when Developer begins to construct a Subdivision Improvement such work shall be completed in compliance with the Applicable Regulations. Developer shall cause construction plans to be prepared for the TODD Projects and Subdivision Improvements in accordance with the rules of the Texas Commission on Environmental Quality and the Applicable Regulations. For purposes of this Agreement, the Date of Acceptance for each facility shall be the date that each facility has been constructed and accepted by the City pursuant to Section 6.1 below. Developer may contract with the MUD (described in Section 10.1 below) to design, construct and install any of the Subdivision Improvements; provided that Developer shall be and remain responsible for the timely completion of all such Subdivision Improvements as provided by and in compliance with the Applicable Regulations. Developer intends to construct each of the following TODD Projects in phases:

(a) *Detention/Water Quality Pond 3* described in Section 3.04(a);

(b) *Detention/Water Quality Pond 4* described in Section 3.04(b);

(c) *Detention/Water Quality Pond 5* described in Section 3.04(c); and

(d) *Initial Entryway* described in Section 3.05(b).

3.8 **TODD Offsite Water Line.** The City agrees to reserve in its current system capacity sufficient to provide water service for Phase 1 (150 living unit equivalents), and agrees and confirms that such capacity currently exists. Developer anticipates that the Commercial

Area will not begin for three or more years after the Effective Date. In order to reduce the financial burden on Developer and TIRZ #1, the Parties agree to work cooperatively toward identifying other Parties willing to cost participate in the design and construction of the TODD Off-Site Water Line. The Board intends to consider policies to require future TODD Area developments, that must have the TODD Off-Site Water Line described in Section 3.2(f) operational in order to have water service, to help fund the design and construction of the TODD Off-Site Water Line.

ARTICLE 4
ECONOMIC DEVELOPMENT INCENTIVE

4.1 **TODD Project Costs Reimbursed**. Subject to the terms, limitations and provisions of this Agreement, and Developer's full and timely performance of, and compliance with, each of the requirements set forth in this Agreement, Developer shall receive Authority Revenue as payment for the following:

(a) one hundred percent (100%) of the Project Costs of the following:

(i) TODD Lift Station No.1 described in Section 3.2(a);

(ii) Offsite Wastewater Lines described in Section 3.2(b);

(iii) Offsite Water Line for Phase IA described in Section 3.2(e);

(iv) TODD Offsite Water Line described in Section 3.2(f); and

(v) Project Entry Road described in Section 3.4(b);

(b) a pro rata share of the Project Costs for the Wastewater Interceptor Projects, with the pro rata share being established by dividing the result of subtracting the number of LUEs required to serve the Subdivision from the total LUE capacity of the project as constructed and accepted by the City ("**Total LUE Capacity**"), by the Total LUE Capacity, to establish the percentage amounts attributable to the Subdivision, and to the land outside the Subdivision for which Developer will be eligible to receive reimbursements, of each of the following:

(i) North Wastewater Interceptor described in Section 3.2(c); and

(ii) South Wastewater Interceptor described in Section 3.2(d);

(c) the pro rata share of the Project Costs calculated in accordance with Section 4.13 for each of the following:

(i) Detention/Water Quality Pond 3 described in Section 3.3(a);

(ii) Detention/Water Quality Pond 4 described in Section 3.3(b); and

(iii) Detention/Water Quality Pond 5 described in Section 3.3(c);

(d) the Project Costs for the Hwy 183A/Project Entry Road Intersection described in Section 3.4(a); provided, however, the total amount reimbursed for this TODD Project shall not exceed $1,500,000, inclusive of the $250,000 referenced in Section 3.4(a); and

(e) fifty percent (50%) of the Project Costs for the TODD Enhancements within the Project, that are approved by the Urban Design Officer.

4.2 **Authority Revenue**. Authority Revenue received by the Authority from TIRZ #1 and payable to Developer shall be calculated as follows:

(a) One hundred percent (100%) if the Property Tax Amount and the Property Tax Additional Amount received by the Authority from TIRZ #1 after the Effective Date; and

(b) One hundred percent (100%) of the Rebate Amount received by TIRZ #1 and paid to the Authority as provided in Section 4.9 below.

Nothing in this Agreement shall be construed to limit the right of the Authority and TIRZ #1, acting with consent of the Council, to increase the amount of the Authority Revenue paid to Developer.

4.3 **Encumbered Account**. Until the Initial Acceptance Date, subject to the terms, limitations and provisions of this Article 4 and Developer's full and timely performance of and compliance with the terms of this Agreement, the Authority shall deposit the Authority Revenue into the Encumbered Account, reserved exclusively for payment to Developer and expended solely to fund the Reimbursable Amounts to which Developer is entitled hereunder.

4.4 **Payment Upon Initial Acceptance Date**. Within thirty (30) days of the Initial Acceptance Date, the Authority shall pay to Developer the entire balance of the Encumbered Account; provided that (a) the amount paid by the Authority to Developer from the Encumbered Account shall not in any event exceed the Project Cost of the TODD Project(s) that have been completed by Developer and accepted by the City; (b) if a balance remains in the Encumbered Account after the Authority pays Developer the Project Costs of one or more completed and accepted TODD Projects, such balance shall remain in the Encumbered Account and be paid to Developer upon the future completion and acceptance of other TODD Projects; and (c) the total payments to Developer from the Encumbered Account shall not in any event ever exceed the Project Costs funded by Developer to obtain completion and acceptance of the TODD Projects. Authority Revenue will not be deposited into the Encumbered Account after the Initial Acceptance Date.

4.5 **Authority Revenue After Initial Acceptance**. Authority Revenue received by the Authority following the Initial Acceptance Date shall be deposited into the Payment Account and reserved exclusively and expended solely to fund the Reimbursable Amounts to which Developer is entitled hereunder. The Authority shall pay the entire balance of the Payment Account to Developer in accordance with this Section until the first to occur of (a) the expiration of this Agreement or (b) Developer being fully reimbursed for the Project Costs as provided in this Agreement; provided that such payments shall not at any time exceed the Reimbursable Amounts of the Project Costs of the TODD Projects completed by Developer and accepted by the City as of each payment date. To the extent funds are available, the Authority shall pay to Developer the amount then due and owing hereunder on or before thirty (30) days after the end of each calendar quarter (March 31, June 30, September 30, and December 31) of each year.

4.6 **Termination of Reimbursement Payments**. Notwithstanding any other provision of this Agreement, payments to Developer will terminate as follows:

(a) all payments will terminate on the earlier to occur of: (i) the expiration of this Agreement; (ii) the termination of this Agreement by reason of a default and failure to cure by Developer as provided in Section 11.2 below; or (iii) payment by the Authority to the Developer of Authority Revenue equal in the aggregate to the Reimbursable Amounts;

(b) payment to TIRZ #1 and the Authority of water Impact Fees as provided in this Agreement will terminate on the earlier to occur of: (i) the expiration or termination of this Agreement; (ii) Developer having received Authority Revenue allocated to the Water Utility Projects equal in amount to the total Project Costs of the Water Utility Projects; or (iii) ten (10) years after the US 183/183A Intersection Completion Date; and

(c) payment to TIRZ #1 and the Authority of wastewater Impact Fees as provided in this Agreement will terminate on the earlier to occur of: (i) the expiration or termination of this Agreement; (ii) Developer having received Authority Revenue allocated to the Wastewater Utility Projects equal in amount to the total Project Costs of the Wastewater Utility Projects; or ten (10) years after the US 183/183A Intersection Completion Date.

4.7 **Drainage Impact Fees**. Construction by Developer of any of the Drainage and Water Quality Facilities under this Agreement shall constitute prepayment by Developer, its grantees, successors and assigns of any future drainage impact fees that are hereafter assessed or charged by the City against the Property. The credit for prepayment shall not in any event include any future drainage fees that may be assessed against the Property for maintenance and/or operation.

4.8 **Required Bonds**. With respect to the construction of any TODD Project, Developer shall require the contractor to provide performance and payment bonds that name the Authority as the insured or co-insured. In addition, Developer shall post fiscal surety with the City for the TODD Projects only in amount sufficient to restore the area of construction if

construction is stopped prior to completion of construction. Surety required to obtain final plat approval shall be provided as established by Conventional Regulations.

4.9 **Water and Wastewater Impact Fees**. Impact Fees shall be payable pursuant *to Chapt. 395, Tex. Loc. Gov't. Code*, and the applicable City ordinances, in the amount that is established by ordinance and that is in effect when the Impact Fees become payable. Subject to the terms and conditions of this Agreement and subsection (h) below, the City shall deposit into the Encumbered Account or Payment Account, as applicable, Impact Fees paid to the City for water service within the Property and the TODD Offsite Water Line Service Area (the "***Water Impact Fees***"), and Impact Fees paid to the City for wastewater service within the Property (the "***Wastewater Impact Fees***"), as follows:

(a) an amount equal to sixty percent (60%) of the Water Impact Fees paid to and received by the City will be deposited into the Encumbered Account prior to the Initial Acceptance Date, and thereafter into the Payment Account, then remitted to the Authority, and then paid by the Authority to Developer upon the Acceptance by the City of one or more of the following:

(i) Offsite Water Line described in Section 3.2(e); and

(ii) TODD Offsite Water Line described in Section 3.2(f);

(b) Water Rebate Amounts shall be paid by the City to TIRZ #1 as provided above until the first to occur of the following: (i) the expiration or termination of this Agreement; (ii) Developer has received payment of Authority Revenues allocable to the Water Utility Projects equal in the aggregate to the documented Project Costs of the Water Utility Projects; or (iii) the expiration of ten (10) years after the US 183/183A Intersection Completion Date.

(c) an amount equal to sixty percent (60%) of the Wastewater Impact Fees paid to and received by the City will be deposited into the Encumbered Account prior to the Initial Acceptance Date, and thereafter into the Payment Account, then remitted to the Authority, and then paid by the Authority to Developer upon the Acceptance by the City of one or more of the following:

(i) TODD Lift Station No. 1 described in Section 3.2(a);

(ii) Offsite Wastewater Lines described in Section 3.2(b);

(iii) North Wastewater Interceptor described in Section 3.2(c); and

(iv) South Wastewater Interceptor described in Section 3.2(d);

(d) Wastewater Rebate Amounts shall be paid by the City to TIRZ #1 as provided in this Agreement until the first to occur of the following: (i) the expiration or termination of this Agreement; (ii) Developer has received payment of Authority Revenues allocable to the Wastewater Utility Projects equal in the

aggregate to the documented Project Costs of the Wastewater Utility Projects; or (iii) the expiration of ten (10) years after the US 183/183A Intersection Completion Date.

(e) the Rebate Amounts will be transferred to the Encumbered Account and the Payment Account, as applicable, and then to the Authority, quarterly in arrears;

(f) the payments will be paid to the Authority on or before the 30th day of each April, July, October and January following the Acceptance Date for the first Utility Project;

(g) the Authority shall make payments of the Rebate Amounts to Developer in accordance with this Agreement and this Section 4.9;

(h) The Rebate Amount will not include any part or portion of a water impact fee or a wastewater impact fee that is received by the City for service within any TODD Offsite Water Line Service Area or Offsite Wastewater Line Service Area, as applicable, that is paid to obtain service for property that receives water service or wastewater service, as applicable, by connection to a water or wastewater line or facility, other than a line or facility that is listed and described in Article 3, that was listed and included on the City Capital Improvements Plan. Impact fees paid for property connected to the City utility system by a CIP line or facility other than those described in Article 3 will not be included in the Rebate Amount.

4.10 **Required Payment of Certain Impact Fees.** Each owner of a lot within the Project shall pay the City's water and the wastewater Impact Fees to the City for each such lot to be developed by such owner on the earlier of the date that a building permit is issued or an application for a connection to the City's water or wastewater system is approved for such lot. If, for any reason, the City is prevented from collecting Water or Wastewater Impact Fees within the Project, then the City shall be entitled to collect from each owner of a lot within the Project (on the earlier of building permit issuance or connection approval) the then-applicable City impact fee (not to exceed $2,000 per living unit equivalent) for each connection to the City's water system, and the then-applicable City impact fee (not to exceed $2,000 per living unit equivalent) for each connection to the City's wastewater system, as a contribution to the costs of the extension of City services to the Project. The contractual impact fees, if any, imposed and received by the City pursuant to this Section shall be Impact Fees as defined in this Agreement and shall be rebated to Developer as provided in this Agreement.

4.11 **Limitation of Reimbursements.** Notwithstanding any other term or provision of this Agreement, no reimbursement shall be made to Developer by the Authority, TIRZ #1 or the City at a time when Developer is delinquent in the payment of monies to the City, TIRZ #1 or the Authority pursuant to a contract or the Applicable Regulations. All reimbursement amounts that become due and payable at a time when any such payment is delinquent shall be held (and the Encumbered Account and the Payment Account, as applicable, shall continue) and shall not be paid until Developer pays the delinquent amounts owed. If the payment of any such funds are

withheld, and thereafter all such sums and amounts owed by Developer to the City, TIRZ #1 or the Authority are fully paid, the withheld sums and amounts will be promptly paid to Developer. This provision is not intended to include property taxes that are due but not yet delinquent.

4.12 **Drainage and Water Quality Facilities**. The Drainage and Water Quality Facilities described in Section 3.3(a), (b) and (c) will provide detention and water quality benefits for the Property and other land located within the TIRZ Boundaries. Developer shall separately document to the Authority the cost and expense of designing and constructing each such Drainage and Water Quality Facility. The City Engineer, or other qualified and certified engineer employed by the Authority (collectively herein the "City Engineer") shall determine, subject to Developer appealing to the Authority Board the City Engineer's decision, the number of acres of impervious cover within the Property, and the number of acres of impervious cover outside the Property, that will be served by each such facility. Developer shall be eligible to receive reimbursement for a portion of the design and construction costs of such Drainage and Water Quality Facilities attributable to land outside the Property. Except as provided below, the portion eligible for reimbursement shall be determined by dividing the total acres of impervious cover of land located outside the Property by the total acres of impervious cover that will be served by the facility to establish the percentage of the Project Cost of the facility that will be subject to Reimbursement. For example, if a facility will serve as the detention pond for 60 acres of impervious cover and 45 of such acres of impervious cover are located outside the Property and 15 acres are within the Property, Developer shall be eligible to receive reimbursement of seventy-five percent (75%) of the documented Project Cost of the facility (the "Drainage Reimbursable Amount"). Additionally, Developer shall be reimbursed the cost of the land required to size the ponds to serve the TIRZ #1 area that is located outside the Property. The Project engineer shall subtract the area of the ponds necessary to serve the Property from the total area of each pond. The cost of the land shall be one hundred twenty-five percent (125%) of Developer's purchase price of the land. Developer must provide satisfactory proof to the City Engineer of Developer's purchase price of the land. The Authority intends to facilitate and coordinate with TIRZ #1 to consider establishing a drainage impact fee, that will be applicable within the TIRZ #1 Boundary, or to consider establishing a charge or assessment per acre that properties outside the boundary of the Property will be required to pay upon development of land that will be served by a Drainage and Water Quality Facility. All such applicable fees, charges or assessments that are collected for land that will be served by the facility will be paid into the Payment Account and remitted to the Authority for payment to Developer in accordance with this Agreement. All such amounts paid to Developer shall be credited and allocated in equal pro rata amounts to the Drainage Reimbursable Amount of the Drainage and Water Quality Facilities which have been completed by Developer and accepted by the City as of each payment date. Such payments to Developer shall terminate on the earlier of: (a) Developer being reimbursed the Drainage Reimbursable Amount for all the Drainage and Water Quality Facilities; or (b) the expiration or termination of this Agreement.

ARTICLE 5
PROJECT COSTS DEFINED

5.1 **Project Costs Defined**. The "**Project Costs**" for each of the TODD Projects shall be the reasonable and approved total cost of the TODD Project based upon the sum of the following:

(a) the hard construction costs;

(b) surveying costs;

(c) the cost of soils and materials testing;

(d) engineering fees relating to the Project;

(e) any other necessary and reasonable out-of-pocket costs expended by the Developer in connection with the design, engineering and construction of the TODD Project, including the cost of any necessary land and rights-of-way located outside the boundaries of the Property.

(f) all legal fees and professional costs paid to the Authority in conjunction with the negotiation and execution of this Agreement;

(g) plan review, approval and inspection fees paid to any governmental agency having jurisdiction to review the plans and construction of a TODD Project, that are charged and paid for review and inspection of a TODD Project; and

(h) land costs for Water Quality and Drainage Facilities, as provided in Section 4.13;

provided, that all such sums and amounts shall be reasonable and necessary and documented to and approved by the Authority upon completion, and final acceptance by the City of each TODD Project, for the purposes of determining the final agreed amount eligible for reimbursement to Developer as herein provided.

5.2 **Developer Payment of Costs**. Except as otherwise provided herein, all costs and expenses for the TODD Projects described in Article 3, the Subdivision and other costs as specifically set forth herein shall be paid by the Developer as they become due. The Authority will not bear or pay any part or portion of the Project Costs except as specifically provided in this Agreement. Each Property Tax Amount and each Property Tax Additional Amount reimbursement to Developer shall be allocated in equal dollar amounts to the Reimbursable Amount of all TODD Projects that have been completed by Developer and accepted by the Authority prior to the date each such reimbursement is paid and have not then been fully reimbursed. Each water Rebate Amount shall be allocated in equal dollar amounts to the Reimbursable Amount of the Water Utility Projects that have been completed by Developer and accepted by Authority prior to the date each such water Rebate Amount is paid and have not then been fully reimbursed. Each wastewater Rebate Amount shall be allocated in equal dollar amounts to the Reimbursable Amount of the Wastewater Utility Projects that have been completed by Developer and accepted by Authority prior to the date each such wastewater Rebate Amount is paid and have not then been fully reimbursed.

5.3 **Developer Financing**. Developer will be responsible for securing financing and constructing the TODD Projects and Subdivision Improvements undertaken by Developer in accordance with this Agreement. Developer shall not receive any rebate or contribution from the

City or the Authority for any part or portion of any amenity or improvement constructed either off-site or on-site within the boundaries of the Property, or any other cost or expense whatsoever; save and except only for the obligations and performances specifically required to be performed by the City and the Authority pursuant to the terms of this Agreement.

5.4 **Bid Requirements**. Developer must obtain written bids and at least three (3) bid sheets submitted by independent, qualified contractors for the construction of each TODD Project. Public bidding in compliance with the Municipal Purchasing Act is not required, but written bids are required to be obtained and accepted in a fair and impartial manner with three (3) or more interested, prospective bidders having been provided equal access to plans, specifications and information. The Parties acknowledge that the TODD Projects may, in some cases, be built in conjunction with other Subdivision Improvements that may be subject to reimbursement under this Agreement. Developer will have each bid proposal separately identify or itemize the construction costs for each TODD Project.

5.5 **City Engineer Bid Approval**. The City Engineer will timely review all bids received for the construction of each TODD Project and approve the award amount for the construction of each TODD Project. Subject to Change Orders approved by the City Engineer, the actual Project Costs incurred and paid by Developer pursuant to each bid approved by the City Engineer will determine the Reimbursable Amount for each TODD Project. Provided written bids are obtained and the contractor selection is made in a manner as not to discourage future competition and competitive bids, the selection of the contractor will be at the sole discretion of Developer. Developer will award all construction contracts.

5.6 **Developer Reports and Records**. Developer will make quarterly reports to the City Engineer on the amounts paid to contractors for each TODD Project, and will maintain accounts in a manner that separately reflects payments subject to reimbursement under this Agreement.

5.7 **City Engineer Responsibilities**. The City Engineer will: (a) make recommendations to and advise the Authority on the award of construction contracts by Developer; (b) make quarterly reports to the Authority on the progress of construction; (c) review and make recommendations to the Authority on the final as-built Project Costs; and (d) periodically inspect the TODD Projects during construction. No changes to the plans and specifications or change orders to the construction contracts pertaining to a TODD Project may be made without the prior approval of the City Engineer. The City Engineer will reasonably cooperate with Developer and Developer's project engineer and will keep Developer's project engineer fully advised of the City Engineer's findings regarding the bidding process and the construction of the TODD Projects.

5.8 **Record Drawings**. Upon completion of construction of a TODD Project, Developer must provide the Authority with final, "record" drawings of the TODD Project, approved by the City Engineer.

5.9 **Required Certificates**. Upon completion of construction, the City must be provided with a certificate of completion from the project engineer certifying that the construction of the TODD Project has been completed in accordance with the plans and

specifications approved by the Authority and the City and that the "record" drawings required by Section 5.8 have been furnished.

5.10 **Eligible Costs**. Developer will work and coordinate with the Authority and the City Engineer, to assure that actual Project Costs of the improvements constituting the TODD Projects are accurately and truly identified and agreed between the Parties as eligible for payment under this Agreement.

ARTICLE 6
PLANS, SPECIFICATIONS AND PERFORMANCE

6.1 **Other Authority Agreements**. The City and the Authority hereby further agree:

(a) Building Permits. The City and the Authority will coordinate and facilitate with the City to arrange for and obtain the issuance of building permits applied for by Developer for buildings to be constructed within a portion of the Property for which a final plat has been approved, as a result of the City having either accepted the completed subdivision infrastructure improvements for such phase or the Developer having posted adequate fiscal surety in a form approved by the City Manager of the City; provided Developer is not in default under this Agreement and provided further that this subsection does not commit the Authority to request the City to waive otherwise applicable requirements that on-site and off-site subdivision infrastructure for the approved plat must be accepted by the City prior to issuance of a certificate of occupancy;

(b) Authorized Coordination. The Authority will, as appropriate, authorize the City Engineer to coordinate with the project engineer, in a timely manner, on specific design requirements, plans and specifications for the Subdivision Improvements and TODD Projects;

(c) Plan Approval. To review and approve on behalf of the Authority, as appropriate, plans for construction of the TODD Projects (hereinafter the "**Approved Plans for the TODD Projects**");

(d) Required Approvals. No approval required to be obtained shall be unreasonably denied, conditioned or delayed;

(e) Permits and Approvals. To cooperate with the Developer as appropriate and take necessary reasonable, and appropriate actions on a timely basis to assist Developer to obtain any permits, licenses or other approvals from the City, the Authority, Williamson County, TxDOT, TCEQ, or any other regulatory authority required for the construction of the TODD Projects and the Subdivision Improvements;

(f) Spoil. To permit Developer to take the soil and limestone that is required, by the expansion and enlargement of the Detention/Water Quality Ponds, subject to the approval of the City Engineer, to be excavated from the

Detention/Water Quality Ponds, and to permit the Developer to use such soil and limestone as fill material on the Property, as appropriate;

(g) Bid Approval. To review and act upon approving bids for construction of the TODD Projects within a reasonable time;

(h) Change Orders and Inspections. During the course of the construction of any TODD Project, to review, approve and sign, as appropriate, any necessary change orders within a reasonable time; and to cause all inspections of the TODD Project within a reasonable time and final acceptance of the completed TODD Project within thirty (30) days of a request for final acceptance if it has been constructed in substantial accordance with approved plans and specifications;

(i) Project Acceptance. After completion of the construction of the TODD Projects and Subdivision Improvements in accordance with the Approved Plans for the TODD Projects and the plans and specifications approved by the City for the layout, construction and installation of the Subdivision, to approve and accept the TODD Projects and to facilitate City acceptance of the Subdivision Improvements in a timely manner; provided that for the purpose of establishing the Initial Acceptance Date, a TODD Project that is listed in Section 3.2, Section 3.3, Section 3.4, or Section 3.5 shall be accepted when installed, completed and constructed in compliance with this Agreement, without reference to the acceptance of a section or phase of the Project;

(j) Submittal Review. To conduct a timely review of all submittals by Developer as each submittal is made, and the City and the Authority will review such submittals individually and will not require a complete set of plans in order to initiate the review; and

(k) Perform Under Agreement. To perform all applicable duties and obligations in a timely manner, and to make timely payments of the Authority Revenue to Developer, as provided in this Agreement.

6.2 **Other Developer Agreements**. Developer hereby further agrees:

(a) Payment of Fees. To pay to the Authority, TIRZ #1 and the City all fees and charges provided for or established by this Agreement, the Applicable Regulations and the TODD Regulations, as applicable, for or with respect to the development of the Property;

(b) Dedication. Upon completion of the TODD Projects and the Subdivision Improvements, to dedicate to the City for ownership, operation and maintenance the TODD Projects, and to the extent required by Applicable Regulations the Subdivision Improvements, as applicable, if constructed in substantial accordance with approved plans and specifications;

(c) Timely Coordination. To coordinate with the City Engineer on specific design requirements and specifications; and to review and approve the plans and specifications for the TODD Projects and the Subdivision Improvements in a timely manner, as appropriate;

(d) Timely Applications. To make, or cause the Project engineer to make, timely requests for reviews, approvals and permits, accompanied by documents, plans and specifications compliant with Applicable Regulations; and

(e) Perform Under Agreement. To perform all applicable duties and obligations of Developer as provided in this Agreement, in a timely manner.

6.3 **Natural Resource Regulations**. Developer further agrees that the Project will be constructed in compliance with the applicable local, state and federal natural resource and environmental laws, rules and regulations, including, but not limited to, the following, to the extent, if any, as they may be or become applicable:

(a) Water Quality Protection. Developer will comply with all applicable TCEQ regulations, including but not limited to, the Edwards Aquifer Rules, 30 TAC 213, as may be amended; and

(b) Stormwater Controls. To the extent necessary, if any, in addition to the Drainage Improvements, Developer will prepare and implement a storm water management and pollution prevention plan in compliance with the TCEQ's Texas Pollution Discharge Elimination System storm water general permit for construction related storm water discharges, and otherwise as required.

ARTICLE 7
EMINENT DOMAIN

7.1 **Right-of-Way**. The Authority agrees to cooperate and facilitate with the City for the City to provide reasonable use of all necessary City lands, rights-of-way and easements and to provide further required easements or lands in fee simple as may be necessary for construction of the Utility Projects, save and except for any such land and easements within the Property. It is acknowledged there exists a public necessity for the TODD Projects, the TODD Projects will be Authority projects for the benefit of TIRZ #1 and the City, and the Authority agrees to work, cooperate and facilitate with the City to cause the City to use its power of eminent domain to acquire such lands or easements, if necessary. The Developer shall pay the costs of any eminent domain proceeding that is initiated under the terms of this Agreement.

ARTICLE 8
ASSIGNMENT OF COMMITMENTS AND OBLIGATIONS

8.1 **Assignment**. The Developer's rights and obligations under this Agreement may be assigned by the Developer to one or more purchasers of all or part of the Property.

8.2 **Successors and Assigns**. This Agreement shall be binding upon the Parties, their successors and assigns.

8.3 **Memorandum of Agreement**. The Parties agree to execute and record a memorandum of agreement regarding this Agreement, substantially similar to the form attached hereto as **Exhibit "D"**, within sixty (60) days of the Execution Date. Upon termination of this Agreement, the Parties agree to execute and record an appropriate release of this Agreement.

ARTICLE 9
BONNET TRACT

9.1 **Inclusion and Zoning**. The Parties acknowledge that the portion of the Property described and identified as the "**Bonnet Tract**" in the attached **Exhibit "A"** is included within the boundaries of the TODD PUD and TIRZ #1 and is zoned for commercial uses and development, in accordance with the applicable provisions of TIRZ #1, the PUD and the TODD PUD.

ARTICLE 10
OTHER DEVELOPER INCENTIVES AND AGREEMENTS

10.1 **Developer MUDs**. The Parties acknowledge and agree that Developer may elect to create a municipal utility district ("***MUD***") within the Project through the Texas Legislature, or in the event that such legislation does not become law by June 30, 2013, through the TCEQ, that Developer may contract with the MUD to design, construct and install certain Subdivision Improvements and other facilities necessary for Developer's intended development of the Property in compliance with this Agreement. Upon the City adoption of the Consent Ordinance, referenced below, the City will have consented to the creation of a MUD through the Texas Legislature, or in the event that such legislation does not become law by June 30, 2013, through the TCEQ. The MUD shall be subject to the terms and conditions of the Consent Ordinance, and shall not be authorized to levy any taxes until general law or special legislation provides that the total of the City's and the MUD's tax rates may exceed the City's tax rate. The City hereby agrees to reasonably cooperate with, and to execute appropriate documents needed by, Developer in connection therewith to evidence the City's consents as set forth in this Agreement and in the Petition Requesting Consent to Creation of a Municipal Utility District, the Consent Ordinance attached hereto as **Exhibit "E" ("Consent Ordinance")**, the draft legislation, attached hereto as **Exhibit "F"**, and the draft Facilities Agreement attached hereto as **Exhibit "G"** (collectively the "**MUD Documents**").

10.2 **Full Satisfaction**. The consents contained in this Article 10 and in the Consent Ordinance are given by the City (a) in full satisfaction of any requirements for City consent contained in any statute or otherwise required by law to the creation of a municipal utility district subject to the terms, conditions and provisions of the MUD Documents, and (b) with the understanding that, save and except fraud in the inducement or misrepresentation, such consent is irrevocable and cannot be withdrawn or modified in any way by the City or by any action of the Council without the prior written approval of Owner.

ARTICLE 11
DEFAULT

11.1 **Default Cure.** Notwithstanding anything herein to the contrary, no Party shall be deemed to be in default hereunder until the passage of sixty (60) business days after receipt by such Party of notice of default from the other Party ("Cure Period"). Upon the passage of the Cure Period without cure of the default, such Party shall be deemed to have defaulted for purposes of this Agreement; provided that, if the nature of the default is such that it cannot reasonably be cured within the Cure Period, the Party receiving the notice of default may during such Cure Period give the other Party written notice that it has commenced cure within the Cure Period and will diligently and continuously prosecute the cure to completion as reasonably soon as possible, and such written notice together with diligent and continuous prosecution of the cure shall extend the Cure Period for up to an additional ninety (90) calendar days so long as the cure is being diligently and continuously pursued during such time; and provided further that, if the cure cannot be reasonably accomplished within the additional ninety (90) calendar day period but the applicable facts, circumstances and progress establish that a cure will be obtained within a reasonable period of time following the expiration of the ninety (90) calendar day period, the time for cure will be extended for an additional period of time as mutually agreed by the Parties (such agreement not to be unreasonably withheld); provided, further, that if a default is not cured within the applicable Cure Period, or, as applicable, written notice having been given and cure being commenced and diligently and continuously prosecuted, within the additional ninety (90) calendar days after the giving of the written notice, or, as otherwise applicable, within the time mutually agreed by the Parties due to the defaulting Party not being able to obtain a cure within the additional ninety (90) calendar days after the defaulting Party gives written notice that it is commencing cure, then the non-defaulting Party pursue the remedies set forth in this Agreement.

11.2 **Default and Termination**. Notwithstanding any other term or provision of this Agreement, if Developer defaults in the performance of a duty or obligation of Developer provided in this Agreement, and such default is not timely cured after notice and opportunity to cure, the Authority may terminate and cancel this Agreement as to any of the TODD Projects not then completed or under construction by Developer.

11.3 **Option to Reduce Reimbursements.** In the event Developer defaults by not completing the construction of a TODD Project by the deadline set forth in Section 1.10 and Developer has not cured said default within the time allowed under Section 9.01, the Authority may notify Developer of the Authority's election to reduce, in accordance with this Section 9.02, the amount of the Project Costs eligible for reimbursement for each TODD Project that Developer is in default. Upon the expiration of the Cure Period described in Section 9.01, the percentage of reimbursement for Project Costs shall be reduced 0.5% and thereafter shall be reduced an additional 0.5% for each additional month that the past due TODD Project is not completed and accepted by the City. By way of example, if Developer is eligible to receive a seventy percent (70%) reimbursement, then upon expiration of the Cure Period, the percent of reimbursement shall be 69.5% and one month after the expiration of the Cure Period, the percent of reimbursement shall be reduced to 69%. The reimbursement percentage will be reduced 0.5% for each month thereafter until every TODD Project that is late is completed and accepted by the City. However, the reduced reimbursement percentage will not apply to any previously accepted TODD Project and to any subsequent TODD Project that is constructed by Developer, and

accepted by the City before the applicable deadline set forth in Section 1.10. After two years of monthly reductions, the Authority may as a partial remedy for default terminate this Agreement as to the TODD Projects not constructed by the deadline set forth in Section 1.10. It is further specifically provided that the Authority may delete any of the TODD Projects from the terms of this Agreement prior to construction by Developer, if the Authority contracts to have the respective TODD Project constructed and installed earlier than is required by this Agreement, or earlier than the TODD Project will actually be installed by Developer. Developer shall be reimbursed Project Costs incurred prior to Developer's receipt of notice from the Authority regarding the Authority's decision to construct such TODD Project. The exercise of, or the refusal to exercise, the option provided in this Section 9.02 shall be in the sole discretion of the Authority, and shall not be or constitute a waiver of termination rights, or any other right or remedy of Authority, if the default is not thereafter cured or if Developer thereafter defaults in the timely performance of any other duty or responsibility of Developer; provided that the Authority shall in its discretion be entitled to continue to exercise the option with respect to any additional defaults.

11.4 **Remedy of Deleting Land From Property.** In the event Developer defaults by not completing the construction of a phase of the Project or the *Offsite Wastewater Line* described in Section 3.02(b), by the deadline set forth in Section 1.10 and Developer has not cured said default within the time allowed under Section 9.01, the Authority may notify Developer of the Authority's election to delete from the Property the land within the phases of the Project that Developer has not timely constructed. In the event that the *Offsite Wastewater Line* described in Section 3.02(b); is not completed by the deadline set forth in Section 1.10, the TODD Area described in the Concept Plan shall be deleted from the Property. The deletion of land from the Property means that no Authority Revenue (Property Tax and Rebates) generated from the deleted land will be paid to Developer.

11.5 **Remedies Cumulative.** The remedies described in this Article are in addition to and hot in replacement of any other remedies at law or in equity that a Party may have as a result of any breach.

ARTICLE 12
FORCE MAJEURE

12.1 **Force Majeure.** The term "force majeure" as employed herein shall mean and refer to acts of God; strikes, lockouts, or other industrial disturbances: acts of public enemies, orders of any kind of the government of the United States, including, but not limited to, the State of Texas, Williamson County or the City of Leander, or any civil or military authority; insurrections; riots; epidemic; landslides; lightning, earthquakes; fires, hurricanes; storms, floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accidents to machinery, pipelines, or canals; or other causes not reasonably within the control of the Party claiming such inability. The term "force majeure" will specifically include an attack by terrorists within the United States that results in a disruption of the financial markets for a period of more than one (1) week.

12.2 **Notice of Force Majeure.** If, by reason of force majeure, any Party hereto shall be rendered wholly or partially unable to carry out its obligations under this Agreement, then

such Party shall give written notice of the full particulars of such force majeure to the other Parties within thirty (30) days after the occurrence thereof.

12.3 **Suspension.** The obligations of the Party giving such notice, to the extent affected by the force majeure, shall be suspended during the continuance of the inability claimed, except as hereinafter provided, but for no longer period, and the Party shall endeavor to remove or overcome such inability with all reasonable dispatch.

12.4 **Settlement of Strikes.** It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the Party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require that the settlement be unfavorable in the judgment of the Party having the difficulty.

ARTICLE 13
NOTICES

13.1 **Written Notice.** Any notice to be given hereunder by any Party to another Party shall be in writing and may be affected by personal delivery, or by facsimile or electronic mail with confirmation of receipt by the addressee, or by sending said notices by registered or certified mail, return receipt requested, to the address set forth below. Notice shall be deemed given when delivered or when deposited with the United States Postal Service with sufficient postage affixed.

Any notice mailed to the City shall be addressed:

City of Leander
Attn: City Manager
P. O. Box 319
200 West Willis Street
Leander, Texas 78646-0319
Telephone: (512) _____
Facsimile: (512) _____
Email: _____

with copy to:

Knight & Partners
Attorneys at Law
Executive Office Terrace
223 West Anderson Lane, Suite A105
Austin, Texas 78752
Telephone: (512) 323-5778
Facsimile: (512) 323-5773
Email: _____

Any notice mailed to Developer shall be addressed:

Leander 183A Development II, LLC
Attn: Steve Leeke
8111 Preston Road, Suite 600
Dallas, TX 75225
Telephone: (214) 443-1945
Facsimile: (214) 443-1978
Email: Steve.Leeke@e2mpartners.com

with copy to:

_____

_____

Telephone: _____
Facsimile: _____
Email: _____

Any Party may change the address for notice to it by giving notice of such change in accordance with the provisions of this Section.

ARTICLE 14
ENTIRE AGREEMENT

This Agreement, together with any exhibits attached hereto, constitutes the entire agreement between the Parties, and may not be amended except by a writing that is signed by the Parties, dated subsequent to the date hereof, and approved by the City Council and the Board.

ARTICLE 15
EFFECTIVE DATE

This Agreement shall be effective as of the Effective Date first provided above in the opening paragraph of this Agreement.

ARTICLE 16
TEXAS LAW GOVERNS

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Williamson County, Texas. Venue shall lie exclusively in Williamson County, Texas.

ARTICLE 17
TIME OF THE ESSENCE

It is acknowledged and agreed by the Parties that time is of the essence in the performance of this Agreement.

ARTICLE 18
ATTORNEY FEES

If Developer or the City is a prevailing Party in any legal proceeding brought under or with relation to this Agreement, such prevailing Party shall be entitled to recover from the non-prevailing Party all costs of such proceeding and its reasonable attorneys' fees, to the extent, if any, reasonable fees are awarded by the court.

ARTICLE 19
WAIVER AND RELEASE

The Parties acknowledge above that the mutual promises and obligations of the Parties expressed herein are good, valuable and sufficient consideration for this Agreement. The Parties further acknowledge that both the City, the Authority, and Developer voluntarily elected the benefits and obligations of this Agreement, as opposed to the benefits available were Developer to have elected to develop the Property without the benefits and obligations of this Agreement, pursuant to and incompliance with the City ordinances. Therefore, save and except the right to enforce the obligations of the City and the Authority to perform each and all of their respective duties and obligations under this Agreement, Developer hereby waives any and all claims or causes of action Developer may have for or with respect to any duty or obligation undertaken by Developer pursuant to this Agreement, including any benefits that may have been otherwise available to Developer but for this Agreement. Developer specifically releases any equitable or legal claim that it may have regarding or with respect to the requirement to install or construct any project or obligation undertaken by Developer pursuant to this Agreement.

ARTICLE 20
GOVERNMENTAL POWERS AND LIMITED WAIVER OF IMMUNITY

Section 20.1. Limited Waiver. By its execution of this Agreement, the Authority, TIRZ #1, and the City do not waive or surrender any of their respective governmental powers, immunities, or rights, except as follows:

(a) The City waives governmental immunity from suit and immunity from liability as to any action brought by a Party to enforce the terms, provisions and conditions of this Agreement, but only to the extent necessary to pursue such remedies if the City fails to pay the Property Tax Increment Receipts paid to and received by the City, or the Rebate Amounts, to the Authority. Nothing in this Article 20 shall waive any claims, defenses or immunities that the City, TIRZ #1 or the Authority may have with respect to suits filed by persons or entities other than a Party to this Agreement.

(b) TIRZ #1 waives governmental immunity from suit and immunity from liability as to any action brought by a Party to pursue the remedies available under this Agreement, but only to the extent necessary to pursue such remedies if TIRZ #1 fails to pay the Property Tax Increment Receipts allocated to the Authority pursuant to this Agreement and that are actually paid to the Tax Increment Fund by the City, or fails to pay any of the Rebate Amounts that may be received by TIRZ #1 to the Authority. Nothing in this Article 20 shall waive any claims, defenses or immunities that the City, TIRZ #1 or the Authority may have with respect to suits filed by persons or entities other than a Party to this Agreement.

(c) The Authority waives governmental immunity from suit and immunity from liability as to any action brought by a Party to enforce the terms, provisions and conditions of this Agreement. No defenses of the Authority are waived as to any third Party . Nothing in this Article 20 shall waive any claims, defenses or immunities whatsoever that the Authority may have with respect to suits filed by persons or entities other than a Party to this Agreement.

(d) Nothing in this Agreement is intended to delegate or impair the performance by the City, TIRZ #1 or the Authority of their respective governmental functions.

EXECUTED in multiple originals and effective as of the Effective Date set forth above.

Exhibits:

Exhibit "A" - The Property
Exhibit "B" - Concept Plan
Exhibit "C" - Drainage and Water Quality Facilities
Exhibit "D" - Memorandum of Agreement
Exhibit "E" - Consent Ordinance
Exhibit "F" - Draft Legislation
Exhibit "G" - Draft Facilities Agreement

Attest:

Leander Development Authority

_____
Debbie Haile, Assistant Secretary

By:_____
Name:_____
Title: President

THE STATE OF TEXAS §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2012, by _____, as President of Leander Development Authority, a non-profit corporation, on behalf of said non-profit corporation.

_____
NOTARY PUBLIC, State of Texas

Attest:

City of Leander

_____
Debbie Haile, Assistant Secretary

By: _____
Name: Chris Fielder
Title: Mayor

THE STATE OF TEXAS §
§
COUNTY OF WILLIAMSON §

This instrument was acknowledged before me on the _____ day of _____, 2012, by Chris Fielder, as Mayor of the City of Leander, a home-rule municipal corporation, on behalf of said municipal corporation.

_____
NOTARY PUBLIC, State of Texas

Attest:

Reinvestment Zone Number One, City of Leander, Texas

_____

Debbie Haile, Assistant Secretary

By:

Name: _____
Title: President

THE STATE OF TEXAS §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2012, by _____, a _____, on behalf of said _____.

_____
NOTARY PUBLIC, State of Texas

Leander 183A Development II, LLC

By:

_____

Name: _____
Title: _____

THE STATE OF TEXAS §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2012, by _____, _____ of Leander 183A Development II LLC, on behalf of said limited liability company.

_____
NOTARY PUBLIC, State of Texas

FIELD NOTE 778
UDC #04-293

EXHIBIT "A"

JEAN BAPTISTE INC.
WILLIAMSON COUNTY, TEXAS

DESCRIPTION

DESCRIBING A TRACT OF LAND CONTAINING 297.47 ACRES, BEING A PART OF THE WILLIAM MANSIL A-437 AND THE HENRY GARMES SURVEY A-269, WILLIAMSON COUNTY, TEXAS, SAID 297.47 ACRE TRACT BEING FURTHER DESCRIBED AS BEING ALL OF THAT 40.17 ACRE TRACT DESCRIBED IN A SPECIAL WARRANTY DEED TO JEAN BAPTISTE, LTD. AS RECORDED IN DOCUMENT NO. 9926687 OF THE OFFICIAL PUBLIC RECORDS OF THE SAID COUNTY, AND BEING A PORTION OF THOSE THREE (3) TRACTS OF LAND DESCRIBED IN THE FOLLOWING TWO (2) SPECIAL WARRANTY DEEDS TO THE SAID JEAN BAPTISTE, LTD., RECORDED IN THE SAID OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY; 1) DOCUMENT NUMBER 9926685, TRACT ONE CONTAINING 199.8712 ACRES AND; 2) DOCUMENT NUMBER 9926686, TRACT ONE CONTAINING 77.49 ACRES AND TRACT TWO CONTAINING 77.484 ACRES, SAID 297.47 ACRE TRACT ALSO BEING EFFECTED BY A BOUNDARY LINE AGREEMENT RECORDED IN DOCUMENT NUMBER 2005050819 OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at an iron rod with cap set (grid coordinates, N:10,194,960.701, E:3,075,023.108) in the north line of the said 77.49 acre tract, same being a south line of a 4.91 acre tract of land described in a deed to Gary Worth Seaman, et al as recorded in Document Number 9648053 of the Official Public Records of the said County from which an iron rod found at the northwest corner of said 77.49 acre tract bears S69°21'36"W at 546.24 feet passing an iron rod with cap found at the northeast corner of that 8.305 acre tract of land described in a Special Warranty Deed to County of Williamson as recorded in Document Number 2005012314 of said Official Public records, continuing for a total distance of 830.77 feet;

THENCE, with the north line of the said 77.49 acre tract, the following two (2) courses:

1) Same being the south line of the said 4.91 acre tract, N69°21'36"E, 587.31 feet to a calculated point at the southeast corner of the said 4.91 acre tract, same being the southwest corner of that certain 5.27 acre tract described in a deed to The Moore Company as recorded in Document No. 9644304 of the said Official Public Records;
2) Same being the south line of the said 5.27 acre tract, N69°21'51"E, 1474.49 feet to an iron rod found at the northeast corner of the said 77.49 acre tract, said iron rod being in the west line of that certain 2.3872 acre tract described in a deed to Benita Cruces as recorded in Document Number 2003040417 of the said Official Public Records;

THENCE, with the east line of the said 77.49 acre tract, same being the west line of the said Cruces tract, S22°33'24"E, 265.99 feet to a calculated point at the northwest corner of the said 40.17 acre tract;

THENCE, with the north line of the said 40.17 acre tract, the following ten (10) courses:

1) Same being the south line of the said Cruces tract, N88°01'00"E, 317.05 feet to an iron rod found at the southeast corner of the said Cruces tract, same being the southwest corner of that certain 10.73 acre tract of land described in a deed to Ernest M. Jordan as recorded in Volume 623, Page 350 of the said Official Public Records;
2) N87°20'23"E, 255.92 feet to a nail found in tree;
3) N87°25'06"E, 222.59 feet to a nail found in tree;
4) N88°38'50"E, 183.83 feet to a metal fence corner post found at the southeast corner of the said Jordan tract, same being the southwest corner of that certain 10.061 acre tract described in a deed to Teddy Jack Estes as recorded in Volume 2079, Page 729 of the said Official Public Records;
5) N87°41'59"E, 181.09 feet to an iron rod found;
6) N89°52'01"E, 63.68 feet to a nail found in tree;
7) N88°10'32"E, 244.09 feet to a nail found in tree;
8) N85°41'55"E, 93.59 feet to a nail found in tree;
9) S88°05'09"E, 75.43 feet to a nail found in tree;
10) N86°33'20"E, 93.07 feet to a nail found in tree at the northeast corner of the said 40.17 acre tract, same being the southeast corner of the said 10.061 acre tract and in the southwest line of Lot 8, South San Gabriel Ranches, a subdivision recorded in Volume 5, Page 12 of the Plat Records of the said County;

THENCE, with an east line of the said 40.17 acre tract, same being the southwest line of the said Lot 8, S33°14'25"E, 246.90 feet to a nail found at the south corner of the said Lot 8, same being in the west right-of-way line of County Road 270;

THENCE, with the east line of the said 40.17 acre tract and the west line of County Road 270, the following two (2) courses:

1) S17°20'59"W, 514.19 feet to a nail found;
2) S11°07'11"E, 459.93 feet to an iron rod found at the southeast corner of the said 40.17 acre tract, same being a northeast corner of that certain 320.38 acre tract described in a deed to Sam Winters and Roy A. Butler as recorded in Volume 511, Page 54 of the said Official Public Records;

THENCE, with the south line of the said 40.17 acre tract and a north line of the said 320.38 acre tract, N89°47'15"W, 1366.91 feet to an iron rod found at the southwest corner of the said 40.17 acre tract, said iron rod also being in the northeast line of the said 77.484 acre tract and a northwest corner of the said 320.38 acre tract;

THENCE, with the northeast line of the said 77.484 and 199.8712 acre tract same being a southwest line of the said 320.38 acre tract as described in the said boundary line agreement recorded in Document Number 2005050819, S21°03'19"E, 2,658.04 feet to an iron rod found at the southeast corner of the said 199.8712 acre tract, same being an interior corner of the said 320.38 acre tract;

THENCE, with the common line of the said 199.8712 acre tract and the said 320.38 acre tract, the following seven (7) courses:

1) S49°24'27"W, 431.16 feet to an iron rod found;

2) S26°12'36"W, 353.97 feet to an iron rod found;
3) S69°48'07"W, 346.17 feet to a calculated point;
4) S51°43'53"W, 400.61 feet to an iron rod found;
5) S84°57'19"W, 279.09 feet to an iron rod found;
6) S71°26'46"W, 416.89 feet to an iron rod found;
7) N85°38'48"W, 88.64 feet to an iron rod found;

THENCE, with the common line of the said 199.8712 acre tract and the said 320.38 acre tract as described in the said boundary line agreement recorded in Document Number 2005050819, S67°24'49"W, 61.70 feet to an iron rod with cap set;

THENCE, through the interior of said 199.8712 acre tract, the following two (2) courses:
1) N33°00'49"W, 903.85 feet to an iron rod with cap set;
2) S69°05'33"W, 764.94 feet to an iron rod with cap set in the east line of that 11.104 acre tract described in said deed recorded in Document Number 2005012314;

THENCE, continuing through the interior of the said 199.8712 acre tract, and with the east line of that 11.104 acre tract described in said deed recorded in Document Number 2005012314, along a curve to the right having a radius of 5529.58 feet, an arc length of 278.32 feet, a central angle of 2°53'02", and a chord which bears N30°09'20"W, 278.29 feet to an iron rod found at the northeast corner of said 11.104 acre tract, on a north line of the said 199.8712 acre tract, same being the south line of that certain tract of land described as 34.9 acres to Louie Bryson and wife, Ruby Bryson and recorded in Volume 525, Page 64 of the said Official Public Records;

THENCE, with a common line of the said 199.8712 acre tract and the said 34.9 acre tract, the following two (2) courses:
1) N67°50'41"E, 419.72 feet to an iron rod found;
2) N21°22'21"W, 393.09 feet to an iron rod found at the southeast corner of that certain 17.46 acre tract described in a deed to West Texas Trading Retirement, Ltd. as recorded in Volume 2058, Page 119 of the said Official Public Records;

THENCE, with the common line of the said 199.8712 acre tract and the said 17.46 acre tract, the following two (2) courses:
1) N21°23'02"W, 306.66 feet to an iron rod found;
2) N21°10'03"W, 312.72 feet to an iron rod found at the southeast corner of that certain 5.96 acre tract described in a deed to Gary G. Bonnet as recorded in Volume 2697, Page 599 of the said Official Public Records;

THENCE, with a common line of the said 199.8712 acre tract and the said 5.96 acre tract, N20°56'22"W, 312.98 feet to an iron rod found at the northeast corner of the said 5.96 acre tract;

THENCE, with the common line of the said 199.8712 acre tract and the said 77.484 acre tract, N69°35'16"E, 65.11 feet to an iron rod with cap set;

THENCE, through the interior of the said 77.484 acre tract and said 77.49 acre tract, the following four (4) courses:

1) N13°48'31"W, 715.22 feet to an iron rod with cap set;
2) N84°52'36"E, 303.74 feet to an iron rod with cap set;
3) N04°46'08"W, 951.97 feet to an iron rod with cap set;
4) N20°34'25"W, 435.85 feet to the POINT OF BEGINNING and containing 297.47 acre of land.

EXHIBIT "A"

METES AND BOUNDS DESCRIPTION
3.185 ACRE TRACT
IN THE WILLIAM MANSIL SURVEY, A-437
WILLIAMSON COUNTY, TEXAS

All that certain 3.185 acres of land out of the residue of the 5.96 acre tract described in the deed from Charles B. Smart to Gary G. Bonnet, recorded under Vol. 2697, Pg. 599 in the Official Public Records of Williamson County, Texas, in the William Mansil Survey, A-437, Williamson County, Texas and more particularly described by metes and bounds as follows: (All bearings based on the Texas State Plane Coordinate System Central Zone.)

BEGINNING at a ½" iron rod found for the southeast corner of the said 5.96 acre tract, common to a point in the west line of a 297.47 acre tract described in the deed from Waterstone Jean Baptiste, L.P. to WYA Villages of Messina, Ltd., recorded under Document No. 2007004725, in the Official Public Records of Williamson County, Texas, and common to the northeast corner of the residue of the 17.46 acre tract described in the deed from J.W. Small to West Texas Trading Retirement, Ltd. recorded under Vol. 2058, Pg. 119, in the Official Records of Williamson County, Texas.

THENCE South 70°01'53" West, a distance of 457.08' with the south line of said 5.96 acre tract, common to the north line of said 17.46 acre tract to the point of curvature of a curve to the right, having a Delta Angle of 03°12'28", a radius of 5529.58, and from which point the radius bears North 71°58'10" East, in the east right-of-way line of US 183A as described in the deed from Gary G. Bonnet to Williamson County, Texas recorded under Document No. 2004090173, in the Official Public Records of Williamson County, Texas, from which a ½" iron rod with cap bears North 70°01'53" East, a distance of 0.21';

THENCE along said curve to the right in a northerly direction, with the east right-of-way line of said US 183A, an arc distance of 309.57' to a ½" iron rod with cap set for the end of curve in the north line of said 5.96 acre tract, and in a line of the residue of a 372.54 acre tract described in the deed from Jean Baptiste, Ltd. to Waterstone Jean Baptiste, L.P. recorded under Document No. 2004099499 in the Official Public Records of Williamson County, Texas;

THENCE North 69°30'19" East, a distance of 432.52', with the north line of said 5.96 acre tract, common to a line of said 372.54 acre tract to a ½" iron rod found for the northeast corner of the said 5.96 acre tract, common to an angle point in a west line of said 297.47 acre tract, from which a ½" iron rod found for an angle point of said 297.47 acre tract bears North 69°37'11" East, a distance of 65.12';

THENCE South 20°57'58" East, a distance of 312.96', with the east line of said 5.96 acre tract, common to a west line of the said 297.47 acre tract, to the **POINT OF BEGINNING** of the herein described tract, and containing 3.185 acres of land;

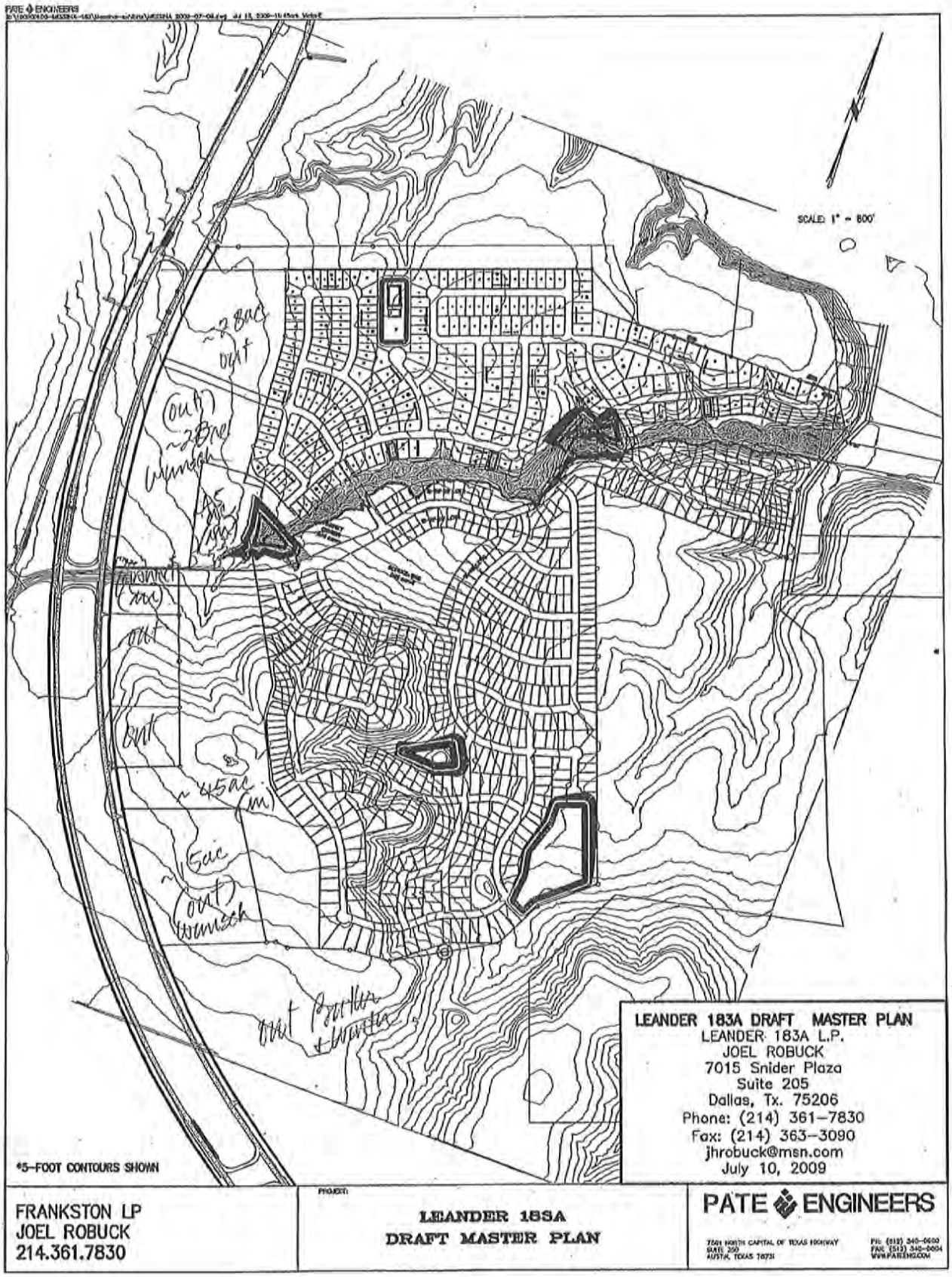
Prepared by:
PATE SURVEYORS
a division of
Pate Engineers, Inc.
Job No. 1909-001-01-S520

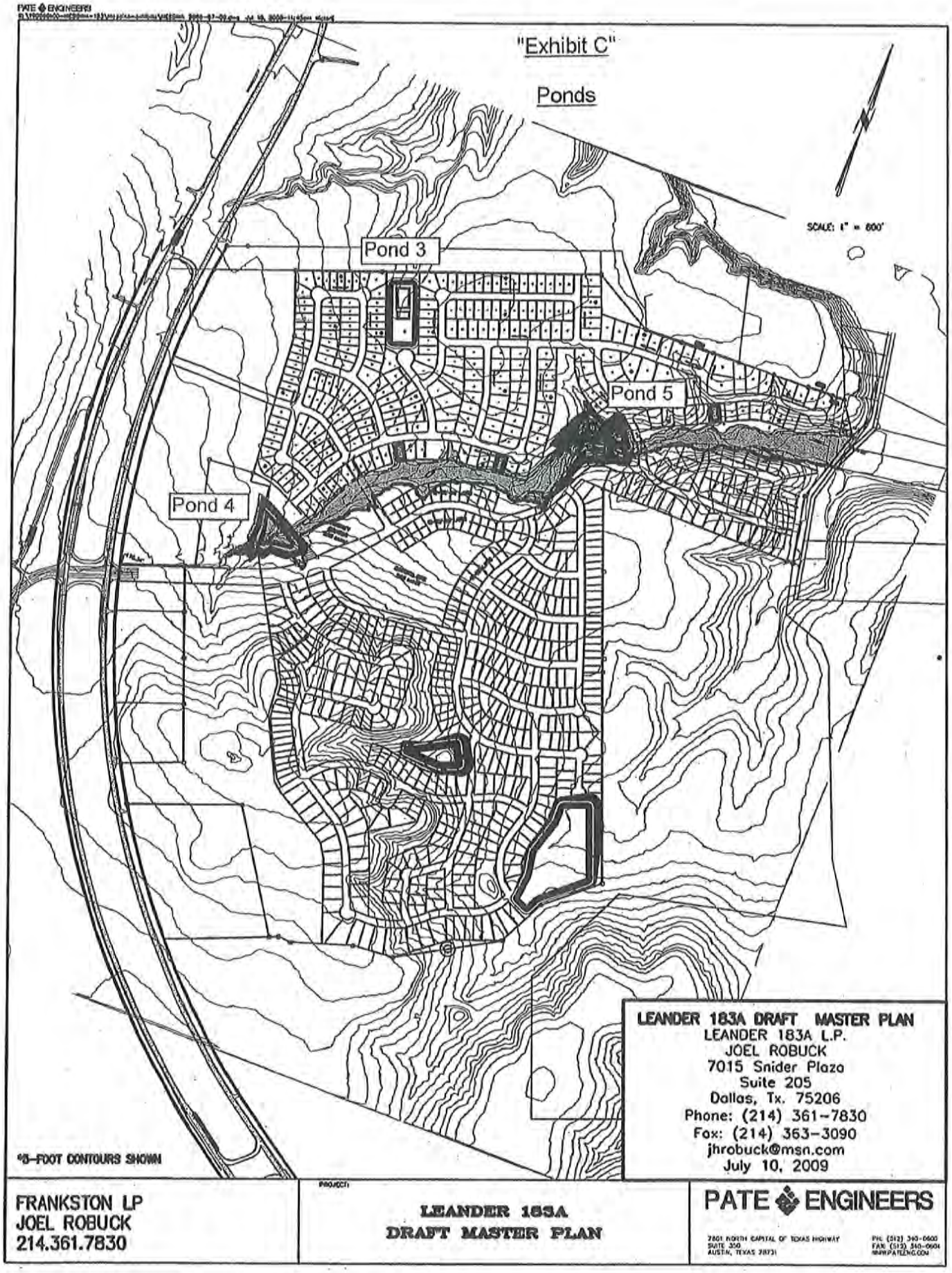
Neil Hines 15 May 2009
Neil Hines, R.P.L.S. Date
Texas Registration No. 5642

THIS LEGAL DESCRIPTION IS ISSUED AS "PART TWO", IN CONJUNCTION WITH THE LAND TITLE SURVEY BY PATE SURVEYORS LAST CERTIFIED MAY 15, 2009. REFERENCE IS HEREBY MADE TO THE SURVEY AS "PART ONE".

"Exhibit B"

Concept Plan





FRANKSTON LP
JOEL ROBUCK
214.361.7830

PROJECT:
LEANDER 183A
DRAFT MASTER PLAN

PATE ENGINEERS
7801 NORTH CAPITAL OF TEXAS HIGHWAY
SUITE 350
AUSTIN, TEXAS 78731
PH: (512) 340-0600
FAX: (512) 340-0604
WWW.PATEENG.COM

Exhibit "D"

MEMORANDUM OF AGREEMENT

The undersigned have executed that certain Development and Reimbursement Agreement for Leander 183A Development II LLC (the "Agreement") dated effective _____, 2012 (the "Effective Date"). Pursuant to the Agreement, Leander Development Authority ("Authority"), Leander 183A Development II LLC ("Developer"), the City of Leander, Texas ("City"), and Reinvestment Number One, City of Leander, Texas ("TIRZ #1") have agreed to certain matters regarding (i) development by Developer of certain property in Williamson County, Texas, described on Exhibit A attached hereto ("Property"), (ii) construction by Developer of certain projects within the Property, (iii) reservation by the Authority, the City and TIRZ #1 of certain ad valorem tax increment and utility impact fee receipts ("Authority Revenue"), and (iv) the payment of the Authority Revenue to Developer in reimbursement of certain costs and expenses ("Reimbursements").

All provisions pertaining to the Agreement, including the determination of the Authority Revenue and the Reimbursements, shall be governed by the Agreement, to which reference is hereby made for all pertinent purposes.

The rights granted hereby shall inure to the benefit of and shall be binding upon the undersigned and their respective legal representatives, executors, administrators, successors, heirs and assigns.

This Memorandum of Agreement shall automatically terminate on the termination of the Agreement, and may be amended only by written agreement of the parties.

Attest:

_____
Debbie Haile, Assistant Secretary

Leander Development Authority

By:_____
Name:_____
Title: President

THE STATE OF TEXAS §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2012, by _____, as President of Leander Development Authority, a non-profit corporation, on behalf of said non-profit corporation.

_____
NOTARY PUBLIC, State of Texas

Attest:

City of Leander

_____
Debbie Haile, Assistant Secretary

By: _____
Name: Chris Fielder
Title: Mayor

THE STATE OF TEXAS §
§
COUNTY OF WILLIAMSON §

This instrument was acknowledged before me on the _____ day of _____, 2012, by Chris Fielder, as Mayor of the City of Leander, a home-rule municipal corporation, on behalf of said municipal corporation.

_____
NOTARY PUBLIC, State of Texas

Attest:

Reinvestment Zone Number One,
City of Leander, Texas

_____
Debbie Haile, Assistant Secretary

By: _____
Name: _____
Title: President

THE STATE OF TEXAS §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2012, by _____, a _____, on behalf of said _____.

_____
NOTARY PUBLIC, State of Texas

Leander 183A Development II, LLC

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2012, by _____, _____ of Leander 183A Development II LLC, on behalf of said limited liability company.

_____
NOTARY PUBLIC, State of Texas

Exhibit "E"

ORDINANCE NO. _____

ORDINANCE OF CITY OF LEANDER, TEXAS
GIVING CONSENT TO THE CREATION OF A MUNICIPAL UTILITY DISTRICT

WHEREAS, Pursuant to Chapters 49 and 54 of the Texas Water Code, Leander 183A Development II, LLC (the "Petitioner") wishes to create Leander TODD Municipal Utility District No. 1 of Williamson County (the "District") to serve the _____ acres of land in Williamson County, Texas described in the attached Exhibit "A" ("Petitioner's Land"); and

WHEREAS, all of the land to be included within the District is located within the corporate boundaries of the City of Leander; and

WHEREAS, land that is within the corporate limits of a city may not be included within a municipal utility district without the written consent of such city; and

WHEREAS, Petitioner has submitted to the Mayor and City Council of the City of Leander, Texas, a Petition for Consent to Creation of Leander TODD Municipal Utility District No. 1 of Williamson County; and

WHEREAS, the general nature of the work to be done by and within the District is the (i) construction, maintenance and operation of a waterworks system for residential and commercial purposes; (ii) the construction, maintenance and operation of a sanitary sewer collection system ; (iii) the control, abatement and amendment of the harmful excess of waters and the reclamation and drainage of overflowed lands within the District; (iv) the financing, developing and maintaining of recreational facilities for the people in the District; (v) the construction, acquisition, improvement, operation, or maintenance of macadamized, graveled, or paved roads, or improvements, including storm drainage, in aid of those roads, to the extent authorized by Article III, Section 52, of the Texas Constitution; and (vi) such other construction, installation, maintenance, purchase and operation of such additional facilities, systems, plants and enterprises as shall be consonant with the purposes for which the District is organized.

WHEREAS, the City Council of the City of Leander desires to adopt Ordinance No. _____ as set forth herein for the purpose of consenting to the creation of the District; Now Therefore,

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

Section 1. That all of the matters and facts set out in the preamble hereof be true and correct.

Section 2. That the City Council of the City of Leander, Texas, hereby gives its written consent to the creation of Leander TODD Municipal Utility District No. 1 of Williamson County by the Texas Legislature, pursuant to the Legislation attached hereto and incorporated herein as Exhibit "B" (the "Legislation"); or (ii) in the event that the Legislation does not

become law, by the Texas Commission on Environmental Quality (the "TCEQ"), wholly within the corporate boundaries of the City of Leander, the boundaries of such land being described by metes and bounds in Exhibit "A" attached hereto and made a part hereof for all purposes.

Section 3. That as a condition of the consent given by the City pursuant to this Ordinance, the District facilities shall be subject to the following terms and provisions:

(a) All facilities and improvements shall be constructed in accordance with plans and specifications which have been approved by the City;

(b) The City shall have the right to inspect all facilities being constructed by the District;

(c) The purposes for which the District may issue bonds (the "Bonds") are restricted to the purchase, construction, acquisition, repair, extension and improvement of land, easements, works, improvements, facilities, plants, equipment and appliances necessary to:

(i) Provide a water supply for municipal uses, domestic uses and commercial purposes;

(ii) Collect, transport, process, dispose of and control all domestic, industrial or communal wastes whether in fluid, solid or composite state;

(iii) Gather, conduct, divert and control local storm water or other local harmful excesses of water within the District;

(iv) Provide roads and improvements;

(v) Develop and maintain recreational facilities for residents, subject to the applicable limitations of Sections 49.461 - 49.466 or as permitted under 54.201, Water Code;

(vi) Refunding of any outstanding Bonds of the District for a debt service savings; provided such refunding Bonds otherwise satisfy the terms of this Ordinance;

(vii) Bonds and Refunding Bonds issued by the District shall have a maximum maturity date that is not more than forty (40) years after the US 183/Hwy 183A Completion Date, as defined in the Development and Reimbursement Agreement for Leander 183A Development II LLC ("Development Agreement"); and

(viii) Provide payment of organizational, administrative, and operating costs during creation and construction periods and interest during construction, subject to the applicable limitations of Section 49.155, Water Code.

(d) Each water and wastewater facility and improvement and each roadway and improvement, shall, upon inspection and final approval and acceptance of construction by the City, be conveyed to the City for operation and maintenance as a part of the City's utility or roadway system, as applicable.

Section 4. That as a further condition of the consent given by the City pursuant to this Ordinance, the District Bonds shall be subject to the following terms and provisions:

(a) Bonds, including refunding Bonds, issued by the District shall, unless otherwise agreed to by the City, comply with the following requirements, provided such requirements do not generally render the Bonds unmarketable:

(i) The Bonds shall be issued in series with a minimum limit on each series of Bonds being $1,000,000;

(ii) The Bonds shall have a maximum maturity of not greater than forty (40)years after the US 183/Hwy 183A Completion Date;

(iii) The Bonds (other than refunding Bonds and Bonds sold to a federal or state agency) shall only be sold after the taking of public bids therefor, and no Bonds shall be sold for less than ninety seven percent (97%) of par provided the net effective interest rate on Bonds so sold, taking into account any discount or premium as well as interest rate borne by such Bonds, shall not exceed 2% above the highest average interest rate reported by the Daily Bond Buyer in its weekly "20 Bond Index" during the 30-day period next preceding the date notice of the sale of such Bonds is given;

(iv) The Bonds shall expressly provide that the District shall reserve the right to redeem Bonds at any time subsequent to the tenth (10th) anniversary of the date of issuance, without premium;

(v) No variable rate Bonds shall be issued by the District without City approval; and

(vi) Any refunding Bonds of the District must provide for a minimum of three percent (3%) present value savings and, further, must provide that the latest maturity of the refunding Bonds may not extend beyond the latest maturity of the refunded Bonds

(b) The City shall require the following information with respect to each issuance of Bonds by the District:

(i) At least 30 days before submission of an application for approval of issuance of Bonds to the TCEQ, the District's financial advisor shall deliver to the City Manager a notice containing the following:

A. The amount of Bonds proposed for issuance;

B. General description of the projects to be funded by the Bonds or Bonds to be refunded by such Bonds; and

C. The proposed debt service schedule and District debt service tax rate after the issuance of the Bonds.

(ii) At least 10 days before issuance of Bonds, except refunding Bonds, the District's financial advisor shall certify in writing that the Bonds are being issued within the existing economic feasibility guidelines established by the TCEQ for districts issuing bonds in Williamson County and shall deliver the certification to the City Manager;

(iii) At least 10 days before the issuance of Bonds, the District shall deliver to the City Manager:

A. If the District is required to obtain TCEQ approval of the issuance of a series of Bonds (other than refunding Bonds), a copy of the order of the TCEQ approving the Bonds and the projects to be funded by such Bonds;

B. The amount of Bonds being proposed for issuance;

C. The projects to be funded by such Bonds; and

D. The proposed District debt service ad valorem tax rate after issuance of the Bonds;

(iv) If the District is not required to obtain TCEQ approval of the issuance of a series of Bonds (other than refunding Bonds), the District shall deliver such notice to the City Manager at least 60 days prior to issuing such Bonds;

(v) At least 10 days before the issuance of Bonds, or refunding Bonds, the District shall certify in writing that the District is in compliance in all material respects with the conditions set forth in this Ordinance and shall deliver the certification to the City Manager; and

(vi) Within 30 days after the District closes the sale of a series of Bonds, the District shall deliver to the City Manager a copy of the final official statement for such series of Bonds; and a copy of any developer reimbursement audit required by the rules of the TCEQ.

(c) In the event that the District is in default of a provision of this Ordinance, the City shall have a period of thirty (30) days after receiving the last of the certifications and notices required by Section 3(b)(i) and a period of then (10) days after receiving the last of the certifications and notices required by Section 3(b)(ii), (iii) and (v) of this Ordinance within which to object to the proposed issuance of a series of Bonds. If the City fails to object to a proposed Bond issue within such

specified periods, the City shall be deemed to have waived all objections to such default. If the City objects to a proposed Bond issue ("City Objection"), such objection (a) shall be in writing, (b) shall be given to the District; (c) shall be signed by the City Manager or the City Manager's designee, and (d) shall specifically identify the applicable provision under this Ordinance for which the District is in default. In the event a City Objection is timely given to the District with respect to a specific issuance of Bonds, the City and the District shall cooperate to resolve the City Objection to such default within a reasonable time, and the issuance of Bonds to which the City Objection applies shall be delayed until the City Objection to such default has been cured or waived by written agreement.

(d) The District shall send a copy of the order or other action setting its annual debt service ad valorem tax rate to the City Manager within 30 days after District adoption of the rate.

(e) The District shall send a copy of its annual audit to the City Manager within 30 days after approval.

(f) The District shall send a copy of any material event notices filed under applicable federal securities laws or regulations to the City Manager within 30 days after filing such notices with the applicable federal agency.

(g) The terms, provisions, conditions and obligations of the Facilities Agreement, dated_____, 2012, executed by Leander 183A Development II LLC, a Texas limited liability company, and the City of Leander,

Section 5. That, in addition to all the rights and remedies provided by the laws of the state in the event the District violates the terms and provisions of this Ordinance, the City shall be entitled to injunctive relief or a writ of mandamus issued by a court of competent jurisdiction restraining, compelling or requiring the District and its officials to observe and comply with the terms and provisions prescribed by this Ordinance.

Section 6. That, if any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

Section 7. That this Ordinance is intended as the sole and controlling ordinance of the City with respect to the granting of the written consent of the City to the inclusion of the Property in the District, and all ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

Section 8. That this Ordinance shall be in full force and effect from and after its passage and approval on this the ___ day of_____, 2012.

PASSED AND APPROVED on this _____ day of ____, 2012.

City of Leander, Texas

_____
Chris Fielder, Mayor

ATTEST:

_____
Debbie Haile, City Secretary

(SEAL)

CERTIFICATE OF ORDINANCE NO. _____

CITY OF LEANDER, TEXAS

I, the undersigned City Secretary of the City of Leander, Texas hereby certify that the attached and foregoing is a true and correct copy of Ordinance No. _____ of the City of Leander, Texas, consenting to the creation of a municipal utility district, to be known as Leander TODD Municipal Utility District No. 1 of Williamson County. I further certify that said Ordinance was passed and approved by the City Council of the City of Leander on _____, 2012.

WITNESS MY HAND AND SEAL OF THE CITY OF LEANDER, TEXAS, the _____ day of _____, 2012.

_____
City Secretary, City of Leander, Texas

(SEAL)

H.B. No. _____

Exhibit "F"

AN ACT

relating to the creation of the Leander TODD Municipal Utility District No.1 of Williamson County; providing authority to impose a tax and issue bonds; granting a limited power of eminent domain.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle F, Title 6, Special District Local Laws Code, is amended by adding Chapter _____ to read as follows:

CHAPTER _____. LEANDER TODD MUNICIPAL UTILITY DISTRICT NO. OF WILLIAMSON COUNTY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. _____.001. DEFINITIONS. In this chapter:

(1) "Board" means the district's board of directors.

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "Director" means a board member.

(4) "District" means Leander TODD Municipal Utility District No. 1 of Williamson County.

Sec. _____.002. NATURE OF DISTRICT. The district is a municipal utility district created under Section 59, Article XVI, Texas Constitution.

Sec. _____.003. CONFIRMATION AND DIRECTORS' ELECTION

REQUIRED. The temporary directors shall hold an election to confirm the creation of the district and to elect five permanent directors as provided by Section 49.102, Water Code.

Sec. .004. CONSENT OF MUNICIPALITY REQUIRED. The temporary directors may not hold an election under Section 8309.003 until each municipality in whose corporate limits or extraterritorial jurisdiction the district is located has consented by ordinance or resolution to the creation of the district and to the inclusion of land in the district.

Sec. .005. FINDINGS OF PUBLIC PURPOSE AND BENEFIT. (a) The district is created to serve a public purpose and benefit.

(b) The district is created to accomplish the purposes of:

(1) a municipal utility district as provided by general law and Section 59, Article XVI, Texas Constitution; and

(2) Section 52, Article III, Texas Constitution, that relate to the construction, acquisition, improvement, operation, or maintenance of macadamized, graveled, or paved roads, or improvements, including storm drainage, in aid of those roads.

Sec. .006. INITIAL DISTRICT TERRITORY. (a) The district is initially composed of the territory described by Section 2 of the Act enacting this chapter.

(b) The boundaries and field notes contained in Section 2 of the Act enacting this chapter form a closure. A mistake made in the field notes or in copying the field notes in the legislative process does not affect the district's:

(1) organization, existence, or validity;

(2) right to issue any type of bond for the purposes for which the district is created or to pay the principal of and interest on a bond;

(3) right to impose a tax; or

(4) legality or operation.

Sec. .007. ELIGIBILITY FOR INCLUSION IN TAX INCREMENT REINVESTMENT ZONE. (a) The district is eligible to be included in a tax increment reinvestment zone created under Chapter 311, Tax Code.

(b) If the City of Leander has created or creates a tax increment reinvestment zone described by Subsection (a) that includes all or part of the territory of the district, the City of Leander and the board of directors of the zone or a developer of property within the tax increment reinvestment zone that receives or will receive money from the tax increment fund, by contract with the district, may grant money to the district from the tax increment fund to be used for a permissible purpose of the district, including the right to pledge the money as security for a bond or other obligation issued by the district and for any permissible purpose of a corporation under Section 380.002(b), Local Government Code.

[Sections .008- .050 reserved for expansion]

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. .051. GOVERNING BODY; TERMS. (a) The district is

governed by a board of five elected directors.

(b) Except as provided by Section .052, directors serve staggered four-year terms.

Sec. .052. TEMPORARY DIRECTORS. (a) The temporary board consists of:

(1) _____;

(2) _____;

(3) _____;

(4) _____;

(5) _____; [will need names of 5 individuals]

(b) Temporary directors serve until the earlier of:

(1) the date permanent directors are elected under Section .003; or

(2) September 1, 2017.

(c) If permanent directors have not been elected under Section .003 and the terms of the temporary directors have expired, successor temporary directors shall be appointed or reappointed as provided by Subsection (d) to serve terms that expire on the earlier of:

(1) the date permanent directors are elected under Section .003; or

(2) the fourth anniversary of the date of the appointment or reappointment.

(d) If Subsection (c) applies, the owner or owners of a majority of the assessed value of the real property in the district

may submit a petition to the commission requesting that the commission appoint as successor temporary directors the five persons named in the petition. The commission shall appoint as successor temporary directors the five persons named in the petition.

[Sections .053- .100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. .101. GENERAL POWERS AND DUTIES. The district has the powers and duties necessary to accomplish the purposes for which the district is created.

Sec. .102. MUNICIPAL UTILITY DISTRICT POWERS AND DUTIES. The district has the powers and duties provided by the general law of this state, including Chapters 49 and 54, Water Code, applicable to municipal utility districts created under Section 59, Article XVI, Texas Constitution.

Sec. .103. AUTHORITY FOR ROAD PROJECTS. Under Section 52, Article III, Texas Constitution, the district may design, acquire, construct, finance, issue bonds for, improve, operate, maintain, and convey to this state, a county, or a municipality for operation and maintenance macadamized, graveled, or paved roads, or improvements, including storm drainage, in aid of those roads.

Sec. .104. ROAD STANDARDS AND REQUIREMENTS. (a) A road project must meet all applicable construction standards, zoning and subdivision requirements, and regulations of each municipality in whose corporate limits or extraterritorial jurisdiction the road

project is located.

(b) If a road project is not located in the corporate limits or extraterritorial jurisdiction of a municipality, the road project must meet all applicable construction standards, subdivision requirements, and regulations of each county in which the road project is located.

(c) If the state will maintain and operate the road, the Texas Transportation Commission must approve the plans and specifications of the road project.

Sec. .105. COMPLIANCE WITH MUNICIPAL CONSENT ORDINANCE OR RESOLUTION. (a) The district shall comply with all applicable requirements of any ordinance or resolution that is adopted under Section 54.016 or 54.0165, Water Code, and that consents to the creation of the district or to the inclusion of land in the district.

(b) In addition to all the rights and remedies provided by other law, if the district violates the terms of an ordinance or resolution described by Subsection (a), the municipality is entitled to injunctive relief or a writ of mandamus issued by a court requiring the district and the district's officials to observe and comply with the terms of the ordinance or resolution.

Sec. .106. MUNICIPAL CONSENT. Municipal consent to the creation of the district and to the inclusion of land in the district granted under Section .004 acts as municipal consent to the creation of any new district created by the division of the

district and to the inclusion of land in the new district.

Sec. .107. EFFECT OF ANNEXATION OR INCLUSION WITHIN THE CORPORATE BOUNDARIES OF THE CITY OF LEANDER. Notwithstanding Section 54.016(f)(2), Water Code, an allocation agreement between the City of Leander and the district that provides for the allocation of the taxes or revenues of the district and the city following the date of inclusion of all the district's territory in the corporate limits of the city may provide that the total annual ad valorem taxes collected by the city and the district from taxable property in the district may exceed the city's ad valorem tax on that property.

Sec. .108. LIMITATION ON USE OF EMINENT DOMAIN. The district may not exercise the power of eminent domain outside the district to acquire a site or easement for:

(1) a road project authorized by Section 8309.103; or

(2) a recreational facility as defined by Section 49.462, Water Code.

[Sections .109- .150 reserved for expansion]

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. .201. ELECTIONS REGARDING TAXES OR BONDS. (a) The district may issue, without an election, bonds and other obligations secured by:

(1) revenue other than ad valorem taxes; or

(2) contract payments described by Section .203.

(b) The district must hold an election in the manner provided

by Chapters 49 and 54, Water Code, to obtain voter approval before the district may impose an ad valorem tax or issue bonds payable from ad valorem taxes.

(c) The district may not issue bonds payable from ad valorem taxes to finance a road project unless the issuance is approved by a vote of a two-thirds majority of the district voters voting at an election held for that purpose.

Sec. .202. OPERATION AND MAINTENANCE TAX. (a) If authorized at an election held under Section .201, the district may impose an operation and maintenance tax on taxable property in the district in accordance with Section 49.107, Water Code.

(b) The board shall determine the tax rate. The rate may not exceed the rate approved at the election.

Sec. .203. CONTRACT TAXES. (a) In accordance with Section 49.108, Water Code, the district may impose a tax other than an operation and maintenance tax and use the revenue derived from the tax to make payments under a contract after the provisions of the contract have been approved by a majority of the district voters voting at an election held for that purpose.

(b) A contract approved by the district voters may contain a provision stating that the contract may be modified or amended by the board without further voter approval.

[Sections .204- .250 reserved for expansion]

SUBCHAPTER E. BONDS AND OTHER OBLIGATIONS

Sec. .251. AUTHORITY TO ISSUE BONDS AND OTHER

OBLIGATIONS. The district may issue bonds or other obligations payable wholly or partly from ad valorem taxes, impact fees, revenue, contract payments, tax increment payments, grants, or other district money, or any combination of those sources, to pay for any authorized district purpose.

Sec. .252. TAXES FOR BONDS. At the time the district issues bonds payable wholly or partly from ad valorem taxes, the board shall provide for the annual imposition of a continuing direct ad valorem tax, without limit as to rate or amount, while all or part of the bonds are outstanding as required and in the manner provided by Sections 54.601 and 54.602, Water Code.

Sec. . 253. BONDS FOR ROAD PROJECTS. At the time of issuance, the total principal amount of bonds or other obligations issued or incurred to finance road projects and payable from ad valorem taxes may not exceed one-fourth of the assessed value of the real property in the district.

SECTION 2. Leander TODD Municipal Utility District No. 1 of Williamson County initially includes all the territory contained in the following area:

[INSERT LEGAL DESCRIPTION]

SECTION 3. (a) The legal notice of the intention to introduce this Act, setting forth the general substance of this

Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b) The governor, one of the required recipients, has submitted the notice and Act to the Texas Commission on Environmental Quality.

(c) The Texas Commission on Environmental Quality has filed its recommendations relating to this Act with the governor, the lieutenant governor, and the speaker of the house of representatives within the required time.

(d) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.

SECTION 4. (a) Section____.109, Special District Local Laws Code, as added by Section 1 of this Act, takes effect only if this Act receives a two-thirds vote of all the members elected to each house.

(b) If this Act does not receive a two-thirds vote of all the members elected to each house, Subchapter C, Chapter_____, Special District Local Laws Code, as added by Section 1 of this Act, is amended by adding Section_____.109 to read as follows:

Sec. 8309.109. NO EMINENT DOMAIN POWER. The district may not

exercise the power of eminent domain.

(c) This section is not intended to be an expression of a legislative interpretation of the requirements of Section 17(c), Article I, Texas Constitution.

SECTION 5. Except as provided by Section 4 of this Act:

(1) this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution; and

(2) if this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

Exhibit "G"

FACILITIES AGREEMENT

STATE OF TEXAS §
§
COUNTY OF WILLIAMSON §

THIS FACILITIES AGREEMENT ("Agreement") is made and entered into as of _____, 2012 (the "Effective Date"), initially by Leander 183A Development II LLC, a Texas limited liability company ("Owner"), and the CITY OF LEANDER, TEXAS ("City"), a home rule municipal corporation. Subsequent to its creation LEANDER TODD MUNICIPAL UTILITY DISTRICT NO. 1 OF WILLIAMSON COUNTY, TEXAS, a municipal utility district created and operating pursuant to Article XVI, Section 59 of the Texas Constitution and Chapters 49 and 54, Water Code (the "District"), will become a party to this Agreement. The Owner, the City, and the District are sometimes hereinafter referred to singularly, as "Party", and collectively, as "Parties".

RECITALS

WHEREAS, the Owner is the owner of approximately 300 acres in Williamson County, Texas, as described by metes and bounds on **Exhibit "A"** attached to this Agreement (the "Property"). The Property lies entirely within the corporate limits of the City;

WHEREAS, the Owner, Leander Development Authority, the City and Reinvestment Zone Number One, City of Leander, Texas ("TIRZ #1 ") have entered into a "Development and Reimbursement Agreement for Leander 183A Development II LLC effective, _____, 2012 (the "Development Agreement"), regarding certain land located within the City, including the Property, that provides, among other things, for the acquisition, construction, and financing of certain TODD Projects, as such term is defined therein, to serve the Property;

WHEREAS, the City Council of the City adopted Ordinance No. ___, dated _____, 2012, consenting to the creation of the District and the inclusion of the Property therein (the "Consent Ordinance"), a copy of which is attached hereto as **Exhibit "B"**;

WHEREAS, the Owner will seek special legislation creating the District which, upon its creation, will be located entirely within the corporate limits of the City (the "Special Legislation");

WHEREAS, in the event that the Special Legislation does not pass or become law, Owner will file an application to the Texas Commission on Environmental Quality (the "TCEQ") seeking the creation of the District which, upon its creation, will be located entirely within the corporate limits of the City;

WHEREAS, the District is being created for the purpose of constructing, acquiring, and financing the public improvements listed and described in **Exhibit "C"** (collectively, the "**District Improvements**") to serve the area within its boundaries. The proposed boundaries of the District are described in **Exhibit "A"**;

WHEREAS, the Owner will cooperate with District and City in the design, bidding, and construction of the District Improvements more particularly described on **Exhibit "C"** attached hereto, in the manner required for the District in accordance with the applicable requirements of Chapters 30, 49, and 54, Water Code, rules of the TCEQ, and the Development Agreement;

WHEREAS, the District will acquire for the benefit of and convey to the City the District Improvements to serve the future residents within the District;

WHEREAS, the District proposes to acquire, construct, and finance the District Improvements and convey them to the City, from time to time, in phases, in consideration for the periodic payments and other consideration to be provided on the terms set forth in this Agreement;

WHEREAS, the District is authorized to enter into this Agreement pursuant to the provisions of Texas law, including but not limited to, Chapters 30, 49, and 54, Water Code, Chapter 791, Government Code, and Section 552.014, Local Government Code;

WHEREAS, the City is a municipal corporation and is operating under a Home Rule Charter (the "City Charter") adopted under the laws of the State of Texas. The City has the authority under City Charter and the laws of the State of Texas to acquire, own, and operate a water and sanitary sewer system and works and improvements necessary for the drainage of the lands in the City, parks and recreational facilities, and road improvements;

WHEREAS, the Parties desire to enter into this Agreement in order to provide the Owner and District with financial capabilities to provide the District Improvements to the City for the benefit of the present and future landowners and residents within the boundaries of the District on the most economically feasible and cost effective basis;

WHEREAS, the Owner and the City have agreed Owner may assign its rights to certain reimbursements payable to the Owner, under the Development Agreement, to the District, and may contract with or assign to the District the right to design, build and construct the District Improvements;

WHEREAS, in order to provide for the continuing and orderly development of the Property on the most economically feasible and cost effective basis, the Owner, the District, and the City desire to enter into this Agreement whereby the Owner will construct and convey to the District, or may contract with the District and advance funds to or on behalf of the District, and the District will acquire or construct for the benefit of and convey or caused to be conveyed to the City, District Improvements to serve the area within the District and other areas within the City, as provided in this Agreement in accordance with all requirements of the City, in order that all of the Property in the District will be placed in the position ultimately to receive adequate water, sanitary sewer, and drainage services, recreational facilities and roads; and

WHEREAS, the City and District wish to establish mutually agreeable terms and conditions relating to the acquisition and construction of District Improvements and issuance of Bonds by the District for such purposes.

NOW THEREFORE, for and in consideration of the mutual agreements, covenants, and conditions hereinafter set forth, the Parties contract and agree as follows:

ARTICLE I
DEFINITIONS

"Agreement" shall mean this Facilities Agreement.

"Assignee" means a successor to Owner as defined in Section 9.09 of this Agreement.

"Board" means the Board of Directors of the District.

"Bond" means a bond, note or other obligation that is issued or incurred by the District under the District's borrowing power. The term shall include obligations issued to refund outstanding Bonds, but shall not include reimbursement agreements entered into between the District and a developer of the Property.

"Bond Limit Amount" means the maximum amount of Bonds, excluding refunding Bonds, that may be issued by the District pursuant to Section 3.04 of this Agreement in the amount and for the authorized purposes as described on **Exhibit "C"** attached hereto.

"City" means the City of Leander, Texas, a home rule municipality located in Travis and Williamson Counties.

"City Council" means the City Council of the City.

"City Manager" means the City Manager of the City.

"Consent Ordinance" means Ordinance No. _____ adopted by the City Council and dated _____, 2012, a copy of which is attached hereto as **Exhibit "B"**.

"Development Agreement" means the Development and Reimbursement Agreement for Leander 183A, dated_____, 2012, by and between the Leander Development Authority, Reinvestment Zone Number One, City of Leander, Texas, the City and Owner.

"District" means the Leander TODD Municipal Utility District No. 1 of Williamson County, Texas.

"District Creation Date" means the issue date of the order of the effective date of special legislation creating the District or the date of the Order of the TCEQ providing for creation of the District.

"District Improvements" means (a) the Project Improvements shown on Exhibit C" hereto; (b) the TODD Projects described in Sections 3.2, 3.3, 3.4 and 3.5 of the Development Agreement, that serve or otherwise benefit the Property; and (c) any other water, wastewater and drainage facilities, roads or other facilities within the Property that may be constructed, financed or maintained by the District pursuant to the provisions of the Special Legislation or the general laws of the State of Texas; the Reimbursable Costs of which have not been reimbursed to Owner pursuant to the Development Agreement.

"Notice" means notice as defined in Section 9.01 of this Agreement.

"Owner" means Leander 183A Development II LLC, a Texas limited liability company, its successors and Assignees as permitted by this Agreement.

"Party" means, individually, the City, Owner, or the District.

"Property" means that certain 300 acre tract located in Williamson County, Texas, as described on Exhibit A.

"Reimbursable Costs" means the documented dollar amount of the bid amounts actually expended for constructing the District Improvements, provided the bids and change orders are approved in advance by the City Engineer and Director of Development Services. The Reimbursable Costs shall also include the reasonable, approved total cost of the following:

(i) the surveying costs;

(ii) the cost of soils and materials testing;

(iii) the engineering fees related to the District Improvements;

(iv) advertising and other costs associated with public bidding and award of construction contracts;

(v) the documented cost of required easements and rights-of-way located outside of the Property, but not including any easement or right-of-way required on any land that is owned by Owner or an affiliate of Owner; and

(vi) any other necessary out-of-pocket costs expended in connection with the creation and operation of the District and constructing and installing the District Improvements;

provided that all such sums and amounts shall be reasonable, required for the District Improvements and documented to and approved by the City Engineer and Director of Development Services. The costs of a component of the District Improvements shall not be a Reimbursable Cost until such component is accepted by and dedicated to the City.

"Road Projects" means the portions of roads and improvements in aid of such roads described in Exhibit C of this Agreement that benefit the District.

"TCEQ" means the Texas Commission on Environmental Quality or its successor state agency.

"TODD Projects" shall have the meaning ascribed to such term by Section 3.1 of the Development Agreement.

"US 183/Hwy 183A Completion Date" means the date on which construction of the grade separated intersection of US Hwy 183 and State Hwy 183A, as identified and depicted on the Concept Plan, is completed and the intersection is open for public use.

ARTICLE II
EXECUTION OF AGREEMENTS

Section 2.01. Documents to be Executed. Owner covenants and agrees to cause the District to approve, execute, and deliver to the City this Agreement within thirty (30) days after the District Creation Date. However, if the District fails to execute this Agreement within the thirty (30) days, or in the event that the Creation Date has not occurred within two (2) years from the Effective Date, either Owner or City may terminate this Agreement upon ten (10) days' written notice to the other party. In the event this Agreement is terminated pursuant to this Section: (a) excluding the provisions authorizing the creation of a municipal utility district, the terms of the Development Agreement, shall be in full force and effect, subject to the terms of the Development Agreement; (b) the Owner's assignment under Section 4.01 of this Agreement shall be void, and the Owner shall be subject to all of the rights and obligations contained in the Development Agreement; and (c) the Consent Ordinance shall be deemed repealed.

Section 2.02. Issuance of Bonds. If the District fails to approve, execute, and deliver this Agreement to the City within the time frame required by Section 2.01, and the Owner or the City do not terminate this Agreement, such failure shall constitute a material breach of this Agreement by Owner and shall operate to prohibit the District from taking any affirmative act to issue Bonds until the failure has been cured. The City shall have all rights to enjoin the issuance of Bonds during any period in which a material breach exists under this Section 2.02. Such failure shall also constitute a breach of the Development Agreement, and the City shall have the right to suspend payment of Authority Revenue, as that term is defined in Section 2.3 of the Development Agreement, until such time as such failure has been cured.

Section 2.03. Owner Reimbursement. If Owner fails to cause the District to approve, execute and deliver this Agreement to the City after Creation Date within the time frame required by Section 2.01, then Owner shall not, from and after the date of such failure, enter into any agreements with the District ("District Reimbursement Agreement") or seek reimbursement from the District for any expenses incurred in connection with the District or development of the Property until the failure has been cured.

ARTICLE III
CONSENT ORDINANCE, ISSUANCE OF BONDS, AND ROAD PROJECTS

Section 3.01. Consent Ordinance. The District hereby acknowledges, accepts, and agrees to operate in accordance with the terms and conditions of the Consent Ordinance, which is incorporated herein by reference, and this Agreement.

Section 3.02. Issuance of Bonds. The District may issue Bonds only as permitted by the Consent Ordinance and this Agreement. Along with the certifications to be provided by the District in connection with each issuance of Bonds pursuant to the Consent Ordinance, the District shall certify in writing that the District is in compliance in all material respects with the

terms and conditions of this Agreement. In addition to its rights under the Consent Ordinance, the City may object to the proposed bond application or to the issuance of a series of Bonds for the reason that the Owner is in default, or the District is in default of any provision of this Agreement or the Development Agreement. If the City objects to a proposed Bond application due to such a default (a "City Objection"), the City shall have a period of thirty (30) days after receiving the District certification required by this Section 3.02 within which to object to the proposed bond application. If the City objects to a proposed Bond application due to such a default; the proposed Bond application will be terminated until such time as the default is cured. The City shall have a period of then (10) days after receiving the District certification required by the Section 3.02, within which to object to the proposed issuance of a series of Bonds. If the City objects due to a default of the Owner or the District the proposed issuance of the Bonds will be postponed until the default is cured. If the City fails to object to a proposed Bond application or issuance within such periods specified herein, the City shall be deemed to have waived all objections. If the City objects to a proposed District Bond issue, such City Objection (a) shall be in writing; (b) shall be given to the District; (c) shall be signed by the City Manager or the City Manager's designee; and (d) shall specifically identify the applicable provision under this Agreement or the Development Agreement for which the District or the Owner is in default. In the event a City Objection is timely given to the District with respect to a specific Bond application or issuance of Bonds, the City and the District shall cooperate to resolve the City Objection within a reasonable time, and the Bond application or issuance of Bonds to which the City Objection applies shall be delayed until the City Objection has been cured or waived by written agreement.

Section 3.03. Road Projects. This Agreement hereby authorizes the District to undertake the Road Projects and to issue Bonds for the Road Projects subject to this Agreement. The District shall convey or cause to be conveyed the Road Projects to the City, and the City shall accept, operate, and maintain such Road Projects in satisfaction of the requirements of Section 54.234, Water Code; provided that (a) the City has approved the plans and specifications of the Road Projects prior to construction; (b) the City finds that the Road Projects have been constructed in accordance with the approved plans and specifications, the Development Agreement, and applicable City regulations; and (c) the Owner or District has satisfied any requirements set forth in City ordinances or the Development Agreement that must be met prior to the City's acceptance of the Road Projects.

Section 3.04. Limitation on Bond Amount.

(a) The District agrees that the total amount of Bonds to be issued by the District, excluding refunding Bonds, shall not exceed $_____, for District Improvements (the "Bond Limit Amount"). However, the Parties agree that the amounts shown next to the various line item cost components of the Bond Limit Amount are estimates, and may vary over the term of this Agreement. Accordingly, such line item amounts are not intended by the Parties as limitations on the amount of funds to be expended for such components. Owner and the District acknowledge that the Bond Limit Amount is estimated as of the Effective Date to be sufficient to accomplish the purposes of the District; and that Owner and the District have voluntarily agreed to the Bond Limit Amount. Owner and District may request the City to approve an increase in the Bond Limit Amount to address increases in future construction costs or the addition of mutually agreed District Improvements. District Improvements, if any, the cost of which

exceeds the Bond Limit Amount, will be dedicated by the District or Owner on behalf of the District to the City without reimbursement.

(b) The District shall prepare and update annually after the District Creation Date (and deliver a copy to the City and the Owner) by June 1 of each year, a budget estimating the costs of the components of the Bond Limit Amount (the "District Bond Budget"). The District Bond Budget shall compare such estimated costs to **Exhibit "C"**. The District Bond Budget shall separately identify, for each line item identified on **Exhibit "C"**, the costs paid for completed District Improvements, the costs to be paid under construction contracts that are pending or that have been awarded, and the costs to be incurred in the future. Upon the completion of work under each construction contract, the District and Owner shall deliver to the Owner and the City a statement of the total costs incurred under each contract.

Section 3.05. Limitation on Owner Reimbursement.

(a) The District and Owner agree that no Bonds, including refunding Bonds, shall be issued with the latest principal maturity date beyond forty (40) years from the US 183/Hwy 183A Completion Date.

(b) Any agreement of the District to reimburse Owner may only be for those costs and expenses which are eligible to be reimbursed to Owner by the District pursuant to the rules and regulations of the TCEQ or other applicable law.

Section 3.06. District Ad Valorem Taxes.

(a) The Parties to this Agreement recognize that the District, in order to pay the principal of and interest on its Bonds and establish and maintain the interest and sinking fund and reserve fund required by the District's orders or resolutions authorizing the issuance of its Bonds, it will be necessary for the District to levy an ad valorem tax for such purposes. The Parties further recognize that the District may levy a maintenance tax as authorized by the Water Code, as amended.

(b) No provision of this Agreement shall limit the District's authority and obligation to levy a continuing direct annual ad valorem tax rate for each year while all or a part of the Bonds are outstanding on all taxable property within the District in sufficient amount to pay the interest on the Bonds as it becomes due and to create a sinking fund for the payment of principal of the Bonds when due or the redemption price on any earlier redemption date and to pay the expenses of assessing and collecting District taxes.

(c) No provision of this Agreement shall be construed to limit the City's authority to levy ad valorem taxes in an amount sufficient within the City Council's discretion to provide for the maintenance and operation and debt service of the City, or otherwise. Nor is any term, provision or condition of this Agreement intended by the Parties to require or to limit the City Council to take any specific action that is within its legislative discretion.

(d) In the event that the District is created by the TCEQ, the District may not levy any ad valorem tax until such time as the special legislation or general law provides that the total

annual ad valorem taxes collected by the City and the District from taxable property within the District may exceed the City's ad valorem tax on the Property.

Section 3.07. Limit of City's Liability. Unless the City abolishes the District and assumes the assets and liabilities of the District, the Bonds or any other obligations of the District shall never become an obligation of the City. The City's obligations under this Agreement shall not extend beyond its obligations to (a) make the periodic payments as provided in Section 5.02 below; (b) operate and maintain the District Improvements after conveyance to the City; and (c) use the District Improvements to serve the Property, and residents and customers within the District; provided that nothing herein shall prevent the City from using the District Improvements to serve customers outside of the District as reasonably required and not inconsistent with the Development Agreement provided that there is sufficient capacity to serve the residents and customers within the District.

ARTICLE IV
ACQUISITION, CONSTRUCTION, AND CONVEYANCE OF DISTRICT IMPROVEMENTS

Section 4.01. Assignment by Owner. Owner hereby assigns all of its rights and obligations with respect to the design, construction, and conveyance of the District Improvements to the District, and the District hereby assumes and accepts such assignment in all respects and agrees to be bound by Article 3 of the Development Agreement with respect to the District Improvements. This Agreement evidences the City's consent to such assignment, and Owner's release from the obligations assigned hereby; provided that such assignment does not release or waive any obligation of the Owner under the Development Agreement. The Owner shall remain obligated under the Development Agreement with respect to the funding, design, construction, and conveyance of all TODD Projects and all other improvements and infrastructure required for the development of the Property in compliance with the Applicable Regulations, as such term is defined in the Development Agreement. The Owner shall further remain obligated to fund, finance, and pay for, on behalf of the District, the design and construction of the District Improvements, which shall be constructed or caused to be constructed by the District pursuant to this Agreement and the Development Agreement. The assignment by Owner, and the City's consent thereto as provided in this Section 4.01, shall not become effective until the District executes this Agreement.

Section 4.02. Recreational Facilities. The Parties acknowledge and agree that the Property will be developed in a manner to provide parkland, landscaping, sidewalks, trails, and associated street and security lighting. The Parties agree to develop a mutually acceptable plan that will provide, to the maximum extent possible, for District financing of the development and maintenance of the park and recreational facilities within the Property described on Exhibit "C".

Section 4.03. Phased Conveyances by District. The Parties acknowledge that the District Improvements will be acquired, constructed, and conveyed to the City in phases as discrete components thereof are completed.

ARTICLE V
DISSOLUTION OF DISTRICT

The City may dissolve the District at anytime after the District has issued Bonds required for financing all Reimbursable Costs and all non-construction costs as shown on Exhibit "C" actually incurred with respect to the District Improvements in accordance with this Agreement. In such event, the City shall assume the indebtedness and legal obligations of the District to the extent required by law. In the event that the City does not dissolve the District as provided herein, the Board of Directors of the District shall take action for dissolution of the District within sixty (60) days after the last bond maturity or the expiration of the Agreement as specified in Article VI.

ARTICLE VI
TERM OF AGREEMENT

This Agreement shall be effective from the Effective Date and shall continue in effect for a term of forty (40) years after the US 183/Hwy 183A Completion Date; provided this Agreement shall terminate earlier if (a) the District is dissolved by the City or (b) the Agreement is terminated in writing pursuant to Section 2.01 or by mutual agreement of the Parties.

ARTICLE VII
BREACH, NOTICE AND REMEDIES

Section 7.01. Notification of Breach. If a Party commits a breach of this Agreement, the non-breaching Party shall give Notice to the breaching Party that describes the breach in reasonable detail.

Section 7.02. Cure of Breach. The breaching Party shall commence curing such breach within fourteen (14) days after the time the breaching Party receives such Notice and complete the cure within fourteen (14) calendar days from the date of commencement of the cure; however, if the breach is not reasonably susceptible to cure by the breaching Party within such 14-day period, the non-breaching Party shall not bring any action so long as the breaching Party has commenced to cure the default within such 14-day period and diligently completes the cure within a reasonable time without unreasonable cessation of the work. Breach of an obligation to pay money shall be considered susceptible to cure within any period required.

Section 7.03. Remedies for Breach. If the breaching Party does not cure such breach within the stated period of time, the non-breaching Party may, in its sole discretion, and without prejudice to any other right under this Agreement, law, or equity, seek an action under the Uniform Declaratory Judgment Act, specific performance, mandamus, injunctive relief, and other remedies described in this Agreement or available at law or in equity; provided, however, (a) the non-breaching Party shall not be entitled to terminate this Agreement save and except as provided in Section 2.01, (b) each Party specifically waives any right such Party has or in the future may have to terminate this Agreement except as provided in Section 2.01, and (c) it is understood and agreed that no Party will seek or recover actual, consequential or any other type of monetary damages or awards.

ARTICLE VIII
ADDITIONAL PROVISIONS

Section 8.01. Notice. Any notices, certifications, approvals, or other communications (a "Notice") required to be given by one Party to another under this Agreement shall be given in writing addressed to the Party to be notified at the address set forth below and shall be deemed given: (a) when the Notice is delivered in person to the person to whose attention the Notice is addressed; (b) when received if the Notice is deposited in the United States Mail, certified or registered mail, return receipt requested, postage prepaid; (c) when the Notice is delivered by Federal Express, UPS, or another nationally recognized courier service with evidence of delivery signed by any person at the delivery address; or (d) five business days after the Notice is sent by FAX (with electronic confirmation by the sending FAX machine) with a confirming copy sent by United States Mail within 48 hours after the FAX is sent. If any date or period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating the Notice shall be extended to the first business day following the Saturday, Sunday, or legal holiday. For the purpose of giving any Notice, the addresses of the Parties are set forth below. The Parties may change the information set forth below by sending Notice of such changes to the other Party as provided in this Section 8.01.

To Owner: Leander 183A Development II, LLC
Attn: Steve Leeke
8111 Preston Road, Suite 600
Dallas, Texas 75225
Telephone: (214) 443-1945
Facsimile: (214) 443- 1978
EMAIL: Steve.Leeke@e2mpartners.com

With Copy to: _____
_____
_____
_____
_____
_____
_____

To City: City of Leander
Attn: City Manager
200 West Willis Street
P.O. Box 319
Leander, Texas 78646-0319
Telephone: (512) 528-2700
Facsimile: (512) 259-1605

With copy to: McKamie Krueger, LLP
Attn: Paige H. Saenz

Executive Office Terrace
223 W. Anderson Lane, Suite A105
Austin, Texas 78752

To District: President
Board of Directors
c/o Julianne B. Kugle
1980 Post Oak Boulevard, Suite 1380
Houston, Texas 77056
Telephone: (713) 850- 9000
Facsimile: (713) 850- 1330
EMAIL: kugle@sklaw.us

With copy to: Julianne B. Kugle
1980 Post Oak Boulevard, Suite 1380
Houston, Texas 77056
Telephone: (713) 850- 9000
Facsimile: (713) 850- 1330
EMAIL: kugle@sklaw.us

Section 8.02. No Waiver. Any failure by a Party to insist upon strict performance by other Party of any provision of this Agreement shall not be deemed a waiver thereof, and the Party shall have the right at any time thereafter to insist upon strict performance of any and all provisions of this Agreement. No provision of this Agreement may be waived except by writing signed by the Party waiving such provision. Any waiver shall be limited to the specific purposes for which it is given. No waiver by any Party hereto of any term or condition of this Agreement shall be deemed or construed to be a waiver of any term or condition or subsequent waiver of the same term or condition.

Section 8.03. Governing Law and Venue. This Agreement must be construed and enforced in accordance with the laws of the State of Texas, as they apply to contracts performed within the State of Texas and without regard to any choice of law rules or principles to the contrary. The Parties acknowledge that this Agreement is performable in Williamson County, Texas, and hereby submit to the jurisdiction of the State district courts of Williamson County, Texas, and hereby agree that any such courts shall be a proper forum for the determination of any dispute arising hereunder.

Section 8.04. Authority to Execute. The City warrants that this Agreement has been approved by the City Council in accordance with all applicable public meeting and public notice requirements (including, but not limited to, notices required by the Texas Open Meetings Act) and that the individual executing this Agreement on behalf of the City has been authorized to do so. Owner warrants that the execution of this Agreement is duly authorized in conformity with the articles of incorporation, bylaws, partnership agreement, or other applicable organizational documents of Owner and that the individual executing this Agreement on behalf of Owner has been authorized to do so. The District warrants that this Agreement has been approved by the Board in accordance with all applicable public meeting and public notice requirements (including, but not limited to, notices required by the Texas Open Meetings Act) and that the

individual executing this Agreement on behalf of the Board of Directors has been authorized to do so.

Section 8.05. Severability. The provisions of this Agreement are severable and, in the event any word, phrase, clause, sentence, paragraph, section, or other provision of this Agreement, or the application thereof to any person or circumstance, shall ever be held or determined to be invalid, illegal, or unenforceable for any reason, and the extent of such invalidity or unenforceability does not cause substantial deviation from the underlying intent of the Parties as expressed in this Agreement, then such provision shall be deemed severed from this Agreement with respect to such person, entity or circumstance, without invalidating the remainder of this Agreement or the application of such provision to other persons, entities or circumstances except to the extent that the severed provision(s) is a dependent substantive term the removal of which affects the intent and effect of the remaining provisions. In the event of such a determination of invalidity or unenforceability, the Parties will attempt in good faith to amend the Agreement in such a manner that is most consistent with the original intent of the Agreement as legally possible.

Section 8.06. Changes in State or Federal Laws. If any state or federal law changes so as to make it impossible for the Owner, the City or the District to perform its obligations under this Agreement, the Parties will attempt in good faith to amend the Agreement in such a manner that is most consistent with the original intent of the Agreement as legally possible.

Section 8.07. Additional Documents and Acts. The Parties agree that at any time after execution of this Agreement, they will, upon the request of any other Party, execute and/or exchange any other documents found appropriate and necessary to effectuate the terms of this Agreement and perform any further acts or things as the other Party may reasonably request to effectuate the terms of this Agreement.

Section 8.08. Captions. Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of the Agreement.

Section 8.09. Assignment.

> Neither the District nor the City may assign this Agreement without written consent of the other and the Owner.
>
> Owner has the right, from time to time, to assign this Agreement, in whole or in part, and including any obligation, right, title, or interest of Owner under this Agreement in the same manner as provided in Article 8 of the Development Agreement.

Section 8.10. Amendment. This Agreement may be amended only with the written consent of all Parties and with approval of the governing bodies of the City and the District.

Section 8.11. Interpretation. The Parties acknowledge that each Party and, if it so chooses, its counsel have reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto. As used in this

Agreement, the term "including" means "including without limitation" and the term "days" means calendar days, not business days. Wherever required by the context, the singular shall include the plural, and the plural shall include the singular. Each defined term herein may be used in its singular or plural form whether or not so defined.

Section 8.12. No Third-Party Beneficiary. This Agreement is solely for the benefit of the Parties, and neither the City, the District nor Owner intends by any provision of this Agreement to create any rights in any third-party beneficiaries or to confer any benefit upon or enforceable rights under this Agreement or otherwise upon anyone other than the City, the District and Owner.

Section 8.13. Incorporation of Exhibits by Reference. All exhibits attached to this Agreement are incorporated into this Agreement by reference for the purposes set forth herein, as follows:

Exhibit "A" Description of the Property
Exhibit "B" Consent Ordinance
Exhibit "C" District Improvements / Bond Limit Amount

Section 8.14. Counterpart Originals. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original.

THE CITY OF LEANDER, TEXAS

By:_____
Name:_____
Title:_____

Date:_____

ATTEST

By:_____
Name:_____
Title:_____

Date:_____

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the ___ day of _____, 2012, by _____, _____ of the City of Leander, Texas, on behalf of said city.

_____
Notary Public, State of Texas
Printed Name:_____
My Commission Expires:_____

Leander 183A Development II, LLC

By:_____
Name:_____
Title:_____

STATE OF TEXAS §
§
COUNTY OF _____ §

This instrument was acknowledged before me, on the ___ day of _____, 2012, by _____, _____of Leander 183A Development II, LLC, on behalf of said limited liability company.

_____
NOTARY PUBLIC, State of Texas

Pursuant to Article II hereof and following the District Creation Date, the District has executed the Agreement.

LEANDER TODD MUNICIPAL UTILITY DISTRICT NO. 1 OF WILLIAMSON COUNTY, TEXAS

By:_____
Name:_____
Title: President, Board of Directors

Date:_____

STATE OF TEXAS §
§
COUNTY OF WILLIAMSON §

This instrument was acknowledged before me, on the ___ day of _____, 2012, by _____, President of the Board of Directors of the Leander TODD Municipal Utility District No. 1 of Williamson County, Texas on behalf of said entity.

_____
Notary Public, State of Texas
Printed Name:_____
My Commission Expires:_____

SEAL

EXHIBIT "A"

Metes and Bounds Description of the Property

EXHIBIT "B"

Consent Ordinance

EXHIBIT "C"

District Improvements / Bond Limit Amount

FIELD NOTE 778
UDG #04-293

EXHIBIT "A"

JEAN BAPTISTE INC.
WILLIAMSON COUNTY, TEXAS

DESCRIPTION

DESCRIBING A TRACT OF LAND CONTAINING 297.47 ACRES, BEING A PART OF THE WILLIAM MANSIL A-437 AND THE HENRY GARMES SURVEY A-269, WILLIAMSON COUNTY, TEXAS, SAID 297.47 ACRE TRACT BEING FURTHER DESCRIBED AS BEING ALL OF THAT 40.17 ACRE TRACT DESCRIBED IN A SPECIAL WARRANTY DEED TO JEAN BAPTISTE, LTD. AS RECORDED IN DOCUMENT NO. 9926687 OF THE OFFICIAL PUBLIC RECORDS OF THE SAID COUNTY, AND BEING A PORTION OF THOSE THREE (3) TRACTS OF LAND DESCRIBED IN THE FOLLOWING TWO (2) SPECIAL WARRANTY DEEDS TO THE SAID JEAN BAPTISTE, LTD., RECORDED IN THE SAID OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY; 1) DOCUMENT NUMBER 9926685, TRACT ONE CONTAINING 199.8712 ACRES AND; 2) DOCUMENT NUMBER 9926686, TRACT ONE CONTAINING 77.49 ACRES AND TRACT TWO CONTAINING 77.484 ACRES, SAID 297.47 ACRE TRACT ALSO BEING EFFECTED BY A BOUNDARY LINE AGREEMENT RECORDED IN DOCUMENT NUMBER 2005050819 OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at an iron rod with cap set (grid coordinates, N:10,194,960.701, E:3,075,023.108) in the north line of the said 77.49 acre tract, same being a south line of a 4.91 acre tract of land described in a deed to Gary Worth Seaman, et al as recorded in Document Number 9648053 of the Official Public Records of the said County from which an iron rod found at the northwest corner of said 77.49 acre tract bears S69°21'36"W at 546.24 feet passing an iron rod with cap found at the northeast corner of that 8.305 acre tract of land described in a Special Warranty Deed to County of Williamson as recorded in Document Number 2005012314 of said Official Public records, continuing for a total distance of 830.77 feet;

THENCE, with the north line of the said 77.49 acre tract, the following two (2) courses:

1) Same being the south line of the said 4.91 acre tract, N69°21'36"E, 587.31 feet to a calculated point at the southeast corner of the said 4.91 acre tract, same being the southwest corner of that certain 5.27 acre tract described in a deed to The Moore Company as recorded in Document No. 9644304 of the said Official Public Records;
2) Same being the south line of the said 5.27 acre tract, N69°21'51"E, 1474.49 feet to an iron rod found at the northeast corner of the said 77.49 acre tract, said iron rod being in the west line of that certain 2.3872 acre tract described in a deed to Benita Cruces as recorded in Document Number 2003040417 of the said Official Public Records;

THENCE, with the east line of the said 77.49 acre tract, same being the west line of the said Cruces tract, S22°33'24"E, 265.99 feet to a calculated point at the northwest corner of the said 40.17 acre tract;

THENCE, with the north line of the said 40.17 acre tract, the following ten (10) courses:

1) Same being the south line of the said Cruces tract, N88°01'00"E, 317.05 feet to an iron rod found at the southeast corner of the said Cruces tract, same being the southwest corner of that certain 10.73 acre tract of land described in a deed to Ernest M. Jordan as recorded in Volume 623, Page 350 of the said Official Public Records;
2) N87°20'23"E, 255.92 feet to a nail found in tree;
3) N87°25'06"E, 222.59 feet to a nail found in tree;
4) N88°38'50"E, 183.83 feet to a metal fence corner post found at the southeast corner of the said Jordan tract, same being the southwest corner of that certain 10.061 acre tract described in a deed to Teddy Jack Estes as recorded in Volume 2079, Page 729 of the said Official Public Records;
5) N87°41'59"E, 181.09 feet to an iron rod found;
6) N89°52'01"E, 63.68 feet to a nail found in tree;
7) N88°10'32"E, 244.09 feet to a nail found in tree;
8) N85°41'55"E, 93.59 feet to a nail found in tree;
9) S88°05'09"E, 75.43 feet to a nail found in tree;
10) N86°33'20"E, 93.07 feet to a nail found in tree at the northeast corner of the said 40.17 acre tract, same being the southeast corner of the said 10.061 acre tract and in the southwest line of Lot 8, South San Gabriel Ranches, a subdivision recorded in Volume 5, Page 12 of the Plat Records of the said County;

THENCE, with an east line of the said 40.17 acre tract, same being the southwest line of the said Lot 8, S33°14'25"E, 246.90 feet to a nail found at the south corner of the said Lot 8, same being in the west right-of-way line of County Road 270;

THENCE, with the east line of the said 40.17 acre tract and the west line of County Road 270, the following two (2) courses:

1) S17°20'59"W, 514.19 feet to a nail found;
2) S11°07'11"E, 459.93 feet to an iron rod found at the southeast corner of the said 40.17 acre tract, same being a northeast corner of that certain 320.38 acre tract described in a deed to Sam Winters and Roy A. Butler as recorded in Volume 511, Page 54 of the said Official Public Records;

THENCE, with the south line of the said 40.17 acre tract and a north line of the said 320.38 acre tract, N89°47'15"W, 1366.91 feet to an iron rod found at the southwest corner of the said 40.17 acre tract, said iron rod also being in the northeast line of the said 77.484 acre tract and a northwest corner of the said 320.38 acre tract;

THENCE, with the northeast line of the said 77.484 and 199.8712 acre tract same being a southwest line of the said 320.38 acre tract as described in the said boundary line agreement recorded in Document Number 2005050819, S21°03'19"E, 2,658.04 feet to an iron rod found at the southeast corner of the said 199.8712 acre tract, same being an interior corner of the said 320.38 acre tract;

THENCE, with the common line of the said 199.8712 acre tract and the said 320.38 acre tract, the following seven (7) courses:

1) S49°24'27"W, 431.16 feet to an iron rod found;

2) S26°12'36"W, 353.97 feet to an iron rod found;
3) S69°48'07"W, 346.17 feet to a calculated point;
4) S51°43'53"W, 400.61 feet to an iron rod found;
5) S84°57'19"W, 279.09 feet to an iron rod found;
6) S71°26'46"W, 416.89 feet to an iron rod found;
7) N85°38'48"W, 88.64 feet to an iron rod found;

THENCE, with the common line of the said 199.8712 acre tract and the said 320.38 acre tract as described in the said boundary line agreement recorded in Document Number 2005050819, S67°24'49"W, 61.70 feet to an iron rod with cap set;

THENCE, through the interior of said 199.8712 acre tract, the following two (2) courses:
1) N33°00'49"W, 903.85 feet to an iron rod with cap set;
2) S69°05'33"W, 764.94 feet to an iron rod with cap set in the east line of that 11.104 acre tract described in said deed recorded in Document Number 2005012314;

THENCE, continuing through the interior of the said 199.8712 acre tract, and with the east line of that 11.104 acre tract described in said deed recorded in Document Number 2005012314, along a curve to the right having a radius of 5529.58 feet, an arc length of 278.32 feet, a central angle of 2°53'02", and a chord which bears N30°09'20"W, 278.29 feet to an iron rod found at the northeast corner of said 11.104 acre tract, on a north line of the said 199.8712 acre tract, same being the south line of that certain tract of land described as 34.9 acres to Louie Bryson and wife, Ruby Bryson and recorded in Volume 525, Page 64 of the said Official Public Records;

THENCE, with a common line of the said 199.8712 acre tract and the said 34.9 acre tract, the following two (2) courses:
1) N67°50'41"E, 419.72 feet to an iron rod found;
2) N21°22'21"W, 393.09 feet to an iron rod found at the southeast corner of that certain 17.46 acre tract described in a deed to West Texas Trading Retirement, Ltd. as recorded in Volume 2058, Page 119 of the said Official Public Records;

THENCE, with the common line of the said 199.8712 acre tract and the said 17.46 acre tract, the following two (2) courses:
1) N21°23'02"W, 306.66 feet to an iron rod found;
2) N21°10'03"W, 312.72 feet to an iron rod found at the southeast corner of that certain 5.96 acre tract described in a deed to Gary G. Bonnet as recorded in Volume 2697, Page 599 of the said Official Public Records;

THENCE, with a common line of the said 199.8712 acre tract and the said 5.96 acre tract, N20°56'22"W, 312.98 feet to an iron rod found at the northeast corner of the said 5.96 acre tract;

THENCE, with the common line of the said 199.8712 acre tract and the said 77.484 acre tract, N69°35'16"E, 65.11 feet to an iron rod with cap set;

THENCE, through the interior of the said 77.484 acre tract and said 77.49 acre tract, the following four (4) courses:

1) N13°48'31"W, 715.22 feet to an iron rod with cap set;
2) N84°52'36"E, 303.74 feet to an iron rod with cap set;
3) N04°46'08"W, 951.97 feet to an iron rod with cap set;
4) N20°34'25"W, 435.85 feet to the POINT OF BEGINNING and containing 297.47 acre of land.

EXHIBIT "A"

METES AND BOUNDS DESCRIPTION
3.185 ACRE TRACT
IN THE WILLIAM MANSIL SURVEY, A-437
WILLIAMSON COUNTY, TEXAS

All that certain 3.185 acres of land out of the residue of the 5.96 acre tract described in the deed from Charles B. Smart to Gary G. Bonnet, recorded under Vol. 2697, Pg. 599 in the Official Public Records of Williamson County, Texas, in the William Mansil Survey, A-437, Williamson County, Texas and more particularly described by metes and bounds as follows: (All bearings based on the Texas State Plane Coordinate System Central Zone.)

BEGINNING at a ½" iron rod found for the southeast corner of the said 5.96 acre tract, common to a point in the west line of a 297.47 acre tract described in the deed from Waterstone Jean Baptiste, L.P. to WYA Villages of Messina, Ltd., recorded under Document No. 2007004725, in the Official Public Records of Williamson County, Texas, and common to the northeast corner of the residue of the 17.46 acre tract described in the deed from J.W. Small to West Texas Trading Retirement, Ltd. recorded under Vol. 2058, Pg. 119, in the Official Records of Williamson County, Texas.

THENCE South 70°01'53" West, a distance of 457.08' with the south line of said 5.96 acre tract, common to the north line of said 17.46 acre tract to the point of curvature of a curve to the right, having a Delta Angle of 03°12'28", a radius of 5529.58, and from which point the radius bears North 71°58'10" East, in the east right-of-way line of US 183A as described in the deed from Gary G. Bonnet to Williamson County, Texas recorded under Document No. 2004090173, in the Official Public Records of Williamson County, Texas, from which a ½" iron rod with cap bears North 70°01'53" East, a distance of 0.21';

THENCE along said curve to the right in a northerly direction, with the east right-of-way line of said US 183A, an arc distance of 309.57' to a ½" iron rod with cap set for the end of curve in the north line of said 5.96 acre tract, and in a line of the residue of a 372.54 acre tract described in the deed from Jean Baptiste, Ltd. to Waterstone Jean Baptiste, L.P. recorded under Document No. 2004099499 in the Official Public Records of Williamson County, Texas;

THENCE North 69°30'19" East, a distance of 432.52', with the north line of said 5.96 acre tract, common to a line of said 372.54 acre tract to a ½" iron rod found for the northeast corner of the said 5.96 acre tract, common to an angle point in a west line of said 297.47 acre tract, from which a ½" iron rod found for an angle point of said 297.47 acre tract bears North 69°37'11" East, a distance of 65.12';

THENCE South 20°57'58" East, a distance of 312.96', with the east line of said 5.96 acre tract, common to a west line of the said 297.47 acre tract, to the **POINT OF BEGINNING** of the herein described tract, and containing 3.185 acres of land;

Prepared by:
PATE SURVEYORS
a division of
Pate Engineers, Inc.
Job No. 1909-001-01-S520

Neil Hines 15 May 2009
Neil Hines, R.P.L.S. Date
Texas Registration No. 5642

THIS LEGAL DESCRIPTION IS ISSUED AS "PART TWO", IN CONJUNCTION WITH THE LAND TITLE SURVEY BY PATE SURVEYORS LAST CERTIFIED MAY 15, 2009. REFERENCE IS HEREBY MADE TO THE SURVEY AS "PART ONE".

ORDINANCE NO. _____

ORDINANCE OF CITY OF LEANDER, TEXAS
GIVING CONSENT TO THE CREATION OF A MUNICIPAL UTILITY DISTRICT

WHEREAS, Pursuant to Chapters 49 and 54 of the Texas Water Code, Leander 183A Development II, LLC (the "Petitioner") wishes to create Williamson County Municipal Utility District No. __ (the "District") to serve the _____ acres of land in Williamson County, Texas described in the attached Exhibit "A" ("Petitioner's Land"); and

WHEREAS, all of the land to be included within the District is located within the corporate boundaries of the City of Leander; and

WHEREAS, land that is within the corporate limits of a city may not be included within a municipal utility district without the written consent of such city; and

WHEREAS, Petitioner has submitted to the Mayor and City Council of the City of Leander, Texas, a Petition for Consent to Creation of Williamson County Municipal Utility District No. ____; and

WHEREAS, the general nature of the work to be done by and within the District is the (i) construction, maintenance and operation of a waterworks system for residential and commercial purposes; (ii) the construction, maintenance and operation of a sanitary sewer collection system ; (iii) the control, abatement and amendment of the harmful excess of waters and the reclamation and drainage of overflowed lands within the District; (iv) the financing, developing and maintaining of recreational facilities for the people in the District; (v) the construction, acquisition, improvement, operation, or maintenance of macadamized, graveled, or paved roads, or improvements, including storm drainage, in aid of those roads, to the extent authorized by Article III, Section 52, of the Texas Constitution; and (vi) such other construction, installation, maintenance, purchase and operation of such additional facilities, systems, plants and enterprises as shall be consonant with the purposes for which the District is organized.

WHEREAS, the City Council of the City of Leander desires to adopt Ordinance No. _____ as set forth herein for the purpose of consenting to the creation of the District; Now Therefore,

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

Section 1. That all of the matters and facts set out in the preamble hereof be true and correct.

Section 2. That the City Council of the City of Leander, Texas, hereby gives its written consent to the creation of Williamson County Municipal Utility District No. __ by the Texas Legislature, pursuant to the Legislation attached hereto and incorporated herein as **Exhibit "B" (the "Legislation");** or in the event that the Legislation does not become law, by the Texas

Commission on Environmental Quality (the **"TCEQ"**), wholly within the corporate boundaries of the City of Leander, the boundaries of such land being described by metes and hounds in Exhibit "A" attached hereto and made a part hereof for all purposes.

Section 3. That as a condition of the consent given by the City pursuant to this Ordinance, the District facilities shall be subject to the following terms and provisions:

(a) All facilities and improvements shall be constructed in accordance with plans and specifications which have been approved by the City;

(b) The City shall have the right to inspect all facilities being constructed by the District;

(c) The purposes for which the District may issue bonds (the "Bonds") are restricted to the purchase, construction, acquisition, repair, extension and improvement of land, easements, works, improvements, facilities, plants, equipment and appliances necessary to:

(i) Provide a water supply for municipal uses, domestic uses and commercial purposes;

(ii) Collect, transport, process, dispose of and control all domestic, industrial or communal wastes whether in fluid, solid or composite state;

(iii) Gather, conduct, divert and control local storm water or other local harmful excesses of water within the District;

(iv) Provide roads and improvements;

(v) Develop and maintain recreational facilities for residents, subject to the applicable limitations of Sections 49.461 - 49.466 or as permitted under 54.201, Water Code;

(vi) Refunding of any outstanding Bonds of the District for a debt service savings; provided such refunding Bonds otherwise satisfy the terms of this Ordinance;

(vii) Bonds and Refunding Bonds issued by the District shall have a maximum maturity date that is not more than forty (40) years after the US 183/Hwy 183A Completion Date, as defined in the Development and Reimbursement Agreement for Leander 183A Development II LLC ("Development Agreement"); and

(viii) Provide payment of organizational, administrative, and operating costs during creation and construction periods and interest during construction, subject to the applicable limitations of Section 49.155, Water Code.

(d) Each water and wastewater facility and improvement and each roadway and improvement, shall, upon inspection and final approval and acceptance of construction by the City, be conveyed to the City for operation and maintenance as a part of the City's utility or roadway system, as applicable.

Section 4. That as a further condition of the consent given by the City pursuant to this Ordinance, the District Bonds shall be subject to the following terms and provisions:

(a) Bonds, including refunding Bonds, issued by the District shall, unless otherwise agreed to by the City, comply with the following requirements, provided such requirements do not generally render the Bonds unmarketable:

(i) The Bonds shall be issued in series with a minimum limit on each series of Bonds being $1,000,000;

(ii) The Bonds shall have a maximum maturity of not greater than forty (40)years after the US 183/Hwy 183A Completion Date;

(iii) The Bonds (other than refunding Bonds and Bonds sold to a federal or state agency) shall only be sold after the taking of public bids therefor, and no Bonds shall be sold for less than ninety seven percent (97%) of par provided the net effective interest rate on Bonds so sold, taking into account any discount or premium as well as interest rate borne by such Bonds, shall not exceed 2% above the highest average interest rate reported by the Daily Bond Buyer in its weekly "20 Bond Index" during the 30-day period next preceding the date notice of the sale of such Bonds is given;

(iv) The Bonds shall expressly provide that the District shall reserve the right to redeem Bonds at any time subsequent to the tenth (10th) anniversary of the date of issuance, without premium;

(v) No variable rate Bonds shall be issued by the District without City approval; and

(vi) Any refunding Bonds of the District must provide for a minimum of three percent (3%) present value savings and, further, must provide that the latest maturity of the refunding Bonds may not extend beyond the latest maturity of the refunded Bonds

(b) The City shall require the following information with respect to each issuance of Bonds by the District:

(i) At least 30 days before submission of an application for approval of issuance of Bonds to the TCEQ, the District's financial advisor shall deliver to the City Manager a notice containing the following:

A. The amount of Bonds proposed for issuance;

B. General description of the projects to be funded by the Bonds or Bonds to be refunded by such Bonds; and

C. The proposed debt service schedule and District debt service tax rate after the issuance of the Bonds.

(ii) At least 10days before issuance of Bonds, except refunding Bonds, the District's financial advisor shall certify in writing that the Bonds are being issued within the existing economic feasibility guidelines established by the TCEQ for districts issuing bonds in Williamson County and shall deliver the certification to the City Manager;

(iii) At least 10 days before the issuance of Bonds, the District shall deliver to the City Manager:

A. If the District is required to obtain TCEQ approval of the issuance of a series of Bonds (other than refunding Bonds), a copy of the order of the TCEQ approving the Bonds and the projects to be funded by such Bonds;

B. The amount of Bonds being proposed for issuance;

C. The projects to be funded by such Bonds; and

D. The proposed District debt service ad valorem tax rate after issuance of the Bonds;

(iv) If the District is not required to obtain TCEQ approval of the issuance of a series of Bonds (other than refunding Bonds), the District shall deliver such notice to the City Manager at least 60 days prior to issuing such Bonds;

(v) At least 10 days before the issuance of Bonds, or refunding Bonds, the District shall certify in writing that the District is in compliance in all material respects with the conditions set forth in this Ordinance and shall deliver the certification to the City Manager; and

(vi) Within 30 days after the District closes the sale of a series of Bonds, the District shall deliver to the City Manager a copy of the final official statement for such series of Bonds; and a copy of any developer reimbursement audit required by the rules of the TCEQ.

(c) In the event that the District is in default of a provision of this Ordinance, the City shall have a period of thirty (30) days after receiving the last of the certifications and notices required by Section 3(b)(i) and a period of then (10) days after receiving the last of the certifications and notices required by Section 3(b)(ii), (iii) and (v) of this Ordinance within which to object to the proposed issuance of a series of Bonds. If the City fails to object to a proposed Bond issue within such

specified periods, the City shall be deemed to have waived all objections to such default. If the City objects to a proposed Bond issue ("City Objection"), such objection (a) shall be in writing, (b) shall be given to the District; (c) shall be signed by the City Manager or the City Manager's designee, and (d) shall specifically identify the applicable provision under this Ordinance for which the District is in default. In the event a City Objection is timely given to the District with respect to a specific issuance of Bonds, the City and the District shall cooperate to resolve the City Objection to such default within a reasonable time, and the issuance of Bonds to which the City Objection applies shall be delayed until the City Objection to such default has been cured or waived by written agreement.

(d) The District shall send a copy of the order or other action setting its annual debt service ad valorem tax rate to the City Manager within 30 days after District adoption of the rate.

(e) The District shall send a copy of its annual audit to the City Manager within 30 days after approval.

(f) The District shall send a copy of any material event notices filed under applicable federal securities laws or regulations to the City Manager within 30 days after filing such notices with the applicable federal agency.

(g) The terms, provisions, conditions and obligations of the Facilities Agreement, dated_____, 2012, executed by Leander 183A Development II LLC, a Texas limited liability company, and the City of Leander,

Section 5. That, in addition to all the rights and remedies provided by the laws of the state in the event the District violates the terms and provisions of this Ordinance, the City shall be entitled to injunctive relief or a writ of mandamus issued by a court of competent jurisdiction restraining, compelling or requiring the District and its officials to observe and comply with the terms and provisions prescribed by this Ordinance.

Section 6. That, if any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

Section 7. That this Ordinance is intended as the sole and controlling ordinance of the City with respect to the granting of the written consent of the City to the inclusion of the Property in the District, and all ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

Section 8. That this Ordinance shall be in full force and effect from and after its passage and approval on this the ___ day of _____, 2012.

PASSED AND APPROVED on this _____ day of ____, 2012.

City of Leander, Texas

_____
Chris Fielder, Mayor

ATTEST:

_____
Debbie Haile, City Secretary

(SEAL)

CERTIFICATE OF ORDINANCE NO. _____

CITY OF LEANDER, TEXAS

I, the undersigned City Secretary of the City of Leander, Texas hereby certify that the attached and foregoing is a true and correct copy of Ordinance No. _____ of the City of Leander, Texas, consenting to the creation of a municipal utility district, to be known as Williamson County Municipal Utility District No. __. I further certify that said Ordinance was passed and approved by the City Council of the City of Leander on _____, 2012.

WITNESS MY HAND AND SEAL OF THE CITY OF LEANDER, TEXAS, the _____ day of _____, 2012.

_____
City Secretary, City of Leander, Texas

(SEAL)

REPORT ON PROJECTED COSTS TO SERVE FULL DEVELOPMENT OF PROPOSED DISTRICT

CONSTRUCTION COSTS

A.	WSD	$	27,715,327
B.	Roads	$	16,822,055
C.	Parks	$	3,189,960
D.	Contingency (20% of A-C)	$	9,545,468
E.	Engineering (16% of A-D)	$	9,163,650
	Total Construction Costs	$	66,436,460

NON-CONSTRUCTION COSTS

A.	Legal Fees (3%)	$	1,993,094
B.	Financial Advisor Fees (3%)	$	1,993,094
C.	Interest:		
	a. Capitalized Interest (2 years @ 10%)	$	13,287,292
	b. Developer Interest (2 years @ 10%)	$	13,287,292
D.	Bond Discount (3% of BIR)	$	1,993,094
E.	Administrative Costs	$	980,969
E.	Engineering Report	$	375,000
G.	Bond Issuance Fee (0.25%)	$	166,091
	Total Nonconstruction Costs	$	34,075,926

TOTAL BOND ISSUE REQUIREMENT $ 100,512,386

Executive Summary

November 1, 2012

Council Agenda Subject: Approve and authorize Mayor to execute documents related to the Development Agreement between the City of Leander and Leander 183A Development II LLC, specifically, the **Ordinance for Municipal Utility District (MUD) creation and its associated Facilities Agreement**.

Background: On October 18th, 2012 the City Council voted to terminate the Development Agreement with the Villages of Messina. This same property is now owned by Leander 183A Development II LLC (Leander 183A Development) and they have proposed to fund and build the same infrastructure under a new agreement.

These associated documents to the Development Agreement include:

- Ordinance of the City of Leander, Texas Giving Consent to the Creation of a Municipal Utility District (MUD), EXHIBIT "E" of the Development Agreement
- Facilities Agreement, with exhibits EXHIBIT "G" of the Development Agreement

Summary

This Ordinance gives consent to create a MUD within the City Limits. It outlines the nature and type of facilities and expenses the bonds may fund and limits each series of bond issuances to $1 million. It delineates the parameters of bond maturities, issuance and reimbursements and specifies that besides approval of the City, the Texas Commission on Environmental Quality (TCEQ) must also approve the bonds. The exhibits include the DRAFT Act (EXHIBIT "F" of the Development Agreement) to be submitted at the Legislature for passage

The Facilities Agreement references the other elements of the overall agreement and more specifically delineates how the facilities will be developed , funded, reviewed, implemented and turned over to the City. The Facilities Agreement has its own Exhibit "C" which is a Report on Projected Costs to Serve Full Development of Proposed District.

This proposed Development Agreement and it's parts were approved by a unanimous vote of the Leander TIRZ No. 1 Board of Directors.

Origination: Pix Howell, Urban Design Officer

Financial Consideration: None

Recommendation: Approve the Ordinance and Facilities Agreement and authorize the Mayor to execute.

Attachments: See attachment for the **Development Agreement between the City of Leander and Leander 183A Development II LLC** agenda item

Prepared by: Pix Howell, AICP, CNU – UDO

Executive Summary

November 1, 2012

Council Agenda Subject: Accept and authorize Mayor to execute Warranty Deed dedication for Rights-0f-Way (ROW) for the US 183 – 183A intersection improvement from Williamson County.

Background: The US 183 – 183A intersection improvement will provide ultimate at-grade improvements to the existing intersection. These improvements will provide a full crossing of 183A and become a major intersection with development east of 183A, within the TOD. Much of the preliminary engineering and environmental work was funded by E2M, the landowners of a large portion of the northern "conventional" portion of the TOD.

Origination: Pix Howell, Urban Design Officer

Financial Consideration: This right-of-way is being dedicated at no cost to the City.

Recommendation: Accept the donated rights-of-way (ROW) and authorize Mayor to execute for recordation at the County.

Attachments: Copies of ROW documents

Prepared by: Pix Howell, AICP, CNU – UDO

SPECIAL WARRANTY DEED
DEDICATION OF RIGHT-OF-WAY

THE STATE OF TEXAS §

COUNTY OF WILLIAMSON § **KNOW ALL PERSONS BY THESE PRESENTS:**

That Williamson County, Texas, hereinafter called "**Grantor,**" for and in consideration of the sum of Ten and No/100 Dollars ($10.00), together with other good and valuable consideration, to Grantors cash in hand paid by **The City of Leander, Texas**, a Texas municipal corporation, hereinafter called "**Grantee**", the receipt of which is hereby acknowledged, have **GRANTED, DONATED** and **CONVEYED**, and by these presents do hereby dedicate to the use of the public as public right-of-way for streets, drives, drainage, utility service, and public places, subject to the continuing and future control and regulation of the use of such public right-of-way by the City of Leander, described as follows:

> All that certain parcel or tract of land being 0.185 acres, more or less, out of the Williamson Mansil Survey, Abstract No. 437, Williamson County, Texas, as more particularly described in metes and bounds and shown in Exhibit "A" attached hereto and incorporated herein as if fully transcribed herein.

This conveyance is expressly made subject to the restrictions, covenants and easements, if any, apparent on the ground, and utility easements, if any, in use by the City of Leander or any other public utility, or now in force and existing of record in the office of the County Clerk of Williamson County, Texas, to which reference is here made for all purposes.

TO HAVE AND TO HOLD the above described premises, together with all and singular, the rights and appurtenances thereto in anywise belonging, unto the said Grantee, **The City of Leander, Texas**, its successors and assigns forever, and Grantor does hereby bind its heirs, executors, successors and assigns to **WARRANT AND FOREVER DEFEND**, all and singular, the said premises unto **The City of Leander, Texas**, the said Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof same by, through or under the Grantor, but not otherwise.

EXECUTED this the 05 day of October 2012.

GRANTOR: Williamson County

By: _____
Name: DAN A GATTI
Title: County Judge

THE STATE OF TEXAS §

COUNTY OF WILLIAMSON §

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared DAN A. GATTIS, COUNTY JUDGE of Williamson County and Grantor herein, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 2nd day of Oct. 2012.

WENDY E. COCO
Notary Public, State of Texas
My Commission Expires
AUGUST 01, 2016

Wendy E. Coco
Notary Public - State of Texas

ACCEPTED BY THE CITY OF LEANDER, TEXAS (Grantee):

_____
Christopher Fielder, Mayor
Mailing Address: P.O. Box 319
Leander, Williamson County, Texas 78641

THE STATE OF TEXAS §

COUNTY OF WILLIAMSON §

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared Christopher Fielder, Mayor, City of Leander, Texas, Grantee herein, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the __ day of _____ 2012.

_____
Notary Public - State of Texas

AFTER RECORDING PLEASE RETURN TO:

City of Leander
City Secretary
P.O. Box 319
Leander, Texas 78646-0319

DESCRIPTION

FOR A 0.185 ACRE (PARCEL 3) TRACT OF LAND SITUATED IN THE WILLIAMSON MANSIL SURVEY, ABSTRACT NO. 437, WILLIAMSON COUNTY, TEXAS, BEING A PORTION OF A CALLED 1.748 ACRE TRACT AS DESCRIBED IN THAT DEED TO WILLIAMSON COUNTY AND RECORDED AS TRACT 133 IN DOCUMENT NO. 2006039276 OF THE OFFICIAL PUBLIC RECORDS OF SAID COUNTY, SAID 0.185 ACRE TRACT, AS SHOWN ON THE ACCOMPANYING SKETCH, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a TxDOT Type 2 concrete monument found for the southwest corner of said 1.748 acre tract, same being on an angle point on the east right-of-way line of U. S. Highway 183 (right-of-way width varies), for the **POINT OF BEGINNING** hereof;

THENCE with the east right-of-way line of said U. S. Highway 183, same being the west line of said 1.748 acre tract, with the arc of a curve to the **right**, having a radius of **2804.93** feet, an arc length of **52.90** feet, a central angle of **001° 04' 50"**, and a chord which bears, **N 03° 20' 27" W** for a distance of **52.90** feet to a ½" iron rod with "Baker-Aicklen" cap set, for the northwest corner hereof, from which a TxDOT Type 1 concrete monument found for a point of tangency on the east right-of-way line of said U. S. Highway 183, same being the west line of said 1.748 acre tract bears, with the arc of a curve to the right, having a radius of 2804.93 feet, an arc length of 65.67 feet, a central angle of 001° 20' 29", and a chord which bears, N 02° 07' 47" W for a distance of 65.67 feet;

THENCE through the interior of said 1.748 acre tract, **N 72° 38' 09" E** for a distance of **159.79** feet to a ½" iron rod with "Baker-Aicklen" cap set on the west right-of-way line of 183A Toll Road (400 foot right-of-way width), same being the east line of said 1.748 acre tract, for the northeast corner hereof, from which a MAG Nail marked "SAM" found for a point of tangency on the west right-of-way line of said 183A, same being the east line of said 1.748 acre tract bears, with the arc of a curve to the right, having a radius of 5929.58 feet, an arc length of 967.38 feet, a central angle of 009° 20' 51", and a chord which bears, N 09° 59' 59" W for a distance of 966.31 feet;

THENCE with the west right-of-way line of said 183A Toll Road, same being the east line of said 1.748 acre tract, with the arc of a curve to the **left**, having a radius of **5929.58** feet, an arc length of **46.23** feet, a central angle of **000° 26' 48"**, and a chord which bears, **S 14° 53' 48" E** for a distance of **46.23** feet to a TxDOT Brass Disc marked CTRMA for the southeast corner of said 1.748 acre tract, same being on the intersection of the east right-of-way line of said U. S. Highway 183 and the west right-of-way line of said 183A Toll Road, for the southeast corner hereof;

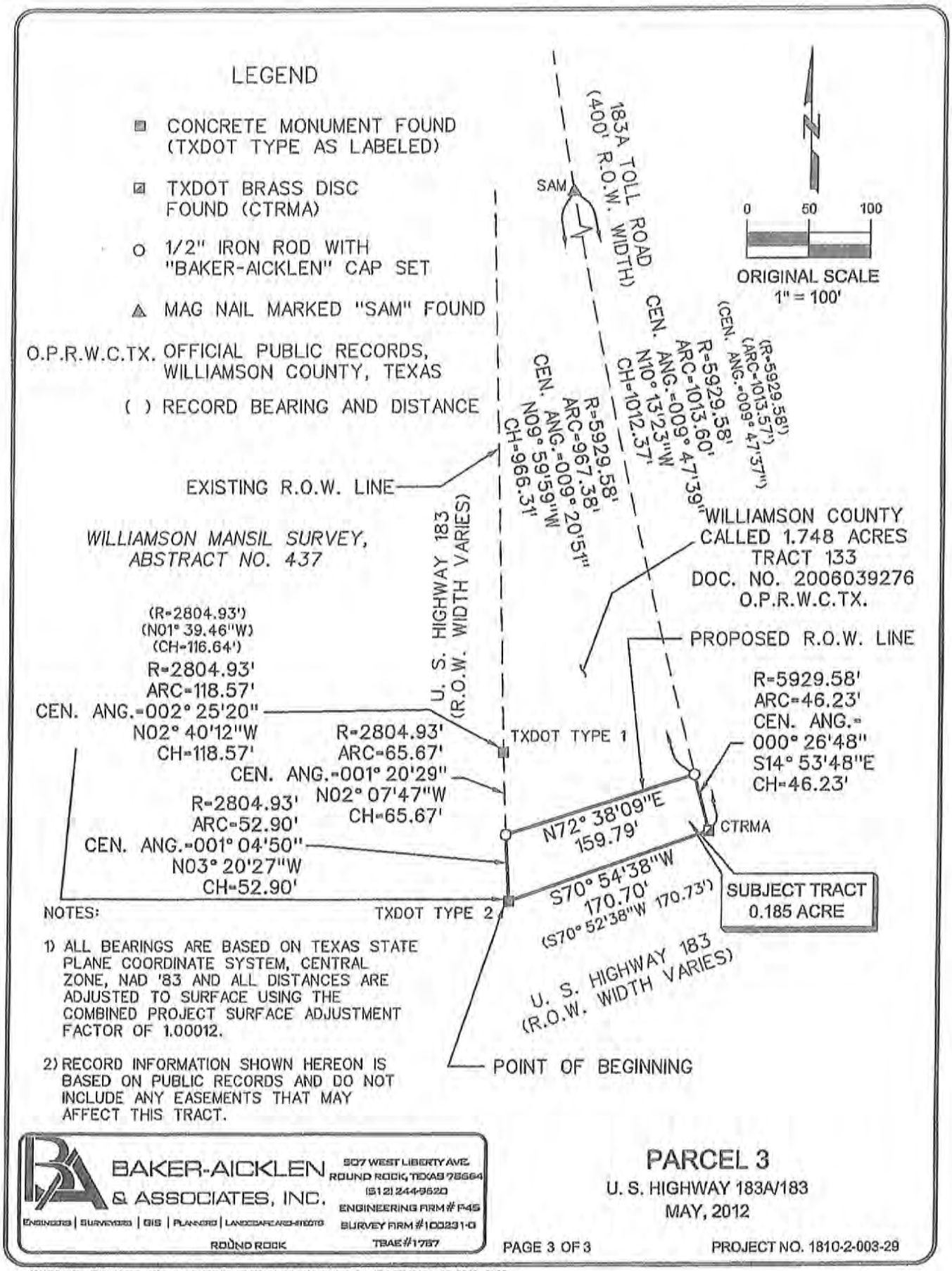
THENCE with the north right-of-way line of said U. S. Highway 183, same being the south line of said 1.748 acre tract, **S 70° 54' 38" W** for a distance of **170.70** feet to the **POINT OF BEGINNING** hereof and containing 0.185 acre of land.

All bearings are based on Texas State Plane Coordinate System, Central Zone, NAD '83 and all distances are adjusted to surface using the combined project surface adjustment factor of 1.00012.

Surveyed under the direct supervision of the undersigned during May, 2012:

Margaret A. Nolen
Registered Professional Land Surveyor No. 5589
BAKER-AICKLEN & ASSOCIATES, INC.
507 West Liberty Avenue
Round Rock, TX 78664
(512) 244-9620

Job No.: 1810-2-003-29
Filename: W:\PROJECTS\183A\ROW DESCRIPTIONS\METES AND BOUNDS\183A PARCEL 3.DOC



NOTES:

1) ALL BEARINGS ARE BASED ON TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE, NAD '83 AND ALL DISTANCES ARE ADJUSTED TO SURFACE USING THE COMBINED PROJECT SURFACE ADJUSTMENT FACTOR OF 1.00012.

2) RECORD INFORMATION SHOWN HEREON IS BASED ON PUBLIC RECORDS AND DO NOT INCLUDE ANY EASEMENTS THAT MAY AFFECT THIS TRACT.

BAKER-AICKLEN & ASSOCIATES, INC.
ENGINEERS | SURVEYORS | GIS | PLANNERS | LANDSCAPE ARCHITECTS
ROUND ROCK
507 WEST LIBERTY AVE.
ROUND ROCK, TEXAS 78664
(512) 244-9520
ENGINEERING FIRM # F-45
SURVEY FIRM # 100231-0
TBAE # 1757

PARCEL 3

U. S. HIGHWAY 183A/183

MAY, 2012

PROJECT NO. 1810-2-003-29

Executive Summary

November 1, 2012

Council Agenda Subject: Consideration of Memorandum of Understanding by and between the Brushy Creek Regional Utility Authority and the Village of Volente

Background: This Memorandum of Understanding (MOU) by and between the Brushy Creek Regional Utility Authority (BCRUA) and the Village of Volente (Volente) is a first, non-binding step towards establishing a mutually beneficial compromise between the BCRUA and Volente in the location and construction of BCRUA's Phase 2, Deep Water Intake and Raw Water Pump Station Facilities. The MOU sets forth Volente's intent to support BCRUA's location of the deep water intake and ancillary facilities on Site 4 within the corporate limits of Volente. In consideration for that support, BCRUA will pursue the relocation the raw water pump station from Site 4 to Site 8, which is adjacent to the Cedar Park Water Treatment Plant on Lime Creek Road within an undeveloped portion of Sandy Creek Park. Volente will support BCRUA's efforts to obtain the rights to Site 8. If the right to locate the raw water pump station on Site 8 can not be secured, BCRUA maintains any and all rights to locate all deep water intake facilities, including the pump station, at Site 4; and Volente retains any and all rights to oppose the location of all BCRUA facilities on Site 4. The Volente City Council and the Board of Directors of the BCRUA both voted unanimously to approve the MOU on October 16, 2012, and October 24, 2012, respectively. The Councils of all three member cities of the BCRUA will also consider approval of the MOU.

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

Financial Consideration: TBD

Recommendation: Staff requests approval of the Memorandum of Understanding by and between the Brushy Creek Regional Utility Authority and the Village of Volente

Attachments: Memorandum of Understanding by and between the Brushy Creek Regional Utility Authority and the Village of Volente

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

RESOLUTION NO.

WHEREAS THE CITY OF LEANDER DESIRES TO APPROVE A MEMORANDUM OF UNDERSTANDING BETWEEN THE BRUSHY CREEK REGIONAL UTILITY AUTHORITY (BCRUA) AND THE VILLAGE OF VOLENTE TO WORK COOPERATIVELY AND IN GOOD FAITH TO OBTAIN THE NECESSARY APPROVALS TO LOCATE THE BCRUA PUMPING STATION AND SITE 8, NOW THEREFORE:

BE IT RESOLVED BY THE CITY OF LEANDER,

That the Mayor is hereby authorized and directed to approve on behalf of the City of Leander a Memorandum of Understanding between the BCRUA and the Village of Volente, a copy of same being attached hereto as Exhibit "A" and incorporated herein for all purposes.

The City of Leander hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

PASSED AND APPROVED this the 1st day of November, 2012.

CITY OF LEANDER, TEXAS

ATTEST:

_____
Christopher Fielder, Mayor

_____
Debbie Haile, TRMC, City Secretary

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is made by and between the Brushy Creek Regional Utility Authority, (the "BCRUA") a local government corporation composed of the cities of Cedar Park, Leander, and Round Rock (the "Cities") and the Village of Volente ("Volente"), a Texas general law city.

RECITALS

WHEREAS, the BCRUA was created by the Cities to design, construct and operate a regional water transmission and treatment system to provide the Cities with drinking water; and

WHEREAS, each of the Cities has contracted with the Lower Colorado River Authority for water stored in Lake Travis; and

WHEREAS, the BCRUA has recently completed construction of a 17 MGD water treatment plant (the "Treatment Plant") located in the City of Cedar Park; and

WHEREAS, in order for the Cities to have a dependable method of accessing their contracted water in times of severe drought, it is necessary for the BCRUA to design, construct, and operate a deep water intake facility (the "Intake Facility") and a pumping facility (the "Pumping Facility") to transmit the water from Lake Travis to the Treatment Plant; and

WHEREAS, the BCRUA has spent the last four years studying the feasibility of various sites on which to locate the Intake Facility and the Pumping Facility; and

WHEREAS, after receiving the results of the aforesaid study, the BCRUA determined that Site 4 was the preferred site for the Intake Facility and the Pumping Facility; and

WHEREAS, Site 4 is located entirely within the city limits of Volente and is zoned for residential use; and

WHEREAS, Volente objects to locating any part of the facility on Site 4 due to existing residential zoning restrictions and because Volente believes that the BCRUA's facility will have negative impacts to its citizens; and

WHEREAS, Volente and BCRUA recognize the benefits of finding a compromise that serves the best interests of both parties and avoids expensive, lengthy litigation; and

WHEREAS, Volente has requested that BCRUA consider placing the Pumping Station on Site 8, which is outside of Volente's city limits and on property owned by LCRA; and

WHEREAS, Volente will not object to the BCRUA's locating the Intake Facility and maintenance structure on Site 4 if the BCRUA is successful in locating the Pumping Station on Site 8; and

WHEREAS, changing the site of the Pumping Station from Site 4 to Site 8 will increase the cost to the BCRUA by approximately $6,000,000 ; and

WHEREAS, LCRA's proposed use for Site 8 is a public park; and

WHEREAS, in spite of the increased cost, the BCRUA is willing to designate Site 8 as its preferred site for the location of the Pumping Station if Volente agrees to support BCRUA's efforts to move the Pumping Station to Site 8; and

WHEREAS, if the BCRUA is successful in obtaining permission to relocate the Pumping Station to Site 8, Volente agrees to withdraw its objections to using Site 4 for the Intake Facility and maintenance building; and

WHEREAS, Volente wishes to express its willingness to officially support and assist BCRUA in its efforts to obtain the approval of LCRA, and if necessary, Travis County to designate Site 8 as the preferred site for the Pumping Station; and

WHEREAS, BCRUA and Volente understand that the Intake Facility and maintenance building will be located on Site 4 provided that BCRUA is successful in moving the Pumping Station to Site 8;

NOW THEREFORE, the BCRUA and Volente agree to work cooperatively and in good faith to obtain the necessary approvals to locate the Pumping Station on Site 8 as set forth below:

ARTICLE I
GENERAL DESCRIPTION OF BCRUA SYSTEM

1.1 BCRUA's system consists of the water Treatment Plant currently located in the city of Cedar Park, and a future Intake Facility and maintenance building to be located on Site 4, and a Pumping Station to be located either on Site 4 or Site 8.

ARTICLE II
BCRUA'S INTENTIONS

2.1 BCRUA intends to locate its Intake Facility and a maintenance building on Site 4. Subject to Volente's agreement to provide support, BCRUA intends to pursue the necessary permissions and arrangements to locate the Pumping Station on Site 8. If BCRUA, with Volente's assistance, is able to locate the Pumping Station on Site 8, then BCRUA intends to locate the Pumping Station on Site 8. If BCRUA, with Volente's assistance, is not able to locate the Pumping Station of Site 8, then BCRUA intends to locate the Pumping Station on Site 4. BCRUA understands that Volente will oppose any effort to construct on Site 4 unless BCRUA has obtained all approvals required by Volente ordinances to locate and construct the Intake Facility, maintenance building and Pumping Station on Site 4.

2.2 BCRUA intends to use its best efforts to obtain all necessary approvals to locate the Pumping Station on Site 8.

2.3 With respect to the design, construction, and operation of the Intake Facility and maintenance building on Site 4, BCRUA intends to deal with Volente in good faith with respect to complying with the applicable and reasonable development regulations of Volente.

ARTICLE III
VOLENTE'S INTENTIONS

3.1 Volente intends to use its best efforts to support and assist BCRUA's efforts to obtain all necessary approvals to locate the Pumping Station on Site 8.

3.2 Provided that the BCRUA is successful in locating the Pumping Station on Site 8, Volente intends to withdraw objections to BCRUA's decision to design, construct and operate its Intake Facility and maintenance building on Site 4 .

3.3 With respect to the design, construction and operation of the Intake Facility and maintenance building on Site 4, Volente intends to deal with the BCRUA in good faith with respect to imposing the applicable and reasonable development regulations of Volente.

ARTICLE IV
LEGAL EFFECT OF MOU

4.1 This MOU is intended to provide an outline of the current understanding of the parties hereto, and is not intended to legally bind the parties to the terms and conditions stated herein. The parties, however, agree that the terms and conditions stated herein are reasonable and provide an outline for future good-faith actions and agreement by the parties. However, should either party fail to pursue meaningfully and in good-faith the conditions stated herein, each party reserves the right to pursue other avenues as it deems prudent.

This MOU is effective on the date last entered below:

BRUSHY CREEK REGIONAL UTILITY AUTHORITY

By:_____
Chris Fielder, President

Date: _____

VILLAGE OF VOLENTE

By:_____
Justine Blackmore Hlista, Mayor

Date: _____