WATER SERVICE AGREEMENT
(*SHADOW CANYON*)

THE STATE OF TEXAS	§
	§
COUNTY OF WILLIAMSON	§

This Water Service Agreement ("Agreement") is entered into as of the Effective Date (defined below), by and among the **City of Georgetown**, a Texas Home Rule Municipal Corporation ("City"); and **278 Georgetown, Inc.**, a Texas corporation ("Developer"). The City and Developer are sometimes referred to individually as a "Party" or collectively as the "Parties."

RECITALS

A. WHEREAS, San Gabriel Harvard Limited Partnership, an Arizona limited partnership ("Original Developer") and CTSUD (defined below) previously entered into the Prior Agreement (defined below) which set forth the terms and conditions pursuant to which CTSUD agreed to provide up to 1,100 total LUEs (defined below) of retail water service (the "Prior Service Commitment") to approximately 308 acres of real property located within the service area of CTSUD's water CCN (defined below), as more particularly described in the Prior Agreement (the "Original Property"), that Original Developer proposed to develop for single family residential and commercial purposes;

B. WHEREAS, under the Prior Agreement, in consideration for Original Developer's payment of $1,595,000.00 (the "Prepayment Amount") to CTSUD to assist with the construction of certain water facilities required to provide water service to the Original Property, CTSUD agreed to credit the impact fees to be paid by the initial 550 applicants for single family domestic water service within the Original Property based on the Prepayment Amount divided by the impact fee in effect at that time (i.e., $1,595,000.00 divided by $2,900) (the "Credited LUEs");

C. WHEREAS, pursuant to the "Asset Transfer and Utility System Consolidation Agreement" between CTSUD and the City dated on or about October 15, 2013, CTSUD subsequently transferred all of its assets and assigned most of its contracts, including the Prior Agreement, to the City;

D. WHEREAS, Developer subsequently acquired the Property (defined below), which is a portion of the Original Property, from Original Developer and, pursuant to the "Assignment of Water Living Unit Equivalents and Water Impact Fee Credits" dated November 21, 2014 between Original Developer, Developer, CTSUD, and the City (the "Assignment"), Original Developer assigned to Developer all of the Credited LUEs, 600 LUEs of the Prior Service Commitment, and all of its rights, duties, and obligations under the Prior Agreement with respect to the Property;

E. WHEREAS, the Prior Agreement provides that the Prior Service Commitment shall become null and void with respect to any portion of the Original Property, including the Property, that is not final platted on or before October 1, 2020;

F. WHEREAS, as of the Effective Date, 106.78 acres of the Property have been platted as Shadow Canyon Collector Road & Parkland (OPRWTC 2019051534), Shadow Canyon Phase 1 (OPRWTC 2019052382) and Shadow Canyon Phase 2 (OPRWTC 2020027111), containing 250 lots and utilizing 250 LUEs of the Prior Service Commitment, leaving 300 Credited LUEs remaining to be applied and 350 LUEs of the Prior Service Commitment to be utilized;

G. WHEREAS, Developer has requested that the 600 LUEs of the Prior Service Commitment allocated to the Property be extended and has requested that the dollar amount of any Credited LUEs that have not been credited as of October 1, 2021 (i.e., the number of remaining Credited LUEs multiplied by $2,900) be credited against the Impact Fees adopted by the City for lots platted after October 1, 2021 until all of the Credited LUEs have been applied and there are no remaining Credited LUEs;

H. WHEREAS, the Property, which is located within the City's corporate city limits, is now located within the service area of the City's water CCN and, as there are terms in the Prior Agreement that are no longer applicable to the Property, the Parties desire to remove the Property from the Prior Agreement and enter into a new agreement upon with the City will provide retail water service to residents within the Property;

I. WHEREAS, this Agreement is authorized by and consistent with state law and the City's other ordinances, regulations, and other requirements governing development of subdivisions and provision of utility services by the City.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereafter set forth, the receipt and sufficiency of which is hereby acknowledged, the City and Developer hereby agree as follows:

I.
DEFINITIONS

When used in this Agreement, the following terms will have the meanings set forth below:

1.1. "Agreement" means this Water Service Agreement.

1.2. "CCN" means a certificate of convenience and necessity.

1.3. "CTSUD" means Chisholm Trail Special Utility District.

1.4. "Effective Date" means the last day of execution of this Agreement by all Parties hereto.

1.5. "Impact Fee" means a fee established and amended from time to time by the Georgetown City Council, in accordance with Chapter 395 of the Texas Local Government Code to recover the costs of capital improvements required to provide service to new development.

1.6. "Interests to be Acquired" means the Internal Facilities, all easements and interests within the Property to be conveyed under the terms set forth in this Agreement.

1.7. "Internal Facilities" means the infrastructure, including all water transmission and distribution lines and related facilities, equipment, and appurtenances thereto, to be constructed by or on behalf of Developer and dedicated to City for purposes of extending water service from the Water System. The exact physical location, design and specifications of the Internal Facilities shall be identified in the plans and specifications submitted to City, and shall be subject to City's review and approval. The Internal Facilities may include infrastructure located outside the limits of the Property.

1.8. "Living Unit Equivalent" or "LUE" means one single-family residential unit, or its equivalent calculated at the rate of 350 gallons of potable water per day, based on a 30-day average.

1.9. "Notice and Opportunity to Cure" means that, before any right of termination or other remedy authorized hereunder may be exercised (i) the Party who intends to exercise such right or remedy must deliver to the other Party a written notice which specifies the reason(s) for the intended exercise and the action(s) necessary to avoid it, and (ii) the other Party fails to cure, within thirty (30) days after receipt of such written notice, the specified problem(s) that would justify the intended exercise.

1.10. "Prior Agreement" means that certain "Non-Standard Water and Wastewater Services Agreement by and among Chisholm Trail Special Utility District and San Gabriel Harvard Limited Partnership" dated effective September 1, 2005, as amended by the First Amendment effective September 19, 2013, and partially assigned to Developer via the Assignment (defined above), setting forth the terms and conditions pursuant to which CTSUD agreed to provide retail water services to the Original Property.

1.11. "Property" means that certain real property consisting of approximately 278.212 acres known as Shadow Canyon and sometimes referred to as Riverview, which is located in Williamson County being more particularly described on **Exhibit "A"** attached hereto.

1.12. "Service Commitment" means the 600 LUEs of retail water service that City agrees to make available to the Property in accordance with the terms and conditions of this Agreement. The Developer may reduce the Service Commitment at any time by providing written notice of such reduction to the City, but Developer may not reduce the Service Commitment to an amount less than the number of final platted lots within the Property.

1.13. "TCEQ" means the Texas Commission on Environmental Quality or any successor agency.

1.14. "Transfer" means the conveyance of the Interests to be Acquired by the City.

1.15. "Water Acquisition Fee" means an annual fee determined by City to be paid by or on behalf of Developer for the costs of acquiring water for the number of LUE's remaining out of the Service Commitment, to be calculated in accordance with Section 4.2 of this Agreement.

1.16. "Water Acquisition Fee Period" means a period of time beginning upon the Effective Date and ending at the earlier of the following: (i) at such time as the number of active connections within the Property is equal to approximately fifty percent (50%) of the total Service Commitment made available hereunder (i.e., **300** LUEs based on the current Service Commitment); or (ii) upon

termination of this Agreement according to its terms, in which event City's commitment for water service to the Property shall also terminate.

1.17. "Water System" means the water system now owned or to be acquired by City to serve City's water service territory and the area included within the water CCN previously held by CTSUD, and any expansions, improvements, enlargements, additions and replacements thereto, including the Interests to be Acquired, subject to the terms of this Agreement.

II.
PROVISION OF WATER SERVICES

2.1. **Service Commitmen**t.

(a) Subject to the terms and conditions of this Agreement, including the payment of all applicable fees and charges as set forth below, City agrees to provide retail water service to customers within the Property in a quantity not to exceed the Service Commitment. The quantity of water service made available to any connection within the Property will be determined according to meter size in accordance with the City's rules, regulations, and policies.

(b) City's obligation to serve the Property is expressly contingent on Owner's compliance with its obligations under this Agreement and with City's rules, regulations, and policies.

(c) City shall have no obligation to provide water service to any portion of the Property until all of the following condition precedents have been satisfied:

(i) the lands to be furnished water service have received final subdivision plat approval by all governmental entities with jurisdiction, and recorded for the phase of development within the Property to be furnished water service; and

(ii) City has received all necessary governmental approvals for the provision of services to the Property; and

(iii) the Internal Facilities required to provide service the Property have been completed in accordance with plans and specifications approved by City, are operational, and have been conveyed to and accepted by City; and

(iv) all easements and other real property interests in Property required to be conveyed to City under this Agreement have been dedicated to City; and

(v) all required fees and charges have been paid to City

2.2. **Service**. City shall provide water service to customers in the Property in accordance with its standard rules and policies and the applicable laws and regulations of the State of Texas.

2.3. **Minimum Pressure**. City will deliver potable water to customers within the Property at a minimum pressure of 35 pounds per square inch at each retail customer meter, or as may otherwise be required by the applicable rules of TCEQ.

2.4. **Fire Flows**. City agrees to make service available to the Property at a flow rate not less than 1000 GPM gallons per minute for a minimum flow rate duration of two (2) hours. Neither this provision, nor any other terms of this Agreement, shall be construed as any guarantee or representation by City that the water service furnished by City to the Property will be sufficient to prevent or control any fire, and City expressly disclaims any such responsibility.

2.5. **Dead Ends**. Developer acknowledges and agree to install at its sole expense automatic flush valves on all dead ends constructed within the Property.

2.6. **Wastewater, Drainage, and Other Services**. City will have no obligation with regard to the construction, ownership, operation, or maintenance of wastewater, drainage, water quality, or other non-water service facilities, except as may be required by other separate agreements.

2.7. **Water System Operations**. Subject to the terms of this Agreement, City will be responsible for operating and maintaining the Water System in good working order; for making all needed replacements, additions, and improvements as required for the operation of the facilities; for reading meters, billing, and collecting from all customers; and for performing all other usual and customary services and administrative functions associated with retail water utility systems.

2.8. **Source of Water Supply**. City shall have sole discretion in determining the source of water supply to be used for the provision of retail water service to the Property.

2.9. **Service Subject to State and Local Approvals**. Notwithstanding other provisions in this Agreement, City will not provide water service in the manner described in this Agreement unless Developer obtains at its sole cost and expense all necessary permits, certificates, and approvals for the Property from Williamson County, TCEQ, and other applicable local, state, or federal government bodies to which it is subject.

2.10. **Water Conservation**.

(a) City may curtail service to the Property in times of high system demand or drought, or as may be required by City's Water Conservation Plan or Drought Contingency Plan, by other regulatory authorities, by entities from whom City purchases water supplies, in the same manner as such curtailment is imposed on other similar customers of City.

(b) Prior to the sale or conveyance of any lot within the Property, Developer agrees to record in the Official Property Records of Williamson County, Texas, deed restrictions prohibiting the re-subdivision of any final platted residential lot into multiple lots, prohibiting private water wells for domestic and drinking water purposes, and imposing those restrictions consistent with those water conservation provisions set forth in the City's Water Conservation and Drought Contingency Plans in their current form, or as may be amended from time to time, which restrictions shall be made applicable to each owner of property within each such subdivision. The deed restrictions shall specifically provide that they are enforceable by the City, its successors and assigns or any entity that acquires the Water System or CCN, and may not be amended without City's consent, not to be unreasonably withheld, conditioned or delayed.

III.
BUILD-OUT SCHEDULE

3.1. **Build-out Schedule**.

(a) The Parties acknowledge that, as of the Effective Date, there are 250 LUEs of active connections within the Property, such number of connections being equal to forty-two percent (42%) of the total Service Commitment made available hereunder. Developer agrees that on or before the second anniversary of the Effective Date (i.e., 730 days after the Effective Date), there will be an additional 60 LUEs of active connections within the Property, such number of connections being equal to ten percent (10%) of the total Service Commitment made available hereunder. In the event that there are not the requisite number of LUEs of active connections on or before the second anniversary of the Effective Date, Developer will pay or cause to be paid to City, on a monthly basis, an amount equivalent to the base rate to be charged by City in accordance with City's policies, rates, and regulations then in effect for the difference between the required number of active connections and the actual number of active connections within Property.

(b) Developer agrees that, after the second anniversary of the Effective Date (i.e., 730 days after the Effective Date), there will be an additional 60 LUEs of active connections within Property each year, such number of connections being equal to approximately ten percent (10%) of the total Service Commitment made available hereunder, until the number of active connections is equal to 480 (80%) LUEs of active connections, such number of connections being equal to approximately eighty percent (80%) of the total Service Commitment made available hereunder. In the event that there are not the requisite number of LUEs of active connections as of the respective anniversary of the Effective Date, Developer will pay or cause to be paid to City, on a monthly basis, an amount equivalent to the base rate to be charged by City in accordance with City's policies, rates, and regulations then in effect for the difference between the required number of active connections and the actual number of active connections within Property.

(c) The required build-out schedule is further described in **Exhibit "B"**, attached hereto and incorporated herein by reference (the "Build-out Schedule"). Developer acknowledges and agrees that its failure to have completed the requisite number of active connections as of the respective anniversary of the Effective Date or failure to timely pay in full the appropriate fee equivalent to the base rate for the difference between the required number of active connections and the actual number of active connections is a material breach of this Agreement. Without limitation, City may refuse to provide any additional service within Property until such time as the breach is cured. In the event of such a breach, City may also exercise all rights and remedies available at law or in equity, including termination, in which event, City's obligation to provide service to any new connections within Property under this Agreement shall terminate.

IV.
RATES, FEES, CHARGES, AND OTHER PAYMENT OBLIGATIONS

4.1. **Rates**. Except as otherwise provided in this Agreement, all retail water customers within the Property will pay the applicable standard rates, fees, and charges for retail water service, as established and amended by the governing body of the water certificate of convenience and necessity holder from time to time.

4.2. **Water Acquisition Fees**.

(a) Developer agrees to pay or cause to be paid the Water Acquisition Fee to City during the Water Acquisition Fee Period. The Water Acquisition Fee is currently equal to $6.00 per LUE per year based on the Service Commitment. The Water Acquisition Fee may be adjusted from time to time by City.

(b) The first annual Water Acquisition Fee payment shall be made by Developer to City within thirty days of the Effective Date.

(c) All subsequent payments of the Water Acquisition Fee shall be made in full by Developer to the City on or before January 1 of each year that this Agreement remains in effect or until the end of the Water Acquisition Fee Period as defined herein.

(d) Developer acknowledges and agrees that failure by them to timely pay in full the Water Acquisition Fee is a material breach of this Agreement. Without limitation, City may refuse to provide any additional service within the Property until such time as the breach is cured. In the event of such a breach, City may also exercise all rights and remedies available at law or in equity, including termination, in which event, City's obligation to provide service to any new connections within the Property under this Agreement shall terminate.

4.3. **Impact Fees**.

(a) Subject to Section 4.3(c) below, Water Impact Fees shall be assessed and collected as set forth in the City's Code of Ordinance at the time the final plat containing the service connection is approved by the City, and collected at the time of application for each building permit issued on such portion(s) of the Property. The amount of the City's impact fee shall be the amount in effect at the time of final platting under the applicable provision of the City's Code of Ordinances for the impact fee service area that included the portion(s) of the Property being served.

(b) Developer acknowledges and agrees that City will have absolutely no obligation to provide service to any lots within the Property unless and until the Impact Fee for that lot has been paid.

(c) The City acknowledges that Developer is entitled to the Credited LUEs under the Prior Agreement, of which **300** remain as of the Effective Date. Accordingly, the City shall credit Developer with the payment of Impact Fees for all lots final platted within the Property from the Effective Date through October 1, 2021, but not to exceed 300 platted lots. For any lots final platted after October 1, 2021, Developer will pay or cause to be paid to the City the Impact Fee then in effect multiplied by the number of meters in accordance with Section 4.4 (a) or (b), as applicable; provided, however, that, in the event Developer final plats less than 300 lots by October 1, 2021 and has remaining Credited LUEs by such date, any Impact Fees paid to the City for lots final platted after October 1, 2021 will be reduced by the amount of the remaining Credited LUEs multiplied by $2,900. By way of example, if Developer final plats 249 lots by October 1, 2021, has 50 remaining Credited LUEs that have not been issued by October 1, 2021, and final plats an additional 50 lots after October 1, 2021, then Developer shall be responsible for payment of the City's Impact Fees then in effect for the 50 lots that are platted after October 1, 2021, but Developer shall receive a credit against such Impact Fees in the amount of $145,000, based on 50 remaining Credited LUEs x $2,900.

4.4. **Irrigation or Second Meter on a Lot**. Any applicant for service within the Property that requests service in excess of one LUE (i.e., service in excess of 350 gallons of potable water per day) for service other than domestic service, or that would result in City providing more cumulative service within the Property than the Service Commitment, will be required to pay the standard fees and charges for water service set forth in the applicable rules and policies, including impact fees, at the time of application for service.

4.5. **Other Connection Fees and Charges**. Except as otherwise provided herein, each applicant for retail service within the Property shall be required to pay to City all applicable charges, fees, and deposits for water service, as such fees may be amended by the City from time to time.

4.6. **Consultant Fees**. City acknowledges prior receipt of a utility evaluation request fee from Developer. In the event City's engineering, legal, or other consulting costs exceed the amount of the fee previously received, then City shall send a written invoice for payment to Developer. Within thirty (30) days after the date of the invoice, and as a condition precedent to performance by City under this Agreement, Developer agrees to pay the full invoiced sum. If payment is not timely received by City, City may suspend the provision of additional service to the Property, terminate this Agreement, or pursue any other remedy available at law or in equity.

V.
INTERNAL FACILITIES

5.1 **Internal Facilities.** Developer will construct, or cause to be constructed, all Internal Facilities required to extend retail water services to the Customers within the Property from the Water System, including all facilities and equipment required to connect the Internal Facilities to the Water System. The Internal Facilities shall also include permanent flushing assemblies of a type and at a location approved by City at dead ends. Upon completion of construction of each phase of the Internal Facilities, Developer will provide City with a certificate of completion from a licensed professional engineer certifying that the Internal Facilities have been completed in accordance with the approved plans and specifications. The date upon which the certificate of completion is provided to City shall be the "Completion Date." Within thirty days after the Completion Date, Developer shall transfer and convey, or cause to be transferred and conveyed, the completed Internal Facilities to City in accordance with the terms of Article VII below.

5.2 **Design of the Internal Facilities.** All physical facilities to be constructed or acquired as a part of the Internal Facilities will be designed by a qualified registered professional engineer selected by or on behalf of Developer. The design will be subject to the approval of City and all governmental agencies with jurisdiction. The Internal Facilities shall be designed so as to provide continuous and adequate service within the Property and so as to ensure their compatibility with City's existing water system. The Internal Facilities will include any equipment necessary for water transmission and distribution, water services through the meter box, pressure reducing valves, air release valves, flow control/shut-off valves, master meters, backflow prevention devices, fire hydrants, flushing assemblies, and other equipment as may be specified by City. Developer further agrees to install, or cause to be installed, meter boxes and a flow indicator for fire lines, if any. Any variance to the plans or specifications approved by City or specified in this Agreement must be submitted in writing to City and is subject to City's sole discretion and

approval. If the Internal Facilities are not in compliance with the agreed specifications approved by City, then City may pursue any remedy provided in this Agreement or may require that Developer replace the facilities.

5.3 **Construction of Facilities**.

(a) The Internal Facilities will be constructed, and all related easements, equipment, materials, and supplies will be acquired by Developer, and all construction contracts and other agreements will contain provisions to the effect that any contractor, materialman, or other party thereto will look solely to Developer for payment of all sums coming due thereunder and that City will have no obligation whatsoever to any such party.

(b) The Internal Facilities will be constructed in a good and workmanlike manner and all material used in such construction will be substantially free from defects and fit for their intended purpose. City may have an on-site inspector to inspect and approve the construction, which approval will not be unreasonably withheld or delayed. Developer shall not cover or allow to be covered any portion of the Internal Facilities until City has the reasonable opportunity to inspect the Internal Facilities. City will notify Developer of any construction defects coming to its attention as soon as practicable. Developer shall pay City for inspections in accordance with City Fee Schedule.

(c) Upon completion of construction of each phase of the Internal Facilities, Developer agrees to furnish City with one reproduction, one blue-line copy, and one set of computer files in an electronic format specified by City of the as-built or record drawings.

5.4 **Warranty**. Except as otherwise specified, Developer agrees to repair or cause to be repaired all defects in materials, equipment, or workmanship for the Internal Facilities appearing within two (2) years from the Completion Date to comply with the approved plans and specifications for the Internal Facilities. Upon receipt of written notice from City of the discovery of any defects, Developer shall promptly and at no cost to the City cause the remedy the defects and replace any property damaged therefrom. In case of emergency where delay would cause serious risk of loss or damage to City or its customers, or if Developer, after notice, fails to proceed promptly toward such remedy within thirty (30) days or within another period of time which has been agreed to in writing, City may have defects in the Internal Facilities corrected in compliance with the terms of this warranty and guarantee, and Developer shall be liable for all reasonable, actual out-of-pocket costs and expenses incurred by City in so doing.

5.5 **Assignment of Warranty Obligations.** In addition to Developer's duty to repair, as set forth above, Developer expressly assumes all warranty obligations required by City under the approved plans and specifications for specific components, materials, equipment, or workmanship. Developer may assign, or cause to be assigned, to City, by written instrument in a form approved by counsel for City, a complying warranty from a manufacturer, supplier, or contractor if such warranty is not otherwise already issued directly to the City. Warranty obligations shall not exceed two years from the Completion Date. Where an assigned warranty is tendered and accepted by City that does not fully comply with the requirements of the agreed specifications, Developer shall remain liable to City on all elements of the required warranty that are not provided by the assigned warranty.

5.6 **Maintenance Bond.** Developer agrees to provide, or its contractor shall provide, to City a Maintenance Bond in a form and from a surety acceptable to City for all Internal Facilities constructed by Developer or its contractor. The Maintenance Bond shall provide for the repair of any defects in materials, equipment, or workmanship for the Internal Facilities appearing within two years from the Completion Date, and shall be in an amount equal to twenty five percent (25%) of the total construction costs for the Internal Facilities, as determined by City. Developer may furnish a proposed form of Maintenance Bond or proposed surety to City at any time to secure City's approval to the form thereof and/or approval of the surety.

5.7 **Insurance.** Developer shall require that all workers involved with the installation and construction of the Internal Facilities are covered by workers' compensation insurance as required by the laws of the State of Texas. Developer shall also procure and maintain, at its own cost, or require that its contractors procure and maintain, comprehensive general liability insurance insuring against the risk of bodily injury, property damage, and personal injury liability occurring from, or arising out of, construction of the Internal Facilities, with such insurance in the amount of a combined single limit of liability of at least $1,000,000 and a general aggregate limit of at least $1,000,000. Such insurance coverage shall be maintained in force at least until the completion, inspection, and acceptance of the Internal Facilities by City. City shall be named as an additional insured on all such insurance coverages.

VI.
REAL PROPERTY

6.1 **Internal Easements**.

(a) All Internal Facilities located within Property shall be constructed within public rights-of-way or within exclusive perpetual easements dedicated or conveyed as the City may determine to be reasonably necessary for the ownership, operation, and maintenance of, and including access to, the Internal Facilities. City shall approve the physical location of water lines within public rights-of-way or easements relative to other utility infrastructure, when such facilities are authorized by City to be located therein, to prevent conflicts with other utilities, road improvements, or drainage improvements. Developer shall provide permanent access easements to the Internal Facilities if required by the City.

(b) All easements not located within the right-of-way must have a minimum width of twenty (20) feet, unless otherwise required by the City or specified in this Agreement.

(c) All easements shall be dedicated or conveyed to the City at no cost to the City.

(d) All easements shall be at locations approved by City and in the form approved by counsel for City.

(e) Executed easements shall be furnished to, and recorded by, City prior to the provision of water service to the Property, but the commencement of water service by City to Property shall not waive or relinquish Owner's obligation to provide any and all such easement(s).

VII.
CONVEYANCE AND TRANSFER

7.1. **Interests to be Acquired**. Subject to the conditions set out in this Agreement, Developer agrees to convey to City the following, which are collectively referred to as the "Interests to be Acquired":

(a) the Internal Facilities, or any portions thereof, when they are finally constructed and accepted by City;

(b) all easements necessary for the operation and maintenance of and access to the Internal Facilities and any other easements required by City, including access easements;

(c) all maps, drawings, engineering records, and office records in the possession of Developer relating to the Internal Facilities (the "Records"); and

(d) all of the contracts, leases, warranties, bonds, permits, franchises, and licenses in the possession of Developer related to or arising out of the acquisition, construction, and operation of the Interests to be Acquired (the "Contracts").

7.2. **Transfer**.

(a) Prior to Transfer, Developer shall deliver to the City the following items:

(i) One (1) complete set of construction plans for the Internal Facilities certified as "as-built" by the designing engineer in the format requested by the City; and

(ii) Copies of all documents evidencing transfer or assignment of all contractor, subcontractor, consultant, and manufacturer and all other contractual rights, warranties, guarantees, assurances of performance, and maintenance bonds related to the Internal Facilities (if applicable); and

(iii) Certifications that there are no liens or other encumbrances on the Internal Facilities, including copies of lien releases in form and substance acceptable to the City; and

(iv) All easements to be conveyed to the City, including metes and bounds descriptions and surveys; and

(v) The Contracts (defined above); and

(vi) The Records (defined above).

(b) The Internal Facilities shall be transferred to the City within the time period set forth in Section 5.1 of this Agreement. The Internal Facilities shall be deemed to be transferred to the City when the City issues a written letter of acceptance for same evidencing the City's consent to accept the Internal Facilities for ownership, operation and maintenance.

VIII.
CONDITIONS, REPRESENTATIONS AND WARRANTIES

8.1. **Indemnification**. TO THE FULLEST EXTENT AUTHORIZED BY LAW, DEVELOPER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS CITY, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND ASSIGNS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, DEBTS, SUITS, CAUSES OF ACTION, LOSSES, DAMAGES, JUDGMENTS, FINES, PENALTIES, LIABILITIES, AND COSTS, INCLUDING REASONABLE ATTORNEY FEES AND DEFENSE COSTS INCURRED BY CITY ARISING OUT OF OR RELATING TO THE BREACH OF ANY AGREEMENT, WARRANTY, OR REPRESENTATION OR OTHER OBLIGATION OF DEVELOPER UNDER THIS AGREEMENT. DEVELOPER FURTHER AGREES TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY, DEFEND, AND HOLD HARMLESS CITY, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND ASSIGNS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, DEBTS, SUITS, CAUSES OF ACTION, LOSSES, DAMAGES, JUDGMENTS, FINES, PENALTIES, LIABILITIES, AND COSTS, INCLUDING REASONABLE ATTORNEY FEES AND DEFENSE COSTS ARISING OUT OF OR RELATING IN ANY WAY TO OWNER'S NONCOMPLIANCE WITH APPLICABLE LAWS, ORDINANCES, AND REGULATIONS AND/OR FAILURE TO OBTAIN REQUIRED PERMIT(S) AND APPROVAL(S) GOVERNING DEVELOPMENT OF THE PROPERTY OR PERTAINING TO THIS AGREEMENT, EXCEPTING ONLY THOSE DAMAGES, LIABILITIES, OR COSTS ATTRIBUTABLE TO THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY OR ITS ASSIGNS. This indemnity shall survive the termination of this Agreement and shall be binding upon and inure to the benefit of the Parties and their respective successors, representatives, and assigns.

8.2. **Representations of Owner.** Developer acknowledges, represents, and agrees that:

(a) It is qualified in all respects to conduct business within the State of Texas;

(b) Except under any financing documents that will be released at or prior to Transfer, it has not created or permitted any third person to create any liens, leases, options, claims, encumbrances, or any other adverse rights, claims, or interests with respect to any Interests to be Acquired that will prevent or hinder its ability to transfer good and warrantable title in same to City;

(c) It will be the true and lawful owner of the Interests to be Acquired, except as provided under financing documents that will be released prior to Transfer, no other third person or entity, public or private, will possess a right or interest, legal or equitable, nor any lien, encumbrance, or other adverse claim, present or contingent, in or to the Interests to be Acquired;

(d) Except as provided under financing documents that will be released prior to Transfer it has not previously sold, assigned, transferred, leased, pledged, or hypothecated its ownership interest in or to Interests to be Acquired and, prior to the Transfer contemplated in this Agreement, will not sell, assign, transfer, lease, pledge, or otherwise hypothecate any interest in or to the Interests to be Acquired to any third person or entity, except as provided under financing documents that will be released at the time of Transfer;

(e) Other than the "Utility and Park Facility Construction Agreement" dated effective May 16, 2017, between Williamson County Municipal Utility District No. 34 (the "District") and Developer and the "Road Improvements Construction and Reimbursement Agreement" dated effective May 16, 2017 between the District and Developer, both as amended or assigned, Developer has not entered into any agreement, written or oral, with any third party, wherein any such third party has agreed to reimburse it for the cost of design or construction of the Interests to be Acquired or any portion thereof, or wherein any third party has acquired a right to purchase such facilities;

(f) The contemplated transfer of the Interests to be Acquired constructed by Developer will not violate any term, condition, or covenant of any agreement to which it is a party;

(g) Execution of this Agreement and the consummation of the transactions contemplated hereunder will not constitute an event of default under any contract, covenant, or agreement binding upon it;

(h) The contemplated transfer of the Interests to be Acquired constructed by Developer to City will not violate the provisions of the United States Constitution, the Texas Constitution, or any federal, state, or local law, ordinance, or regulation;

(i) It has not previously granted any right or option to any other person, entity, or political subdivision to acquire or use the Interests to be Acquired to be constructed by Owner, and agrees to defend and hold City harmless from all claims or causes of action asserted by any third person, entity, or political subdivision alleging a right or option to acquire or use the Interests to be Acquired constructed by Owner, or any portion thereof; and

(j) Except as provided herein, it has not previously entered into any agreement or caused or otherwise authorized any action that would diminish, eliminate, or adversely affect City's contemplated ownership or use of the Interests to be Acquired.

City is executing this Agreement in reliance on each of the warranties and representations set forth above and each such representation and warranty will survive the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement.

8.3. **Representations of City.** City represents and warrants to Developer that:

(a) City is a Home Rule Municipal Corporation of the State of Texas and has the requisite power and authority to take all necessary action to execute and deliver this Agreement and to perform all obligations hereunder;

(b) The execution, delivery, and performance of this Agreement have been duly authorized by all necessary action on the part of City and the person executing this Agreement on behalf of City has been fully authorized and empowered to bind City to the terms and provisions of this Agreement;

(c) This Agreement does not contravene any law or any governmental rule, regulation, or order applicable to City; and

(d) The execution and delivery of this Agreement and the performance by City of its obligations hereunder do not contravene the provisions of, or constitute a default under, the terms of any contract, resolution, or other instrument to which City is a party or by which City is bound.

Developer is executing this Agreement in reliance on each of the warranties and representations set forth above and each such representation and warranty of City will survive the execution and delivery of this Agreement and the consummation of each of the transactions contemplated by this Agreement.

8.4. **Survival of Covenants**. The covenants contained in this Article will survive the conveyance, transfer, and assignment of the Interests to be Acquired after Transfer and will continue to bind City and Developer as provided herein.

IX.
REMEDIES

9.1. **City Remedie**s.

(a) If Developer fails or refuses to timely comply with any of its obligations hereunder, or if Owner's representations, warranties, or covenants contained herein are not true or have been breached, City will have the right, after providing Notice and Opportunity to Cure, to enforce this Agreement by any remedy at law or in equity or under this Agreement to which it may be entitled; to terminate this Agreement; or to waive the applicable objection or condition and to proceed in accordance with the remaining terms.

(b) If City determines that any of Owner's representations, warranties, or covenants are not true, then City may avail itself of any remedy at law or in equity or under this Agreement to which it may be entitled.

(c) Notwithstanding any provision herein to the contrary, the City waives all present and future claims for special and consequential damages against Developer arising from or related to this Agreement. Such waiver shall survive any termination or expiration of this Agreement.

9.2. **Developer Remedies**.

(a) If City fails or refuses to timely comply with its respective obligations hereunder, or if, prior to Transfer, City's representations or warranties contained herein are not true in any material respect or its covenants have been breached, Developer will have the option, after providing Notice and Opportunity to Cure, to enforce this Agreement by any remedy at law or in equity or under this Agreement to which it may be entitled; or to waive prior to Transfer, as applicable, the applicable default, objection, or condition and proceed to close the transaction in accordance with the remaining terms.

(b) If, after Transfer, Developer determines that any of City's representations, warranties, or covenants which applied to the Transfer are not true in any material respect, then Developer may avail itself of any remedy in equity to which it may be entitled.

(c) Notwithstanding any provision herein to the contrary, Developer waives all present and future claims for special and consequential damages against City arising from or related to this Agreement. Such waiver shall survive any termination or expiration of this Agreement.

9.3. **Default in Payments**.

(a) All amounts due and owing by Developer to City shall, if not paid when due, bear interest at the Texas post-judgment interest rate as set out in Texas Civil Practice & Remedies Code, or any successor statute, from the date when due until paid, provided that such rate shall never be usurious or exceed the maximum rate as permitted by law. If any amount due and owing by Developer to City is placed with an attorney for collection, and the City prevails in any litigation or arbitration involving the collection, Developer shall pay the City's costs and attorneys' fees, and such payments shall be in addition to all other payments provided for by this Agreement, including interest.

(b) In the event of any failure to provide a required payment hereunder by Owner, Developer agrees that City may, in its sole discretion, decline to sign any additional final plats for subdivisions within the Property until payment in full is made to City.

9.4. **Disputed Payment**. If Developer at any time disputes the amount to be paid by it to City, Developer shall nevertheless promptly make or cause to be made the disputed payment or payments, but Developer shall thereafter have the right to seek a determination whether the amount charged by City is in accordance with the terms of this Agreement.

9.5. **Default**. Unless otherwise provided in this Agreement, if either Party (referred to herein as the "Defaulting Party") fails to comply with its obligations under this Agreement or is otherwise in breach or default under this Agreement (collectively, a "Default"), then the other Party (referred to herein as the "Non-Defaulting Party") may not invoke any rights or remedies with respect to the Default until and unless the Non-Defaulting Party delivers to the Defaulting Party a Notice and Opportunity to Cure and the Defaulting Party fails to cure as required.

X.
NOTICES

10.1. **Addresses**. All notices hereunder from Developer to City will be sufficient if sent by certified mail, addressed to City to the attention of City Manager, City of Georgetown, P.O. Box 409, Georgetown, TX 78627. All notices hereunder to Developer will be sufficiently given if sent by certified mail or facsimile transmission with confirmation of delivery to Developer, c/o Joseph W. Straub, 4408 Spicewood Springs Road, Austin, Texas 78759. The address for delivery of notice may be changed by any Party by providing not less than five (5) days prior written notice thereof to the other Parties.

XI.
TERM AND TERMINATION

11.1. **Term**. This Agreement shall be effective for a period of ten (10) years from the Effective Date unless otherwise terminated according to its terms or extended by the Parties. Any outstanding payment obligation of either Party shall survive termination.

11.2. **Effect of Termination**. Notwithstanding any termination of this Agreement on terms provided herein, City's obligation(s) to furnish water services to all retail water customers residing within the Property to which City is providing Service at the time of termination survives the termination of this Agreement.

XII.
MISCELLANEOUS

12.1. **Execution**. This Agreement may be simultaneously executed in any number of counterparts, each of which will serve as an original and will constitute one and the same instrument.

12.2. **Costs and Expenses**. Except as otherwise expressly provided herein, each Party will be responsible for all costs and expenses and attorney's fees incurred by such Party in connection with the transaction contemplated by this Agreement.

12.3. **Governing Law**. This Agreement will be governed by the Constitution and laws of the State of Texas, except as to matters exclusively controlled by the Constitution and Statutes of the United States of America.

12.4. **Successors and Assigns**.

(a) Developer shall not assign its rights or obligations hereunder without the prior written consent of City, which shall not be unreasonably withheld, conditioned, or delayed.

(b) City has the right to assign its rights or obligations hereunder without the prior written consent of Developer.

(c) This Agreement shall be binding upon the permitted successors and assigns of Developer and City, and shall inure to the benefit of the successors and assigns of Developer and City.

12.5. **Headings**. The captions and headings appearing in this Agreement are inserted merely to facilitate reference and will have no bearing upon its interpretation.

12.6. **Partial Invalidity**. If any of the terms, covenants or conditions of this Agreement, or the application of any term, covenant, or condition, is held invalid as to any person or circumstance by any court with jurisdiction, the remainder of this Agreement, and the application of its terms, covenants, or conditions to other persons or circumstances, will not be affected.

12.7. **Waiver**. Any waiver by any Party of its rights with respect to a default or requirement under this Agreement will not be deemed a waiver of any subsequent default or other matter.

12.8. **Amendments**. This Agreement may be amended or modified only by written agreement duly authorized by the governing body of City and Owner, and executed by the duly authorized representatives of all Parties.

12.9. **Cooperation**. Each Party agrees to execute and deliver all such other and further instruments and undertake such actions as are or may become necessary or convenient to effectuate the purposes and intent of this Agreement.

12.10. **Venue**. All obligations of the Parties are performable in Williamson County, Texas and venue for any action arising hereunder will be in Williamson County.

12.11. **Third Party Beneficiaries**. Except as otherwise expressly provided herein and except with respect to any contracts assumed by City, nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties, any rights, benefits, or remedies under or by reason of this Agreement.

12.12. **Representations**. Unless otherwise expressly provided, the representations, warranties, covenants, indemnities, and other agreements will be deemed to be material and continuing, and will not be merged.

12.13. **Exhibits**. All exhibits attached to this Agreement are hereby incorporated in this Agreement as if the same were set forth in full in the body of this Agreement.

12.14. **Approvals**. All approvals of any party hereunder shall be in writing.

12.15 **Entire Agreement.** This Agreement, including the attached exhibits, contains the entire agreement between the Parties with respect to the terms addressed herein, and supersedes all prior communications, representations, or agreements, either verbal or written, including but not limited to the Prior Agreement, between the Parties with respect to such matters.

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be signed, sealed and attested in duplicate by their duly authorized officers, as of the Effective Date.

[SIGNATURE PAGES FOLLOW]

CITY:

CITY OF GEORGETOWN

By: _____
Josh Schroeder, Mayor

ATTEST:

_____
Robyn Densmore, City Secretary

APPROVED AS TO FORM:

_____
Skye Masson, City Attorney

DEVELOPER:

278 GEORGETOWN, INC.,
a Texas corporation

By:_____
Joseph W. Straub, President

Exhibit "A"
Description of Property

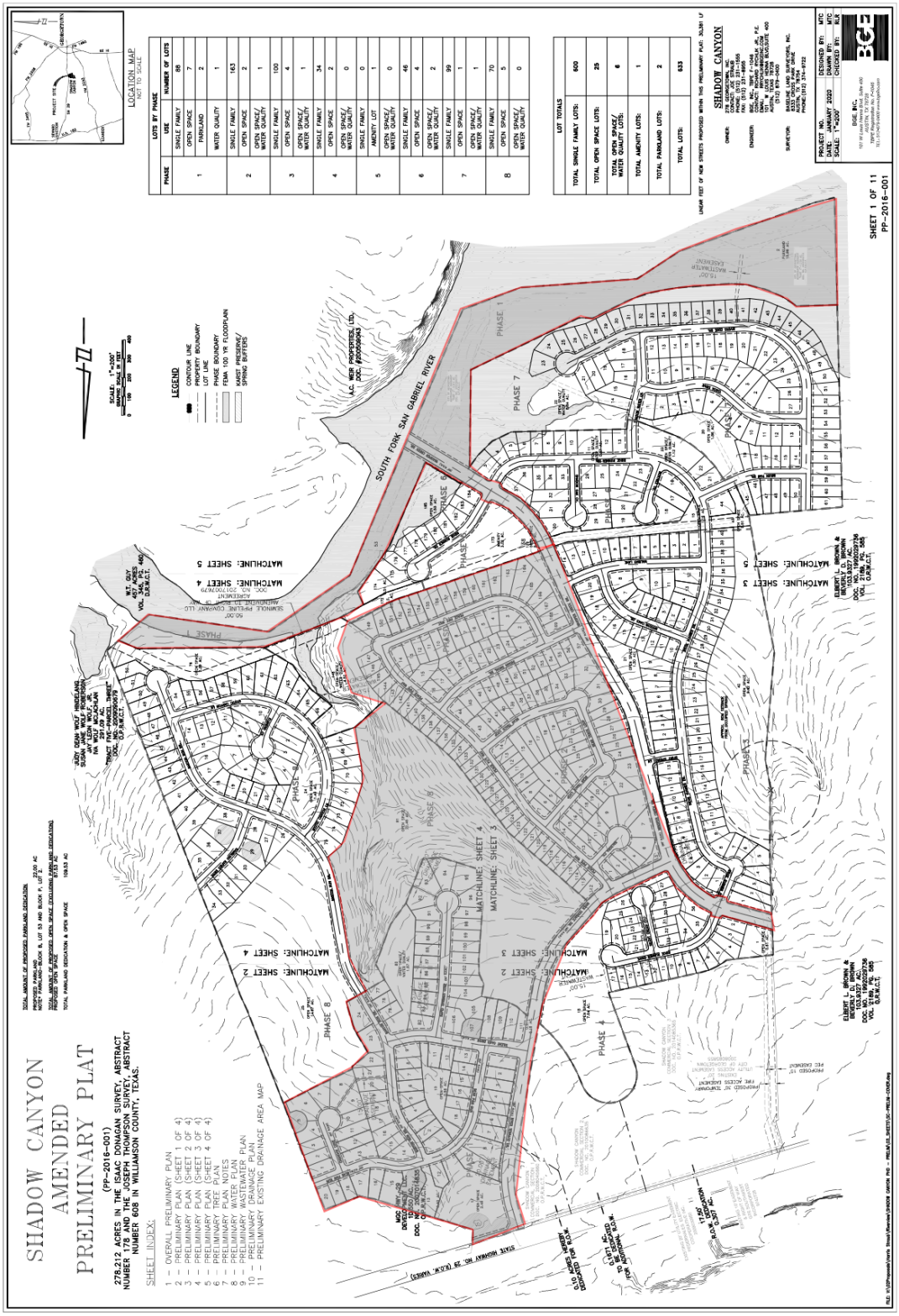

Exhibit "B"

Build-out Schedule

Number of Years after Effective Date	Required Active Connections in LUEs
2	60
3	120
4	180
5	240
6	300
7	360
8	420
9	480
10	520