Notice of Meeting of the Governing Body of the City of Georgetown, Texas February 12, 2019

The Georgetown City Council will meet on February 12, 2019 at 6:00 PM at Council Chambers - 101 East 7th Street Georgetown, TX 78626

The City of Georgetown is committed to compliance with the Americans with Disabilities Act (ADA). If you require assistance in participating at a public meeting due to a disability, as defined under the ADA, reasonable assistance, adaptations, or accommodations will be provided upon request. Please contact the City Secretary's Office, at least three (3) days prior to the scheduled meeting date, at (512) 930-3652 or City Hall at 808 Martin Luther King Jr. Street, Georgetown, TX 78626 for additional information; TTY users route through Relay Texas at 711.

REVISED AGENDA

Regular Session

(This Regular Session may, at any time, be recessed to convene an Executive Session for any purpose authorized by the Open Meetings Act, Texas Government Code 551.)

A Call to Order

Invocation

Pledge of Allegiance

Comments from the Mayor

- Volunteer Achievement Award
- National Nutrition Month Proclamation
- Registered Dietitian Nutritionist Day Proclamation

City Council Regional Board Reports

Announcements

Action from Executive Session

Statutory Consent Agenda

The Statutory Consent Agenda includes non-controversial and routine items that may be acted upon with one single vote. An item may be pulled from the Consent Agenda in order that it be discussed and acted upon individually as part of the Regular Agenda.

- B Consideration and possible action to approve the **minutes** of the Workshop and Regular Meetings held on Tuesday, January 22, 2019 -- Robyn Densmore, City Secretary
- C Consideration and possible action to appoint members to the City of Georgetown Advisory

Boards and Commissions -- Mayor Dale Ross

- D Consideration and possible action to **appoint members** to the **Georgetown Housing Authority** -- Mayor Dale Ross
- E Consideration and possible action to **appoint City Councilmembers** to the **City of Georgetown Advisory Boards** -- Mayor Dale Ross
- F Consideration and possible action to **appoint Board Chairs** to the **City of Georgetown** Advisory Boards -- Mayor Dale Ross
- G Consideration and possible action to **appoint members** and **chairs** to the **Williams Drive** Tax Increment Reinvestment Zone (TIRZ) Board, Downtown Georgetown TIRZ Board, Rivery Park TIRZ Board, and South Georgetown TIRZ Board -- Mayor Dale Ross
- H Consideration and possible action to appoint the Ethics Commission and Chair as a City of Georgetown Advisory Board -- Mayor Dale Ross
- I Forwarded from Georgetown Economic Development Corporation (GEDCO): Consideration and possible action to approve an economic development performance agreement with WBW Single Development LLC – Series 201 -- Michaela Dollar, Economic Development Director
- J Forwarded from the General Government and Finance Advisory Board (GGAF): Consideration and possible action to approve purchasing authority for fuel card services and related products with FleetCor Technologies dba Fuelman in amount not to exceed \$875,000.00 -- Stan Hohman, Fleet Services Manager
- K Forwarded from General Government and Finance Advisory Board (GGAF): Consideration and possible action to approve a business consulting and IT support services contract with Itineris, N.A. to provide services through September 31, 2019 for \$320,500.00 and to provide services for two additional years for an annual expenditure of \$424,500.00 --Leticia Zavala, Customer Care Director
- L Forwarded from Georgetown Utility Systems Advisory Board (GUS): Consideration and possible action to award a bid for the Pastor 24" Waterline to Prota Construction Inc. & Prota Inc., JV. of Austin, Texas in the amount of \$2,936,000.00 -- Wesley Wright, P.E., Systems Engineering Director
- M Consideration and possible action to approve an **Assignment** and **Assumption Agreement** with **IPKeys Power Partners, LLC** to allow IPKeys to assume the **obligation** of the **contracted services** previously made between the City of Georgetown and Electsolve Technology Solutions and Services, Inc. -- Leticia Zavala, Customer Care Director
- N Consideration and possible action to ratify and approve an Agreement with the Opportunities for Williamson & Burnet Counties agency to accept pledges of payment from CEAP agencies for low-income customers -- Leticia Zavala, Customer Care Director
- O Consideration and possible action to agree to an **amended Closing Date** for the **conveyance** of the **City Hall Building** to a date **on or before March 8th**, **2019** -- Travis Baird, Real Estate Services Manager
- P Consideration and possible action to **release** and **abandon** a **public utility easement** situated across Lots 4 through 11, Block Y, **Saddlecreek** Phase 2A and Lots 12 through 19, Block Y, Saddlecreek Phase 1B, as recorded in Document Numbers 2018068875 and 2017046554, respectively, in the Official Public Records of Williamson County, and to authorize the Mayor to execute all documents necessary to complete the abandonment -- Travis Baird, Real Estate Services Manager
- Q Consideration and possible action to **release** and **abandon** a **public utility easement** situated across **Lot 1, Bonnet Subdivision**, and recorded as Cabinet Q, Slides 119-120 in the Official Public Records of Williamson County, and to authorize the Mayor to execute all documents necessary to complete the abandonment -- Travis Baird, Real Estate Services Manager
- R Consideration and possible action to **release** and **abandon** a **public utility easement** situated across **Lot 2**, **Bonnet Subdivision**, and recorded as Cabinet Q, Slides 119-120 in the Official Public Records of Williamson County, and to authorize the Mayor to execute all documents necessary to complete the abandonment -- Travis Baird, Real Estate Services Manager

- S Consideration and possible action to **release** and **abandon** a **utility easement** situated in the Antonio Flores Survey, Abstract No. 235, and recorded as Document No. 2011015855 in the Official Public Records of Williamson County, to **Lennar Homes of Texas Land and Construction, Ltd.**, and to authorize the Mayor to execute all documents necessary to complete the abandonment -- Jim Kachelmeyer, Real Estate Services Coordinator
- T Consideration and possible action to accept the **2018 Racial Profiling Report** as mandated by the State Legislature -- Cory J. Tchida, Assistant Chief of Police

Legislative Regular Agenda

- Public Hearing and possible action to approve a request for a Development Agreement for a multifamily and commercial development on approximately 54 acres out of the Francis A. Hudson Survey, Abstract No. 295, J.S. Patterson Survey, Abstract No. 502, and the John Powell Survey, Abstract No. 491, generally located in the 500 block of Westinghouse Rd, to be known as Chapel Hill -- Sofia Nelson, CNU-A, Planning Director
- V Second Public Hearing for the Voluntary Annexation of an approximate 262.011-acre tract of land situated in the William Roberts League Survey, Abstract No. 524, and a portion of Shell Road, a right-of-way of varying width of record described to the Williamson County, Texas, for the property generally located along Shell Road approximately 6,800 feet north of Williams Drive, to be known as the Shell Road development -- Sofia Nelson, CNU-A, Planning Director
- W Second Public Hearing for the Voluntary Annexation and designation of Residential Estate (RE) zoning district for an approximate 23.10 acre tract of land out of the Joseph Pulsifer Survey, Abstract No. 498, generally located at 34 Skyline Road, to be known as Maravilla Subdivision -- Chelsea Irby, Senior Planner
- X Public Hearing and First Reading of an Ordinance rezoning approximately 10.89 acres in the Barney C. Low survey, Abstract No. 385, located at 878 Westinghouse Road, from the Agriculture (AG) zoning district to a Planned Unit Development (PUD) zoning district, to be known as Toolmen Corp -- Chelsea Irby, Senior Planner
- Y Public Hearing and First Reading of an Ordinance rezoning approximately 1.8 acres out of Block 51, Snyder Addition, Blocks 6, 7 and 11, Coffee Addition, generally located at 800 17th Street, from the Residential Single-Family (RS) zoning district to the Two-Family (TF) zoning district -- Andreina Dávila-Quintero, AICP, Current Planning Manager
- Z Public Hearing and First Reading of an Ordinance to close and abandon a portion of East 6th Street between Pine Street (Taylor Street) and East 7th Street (San Gabriel Street), pursuant to Section 311.007 of the Texas Transportation Code, for the safety and public benefit of the municipality at large, to Williamson County, Texas, and to authorize the Mayor to execute all documents necessary to complete the abandonment. --Jim Kachelmeyer, Real Estate Services Coordinator
- AA First Reading of an Ordinance amending Title 2 of the Code of Ordinances by adding Chapter 2.30 relating to the Police Department -- Amy Janik, Police Captain
- AB Forwarded from the General Government and Finance Advisory Board (GGAF): Consideration and possible action to approve a Construction Contract with O'Haver Contractors of San Antonio, Texas for the Construction of Fire Station No. 6 in the amount of \$4,619,200.00 -- Eric Johnson, CIP Manager
- AC Forwarded from the General Government and Finance Advisory Board (GGAF): Consideration and possible action to approve a Construction Contract with O'Haver Contractors of San Antonio, Texas for the Construction of Fire Station No. 7 in the amount of \$5,261,000.00 -- Eric Johnson, CIP Manager
- AD Consideration and possible action to approve a Resolution pursuant to **Chapter 2206**, **Government Code § 2206.053** finding that portions of properties located along the southern side of Williams Drive between Rivery Boulevard and West Central Drive, Georgetown, Texas, 78628, are necessary for the **Rivery TIA/Rivery Turn Lanes Project** and authorizing the use of **eminent domain** to condemn the properties, if necessary -- Jim Kachelmeyer, Real Estate Services Coordinator

- AE Second Reading of an Ordinance rezoning approximately 3.361 acres out of the Nicholas Porter Survey, Abstract No. 497, located in the 200 block of East Janis Drive, from the Residential Single-Family (RS) and General Commercial (C-3) zoning districts to the Townhouse (TH) zoning district -- Andreina Dávila-Quintero, AICP, Current Planning Manager
- AF Consideration and possible action to approve a **\$20,000.00 grant** to **Georgetown Sertoma Club** for participation in the **July 4th event** -- Mayor Dale Ross and David Morgan, City Manager
- AG Request for a **future workshop item** to discuss **waiving signage fees** for **non-profit organizations** -- Steve Fought, Councilmember District 4

Project Updates

AH Project updates and status reports regarding current and future transportation and traffic project; street, sidewalk, and other infrastructure projects; police, fire and other public safety projects; economic development projects; parks & recreation projects; city facility projects; city technology projects; employee recognition, and downtown projects including parking enhancements, city lease agreements, sanitation services, and possible direction to city staff --David Morgan, City Manager

Public Wishing to Address Council

<u>On a subject that is posted on this agenda:</u> Please fill out a speaker registration form which can be found on the table at the entrance to the Council Chamber. Clearly print your name and the letter of the item on which you wish to speak and present it to the City Secretary on the dais, prior to the start of the meeting. You will be called forward to speak when the Council considers that item. Only persons who have delivered the speaker form prior to the meeting being called to order may speak.

<u>On a subject not posted on the agenda:</u> An individual may address the Council at a regular City Council meeting by contacting the City Secretary no later than noon on the Wednesday prior to the Tuesday meeting, with the individual's name and a brief description of the subject to be addressed. Only those persons who have submitted a timely request will be allowed to speak. The City Secretary can be reached at (512) 930-3652.

- AI Christine Attoun would like to speak to the Council about the Williams Dr. Study
 - Ingrid Kent would like to speak to the Council about the Williams Dr. Study
 - Stacey Kent would like to speak to the Council about the Williams Dr. Study
 - Scott Allen would like to speak to the Council about the Williams Dr. Study

- David Barrera would like to speak to the Council about a proposed car wash on Williams Dr. next to Deer Haven Subdivision

- Franklin Attoun would like to speak to the Council about a proposed car wash on Williams Dr. next to Deer Haven Subdivision

Executive Session

In compliance with the Open Meetings Act, Chapter 551, Government Code, Vernon's Texas Codes, Annotated, the items listed below will be discussed in closed session and are subject to action in the regular session.

AJ Sec. 551.071: Consultation with Attorney

Advice from attorney about pending or contemplated litigation and other matters on which the attorney has a duty to advise the City Council, including agenda items

- Legal advice regarding purchase power agreements

Sec. 551.072: Deliberations about Real Property

- Property Located at Inner Loop and I-35

- Rivery TIA/Rivery Turn Lanes, Parcels 5-7, acquisition of real property -- Jim Kachelmeyer,
- Real Estate Services Coordinator and Travis Baird, Real Estate Services Manager
- Sale of Property-113 E. 8th Street -- Travis Baird, Real Estate Services Manager

Texas Crushed Stone
Sec. 551.086: Certain Public Power Utilities: Competitive Matters
Purchase Power Update -- Jim Briggs, General Manager of Utilities
Sec. 551.087: Deliberation Regarding Economic Development Negotiations
Project Deliver

- Project Big C

- Project Access

Sec. 551:074: Personnel Matters

City Manager, City Attorney, City Secretary and Municipal Judge: Consideration of the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal - City Secretary

Adjournment

Certificate of Posting

I, Robyn Densmore, City Secretary for the City of Georgetown, Texas, do hereby certify that this Notice of Meeting was posted at City Hall, 808 Martin Luther King Jr. Street, Georgetown, TX 78626, a place readily accessible to the general public at all times, on the ______ day of _______, 2019, at ______, and remained so posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Robyn Densmore, City Secretary

SUBJECT: Call to Order

Invocation

Pledge of Allegiance

Comments from the Mayor

- Volunteer Achievement Award

- National Nutrition Month Proclamation
- Registered Dietitian Nutritionist Day Proclamation

City Council Regional Board Reports

Announcements

Action from Executive Session

ITEM SUMMARY:

FINANCIAL IMPACT: NA

SUBMITTED BY:

SUBJECT:

Consideration and possible action to approve the **minutes** of the Workshop and Regular Meetings held on Tuesday, January 22, 2019 -- Robyn Densmore, City Secretary

ITEM SUMMARY:

FINANCIAL IMPACT: N/A

SUBMITTED BY: Robyn Densmore, City Secretary

ATTACHMENTS:

CC Reg Meeting Minutes 01.22.2018 CC Workshop Meeting Minutes 01.22.2018

Notice of a Meeting of the Governing Body of the City of Georgetown, Texas Tuesday, January 22, 2019

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Called to order at 6:14 p.m.

Regular Session

(This Regular session may, at any time, be recessed to convene an Executive Session for any purpose authorized by the Open Meetings Act, Texas Government Code 551.)

A. Call to Order

Invocation

Pledge of Allegiance

Comments from the Mayor

City Council Regional Board Reports

Announcements

- Cupid's Chase

Action from Executive Session

Motion out of Executive Session to waive the conflict in the Foley and Ladner waiver of lienholder conflict for Northwest Blvd., Parcel 4 as discussed in executive session.

Motion by Hesser, second by Fought. **Approved 7-0**

Mayor Ross announced that Item D was pulled to the Legislative Regular Agenda for discussion.

Statutory Consent Agenda

The Statutory Consent Agenda includes non-controversial and routine that may be acted upon with one single vote. An item may be pulled from the Consent Agenda in order that it be discussed and acted upon individually as part of the Regular Agenda.

- B. Consideration and possible action to approve the **minutes** of the Workshop, and Regular Meetings held on Tuesday, January 8, 2019 -- Robyn Densmore, City Secretary
- C. Consideration and possible action to approve a Resolution ordering a General Election to be held on May 4, 2019 for City Council Members for District 3, District 4 and District 7 -- Robyn Densmore, City Secretary

D. Consideration and possible action to approve the **second amendment** to the **consultation agreement** with **Gallagher Benefit Services**, **Inc**. to exercise the **two remaining renewal periods** for an additional cost of **\$48,000.00** per year --Tadd Phillips, Director of Human Resources

This item was presented as the first item on the Legislative Regular Agenda. Tadd Phillips, HR Director, presented the item. Mayor Ross read the caption.

Motion by Fought, second by Gonzlaez.

Approved 7-0.

- E. Consideration and possible action to approve a Master Services Agreement with Atrium Real Estate Services to provide real property appraisal services; and to authorize the Mayor to execute the agreement -- Travis Baird, Real Estate Services Manager
- F. Consideration and possible action to approve a Master Services Agreement with Kokel-Obberrender-Wood Appraisal, Ltd. to provide real property appraisal services; and to authorize the Mayor to execute the agreement -- Travis Baird, Real Estate Services Manager
- G. Consideration and possible action to approve a Master Services Agreement with Pyles Whatley Corporation to provide real property appraisal services; and to authorize the Mayor to execute the agreement -- Travis Baird, Real Estate Services Manager
- H. Consideration and possible action to approve a Master Services Agreement with Lone Star Appraisal and Realty, Inc. to provide real property appraisal services; and to authorize the Mayor to execute the agreement -- Travis Baird, Real Estate Services Manager
- I. Consideration and possible action to agree to an **amended Closing Date** for the **conveyance** of the **Municipal Court\Council Chambers Building** to a date on or before **May 17th**, **2019** -- Travis Baird, Real Estate Services Manager
- J. Consideration and possible action to authorize the City Manager to sign an agreement to accept the FY2018 Community Development Block Grant (CDBG) grant funds allocated by Williamson County -- Susan Watkins, AICP, Housing Coordinator
- K. Consideration and possible action to approve a **two-year extension** with **Valley View Consulting, L.L.C.** for **investment advisory services** -- Leigh Wallace, Finance Director
- L. Consideration and possible action to approve a Resolution authorizing a **payment** of **\$180,014.00** for the **City's pro-rata portion** of the **cost** of **operation** of the Williamson Central Appraisal District (WCAD) -- Paul Diaz, Budget Manager
- M. Consideration and possible action to approve the second renewal of the agreement with D.I.J. Construction Company, of Bertram, Texas, for annual street striping services, in an amount not to exceed \$62,610.00 -- Octavio Garza, Public Works Director
- N. Forwarded from Georgetown Transportation Advisory Board (GTAB): Consideration and possible action to approve Task Order KHA-19-002-TO with Kimley Horn and Associates of Austin, TX in the amount of \$137,555.00 for a Transportation Impact Fee Study -- Wesley Wright, PE, Systems Engineering Director
- O. Forwarded from Georgetown Utility System Advisory Board (GUS): Consideration and possible action to approve a contract with Unifit Corporation, from Ellwood City, PA for the replacement of 8 Lake Water Treatment Plant filter media (anthracite) in the approximate amount of \$78,199.99 --Glenn W. Dishong, Utility Director
- P. Forwarded from Georgetown Utility System Advisory Board (GUS): Consideration and possible action to approve Task Order CDM-19-001 with CDM Smith Inc. of Austin, Texas for professional services related to the South Lake Water Treatment Plant Intake and Raw Waterline in the amount of \$1,781,648.00 -- Wesley Wright, P.E., Systems Engineering Director

Motion by Pitts, second by Hesser, to approve the Statutory Consent Agenda in its entirety, with the exception of Item D which was moved to the Legislative Agenda. **Approved 7-0**

Legislative Regular Agenda

D. Consideration and possible action to approve the second amendment to the consultation agreement with Gallagher Benefit Services, Inc. to exercise the two remaining renewal periods for an additional cost of \$48,000.00 per year –

Tadd Phillips, Director of Human Resources presented the item which was moved to Legislative Regular Agenda because of a missing attachment.

Mayor Ross read the caption.

Motion by Fought, second by Gonzlaez.

Approved 7-0

 Q. Public Hearing and First Reading of an Ordinance rezoning approximately 26.6 acres out of the David Wright Survey, Abstract No. 13, located along Lakeway Dr. between Northwest Blvd. and Airport Rd., from Local Commercial (C-1) to Industrial (IN) zoning district -- Sofia Nelson, CNU-A, Planning Director (action required)

Nelson presented the item. She then presented the Location Map, Future Land Use Map, Zoning Map, and Aerial Map. Nelson reviewed the Industrial Zoning District and what is allowed in that type of district. She explained that some of the more intense uses allowed with Industrial Zoning would require a Special Use Permit and public hearings. Nelson stated that staff had reviewed the criteria for zoning changes and felt that the use did comply or partially comply with the different criteria. She stated that to date 13 property owners have submitted letters in opposition to the request for zoning. Nelson said that the Planning and Zoning Commission held a Public Hearing on September 18, 2018 and recommended denial with a 5-2 vote which will require a Council super-majority vote to be approved.

Nelson read the caption.

Scott Foster, the applicant for the property, provided a presentation. He said that his group has been out talking to the neighbors surrounding the property. Foster explained the compatibility of the zoning to the area and that buildings may be up to 500 feet away from the nearest home. He then showed Council a map of the area that included a buffer of a creek and trees that will remain undisturbed. Foster explained that traffic is being considered as part of the project. He added that the project will comply with all City regulations. Foster reviewed restricted uses and informed Council that he is willing to put deed restrictions in place for over 40 uses. He showed Council the concept plan for the area.

Mayor Ross opened the Public Hearing at 6:36 PM.

Les Romo signed up to speak but was not in attendance when called.

Ron Doernbach signed up to speak but was not in attendance when called.

Larry Havins spoke on behalf of is family who are the property in question. He gave his family history and the family's reasons changing the property use.

Allen Hill signed up to speak but was not in attendance when called.

Mayor Ross noted that Mary Havins Hill was in favor of the change but did not wish to speak.

Nick Boyd spoke as a potential buyer for the project. He explained that his wife has roots in Georgetown and his business team will be community focused. Nicholson asked for clarification of the uses planned. Boyd explained that his group is only interested in a portion of the area for Industrial Zoning. Nicholson asked about a portion of the land near the runway. Foster explained that the portion referenced will still be maintained by the Havins family. He added that the proposed deed restrictions were provided to Council and would be recorded prior to the next Council meeting. Nicholson stated she appreciated Fosters correspondence with the nearby residents.

Nena Young spoke as a nearby homeowner of the property against the project due to safety of residents and school children.

Bill Vaello spoke as a nearby homeowner of the property against the project. He did not feel the deed restrictions provided enough protection for the homeowners and was concerned about traffic and safety.

Chase Tinney spoke as a nearby homeowner of the property against the project due to traffic and safety of residents and school children.

Brent Campbell spoke on behalf of the Havins family in favor of the zoning change.

Jennifer Franz spoke as a nearby homeowner of the property against the project. She did not feel the deed restrictions provided enough protection for the homeowners and was concerned about traffic and safety of residents and school children.

Gonzalez asked McNabb about the ability of the City to enforce deed restrictions in perpetuity if they are accepted by the current property owner. McNabb explained that deed restrictions are enforced by the property owner and normally cities are not part of deed restriction. Foster responded that the nearby neighborhood has no HOA in neighborhood but the owner would be happy to add the City as an enforcing body. He added that in addition to the draft deed restrictions provided, the owner plans to include a two year hold on amending the deed restrictions without a 100% support of the residents. Gonzalez responded that he understood but was trying to find the most equitable solution to meet the needs of the City for this type of use and that he wasn't sure if the deed restrictions were the best way to meet the needs of the neighborhood residents. Foster added that the deed restrictions would extend the entire property area beyond what was being discussed at the current meeting. Gonzalez responded that he would be will to move this forward to a second reading and allow staff to review the options related to deed restrictions and a possible third party to enforce them.

Mayor Ross closed the Public Hearing at 7:05 PM.

Motion by Gonzalez, second by Fought.

Approved 6-1. (Jonrowe opposed.)

R. Continued from the December 11, 2018 City Council Meeting:

Public Hearing and **First Reading** of an Ordinance **rezoning** approximately **3.361 acres** out of the Nicholas Porter Survey, Abstract No. 497, located in the **200 block** of **E. Janis Drive**, **from** the **Residential Single-Family** (**RS**) and **General Commercial (C-3) zoning districts to** the **Townhouse** (**TH**) **zoning district** -- Andreina Dávila-Quintero, AICP, Current Planning Manager (action required)

Davila-Quintero presented the item. She then presented the Location Map, Future Land Use Map, Zoning Map, and Aerial Map. Davila-Quintero then reviewed the Industrial Zoning District and what is allowed in that type of district. She added that this property is part of the Williams Drive Study and explained that this type of use was considered appropriate. Davila-Quintero then stated that staff reviewed the criteria for zoning changes and felt that the use did comply with the different criteria. She then stated that the Planning and Zoning Commission held a Public Hearing on October 16, 2018 and recommended approval with a 7-0 vote. Davila-Quintero stated that public notifications were sent out to all property owners within 200 feet of the subject property and staff received one response in favor and nine responses in opposition. She added that they did received a petition signed by 22 property owners, which is 30.5%, which means that approval of this request will require a Council super-majority.

Davila-Quintero read the caption.

The applicant, Tim Haynie, addressed the Council regarding the history of the project. Pitts asked if there were plans to Janis Drive. Haynie responded that there were not and would have to tie to Rivery and Ryans Cove per UDC rules. Gonzalez asked how many units were anticipated with the project. Haynie responded 33 or 34 units.

Mayor Ross opened the Public Hearing at 7:13 PM.

Melissa Thompson spoke against the project due to the townhomes not being in character of the neighborhood, traffic, and increased crime rate.

Mayor Ross asked these current design would allow for three story townhomes. Davila-Quintero responded that the maximum height would be 33 feet and if they could fit three stories it would be allowed. Mayor Ross responded that it would be hard to do.

Deborah Young spoke against the project due to increased traffic, nearby residents do not want this type of development. Joseph Oscar Thompson spoke against the project due to nearby residents do not want this type of development, traffic, and offered to buy the property.

Mayor Ross closed the Public Hearing at 7:21 PM.

Motion by Pitts, second by Gonzalez.

Gonzalez asked what is permitted in C-3 zoning. Nelson responded generally bigger boxed retail stores like what is seen along the highway.

Hesser asked the proposed height of condo. Haynie responded that they would be two story. Hesser asked if this area was considered transitional. Haynie described properties to east as high density and the west as residential.

Approved 7-0.

S. Consideration and possible action on a Resolution **adopting** the **Planning and Development fees** in accordance with the City's Unified Development Code (**UDC**) -- Sofia Nelson, CNU-A, Planning Director

Nelson presented the item and provided an update and review covering the current and proposed fees for Municipal Utility Development (MUD) applications.

Nelson read the caption

Motion by Jonrowe, second by Hesser.

Approved 7-0.

T. Second Reading of an Ordinance rezoning approximately 0.30 acres out of Block No. 1 of the Snyder Addition, located at 1205 S. Walnut Street and 703 E. 13th Street, from the Office (OF) to the Residential Single-Family (RS) zoning district -- Sofia Nelson, CNU-A, Planning Director (action required)

Nelson presented the item and informed Council that there had been no changes since first reading and staff had received no additional comments.

Nelson read the caption.

Motion by Jonrowe, second by Hesser.

Approved 7-0.

U. Second Reading of an Ordinance rezoning approximately 5.47 acres in the Joseph Fisk Survey, Abstract No. 232, located at 4809 Williams Dr, from the Agriculture (AG) District to the Local Commercial (C-1) District -- Andreina Davila-Quintero, AICP, Current Planning Manager (action required)

Davila-Quintero presented the item and informed Council that there had been no changes since first reading and staff had received no additional comments.

Davila-Quintero read the caption.

Motion by Gonzalez, second by Hesser.

Approved 7-0.

V. Second Reading of an Ordinance rezoning approximately 1.478 acres out of Block 8, Outlot Division D, Block 1, Rucker-Hodges Addition, and Block 1, Fleager Addition, also being out of the Clement Stubblefield Survey, Abstract No. 558, located at 1020 Railroad Avenue, from the Local Commercial (C-1) to the Residential Single-Family (RS) zoning district, to be known as Scenic River -- Andreina Davila- Quintero, AICP, Current Planning Manager (action required)

Davila-Quintero presented the item and informed Council that there had been no changes since first reading and staff had received no additional comments.

Davila-Quintero read the caption.

Motion by Pitts, second by Fought.

Approved 6-1. (Jonrowe opposed.)

W. Second Reading on an Ordinance amending the Estrella Crossing Planned Unit Development (PUD) for approximately 5.89 acres (Lot 1 Block A of the Resubdivision of Estrella Crossing Commercial Subdivision), located at 4051 Williams Drive to amend the existing PUD for a project to be known as Resubdivision of Estrella Crossing Commercial - Andreina Davila- Quintero, AICP, Current Planning Manager (action required)

Davila-Quintero presented the item and informed Council that there had been no changes since first reading and staff had received no additional comments.

Davila-Quintero read the caption.

Jonrowe left the dais at 7:30 p.m.

Motion by Pitts, second by Gonzalez.

Approved 6-0. (Jonrowe absent.)

Project Updates

X. Project updates and status reports regarding current and future transportation and traffic project; street, sidewalk, and other infrastructure projects; police, fire and other public safety projects; economic development projects; city facility projects, city technology projects and downtown projects including parking enhancements, city lease agreements, sanitation services, and possible direction to city staff -- David Morgan, City Manager

Morgan had no updates.

Public Wishing to Address Council

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<u>On a subject not posted on the agenda:</u> An individual may address the Council at a regular City Council meeting by contacting the City Secretary no later than noon on the Wednesday prior to the Tuesday meeting, with the individual's name and a brief description of the subject to be addressed. Only those persons who have submitted a timely request will be allowed to speak. The City Secretary can be reached at (512) 930-3651.

Y. - Max Marion would like to speak to the Council about plastic bags. Mr. Marion was not in attendance due to illness.

Executive Session

In compliance with the Open Meetings Act, Chapter 551, Government Code, Vernon's Texas Codes, Annotated, the items listed below will be discussed in closed session and are subject to action in the regular session.

Z. Sec. 551.071: Consultation with Attorney

Advice from attorney about pending or contemplated litigation and other matters on which the attorney has a duty to advise the City Council, including agenda items

 Foley and Ladner waiver of lienholder conflict for Northwest Blvd., Parcel 4 Sec. 551:074: Personnel Matters

City Manager, City Attorney, City Secretary and Municipal Judge: Consideration of the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal

Sec. 551.086: Certain Public Power Utilities: Competitive Matters

- Purchased Power Update -- Jim Briggs, General Manager of Utilities

Sec. 551.087: Deliberation Regarding Economic Development Negotiations - Project Gear

Adjournment

Motion to adjourn by Fought, second by Pitts.

Approved 6-0. (Jonrowe absent.)

Mayor Ross adjourned the meeting at 7:32 PM.

Approved by the Georgetown City Council on ____

Date

Dale Ross, Mayor

Attest: Robyn Densmore, City Secretary

Notice of Meeting of the Governing Body of the City of Georgetown, Texas Tuesday, January 22, 2019

The Georgetown City Council will meet on Tuesday, January 22, 2019 at 3:00 PM at the Council Chambers, at 101 E. 7th St., Georgetown, Texas

The city of Georgetown is committed to compliance with the Americans with Disabilities Act (ADA). If you require assistance in participating at a public meeting due to a disability, as defined under the ADA, reasonable assistance, adaptations, or accommodations will be provided upon request. Please contact the City Secretary's Office, at least three (3) days prior to the scheduled meeting date, at (512) 930-3652 or City Hall at 113 East 8th Street for additional information; TTY users route through Relay Texas at 711.

Mayor Dale Ross called the meeting to order at 3:04 PM. All Councilmembers were in attendance, Mayor Dale Ross, Anna Eby, Councilmember District 1, Valerie Nicholson, Councilmember District 2, John Hesser, District 3, Steve Fought, Councilmember District 4, Kevin Pitts, Councilmember District 5, Rachael Jonrowe, Councilmember District 6 and Tommy Gonzalez, Councilmember District 7 were in attendance.

The Council immediately recessed into Executive Session at 3:04 PM under Sec. 551.086: Certain Public Power Utilities: Competitive Matters. Council came back into the regular Policy Development/Review Workshop at 3:44 PM.

Policy Development/Review Workshop – Call to order at 3:00 PM

The Council immediately recessed into Executive Session at 3:04 PM under Sec. 551.086: Certain Public Power Utilities: Competitive Matters. Council came back into the regular Policy Development/Review Workshop at 3:44 PM.

A. Presentation and discussion of the Williamson Central Appraisal District (WCAD) operations and technology upgrades -- Paul Diaz, Budget Manager

Diaz introduced Alvin Lankford, Chief Appraiser with WCAD. Lankford presented the City of Georgetown 2018 Value Update to Council. He showed Council website updates including the Property Owner Dashboard. Councilmember Gonzalez asked where WCAD was getting the sales information. Lankford responded that WCAD utilized sales questionnaires and MLS information that is provided by realtors. He added that there is some information that cannot be provided to the public due to the non-disclosure piece of the law. Lankford then explained the WCAD's new change detection capabilities, reviewed the WCAD Budget, population growth, accuracy of appraisals, protest levels and certified roll, how WCAD is graded, property value study, Methods and Assistance Program (MAP) for 2017, and the most important grade of customer service. He then reviewed real estate data and WCAD appraisal data for 2018.

Pitts asked what the success rate for appeals is at WCAD. Lankford said it depends on what someone's definition of success is and if their definition meant getting the value the imagined their home to be or getting their value lowered at all. Pitts clarified by asking how many people get their value decreased. Lankford responded that approximately 40% of properties get a reduction and that reduction is approximately -1.5% overall on average. Mayor Ross asked about the appeal rate for commercial properties. Lankford responded that it varies per area and overall it was about 5% but did depend on the property. Pitts asked if SCAD charges a fee for time spent with customers reviewing appraisals. Lankford responded that no, WCAD did not do that.

Hesser asked what happens when change is detected in the aerial photography that shows a removal or decrease in size. Lankford responded that the value is adjust accordingly whether things are added or removed.

Eby asked for clarification on the value of 55% of new homes in Georgetown being less than \$250,000 in value. Lankford clarified that this value was referencing new improvements and new starts.

Mayor Ross asked how WCAD handles properties in historic areas where there are very few comparable properties. Lankford responded that they would look at a large area and compare sales. Mayor Ross stated that is must be difficult to address this area. Lankford responded that it is and areas that are much more homogeneous are easier to apply value.

B. Presentation, discussion and possible direction regarding the City's upcoming communication audit -- Jack Daly, Assistant to the City Manager

Daly presented and update on the Communications Audit. He stated by reviewing the background and what the City's current communication struggles are. Daly explained that the audit will assess current practices for different communication areas. He described the deliverables that include a candid assessment of communication efforts, guidance on branding and messaging, direction on measuring outcomes and success, suggestions on resource allocation and organization, and providing a framework for a strategic plan. Daly reviewed process and said that the City has selected Cooksey and provided a brief background on the firm. He then introduced Cooksey staff members Colby Walton and Michelle Hargis. Walton stated that they were excited to work with the City and gave a brief explanation of the process. Daly reviewed the proposed timeline:

- January February
 - Project kickoff
 - Conduct interviews
 - Review of City materials
 - Benchmarking of peer cities

- March – April

- Develop audit report
- Present report to Council

Daly reviewed the project outcomes including help to create a road map for a communication strategic plan, a candid review of resource allocation, and laying the groundwork to improve communications to meet change.

Council had no questions at this time.

C. Presentation and update to City Council on Downtown Parking Garage at 7th and Main and Downtown Parking Expansion at 8th and Martin Luther King Jr. St. and Downtown Parking Enforcement -- Eric Johnson, CIP Manager and Wayne Nero, Police Chief

Johnson presented on the parking expansion that will be across the street from the library. He explained that currently County buildings are there, but the City has reached an agreement with them to build a parking lot at that location. Johnson explained that the proposed parking will add an additional 67 parking spaces.

He then reviewed the next steps of completing the design, demolishing the existing buildings in spring and constructing the new parking area in summer of this year.

Johnson then presented on the parking garage that will be located right behind old/current City Council Chambers and provide 200 spaces which include approximately 150 additional spaces. He then stated that the exterior look of the project is very important to match the design aesthetics of downtown. Johnson showed the opportunities for art on the structure. City Manager David Morgan stated that moving forward the art treatment will be in the future. Johnson reviewed the next steps for the garage including the continuation of the design work, bidding the construction in late summer of this year and completing the garage in summer of 2020. He then reviewed the funding source as through the 2019 debt sale with 50% through TIRZ property taxes and 50% through the property tax rate.

Jonrowe asked when the citizens will have an opportunity to weigh in since this will be a City owned structure. Johnson responded that the first phase is to guarantee that the project is feasible and now that it is confirmed that he project is feasible public meetings can be scheduled. Jonrowe stated that public dialogue is important for this project and strongly encouraged staff to make that a priority going forward.

Eby stated that she was glad about parking garage, but is concerned about the massing and scale. She then stated that there is an example in downtown Round Rock that incorporates vegetation and proposed that something like that may be more appropriate considering the location.

Hesser asked when the project goes to HARC. Johnson responded that it go later this summer when they are closer to completion with the design. Hesser asked how tall the building will be. Johnson responded that it will be four stories and falls within current standards. Hesser asked how many feet.

Morgan stated that the highest point is below 44 feet. Hesser stated that he didn't want to the project to get delayed because these things aren't being considered. Morgan responded planning staff has been involved and staff has worked with design guidelines and will comply and go through HARC process.

Gonzalez stated that sooner rather than later staff needs input from citizens and the City needs to be 100% upfront on the project so that there is no backtracking. Morgan responded that this is very preliminary and the structure will go through public process. He added that staff will need to keep in mind the price impact that may come with comments and staff will need to manage the cost of the project.

Mayor Ross asked if the renderings adhered to design code. Johnson responded that yes they did so far. Ross continued that staff must have something to present to HARC.

Pitts asked if Council would have an opportunity to review the design prior to it going to HARC. Morgan responded that staff will conduct a public meeting and get feedback and share it with Council. He continued that if there some consistency with the feedback received, staff will see how the feedback can be implemented, how it can affect the design, and any cost implications.

Mayor Ross stated that Council needs to see the design once more before it goes out to HARC.

Nicholson asked if the flat parking lot had any shade elements beyond the existing trees and shade could be considered. Morgan stated that right now shade is not in the scope at this time, but could be accommodated. Mayor Ross stated that a lot with no trees around it is not desired. Morgan responded that there is landscaping. Johnson added that there is vegetation and additional trees being planned for the lot.

Jonrowe asked about the proposed height for the parking garage. Morgan responded no, but staff will get that answer. Jonrowe stated she was concerned about the height of the structure based on its location and that she was curious about the cost difference between a three story and a four story structure.

Nero provided an update on the downtown ambassador program and parking enforcement. He stated that the program began in April of 2018 and the ambassadors are an informational resources for visitors as well as enforcers of the three hour parking ordinance. Nero reviewed the fine structure as: 1st offense is a warning; 2nd offense is a \$25.00 fine; 3rd offense is a \$50.00 fine; and 4th+ offense(s) is a \$100 fine. He added that since April of 2018 there have been a total of 1,248 citations with 843 being warnings, 221 being 2nd offenses, 100 being 3rd offenses, and 84 being 4th or subsequent offenses. Nero said that staff has identified a few practices which are not consistent with the current ordinance, specifically to the issuance of placards and staff is currently assessing and will bring forth recommended revisions to the current ordinance.

Gonzalez asked if based 2nd, 3rd, and 4th offenses is there a communication issue. Nero responded that Gonzalez proposed a great question that he doesn't have an answer to.

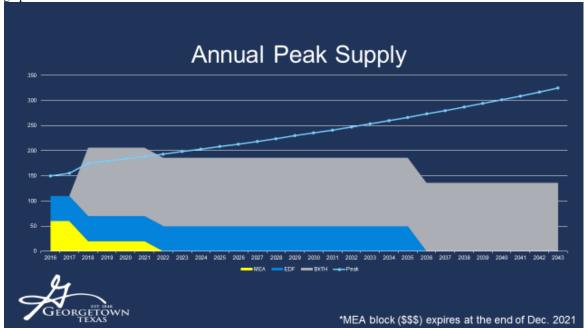
Mayor Ross asked the cost of a 4th offense. Nero responded \$100.00. Mayor Ross asked if Nero had anything else to add. Nero responded that accreditation is almost done and should be completed around April of 2019.

D. Presentation and discussion relating to the City of Georgetown Purchase Power Portfolio and Integrated Resource Place Status -- David Morgan, City Manager and Jim Briggs, General Manager of Utilities

Morgan started presentation by providing the purpose which was to provide an explanation of the current condition of the electric fund, the reasons why the City entered into its current contracts, context regarding the electric market, and an update on current actions to address the financial obligations of the fund.

Briggs reviewed the 2008 Purchase Power Goals including the current policy direction on power portfolio goals: competitively priced; long term stable rates on energy; mitigate regulatory, legislative, and financial risk; and 30% renewable by 2030. He added that the 2008 Integrated Resource Plan (IRP) called for 30% Renewable, 30% Coal, 30% Gas and 10% Market with the option of substituting nuclear power for Coal or Gas if available. Briggs then reviewed the contract history, which included LCRA as the primary provider of energy from 1940-2012. He added that the contract was not renew as LCRA couldn't meet purchased power goals because of an aging fleet, the new investments were expensive and there were no rate guarantees to the City. Briggs stated that in 2008 the City signed a small wind contract with AEP as a pass through deal for Southwestern University and the utility had no other sources of power at that time. He then reviewed the state of the markets in 2008 through 2012. Briggs stated that all forms of power were expensive to acquire and the City evaluated multiple options in wind, coal, and gas with every option being above electric rate targets. He added there was really nothing to contract for and the City was waiting for the market to shift. Briggs then explained the power needs based on the hours of the day. He then reviewed the process of competitive procurement of purchase power and how in 2012 the LCRA contract was terminated and the City began competitive procurement for energy. Briggs continued that the philosophical design for the utility was based on targeted peak vs. base load protection and targeted future vs. current needs. He stated that 2008 through 2012 had shown a high frequency of price spikes during

peak demand. Briggs explained how in 2012 City approved Mercuria Contracts that were originally contracted with JP Morgan, and then subsequently purchased by Mercuria. He continued that these were gas based contracts and the decision was to buy 50-60% of the projected load through 2021. Briggs said that these contracts were above rate target but there were no long-term contracts available and ERCOT forecasting shortage of energy resulting in very high prices toward the end of the decade. He then reviewed the Mercuria blocks of power vs. load based on hours of the day. Briggs reviewed the state of the energy market in 2013 when the City was seeking long-term option to replace Mercuria and fill in short positions. He added that at the time all contracts were ending in 2012 and there were no contracts past that available. Briggs said that the City issued a RFP for long-term energy contracts, evaluated multiple options including wind, coal, solar, nuclear and gas, with only wind being below rate targets and the City's load was growing. He continued that in 2013 the City approved the Spinning Spur 3 contract with the decision to buy 144 megawatts of capacity through 2035. Briggs stated that initially sought 70 megawatts but one partner dropped out and the balance was picked up to 144. He said that tax credits expired with no replacement option, the contract was below rate target, and the City moved forward with full 144 megawatts to keep the contract. Briggs then reviewed the Mercuria blocks of power vs. load based on hours of the day. He then reviewed the state of the energy market in 2014 when the City was seeking long-term option to replace Mercuria and fill in short positions on peak times only. Briggs added that some elements of Mercuria were not extended past 2018 and the City issued RFP for energy contracts to better address short position during peak demand. He added that the City evaluated multiple options including wind, solar, and gas and only solar and gas matched the rate targets. Briggs then reviewed the Mercuria blocks of power vs. load based on hours of the day. He then explained how in 2015 the City approved the Buckthorn Contract. Briggs added that it was originally contracted with SunEdison and then subsequently acquired by NRG and then sold to Clearway, with the decision to buy 150 megawatts of capacity through 2043. He said the contract was at City's rate target and would knowingly put City in long position. Briggs then reviewed the Buckthorn blocks of power vs. load based on hours of the day. He then presented the Annual Peak Supply graph:



Briggs explained why the City was in a long position. He said that Georgetown's energy demand was growing rapidly, the high frequency of price spikes for peaking energy in 2008-2014, ERCOT was forecasting energy shortages past 2021 and the forecast for energy market predicted increasing prices. Briggs reviewed the state of the energy market in 2016 and how mild weather depressed power prices throughout the year. He then reviewed the state of the energy market in 2017 and how Hurricane Harvey disrupted all of ERCOT and energy prices crashed. Briggs reviewed the state of the energy market in 2018 when there was a return to normal weather patterns, normal market performance in late-May and all of June, and prices crashed as more generation turned online. He then reviewed the state of the current energy market for power and natural gas, and how market fundamentals have changed significantly since the City's contracts were originally proposed. Briggs explained the realities of the market versus the forecasts.

Pitts asked about the spike in the power market in 2018 and if that would have been when the City would have wanted to sell on the market. Briggs responded that, if the City had sold then, it would have covered any shortages during 2018 and more. Pitts asked about the delay in data getting to the City. Briggs responded that the ERCOT settlement comes in 30 days after the close of the month. Pitts asked how the City could get the data needed to know when to sell. Briggs

responded that the information comes in daily, in 15 minute increments, and is not the delayed data. He added that the delayed data is a settlement summary that shows the net profit. Pitts asked if there was a City staff person who monitors this data and suggests when to sell or if it was an automated process. Briggs responded that it was an automated process, but staff does monitor and shares the data with a consultant. He continued to explain how the data is brought in to the City.

Morgan reviewed the volatility of the market and how it makes it difficult for staff to trust the forward market curve as a predictor. He added that there is also volatility in both the long position and short position. Morgan said that staff is working aggressively to get out of a long position. He then explained the 2016 electric fund actions that were taken to address budget variances. Morgan said that the City budget was based on market forecast and staff has changed the outlook for acquiring peak power for 2021 and later. He added that the Customer Information System (CIS) upgrade allocation changed to share cost with all utilities, the City used more debt for CIP versus cash funding, and increased transmission congesting hedging for Spinning Spur 3. Morgan explained the 2017 electric fund actions to address budget variances including: budget based on market forecasts; delayed Buckthorn to July 2018 to coincide with Mercuria peak block expiration; negotiated a price reduction on Buckthorn; reduced/deferred CIP; updated cost allocations and holding vacant positions. He added that staff also based the budget on the rate target due to recognizing inability of the industry to accurately predict future energy prices, pursued selling forward blocks of energy in non-peak months which was not successful based on market conditions, and completed an electric rate study which lead to an increased base rate and increased fees for new development. Morgan explained the 2019 electric fund actions which include: having a budget based on the rate target; taking advantage of the November natural gas price spike to sell 2019 Mercuria gas and energy into the forward market and sold gas contracts from December through March and sold power block from December through September; Initiating discussions with Spinning Spur 3 and Buckthorn on contract structure; actively soliciting proposals from other utilities and brokers on selling remaining long position; updating management strategies; and seeking alternatives for portfolio management going forward. Morgan reviewed the Electric Rate Structure:

- Base Monthly Charge (100% of fixed costs)
 - Currently \$24.80 per month (up from \$20.00 in December to offset rising CIP costs due to growth)
- Variable per kilowatt hour (kWh) Charge

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- o Target for all Power and Transmission Costs including ERCOT Fees and Charges
 - \$0.0629 per kWh
 - Power Cost Adjustment Factor (PCA)
 - \$0.004 per kWh
 - o Transmission Cost Adjustment Factor (TCA)
 - 0.0000 per kWh
 - Used when unexpected increases to transmission rates occur during a budget year
 - Delivery costs, fees, and charges incurred by the City
 - \$0.0329 per kWh

He stated that effective February 1st the City will adjust the PCA by \$0.0135 per kwh through the end of September 2019. Morgan added that the average customer uses 949 kwhs per month, and the PCA adjustment will impact the average bill by \$12.82 per month. He stated that the PCA adjustment will generate \$6 million in FY19, and is needed to ensure the financial stability of the electric fund should steps to reduce our long position take longer to implement than expected. Morgan said that the City relied heavily on minimizing being in the short position and leaned too much on the side of being in the long position. He added that staff is moving forward in trying to remove the City from the long position.

Hesser asked Morgan to describe cash settlement process and if the City purchased today, how does it get settled on a cash basis. Briggs explained that ERCOT tracks transactions across 30 days to know what went where and at what price. He added that ERCOT runs all needed algorithms and then distribute out a bill and all participants pay their portion.

Mayor Ross stated that it was valuable presentation with good information.

E. Presentation, discussion and possible direction regarding the City Council's Governance Policy and Meeting Procedures -- Jack Daly, Assistant to the City Manager

Daly presented on the City Council's Governance Policy and Meeting Procedures. He provided the background of the Council's Governance Policy and how it outlines relationship between City Councilmembers and staff, was originally adopted in 1994 and then updated in 2012. Daly stated that meeting procedures are codified in an ordnance and explain the when, how, and who of a meeting. He reviewed the purpose for Governance Policy and how it outlines City Council's responsibilities and obligations to good governance, other City Councilmembers, staff, media and the public. Daly then reviewed the eleven parts of the Governance Policy. He stated that the guidelines state that Council shall be responsive, future-oriented, respectful, encourage communication, maintain relationships with other entities, ensure quality of life,

and show stewardship and promote trust with the public. Daly stated that these points were codified in the Ethics Ordinance. He reviewed the Governance Principles which are to be loyal to citizens above all else, principle of honor and integrity, avoid gifts and appearance of impropriety, receive no personal gain, policy decisions are responsibility of Council, comply with Ethics Ordinance, and be open and transparent. Daly said that Council meetings will be reviewed later and that Councilmembers have a responsibility to be prepared and stay informed of Council decisions even when absent from meetings. He reviewed the Mayor's role as a spokesperson for Council who presides over meetings, preserves decorum, and is the mediator. Daly explained that Council has a prerogative to establish Council committees that can be subcommittees or ad-hoc committees to prepare policy, citizen advisory committees to resolve policy decisions, and boards, commissions, or committees to make recommendations. He added the Governance Policy addresses the obligation of the Council to receive education and training including a new member orientation. Daly stated that councilmembers are encouraged to attend continuing education. He said that with media relations, Council is expected to maintain professional working relationship. Daly added that the City Manager, or designee, handles administrative and operations matters and the Mayor handles policy issues. He stated that in terms of Council's relationship with staff, the Council authority is collective and not per individual, while operations and administration falls to the City Manager. Daly continued that Council provides policy direction, the is tasked with City Manager providing regular updates, including to City Secretary and City Attorney, and any communication or requests from Council should be made through City Manager. He explained the Council's relationship with City Attorney that the City Attorney is a legal advisor who represents the City, not individual councilmembers, acts at direction of Council and keeps the City Manager and City Secretary informed of requests. Daly then explained the Council's relationship with City Secretary and that the City Secretary is the official record keeper, oversees records management, coordinates ceremonial activities, oversees boards and commissions, is the liaison to the ethics commission, conducts ethics training, manages elections, and keeps the City Manager and City Attorney informed. He reviewed the Council's relationship with boards, commissions, and committees and how the boards do not supervise employees, staff assists with regulatory compliance, the chairperson is ultimately responsible, staff provides support and information, the boards, commissions, and committees advise Council on assigned topics, councilmembers should not take part in meetings or address boards if not on the board, and direction to boards must be made on the record.

Fought posed three suggestions: communication with study groups that allows councilmembers to give their questions to the group prior to reviewing at Council; make it clear that the rules apply to everyone, including the Councilmembers; and stop use of the motion to reconsider and follow Robert's Rules instead. Pitts stated that he would like to see a section regarding use of social media and how information is delivered. Gonzalez stated that he agrees with Fought on making sure that all rules apply to councilmembers including the use of proper timelines. He added that the feels it is bad policy to set out general accusations from the dais without proof. Nicholson asked if there was anything specific on councilmembers bringing items to the agenda. Daly responded that he would review that later in the presentation. Pitts asked about the consequences for violating the ethics policy and what happens when it is violated. He added that he didn't know what the punishment should be but would like for it to be considered.

Jonrowe asked Fought for a hypothetical scenario for motion to reconsider so she could better understand the proposition. Fought explained the possibility of new information being brought forward during a meeting that effected a previous item, and Council having the ability to go back to a previous item, from the same meeting, and reconsider it. Jonrowe asked McNabb for clarification. McNabb explained that rules of consideration for items at a current meeting versus previous meeting. General discussion continue about possible scenarios and what the proper motions would be for them. Jonrowe said that whatever suggestions are made by Council she would like to have the City Attorney weigh in on them to verify the legality of the suggestions.

Daly resumed the presentation by reviewing Council meetings and how regular and workshop meetings are held the 2nd and 4th Tuesdays of each month at 6 p.m. He added that workshop meetings are to discuss matters with no specific action and no public comment and special meetings can be called by Mayor, City Manager, or three Councilmembers. Daly reviewed the process for placing items on an agenda. He added that Mayor, councilmember, or City Manager may place an item by 5 p.m. on Tuesday preceding the week of the meeting and the councilmember or Mayor is responsible for preparing their item with requests for support going through City Manager. Daly said that City staff submits items through City Manager. He reviewed how the agendas were assembled, sent out, and notices of meetings posted. He said that the chairperson is the Mayor or Mayor Pro Tem, but if both are out Council may elect temporary chair. Daly reviewed the general rules of a Council meeting: a quorum consist of four Councilmembers, plus Mayor or five Councilmembers; for attendance, Council shall notify the Mayor, City Manager, and City Secretary if unable to attend; and Call to Order is done by Mayor, Pro Tem, or City Secretary if both are absent and then Council will elect a temporary chair if needed. He explained the procedure for right to the floor of councilmembers: they will be recognized by the Chairperson; confine remarks to the subject under consideration or to be considered; no councilmember shall be allowed to speak more than once on any one subject until every councilmember wishing to speak has spoken; and no councilmember shall be permitted to interrupt another. Daly reviewed the procedures for special presentations of certain topics under consideration of Council that may require detailed communication from an individual or organization are to receive prior approval from the City Manager's office by the agenda deadline. He then reviewed how citizens are handled regarding

right to floor: citizens must sign up to speak in accordance with the policy of the Council; citizens shall be allowed a maximum of three minutes to speak, or six minutes with someone conceding time; persons who disrupt the meeting may be asked to leave and be removed; and a citizen may address the Council up to three times during any calendar quarter. Daly explained the Code of Conduct for Council is to: preserve order and decorum; not delay or interrupt the proceedings; treat each other with dignity, respect and civility; and if speaking out of turn Council may call to order, in which case Councilmember shall immediately refrain. He then reviewed Parliamentary Procedure and how Robert's Rules of Order shall prevail if there are procedural questions not addressed by provisions of the City Charter and/or the rules of procedure contained in this Chapter and in the event of conflict between the Charter or Code of Ordinances and Robert's Rules of Order, Newly Revised, the Charter and/or Code of Ordinances shall prevail. Daly then listed the motions that can used by Council: motion to approve; motion to adjourn; motion to recess; motion to table; motion for previous question; motion to amend; motion to withdraw and take from table. He then reviewed motion to reconsider and how once vote is done, it cannot be consider again for 90-days and only a member who voted with prevailing side may make a motion to reconsider. Daly reviewed the voting guidelines: Mayor breaks ties; Mayor Pro Tem can vote; and there are no excuses for not voting unless there is a conflict of interest. He added that if there is a conflict the councilmember should announce that he/she is excused from voting, leaves dais, and not enter into discussion or debate on the matter. Daly stated that an appearance of impropriety shall be excused from voting and the councilmember should state publicly the reason(s) why voting would be improper. He continued that any councilmember excused from voting shall be treated as if that member was absent and an affirmative vote of a majority of the Council present and qualified to vote is necessary to repeal or approve any ordinance or take any official action in the name of the City. Daly stated that the following section will be removed per earlier direction: When considering planning, zoning and development applications, the failure of a positive motion to receive an affirmative vote by the required number of Councilmembers (majority, three-fourths vote, or supermajority) shall be deemed to be a denial of the application by the City Council, unless a subsequent positive motion is affirmatively passed during discussion of the agenda item on the day of the failed motion, or such subsequent meeting of the City Council, if the item is deferred for further consideration. He said that Council is allowed to perform a suspension of rules and parts of this chapter may be suspended by a majority plus one vote of Council. Daly stated that Council may adopt a governance policy to further this chapter. He then reviewed the next steps which are to confirm current governance policy and meeting procedures and receive direction on possible changes.

Mayor Ross stated that the objective of the day was to receive the view of individual councilmembers and that this would be brought back at a later date and at another workshop. Daly stated that staff will be sure and consult with the City Attorney on proposed changes.

Nicholson stated that there have been times when councilmembers have put items on the agenda and based on the controversial nature of the topic advanced and working with staff should be considered.

Mayor Ross would like a conversation about two councilmembers putting an item on the agenda which guarantees a second on the item and conversation the meeting. He added that putting items on the agenda Tuesday before does not allow enough time for review by staff or Council. Jonrowe asked Mayor Ross if he suggesting that this become a requirement. Mayor Ross responded yes. Mayor Ross continued that he would also like a conversation about when the Council is in an applet board situation and having councilmembers prejudge items before considering both sides to guarantee fairness. Eby asked for clarification on the purpose of this conversation as being to put items on the table for discussion. Mayor Ross responded that was correct. He added that Council needs to revisit that councilmembers don't have rights to scold public speakers.

Council recessed into executive session at 5:45 p.m.

Executive Session

In compliance with the Open Meetings Act, Chapter 551, Government Code, Vernon's Texas Codes, Annotated, the items listed below will be discussed in closed session and are subject to action in the regular session.

F. Sec. 551.071: Consultation with Attorney
Advice from attorney about pending or contemplated litigation and other matters on which the attorney has a duty to advise the City
Council, including agenda items

Foley and Ladner waiver of lienholder conflict for Northwest Blvd., Parcel 4
Sec. 551:074: Personnel Matters
City Manager, City Attorney, City Secretary and Municipal Judge: Consideration of the appointment, employment, evaluation,
reassignment, duties, discipline, or dismissal
Sec. 551.086: Certain Public Power Utilities: Competitive Matters
- Purchase Power Update -- Jim Briggs, General Manager of Utilities
Sec. 551.087: Deliberation Regarding Economic Development Negotiations
- Project Gear

Approved	by the	Georgetowr	n City	Council	on	
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Date

Dale Ross, Mayor

Attest: City Secretary

SUBJECT:

Consideration and possible action to **appoint members** to the **City of Georgetown Advisory Boards and Commissions** -- Mayor Dale Ross

ITEM SUMMARY:

FINANCIAL IMPACT: N/A

SUBMITTED BY: Robyn Densmore on behalf of Mayor Ross

ATTACHMENTS:

Mayor Board and Commission Appointments 2019

	2019 Boards and Com	missions Appointments	
Americans with Dis	abilities Act Advisory Board	Georgetown Village Public I	mprovement District Board
Lavera Patton	Reappointment	Michael Charles	New Appointment
Johnathan Dade	Reappointment	Steve Taylor (alternate #1)	New Appointment
Lydia Harkey	New Appointment	Howard Davis (alternate #2)	New Appointment
Animal She	elter Advisory Board	Marlene McMichael	Reappointment
Ned Atkins	New Appointment	Gary Newman	Reappointment
Arthur Bartleson	Reappointment	Penny Evans	Reappointment
Laura Klein Plunkett	Reappointment	Historic Architectural	Review Commission
Arts and Cu	Iture Advisory Board	Josh Schroeder	New Appointment
Susie Kelly Flatau	Reappointment	Karalei Nunn	New Appointment
Jane Estes	Reappointment	Amanda Parr	Reappointment
Sharon Snuffer	Reappointment	Arthur Browner	Reappointment
Building Sta	andards Commission	Steve Johnston (alternate #1)	New Appointment
Todd Treadway	New Appointment	Pam Mitchell (alternate #2)	New Appointment
Bill Stump	Reappointment	Housing Adv	isory Board
-	ission on Aging	Lou Snead	Reappointment
Mary Kathleen Hopkins	New Appointment	Bob Weimer	Reappointment
Gerald Nicklen	New Appointment	Library Advi	
Gerald Lourigan	New Appointment	Cale Hart	New Appointment
Beverly Stehle	Reappointment	Richard Thielmann	New Appointment
Convention and Vis	itor's Bureau Advisory Board	Linda Schaffer	Reappointment
Karen Soeffker	New Appointment	Main Street Ac	
Christy Fisher	New Appointment	Christine Tomaszewski	New Appointment
Daniel Orozco	New Appointment	Trisha Tallman	Reappointment
	nic Development Corporation	Diane Gaume	Reappointment
Hugh Brown	New Appointment	Planning and Zon	
Ron Garland	New Appointment	Marlene McMichael	New Appointment
Kevin Cummins	New Appointment	Aaron Albright (alternate #1)	New Appointment
	ent and Finanace Committee	Glenn Patterson (alternate #2)	New Appointment
Chere Heintzmann	Reappointment	Travis Perthuis	Reappointment
Georgetown Tran	sportation Advisory Board	Ercel Brashear	Reappointment
George Brown	New Appointment	Parks and Recreation	
Sheila Mills	Reappointment	Danelle Houck	Reappointment
Ercel Brashear	New Appointment	Larry Gambone	Reappointment
Georgetown Transport	ation Enhancement Corporation	Wayne Beyer	Reappointment
John Marler	New Appointment	Strategic Partnerships for	
Alfred Hajka	Reappointment	Jaquita Wilson	Reappointment
-	y Systems Advisory Board	Michael Douglas	Reappointment
Stuart Garner	New Appointment	, , , , , , , , , , , , , , , , , , ,	Code Advisory Board
Robert Kostka	New Appointment	PJ Stevens	Reappointment
Weston Wicks	New Appointment	Brett Danaher	Reappointment
		Stuart Garner	New Appointment
		Philip Wanke	New Appointment
Total Number of Appoint	ments = 65	Youth Advis	
Total Number of Applica		Jacob (J.T.) Bradley	New Appointment
		Lucas Friggle	New Appointment
		Garrett R Hevey	New Appointment
		Zoning Board o	
		Ed Whitmore	Reappointment
		Stephanie Gipson Lafears (alternate	• •
		Shane Mitchell (alternate #2)	New Appointment

SUBJECT:

Consideration and possible action to appoint members to the Georgetown Housing Authority -- Mayor Dale Ross

ITEM SUMMARY:

FINANCIAL IMPACT: N/A

SUBMITTED BY: Robyn Desnmore on behalf of Mayor Ross

ATTACHMENTS:

Mayor Georgetown Housing Authority Appointments 2019

2019 Georgetown Hou	using Authority Appointments
Georgetowi	n Housing Authority
Nikita Goodwin	
Terri Michelle	

Total Number of Appointments = 2

Current Members Tom Karr Orville Ramsey Larry Raper Tim Todd

Page 27 of 736

SUBJECT:

Consideration and possible action to **appoint City Councilmembers** to the **City of Georgetown Advisory Boards** --Mayor Dale Ross

ITEM SUMMARY:

FINANCIAL IMPACT: N/A

SUBMITTED BY: Robyn Densmore on behalf of Mayor Ross

ATTACHMENTS:

Mayor Council Representative Appts 2019

2019 Council	Representative Appointments
Anima	Shelter Advisory Board
Anna Eby	
Georgetown Ec	onomic Development Corporation
Valerie Nicholson	
Steve Fought	
General Govern	ment and Finance Advisory Board
Kevin Pitts	
Tommy Gonzalez	
Georgetown	Transportation Advisory Board
John Hesser	
Georgetown Trans	portation Enhancement Corporation
John Hesser	
Rachael Jonrowe	
Georgetown	Utility Systems Advisory Board
Steve Fought	

Total Number of Appointments = 9

SUBJECT:

Consideration and possible action to **appoint Board Chairs** to the **City of Georgetown Advisory Boards** -- Mayor Dale Ross

ITEM SUMMARY:

FINANCIAL IMPACT: N/A

SUBMITTED BY: Robyn Densmore on behalf of Mayor Ross

ATTACHMENTS:

Mayor B&C Chair Appointments 2019

2019 Boards and Commissions Chair Appointments
Americans with Disabilities Act Advisory Board
Johnathan Dade
Animal Shelter Advisory Board
Nica Gill
Arts and Culture Advisory Board
Jane Estes
Building Standards Commission
Bill Stump
Commission on Aging
Virginia Hahn
Convention and Visitor's Bureau Advisory Board
Rita Healy
Georgetown Economic Development Corporation
TBD
Georgetown Housing Authority
Larry Raper
General Government and Finanace Committee
Tommy Gonzalez
Georgetown Transportation Enrichment Corporation
TBD
Georgetown Transportation Advisory Board
Ronald Bindas
Georgetown Utility Systems Advisory Board
Ed Pastor
Georgetown Village Public Improvement District Board
Marlene McMichael
Historic Architectural Review Commission
Josh Schroeder
Housing Advisory Board
Lou Snead
Library Advisory Board
Lindsay Cooper
Main Street Advisory Board
Trisha Tallman
Parks and Recreation Advisory Board
James Hougnon
Planning & Zoning Commission
Ercel Brashear
Strategic Partnerships for Community Services
Jaquita Wilson
Unified Development Code Advisory Board
PJ Stevens
Youth Advisory Board
Alvin Gusman
Zoning Board of Adjustments
Alex Fuller

Total Number of Appointments = 21

SUBJECT:

Consideration and possible action to **appoint members** and **chairs** to the **Williams Drive** Tax Increment Reinvestment Zone (TIRZ) Board, Downtown Georgetown TIRZ Board, Rivery Park TIRZ Board, and South Georgetown TIRZ Board -- Mayor Dale Ross

ITEM SUMMARY:

FINANCIAL IMPACT: N/A

SUBMITTED BY: Robyn Densmore on behalf of Mayor Ross

ATTACHMENTS:

Mayor TIRZ Board Appointments 2019

2019 Boards and Commis	sions Appointments
Williams Driv	ve TIRZ
Dale Ross	Chair
David Morgan	
Steve West (GISD)	
Valerie Nicholson	
Brad Curlee	
Downtown Georg	jetown TIRZ
Dale Ross	Chair
Rachael Jonrowe	
Rusty Winkstern	
Karen Soeffker	
Trisha Tallman	
Rivery Park	TIRZ
Dale Ross	Chair
Valerie Nicholson	
Leigh Wallace	
Laurie Brewer	
Jeff Novak	
Ronald Swain	
Valerie Covey	
Terry Wilson	
Charles Schwertner	
South Georget	
Dale Ross	Chair
David Morgan	
Glenn Dishong	
Sofia Nelson	
GUS Chair	
Anna Eby	
GTEC President	

SUBJECT:

Consideration and possible action to **appoint the Ethics Commission and Chair** as a **City of Georgetown Advisory Board** -- Mayor Dale Ross

ITEM SUMMARY:

FINANCIAL IMPACT:

SUBMITTED BY: Robyn Desnmore on behalf of Mayor Ross

ATTACHMENTS:

Mayor Ethics Commission Appointments

Ethics C	Commission
Christine Tomaszewski	2 year Term
Kelly McClennahan Barnett	1 year Term
TBD	2 year Term
TBD	1 year Term
Thomas Rice	Chair and 2 year Term
Dennis Wilson	1 year Term
Dawn Korman	2 year TErm
Jade Doss	1 year Term

SUBJECT:

Forwarded from Georgetown Economic Development Corporation (GEDCO): Consideration and possible action to approve an economic development performance agreement with WBW Single Development LLC – Series 201 --Michaela Dollar, Economic Development Director

ITEM SUMMARY:

WBW Single Development LLC plans to partner with the landowner and developer located at Austin Avenue and the San Gabriel River to construct a mixed-use development. Following development, the company will gain ownership of its offices within the development. WBW will invest a minimum of \$3,000,000 in capital expenditures, and will receive a \$200,000 infrastructure reimbursement grant. Additionally, it will create a minimum of 30 jobs with an average annual salary of \$90,000 or greater to obtain a job creation grant of \$3,000 per job, up to \$120,000 total. The total economic development incentive will not exceed \$320,000.

FINANCIAL IMPACT: \$320,000 economic development incentive from Georgetown Economic Development Corporation (Type A) funds.

SUBMITTED BY: Michaela Dollar, Economic Development Director

ATTACHMENTS:

WBW Single Development LLC performance agreement

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** by and between *WBW SINGLE DEVELOPMENT LLC – SERIES 201* a Texas limited liability company (hereinafter referred to as "WBW"), and the *GEORGETOWN ECONOMIC DEVELOPMENT CORPORATION*, a Texas non-profit corporation (hereinafter referred to as "GEDCO"), is made and executed on the following recitals, terms and conditions.

RECITALS

1. WBW has applied to GEDCO for financial assistance for a mixed-use development to be located at Austin Avenue and the San Gabriel River in Georgetown, Williamson County, Texas (hereinafter referred to as the "Property"), and more fully described in Exhibit "A" to this Agreement.

2. WBW plans to complete the following project, as defined below, and at a minimum:

partner with property owner of the Property located at Austin Avenue and the San Gabriel River on a mixed-use development; gain ownership of the building consisting of their offices; and will make a \$3,000,000 capital investment for their owned portion and will create a minimum of 30 jobs with an average annual compensation of at least \$90,000.

3. GEDCO is a Type A economic development corporation operating pursuant to Chapter 504 of the Texas Local Government Code, as amended (also referred to as the "Act"), and the Texas Non-Profit Corporation Act, as codified in the Texas Business Organizations Code, as amended.

4. Section 501.101 of the Texas Local Government Code, in pertinent part, defines the term "project" to mean "land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements that are: (1) for the creation or retention of primary jobs; and (2) found by the board of directors to be required or suitable for the development, retention, or expansion of: (A) manufacturing and industrial facilities; (B) research and development facilities; (C) military facilities, including closed or realigned military bases; (D) recycling facilities; (E) distribution centers; (F) small warehouse facilities capable of serving as decentralized storage and distribution centers; (G) primary job training facilities for use by institutions of higher education; or (H) regional or national corporate headquarters facilities."

5. Section 501.103 of the Texas Local Government Code, in pertinent part, defines the term "project" to mean "expenditures that are found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, limited to: (1) streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements; (2) telecommunications and Internet improvements;..."

6. Section 501.158 of the Texas Local Government Code prohibits GEDCO from providing a direct incentive to or making an expenditure on behalf of WBW under a project unless GEDCO enters into a performance agreement with WBW.

7. GEDCO's Board of Directors has determined that the financial assistance provided to WBW pursuant to this Agreement is consistent with and meets the definition of "project" as that term is defined in Sections 501.101 and 501.103 of the Texas Local Government Code; and the definition of "cost" as that term is defined by Section 501.152 of the Texas Local Government Code.

8. WBW agrees and understands that Section 501.073(a) of the Texas Local Government Code requires the City Council of the City of Georgetown, Texas, to approve all programs and expenditures of GEDCO, and accordingly this Agreement is not effective until City Council has approved this project at a City Council meeting called and held for that purpose.

In consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, GEDCO and WBW agree as follows:

SECTION 1. FINDINGS INCORPORATED.

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

SECTION 2. WBW'S RESPONSIBILITIES.

In addition to all other duties and obligations under this Agreement, WBW shall have the following responsibilities:

- 2.1. <u>Requirement to Construct the Project</u>. WBW shall construct the Project as described with Certificate of Occupancy issued on or before December 31, 2020.
- 2.2. <u>Creation or Retention of Full-time Primary Jobs</u>. WBW shall, upon completion of the Project, create a minimum of 30 full-time primary jobs within six (6) years of the Certificate of Occupancy date, to be maintained for a period of at least ten (10) years from the Certificate of Occupancy date of the Project. For the purposes of this Agreement, a full-time job shall be defined as permanent employment for thirty-five (35) hours or more per week in each month of the year following completion of the Project. The information substantiating the number of jobs created/retained is outlined in Exhibit "A" of this document, and is required to be provided to the GEDCO by December 31 of each year for the ten-year period commencing on the Certificate of Occupancy date of the, and shall include the starting and ending payroll in order to assist in determining the number of

jobs created/retained. Seasonal, temporary, or part-time jobs are not considered to be new permanent jobs and shall not be counted as full-time jobs for the purposes of this Agreement. Jobs created includes all personnel for whom the home office is located at the Property, including those current staff presently working outside of the City of Georgetown, but who will relocate to the Property upon completion. It is mutually understood that the job creation requirements will be satisfied by or through one or more entities under Common Control with WBW, rather than through WBW directly. The date of completion of the Project shall be the date a Certificate of Occupancy is issued by the City for the Project.

Compliance with the City's Development Requirements. WBW shall comply 2.3. with the City's development approval processes (including obtaining approval of the City's Historic and Architectural Review Commission, if required by law, and the City's approval of the Site Plan and any other City development procedures), and WBW shall develop the Project on the Property consistent with the City's Unified Development Code, the City-approved zoning ordinance for the Property, the City-approved development plans, all applicable City ordinances, requirements, rules and manuals, and other City development, utility, and design and construction requirements, as the same may be amended from time to time (collectively, the "City's Development Requirements"). WBW expressly agrees that neither this Agreement nor any proceedings related to the request by WBW for funds constitute a vesting event under Chapter 245 of the Local Government Code. WBW shall comply with the City's development regulations in effect at the time of their first application for approval of development of the Property.

SECTION 3. GEDCO RESPONSIBILITIES.

In addition to all other duties and obligations under this Agreement, GEDCO shall have the following responsibilities:

- 3.1. <u>Use of Funds</u>. Subject to other terms and conditions of this Agreement, GEDCO shall reimburse WBW for certain costs and expenses incurred by WBW for WBW-Constructed Public Improvements as provided in Section 501.101 of the Texas Local Government Code, but not to exceed \$200,000. Additionally, GEDCO shall grant WBW \$3,000 per net new job created for a period of six (6) years from the completion date of the project, up to \$120,000 in total. An initial payment of the job creation grant shall be made upon WBW's initial occupancy, and the grant for additional jobs created shall be made annually upon submission of the information described in Section 2.2, above. The total incentive amount under this Agreement shall not exceed \$320,000.
- 3.2. <u>Coordination with the City</u>. In accordance with the Project Agreement between the City and GEDCO, GEDCO shall cause the City to review WBW-Constructed Public Improvements in accordance with the City's Development Requirements and other applicable criteria. Payment is anticipated upon issuance of a certificate

of occupancy for the Property.

For purposes of Section 3.1 and the project described in Recital 2, above, it is mutually understood that WBW will fund the development and the WBW-Constructed Public Improvements through an interim financing agreement with the current landowner, ahead of closing on an ownership interest in the Property through a single-purpose entity under Common Control with WBW upon completion of the shell of the building. Notwithstanding the foregoing, the eligible costs funded through that mechanism shall be eligible for reimbursement under Section 3.1, above.

SECTION 4. CESSATION OF FINANCIAL ASSISTANCE.

If GEDCO has made any commitment to make any reimbursement to WBW, whether under this Agreement or under any other agreement, GEDCO shall have no obligation to advance or disburse financial assistance pursuant to this Agreement if: (i) WBW becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged bankrupt; or (ii) an Event of Default occurs.

SECTION 5. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

- (a) Affirmative Covenants of WBW. Failure of WBW to comply with any of the Affirmative Covenants included in Section 2 of this Agreement is an Event of Default.
- (b) Affirmative Covenants of GEDCO. Failure of GEDCO to comply with any of the Affirmative Covenants included in Section 3 of this Agreement is an Event of Default.
- (c) False Statements. Any warranty, representation, or statement made or furnished to GEDCO by or on behalf of WBW under this Agreement or the Related Documents that is false or misleading in any material respect, either now or at the time made or furnished is an Event of Default.
- (d) **Insolvency**. WBW's insolvency, appointment of receiver for any part of WBW's property, any assignment for the benefit of creditors of WBW, any type of creditor workout for WBW, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against WBW is an Event of Default.
- (e) Other Defaults. Failure of WBW or GEDCO to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents, or failure of WBW or GEDCO to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement between GEDCO and WBW is an Event of Default.

SECTION 6. EFFECT OF AN EVENT OF DEFAULT.

The non-defaulting party shall give written notice to the other party of any Event of Default, and the defaulting party shall have thirty (30) days to cure said default. Should said default remain uncured as of the last day of the cure period, and the non-defaulting party is not otherwise in default, the non-defaulting party shall have the right to immediately terminate this Agreement.

SECTION 7. INDEMNIFICATION.

WBW shall indemnify, save, and hold harmless GEDCO, its directors, officers, agents, attorneys, and employees (collectively, the "Indemnitees") from and against: (i) any and all claims, demands, actions or causes of action that are asserted against any Indemnitee if the claim, demand, action or cause of action directly or indirectly relates to tortious interference with contract or business interference, or wrongful or negligent use of GEDCO's funds by WBW or its agents and employees; (ii) any administrative or investigative proceeding by any governmental authority directly or indirectly related, to a claim, demand, action or cause of action in which GEDCO is a disinterested party; (iii) any claim, demand, action or cause of action which directly or indirectly contests or challenges the legal authority of GEDCO or WBW to enter into this Agreement; and (iv) any and all liabilities, losses, costs, or expenses (including reasonable attorneys' fees and disbursements) that any Indemnitee suffers or incurs as a result of any of the foregoing; provided, however, that WBW shall have no obligation under this Section to GEDCO with respect to any of the foregoing arising out of the gross negligence or willful misconduct of GEDCO or the breach by GEDCO of this Agreement. If any claim, demand, action or cause of action is asserted against any Indemnitee, such Indemnitee shall promptly notify WBW, but the failure to so promptly notify WBW shall not affect WBW's obligations under this Section unless such failure materially prejudices WBW's right to participate in the contest of such claim, demand, action or cause of action, as hereinafter provided. If requested by WBW in writing, as so long as no Default or Event of Default shall have occurred and be continuing, such Indemnitee shall in good faith contest the validity, applicability and amount of such claim, demand, action or cause of action and shall permit WBW to participate in such contest. Any Indemnitee that proposes to settle or compromise any claim, demand, action, cause of action or proceeding for which WBW may be liable for payment of indemnity hereunder shall give WBW written notice of the terms of such proposed settlement or compromise reasonably in advance of settling or compromising such claim or proceeding and shall obtain WBW's concurrence thereto.

SECTION 8. MISCELLANEOUS PROVISIONS.

Amendments. This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by GEDCO and WBW, and approved by the City Council.

Applicable Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Williamson County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Williamson County, Texas.

Assignment. This Agreement may not be assigned without the express written consent of the other party, and approval of the City Council.

Common Control. The parties understand WBW operates its businesses through several entities under common control. For purposes of this Agreement common control shall mean all related activities performed through "common control" for a common business purpose. The word "control" may be defined as the act of fact of controlling; power or authority to control; directing or restraining domination. In relation to the performance of the described activities herewithin, the "control," includes the power to direct, restrict, regulate, govern, or administer the performance of the activities. "Common" control includes the sharing of control and it is not limited to sole control or complete control by one entity.

Binding Obligation. This Agreement shall become a binding obligation on GEDCO and WBW upon execution by the Parties, and approval of the City Council. WBW warrants and represents that the individual executing this Agreement on behalf of WBW has full authority to execute this Agreement and bind WBW to the same. GEDCO warrants and represents that the individual executing this behalf has full authority to execute this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.

Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.

Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

Notices. Any notice or other communication required or permitted by this Agreement (hereinafter referred to as the "Notice") is effective when in writing and (i) personally delivered by hand or (ii) mailed with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows:

If to WBW:	WBW Single Development LLC – Series 201
	3000 Illinois Avenue, Suite 100
	Killeen, TX 76543
	Attn: David L. Peter, VP of Development
	Telephone: (254) 953-5353

If to GEDCO:	Georgetown Economic Development Corporation 113 E 8 th Street Georgetown, Texas 78626 Attn: City Manager Telephone: (512) 930-3546
	Telephone: (512) 930-3546

Severability. If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.

Time is of the Essence. Time is of the essence in the performance of this Agreement.

Undocumented Workers. WBW certifies that WBW does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If WBW is convicted of a violation under 8 U.S.C. § 1324B(f), WBW shall repay the amount of the public subsidy provided under this Agreement plus interest, at the rate of six percent (6%), not later than the 120th day after the date GEDCO notifies WBW of the violation.

WBW ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS PERFORMANCE AGREEMENT AGREES TO ITS TERMS. THIS PERFORMANCE AGREEMENT IS DATED EFFECTIVE AS OF THE EFFECTIVE DATE AS DEFINED HEREIN.

Signed and agreed to on the _____ day of _____, 2019.

WBW SINGLE DEVELOPMENT LLC – SERIES 201, a Texas limited liability company

By:	
Name:	
Title:	

THE STATE OF TEXAS

COUNTY OF WILLIAMSON

This instrument was acknowledged before me on this ____ day of _____, 2019, by _____, as _____ of WBW SINGLE DEVELOPMENT LLC – SERIES 201, a Texas limited liability company, on behalf of said company.

\$ \$ \$

Notary Public – State of Texas

 $\{00010354 \ / \ v3 \ / \ CMCNABB \ / \ ECODEVO \ / \ WBW \ / \ 1/11/2019 \}$

Signed and agreed to on the	_ day of	, 2019.
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GEORGETOWN ECONOMIC DEVELOPMENT CORPORATION, a Texas non-profit corporation

By:	
Name:	
Title:	

Attest:

By: _____, Secretary

THE STATE OF TEXAS \$
S
COUNTY OF WILLIAMSON \$

This instrument was acknowledged before me on this ____ day of _____, 2019, by _____, as President of GEORGETOWN ECONOMIC DEVELOPMENT CORPORATION, a Texas non-profit corporation, on behalf of said corporation.

Notary Public – State of Texas

CERTIFICATION OF CITY COUNCIL APPROVAL

I hereby certify that the foregoing Performance Agreement of the Georgetown Economic Development Corporation and the Project described therein was approved by the City Council of the City of Georgetown, Texas, on the _____ day of _____, 2019.

THE CITY OF GEORGETOWN, TEXAS

A Texas home-rule municipality

By:

Dale Ross, Mayor

By:

Robyn Densmore, City Secretary

APPROVED AS TO FORM:

By:

Charlie McNabb, City Attorney

COMPANY NAME: WBW DEVEL	WBW DEVEL	LOPMENT						
REPORTING PERIOD: (start date-end date)): (start date-	end date)						
REPORT GENERATED BY: (individual's name)	D BY: (indivio	(amen's name)						
REPORT DATE: (date report actually generated)	te report actua	ally generated)						
	eligible NEW						Hours	
	ions d in	eligible nositions	Full-Time Employment Position DERSON NAME				Worked During the	Vear
	year 2	BASE year 1	(last, first)	TTTLE	HIRE DATE	TERM DATE	Period	Paid
	•							
	0	2						
	•							
		4						
		5						
			Number of BASE positions (eligible positions end of year 1)	Ω				
			Number of eligible NEW positions (added in year 2)					
			Total Number of Eligible positions at end of this reporting preriod	0				
			TOTAL POSITIONS					

Exhibit "A"

City of Georgetown, Texas City Council Regular Meeting February 12, 2019

SUBJECT:

Forwarded from the General Government and Finance Advisory Board (GGAF):

Consideration and possible action to approve **purchasing authority** for **fuel card services** and **related products** with FleetCor Technologies dba **Fuelman** in amount not to exceed **\$875,000.00** -- Stan Hohman, Fleet Services Manager

ITEM SUMMARY:

This item is to request authority to continue purchasing fuel card services and related products under the TCPN contract that the City currently has with FleetCor Technologies dba Fuelman. Last year the requested amount for these services was \$830.000.

Staff projects an increase of 5.4% in fuel usage which is based on increases seen in previous years. In FY 2019 the City has seen a 4% increase in the vehicle count and an average of 4% over the past 4 years. Fuel usage in the past 5 years has averaged a 5.4% increase. This average excludes the year that the Chisholm Trail Water District was acquired since we saw a larger that normal increase that year. Fuel usage is actual gallons used, not the price of the fuel. If the price of fuel had not come down back in November, then our fuel spend would have been closer to the last years requested amount. With that in mind, staff is asking for 5.4% increase over our request from last year. The increase brings the requested maximum amount to spend to \$875,000. This is a not to exceed amount. Each year the contract is in place, staff will request budget authority to spend under the current contract.

Fuelman was awarded a contract through the Cooperative Purchasing Network (TCPN) under Contract No. R5161501 effective April 1, 2017 through March 31, 2020. This is for City fuel services to include Fuelman cards for offsite fuel purchases and management and stocking (inventory) of the City's onsite fuel station. In continuing with Fleetcor Technologies the City will keep the same billing and reporting system that we are currently using which includes real time transaction posting and exception alerts which help reduce the risk of theft or fraudulent use.

Pricing is based on OPIS wholesale cost pricing as defined in the TCPN contract proposal plus freight and applicable taxes. OPIS (Oil Price Information Service) is an independent company that tracks and provides refiner terminal rack prices to resellers by Rack Market. Rack Market refers to where the petroleum products are sold at the wholesale level from primary storage. For the Georgetown area this is typically the Austin loading rack where the tanker trucks fill up. This was presented to the General Government & Finance Advisory Board on January 23, 2019 and was approved.

FINANCIAL IMPACT:

Total annual cost is not to exceed \$875,000. This amount will continue to be paid from the individual fuel budget accounts for each division.

SUBMITTED BY: Stan Hohman, Fleet Services Manager

City of Georgetown, Texas City Council Regular Meeting February 12, 2019

SUBJECT:

Forwarded from General Government and Finance Advisory Board (GGAF):

Consideration and possible action to approve a business consulting and IT support services contract with Itineris, N.A. to provide services through September 31, 2019 for \$320,500.00 and to provide services for two additional years for an annual expenditure of \$424,500.00 -- Leticia Zavala, Customer Care Director

ITEM SUMMARY:

This contract is for post implementation support of the UMAX Customer Information System used for billing and customer interaction. An interim services contract was recommended by GGAF and approved by Council in December 2018 for services through January 2019.

This contract provides services from February through September 31st, 2021. An upgrade to a cloud product is expected in 2021 and the goal of this service contract is to address support needs until that new model is implemented. Services provided are above the base level maintenance and support included with the standard software licensing terms and includes services in the following areas:

	Year1 (B)	Year2	Year3
	2019	2020	2021
	(8 months)	(12 months)	(12 months)
Business Consulting:			
Business Assurance (Includes Travel)	\$66,500	\$76,000	\$76,000
20% dedicated resources (on-site)			
IT Support Services:			
L2 Support	\$76,000	\$81,500	\$81,500
Application Support & Maintenance Services			
Managed Services	\$154,000	\$200,000	\$175,000
Release/Change/Deploy/Configuration			
SLA Management			
Batch & Interface Management			

Service Catalog – Pre-defined and prepaid effort (60
"person" days) \$24,000 \$36,000 \$36,000 Availability Software & Management
Monitoring software & database performance \$24,000 \$36,000 \$36,000 Contingency: \$31,000 \$56,000 Service Contract Annual Cost: \$320,500 \$424,500 \$424,500

FINANCIAL IMPACT:

The expense was approved in the budget (GL #540-5-0321-51-330 - Special Services). Subsequent years will be budgeted through the IT Internal Services Fund and allocated to the utility.

SUBMITTED BY:

Leticia Zavala, Customer Care Director

ATTACHMENTS:

Final SOW with signature Appendix C Appendix D Appendix E Appendix F







Statement of Work

Prepared for: City of Georgetown, TX December 27th, 2018





Version Control

Sign off

Name	Job Title		Date
Leticia Zavala	Customer Director, GUS	Care	

Supporting Documentation

File Name	Author	Location
Incident Management Process.pdf	Itineris	Attachment
Change Management Process.pdf	Itineris	Attachment
Release Management Process.pdf	Itineris	Attachment
GUS - STD Service Catalog_v1.0.xls	Itineris	Attachment





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1 Project Introduction

1.1 Document Purpose

This **Statement of Work** (the **"SOW"**) and any exhibits, appendices, schedules and attachments, the terms of which are incorporated herein by reference, is entered into by and between the City of Georgetown, TX, (the **"Customer"**) and Itineris NA, Inc (the **"Service Provider"**) on **Davues 25**, 2019 pursuant to the **Framework Agreement** by and between the Customer and the Service Provider dated [May 04th 2016] (the **"Framework Agreement"**), the terms of which are incorporated herein by reference.

The Parties acknowledge and confirm the expiration on Sep 30th, 2018 of the initial Statement of Work entered into between the Parties (dated May 04th, 2016), covering the services performed by the Service Provider related to the Georgetown Utility Systems (GUS) Customer Information System (CIS) Replacement Project.

This SOW sets forth the services to be performed by the Service Provider (the **"Services"** as further described herein) related to the Georgetown Utility Systems (GUS) Customer Information System (UMAX CIS) Application Maintenance & Support (the **"Project"**). Capitalized terms used in this SOW and not separately defined in this SOW, shall have the respective meaning ascribed to such terms in the Framework Agreement. This SOW, in conjunction with the appendixes (including the RACI and interfaces and the matrix) represents the complete baseline for the scope of and the Services to this SOW. All changes to this SOW will be managed in accordance with the Change Management Process defined below.

In the event of conflict between the terms of this SOW and any other Statement of Work related to the Framework Agreement, the scope of each Statement of Work shall be governed by the respective terms and conditions of the relevant Statement of Work.

1.2 Objective

The UMAX CIS in operation is managed by the Customer on a day-to-day basis. The Service Provider will provide Services to assist the Customer to make sure the system remains in a healthy state and to stay current with regards to small changes of business requirements. These Services are additional Services, on top of the services that are included in the Recurring License Fee as described in the License Transaction Agreement in Schedule B (the "License Transaction Agreement") to the Umax Software License Terms (the "Software License Terms").

The Customer strives to provide the best services to their customers minimizing the business interruptions due to failures/releases in UMAX system. It plans to do that by adopting best in class processes and tools to solve, document and eliminate the problems and by taking the Services from the Service Provider.





1.3 Customer Stakeholders

Name	Role	Responsibilities
Leticia Zavala	Customer Care Director, Georgetown Utility Systems	
Cindy Pospisil	CIS Project Manager, Georgetown Utility Systems	
Chris Bryce	IT Director, City of Georgetown	
Mike Babin	Deputy General Manager, Georgetown Utility Systems	

2 Application Support & Maintenance Services

The Service Provider Team will work with the Customer Business and IT Staff in the following domains:

- Incident Management
- Release, Change, Deploy and Configuration Management
- SLA Management
- Batch & Interface management
- Business Assurance The Services will be rendered from the Service Provider offices. However, part of the Services will be rendered from a customer location, with a maximum of one (1) week/month.

2.1 Incident Management

In addition to the standard Software Support Services delivered as part of the Software License Terms, these additional Services are rendered by the Service Provider to assist the Customer in quick identification and resolution of support issues that arise.

Included activities

Included activities are:

- Email based integration in the Service Provider helpdesk tool to facilitate integration with the Customer ticketing tool (Jira); The integration is unidirectional (Jira -> TopDesk); The Service Provider will share the email template and an email address to the Customer Team. The Customer Team has to configure the same in JIRA;
- Access and use of the Service Provider helpdesk tool for designated Customer key-users;
- Propose solutions for support issues, be it additional instructions, configuration changes or code fixes (in non-product software);
- Assist Customer in problem management if issues are part of a larger issue;
- Report on the service status and service performance on a monthly basis;
- L2 (2nd Level Support) for support issues.

Service provider will monitor the inflow of tickets on a monthly basis, as well as, monitor the average ticket trend on a quarterly basis. Based on ticket analysis and overall operation Customer and Service provider will work together (if needed) to decrease ticket inflows via but not limited to the following:

- Implementing code & configuration changes,
- Delivering knowledge base articles,





- Helping users by responding to how to queries,
- Changing business process or work instruction.

If the average ticket inflows exceed the budgeted ticket volume/month for two (2) subsequent months, Service provider will initiate discussions with Customer to use the contingency amount.

Out of scope activities

Out of scope activities include, but are not limited to:

- Support Services as set out in the relevant Service Level Agreement in Schedule C to the Framework Agreement or the relevant Maintenance and Support Agreement in Schedule E to the Software License Terms;
- Support issues as far as the number of tickets surpasses the maximum amount per month (35) excluding product bug in year-1;
- Any activities related to Change Management, Release Management, Deployment Management and Configuration Management related to the support issues;
- Support issues that are not related to the UMAX CIS, FO, CSS & Cashiering platform;
- End-user training.

2.2 Minor Changes (STD Service Catalogue)

The standard scope of minor changes will be governed by the STD Service catalogue. A first version of the STD Service Catalogue is attached in Appendix [F] to this SOW. These activities would be managed through a service request in TopDesk Incident Management tool. Each STD Service Catalogue item will be associated with a set number of pre-defined effort ("person" days).

Included activities

Minor changes contained in the STD Service Catalogue include, but are not limited to:

- Simple administration
- Change in setups to existing functionality Price change, new user creations etc.;
- Data Manipulation;
- Ad-hoc data request / reports;
- Addition/modification/Deletion of columns;
- "How to" quires;
- Data extract.

Any modification of the Standard (STD) Service Catalogue will be discussed and defined in collaboration with the City.

Out of scope activities

Out of scope activities include, but are not limited to:

- More than 60-person days of total effort in a year;
- Code changes to implement new functionality;
- Changes within the peripheral systems e.g. Paymentus, uCcentra, Esri etc.;
- Development of new interfaces;
- Deployment of the configuration changes into the Production Environment;
- Acceptance testing on behalf of users.





Prerequisites and boundaries

- The STD Service Catalogue will be reviewed once per year and remain constant throughout the year;
- There is a maximum of 60-person days of total effort per year included for minor changes with an exception of only 40 person days of effort during Year 1, exceeding requests are new change request (as per section 3.5). The Service Provider will pre-plan the resource capacity for these efforts. The Customer will not be able to carry over the unused efforts from year to year.

2.3 Release, Change, Deploy & Configuration Management

The Service Provider will provide Release, Deploy and Configuration management related activities for the Customer. These Services are geared towards successfully deploying new versions of UMAX, the Customer Self Service, Front Office and Cashiering on the Production Environment. Although small changes can be made to the UMAX system, this is not the primary goal. Substantial changes as there are interface modifications, upgrades and so on will be handled by a separate request.

Included activities

Included activities are:

- -Representation included in the Change Advisory Board (CAB) described in section 3.6 that decides on and finalizes the scope of the upcoming release;
- Coordination of the release activities of the Service Provider & the Customer Personnel;
- Deployment activities of the different components on the different Customer environments
- Testing of delivered packaged product.

Out of scope activities

Out of scope activities include, but are not limited to:

- Any changes which are not developed & implemented by the Service Provider;
- Changes related to peripheral systems themselves e.g. Esri, uCcentra etc.;
- Infrastructure related activities; These are to be performed by the Customer Personnel, working closely with the Service Provider Release Manager;
- Regression testing and acceptance of the release;
- Structural and impacting changes to the Customer version of UMAX;
- Releases as part of upgrades, service packs, new projects or upgrade or changes within the peripheral systems;
- Testing & Data validation as part of upgrades, service packs, new projects or upgrade or changes to peripheral systems;
- Acceptance of the release;
- Deployment of configuration in production environment;

Prerequisites and boundaries

- Designated Service Provider Personnel has access to the Customer systems with appropriate access rights;
- One maintenance release per month for a first (1st) year (to be evaluated after six (6) months);
- A release calendar for the upcoming twelve (12) months is agreed on and reviewed on a yearly basis;
- Assistance is rendered off-site.





2.4 SLA Management

As part of the Services, the Service Provider reports on a regular basis on the performance of the Services. This report will indicate both ticket volumes and the performance in responding to and resolving of tickets.

Included activities

Included activities are:

- Delivery of a standard service report on a monthly basis;
- Discussion of the service report;
- Common escalation process for all Services rendered by the Service Provider.

Prerequisites and boundaries

• Customer governance and escalation organization is set-up and known.

2.5 Batch & Interface Management:

As part of the regular daily routine, it is necessary to perform several operational validations to ensure that the Solution is functioning as expected. The Service Provider will provide the necessary resources to ensure the technical checks are executed. Any exceptions that are recorded during these checks enter the normal procedure for exception handling.

Included activities

Included activities are:

- Ensure all jobs are completed as per schedule;
- Monitor inbound & outbound interfaces in UMAX;
- Verify all batch jobs & interfaces are executed correctly through an automated process;
- Categorizes exceptions and assign & follow up with Service Provider Team on resolution on UMAX related issues;
- Periodic system reconciliation of different interfaces;
- Send out exception report, if any.

Out of scope activities

Out of scope activities include, but are not limited to:

- Handling business exceptions that are recorded during the validations;
- Business Reconciliation;
- Handling infrastructure related exceptions that are recorded during the validations;
- Biz talk monitoring & operations.

Prerequisites and boundaries

- Designated Service Provider Personnel has access to the Customer systems with appropriate access rights;
- Batch schedule and schedule for other interventions are known to and agreed by the Customer;
- Services are rendered off-site.





2.6 Availability Management

As part of the regular activities, the Service Provider will monitor the performance and availability of the application and database (SQL-Server). The Service provider might use some automated script to monitor application & database health. The Service provider will look after the monitoring results and initiate Incidents and problems wherever there is an issue or even a risk of issue.

Included activities

Included activities are:

- Monitor the performance and availability of the application and database (SQL-Server) in the Production Environment;
- Communication alerts need to be sent when the application and database are not available;
- Leverage available tools to identify areas of poor application/program, database performance (e.g. long running quires, DB growth etc.) and get them addressed;
- Monitor growth and index fragmentation evolutions of DB and launch automated jobs to defragment the indexes;
- Performance and availability exceptions need to be reported, analysed and addressed by the Service Provider Team;
- Coordination with the Customer Infrastructure Team and other Support Teams;
- RCA is required on recurring issues;
- Monthly status & recommendations for improvement, if any.

Out of scope activities

Out of scope activities include, but are not limited to:

- Monitoring performance & availability in the Non-Production Environment;
- Network, VDI, Hardware & OS-level issues;
- Capacity Management;
- Disaster recovery drill;
- Continuity Management.

Prerequisites and boundaries

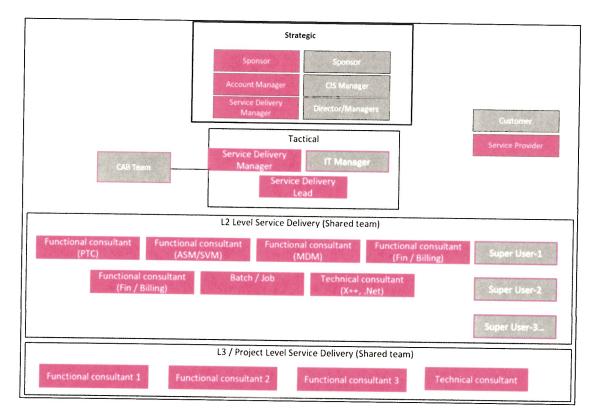
 Only availability management will be offered with a max of thirty-Six (36) days of effort in a year.





3 Application Support & Maintenance Organizational Structure

The proposed organizational structure will include a steering committee consisting of Business Executives from both the Service Provider and the Customer, a Senior Manager from the Service Provider and Senior Managers from the impacted departments within the Customer (the "Steering Committee"). Other members will be invited as deemed necessary throughout the duration of the SOW depending on the agenda and the then applicable needs.



3.1 Proposed Team Structure

Reporting to the Strategic Committee are the responsibility of the Customer IT Manager and the Service Provider Manager. L2 and L3 Team has its own tasks and responsibilities.

3.2 Roles & Responsibilities

3.2.1 Service Provider Roles & Responsibilities:

Service Role	Provider	Responsibility
Service Manager (S	Delivery DM)	 Manages business expectations, concerns and CTQs, and provides strategic direction; Ensures processes are in place for timely escalation of critical application issues;





Service Provider	Responsibility
Role	
	 Acts as escalation point for unresolved application issues or process failures
	failures;
	 Service Delivery Manager will also decide which Services are out of scope and communicate to the Customer;
	 Ensures metrics collection and reporting systems are in place and functioning properly;
	 Manages overall budget for service delivery.
	manages over an budget for service denvery.
Service Delivery Lead	 Advocates the Service Provider within the Customer organization;
	 Advocates the Customer's interests within the Service Provider
	organization;
	 Works on a day-to-day basis with the Customer's lead to resolve issues
	and to advance service projects (roadmaps);
	 Issue load balancing, first point of escalation for the Service Delivery
	Team;
	Runs the Change Advisory Boards with the Customer (together with Rel.
	Manager);
	 Ensure issue prioritization for all open issues;
	 Provide functional support on application related issues;
	Completes tasks and assignments to the Service Delivery Team; Facilitates
	issue resolution across domain as required;
	 Impact analysis and estimation for all changes logged (together with the Service Delivery Team);
	 Manages small to medium service projects (roadmap);
	 Ensure new releases going live on Production Environment do not affect
	the existing businesses;
	 Manages budget for assigned work;
	 Drive Root Cause Analysis (RCA) & permanent fix;
	 Coordinate bug-fix/release activities.
L2 Team	 Analyse tickets based on priority;
	 Reply to business super users and create/update ticket for the issue filling
	in necessary details;
	 Respond to 'how to' questions;
	• Assist the user in making a data change on the front end. If the issue
	requires a backend change (Fix) then work with L3 Team;
	• Does preliminary testing before releasing the solution for acceptance
	testing;
1	• Liaison with L3 Team for development of bug & request for changes or minor enhancements using STD Service extern
	minor enhancements using STD Service catalogue;
	 Determine type of ticket – data, application use, break-fix etc. Resolve or help resolve issue;
	 Create work-around solution for break-fixes that take a long time to
	resolve.





Service Role	Provider	Responsibility
L3 Team		 Resolve UMAX related bugs; Assist L2 Team to resolve critical issues; Work on Request For Changes (RFCs) and roadmap projects; Create Functional Design document; Keep L2 Team informed about the new changes in the product.

3.2.2 Customer Roles & Responsibilities:

CUSTOME	R Role	Responsibility
Customer Manager	Project	 Provide communication to the entire Customer Business Team relating to the service delivery execution successes and issues; Serve as a one-point contact of the Customer Team; Manages Business expectations, concerns and CTQs, and provides strategic direction; Manages budget for assigned buckets; Review and facilitate approval of Deliverables on timely basis throughout the duration of the Project; Jointly review and monitor progress on issues.
Customer E Lead/Sponsc	Business or	Responsible for stakeholder engagement within the Customer organization to ensure successful delivery of the Project; This role will not be filled by a dedicated Project resource.
Customer Users	Super	Provide business functional expertise to define the Business Operating Model that the Solution will satisfy; This will involve key users from: Billing; Finance and other departments as needed.
Customer Manager		Responsible for all Customer IT input and approval of Deliverables during the Project.

3.2.3 Proposed Key Persons

Role	Name
Service Delivery Manager	Sailen Deshmukh
Service Delivery Lead	Filip Vanslambrouck





3.3 Project Governance

The Project governance is implemented to support the service delivery and allow for efficient and timely communication and decision making to all stakeholder levels both inside and outside of the Service Delivery Team.

The Service Delivery Team Members use a variety of communication methods to deliver Project information, including meetings, telephone calls, email & voicemail etc. The plan acts as a framework and is an evolving document that is revised when appropriate. The communication plan ensures timely and appropriate generation, collection, dissemination, and storage and ultimate disposition of Project information to all stakeholders. The 'representative' elements of our communication plan are given below:

Governance Meeting	Frequency	Service Provider's Presence
Issue review stand-ups	Weekly	Yes
Change Advisory Board	Bi-Weekly	Yes

Issue review Stand-Ups

The Service Delivery Lead will conduct issue review stand up meetings with the Service Provider and the Customer Team Members bi-weekly to prioritize the issues and to provide the status update on issues.

CAB (Change Advisory Board) Meeting

The Service Provider Project Manager (SDM), Release Manager & Service Delivery Lead will attend weekly CAB meetings to decide on changes and reach agreement on the planning and other characteristics associated with changes.

3.4 Incident Management

All application support Incidents, service requests, changes, problems, and support issues shall be tracked via the Service Provider centralized issue tracking system, TopDesk. All issues shall be tracked via the Service Provider centralized Incident tracking system, TopDesk Incident Module. Application Support Teams monitor assigned TopDesk queues for applications listed in scope based upon coverage hours & criticality.

The Incident owner is responsible for ensuring all issue activity is documented within TopDesk including research, findings and all communications (email, phone, skype chat, etc.) with the business user. The intent of Incident notes is to provide a complete history of the activity required to resolve an Incident.

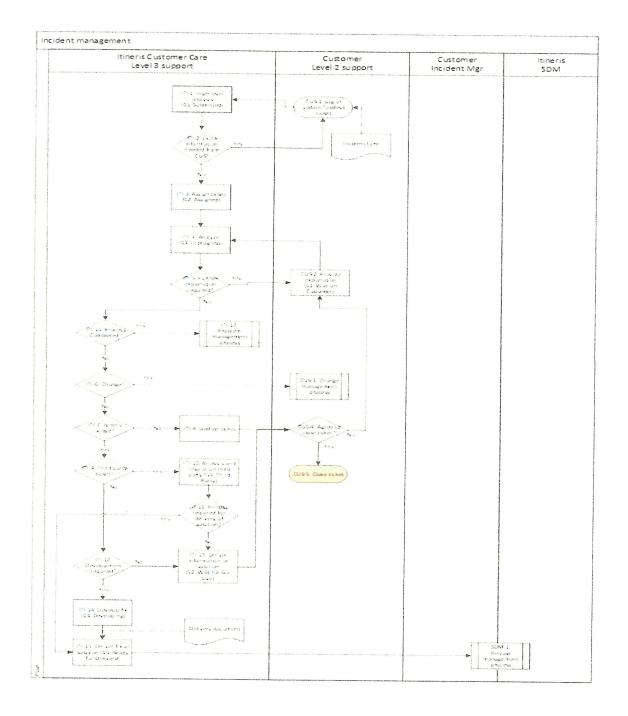
Incident Management shall be given the highest priority, followed by break/fix, service request and enhancement (request for change) work. This mix will vary based on several factors; e.g., break/fix ticket volume and priority, business cycle timing. Unless specifically directed by the Customer IT Manager every Incident will have a higher priority than any RFC. The combination of support activities will fluctuate based on the needs and the focus of the Customer users. This mix may remain flexible throughout the term of the framework agreement.





3.4.1 Incident Management Process:

The following Incident Management Process ensures that the Incidents are managed effectively during the SOW. The Customer and the Service Provider will use TopDesk to capture the Incidents related to UMAX. Refer to **Appendix C** for the detailed step by step information about the Incident management process flow.



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3.5 Change Management

The goal of the Change Management Process is to ensure that (i) standard methods and procedures are used for efficient and prompt handling of all changes and (ii) all changes to UMAX systems are documented for future references.

3.5.1 Change Order Management Process

The purpose of Change Management is to respond to changing business requirements while maximizing value and reducing Incidents, disruption and rework. The objective of the Change Management Process is to ensure that changes are recorded and then evaluated, authorised, prioritised, planned, tested, implemented, documented and reviewed in a controlled manner and to take necessary corrective action.

The control of change means the assessment of the impact, the importance and the cost of potential and the determination by management on whether to approve them or not. Any approved changes must be reflected in corresponding release schedule and (potentially) budget.

An approved Contract Change Order (CCO) is required for any scope change to this SOW. No Services or billing will start until approved by the Customer Manager. The CCO effective start date will be the approval date of the Customer Manager or some date in the future.

A change can fall into one of the below three categories.

1. Standard Changes (STD Service Catalogue):

A standard change is a change to a service or infrastructure for which the approach is pre-authorised by Change Management that has an accepted and established procedure to provide a specific change requirement. It would be dealt with standard STD Service catalogue services. The elements of a standard change include:

- There is a defined catalogue to initiate the request for change;
- The activities/tasks are well known, documented and proven;
- Authority is given in advance (these changes are pre-authorised); OR
- The risk is usually low.

Standard catalogue will be invoked when any one of these four conditions is valid.

2. Normal Changes:

A normal change refers to changes that must follow the complete Change Management Process. These changes will be outside of the STD Service Catalogue services. Normal changes are categorized according to risk and impact to the business. For example, significant change – medium risk and impact and major change – high risk and impact.

By definition a normal change will proceed through all steps of the Change Management Process and those that are categorised as medium or high risk will be reviewed by the Change Advisory Board (CAB). The activities of the normal change process include:

Identify & Record the request for changes;





- Review the request for changes;
- Prioritize the changes;
- Impact analysis & estimate the effort;
- Approval to develop the changes;
- Authorise to move it to production;
- Implement the change in production; and
- Review & close change record.

After receiving Change Requests, the Service Provider (i) evaluates the impacts to the Software and/or the Solution, and (ii) determines the effort and cost.

The Service Provider reserves the right to request additional information from the Customer in order to respond to the Change Request. The response from the Service Provider must include a Change Quote for the work required to complete the change stating the estimated number of days of effort, an estimated delivery date, and details of the technical approach for the proposed change and the period of validity of the Change Quote (a "Change Order").

If a Change Request initiated by the Customer is reasonably considered by the Service Provider to be complex, the Service Provider shall be entitled to charge the Customer the number of days of analysis and cost required to enable the Service Provider to provide the Customer with a Change Quote in respect of that Change Request. The Change Quote should also give detail of the technical approach for the proposed Solution.

The Customer must approve any expenditure in writing, before the Service Provider commences either analysis or development. The Customer shall respond within five (5) Business Days of receipt of a Change Quote from the Service Provider, unless additional approval time is required due to the Customer's statutory requirements. This may be either approval (for the analysis or development to proceed), cancellation or notification that further time shall be required by the Customer to consider the Change Quote. The Customer shall in any event respond with a decision within the validity period of the Change Quote.

Any changes outside the scope of services defined in this SOW would be charged on hourly basis @\$175/hr.

On receipt of a duly signed authorization to proceed, the Service Provider shall supply the Services that are the subject of the request and such Services shall be deemed services in accordance with this day-to-day issue resolution.

3. Emergency Change

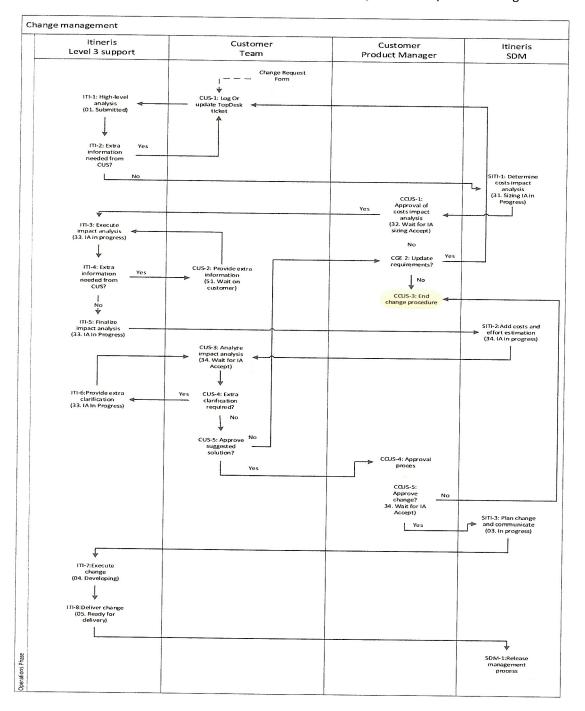
An Emergency Change (e.g. a hotfix) is reserved for changes intended to repair an error that is impacting the business to a high degree or to protect the organisation from a threat and that cannot be postponed until the next scheduled release. In case of Emergency Changes, the Service Provider will follow a quicker process to move the changes into the production. Communication is done between the Service Provider Service Delivery Lead and the IT Manager directly, without the need for the written and signed Impact Analysis. Approval for installation of the Emergency Change is obtained by email and registered in the related ticket.





3.5.2 Change Control Process:

The following Change Control Process ensures that changes are managed effectively during the SOW. The Customer and the Service Provider will use TopDesk to capture the request for change.



Refer to **Appendix D** for the detailed step by step information about the Change Management Process flow.

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3.6 Change Management Authorization

The following principal authorities from the Customer are involved in the Change Management Process:

- The Change Manager: Change Management Process owner and responsible for filtering, accepting and classifying Change Order (CO's).
 - In addition, the Change Manager is responsible for securing appropriate authorization to implement changes. Appropriate authorization may be provided by the Change Manager or may require calling upon higher management (Steering Group).
- The Change Advisory Board (CAB): Consensus advisory and decision board to decide on changes and reach agreement on the planning and other characteristics associated with changes.
 - The CAB, whose exact composition may differ from one meeting to the other, typically is composed of representatives of all sections, including the Service Provider and representatives of the Customer and user communities;
 - The main tasks involve assessment of required resources to implement changes (also in time), potential conflicts with current operations, safeguarding appropriate transfer and creation of documentation, integration/cross-referencing, impact analysis on existing capacity, etc.

The principal authorities from the Service Provider involved in the Change Management Process are:

- The Release Manager: Release the changes in different environments (Test, Acceptance & Production)
- The Service Delivery Lead (SDL): Working closely with the functional consultants and providing architectural authority to decide upon changes and their impact cross the delivered Solution.
 - Maintaining the functional integrity of the system cross all functional domains;
 - In close relationship with the Service Provider Subject Matter Experts (SME) assessing the functional impact against UMAX.
- The Service Delivery Manager (SDM): Responsible for:
 - guaranteeing proper control on cost and timelines;
 - o the Service provider resource allocation both on-site or off-site;
 - escalating timely any outstanding issue to the Customer Change Manager or its coordinators in order to deliver timely both the necessary impact analysis and the Change Request implementation itself.

In order to manage this effectively, the Service Provider has an internal organization and Resource Allocation Management Process whereas the Service Delivery Manager (SDM) takes part in.

3.7 Release Management

The goal of release and Deployment Management is to deploy releases into operation and establish effective use of the Services in order to deliver value to the Customer. The Service Provider needs to





own/manage monthly releases on the applications that are in scope. These releases are classified as Operational Releases.

Operational Releases: All changes arising from the problem management, request for changes and some of the STD catalog enhancements buckets are deployed to production by operational releases. The frequency of releases would depend on various factors, it is safe to assume that one (1) release per month would be reasonable and which can be increased/decreased based on the Customer's needs.

The activities are of the normal operational release process are

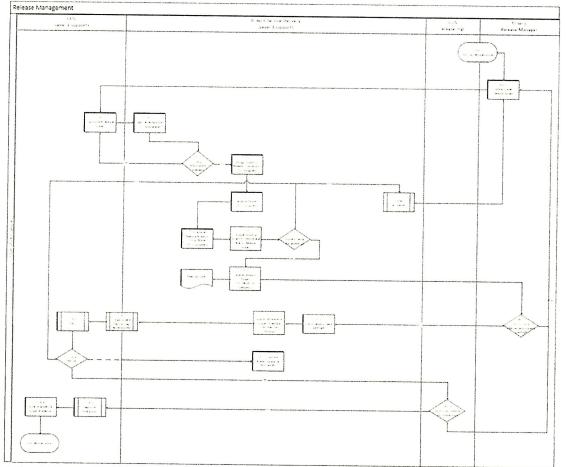
- Define the release plan;
- Define the scope of the release;
- Take approval in the CAB;
- Deploy & execute tests on environments;
- Deploy on Production Environment.

3.7.1 Release Management Process:

The following Release Management Process ensures that releases are managed effectively during the SOW. The Customer and the Service Provider will use TopDesk to capture the release scope using major Incident.







Refer to **Appendix E** for the detailed step by step information about the Release Management process flow.

3.8 General Project Assumptions

- The Customer will provide access to relevant applications to facilitate smooth transition of the application to the Service Provider.
- Any technological or organizational change related to and during the SOW would be communicated in a timely manner.
- In case of any change of scope, over and above the requirements mentioned in this SOW, Change Control Procedure must be followed. This may result in additional cost.
- The Service provider will be utilizing a common pool of resources for break/fix, enhancements and change order, roadmap purposes.
- The Customer will provide all Project specific software licenses to resources only.
- The Customer will not manage/approve hours worked by the Service Provider resources.





4 **Deliverables**

4.1 Table of Deliverables

The following list of Deliverables will be delivered during the SOW. The responsible Party for each Deliverable are defined below.

Deliverable	Delivery Dates	Approval	Responsible
Ticket resolution using TopDesk	Daily on Business Days	Customer	Service Provider
 Releases & Deployment Release plan Scope document Testing instruction Deploying the code in different environments Release notes 	Monthly	Customer	Service Provider
Engagement Report	Monthly	Customer	Service Provider
Support Coverage	Daily on Business Days	Customer	Service Provider
Standard Catalog	Yearly	Customer	Service Provider
Ensure the availability of the Production, Shadow, Test & acceptance environment	Daily on Business Days	Customer	Service Provider
Execute, Monitor & Analysis of batch Jobs in case of failure	Daily on Business Days	Customer	Service Provider
Documentation related to configuration changes, enhancements	When required	Customer	Service Provider

4.2 Acceptance Criteria

All Deliverables will be reviewed by the Customer and approved in accordance with the acceptance testing procedure.

Deliverable	Acceptance Criteria
Ticket resolution using TopDesk	The issues are resolved in the Production Environment & Tickets are updated with resolution information and closed @ TopDesk

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Deliverable	Acceptance Criteria
 Releases & Deployment Release plan Scope document Testing instruction Deploying the code in different environments Release notes 	Releases are successfully deployed in Production Environment and approved by the Customer
Engagement Report	The Service Provider shares the relevant information through email to the Customer & the Customer approves the report
Support Coverage Daily on Business Days	The Service Provider Team is available at their own office during the coverage period, except Federal US holidays
Standard STD Service Catalogue	Reviewed and approved by the Customer
Ensure the availability of the Production, Shadow & acceptance environment	The Customer should able to perform their daily tasks into these Production Environments
Execute, Monitor & Analysis of batch Jobs in case of failure	Review and approve the batch schedule & analysis document in case of failure
Documentation related to configuration changes, enhancements	Reviewed and approved by the Customer





5 Costs and Payment Schedule

5.1 Cost

The duration of this SOW is valid from 01-FEB-2019 to 30-Sep-2021. The cost for Application Maintenance & Support including business assurance, travel fees & expenses and contingency shall not exceed \$ 1,169,500.00 (One Million One Hundred Sixty-Nine Thousand Five Hundred US Dollars)

A		Year1 (B)	Year2	Year3
Service Delivery Contract:	Description	Feb 19 - Sep 19	Oct 19 - Sep 20	Oct 20 - Sep 21
A. Business Consulting				
Business Assurance	Dedicated on-site resource (20% time)	\$47,500	\$57,000	\$57,000
Travel	On-site Travel	\$19,000	\$19,000	\$19,000
B. IT Support Services				
L2 Support	Incident & problem resolution for L2 issues	\$76,000	\$81,500	\$81,500
Managed Services	Batch & Interface management; release/deploy/change version management; Service Catalog	\$154,000	\$200,000	\$175,000
Availability Software & Management	Monitoring software & databases ensuring no significant downtime.	\$24,000	\$36,000	\$36,000
Contingency			\$31,000	\$56,000
Total C	Contract	\$320,500	\$424,500	\$424,500

The breakups of the cost are given below:

- The Customer assumes that its team would be able to resolve some of the incidents by themselves or would be able to perform some of the managed services tasks by their own in Year-2 & Year-3. Hence, the inflow of tickets in Year - 2 & Year - 3 would remain below 25/month & 17/month respectively.
- The Service provider may use the contingency amount for the remaining months of the year, if the inflow of tickets goes beyond 25/month in Year-2 or 17/month in Year-3 for subsequent 2 months in a year.
 - $\circ~$ Monthly calculation methodology and review is provided in section 2.1 of this document.
 - Service provider will bill at the end of the fiscal year for months where ticket volume went above 10% of budgeted count using the following matrix:

	Case volume/month	Additional Invoice amount/month	
Year - 2	> than 10% of 25/month <36	\$2583.00	
Year – 3	> than 10% of 17/month <26	\$2583.00	
	>25 but <35	\$4667.00	

- Additional effort to resolve tickets above 36/month would be charged on an hourly basis @ \$175/hour.
- The Customer will retain the contingency amount if the inflow of tickets does not go beyond 25/month in Year-2 or 17/month in Year-3.

5.2 Invoice and Payments





The costs (section 5.1) shall be invoiced upfront on an annual basis.

Payments are due forty-five (45) days following invoicing. The total cost to the Customer for the performance of the tasks contained in this SOW and engagement schedule shall not exceed the amount shown, (i) except in the case of Change Orders agreed between the Parties or (ii) except in case of any change to the preconditions and boundaries as described in section 2 & 5.1 of this SOW.

5.3 Pricing Schedule

The Service Provider shall invoice the Customer upfront in accordance with the following schedule (in US dollars).

Invoice Date	Amount(\$)	
Feb-2019	\$301,500.00	
Oct-2020	\$374,500.00	
Oct-2021	\$349,500.00	

The invoice schedule, as defined hereinabove, shall exclude all travel, contingency, taxes and duties (including but not limited to value added tax, withholding tax, local, state, and federal taxes, if any) and all such amounts shall be additionally charged by the Service Provider to the Customer.

This budget has been estimated based on the preconditions and boundaries as described in section 2 & 5.1 in this SOW.

Both Parties commit to discuss and review, at least quarterly, the preconditions, boundaries and budget and to make the necessary adjustments whenever needed to make sure the budget is aligned to actual consumption.

5.4 Travel and Expense Guidelines

5.4.1 Reimbursement for Travel Expenses

The Customer shall reimburse for Expenses for travel as detailed in an amount not to exceed \$19,000.00. The Service Provider will invoice for travel 30 days after occurrence.

The Service provider Personnel will pursue value through the least expensive, yet most reasonable and/or appropriate alternatives, and are expected to use preferred suppliers (i.e., airline, hotel, car rental, etc.) where negotiated rates have been established.

The Service Provider would discuss with the Customer and seek for an approval prior to travel to the Customer location. The Service Provider would invoice travel and other expenses on actuals as it incurs along with the regular recurring monthly invoice. The Service Provider will report travel expenses (budget vs actual) to the Customer time to time for further planning.

5.4.1.1 Airfare

The Customer shall reimburse for airfare not to exceed \$1,000.00 round trip from locations within North America, unless there is prior written approval from the Customer Project Manager. All air travel





shall be "coach class" or that class that offers the lowest overall fare for the given itinerary. The Service Provider shall book all air travel as far in advance as possible to take advantage of the air carrier's best rate.

If the Service providers' employee elects to change a flight for their own convenience after the ticket has been approved and booked, the Customer shall not reimburse for any charges incurred to change the airline ticket and the Service Provider' employee will be responsible for paying any charges incurred to change the airline ticket.

If the Customer or Service Provider Manager request makes it is necessary to change a flight after it has been approved and booked, the Service Provider will not be responsible for the charges incurred to change the airline ticket, and the Customer shall fully reimburse the Service Provider for such flight (in accordance with the terms of this SOW) provided they received prior approval from the City.

Alternate travel can be approved by the Service Provider and Customer Project Managers if the price of the airline ticket is the same cost or less than the price of flying to the relevant Service Provider Personnel's home airport. This could include weekend stays that do not require a flight.

5.4.1.2 Parking

The Customer shall reimburse for actual cost of parking fees, tolls, and other road tariffs encountered while traveling to/from airports or the Customer offices.

5.4.1.3 Mileage

Mileage rates will be consistent with the Internal Revenue Code annual rates posted while traveling to/from airports or train stations.

5.4.1.4 Hotels

When overnight stay is appropriate, the Customer shall reimburse Service Provider for hotel lodging expense, not to exceed \$135 per night including applicable taxes or other tariffs. The Service Provider agrees to pursue corporate or special rates at local hotels.

5.4.1.5 Rental Cars

Rental cars will be used for local travel at the destination city and the associated expenses (including fuel) shall be recoverable and reimbursable.

Should two (2) to three (3) Service Provider Personnel travel to the destination city, a rental car shall be shared whenever travel and work schedules permit. Should four (4) to seven (7) employees travel to the destination city, two rental cars shall be shared, and reimbursable. Over seven (7) personnel travelling to the destination city will be rare, and the number of rental cars will be considered on a case by case basis.

Service Provider will rent cars with unlimited mileage and will work to minimize weekly rental car costs.





5.4.1.6 Per Diem

The Customer shall reimburse the Service Provider for each full day of travel/work that the relevant Service Provider Personnel is on site with the Customer at a per diem rate of based on the amount listed on the U.S. General Services Administration web site @ http://www.gsa.gov/portal/category/100120 for rates detailed for Round Rock, TX.

As a general rule of thumb, the break-out for the meals (incidentals are factored in within these amounts) are as follows: Breakfast -20%; Lunch -30% and Dinner -50%.

Per Diem charges will be invoiced without the requirement to submit meal expense receipts.

5.4.2 Invoicing Travel

Billing for travel related Expenses will be on a separate monthly invoice from the invoices from Service Provider in respect of the Services. Expenses will be charged two (2) months after the Expenses have occurred

Estimated travel costs are detailed as follows:

Travel policy and assumptions	Daily	y Rate	Per Trip/FC	We	ekly Total
Hotel lodging per night according to GUS travel policy	\$	135.00	4	\$	540.00
Meal allowances (per diem) per day according to GUS travel policy, official website	\$	59.00	5	\$	295.00
http://www.gsa.gov/portal/category/100120					
Airfare economy class, actual costs assumed 457\$/flight (incl. international flights)	\$	457.00	1	\$	457.00
Standard rental car assumed 45/day	\$	45.00	4	\$	180.00
Fuel cost for rental car	\$	15.00	1	\$	15.00
Taxi costs (travel between airport, hotel and customer)		100	1	\$	100.00
	P	er Trip Total	1	\$	1,587.00
Number of trips		12			
Total person days on-site		12 Weeks		Pre	oject Total
No. of consultants on site / no. of trips		1	12	\$	19,044.00





6 Appendixes

Appendix	Description	File name
Appendix A	RACI model for each service	Section 6.1.1
Appendix A	Support coverage hours	Section 6.1.2
Appendix B	Summary of Services	Section 6.2.1
Appendix B	List of integrations	Section 6.2.2
Appendix C	Incident Management Process	Incident Management Process.pdf
Appendix D	Change Management Process	Change Management Process.pdf
Appendix E	Release Management Process	Release Management Process.pdf
Appendix F	Standard Catalogue	GUS - STD Service Catalog_v1.0.xlx

6.1 Appendix A: RACI Model / Support Coverage

6.1.1 RACI

The table below lists the tasks and responsibilities in more detail using the standard RACI model. In each Incident, following convention is used:

- R: The Party is Responsible for the execution of this task according to the method as specified in the mutual agreement;
- A: The Party is Accountable for the end-result of the task;
- C: The Party is Consulted during the task. This implies that the Party is either giving advice during the execution of the task or performs a specific part of the task as mutually agreed;
- I: The Party is (or can be) Informed of (the result of) the task.

Task	CUSTOMER	Service Provider
Incident Management		
Perform helpdesk function for end-users of the Solution, including the registration of all issues and questions of users and the communication of solutions to the end-user	AR	1
Perform first line Incident investigation and resolution	AR	I
Perform second line Incident investigation and resolution	ACI	R
Escalate Incidents following the agreed-on procedures and templates using the Service Provider helpdesk system	AR	С
Perform third line Incident investigation and propose solutions to remedy such Incidents	A	R
Operate a helpdesk system for the use of the Customer Key-users to register tickets to be handled by the Service Provider		AR
Create problem tickets based on Incidents that are caused by a larger issue	А	R
Create problem tickets if deemed necessary based on Incident recurrence	CI	AR





Implement proposed configuration changes based on an Incident	AR	
investigation		C
Implement proposed changes in system usage instructions based on an Incident investigation	AR	C
Implement any software solutions to resolve bugs in the Customer specific	C	AR
code and/or the Customer specific interfaces		
Minor Changes (STD Service Catalogue)		
Define STD Service catalogue	CI	AR
Approve STD Service catalogue & buy service efforts	AR	CI
Business impact analysis of the changes	AR	CI
UMAX system impact analysis of the changes	CI	AR
Impact analysis of the third-party peripheral systems (e.g. Ucentra, Esri etc.)	AR	CI
Perform the changes & testing within UMAX	CI	AR
Accept the changes in different environments	AR	CI
Advice on Go/No-Go for the changes based on the result of the tests	AR	CI
Decide on the Go/No Go for the changes	AR	
Release, Change, Deploy and Configuration Management		
Define a yearly release schedule	A	R
Approve the yearly release schedule	AR	
Propose scope of the upcoming release		AR
Escalate and propose any necessary changes to the release scope		AR
Accept scope of the upcoming release	AR	
Ensure items in scope are delivered according to the release schedule	A	R
Create releasenotes for each release	4.0	AR
Communicate availability of the different systems and environments to end-users and customers	AR	
Perform deploy activities for UMAX on the different environments	A	R
Perform deploy activities for Front Office on the different environments	A	R
Perform deploy activities for CSS, Cashiering on the different environments	A	R
Perform infrastructure related deploy activities on the different environments	AR	С
Implement any software solutions to provide enhancements in the Customer specific code and/or the Customer specific interfaces	С	AR
Coordinate all deploy activities on the different environments	A	R
Perform specific parametrization on the different environments as needed for the release scope	A	R
Perform specific data manipulation jobs on the different environments as needed for the release scope	А	R
Testing of delivered package in Service Provider Test environment	CI	AR
Perform acceptance testing on the different environments	AR	I
Accept the release on the different environments	AR	I
Advice on Go/No Go for the continuation of the release based on the result of the tests	AR	CI
Decide on the Go/No Go for the continuation of the release	AR	
Communicate progress of deploy activities to the Customer key-users		AR





Communicate progress of deploy activities to the Customer's users and	AR	
customers		
SLA Management		4.5
Perform continuous follow up on the quality of Services delivered by the Service Provider		AR
Report, on a monthly basis, on the Services delivered using the Service Provider standard format	I	AR
Present the monthly service report to the Customer	С	AR
Appoint a specific person within the Service Provider as a SPOC for the Customer related to Service Delivery	1	AR
Create and maintain a single governance and escalation organization within the Service Provider to the Customer with all Services rendered to Customer	I	AR
Create and maintain a governance and escalation organization within the Customer	AR	I
Execute phase of the Operational Management (Batch & Interface)		and the second
Perform batch scheduling and scheduling of other processes	A	R
Ensure that all maintenance activities of related entities are known to all parties involved	AR	CI
Perform daily checks on the execution of the Nightly batch job & interfaces on Business Days	A	R
Assess all deviations from normal processing ¹ during the daily check	A	R
Report on all deviations from normal processing during the daily check		AR
Evaluate issues related deviations from normal processing and propose solutions for resolving the deviations	AC	R
Resolve any issues related deviations that occur during normal processing	AC	R
Evaluate all business-related deviations from normal processing and propose solutions for resolving the deviations	AR	CI
Resolve any business-related deviations that occur during normal processing	AR	1
Evaluate all infrastructure related deviations from normal processing and propose solutions for resolving the deviations	AR	CI
Business Reconciliation and data validation	AR	CI
Report interface reconciliation related issues	CI	AR
Resolve & Reconciliation interface related issues within UMAX	CI	AR
Resolve & Reconciliation interface related issues within third parties	AR	CI
Performance & Availability Management		
Monitor the performance & availability of the application and database	CI	AR
SQL-Server) in the production environment through automated job		
Communication alerts need to be sent when the application & database has failed P&A.	CI	AR
dentify areas of poor application/program, database performance (e.g. ong running quires, DB growth etc.)	CI	AR
Resolve poor application/program, database performance	CI	AR
Hardware & OS level issues & remediation	AR	CI

Normal processing is processing where results of the processing both with regard to number and type of errors and to duration of the processing are within acceptable boundaries from a historical perspective or as can be expected based on system load





RCA for recurring issues	CI	AR
Monthly status reporting & recommendations for improvement, if any	CI	AR

6.1.2 Support Coverage

Service Provider Team shall use its best efforts to provide support to the Customer's business during the below time zone.

Business Days	Start	End
Monday-Friday (except Federal US holidays)	9 AM EST/EDT	5 PM EST/EDT

6.2 Appendix B: Service Levers / Integration List

6.2.1 Service Levers

Summary of the Services:

Service Lever Names	In Scope
L2 Support	Yes
L3 Support (UMAX Product issue resolution)	Yes
L3 Support (MS AX2012)	Yes
Custom component + Interface developed by	Yes
the Service Provider (Maintenance & Support)	
Problem Management	Yes
Minor Changes using STD catalogue (max 60-	Yes
person days of effort in a year)	
Release, Change, Deploy and Configuration	Yes
Management	
Batch & Interface Management	Yes
SLA Management	Yes
Availability & continuity and Capacity	Yes
management	
System & Infrastructure management	No

Find below the list which are supported by application Support Team.

Applications	UMAX CIS, CSS, Front Office, Paymentus,
	Cashiering (Mazik)
Version	AX 2012
# of Customers (Accounts)	< than 50,000
# of GUS Users	< than 50
# of Interfaces	Information is given below in section 6.2.2





6.2.2 Integration List

Interface	Frequency
Texas Disposal System Export Customer Information	Э
uCentra	3
Export customers	3
Export billing history	3
Export meters	3
Remote Connect/Disconnect Meters Import Meter Reads	4
ESPI	3
Import Addresses	3
Export Premises and Services (+ Attributes)	4
Import Premises Attributes	3
Import Service Attributes	3
Front Office > ESRI Map My Permit Now	4
Check premises permits	4
RemitPlus - Import check payments in UMAX (payment transaction +	
Transform and import payment file from RemitPlus	3
Transform and import cheque images from RemitPlus	3
Dataprose Create / Event Zin file	
Create / Export Zip file Upload Zip File	3
Incode	3
Export and transform ledger transactions to Incode file	3
Export and transform refund requests to Incode	3
Princeton - Payment File	
Transform and import payment file from Princeton Checkfree - Payment File	3
Transform and import payment file from CheckFree	3
Metavante - Payment File	
Transform and import payment file from Metavente	3
Infor - Assets	
Import and create assets in UMAX inventory Infor - Service Orders	3
Create a work order in Infor	4
Get work orders ON-HOLD in Infor	4
Cancel a work order in Infor	4
Get work orders COMPLETED in Infor	4
Milsoft - Export customer, service, meter and DNP information	
Export Disconnect for Non-Pay (DNP) Export Customer, Service and Meter information	3
Cisco - Front Office IVR Integration	3
VR - Front Office Integration	4
Paymentus Integration	
Export CIF File	3
Export Broadcasts	4





6.3 Appendix C: Incident Management Process



6.4 Appendix D: Change Management Process



6.5 Appendix E: Release Management Process



6.6 Appendix F: Standard Catalogue



7 Approvals

Item #	City of Georgetown	City of Georgetown	Itineris
Name	Leticia Zavala	Dale Ross	John Beddingfield
Role	Customer Care Djrector	Mayor	President
Signature	Aple		Justife
Date	2/12/19		(1/25/2019)

Customer signature serves as an acceptance of the budget amount listed above as it relates to the description of work contained in this Statement of Work. Your signature also indicates you have reviewed and agree to the scope of work as detailed in any accompanying enclosures or attachments.



GUS CIS Application Support

Incident Management









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Overview

Incident Management

Status and Closure Code

Top Desk Tool - Overview

Top Desk Demo

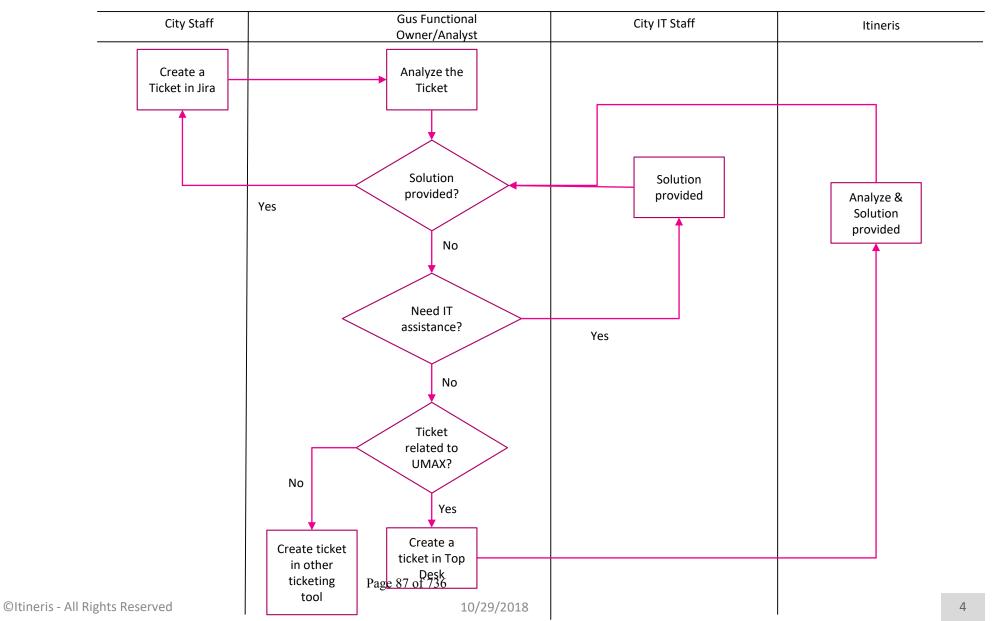


Overview

maximum performance for utilities

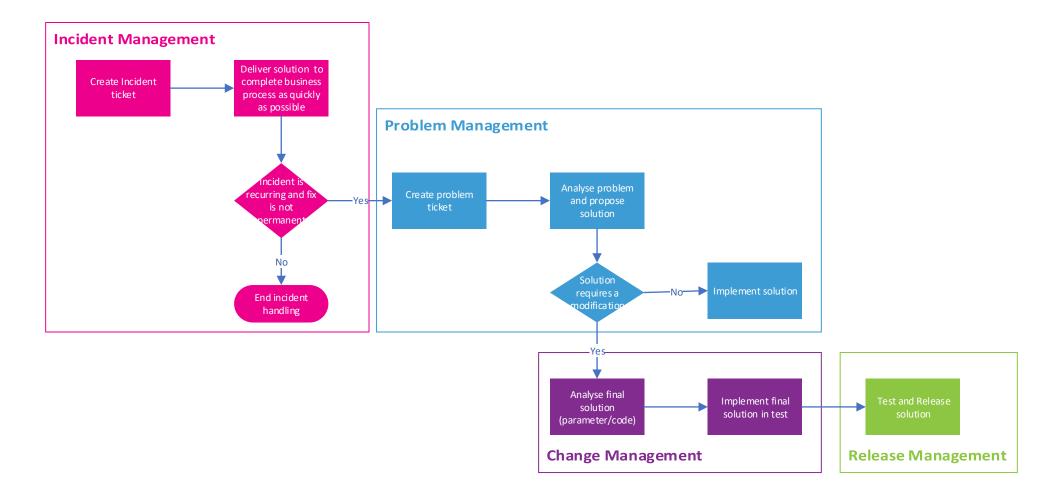
Incident process in GUS





Life of an Incident in TopDesk

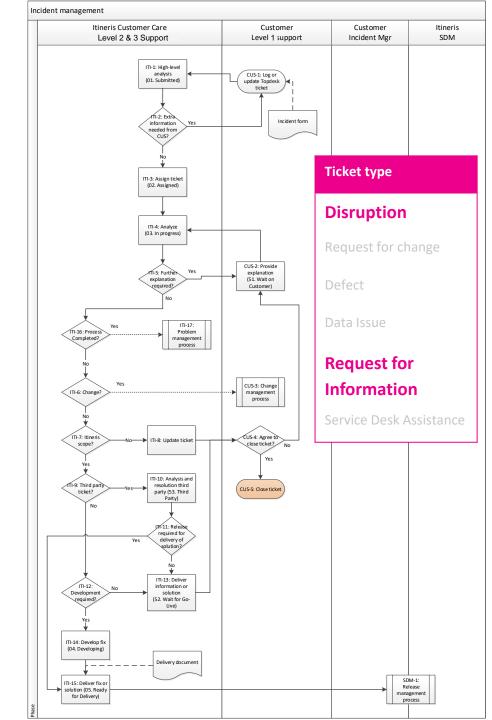




10/29/2018

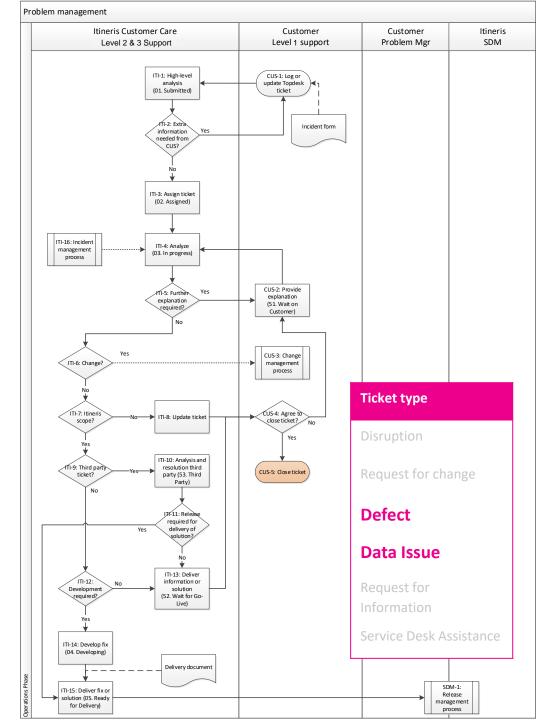
Incident management

- Goal:
 - Restore the service as quickly as possible
 - "Make sure the user can continue working as normal"
- Key success factors:
 - Speed of reaction / solution
 - Restore operation, not (necessarily) permanent fix!



Problem Management

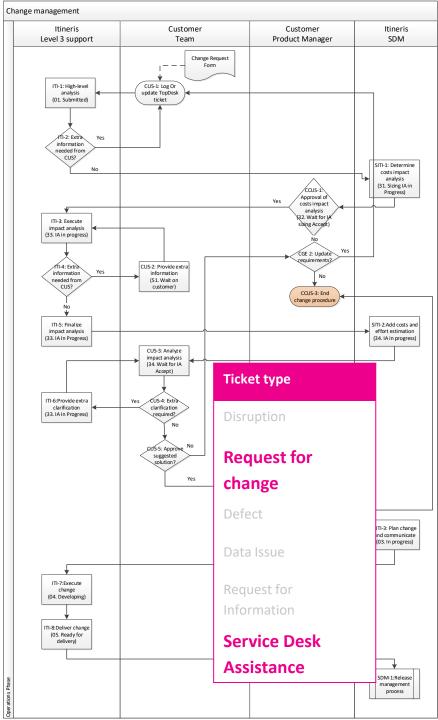
- Goal:
 - Avoid incidents from occurring by improving the system
- Key success factors:
 - Implement permanent fixes!
 - Be pro-active



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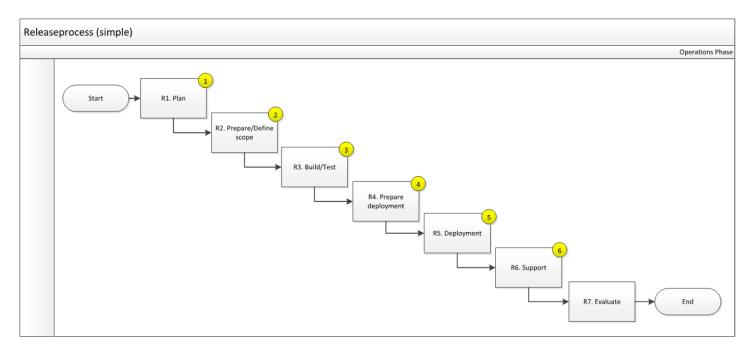
Change / Request Management

- Goal:
 - Introduce changes to a working environment in a controlled way
- Key success factors:
 - Make sure the requirement is well understood
 - Make sure the impact on existing processes and features is analyzed





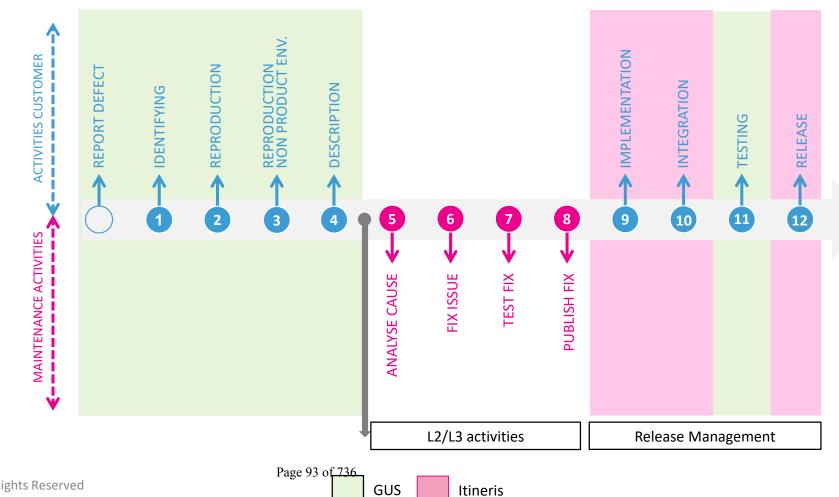
- Goal:
 - Release new software in a controlled way to minimize the impact on an operational system
- Key success factors:
 - Control the scope throughout the release cycle
 - Execute proper testing on every level





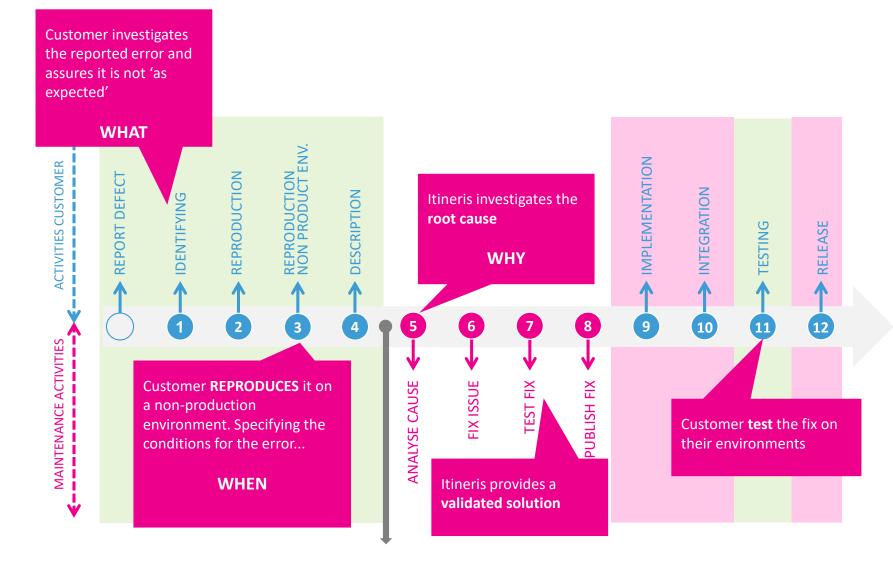
100/29/2018

Standard Support Activities



Standard Support Activities





Itineris

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Overview

Incident Management

Status and Closure Code

Top Desk Tool - Overview

Top Desk Demo



Guide to Incident Management

What is incident management?

- Incident management is a defined process for logging, recording and resolving incident or issues.
- The aim of incident management is to restore the service to the customer as quickly as possible, often through a work around or temporary fixes, rather than through trying to find a permanent solution.

Incident	Problem
 An incident is where an error occurs: something doesn't work the way it is expected. This is often described as: A fault An error It used to work but does not work Etc 	 A problem (is different) and can be: the occurrence of the same incident many times The result of diagnosis revel that some business process are not working It might exists without having immediate impact to the users Etc

Example of incident

- A user complains that his account is locked out.
- Not able to print the bills
- Front office is very slow

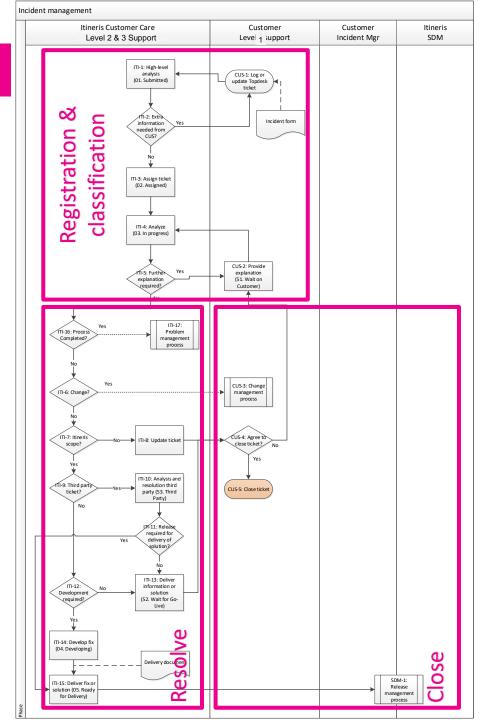
10/29/2018



Incident / Ticket types	Description	Service delivery process
Disruption	The system is not working and a business process is blocked (service interruption or degraded service quality). Solution is a workaround(*) or a permanent fix.	Incident managment
Request for change	A formal change, using the Change Request template	Change managment
Defect	An 'issue' is detected (but not blocking a user), but no permanent fix is available. Solution is a permanent fix. A defect can be related to a bug, a malfunction of infrastructure, a networking issue,	Problem managment
Data Issue	A one-time change of incorrect data for which GUS does not have sufficient user rights or knowledge to execute the change. This ticket type is only linked to those errors that are not related to a 'Defect' or a 'Request for Change'.	Problem managment
Request for Information	Any request for support concerning the standard functionality of the product.	Incident management*
		*without response and resolution times
Service Desk Assistance	A formal change, but with a pre-approved scope (e.g. a release, a database refresh, a query or list,)	Change managment

Incident Management: Step by step

- Registration & Classification:
 - Ensure all information is available to tackle the incident
- Resolve:
 - Investigate and propose a solution
 - Convert to problem
 - Propose parameter change
 - Propose revised instructions
 - Propose a bug fix
- Close:
 - Confirm the solution



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Incident ticket contents

- Description of the incident
 - What is happening
 - Environment / application
 - Expected behaviour
- Impact of the incident
 - Who is impacted
 - How often does it occur
 - Impact/Urgency leads to Priority
- Investigation already performed
 - Possible relationships (e.g. linked incidents, since release, since parameter change, ...)
 - Reproduction steps (non-production)



Resolution document

- Needed to deliver the solution of an incident
 - Compare to 'release notes' for a release
- Description of the analysis and solution
 - Describe the analysis executed
 - Describe the solution to solve the issue
 - Code fix
 - Parameter/Configuration
 - Work instruction
- Assessment on how to validate the solution
 - Time needed to validate the solution
 - Test preparation to execute
 - Test scenario to execute



Registration & Classification

Resolve

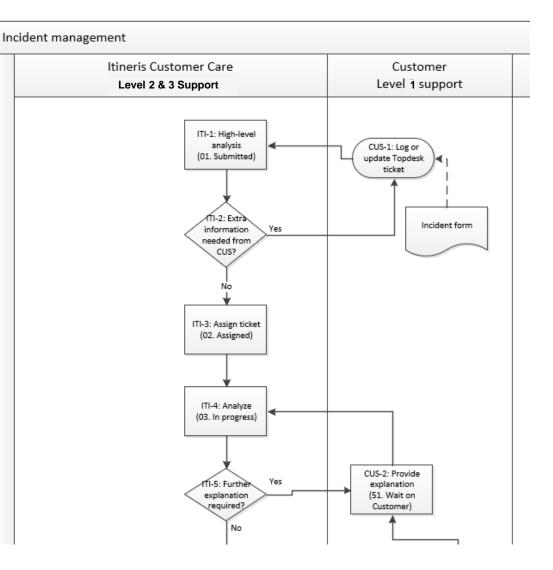
Close



Registration & Classification



- Customer submits ticket in Topdesk
 01. Submitted
- Itineris evaluates completeness
 - 51. Wait on Customer
- Itineris assigns ticket to SD Consultant
 02. Assigned
- SD Consultant analyses the issue
 03. In Progress





New ticket registration

Do's & Don'ts

- Make sure the ticket is as complete as possible
 - Clear error description: environment, ID's of record, reproducable steps, ...
 - Fill in required fields in TopDesk
- Check if it might be a known error and/or a knowledge base article exists
 - Sources: your own experience, Knowledge Base, Topdesk Knowledge Base



Customer Level 1 Support

CUS-1	Log/update incident in topdesk
Description	CUS logs a ticket in TopDesk and adds a complete 'Incident report', making sure
	there is a reproducible example on a non production environment. The requestor of the ticket is owner of the ticket at CUS side.
Previous step	 None ITI-2: Extra information needed from CUS?
Entry criteria	CUS has investigated an issue reported by a user.
	CUS cannot provide a solution themselves and requires assistance from Itineris to resolve the ticket. Or Itineris needs additional information to start the analysis of the incident.
Exit criteria	 Complete TopDesk ticket with a complete 'Incident report'. Reproducible example on a non-production environment (Test, Accept,)
Next step	ITI-1: High-level analysis (01. Submitted)
Responsible	Customer Level 1 Support

Itineris Level 2/3 Support

Process description



ITI-1	High-level analysis (01. Submitted)
Description	Itineris provides a high level analysis on the ticket to determine whether the ticket and "incident report" are complete and whether enough information is available to start the detailed analysis.
Previous step	CUS-1: Log or update TopDesk ticket
Entry criteria	A TopDesk ticket with a correct ticket type, a reproducible example on a test environment and a filled in "incident report"
Exit criteria	High level analysis is executed
Next step	ITI-2: Extra information needed from CUS?
Responsible	Itineris Level 2/3 Support



Itineris Level 2/3 Support

ITI-2	Extra information needed?
Description	Itineris will update the TopDesk ticket if additional information is required to perform the detailed analysis. The update specifies the required information.
Previous step	ITI-1: High-level analysis (01. Submitted)
Entry criteria	High level analysis is executed
Exit criteria	Decision is made whether the input is adequate and sufficient to start ticket analysis. If additional information is necessary, the Ticket is up to date with a description of the information that is missing.
	 Yes: Ticket status is '02. Assigned' No : Ticket status is '51. Wait on Customer'
Next step	 Yes: CUS-1: Log or update TopDesk ticket (51. Wait on Customer) No: ITI-3: Assign ticket (02. Assigned)
Responsible	Itineris Level 2/3 Support



Itineris Level 2/3 Support

ITI-3	Assign Ticket (02. Assigned)
Description	The ticket is assigned to a functional consultant of Itineris. This consultant is owner of the ticket.
Previous step	ITI-2: Extra information needed from CUS?
Entry criteria	All required information to start analysis is available.
Exit criteria	Ticket is assigned to a functional consultant of Itineris. Ticket status is '02. Assigned'
Next step	ITI-4: Analyze Ticket (03. In progress)
Responsible	Itineris Level 2/3 Support



Itineris Level 2/3 Support

ITI-4	Analyse ticket (03. In progress)
Description	The functional consultant executes a detailed analysis on the ticket to be able to evaluate the ticket in the following steps.
Previous step	ITI-3: Assign ticket (02. Assigned)
Entry criteria	Ticket is assigned to a functional consultant
Exit criteria	Detailed analysis is executed.
Next step	ITI-5: Further explanation required?
Responsible	Itineris Level 2/3 Support



Itineris Level 2/3 Support

ITI-5	Further explanation required?
Description	Itineris will update the TopDesk ticket if additional information is required to perform the detailed analysis.
	The update specifies the required information and the status changes to '51. Wait on Customer'
Previous step	ITI-4: Analyze (03. In progress)
Entry criteria	Detailed analysis is executed by the functional consultant.
Exit criteria	Decision is made whether the input is adequate and sufficient for detailed analysis.
	If additional information is necessary, the Ticket is up to date with a description of the information that is missing.
Next step	- Yes: CUS: Provide explanation (51. Wait on Customer) - No: ITI-6: Change?
Responsible	Itineris Level 2/3 Support



Customer Level 1 Support

CUS-2	Provide explanation (51. Wait on Customer)
Description	CUS provides the additional information needed to finalize the high level analysis.
Previous step	 ITI-5: Further explanation required? CUS: Agree to close ticket?
Entry criteria	- Analysis is ongoing
Exit criteria	The requested information is updated in TopDesk
Next step	ITI-4: Analyze Ticket (03. In progress)
Responsible	Customer Level 1 Support



Registration & Classification

Resolve

Close



Resolve

- Itineris to evaluate solution
 - Problem -> PROBLEM Management
 - Change Request -> CHANGE Management
 - Not in Scope for Itineris -> Reject ticket

54. Out Of Scope

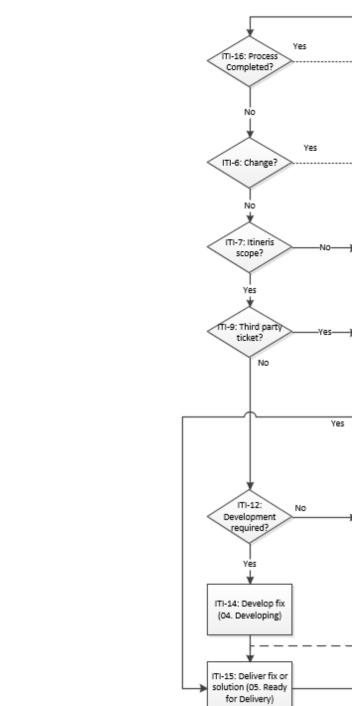
Resolution Category: choose correctly

- In Scope for 3rd Party resolution
 53. Third Party
- Requires development by Itineris
 04. Developing
- Itineris or 3rd Party delivers solution
 - Release needed

52. Wait for Go-Live

Requires release

05. Ready for Delivery



ITI-17:

Problem

management process

ITI-8: Update ticket

ITI-10: Analysis and

resolution third

party (53. Third

Party)

11: Releas

required for delivery of

solution3

No ITI-13: Deliver

information or

solution

(52. Wait for Go-

Live)

Delivery document

Page 112 of 736



Do's and Don'ts

Resolve

- For urgent tickets (P1/P2)
 - Out of hours, call out (on the phone) to Itineris Service Desk
- **Delivery Document** lists the steps Itineris took to investigate / pinpoint the issue
 - This will help if the same issue arises again, in argumentation towards customer, to draft knowledge base articles, ...



Resolve - developing

Do's and Don'ts

- When the incident is resolved from an Itineris point of view:
 - Mark the incident Completed
 - Typically in status 05. Ready for Delivery (non release), 52. Wait for go live (with release) or 54. Out of Scope



Itineris Level 2/3 Support

ITI-6	Change?
Description	The ticket is updated with information on whether the ticket is a change or not.
Previous step	ITI-5: Further explanation required?
Entry criteria	No further clarification required for the investigation of the incident
Exit criteria	Clear indication whether the ticket is a change or not
Next step	- Yes: CUS-3: Change management Process - No: ITI-7: Itineris Scope?
Responsible	Itineris Level 2/3 Support



Customer Level 1 Support

CUS-3	Change management process
Description	CUS issues a new ticket with ticket type 'Request for Change'.
Previous step	ITI-6: Change?
Entry criteria	The incident is considered a change
Exit criteria	Cfr. Change management Process.
Next step	N/A
Responsible	CUS Change manager

Process description Itineris Level 2/3 Support



ITI-7	Scope Itineris?
Description	The consultant decides if the ticket is within Itineris scope to trigger the correct next steps.
Previous step	ITI-6: Change?
Entry criteria	A TopDesk incident in status '03. In progress' that isn't a change
Exit criteria	Clear indication whether the ticket is Itineris scope or not
Next step	Yes: ITI-9: Third party ticket? No: ITI-8: Update ticket
Responsible	Itineris Level 2/3 Support

Itineris Level 2/3 Support

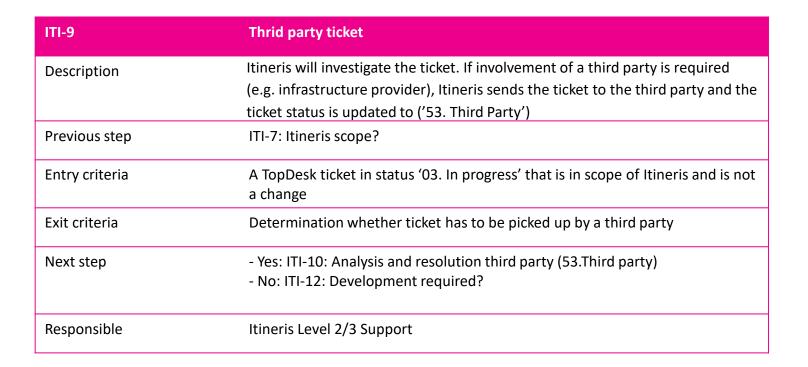
Process description



ITI-8	Update Ticket
Description	Itineris will update the ticket, indicating why the ticket should be closed at this stage. The ticket is either a change (for which a new ticket needs to be created with ticket type 'Request for Change' or the ticket is out of scope for Itineris and needs to be resolved by CUS. The ticket is marked as 'completed', since no further action of Itineris is required.
Previous step	ITI-7: Itineris scope?
Entry criteria	A TopDesk ticket in status '03. In progress' that is not in Itineris scope.
Exit criteria	Updated ticket that is marked as 'ready' explaining why the ticket is out of scope for Itineris and giving a reason for closure.
Next step	CUS: Agree to close ticket?
Responsible	Itineris Level 2/3 Support

Itineris Level 2/3 Support

Process description





Process description Itineris Level 2/3 Support



ITI-10	Analysis and resolution third party (53.Third party)
Description	The third party provides the solution for the incident. Itineris manages the
	ticket and provides feedback to CUS through updates of the ticket.
Previous step	ITI-9: Third party ticket?
Entry criteria	A TopDesk incident in status '53 Third Party'. The third party is instructed to solve the ticket.
Exit criteria	Solution is provided by third party.
Next step	ITI-11: Release required for delivery of solution?
Responsible	Itineris Level 2/3 Support

Itineris Level 2/3 Support

Process description

ITI-11	Release required for delivery of solution?
Description	Itineris checks whether a release is required to resolve the ticket.
Previous step	ITI-10: Analysis and resolution third party
Entry criteria	Solution is provided by third party.
Exit criteria	Decision that the resolution of the ticket does or does not require a release.
Next step	 No: ITI-13: Deliver information or solution (52. Wait for Go-Live) Yes: ITI-15: Deliver fix or solution (05. Ready for Delivery)
Responsible	Itineris Level 2/3 Support



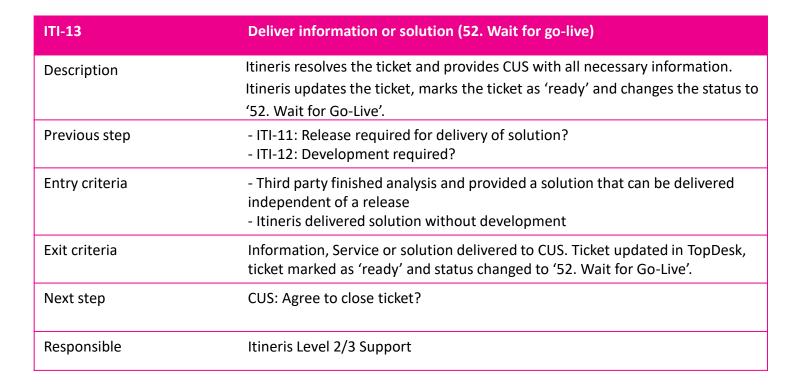


Itineris Level 2/3 Support

ITI-12	Development required?
Description	Itineris determines whether development is required to deliver a fix. When development is needed, the TopDesk ticket status is changed to '04.
	Developing'.
Previous step	ITI-9: Third party ticket?
Entry criteria	A TopDesk incident in status '03. In progress' that is in Itineris scope, is not a change and where no third party involvement is required.
Exit criteria	Decision whether development is required by Itineris, and if so, a TopDesk ticket in status '04. Developing'
Next step	- Yes: ITI-14: Develop fix (04. Developing) - No: Deliver information or solution (52. Wait for Go-Live)
Responsible	Itineris Level 2/3 Support

Itineris Level 2/3 Support

Process description





Itineris Level 2/3 Support

Process description

ITI-14	Develop fix
Description	Itineris manages the analysis, build and test of the fix within the agreed timeframe. Itineris provides timely updates on progress and on any additional elements that need to be discussed with CUS.
Previous step	ITI-12: Development required?
Entry criteria	A TopDesk incident in status '04. Developing'.
Exit criteria	Fix developed an tested by Itineris.
Next step	ITI-15: Deliver fix (05. Ready for Delivery)
Responsible	Itineris Level 2/3 Support



Itineris Level 2/3 Support

ITI-15	Deliver fix (05. Ready for delivery)
Description	Itineris manages the test of the fix within the agreed timeframe. Itineris provides a delivery document for the disruption.
Previous step	ITI-14 Develop fix
Entry criteria	A TopDesk incident in status '04. Developing'
Exit criteria	Fix succesfully tested by Itineris and 'delivery document' is available.
Next step	SDM-1 Release management process
Responsible	Itineris Level 2/3 Support



Registration & Classification

Resolve

Close



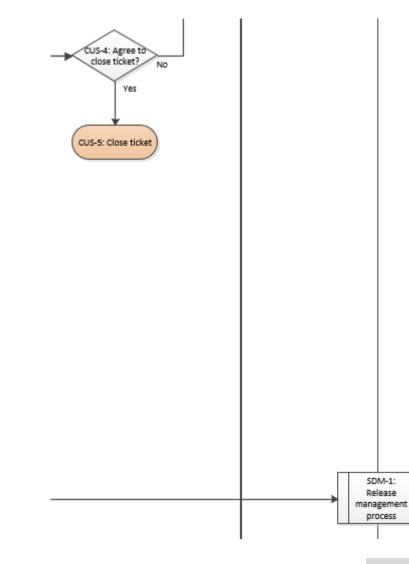


Close

- Customer evaluates the solution
 - Sufficient solution

Closed flag

- Not sufficient
 - Extra info to be supplied
 - 51. Wait on Customer





Customer Level 1 Support

CUS-4	Agree to close ticket?
Description	CUS checks whether there is agreement on the fact that the ticket is out of scope for Itineris or that the provided information or solution is sufficient. CUS adds the decision and conclusion of the discussion with Itineris to the TopDesk ticket. OR CUS checks the information or solution delivered by Itineris and decides whether this covers the incident.
Previous step	 ITI-8: Update ticket (ticekt marked as 'completed') ITI-13: Deliver information or solution (52. Wait for Go-Live)
Entry criteria	Updated ticket which is marked as 'completed' with clarification why ticket should be closed.
Exit criteria	Decision made whether CUS agrees to close the ticket.
Next step	 Yes: CUS-5: close ticket No: CUS-2: Provide explanation (51. Wait on Customer)
Responsible	Customer Level 1 Support



Customer Level 1 Support

CUS-5	Close ticket
Description	End of Incident management process.
Previous step	CUS-4: Agree to close ticket?
Entry criteria	CUS agrees to close the ticket
Exit criteria	CUS closes the TopDesk ticket (mark as "Closed")
	Incident management Process is officially ended for the ticket.
	CUS is responsible for any follow-up actions necessary.
Next step	N/A
Responsible	Customer Level 1 Support





CUS Release Manager / ITI Service Delivery Manager

SDM1	Release management process
Description	End of Incident management process
Previous step	Deliver fix or solution is planned
Entry criteria	Deliver fix or solution is planned
Exit criteria	Release Management Process
Next step	N/A
Responsible	CUS Release Manager & Itineris Service Delivery Manager





Overview

Incident Management

Status and Closure Code

Top Desk Tool - Overview

Top Desk Demo



Statuses

Short description
Initial status when a new ticket is logged in Topdesk
Intake has been done, and the ticket is assigned to a consultant for treatment
Consultant is investigating the issue. Used to make sure only one person is working on a ticket
Development is needed to solve the ticket. Development is ongoing. Development includes testing on all ITI internal environments
The ticket has been solved and the solution is verified on ITI internal environments. It is 'waiting' to be implemented on the customer environment.
The solution has been deployed on the customer testsystem. Customer needs to test and accept the solution.
The solution on test has been verified by the customer. The solution is waiting to be installed on the Accept environment.
The solution has been deployed on the customer acceptsystem. Customer needs to test and accept the solution.
The solution on accept has been verified by the customer. The solution is waiting to be installed on the Production environment.

Status	Short description
31. Sizing IA in Progress	A change is requested. Itineris is estimating the effort needed to deliver an Impact Analysis (IA)
32. Wait for IA Sizing Accept	The customer has to agree to the estimated effort to deliver an Impact Analysis (IA)
33. IA In Progress	The customer has agreed to the estimated effort to deliver an Impact Analysis (IA) Itineris is performing the Impact Analysis (IA)
34. Wait for IA Accept	The Impact Analysis (IA) is delivered to the customer. Itineris is waiting for the customer to approve the Impact Analysis (IA) both from a solution and a financial point of view
51. Wait on Customer	Itineris is waiting for information from the customer. Typically used when additional information is needed to investigate the issue
52. On Hold	The ticket is not actively worked on. For example because there are other priorities,
53. Third Party	The ticket is being treated by a Third Party that needs to provide an analysis / solution
54. Out of Scope	The issue/request in the ticket is NOT in scope of any of the services rendered by Itineris (e.g. an issue is reported in a system not under the control/management of Itineris)



Status vs. Closed (Completed)

- Which statusses to use for which ticket type
- When a ticket is marked as 'Completed' the status has to be one of the following:
 - 05. Ready for Delivery
 - 09. Wait for Go Live
 - 54. Out of Scope

Status	Closed?	Disruption	Defect	Data Issue	Product Optimisation	Request For Information	Request for Change	Service Desk Assistance	Change (ITI Only)
01. Submitted		Х	Х	Х	Х	Х	Х	Х	
02. Assigned		X	Х	Х	Х	Х	Х	Х	Х
03. In Progess		Х	Х	Х	Х	Х	Х	Х	Х
04. Developping		X	Х	Х	Х	Х	Х		
05. Ready for Delivery	Х	Х	Х	Х	Х	Х	Х	Х	Х
06. Wait for Testing		Х	Х	Х	Х		Х	Х	
07. Install on Accept		Х	Х	Х	Х		Х	Х	
08. Wait for Accept		Х	Х	Х	Х		Х	Х	
09. Wait for Go Live	Х	Х	Х	Х	Х		Х	Х	Х
31. Sizing IA in Progress							Х		
32. Wait for IA Sizing Accept							Х		
33. IA In progress							Х		
34. Wait for IA Accept							Х		
51. Wait on Customer		Х	Х	Х	Х	Х	Х	Х	Х
52. On Hold		Х	Х	Х	Х	Х	Х	Х	Х
53. Third Party		Х	Х	Х	Х	Х	Х	Х	Х
54. Out of Scope	Х	Х	Х	Х	Х	Х	Х	Х	Х

Solution categories



Solution Category	Short description	Status	Ticket Type
ERRSTD (Error Standard Program)	Bug in product / localisation	09. Wait for Go Live	Disruption, Defect
ERRTEC (Error Infrastructure)	Problem with infrastructure (not code related)	09. Wait for Go Live	Disruption, Defect
ERRSPE (Error Specific Dev)	Bug in bespoke software	09. Wait for Go Live	Disruption, Defect
CHANGE	Request for Change was delivered	09. Wait for Go Live	Request for Change Service Desk Assistance
PARMET (Parametrisation)	Change in parametrisation	05. Ready for Delivery	Disruption, Defect
DATISS (Data Issue Correction)	A (one time) data correction was executed (SQL, job,) or delivered	05. Ready for Delivery 09. Wait for Go Live	Disruption, Defect, Data Issue
INFODE (Information Delivered)	Information was delivered to resolve the issue	05. Ready for Delivery	Request for Information
ERROUT (Error Non Itineris)	Problem in a component that is out-of-scope for Itineris	54. Out of Scope	All ticket types
DOUBLE (Double submission)	Same ticket as another	_	
FCTNOR (Wrong use of App.)	User has executed a faulty manipulation of the system	_	
NONISS (Non-Issue)	Works as designed	_	
NOTREP (Not Repeatable)	Cannot be reproduced, does not occur again	_	
SUDROP (Dropped by submitter)	Submitter has indicated that no further action is needed (before a solution is delivered)	_	





Overview

Incident Management

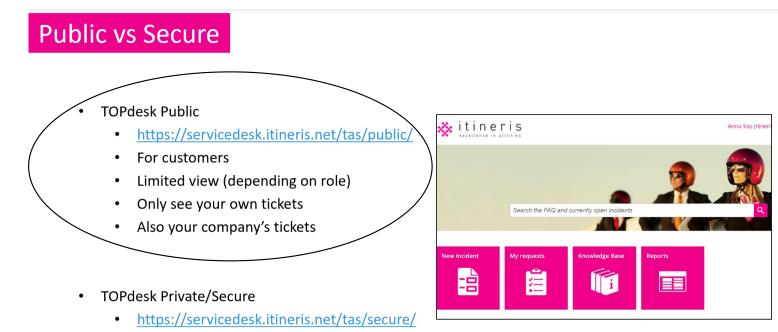
Status and Closure Code

Top Desk Tool - Overview

Top Desk Demo



General



- For Itineris employees
- Extended view (depending on role)
- Can see every ticket in TOPdesk for all customers
- Can create, edit, close, update, delete, etc. tickets



TopDesk

How to Create a New Ticket/Incident

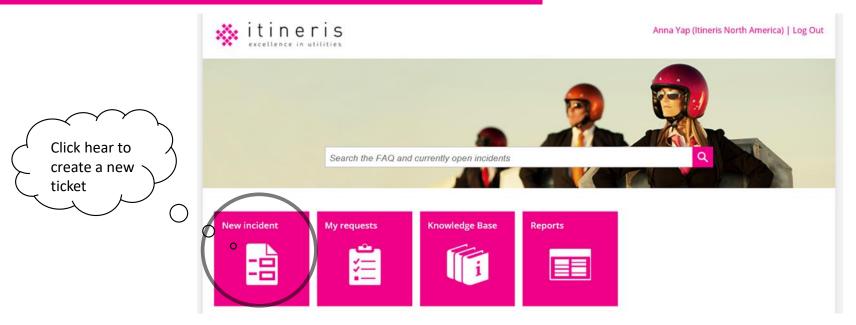
Updating Existing Ticket/Incident

Close



STORE OF STREET

TopDesk – Create a New Incident





TopDesk – New Ticket/Incident



Search the FAQ and currently open incidents

HOME > FORMS_ALL_CLIENTS > NEW INCIDENT

New incident

Caller

City

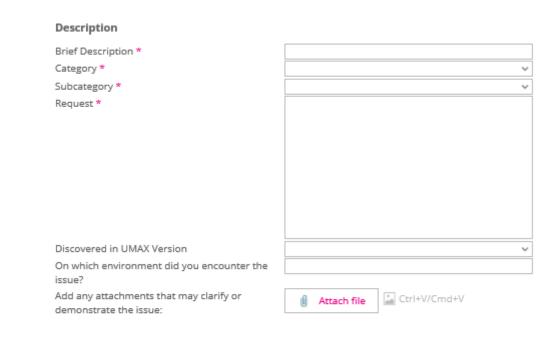
Name * Anna Yap Branch Itineris North America Telephone Number Email anna.yap@itineris.net Location (Caller) North America Incident Type Incident Type Impact * Urgency * Ticket nr. in your system:

~
~

v



TopDesk – New Ticket/Incident







TopDesk

How to Create a New Ticket/Incident

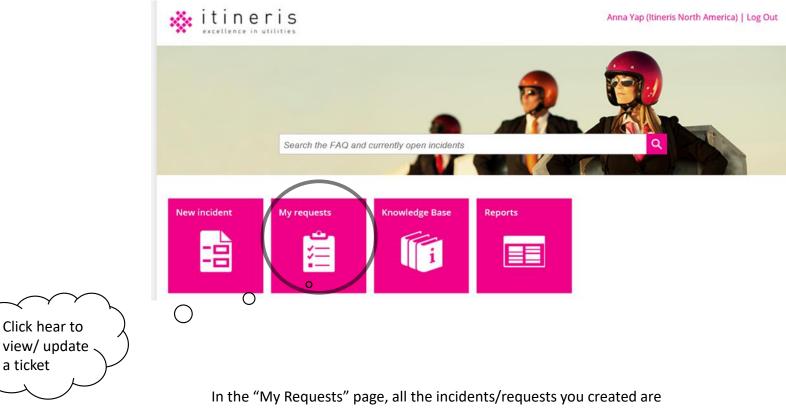
Updating Existing Ticket/Incident

Report



TopDesk – View & Update Ticket/Incident





displayed.

- By default, the "Own" filter is selected, which displays only your own incidents (created by you).
- Clicking "All" displays a list of all the tickets in your organization.

TopDesk – View & Update Ticket/Incident



<pre>itineris excellence in utilities</pre>	Anna Yap (I	tineris North America) Log Out	
Search the FAQ and currently open incidents		٩	
OME > MY REQUESTS			
/ly requests (1)			
Show Own All Open Closed All			
Updates to Baltimore Public Works user accounts ITI-11704-0109 Please disable the following Baltimore Public Works user account in TOPdesk. Maria DeChellis Email: Maria.DeChellis@baltimorecity.gov Login Name: BALMaDec	11 On Hold	Apr 11, 2017	
To view and/or update an incident:			
 Click on the ticket you would like to update or manage. Add any notes and add any relevant attachments, and click SEND to save the note/attachment. If any new details emerge please update with as much information as possible. If the issue has been resolved, click CLOSE 		system? Reach out to me directly if Chatted about this before. JD Jargen Dhooge () Free Baltimore : JD Jargen Dhooge Hi Pauli, would you be ok	
Deres	142 of 726	Ø Attach file	

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:

Close

On Hold by Jürgen Dhooge Due date July 20, 2018 6:00 PM

Status 51. Wait on Customer Type Service Desk Assistance Categorization Itineris Service Desk - TOPdesk Impact, Urgency, Priority 20. Medium, Medium, 3



TopDesk

How to Create a New Ticket/Incident

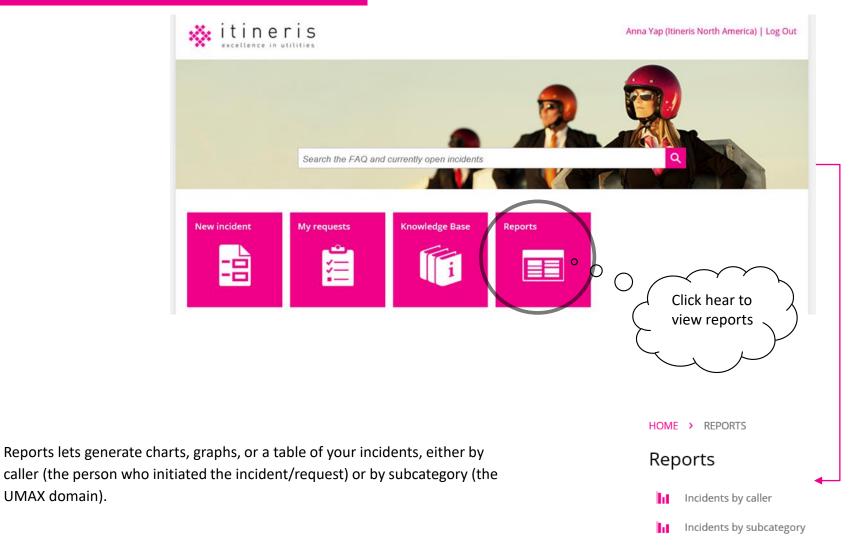
Updating Existing Ticket/Incident

Report





TopDesk – View Reports



UMAX domain).

TopDesk – View Reports



HOME > REPORTS > INCIDENTS BY CALLER Incidents by caller Incidents by caller / aanmelder 🧉 Pie chart 🛍 Bar chart 🗠 Line graph 🌐 Table Display as Logged Total Paul Mullins Anna Yap Ed Fowler James Hopkins Whitney Dozier Wim Steenwerck Incidents by caller > Paul Mullins / Logged Total Need email template for emailed incidents Processing 21-Jul-2017 15:05 [GMT -4:00] Paul Mullins: Good da... July 21, 2017 2:34 PM Need Location for Branch: Cape Fear Completed 21-Jul-2017 15:02 [GMT -4:00] Paul Mullins: Hi Servic... Please provide new user ids (Login / Passwords) fo... Completed 09-Dec-2016 08:48 [GMT -5:00] Paul Mullins: Thanks... Certificate not terminated when 2 contract struct... Processing 08-Nov-2016 11:12 [GMT -5:00] Paul Mullins: Ticket t... September 8, 2016 10:57 (HOLD) will need to consider SubBranches for CIT... Processing 08-Sep-2016 17:10 Paul Mullins: There will be two p... NA - Release Management SLAs Setup in TopDesk Processing 25-08-2016 20:56 Mullins Paul: Release Mgmt SLAs...

HOME > REPORTS > INCIDENTS BY CALLER

Incidents by caller

Incidents by caller / aanmelder

Display as	🔮 Pie chart	ជា Bar chart	🗠 Line graph	I Table

Incidents by caller

	Logged Total
Anna Yap	1
Ed Fowler	1
James Hopkins	1
Paul Mullins	6
Whitney Dozier	1
Wim Steenwerckx	1
Total	11

HOME > NEED EMAIL TEMPLATE FOR EMAILED INCIDENTS

I Attach file

Need email template for emailed incidents

PM

Page 146 of 736

Mullins d on July 21, 2017		On Hold
day Service Desk,		by Jürgen Dhooge
get an email template for the TOPdesk integratio n? I out to me directly if you need more details. I be id about this before.		Due date July 20, 2018 6:00 PM
		Close
Jürgen Dhooge New Baltimore City Topdesk Incident.msg	July 24, 2017 3:54 PM	Status
Jürgen Dhooge Hi Paul.	July 24, 2017 3:54 PM	51. Wait on Customer Type Service Desk Assistance
would you be okay with using the same temp attached) and just changing the name on top		Categorization Itineris Service Desk - TOPdesi
Kr. Jürgen		Impact , Urgency , Priority 20. Medium, Medium, 3
l reply		
-		20. Medium, Me

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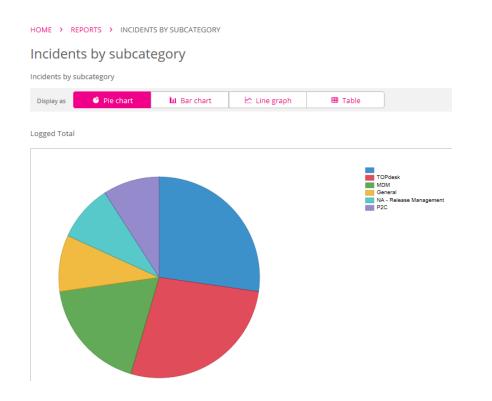
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STORE OF STREET

TopDesk – View Reports

Incidents by Subcategory shows incidents based on the UMAX domains. The report options are a Pie chart (pictured below), Bar chart, Line graph, and Table.



HOME > RE	PORTS > INCIDEN	TS BY SUBCATEGORY			
Incident	ts by subcat	egory			
Incidents by s	ubcategory				
Display as	Pie chart	ជា Bar chart	🗠 Line graph	Ⅲ Table	
Incidents by s	ubcategory				
					Logged Total
General					1
MDM					2
NA - Releas	e Management				1
P2C					1
TOPdesk					3
					3
Total					11





Overview

Incident Management

Status and Closure Code

Top Desk Tool - Overview

Top Desk Demo



Backup

Priority

SLA



TopDesk – Priority



		Impact		
		High	Medium	Low
lcy	High	1	2	3
Urgency	Medium	2	3	4
Ŭ.	Low	3	4	5

TopDesk Impact

Impact is the degree of realized / potential business process failure caused by an incident. Scope of service degradation - measured by the number of services, systems or users affected.

Impact is really about WHO is affected and classified as following:

- **High**: the entire system is down, and no one can use the system or services.
- **Medium**: a functional group (ex: payment department) cannot use the system and/or moderate number of members are affected.
- Low: a single user and/or low number of members are affected.

Topdesk Urgency

Urgency is the necessary speed of resolving an incident. It is determined by the time sensitivity requirement for a resolution, as measured in terms of financial, image, or security impact of a service's downtime.

Urgency is about WHAT is affected and is classified as follows:

- **High**: Core business service affected that has direct impact on financials, GUS's image, or security.
- **Medium**: Affect the execution of a core business service and a workaround or other options are available.
- Low: Non-urgent service, which does not directly support a core business service and not time sensitive.

Priority	Description
1	Incident with business-critical process which cannot be completed and which has immediate impact (typically revenue based or high impact on member relations).
2	Business critical process which end's with more than 10% failures; OR One or more departments of Customer has no access to the system; OR More than 25% of the users cannot access the application, OR An incident with a non-business critical process which cannot be completed.
3	An incident with a non-business critical process which end's with more than 10% failures; OR Between 10% and 25% of the users cannot access the application; OR Loss of performance whereas the online response times are twice as high as the reference response times.
4, 5	Less than 10% of the users cannot access the application; OR It concerns a non-critical issue whereas a change is needed and both parties agree a mutual acceptable resolution time Page 150 of 736



Backup

Priority

SLA



TopDesk – SLA



Priority Level	Response times (during Hours of Coverage)	Resolution Times (during Hours of Coverage)
Critical (1)	Within 1 hours for 90% of Tickets	Correction or workaround available ^{1,2} within 3 Business Days for 99% of all cases. Standard Software Patch to be delivered.
Major (2)	Within 1 hour for 90% of Tickets	Correction available ^{1,2} within 10 Business Days for 95% of all cases. Standard Software Patch to be delivered.
Medium (3)	Within 2 hours for 90% of Tickets	Correction available ^{1,2} within 40 Business Days or if mutually agreed, integrated in the next regular service release for 80% of all cases.
Minor (4&5)	Within 2 hours for 90% of Tickets	No guaranteed time ^{1,2} . Possible integration of a correction in next version or release of the Software.

¹ 'Correction available' means that a Software Patch is ready to be implemented at Licensee side.

² Note that a Service Level Agreement under the Framework Agreement can be added to increase the Resolution Times inside or outside Hours of Coverage.



Thank you!



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GUS CIS Application Support

Change Management









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Overview

Process description

Status and Closure Code

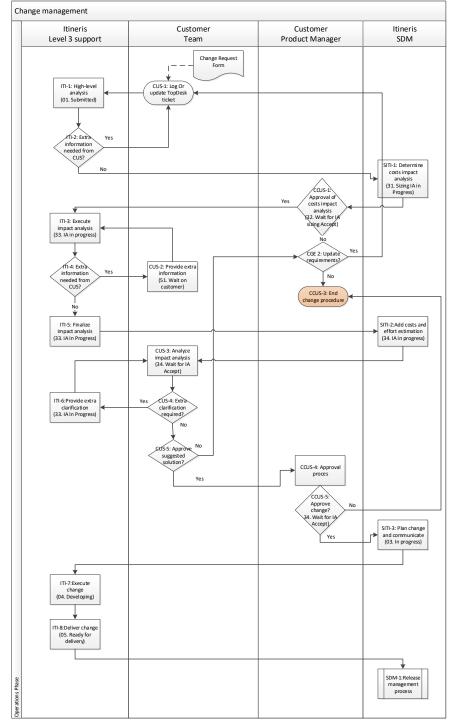
Template



Ticket type	Description	Service delivery process
Disruption	The system is not working and a business process is blocked (service interruption or degraded service quality). Solution is a workaround(*) or a permanent fix.	Incident managment
Request for change	A formal change, using the Change Request template	Change managment
Defect	An 'issue' is detected (but not blocking a user), but no permanent fix is available. Solution is a permanent fix. A defect can be related to a bug, a malfunction of infrastructure, a networking issue,	Problem managment
Data Issue	A one-time change of incorrect data for which GUS does not have sufficient user rights or knowledge to execute the change. This ticket type is only linked to those errors that are not related to a 'Defect' or a 'Request for Change'.	Problem managment
Request for Information	Any request for support concerning the standard functionality of the product.	Incident management*
		*without response and resolution times
Service Desk Assistance	A formal change, but with a pre-approved scope (e.g. a release, a database refresh, a query or list,)	Change managment

Change / Request Management

- Goal:
 - Introduce changes to a working environment in a controlled way
- Key success factors:
 - Make sure the requirement is well understood
 - Make sure the impact on existing processes and features is analyzed



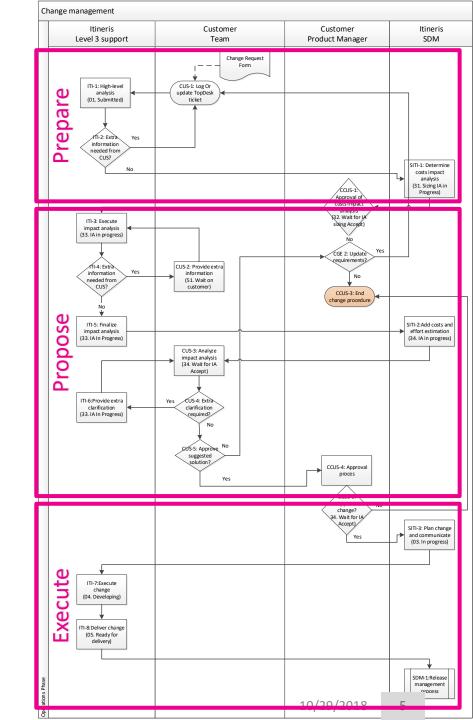
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Step by step

- Prepare
 - Perform first assessment of the request
 - Propose effort for the Impact Analysis
 - Approve the effort for the Impact Analysis

• Propose

- Perform Impact analysis & effort estimate
- Propose a solution
- Validate the proposed solution
- Approve the solution & effort/cost
- Execute
 - Plan and build the execution of the change



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Overview

Process description

Status and Closure Code

Template



Prepare

Propose

Execute





Prepare

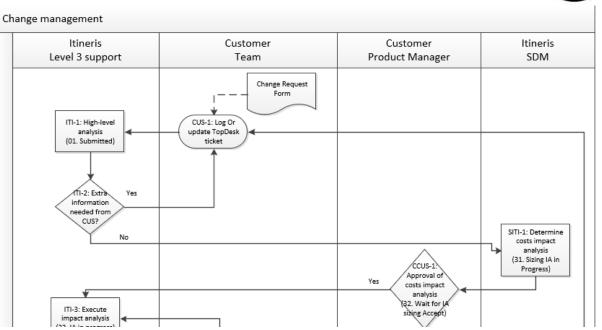
• Customer submits ticket in Topdesk

01. Submitted

- Itineris evaluates completeness
 51. Wait on Customer
- Itineris Responsible determines
 cost of IA

31. Sizing IA in Progress

Customer approves cost of IA
 32. Wait for IA Sizing Accept





New Change registration

Do's & Don'ts

- Make sure the change is as complete as possible
 - Clear description (RFI document)
 - Fill in required fields in TopDesk



Customer Level 1 / 2 Support

CUS-1	Log or update Change in TopDesk
Description	A ticket is logged in TopDesk and the Change Form is attached. The Change Form contains a clear description of the requirements. CUS creates a new ticket if the initial ticket has another type (e.g. 'Defect') CUS adds additional information or requirements if the previous request was not clear for Itineris.
Previous step	- Others - ITI-2: Extra information needed from CUS? - SGE-2: Update requirements?
Entry criteria	Request for change is defined by CUS internally
Exit criteria	-Topdesk ticket including the filled in RFC document cfr guidelines - Type of TopDesk ticket = " Request for Change" - Contact of CUS is assigned to discuss the functional requirements of the change
Next step	ITI-1: High-Level analysis
Responsible	Customer Level 1 / 2 Support



Itineris Level 3 Support

ITI-1	High level analysis (01. Submitted)
Description	Itineris provides a high level analysis on the requested change to determine that enough information is available to deliver an impact analysis.
Previous step	CUS-1: Log Or update TopDesk ticket
Entry criteria	A Topdesk of type 'Request for change' including the filled in RFI/RFC document
Exit criteria	High level analysis is executed
Next step	ITI-2: Extra information needed from CUS?
Responsible	Itineris Level 3 support



Itineris Level 3 Support

ITI-2	Extra information needed?
Description	Itineris will update the TopDesk ticket if additional information is required to perform the high level analysis. The update specifies the required information. The status changes to 'Wait on Customer'
Previous step	ITI-1: High-Level analysis
Entry criteria	High level analysis is executed
Exit criteria	Decision is made whether the input is adequate and sufficient for estimating the impact analysis
Next step	- No: SITI-1: Determine costs impact analysis - Yes: CUS-1: Log or update TopDesk ticket
Responsible	Itineris Level 3 support



Itineris Responsible

SITI-1	Determine costs impact analysis
Description	The Itineris SDM provides a cost estimate for execution of the impact analysis. The initial effort (Low, Medium of High) for the implementation of the change is estimated.
Previous step	ITI-2: Extra information needed from CUS?
Entry criteria	High level impact analysis
Exit criteria	- Final impact analysis estimate - Throughput time for ITI-3: Execute impact analysis
Next step	CCUS-1: Approval of costs impact analysis
Responsible	Itineris Service Delivery Manager



CCUS-1	Approval of cost IPA (32. Wait for IA Sizing Accept)
Description	The CUS Change Manager approves or disapproves the execution of the impact analysis, based on the estimation of the costs for the impact analysis.
Previous step	SITI-1: Determine costs impact analysis
Entry criteria	Final impact analysis estimate
Exit criteria	Approval or disapproval on execution of impact analysis
Next step	 Yes ITI-3: Execute impact analysis No CCUS-2: Update requirements?
Responsible	Customer Change Manager



Prepare

Propose

Execute





Propose

Impact analysis is written

33. IA in progress

Feedback loop included to validate/get extra info

51. Wait on Customer

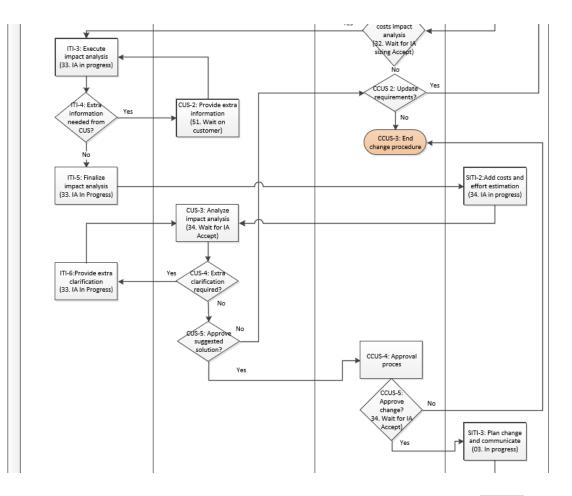
• Finalize IA and add the cost/effort estimates

33. IA in Progress

- Customer evaluates solution 34. Wait for IA Accept
- Feedback loop included to get extra info

33. IA in progress

- Customer approves solution and associated cost
 - 34. Wait for IA Accept



Itineris Level 3 Support

Process description

ITI-3	Execution IPA (33. In progress)
Description	Itineris executes the impact analysis. Itineris fills in the form to make clear to CUS how the change will be designed.
Previous step	 CCUS-1: Approval of costs impact analysis CUS-2: Provide extra information
Entry criteria	Approval to execute impact analysis
Exit criteria	Impact analysis, updated in the change form
Next step	ITI-4: Extra information needed from CUS?
Responsible	Itineris level 3 support





Itineris Level 3 Support

ITI-4	Extran information needed?
Description	Itineris will update the TopDesk ticket if additional information is is required to perform the Impact Analysis. The update specifies the required information. The status changes to 'Wait on Customer'. If no additional information is required, the Impact analysis is finalized in ITI-5.
Previous step	ITI-3: Execute impact analysis
Entry criteria	Draft impact analysis
Exit criteria	Decision is made whether the input is adequate for finalizing the IA
Next step	 ITI-5: Finalize impact analysis CUS-2: Provide extra information
Responsible	Itineris level 3 support



Customer Level 1 / 2 Support

CUS-2	Provide explanation (51. Wait on Customer)
Description	CUS provides the additional information to Itineris.
Previous step	ITI-4: Extra information needed from CUS?
Entry criteria	Draft Analysis is executed and topdesk is up to date with a clear description of the additional information needed to finalize the impact analysis.
Exit criteria	The requested information is updated in TopDesk.
Next step	ITI-3: Execute impact analysis
Responsible	Customer Level 1 / 2 Support

Itineris Level 3 Support

Process description

ITI-5	Finalize Impact analysis (33. IA in progress)
Description	Itineris reviews and finalizes the Impact Analysis
Previous step	ITI-4: Extra information needed from CUS?
Entry criteria	All necessary information is provided, no more information is required from CUS
Exit criteria	Update Change Form with the finalized impact analysis
Next step	SITI-2: Add costs and effort estimation
Responsible	Itineris level 3 support





Itineris Service Delivery Manager

SITI-2	Add costs and effort
Description	The Itineris SDM provides the costs for the implementation of the solution. The effort (Low, Medium of High) of the change is frozen as of this step.
Previous step	ITI-5: Finalize impact analysis
Entry criteria	Finalized impact analysis
Exit criteria	Final and signed impact analysis with clear indication of bespoke or product and ownership of IPR and the costs to build the change
Next step	CUS-3: Analyze impact analysis
Responsible	Itineris Service Delivery Manager



Customer Level 1 / 2 Support

CUS-3	Analyze impact analysis (34. Wait for IA Accept)
Description	CUS analyzes the solution that Itineris proposes
Previous step	SITI-2: Add costs and effort estimation ITI-6: Provide extra clarification
Entry criteria	Finalized proposal (impact analysis and costs)
Exit criteria	Analyzed solution
Next step	CUS-4: Extra clarification required?
Responsible	Customer Level 1 / 2 Support



Itineris Level 3 Support

ITI-6	Provide extra clarifications (33. IA In progress)
Description	Itineris clarifies the Impact Analysis to CUS. Itineris updates TopDesk and provides the information by meeting, mail or phone call.
Previous step	CUS-4: Extra clarification required?
Entry criteria	Clear description in topdesk of the required additional clarification to evaluate the final impact analysis.
Exit criteria	Provide the requested clarification in TopDesk.
Next step	CUS-3: Analyze impact analysis
Responsible	Itineris level 3 spuport



Customer Level 1 / 2 Support

CUS-4	Extra clarification required?
Description	CUS will update the topdesk ticket if additional information is required to evaluatie the Impact analysis of Itineris. The update specifies the required information. CUS adds the outcome of meetings or phone-calls in TopDesk. If no additional information is required, the Impact analysis is finalized in CUS- 5.
Previous step	CUS-3: Analyze impact analysis
Entry criteria	Analyzed solution
Exit criteria	Decision is made if analysis of the solution is final or extra clarification of the impact analysis is needed
Next step	 Yes: ITI-6: Provide extra clarification No: CUS-5: Approve suggested solution?
Responsible	Customer Level 1 / 2 Support



CCUS-2	Update requirements?
Description	The CUS Change manager decides to revise the requirements of the change request or to cancel the change request.
Previous step	 CCUS-1: Approval of costs impact analysis CUS-5: Approve suggested solution?
Entry criteria	Disapproval on the costs of the impact analysis or on the suggested solution for the change.
Exit criteria	Decision to update the requirements or end the process.
Next step	- Yes: CUS-1: Log Or update TopDesk ticket - No: CCUS-3: End Change procedure
Responsible	Customer Change Manager



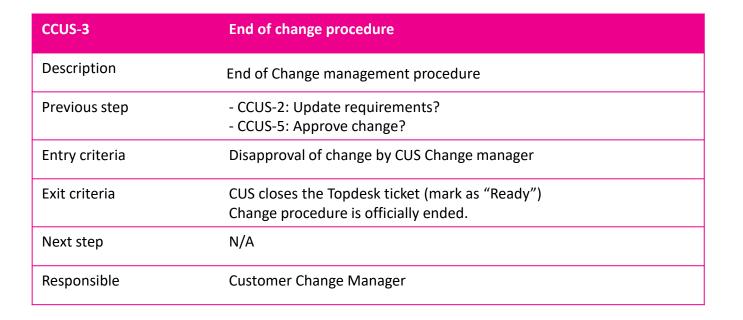
CCUS-4	Approval process
Description	CUS Change Manager ensures that the formal CUS approval procedure is executed.
Previous step	CUS-5: Approve suggested solution?
Entry criteria	Approval of solution by CUS Level 1 / 2
Exit criteria	Formal approval procedure is completed
Next step	CCUS-5: Approve change?
Responsible	Customer Change Manager



CCUS-5	Approve change (34. Wait for IA Accept)
Description	CUS approves or disapproves the change. CUS updates the TopDesk ticket with the new status and communicates any additional information to ITI SDM.
Previous step	CCUS-4: Approval process
Entry criteria	Approval process is finalized
Exit criteria	 Decision is made whether the proposed solution fulfills the needs of the business, this decision will be made in the CAB in the approval process When approved: The change form is signed by the CUS SDM The PO number is provided to the ITI SDM
Next step	 Yes: SITI-3: Plan change and communicate No: CCUS-3: End change procedure
Responsible	Customer Change Manager











Prepare

Propose

Execute



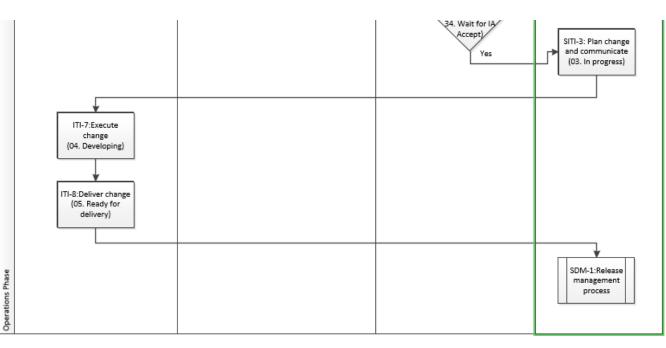


Execute

- Change is planned
 03. In Progress
- Develop the change 04. Developing
- Deliver the change

05. Ready for delivery

• Enter Release management process





Developing Do's and Don'ts

- When estimates are **not correct** or you notice other issues with the initial IA
 - Itineris will contact the customer to discuss the options / alterations to the original impact analysis
 - Change might be due to
 - The proposed solution
 - The planning
 - The budget





Itineris Service Delivery Manager

SITI-3	Plan change (03. In progress)
Description	The ITI SDM plans the change and communicates the planning to CUS
Previous step	CCUS-5: Approve change?
Entry criteria	- Purchase Order - Signed RFC
Exit criteria	Communication to CUS about the planning of the change
Next step	SITI-4: Release management process
Responsible	Itineris Service Delivery Manager

Itineris Level 3 Support

Process description



ITI-7	Execute Change (04. Developing)
Description	Itineris manages the analysis, build and test of the change within the agreed timeframe.
	Itineris provides timely updates on progress and on any additional elements that need to be discussed with CUS.
Previous step	SITI-3: plan change (03. In progress)
Entry criteria	A TopDesk ticket in status '04. Developing'.
Exit criteria	Change developed an tested by Itineris.
Next step	ITI-8: Deliver change (05. Ready for Delivery)
Responsible	Itineris Level 3 Support



Itineris Level 3 Support

ITI-8	Deliver change (05. Ready for delivery)
Description	Itineris manages the test of the change within the agreed timeframe. Itineris provides a delivery document for the request for change.
Previous step	ITI-7 Execute change
Entry criteria	A TopDesk RFC in status '04. Developing'
Exit criteria	Change succesfully tested by Itineris and 'delivery document' is available.
Next step	SDM-1 Release management process
Responsible	Itineris level 3 support





Itineris Service Delivery Manager

SITI-4	Release management process
Description	See Release Management
Previous step	SITI-3: Plan change and communicate
Entry criteria	Change is planned
Exit criteria	Criteria described in the release management process
Next step	NA
Responsible	Itineris Service Delivery Manager





Overview

Process description

Status and Closure Code

Template



Statusses

Status	Short description
01. Submitted	Initial status when a new ticket is logged in Topdesk
02. Assigned	Intake has been done, and the ticket is assigned to a consultant for treatment
03. In Progress	Consultant is investigating the issue. Used to make sure only one person is working on a ticket
04. Developing	Development is needed to solve the ticket. Development is ongoing. Development includes testing on all ITI internal environments
05. Ready for Delivery	The ticket has been solved and the solution is verified on ITI internal environments. It is 'waiting' to be implemented on the customer environment.
06. Wait for Testing	The solution has been deployed on the customer testsystem. Customer needs to test and accept the solution.
07. Install on Accept	The solution on test has been verified by the customer. The ticket is waiting to be installed on the Accept environment.
08. Wait for Accept	The solution has been deployed on the customer acceptsystem. Customer needs to test and accept the solution.
09. Wait for Go Live	The solution on accept has been verified by the customer. The ticket is waiting to be installed on the Production environment.

Status	Short description
31. Sizing IA in Progress	A change is requested. Itineris is estimating the effort needed to deliver an Impact Analysis (IA)
32. Wait for IA Sizing Accept	The customer has to agree to the estimated effort to deliver an Impact Analysis (IA)
33. IA In Progress	The customer has agreed to the estimated effort to deliver an Impact Analysis (IA) Itineris is performing the Impact Analysis (IA)
34. Wait for IA Accept	The Impact Analysis (IA) is delivered to the customer. Itineris is waiting for the customer to approve the Impact Analysis (IA) both from a solution and a financial point of view
51. Wait on Customer	Itineris is waiting for information from the customer. Typically used when additional information is needed to investigate the issue
52. On Hold	The ticket is not actively worked on. For example because there are other priorities,
53. Third Party	The ticket is being treated by a Third Party that needs to provide an analysis / solution
54. Out of Scope	The issue/request in the ticket is NOT in scope of any of the services rendered by Itineris (e.g. an issue is reported in a system not under the control/management of Itineris)



Status vs. Completed

- Which statusses to use for which ticket type
- When a ticket is marked as 'Completed' the status has to be one of the following:
 - 05. Ready for Delivery
 - 09. Wait for Go Live
 - 54. Out of Scope

Status	Closed?	Disruption	Defect	Data Issue	Product Optimisation	Request For Information	Request for Change	Service Desk Assistance	Change (ITI Only)
01. Submitted		Х	Х	Х	Х	Х	Х	Х	
02. Assigned		X	Х	Х	Х	Х	Х	Х	Х
03. In Progess		Х	Х	Х	Х	Х	Х	Х	Х
04. Developping		Х	Х	Х	Х	Х	Х		
05. Ready for Delivery	Х	Х	Х	Х	Х	Х	Х	Х	Х
06. Wait for Testing		Х	Х	Х	Х		Х	Х	
07. Install on Accept		Х	Х	Х	Х		Х	Х	
08. Wait for Accept		X	Х	Х	Х		Х	Х	
09. Wait for Go Live	Х	Х	Х	Х	Х		Х	Х	х
31. Sizing IA in Progress							Х		
32. Wait for IA Sizing Accept							Х		
33. IA In progress							Х		
34. Wait for IA Accept							Х		
51. Wait on Customer		Х	Х	Х	Х	Х	Х	Х	Х
52. On Hold		Х	Х	Х	Х	Х	Х	Х	Х
53. Third Party		Х	Х	Х	Х	Х	Х	Х	Х
54. Out of Scope	Х	Х	Х	Х	Х	Х	Х	Х	Х





Overview

Process description

Status and Closure Code

Template

Template Change Request



- One document to combine all information on a change request
 - What the customer expects
 - What solution Itineris proposes
 - The approval by the customer
- Four sections
 - Summary: overview of the document (part to be completed by Customer, part by Itineris)
 - Part A: Request (to be completed by Customer)
 - Part B: Proposed solution (to be completed by Itineris)
 - Part C: Decision

Summary

SUMMARY

Service Delivery ---- On behalf of customer

ң 1 🔰 General - Required

General information on the request

How the different components will be charged

1 General - Required						
Short description	Short description.					
PO number	PO number.	Version	.V			
Applicant	Applicant name.	Date	Request date.			
Date of impact analysis	Date impact analysis.					
Delivery date	Expected delivery date.					
Expected Go-Live	Expected Go-Live date.					

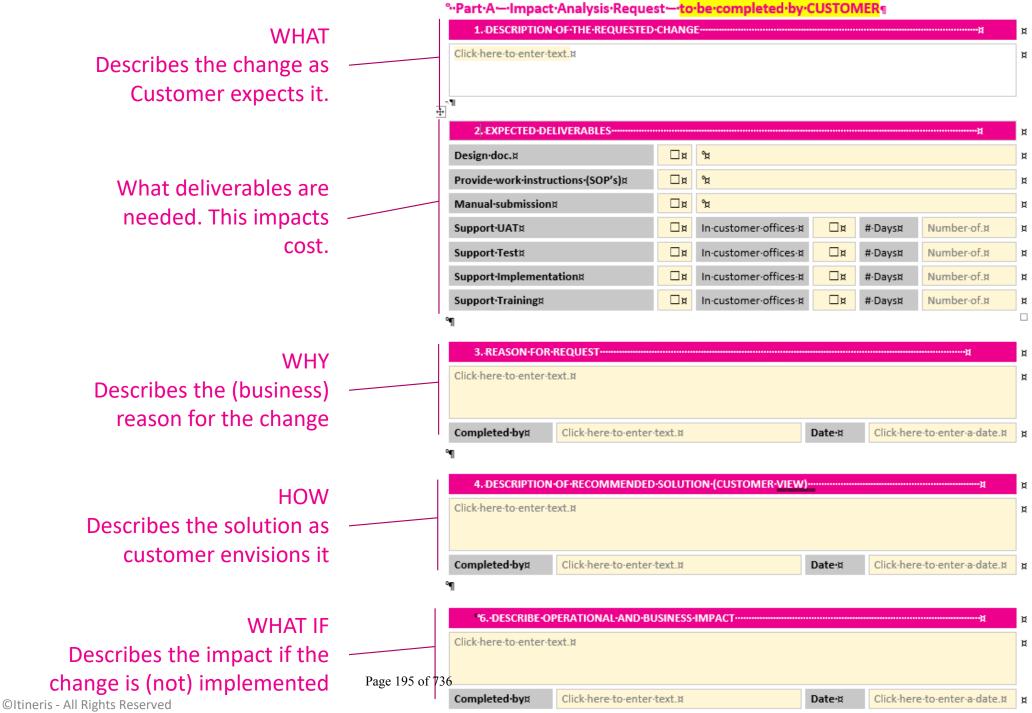
2 Execution method - Required

Impact analysis	O Fixed price	О Т&M
Execution	C Fixed price	С Т&М
Support	○ Fixed price	С т&м

3 Pricing info - Required

Impact analysis	Amount. \$		Number of days
Execution	Amount. \$		Number of days
Support	Amount. \$		Number of days
Solution offered is	□Product	AND / OR	□Customer specific
TOTAL	Amount. \$		Number of days
Licensee fee	Amount. \$		
Annual maintenance	Amount. \$		
Travel Budget (Customer Location)Page 194 of 736	Amount. \$		

Cost estimates of the solution

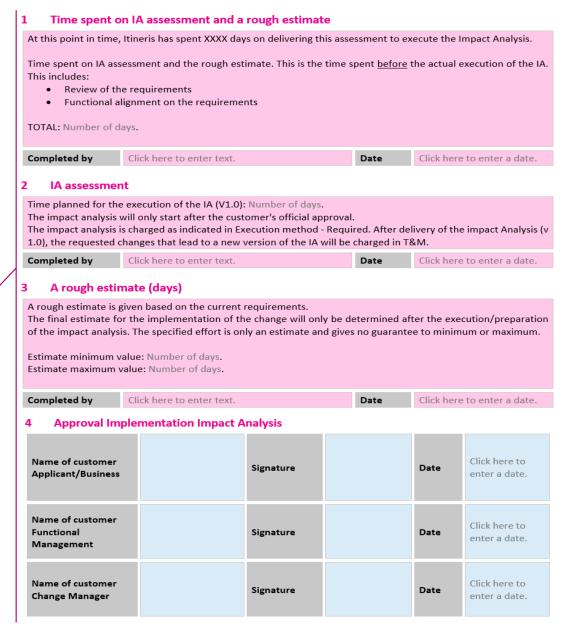


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PART B – Impact analysis/ballpark assessment – To be completed by Itineris



In this section Itineris will share a rough estimate. This is the time spent before the actual execution of the IA. The final estimate for the implementation of the change will only be determined after the execution/ preparation of the impact analysis. The specified effort is only an estimate and gives no guarantee to minimum or maximum.



PART C – Execution – To be completed by Itineris

The proposed solution for TopDesk NR - Title is explained below. Certain items may be referred to as 'out of scope'. These elements will be listed in Financial Impact Assessment – Required. Functionality that is not included within the proposed solution is also 'out of scope' when executing the approved RFC.

1 Description chosen solution – Required

<<<Please describe here >>>

Completed by Consultant	Click here to enter text.	Date	Click here to enter a date.
Validated by Solution Expert (SME)	Click here to enter text.	Date	Click here to enter a date.
Validated by Solution Architect (SA)	Click here to enter a date.	Date	Click here to enter a date.

2 Operational Impact Assessment – Required

<<<Please describe here >>>

Completed by	Click here to enter text.	Date	Click here to enter a date.
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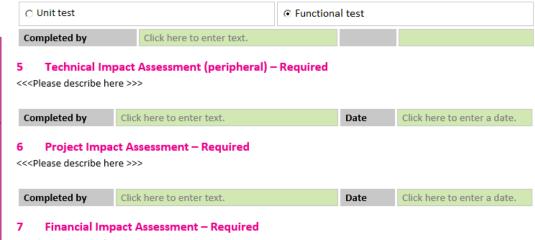
3 Description of migration and/or conversion jobs – Optional

<<<Please describe here >>>

Completed by	Click here to enter text.	Date	Click here to enter a date.
--------------	---------------------------	------	-----------------------------

4 Description of executable tests – Optional

<<<Please describe here >>>



Describes the solution. Use mock-ups for screens, a process flow, parameter changes, ... If needed, use an attachment for long texts

HOW

WHAT IF Describe the impact of the change for the customer / users. Consider processes, batch planning, roles,

...

PART D – Decision

1 Approval by Change Control Board – Optional

ltineris Program Executive Signature		Date	Click here to enter a date.
Signed by			
Customer Program Executive Signature		Date	Click here to enter a date.
Signed by			
		Date	Click here to enter a date.
		Date	Click here to enter a date.
Completed by	Click here to enter text.	Date	Click here to enter a date.

2 Decision change request

C Approved / Delayed	C Rejected	C Canceled	ි Other	
2.1 Reason				
Click here to enter text.				

Customer can decide to

- Approve the analysis
- Delay the implementation
 - Reject the solution
 - Cancel the request

3 Approval closure

Signature Itineris Responsible	Date	Click here to enter a date.
Signature Client Responsible	Date	Click here to enter a date.





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GUS CIS Application Support

Release Management





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Overview

Process description

Status and Closure Code



Ticket type	Description	Service delivery process
Disruption	The system is not working and a business process is blocked (service interruption or degraded service quality). Solution is a workaround(*) or a permanent fix.	Incident managment
Request for change	A formal change, using the Change Request template	Change managment
Defect	An 'issue' is detected (but not blocking a user), but no permanent fix is available. Solution is a permanent fix. A defect can be related to a bug, a malfunction of infrastructure, a networking issue,	Problem managment
Data Issue	A one-time change of incorrect data for which GUS does not have sufficient user rights or knowledge to execute the change. This ticket type is only linked to those errors that are not related to a 'Defect' or a 'Request for Change'.	Problem managment
Request for Information	Any request for support concerning the standard functionality of the product.	Incident management*
		*without response and resolution times
Service Desk Assistance	A formal change, but with a pre-approved scope (e.g. a release, a database refresh, a query or list,)	Change managment



Release Management

- Goal:
 - Deploy new version of software to Production in a controlled manner
- Key success factors:
 - Structured process
 - Thorough testing on all levels
 - Agreement with customer on the process

Step by step

- Plan
 - Define release planning and Release scope

• Prepare

- Develop scope
- Deploy and execute tests on environments
- Test
 - Deploy on non-production environments
 - Perform tests
- Deploy
 - Deploy on production
 - Provide post release support

elease Management			
CUS (Level 2 support)	Itineris Service Delivery (Level 3 support)	CUS release mgr	Itineris Belease Manager
Plan Prepare	Pi (1) (1) (1) (1) (1) (1) (1) (1)	(Barray of	Mora prano
	merz unge cirkinse e treate deployment e treate deployment e		Test
CR4 Bool It sets to supply the observed Indiation (Indiations press)	<i>m.</i>	Not onless	Peploy





Overview

Process description

Status and Closure Code



Plan

Prepare

Test

Deploy





- Plan
 - Plan releases for a full year
 - Create tickets for future scheduled releases 53. On Hold
 - Discuss scope of release
 - Verify that scope is realistic
 - Assign next ticket to Release Manager 02. Assigned

Release Management CUS Itineris Service Delivery CUS ltineris (Level 2 support) (Level 3 support) release mgr Release Manager IRM-1 Start up release proces IRM-2 Define scope/ release mode CUS-1 ITI-1 .og/update release High Level Analysis ticket (01. Submitted) ITI-2 ITI-3 Extra Assign Ticket to Information Release Coordinator (02. Assigned) seeded3 Page 207 of 736



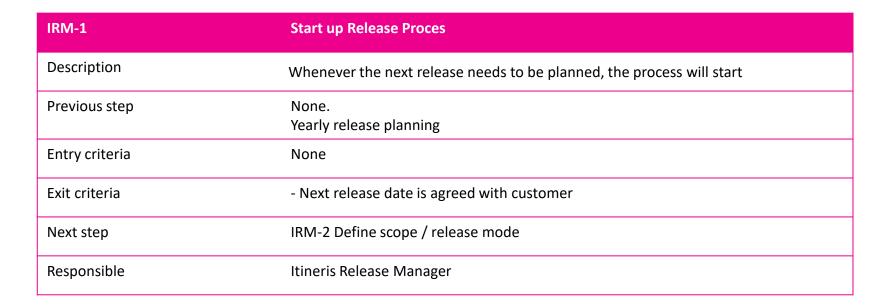
Plan Release

Do's & Don'ts

- Cost of a release is only marginally impacted by the number of tickets
 - A larger scope reduces the cost per ticket of the release
- Make sure you propose a realistic scope and planning
 - Focus on high priority tickets
 - Leave room for the unexpected
- Take **dependencies** into account
 - One module / domain
 - Limits the preparation, coding and test effort
 - Bundle a **single application** (e.g. FO, Mazik, ...)
 - Limits the release effort
 - Spread tickets over different resources to limit stress on resource allocation

Itineris Release Manager

Process description







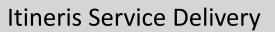
Itineris Release Manager

IRM-2	Define scope / release method
Description	A proposed release scope is defined based on planning of delivery of fixes / changes and urgency of requests. Possible interdependencies are taken into account. Based on release scope and urgency, the release method is defined
Previous step	IRM-1 Start up release process IRM-3 Go / No Go to deliver deployment package CUSRM-1 Go/No Go Release to Production Any other trigger that might require a change in scope
Entry criteria	A new release needs to be planned
Exit criteria	Proposal of scope (list of tickets) and release method is defined
Next step	CUS-1 Log/Update Release ticket
Responsible	Itineris Release Manager



Customer Level 2 Support

CUS-1	Log/Update Release ticket
Description	The release ticket is created. If it already exists, the ticket is updated with the info from the previous step
Previous step	IRM-2 Define scope / release method ITI-2 Extra information needed
Entry criteria	Date of release, release method and scope are defined
Exit criteria	Topdesk ticket type Service Desk Assistance in status 01. Submitted available
Next step	ITI-1 High Level Analysis
Responsible	Customer Level 2 Support



ITI-1	High Level Analysis
Description	Contents of the ticket is verified for completeness
Previous step	CUS-1 Log/Update Release ticket
Entry criteria	Ticket in status 01. Submitted
Exit criteria	Ticket contents is verified. Ticket status is 01. Submitted
Next step	ITI-2 Extra information needed
Responsible	Itineris Service Delivery



Itineris Service Delivery

ITI-2	Extra information needed
Description	Contents of the ticket is verified for completeness
Previous step	ITI-1 High Level Analysis
Entry criteria	High level analysis of release ticket is executed
Exit criteria	 Ticket is complete and planning can continue (Status: 01. Submitted) Important information is missing (Status: 51. Waiting on Customer)
Next step	 CUS-1 Log/Update release ticket ITI-3 Assign ticket to Release Coordinator)
Responsible	Itineris Service Delivery



Itineris Service Delivery

Process description

ITI-3	Assign Ticket to Release Coordinator
Description	The ticket is assigned to the Release Coordinator for follow-up and execution
Previous step	ITI-2 Extra information needed?
Entry criteria	The release ticket is complete.
Exit criteria	 Information in the ticket is complete Ticket in status 02. Assigned
Next step	- ITI-4 Analyze ticket
Responsible	Itineris Service Delivery





Plan

Prepare

Test

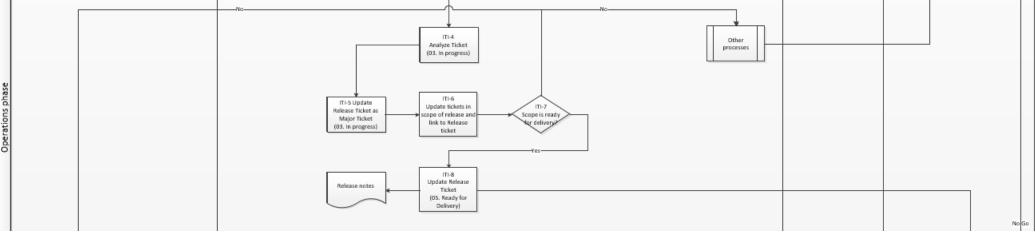
Deploy





Prepare

- Thorough analysis of release scope
 - 03. In Progress
- Create Major ticket (release ticket) and link all tickets in scope
- Update Release ticket when all tickets are on 05. Ready for Delivery
 - All tickets should have a **Delivery Document**
 - 05. Ready for Delivery
 - Deliver Release notes







Do's & Don'ts

Prepare

- Continously monitor progress on tickets in scope and alert when scope might need to be changed
- Evaluate to extend scope with urgent issues that pop-up
- Evaluate to limit scope if progress is slow or risk of missing GUSdline is real

Process description Itineris Service Delivery



ITI-4	Analyze ticket
Description	The scope and release method as defined in the ticket is analysed in detail. All information is checked and for each scope item, the necessary validations are performed: TFS item available and correct, planning communicated to stakeholders (Functional + Technical consultants), resources allocated for different deployment actions
Previous step	ITI-3 Assign Ticket to Release Coordinator
Entry criteria	The release ticket is assigned to the Release coordinator.
Exit criteria	 Scope is validated and all steps are taken to deliver the items on time Ticket in status 03. In Progress
Next step	ITI-5 Update Release ticket as Major ticket
Responsible	Itineris Service Delivery

Itineris Service Delivery

Process description

ITI-5	Update release ticket to Major ticket
Description	The release ticket is updated and upgraded to a Major ticket
Previous step	ITI-4 Analyze ticket
Entry criteria	All necessary steps are taken to make sure the complete release scope can be delivered on schedule
Exit criteria	- Release ticket is upgraded to Major ticket
Next step	ITI-6 Update tickets in scope of release and link to Release ticket
Responsible	Itineris Service Delivery



Process description Itineris Service Delivery



ITI-6	Update tickets in scope fo release and link to Release ticket
Description	All tickets in scope are updated to make sure they are in the correct state. Tickets in scope are linked to the Release ticket.
Previous step	- ITI-5 Update release ticket to Major ticket
Entry criteria	The Release ticket is upgraded to Major Ticket. Scope is correct.
Exit criteria	 All tickets in scope are linked to the release ticket and have the correct status
Next step	ITI-7 Scope is ready for delivery
Responsible	Itineris Service Delivery



Itineris Service Delivery

ITI-7	Scope is Ready for delivery
Description	Itineris follows up on status and progress on all tickets in scope. Whenever
·	needed, responsible (functional or technical consultant, PM,) is queried to
	check for status.
	If needed, a notification is sent to the customer to indicate that the item is at
	risk of being removed from scope. To remove an item from scope, impact has
	to be (re-)evaluated (ITI-4).
	This step is repeated throughout the development cycle of the ticket.
Previous step	ITI-6 Update tickets in scope fo release and link to Release ticket
Entry criteria	All tickets in scope are linked to the Major Ticket
Exit criteria	- Status of tickets in scope is verified
Next step	- ITI-8 Update Release Ticket
	- All regular delivery processes
Responsible	Itineris Service Delivery



Itineris Service Delivery

ITI-8	Update Release Ticket
Description	The release ticket is set to Ready for Delivery and can pass to installation on the next environment. Release notes are available.
Previous step	ITI-7 Scope is Ready for delivery
Entry criteria	All tickets in scope are in state 05. Ready for Delivery
Exit criteria	 Major Ticket in status 05. Ready for Delivery Release notes are available
Next step	- IRM-3 Go/No Go to deliver deployment package
Responsible	Itineris Service Delivery



Plan

Prepare

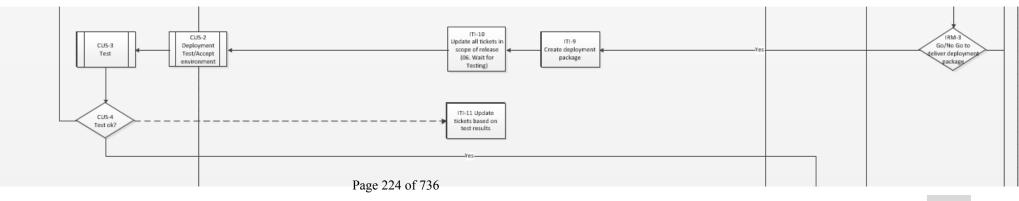
Test

Deploy





- Test
 - Create the deployment package(s)
 - 06. Wait for Testing
 - Customer (or Itineris) will deploy the package(s) to the different environments
 - Customer will test the deployed release scope
 - IST, UAT, Regressiontesting
 - Progress needs to be communicated to Itineris to enable follow up
 - 07. Install on Accept : if scope is tested on a first environment (IST) and needs to be installed on the Accept environment
 - 08. Wait for Accept : if package is deployed on the Accept environment and is awaiting test results
 - **09. Wait for Go Live + Completed**: if scope is tested on Accept (UAT + Regression) and needs to be installed on the Production environment





Do's & Don'ts

Test

- Make sure the Release notes are applied
 - Pay special attention to the coordination between different actions and actors
- Agree on
 - Who will change parameters needed for the release to function
 - Who will **modify interfaces** if needed
 - Who will change infrastructure configuration
 - Who will run data modification scripts
- Do not wait for final test results, try to get intermediate information on progress to assess if additional fixes need to be foreseen
- Whenever issues arise during testing, create a new Topdesk item
 - To enable proper follow up
 - Link the Topdesk items together
- Do not forget the administration in **TFS**



Itineris Release Manager

IRM-3	Go/No Go to delivery deployment package
Description	A final GO is needed before deployment can continue. This decision is based on the results of the internal Itineris testing of the different tickets in scope
Previous step	ITI-8 Update Release Ticket
Entry criteria	Release ticket is in status 05. Ready for Delivery and release notes are available
Exit criteria	- Decision taken to continue deployment (or not)
Next step	 IRM-2 Define scope / release method ITI-9 Create deployment package
Responsible	Itineris Release Manager



Itineris Release Manager

IRM-3	Go/No Go to delivery deployment package
Description	A final GO is needed before deployment can continue. This decision is based on the results of the internal Itineris testing of the different tickets in scope
Previous step	ITI-8 Update Release Ticket
Entry criteria	Release ticket is in status 05. Ready for Delivery and release notes are available
Exit criteria	- Decision taken to continue deployment (or not)
Next step	 IRM-2 Define scope / release method ITI-9 Create deployment package
Responsible	Itineris Release Manager



Itineris Service Delivery

ITI-9	Create deployment package
Description	The deployment package for this release is created. The package format depends on the scope of the release and on the release method.
Previous step	IRM-3 Go/No Go to delivery deployment package
Entry criteria	GO received to create deployment package
Exit criteria	Deployment package available, including release notes
Next step	ITI-10 Update all tickets in scope of release
Responsible	Itineris Service Delivery

Process description Itineris Service Delivery



ITI-10	Update all tickets in scope of release
Description	The release ticket is set to status 06. Wait for Testing.
	All tickets in scope are set to 06. Wait for testing
Previous step	ITI-9 Create deployment package
Entry criteria	Deployment package and release notes available
Exit criteria	All tickets in scope and the release ticket in status 06. Wait for Testing
Next step	CUS-2 Deployment Test/Accept environment
Responsible	Itineris Service Delivery



CUS-2	Deploy Test/Accept environment
Description	The deployment package is deployed to the destination environment
	Itineris is kept up to date on progress to ensure follow up.
	If multiple environments / testrounds are foreseen, this step needs to be
	repeated for every environment.
Previous step	ITI-10 Update all tickets in scope of release
Entry criteria	All tickets in scope 06. Wait for Testing. Deployment package available
Exit criteria	The release is deployed on the target environment.
	Itineris updates the tickets in scope and the release ticket if relevant (08. Wait for Accept)
Next step	CUS-3 Test
Responsible	Customer Level 2 Support



CUS-3	Test
Description	The relevant test cases are executed on the target environment.
	Itineris is kept up to date on progress to ensure follow up.
	If multiple environments / testrounds are foreseen, this step needs to be
	repeated for every environment.
Previous step	CUS-2 Deploy Test/Accept environment
Entry criteria	Release scope deployed to the environment
Exit criteria	Test scope is executed.
	Tickets in scope and release ticket status is updated (07. Install on Accept / 09. Wait for Go Live)
Next step	CUSRM-1 Go/No Go release to production
Responsible	Customer Level 2 Support



CUS-3	Test
Description	The relevant test cases are executed on the target environment.
	Itineris is kept up to date on progress to ensure follow up.
	If multiple environments / testrounds are foreseen, this step needs to be
	repeated for every environment.
Previous step	CUS-2 Deploy Test/Accept environment
Entry criteria	Release scope deployed to the environment
Exit criteria	Test scope is executed.
	Tickets in scope and release ticket status is updated (07. Install on Accept / 09. Wait for Go Live)
Next step	CUSRM-1 Go/No Go release to production
Responsible	Customer Level 2 Support



CUS-4	Test OK?
Description	Verify test results of all tests in scope.
Previous step	CUS-3 Test
Entry criteria	Selected test scenario's have been executed in the test environment
Exit criteria	Test report is available and Go/No Go advice is added
Next step	 CUSRM-1 Go/No Go release to Production All other processes
Responsible	Customer Level 2 Support



Itineris Service Delivery

Update tickets based on test results
During the deploy and test cycle. Itineris is informed of progress. Based on this,
the ticket status needs to be adjusted to either one of
Both the release ticket and all tickets in scope of the release need to be updated.
CUS-2 Deploy Test/Accept environment
CUS-4 Test OK?
Release scope deployed to the environment and/or status of tickets is updated
All tickets are updated to reflect the correct status
- 07. Install on Accept
- 08. Wait for Accept
- 09. Wait for Go Live
#n/a
Itineris Service Delivery



Plan

Prepare

Test

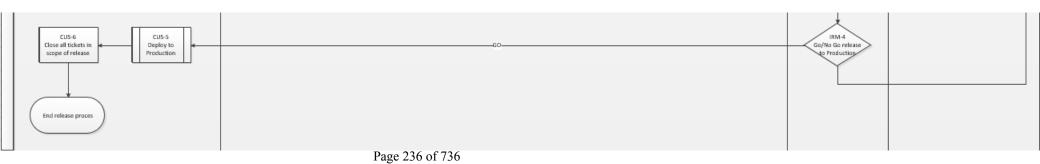
Deploy





Deploy

- Customer decides to deploy the release to production
- All tickets are set to 'Closed'





Deploy Do's & Don'ts

- Make sure the Release notes are applied
 - Pay special attention to the coordination between different actions and actors
- Agree on
 - Who will change parameters needed for the release to function
 - Who will modify interfaces if needed
 - Who will change infrastructure configuration



Customer Release Manager

CUSRM-1	Go/No Go release to Production
Description	Verify test results of all tests in scope.
Previous step	CUS-4 Test OK?
Entry criteria	Test report is available Go/No Go advice is available
Exit criteria	A formal Go or No Go is received to deploy the release to Production
Next step	 CUS-5 Deploy to Production IRM-2 Define scope / release method
Responsible	Customer Release Manager



CUS-6	Deploy to Production
Description	Deploy the release package(s) to the Production environment. As part of this deployment, some post release tests will be executed on the production environment.
Previous step	CUSRM-1 Go/No Go release to Production
Entry criteria	A Go is received to deploy the release to production
Exit criteria	Release package is deployed on the production environment
Next step	- CUS-7 Close all tickets in scope of release
Responsible	Customer Level 2 support





Overview

Process description

Status and Closure Code



Statuses

Status	Short description
01. Submitted	Initial status when a new ticket is logged in Topdesk
02. Assigned	Intake has been done, and the ticket is assigned to a consultant for treatment
03. In Progress	Consultant is investigating the issue. Used to make sure only one person is working on a ticket
04. Developing	Development is needed to solve the ticket. Development is ongoing. Development includes testing on all ITI internal environments
05. Ready for Delivery	The ticket has been solved and the solution is verified on ITI internal environments. It is 'waiting' to be implemented on the customer environment.
06. Wait for Testing	The solution has been deployed on the customer testsystem. Customer needs to test and accept the solution.
07. Install on Accept	The solution on test has been verified by the customer. The ticket is waiting to be installed on the Accept environment.
08. Wait for Accept	The solution has been deployed on the customer acceptsystem. Customer needs to test and accept the solution.
09. Wait for Go Live	The solution on accept has been verified by the customer. The ticket is waiting to be installed on the Production environment.

Status	Short description					
31. Sizing IA in Progress	A change is requested. Itineris is estimating the effort needed to deliver an Impact Analysis (IA)					
32. Wait for IA Sizing Accept	The customer has to agree to the estimated effort to deliver an Impact Analysis (IA)					
33. IA In Progress	The customer has agreed to the estimated effort to deliver an Impact Analysis (IA) Itineris is performing the Impact Analysis (IA)					
34. Wait for IA Accept	The Impact Analysis (IA) is delivered to the customer. Itineris is waiting for the customer to approve the Impact Analysis (IA) both from a solution and a financial point of view					
51. Wait on Customer	Itineris is waiting for information from the customer. Typically used when additional information is needed to investigate the issue					
52. On Hold	The ticket is not actively worked on. For example because there are other priorities,					
53. Third Party	The ticket is being treated by a Third Party that needs to provide an analysis / solution					
54. Out of Scope	The issue/request in the ticket is NOT in scope of any of the services rendered by Itineris (e.g. an issue is reported in a system not under the control/management of Itineris)					



Status vs. Completed

- Which statusses to use for which ticket type
- When a ticket is marked as 'Completed' the status has to be one of the following:
 - 05. Ready for Delivery
 - 09. Wait for Go Live
 - 54. Out of Scope

Status	Closed?	Disruption	Defect	Data Issue	Product Optimisation	Request For Information	Request for Change	Service Desk Assistance	Change (ITI Only)
01. Submitted		Х	Х	Х	Х	Х	Х	Х	
02. Assigned		X	Х	Х	Х	Х	Х	Х	х
03. In Progess		Х	Х	Х	Х	Х	Х	Х	Х
04. Developping		Х	Х	Х	Х	Х	Х		
05. Ready for Delivery	Х	Х	Х	Х	Х	Х	Х	Х	Х
06. Wait for Testing		Х	Х	Х	Х		Х	Х	
07. Install on Accept		Х	Х	Х	Х		Х	Х	
08. Wait for Accept		Х	Х	Х	Х		Х	Х	
09. Wait for Go Live	Х	Х	Х	Х	Х		Х	Х	Х
31. Sizing IA in Progress							Х		
32. Wait for IA Sizing Accept							Х		
33. IA In progress							Х		
34. Wait for IA Accept							Х		
51. Wait on Customer		Х	Х	Х	Х	Х	Х	Х	Х
52. On Hold		Х	Х	Х	Х	Х	Х	Х	Х
53. Third Party		Х	Х	Х	Х	Х	Х	Х	Х
54. Out of Scope	Х	Х	Х	Х	Х	Х	Х	Х	Х



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STD Service	STD Service Desciption	STD Service In Scope Activities	STD Service Out of Scope Activities	STD Service Deliverables	Effort (Days)
Product Rate Schedule Change	 One or several new products need to be created Product on contract requires to be changed (Product Switch) One or several new price components / conditions are required 	 Configuration changes (On Customer TEST, ACCEPT and PRODUCTION environment) Unit Test (Customer TEST environment) Full Bill Run Test (Customer TEST environment) Regression Testing (Customer ACCEPT environment) Development of additional price conditions (if required) Migration of additional date for introduced price conditions Automated (scripted) push of Product Switches (If necessary input is received from Customer) 		 - Updated Market & Rate Catalog - Configuration Manual / Document - Price Upload Sheet - Bill Comparison 	NA
individual Product Rate Change	 Product on contract remains the same One or several changes in the Product composition Price of one or several price components is changed Price condtion of one or several price components is changed Product Terms update 	- Configuration changes (On Customer TEST and ACCEPT enviroment) - Unit Test (Customer TEST environment) - Product Terms update to all applicable contracts	Creation of new products Development of additional price conditions Migration of additional data for introduced price conditions Acceptance / Regression Testing Configuration on Customer PRODUCTION enviroment - Onsite Activities / Support Full Bill Run Test (Customer TEST environment)	- Updated Market & Rate Catalog - Configuration Manual / Document - Price Upload Sheet	7.5
Individual Product Price Change	 Product on contract remains the same Product composition remains the same Price components / conditions remain the same Price of one or several price components is changed Product Terms update (If required) 	- Configuration changes (On Customer TEST and ACCEPT enviroment) - Unit Test (Customer TEST environment) - Product Terms update to all applicable contracts (If required)	Creation of new products Development of additional price conditions Migration of additional data for introduced price conditions Acceptance / Regression Testing Configuration on Customer PRODUCTION enviroment Onsite Activities / Support Full Bill Run Test (Customer TEST environment)	- Price Upload Sheet	3
Multiple Product Price Changes	 Typical Yearly Product Price changes for several products Product on contract remains the same Product composition remains the same Price components / conditions remain the same Price of one or several price components is changed Product Terms update (If required) 	 Configuration changes (On Customer TEST and ACCEPT enviroment) Unit Test (Customer TEST environment) Product Terms update to all applicable contracts (If required) Full Bill Run Test (Customer TEST environment) - 1 Cycle 	 Creation of new products Development of additional price conditions Migration of additional data for introduced price conditions Acceptance / Regression Testing Configuration on Customer PRODUCTION enviroment Onsite Activities / Support 	- Price Upload Sheet - Bill Comparison - 1 Cycle	9
Add / Change Security Role of a user	- Security Role(s) of 1 user requires changes	uration changes on Customer TEST. ACCEPT and PRODUCTION enviro	 Development (if required) Unit / Acceptance / Regression Testing 	n/a	0.15
Outbound customer communication updates (Minor)	Update in static (fixed) parts of outbound customer communications (Logo, Fixed Text, Contact Information,) in: - Emails - Paper Mail - Text Messages - Outbound Calls	- Configuration changes (On Customer TEST and ACCEPT enviroment) - Unit Test (Customer TEST environment)	- Development (if required) - Acceptance / Regression Testing - Configuration on Customer PRODUCTION enviroment	- Configuration Manual / Document - OPM templates (if applicable)	0.6
Standard "How To" Information Request	- Standard "How To" request - Informational only	n/a	- Configuration changes	low To" Delivery Docume	0.15
Enable / Disable Case in CSS	- Enabling / Disabling of existing cases in CSS	- Configuration changes (On Customer TEST and ACCEPT enviroment) - Unit Test (Customer TEST environment)	 Development (if required) Acceptance / Regression Testing Configuration on Customer PRODUCTION enviroment 	 Configuration Manual / Document OPM templates (if applicable) 	0.15
Enable / Disable Field in UMAX (No Additional Configuration)	- Enabling / Disabling of existing fields in UMAX	- Configuration changes (On Customer TEST and ACCEPT enviroment) - Unit Test (Customer TEST environment)	- Acceptance / Regression Testing - Configuration on Customer PRODUCTION enviroment	figuration Manual / Docu	0.15

Invoice Approval Workflow Changes (Minor)	- Minor changes in the Invoice Approval Workflow	 Changes in the approvers and/or groups of approvers Changes in the treshholds for approvals Unit Test 	- New and/or redesigned Invoice Approval Workflow	n/a	0.6
New environment / move existing environment	ld new or move existing environment to new/existing se	- Install of SQL - Install of AX / UMAX - Install of Front Office - Install of Cashiering - Install of Enterprise Portal / Role Centers - Setup of required folder structure for OPM / Interfaces	- Install of OS - Install / Setup of new CSS environment	n/a	3
New CSS environment / move existing CSS environment	- Build new or move existing CSS environment	- Install / Setup of new CSS environment		n/a	3
Correct Move case	- Correct a corrupt Move case due to user errors			n/a	0.3

Basic Principles

There is a maximum of 60 person days of effort per annum, exceeding requests are T&M or need to handled through a Request For Change as mentioned in SOW Each Service Request definad in the STD Catalogue will have a set number of pre-approved effort (TIOLI > no negotiation)

City of Georgetown, Texas City Council Regular Meeting February 12, 2019

SUBJECT:

Forwarded from Georgetown Utility Systems Advisory Board (GUS):

Consideration and possible action to **award** a **bid** for the **Pastor 24'' Waterline** to **Prota Construction Inc. & Prota Inc., JV.** of Austin, Texas in the amount of **\$2,936,000.00** -- Wesley Wright, P.E., Systems Engineering Director

ITEM SUMMARY:

The purpose of this project is to provide a dedicated 24-inch waterline to the Pastor Pump Station to meet the demands in the Western District in the SH-29 and Ronald Reagan area.

The project consists of furnishing, installing, and providing all labor and materials required to install approximately 11,100 linear feet of new 24-inch diameter potable water pipeline including 994 linear feet of horizontal directional drill under the Middle Fork of the San Gabriel River, gate valves, air valves, erosion controls, revegetation, traffic control, system connections, pavement repair and appurtenances.

The Cedar Breaks to Pastor Dedicated Water Line project was advertised for public bids on January 6, 2019 and January 13, 2019 in the *Williamson County Sun*. On January 29, 2019 at 2 p.m. bids were received at the Purchasing Department for the construction of the Cedar Breaks to Pastor Dedicated Water Line project and then

opened and publicly read aloud. Staff received nine (9) competitive bids summarized below.

1. Prota Construction Inc. & Prota Inc., JV - \$2,936,000.00

- 2. Austin Engineering Company, Inc. \$2,991,939.00
- 3. M.A. Smith Contracting Company, Inc. \$2,998,831.50
- 4. Cash Construction Company, Inc \$3,071,810.00
- 5. Austin Underground, Inc. \$3,096,927.00
- 6. Patin Construction LLC \$3,296,658.20
- 7. Excel Trenching \$3,392,396.69
- 8. Santa Clara Construction, Ltd \$3,423,316.00
- 9. Aaron Concrete Contractors, LP \$4,650,938.00

A bid tabulation of all the bid items is attached. The low bidder on the project based on the total base bid is Prota

Construction Inc. & Prota Inc., JV, Austin, Texas (Prota). The engineer's estimate for the project was \$3.0 million.

STAFF RECOMMENDATIONS:

Staff and CDM Smith recommend awarding this bid for the Cedar Breaks to Pastor Water line to Prota Construction Inc. & Prota Inc., JV. Austin, Texas in the amount of \$2,936,000.00.

BOARD RECOMMENDATIONS:

GUS Board meeting was after the due date for Council items. Board recommendation will be given at the dais.

FINANCIAL IMPACT:

Funds for this expenditure are budgeted in the Water Capital Improvement Plan.

SUBMITTED BY:

Wesley Wright, P.E., Systems Engineering Director/Michael Hallmark, CIP Manager.

ATTACHMENTS:

Recommendation of Award Bid Tabulation Bid Summary



9430 Research Boulevard Building 1, Suite 200 Austin, Texas 78759 Tel: (512) 346-1100 Fax: (512) 345-1483

January 30, 2019

Mr. Michael Hallmark City of Georgetown 300 Industrial Avenue Georgetown, TX 78626

RE: Cedar Breaks to Pastor Dedicated Water Line Project No. 2JI Recommendation of Award

Dear Mr. Hallmark:

The Cedar Breaks to Pastor Dedicated Water Line project was advertised for public bids on January 6, 2019 and January 13, 2019 in the *Williamson County Sun*. Through our office, we provided plans and specifications to twenty-one (21) interested parties, including general contractors and plan rooms. On January 29, 2019 at 2 p.m. bids were received at the Purchasing Department for the construction of the Cedar Breaks to Pastor Dedicated Water Line project and then opened and publicly read aloud. Out of the sixteen (16) general contractors that requested plans and specifications, nine (9) bids were received. The names of the bidders and total base bid amounts are summarized below.

1.	Prota Construction Inc. & Prota Inc., JV	\$2,936,000.00
2.	Austin Engineering Company, Inc.	\$2,991,939.00
3.	M.A. Smith Contracting Company, Inc.	\$2,998,831.50
4.	Cash Construction Company, Inc	\$3,071,810.00
5.	Austin Underground, Inc.	\$3,096,927.00
6.	Patin Construction LLC	\$3,296,658.20
7.	Excel Trenching	\$3,392,396.69
8.	Santa Clara Construction, Ltd	\$3,423,316.00
9.	Aaron Concrete Contractors, LP	\$4,650,938.00

A bid tabulation of all the bid items is attached. The low bidder on the project based on the total base bid is Prota Construction Inc. & Prota Inc., JV, Austin, Texas (Prota).

The engineer's estimate for the project was \$3.0 million.



Mr. Michael Hallmark January 30, 2019 Page 2

Enclosed in the bid package, each of the bidders submitted a Statement of Bidder's Experience (Section 00400). We have reviewed the information provided by Prota, and we believe that they have the qualifications, experience, personnel and equipment to complete this project. We have also checked the references for Prota and believe they are capable of completing the Cedar Breaks to Pastor Dedicated Water Line project within the project schedule. We recommend that the City of Georgetown award the Cedar Breaks to Pastor Dedicated Water Line amount of \$2,936,000.00 (*total base bid amount*) to Prota Construction Inc. & Prota Inc., JV.

Sincerely,

alan D. Cham

Alan D. Rhames, P.E. CDM Smith Inc. TBPE Firm Registration No. F-3043

ATTACHMENT ENCLOSED

cc: Wesley Wright, P.E. / City of Georgetown Ken Taylor / City of Georgetown Allen Woelke, P.E. / CDM Smith

	CEDAR BREAKS TO PASTOR DEDICATED WATER LINE PROJECT NO. 2JI BID NO 201916 CONTRACT NO 19-0033-CIF	BID DATE: 01/29/2019 ENGINEER'S ESTIMATE \$3,000,000																			
	Bidders	25,000,000		Prota Construction Ir	nc. and Prota Inc., JV	Austin Engin	eering Company, Inc.	M.A. Smith	Contracting Company, Inc.	Cash Cons	truction Company, Inc.	Austi	n Underground, Inc.	Patin	Construction LLC	Exc	el Trenching	Santa Clara	Construction, Ltd.	Aaron Concret	te Contractors, LP
	Acknowledged all Addenda			X		v		v		v		v		v		v		v		V	
	Provide Bid Security (5%)			v		v		v		v		v v		v		v		v v		v	
	Provide Information from 00400			V		v		v		v		Deferred		Deferred		v		Deferred		V	
	Base Bid Item	Estimated Quantity	110.00	Init Drice	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	
1	Dates bin term insurance, Bonds and Mobilization/Demobilization Related Expenses not to exceed 5% of Total Bid Storm Water Pollution Prevention Plan (SWPPP) and SWPPP Implementation, including installing the stabilized construction entrances, silf fence, multo sock, tree protection foncing and other required temporary sedimentation and erosion control best management and tree protection practices as required by the drawings and the SWPPP plan, complete in place as detailed and specified, including maintenance and removal.	1 1 1	LS \$	\$146,436.10	\$146,436.10 \$26,158.10	\$115,000.00 \$3,000.00	\$115,000.00 \$3,000.00	\$140,000.00 \$40,000.00	\$140,000.00 \$40,000.00	\$79,800.50 \$35,000.00	\$79,800.50 \$35,000.00	\$150,000.00 \$40,000.00	\$150,000.00 \$40,000.00	\$160,000.00 \$37,000.00	\$160,000.00 \$37,000.00	\$150,000.00 \$30,000.00	\$150,000.00 \$30,000.00	\$170,000.00 \$50,000.00	\$170,000.00 \$50,000.00	\$200,000.00 \$112,000.00	\$200,000.00 \$112,000.00
	Additional Mulch Sock (above that shown on the drawings) installed at the direction of the Engineer and/or Inspector, complete in place as detailed and specified, including maintenance and removal.	250	LF \$	\$2.70	\$675.00	\$10.00	\$2,500.00	\$9.50	\$2,375.00	\$7.70	\$1,925.00	\$8.00	\$2,000.00	\$8.50	\$2,125.00	\$5.00	\$1,250.00	\$13.00	\$3,250.00	\$13.00	\$3,250.00
	Additional Silt Fence (above that shown on the drawings) installed at the direction of the Engineer and/or Inspector, complete in place as detailed and specified, including maintenance and removal.	250	LF \$	\$1.00	\$250.00	\$3.00	\$750.00	\$2.25	\$562.50	\$2.00	\$500.00	\$1.75	\$437.50	\$2.50	\$625.00	\$2.00	\$500.00	\$3.00	\$750.00	\$3.00	\$750.00
5	Additional Tree Protection Fence (above that shown on the drawings) installed at the direction of the Engineer and/or Inspector, complete in place as detailed and specified, including maintenance and removal.	250	LF \$	\$2.30	\$575.00	\$4.00	\$1,000.00	\$3.50	\$875.00	\$2.90	\$725.00	\$2.85	\$712.50	\$3.50	\$875.00	\$2.00	\$500.00	\$4.00	\$1,000.00	\$175.00	\$43,750.00
	Site and Right-of-Way Preparation, non-pavement areas, including clearing, grubbing, and appurtenances, complete in place as detailed and specified.	38000	SY \$	\$0.50	\$19,000.00	\$1.00	\$38,000.00	\$1.30	\$49,400.00	\$0.50	\$19,000.00	\$1.00	\$38,000.00	\$2.00	\$76,000.00	\$0.32	\$12,160.00	\$1.00	\$38,000.00	\$2.00	\$76,000.00
	Site and Right-of-Way Preparation. roadway payement areas. including appurtenances, complete in place as detailed and specified.	1	LS \$	\$3,998.50	\$3,998.50	\$10,500.00	\$10,500.00	\$20,000.00	\$20,000.00	\$3,000.00	\$3,000.00	\$40,000.00	\$40,000.00	\$26,000.00	\$26,000.00	\$6,050.00	\$6,050.00	\$20,000.00	\$20,000.00	\$42,000.00	\$42,000.00
		1	LS \$	526,524.20	\$26,524.20	\$10,500.00	\$10,500.00	\$30,000.00	\$30,000.00	\$18,000.00	\$18,000.00	\$55,000.00	\$55,000.00	\$30,000.00	\$30,000.00	\$20,000.00	\$20,000.00	\$22,000.00	\$22,000.00	\$120,000.00	\$120,000.00
	Traffic Control Plan and Implementation, complete in place as detailed and specified, including temporary traffic barriers. Fencing Removal and Replacement, including temporary access gate(s) and fencing to keep the site, materials, equipment and livestock	1	LS \$	52,492.80	\$2,492.80	\$1,500.00	\$1,500.00	\$8,000.00	\$8,000.00	\$1,000.00	\$1,000.00	\$5,500.00	\$5,500.00	\$15,000.00	\$15,000.00	\$5,000.00	\$5,000.00	\$25,000.00	\$25,000.00	\$31,000.00	\$31,000.00
	secure, complete in place as detailed and specified.	10369	LF \$	\$0.60	\$6,221.40	\$1.00	\$10,369.00	\$1.00	\$10,369.00	\$0.50	\$5,184.50	\$3.00	\$31,107.00	\$2.00	\$20,738.00	\$0.01	\$103.69	\$1.00	\$10,369.00	\$2.00	\$20,738.00
	Trench Safety Plan and Implementation, as required for all excavations deeper than 5 feet, complete in place as detailed and specified. Furnish and Install Restrained 20-inch AWWA C900 DR25 PVC or Restrained 20-inch Class 250 Ductile Iron pipe (Open Trench	183	LF \$	5210.50	\$38,521.50	\$200.00	\$36,600.00	\$160.00	\$29,280.00	\$190.00	\$34,770.00	\$180.00	\$32,940.00	\$140.00	\$25,620.00	\$229.00	\$41,907.00	\$284.00	\$51,972.00	\$240.00	\$43,920.00
	Construction) link utualing, metaning a second second of the analysis of the second se																				
	Furnish and Install 24-inch Unrestrained AWWA C900 DR25 PVC or 24-inch Class 200 Ductile Iron (Open Trench Construction) pipe including fittings, excavation, dewatering, bedding, backfill, tracer wire and trench surface restoration complete in place as detailed and specified.	8700	LF \$	5128.70	\$1,119,690.00	\$133.00	\$1,157,100.00	\$120.00	\$1,044,000.00	\$147.00	\$1,278,900.00	\$152.00	\$1,322,400.00	\$103.00	\$896,100.00	\$179.00	\$1,557,300.00	\$139.00	\$1,209,300.00	\$200.00	\$1,740,000.00
13	Furnish and Install 24-inch Restrained AWWA (2000 DR25 PVC or 24-inch Class 200 Ductile Iron (Open Trench Construction) pipe including fittings, restraints, excavation, dewatering, bedding, backfill, tracer wire and trench surface restoration complete in place as detailed and specified	1465		5222.70	\$326,255.50	\$173.00	\$253,445.00	\$150.00	\$219,750.00	\$183.00	\$268,095.00	\$200.00	\$293,000.00	\$115.00	\$168,475.00	\$208.00	\$304,720.00	\$263.00	\$385,295.00	\$226.00	\$331,090.00
14	Furnish and Install 24-inch AWWA C900 DR25 PVC or 24-inch Class 200 Ductile Iron, including an Uncased Tree Bore, including setup, exeruation, boing, dewatering, pipe installation, tracer wire, restraints is required, backfilling and all appurtenances, complete in place as detailed and specified.	60	LF \$		\$34,590.00	\$550.00	\$33,000.00	\$750.00	\$45,000.00	\$650.00	\$39,000.00	\$450.00	\$27,000.00	\$1,000.00	\$60,000.00	\$555.00	\$33,300.00	\$800.00	\$48,000.00	\$545.00	\$32,700.00
15	Furnish and Install 24-inch AWWA C900 DR25 Fusible PVC by Horizontal Directional Drill, including required engineering submittals, setup, excavation, pilot borning, back reaming, dewatering, pipe fusing, pipe installation, backfilling and all appurtenances, complete in place as detailed and specified. Furnish and install Connection to Existing 24 rd Water Line at Cedar Breaks Tank, including excavation, 24-inch z 44-inch tapping sleve	994	LF Ş		\$591,728.20	\$640.00	\$636,160.00	\$670.00	\$665,980.00	\$680.00	\$675,920.00	\$355.00	\$352,870.00	\$1,000.00	\$994,000.00	\$694.00 \$35,100.00	\$689,836.00	\$700.00	\$695,800.00	\$700.00 \$47,000.00	\$695,800.00
.6	rumina na instaii Connection to Existing // Water Line at Ceaar prease Isan, including exc2valon/, // -/incr X/-/incr X/pring Seeve and valve, tracer wire test station, coing, fittings, adepters, concrete, casings, cleanup, baltin al all appurtences, complete in place as detailed and specified. Furnish and installi Connection to Existing 20" Water Line at Pastor Pump Station, including excavation, 20-inch x 20-inch tapping sleeve	1		\$32,032,30	\$37,017.70	\$45,000.00	\$45,000.00	\$40,000.00	\$40,000.00	\$45,000.00	\$45,000.00	\$51,000.00	\$51,000.00	\$40,000.00	\$40,000.00	\$35,100.00	\$35,100.00	\$43,000.00	\$43,000.00	\$47,000.00	\$47,000.00
7	radiation is transformed to a score of the state of the score of the s	2420	SY S	,	\$45,980.00	\$40.00	\$96,800.00	\$60.00	\$145,200.00	\$60.00	\$145,200.00	\$45.00	\$108,900.00	\$50.00	\$121,000.00	\$35.00	\$84,700.00	\$53.00	\$128,260.00	\$150.00	\$363,000.00
.8	subgrade prep, base material (or equal) and hot mix asphaltic concrete, including all appurtenances, complete in place as detailed and specified Furnish and Install Two-Course Seal Coat on Roadway (Asphalt Binder Plus Aggregate) per TXDOT Specification 316, including surface	11420	SY \$		\$109,632.00	\$12.00	\$137,040.00	\$7.00	\$79,940.00	\$7.00	\$79,940.00	\$10.00	\$114,200.00	\$8.31	\$94,900.20	\$8.00	\$91,360.00	\$11.00	\$125,620.00	\$12.00	\$137,040.00
19	preparation, neighborhood coordination, installation, cleanup and appurtenances. complete in place as detailed and specified. Furnish and Install Driveway Repairs, all types and materials and including saw cut, backfill, subgrade prep, base and pavement surface	4	EA \$	\$2,492.80	\$9,971.20	\$3,000.00	\$12,000.00	\$2,500.00	\$10,000.00	\$2,100.00	\$8,400.00	\$2,000.00	\$8,000.00	\$3,000.00	\$12,000.00	\$2,000.00	\$8,000.00	\$3,000.00	\$12,000.00	\$5,600.00	\$22,400.00
20	to match existing driveway in material, thickness, reinforcing and surface quality, including dowels for concrete, complete in place as detailed and specified. Furnish and Instal 2-inch. Combination Air Vacuum Valve (CAV), including excavation, piping, fittings, concrete manhole, ring and cover,	11	EA \$	\$4,115.60	\$45,271.60	\$4,000.00	\$44,000.00	\$3,000.00	\$33,000.00	\$3,000.00	\$33,000.00	\$6,000.00	\$66,000.00	\$5,000.00	\$55,000.00	\$2,400.00	\$26,400.00	\$5,000.00	\$55,000.00	\$3,200.00	\$35,200.00
	to main maniferrate inter-commission we reason to see (CVV), incoming exceesion, physic, intrings, out-eter maintoirer, real out-eter, concrete apron, and physic extension, pipe supports backfill and appurtements, complete liphce as detailed and specified. Furnish and Install 6-inch Class 350 Ductile iron Drain Valve with 6-inch Gate Valve, including excavation, piping, fittings, casings,	4	EA \$	54,140.70	\$16,562.80	\$3,000.00	\$12,000.00	\$2,300.00	\$9,200.00	\$3,000.00	\$12,000.00	\$5,500.00	\$22,000.00	\$3,500.00	\$14,000.00	\$3,800.00	\$15,200.00	\$3,500.00	\$14,000.00	\$3,500.00	\$14,000.00
2	concrete aprons, pipe restraints, backfill and appurtenances, complete in place as detailed and specified. Furnish and Install Direct Bury 24-Inch Butterfly Valve with Tracer Wire Test Station, including excavation, piping, connections,	2	EA \$	\$7,060.60	\$14,121.20	\$10,000.00	\$20,000.00	\$11,300.00	\$22,600.00	\$8,000.00	\$16,000.00	\$10,000.00	\$20,000.00	\$16,000.00	\$32,000.00	\$6,650.00	\$13,300.00	\$9,000.00	\$18,000.00	\$9,500.00	\$19,000.00
	adapters, restraints, backfill, tracer wire, concrete casings and appurtenances, complete in place as detailed and specified. Furnish and install Direct Bury 24-inch Butterfly Valve with Tracer Wire Test Station and Pressure Monitoring Station, including execution, piping, connections, adapters, restraints, backfill, tracer wire, concrete casings and appurtenances, complete in place as	1	EA \$	\$7,467.50	\$7,467.50	\$19,000.00	\$19,000.00	\$12,500.00	\$12,500.00	\$9,000.00	\$9,000.00	\$11,000.00	\$11,000.00	\$16,000.00	\$16,000.00	\$7,100.00	\$7,100.00	\$12,000.00	\$12,000.00	\$30,000.00	\$30,000.00
	detailed and specified. Furnish and Install Class I Void Mitigation Measures, including excavation, materials, labor, documentation and reporting, complete in	210	LF \$	\$76.10	\$15,981.00	\$20.00	\$4,200.00	\$50.00	\$10,500.00	\$20.00	\$4,200.00	\$23.00	\$4,830.00	\$100.00	\$21,000.00	\$30.00	\$6,300.00	\$13.00	\$2,730.00	\$50.00	\$10,500.00
	place as detailed and specified, per linear foot of trench. Furnish and Install Class II Void Mitigation Measures, including excavation, materials, labor, documentation and reporting, complete in	70	LF \$	\$81.80	\$5,726.00	\$120.00	\$8,400.00	\$100.00	\$7,000.00	\$45.00	\$3,150.00	\$86.00	\$6,020.00	\$200.00	\$14,000.00	\$85.00	\$5,950.00	\$93.00	\$6,510.00	\$200.00	\$14,000.00
26	place as detailed and specified, per linear foot of trench. Furnish and Install Class III Void Mitigation Measures, including excavation, materials, labor, documentation and reporting, complete in	70	LF	581.80	\$5,726.00	\$150.00	\$10,500.00	\$120.00	\$8,400.00	\$70.00	\$4,900.00	\$88.00	\$6,160.00	\$300.00	\$21,000.00	\$100.00	\$7,000.00	\$106.00	\$7,420.00	\$210.00	\$14,700.00
27	Place as detailed and specified, per linear foot of trench. Furnish and Install Class V Void Mitigation Measures, including excavation, materials, labor, documentation and reporting, complete in	35		\$81.80	\$2,863.00	\$175.00	\$6,125.00	\$150.00	\$5,250.00	\$50.00	\$1,750.00	\$140.00	\$4,900.00	\$500.00	\$17,500.00	\$250.00	\$8,750.00	\$119.00	\$4,165.00	\$230.00	\$8,050.00
28	Turnish and instal Cass V food mitigetion measures, including exceration, materials, labor, documentation and reporting, complete in place as detailed and specified, per linear foot of trench. Furnish and Install Class V Modified Void Mitigation Measures, including exceration, materials, labor, documentation and reporting,	35	LF \$		\$2,863.00	\$350.00	\$12,250.00	\$170.00	\$5,950.00	\$50.00	\$1,750.00	\$150.00	\$5,250.00	\$600.00	\$21,000.00	\$250.00	\$8,750.00	\$205.00	\$7,175.00	\$410.00	\$14,350.00
29	complete in place as detailed and specified, per linear foot of trench. Remove Existing 20-Inch Water Meter and Associated Fittings from Existing Vault and Install a 20-Inch Motor Operated Butterfly Valve	1	LS \$		\$24,479.50	\$24,000.00	\$24,000.00	\$30,000.00	\$30,000.00	\$28,000.00	\$28,000.00	\$30,000.00	\$30,000.00	\$50,000.00	\$50,000.00	\$19,260.00	\$19,260.00	\$30,000.00	\$30,000.00	\$36,000.00	\$36,000.00
30	with Required Fittings, Flanges and Adapters inside Existing Vaulu, including, materials, labor, pipe connections, adjustments, spool pieces and appurtenances, complete in place as detailed and specified, per lump sum. Furnish and Install Electrical Conduit, Wire, Terminations, Conduit Connections and all Appurtenances to Connect the 20-inch Motor	1	LS \$	526,622.30	\$26,622.30	\$16,000.00	\$16,000.00	\$30,000.00	\$30,000.00	\$30,000.00	\$30,000.00	\$35,000.00	\$35,000.00	\$35,000.00	\$35,000.00	\$8,900.00	\$8,900.00	\$31,000.00	\$31,000.00	\$45,000.00	\$45,000.00
31	Operated Butterfly Valve to the Site Electrical Supply, including, materials, conduit, excavation, backfill, connections, adjustments, coring, testing and appurtenances, complete in place as detailed and specified, per lump sum. Modify the Depth of the Existing Electrical Power Feed Duct in the Pastor Pump Station Yard at the Crossing of the 20-inch Water Line,	1	LS \$	\$2,991.30	\$2,991.30	\$7,000.00	\$7,000.00	\$3,700.00	\$3,700.00	\$4,000.00	\$4,000.00	\$4,000.00	\$4,000.00	\$10,000.00	\$10,000.00	\$5,000.00	\$5,000.00	\$4,000.00	\$4,000.00	\$12,000.00	\$12,000.00
	including materials, wire adjustments, conduit, excavation, concrete, backfill, connections, adjustments and appurtenances, complete in place as details and specified, per lump sum. Furnish and Install instrumentation & Control and Process Control System Improvements to Integrate and Automate the Operation the places by details and unbrackfills, and unbrackfills and places control System Improvements to Integrate and Automate the Operation the places by details and unbrackfills and unbrack of the System Improvements to Integrate and Automate the Operation the places by details and unbrackfills and unbrackfills and places the specific	1	LS \$	\$28,700.00	\$28,700.00	\$28,700.00	\$28,700.00	\$28,700.00	\$28,700.00	\$28,700.00	\$28,700.00	\$28,700.00	\$28,700.00	\$28,700.00	\$28,700.00	\$28,700.00	\$28,700.00	\$28,700.00	\$28,700.00	\$28,700.00	\$28,700.00
3	20-inch Motor Operated Butterfly Valve with the Existing Programmable Logic Controller, including materials, conduit, execution, backfll, connections, coring, adjustments, programming testing and appurtenances, complete in place as detailed and specified, per Jump sum. Contractor's Cost of Coordination, Management and Supplemental Work Associated with the Implementation of Bid Item 32, including	1	15 6	\$1,558.40	\$1,558.40	\$7,500.00	\$7,500.00	\$3,000.00	\$3,000.00	\$1,000.00	\$1,000.00	\$2,000.00	\$2,000.00	\$10,000.00	\$10,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$25,000.00	\$25,000.00
4	Cult action 5 cobs to exolutionation is with a generation and a subplementation work resources with the impedentation of an even 32, including materials, conduct exound and the subplementation of an even 32, including materials, conduct even and the subplementation of an even 32, including as a detailed and specified. The subplementation of t	1			\$1,558.40	\$3,000.00	\$3,000.00	\$6,800.00	\$6,800.00	\$4,000.00	\$4,000.00	\$2,000.00	\$13,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$2,000.00	\$2,000.00	\$30,000.00	\$30,000.00
36	Disinfection of Potable Water Pipelines, complete in place as detailed and specified.	1	LS \$	513,485.50	\$13,485.50	\$4,000.00	\$4,000.00	\$12,000.00	\$12,000.00	\$5,000.00	\$5,000.00	\$13,000.00	\$13,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$12,000.00	\$12,000.00	\$48,000.00	\$48,000.00
37	Provide Re-vegetation, complete in place as detailed and specified. Allowance to be used for additional site improvements, landscaping and miscellaneous modifications.	38000 1	SY \$		\$34,200.00 \$92,000.00	\$1.00 \$92,000.00	\$38,000.00 \$92,000.00	\$1.25 \$92,000.00	\$47,500.00 \$92,000.00	\$0.50 \$92,000.00	\$19,000.00 \$92,000.00	\$0.50 \$92,000.00	\$19,000.00 \$92,000.00	\$0.50 \$92,000.00	\$19,000.00 \$92,000.00	\$0.40 \$92,000.00	\$15,200.00 \$92,000.00	\$0.50 \$92,000.00	\$19,000.00 \$92,000.00	\$2.00 \$92,000.00	\$76,000.00 \$92,000.00
	Total - Base Bid (Item Nos. 1-38)		-		\$2,936,000.00	F	\$2,991,939.00	-	\$2,998,831.50	-	\$3,071,810.00	-	\$3,096,927.00	ŀ	\$3,296,658.20	-	\$3,392,396.69	-	\$3,423,316.00	-	\$4,650,938.00

City of Georgetown Cedar Breaks to Pastor Dedicated Water Line Project No. 2JI

BID TABULATION SUMMARY

January 29, 2019

Approved Bidders	Prota Construction Inc	Austin Engineering Company Inc	M.A. Smith Contracting Company, Inc.	Cash Construction Company Inc	Austin Underground Inc
Acknowledged all Addenda	\checkmark	V	V	V	v
Provide Bid Security (5%)	V	V	V	V	V
Provide Information from 00400	V	V	V	V	Deferred
Total - Base Bid	\$2,936,000.00	\$2,991,939.00	\$2,998,831.50	\$3,071,810.00	\$3,096,927.00

Approved Bidders	Patin Construction LLC	Excel Trenching	Santa Clara Construction	Aaron Concrete Contractors, LP
Acknowledged all Addenda	V	V	V	V
Provide Bid Security (5%)	V	V	V	V
Provide Information from 00400	Deferred	V	Deferred	V
Total - Base Bid	\$3,296,658.20	\$3,392,396.69	\$3,423,316.00	\$4,650,938.00

City of Georgetown, Texas City Council Regular Meeting February 12, 2019

SUBJECT:

Consideration and possible action to approve an **Assignment** and **Assumption Agreement** with **IP Keys Power Partners, LLC** to allow IP Keys to assume the **obligation** of the **contracted services** previously made between the City of Georgetown and Electsolve Technology Solutions and Services, Inc. -- Leticia Zavala, Customer Care Director

ITEM SUMMARY:

This item seeks City approval of an Assumption Agreement with IPKeys to assume the responsibility for the remaining term of the existing service contracts currently held by Electsolve Technology Solutions and Services, Inc. which were previously approved by Council.

Electsolve Technology Solutions and Services, Inc. was acquired in October 2018 by IPKeys Power Partners, LLC, a leading provider of secure integrated automated demand management platforms for utilities and consumers. IPKeys was founded in 2005 as a strategic partner in the Energy, DOD, Federal, and Commercial sectors, delivering expertise in the development, integration, and deployment of cyber secure Internet Protocol technology and communication systems. They are co-headquartered in Eatontown, NY and Stafford VA.

FINANCIAL IMPACT: N/A

SUBMITTED BY: Leticia Zavala

ATTACHMENTS:

2019.02.12 Assign_Electsolve to IP Keyes_1.16.2018



Assignment and Assumption Agreement by and between City of Georgetown and IPKeys Power Partners LLC.

This Assignment and Assumption Agreement ("Assignment") is entered into this 5th day of December 2018 by and between the City of Georgetown ("City") and IPKeys Power Partners LLC (IPKeys), a Delaware limited liability company.

Whereas, the City and ElectSolve Technology Solutions and Services, Inc. entered into a Meter Data Management Contract December 16, 2010 ("Agreement");

Whereas, ElectSolve Technology Solutions & Services Inc. (ElectSolve) entered into a definitive asset purchase agreement with IPKeys Power Partners LLC (IPKeys) for sale of all ElectSolve's assets effective October 16, 2018;

Whereas, pursuant to the Meter Data Management Contract, ElectSolve cannot assign its rights and obligations without the prior consent of the City; and

Whereas, City desire to consent to such assignment pursuant to the terms and conditions set forth below.

Now Therefore, in consideration of the foregoing recitals that are incorporated herein by this reference and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

- 1. <u>Purchase and Assignment</u>. Pursuant to the purchase of ElectSolve by IPKeys, ElectSolve has granted and assigned to IPKeys all of its rights, title, and interest in, to and under, all of its rights, duties and obligations arising out of or relating to the Agreement, as amended.
- 2. <u>Assumption of Assignment</u>. Pursuant to the purchase of ElectSolve by IPKeys, IPKeys hereby accepts and assumes the foregoing assignment by ElectSolve of all of its rights, title and interest in, to and under, and all rights duties and obligations of ElectSolve arising out of or relating to the Agreement, in accordance with the terms and conditions of the Agreement and this Assignment.
- 3. <u>Consent</u>. City hereby consents to such assignment and assumption. City's consent to this assignment and assumption is not intended to and shall not amend, modify, or delete in anyway the rights and obligations of the City, ElectSolve or IPKeys under the Agreement.
- 4. Miscellaneous Provisions.
 - a. Confidentiality. ElectSolve, as assignor and party to the Agreement, may disclose necessary confidential information to IPKeys, as assignee, received from the City, provided that IPKeys is first informed by ElectSolve of the confidential nature of such confidential information and shall have agreed in writing to maintain its confidentiality in accordance with the Agreement.
 - b. Severability. Provisions of this Assignment are severable. If any provision is held to be invalid or unenforceable it shall not affect the validity or enforceability of any other provision.



- c. Sole Agreement. This Assignment represents the final, sole and entire agreement between the Parties and, except as expressly stated herein, supersedes all prior agreements, negotiations and discussions between the parties with respect to the subject matters contained herein. This Assignment is fully integrated.
- d. Governing Law. This Assignment shall be construed under the laws of the State of Texas. Any cause of action arising out of the Agreement or Assignment shall be filed in the Superior Court of the County of Williamson, Texas.
- e. Counterparts. This Assignment may be executed in one of more counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.
- f. Amendment or Modification. This Assignment may be amended or modified only by a written instrument signed by all Parties or their successors in interest.
- g. Successors and Assigns. This Assignment shall apply to, bind and inure to the benefit of the Parties and their respective successors and assigns.
- h. Authority. The individuals executing this Assignment, it shall be deemed that it was prepared jointly by the Parties with full access to legal counsel of their own. No ambiguity shall be resolved against any party on the premise that its attorneys were solely responsible for drafting this Assignment or any provision thereof.

[*Remainder of page left intentionally blank*]



IN WITNESS WHEREOF, the Parties hereto have executed this Assignment on the date first written above.

IPKeys Power Partners, LLC.

Jain C Report

David Reynolds Senior Contracts Manager IPKeys Power Partners LLC. 732-982-3115

City of Georgetown

Dale Ross, Mayor City of Georgetown

ATTEST:

APPROVED TO FORM:

Robyn Densmore, City Secretary

Charlie McNabb, City Attorney

City of Georgetown, Texas City Council Regular Meeting February 12, 2019

SUBJECT:

Consideration and possible action to ratify and approve an **Agreement** with the **Opportunities for Williamson & Burnet Counties agency** to accept **pledges of payment** from **CEAP agencies** for **low-income customers** -- Leticia Zavala, Customer Care Director

ITEM SUMMARY:

The purpose of the Comprehensive Energy Assistance Program (CEAP) funded from the Low-Income Home Energy Assistance Program (LIHEAP) grant is to maintain an energy supply to heat and cool the residences of eligible low-income customers.

The attached signed vendor agreement is between the City of Georgetown and the Opportunities for Williamson and Burnet Counties(OWBC) agency. This agreement renews every two years and has been in effect with the City since the 90's. This agenda item ratifies the City Managers signature on the contract.

OWBC provides assistance to low-income customers who are having difficulty paying their utility bills. The agency manages the screening and approval process, and once they determine funding assistance, OWBC emails the Utilities Customer Care department a voucher. The voucher is entered on the customer's account as a payment and at the end of the month, OWBO sends the utility a check to cover the amount of the vouchers. The payment is reconciled with the vouchers to ensure proper payment is recorded and received

FINANCIAL IMPACT: N/A

SUBMITTED BY: Leticia Zavala

ATTACHMENTS:

OWBC Contract with signature

VENDOR AGREEMENT COMPREHENSIVE ENERGY ASSISTANCE PROGRAM

The purpose of the Comprehensive Energy Assistance Program ("CEAP") funded from the Low-Income Home Energy Assistance Program ("LIHEAP") grant is to maintain an energy supply to heat and cool the residences of eligible low-income clients.

The Energy Services provider, (or "Vendor,") agrees to honor the purpose of the CEAP grant and to accept pledges of payment from CEAP agencies only for certified customers to whom Vendor continues to provide energy services. The Energy Assistance Provider, (or "Agency",) agrees to make payments only for eligible low-income clients.

This vendor agreement is by and between:

Opportunities for Williamson & Burnet Counties

City of Georgetown Vendor

Vendor and Agency agree to assist customers in the following counties: Williamson and Burnet

This agreement shall be effective from the <u>22nd</u> day of <u>January</u> 2019 for a period not to exceed two years from the effective date. Either party may terminate this agreement by written notice. Such written notice of termination shall not affect any obligation by either party incurred prior to the receipt of such notice. Notice shall be sent via certified mail with return receipt requested.

<u>City of Georgetown</u> Vendor Name

P.O. Box 1430

Georgetown, Texas

78627

and

Opportunities for Williamson & Burnet Counties (Agency Name)

604 High Tech Drive, Georgetown, Texas 78626 (Agency Mailing Address) The Agency named above represents and warrants to Vendor that it is a subrecipient of the Texas Department of Housing and Community Affairs ("TDHCA") and as such is authorized and has received funding from the TDHCA to provide bill payment assistance service for eligible low-income households.

The Vendor named above represents and warrants that it will apply any payments received from Agency to the account of the customer that the Agency has determined to be eligible under the CEAP guidelines and such is a "Certified Customer".

Vendor will, with reference to a Certified Customer:

- Extend the CEAP applicant's energy service for up to five business days while the Agency determines whether the CEAP applicant is eligible pursuant to the CEAP guidelines.
- Upon accepting pledge from Agency for Certified Customer, continue or restore energy service to Certified Customer with no increases in charges, service charges or other charges affecting the total cost of the bill, except as allowed by the stated tariff cost registered with the Public Utility Commission "PUC" and/or Texas Railroad Commission.
- In the event the full past due balance is not paid by the Agency, the Certified Customer must pay the remaining balance on or before the disconnect date stated in the customer's Disconnect Notice required by PUC regulations in order to avoid disconnection or be eligible for reconnection. Nothing in this agreement requires the Vendor to reconnect the customer upon receipt of a pledge that does not cover the full past due balance or if the customer has already been disconnected by the time the pledge is received by the Vendor.
- Invoice the Certified Customer in accordance with Vendor's normal billing practices.
- Upon verbal or written request from Agency, provide at no cost to the Agency the Certified Customer's billing and usage history for previous twelve months, or available history plus monthly estimates if less than twelve months of billing history and usage is available. Vendor will transmit such billing history via electronic mail or facsimile as soon as possible, but no later than forty-eight hours following the request.
- Work with Agency and Certified Customer to explore the feasibility of offering flexible payment arrangements that may include, without limitation, waiving security deposits, reconnect fees, application fees, and all other fees whenever possible.
- Not discriminate against Certified Customer in price or services, including the availability
 of deferred payment plans, level or average payment plans, discount, budget, advance
 payment or other credit plans.
- Not refuse to provide energy service or otherwise discriminate in the marketing and provision of energy service to any Certified Customer because of race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, level of income, disability, financial status, location of customer in an economically distressed geographic area, or qualification for low-income or energy-efficiency services.

- Allow Agency forty-five days from the date of the pledge to forward payment to the Vendor. Vendor agrees not to consider the portion of the Certified Customer's account to be paid by the Agency delinquent if said payment is received within the above mentioned forty-five day period and Vendor is provided with a verbal or signed pledge from the Agency within forty-five days of identifying a Certified Customer.
- Not interrupt service if Certified Customer is eligible under PUC regulations, or other state agency regulations (as applicable), and enters into an agreement with the Vendor concerning how the Certified Customer will pay the balance owed Vendor and the Certified Customer is meeting the obligation under such agreement.
- If the Agency has paid for an initial deposit or similar refundable instrument, upon the termination of service to the Certified Customer, the Vendor shall return funds including interest (after any balance owed) to the Agency in accordance with PUC regulations or other state agency regulations (as applicable).

The Agency will:

- Obtain written permission for Agency to request and have access to customer information, including confidential or personal account information, credit and payment history, from customers seeking Agency's assistance. Social Security numbers are not required for the CEAP program and may not be disclosed to Agency.
- Provide to Vendor, at Vendor's request, customer's written permission for Agency's access to customer information as stated above.
- Not provide pledges on behalf of a Certified Customer to Vendor without having adequate funds to pay such pledge.
- Pay pledges within forty-five days of making pledge to Vendor.
- Determine if a customer is a Certified Customer within five days of contacting Vendor.
- Provide Vendor a list of names, telephone numbers and e-mail addresses of Agency staff designated to make pledges on behalf of the Agency and Certified Clients, if requested from Vendor.

The terms of any confidential transaction under this agreement or any other information exchanged by the Agency and Vendor relating to any transaction shall not be disclosed to any person not employed or retained by the Agency or Vendor, their affiliates, or brokers, except to the extent disclosure is 1) required by law; 2) necessary to disclose to the other party in connection with a dispute between the parties; 3) otherwise permitted by written consent of the other party; 4) required by guarantors to be disclosed; 5) information which must be disclosed to a third party to transmit energy; 6) to meet reliability council, regulatory, administrative, judicial, governmental, or regulated commodity exchange requirements where necessary; or 7) of information which was or is hereafter in the public domain (except by breach of this Agreement).

Authorized Vendor Signature

Devid S. Morgan Typed Name of Authorized Signature

512-930-3640

Vendor Telephone Number

customercare@georgetown.org

Vendor Email Address

MARO 147

Authorized Agency Signature

Marco Cruz

Typed Name of Authorized Signature

512-255-2202

Agency Telephone Number

18 101

Date

1/21/19 Date

City Mana Title

Executive Director Title

Revised December 2017

City of Georgetown, Texas City Council Regular Meeting February 12, 2019

SUBJECT:

Consideration and possible action to agree to an **amended Closing Date** for the **conveyance** of the **City Hall Building** to a date **on or before March 8th, 2019** -- Travis Baird, Real Estate Services Manager

ITEM SUMMARY:

City Post, LLC and the City of Georgetown entered into a purchase contract for the current City Hall Building in October 2018, set to close on or before January 30th, 2019. The City and City Post subsequently agreed, at the request of the City, to an extension of the closing date to February 19th, 2019 in order to allow City staff time to move to their new offices. City Post has now requested that the closing date be extended to allow them time for final preparations for closing.

The existing contract allows for such an event, upon "mutual agreement of the Parties". It is recommended that the closing date be amended to a date on or before March 8th, 2019. City Post has communicated that this will allow sufficient time for them to complete their preparations and close on the transaction.

Staff recommends approval of this item.

FINANCIAL IMPACT: N/A. Any changes to value are as discussed in Executive Session.

SUBMITTED BY: Travis Baird-Real Estate Services Manager

City of Georgetown, Texas City Council Regular Meeting February 12, 2019

SUBJECT:

Consideration and possible action to **release** and **abandon** a **public utility easement** situated across Lots 4 through 11, Block Y, **Saddlecreek** Phase 2A and Lots 12 through 19, Block Y, Saddlecreek Phase 1B, as recorded in Document Numbers 2018068875 and 2017046554, respectively, in the Official Public Records of Williamson County, and to authorize the Mayor to execute all documents necessary to complete the abandonment -- Travis Baird, Real Estate Services Manager

ITEM SUMMARY:

This item is a request from the developer of portions of Saddlecreek Phases 2A and 1B to abandon public utility easements (PUEs) along several lots which back up onto Sam Houston Avenue. The PUEs overlap a previously existing Jonah waterline easement, creating a significant likelihood of conflict with that utility to which they object. Staff has reviewed the PUEs, which do not currently hold any utility lines, and found them to be unnecessary. Staff recommends approval of this item.

FINANCIAL IMPACT: N/A. No alternative easement will be required, utilities can be located in the City's existing ROW.

SUBMITTED BY: Travis Baird-Real Estate Services Manager

ATTACHMENTS:

Resolution Package Exhibit

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GEORGETOWN VACATING AND ABANDONING PUBLIC UTILITY EASEMENTS ACROSS LOTS 4 THROUGH 11, BLOCK Y, SADDLECREEK PHASE 2A AND LOTS 12 THROUGH 19, BLOCK Y, SADDLECREEK PHASE 1B, AS RECORDED IN THOSE CERTAIN MAPS OR PLATS RECORDED AS DOCUMENT NUMBERS 2018068875 AND 2017046554, RESPECTIVELY, IN THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS (THE "PUES"), AND BEING LOCATED ON ARABIAN COLT DRIVE IN GEORGETOWN, TEXAS.

WHEREAS, the City of Georgetown has received a request for the vacation and abandonment of the above described PUEs; and

WHEREAS, the City of Georgetown ("City") has received a request from Pacesetter Homes, LLC, the current owner of properties encumbered by the above described easements. The easements overlap an existing waterline easement held by Jonah Special Utility District. The collocation of the easements is likely to create conflicts in the future between Jonah's infrastructure and that of users of the PUEs. The easements currently do not hold any utilities, and sufficient space exists within adjoining City rights of way to provide for extension of utilities under existing agreements. The easements requested to be abandoned and vacated are described by the metes and bounds with sketch on **Exhibit "A"** attached hereto (the "Property"); and

WHEREAS, upon considering the request for vacation and abandonment of the subject PUEs and additional information pertaining to the request, the City Council finds that a public need for the areas sought to be vacated and abandoned no longer exists and that said PUEs may be vacated and abandoned pursuant to City Ordinance No. 2009-47 relating to disposition of City property; and

WHEREAS, nothing herein shall operate to vacate or abandon any other PUE or easement.

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

<u>SECTION 1</u>. The facts and recitations contained in the preamble of this resolution are hereby found and declared to be true and correct, and are incorporated by reference herein and expressly made a part hereof, as if copied verbatim. The City Council hereby finds that the adoption of this resolution is not inconsistent or in conflict with any of the City's 2030 Comprehensive Plan policies.

<u>SECTION 2</u>. The Mayor is hereby authorized to execute a Quitclaim Deed in substantially the same form attached hereto as <u>Exhibit "B"</u> and any other conveyance

document(s) necessary to complete the vacation and abandonment of the PUEs described herein and the City Secretary is authorized to attest thereto on behalf of the City of Georgetown.

SECTION 3. This resolution shall be effective immediately upon adoption.

RESOLVED this _____ day of _____, 2019.

CITY OF GEORGETOWN

ATTEST:

BY:

Dale Ross, Mayor

Robyn Densmore, City Secretary

APPROVED AS TO FORM:

STATE OF TEXAS

Charlie McNabb, City Attorney

)) **COUNTY OF WILLIAMSON**)

ACKNOWLEDGMENT

BEFORE ME, the undersigned authority, on this date personally Dale Ross, Mayor of the City of Georgetown, a Texas home-rule municipal corporation, 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, as the act and deed of said municipality, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____day of ______, 2019.

Notary Public, State of Texas

Exhibit "A"



FIELD NOTES FOR

A 0.193 ACRE, OR 8,404 SQUARE FOOT, TRACT OF LAND BEING OUT OF SADDLECREEK PHASE 2A, A SUBDIVISION ACCORDING TO THE PLAT RECORDED IN DOCUMENT NO. 2018068875 OF THE OFFICIAL RECORDS OF WILLIAMSON COUNTY, TEXAS, AND BEING OUT OF SADDLECREEK PHASE 1B, A SUBDIVISION ACCORDING TO THE PLAT RECORDED IN DOCUMENT NO. 2017046554 OF THE OFFICIAL RECORDS OF WILLIAMSON COUNTY, TEXAS, SITUATED IN THE WILLIAM ADDISON SURVEY, ABSTRACT NO 21, IN THE CITY OF GEORGETOWN, WILLIAMSON COUNTY, TEXAS. SAID 0.193 ACRE TRACT BEING MORE FULLY DESCRIBED AS FOLLOWS, WITH BEARINGS BASED ON THE TEXAS COORDINATE SYSTEM ESTABLISHED FOR THE CENTRAL ZONE;

BEGINNING at a ¹/₂" iron rod with yellow cap marked "Pape-Dawson" found in the north rightof-way line of Sam Houston Avenue, a variable width right-of-way, same being the southeast corner of a called Saddlecreek Phase 1A, a subdivision according to the plat recorded in Document No. 2017046488 of the Official Public Records of Williamson County, Texas, and being the southwest corner of said Saddlecreek Phase 2A, for the southwest corner and **POINT OF BEGINNING** hereof;

THENCE N 45°44'38'' W, departing the north right-of-way line of Sam Houston Avenue, with the east line of said Saddlecreek Phase 1A, same being the west line of said Saddlecreek Phase 2A, a distance of **10.97 feet** to a calculated point for the northwest corner hereof,

THENCE N 68°33'46'' E, departing the east line of Saddlecreek Phase 1A, through the interior of Saddlecreek Phase 2A, and Saddlecreek Phase 1B, a distance of **843.19 feet** to a calculated point on the east line of said Saddlecreek Phase 1B, same being the west line of a called Remnant Portion of a called 100 acre, Tract No. 2, "2nd Tract", conveyed to Woodhull Family Partners for the northeast corner hereof,

THENCE S 15°11'23'' E, with the east line of said Saddlecreek Phase 1B, same being the west line of said Remnant Portion, a distance of **10.06 feet** to a ¹/₂" iron rod with yellow cap marked "Pape-Dawson" found in the north right-of-way line of Sam Houston Avenue, for the northeast corner hereof,

THENCE S 68°33'46'' W, with the south right-of-way line of Sam Houston Avenue, same being the south line of said Saddlecreek Phase 1B, and Saddlecreek Phase 2A, a distance of 411.54 feet to a $\frac{1}{2}$ '' iron rod with yellow cap marked "Pape-Dawson" found, continuing for a total distance of

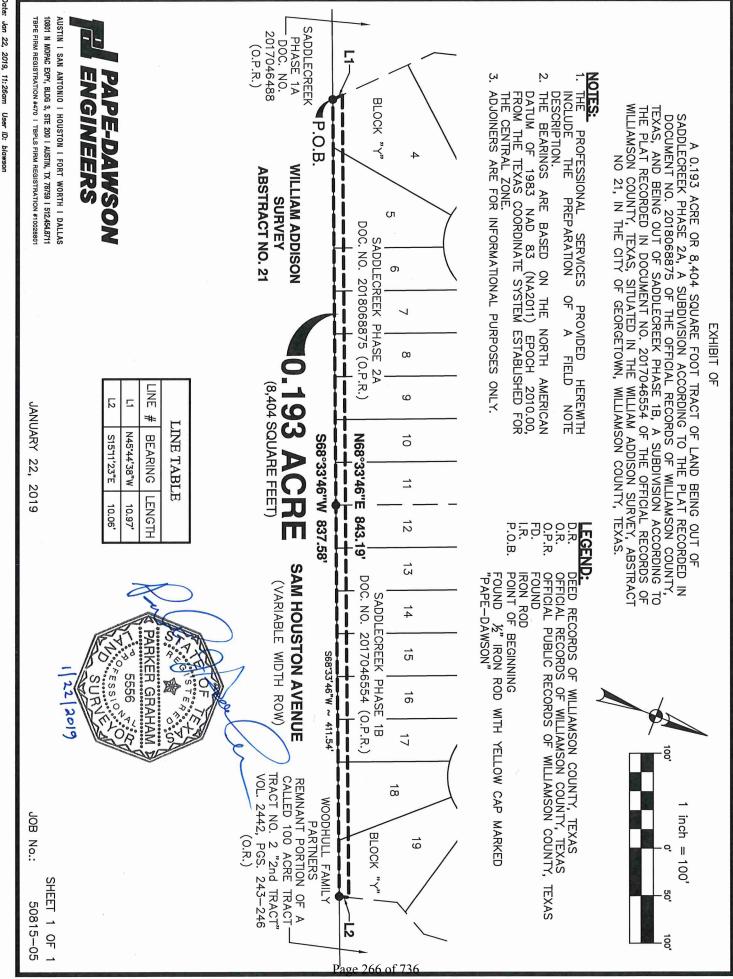
TBPE Firm Registration #470 | TBPLS Firm Registration #10028801 Austin | San Antonio | Houston | Fort Worth | Dallas Transportation | Water Resources | Land Development | Surveying | Environmental

10801 N MoPac Expy., Bldg. 3, Suite 200, Austin, TX 78759 512.454.8711 www.Pape-Dawson.com Page 264 of 736 0.193 Acre Job No. 50815-05 Page 2 of 2

837.58 feet to the **POINT OF BEGINNING** and containing 0.193 acres in Williamson County, Texas Said tract being described in accordance with an exhibit prepared by Pape-Dawson Engineers, Inc. under Job No. 50815-05.

PREPARED BY: Pape-Dawson Engineers, Inc.DATE:January 22, 2019JOB No.:50815-205DOC.ID.:H:\survey\CIVIL\50815-05\Easements\Word\ES-5081505_0.193PUEsmt.docxTBPE Firm Registration #470TBPLS Firm Registration #100288-01

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Date: Jan 22, 2019, 11:26am User ID: blawson Flle: H: \survey\ClVIL\50815-05\Easements\50815-05_0.193Ac_PUEsmt.dwg

Exhibit: "B"

QUITCLAIM DEED

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.

DATE: _____, 2019

GRANTOR: City of Georgetown, a Texas home-rule municipal corporation

GRANTOR'S Mailing Address (including County): P.O. Box 409, Georgetown, Williamson County, Texas 78627

GRANTEE: Pacesetter Homes, LLC, a Texas limited liability corporation

GRANTEE'S Mailing Address (including County): 14400 The Lakes Blvd., Bldg. C, Ste. 200, Pflugerville, Travis County, Texas, 78660

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

PROPERTY:

BEING all of those approximately 10' wide Public Utility Easements (PUEs) across the 0.193 acres (8,404 square feet) of property, said PUEs being described by metes and bounds with the sketches on **Exhibits "A"** attached hereto and incorporated herein by reference.

For the consideration, GRANTOR quitclaims to GRANTEE all of GRANTOR'S right, title, and interest in and to the above described property, to have and to hold it to GRANTEE, GRANTEE'S successors and assigns, forever. Neither GRANTOR, nor GRANTOR'S successors and assigns, shall have, claim or demand any right or title to the property or any part of it.

Exhibit: "B"

EXECUTED this the	_ day of	, 2019.
GRANTOR CITY OF GEORGETOWN		ATTEST:
BY: Dale Ross, Mayor	-	Robyn Densmore, City Secretary
STATE OF TEXAS COUNTY OF WILLIAMSON)))	ACKNOWLEDGMENT

BEFORE ME, the undersigned authority, on this date personally Dale Ross, Mayor of the City of Georgetown, a Texas home-rule municipal corporation, 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, as the act and deed of said municipality, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____day of _____, 2019.

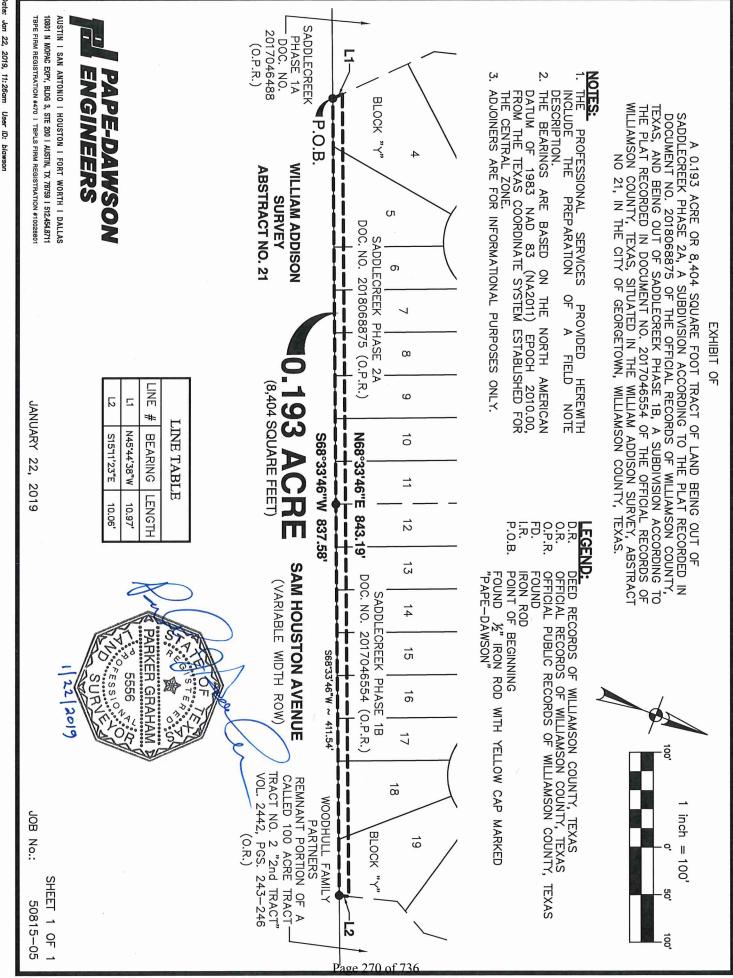
Notary Public, State of Texas

APPROVED AS TO FORM:

Charlie McNabb, City Attorney

[Exhibit "A" to Quitclaim Deed]

Exhibit "A" to the Quitclaim Deed is heretofore attached as Exhibit "A" to the foregoing Resolution and will be attached accordingly to the original Quitclaim Deed prior to execution and recording.



Date: Jan 22, 2019, 11:26am User ID: blawson Flle: H: \survey\ClVIL\50815-05\Easements\50815-05_0.193Ac_PUEsmt.dwg

City of Georgetown, Texas City Council Regular Meeting February 12, 2019

SUBJECT:

Consideration and possible action to **release** and **abandon** a **public utility easement** situated across **Lot 1, Bonnet Subdivision**, and recorded as Cabinet Q, Slides 119-120 in the Official Public Records of Williamson County, and to authorize the Mayor to execute all documents necessary to complete the abandonment -- Travis Baird, Real Estate Services Manager

ITEM SUMMARY:

This item is a request from the developer of portions of the Bonnet Subdivision to remove two public utility easements from the property, as part of a vacation of the subdivision and redevelopment of the land. The developer is seeking to redevelop the property, including a purchase of the adjoining lot. One easement bisects the property, currently being Lot 1, and will hinder construction on the lot. Another easement, located along the boundary of Lots 1 & 2, will hinder redevelopment of the site as it will bisect a future lot. Neither of these easements is currently being used for utility infrastructure.

The vacation of the existing subdivision is scheduled for P&Z on Feb. 5th. Staff recommends approval of this item.

FINANCIAL IMPACT:

N/A. Replacement easements to be provided as part of the replat of the area.

SUBMITTED BY: Travis Baird-Real Estate Services Manager

ATTACHMENTS:

Resolution Package Exhibit A graphic Exhibit B graphic

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GEORGETOWN VACATING AND ABANDONING PORTIONS OF TWO PUBLIC UTILITY EASEMENTS ACROSS LOT 1, BONNET SUBDIVISION, AS RECORDED IN THAT CERTAIN MAP OR PLAT IN CABINET Q, PAGE 119 OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS (THE "PUES"), AND BEING LOCATED ON SH-29 IN GEORGETOWN, TEXAS.

WHEREAS, the City of Georgetown has received a request for the vacation and abandonment of the above described PUEs, as the owners of Lots 1 & 2 are seeking to vacate the Bonnet Subdivision and the lots will be combined and the future lot(s) will be bisected by these easements; and

WHEREAS, the City of Georgetown ("City") has received a request from Morris Corners Collection, Ltd., the current owner of property encumbered by the above described easements. The bisection of the newly created lot(s) by these easements will hinder development of the lot. The easements requested to be abandoned and vacated are described by the metes and bounds with sketches on **Exhibits "A" & "B"** attached hereto (the "Property"); and

WHEREAS, upon considering the request for vacation and abandonment of the subject PUEs and additional information pertaining to the request, the City Council finds that a public need for the areas sought to be vacated and abandoned no longer exists and that said PUEs may be vacated and abandoned pursuant to City Ordinance No. 2009-47 relating to disposition of City property; and

WHEREAS, nothing herein shall operate to vacate or abandon any other PUE or easement.

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

SECTION 1. The facts and recitations contained in the preamble of this resolution are hereby found and declared to be true and correct, and are incorporated by reference herein and expressly made a part hereof, as if copied verbatim. The City Council hereby finds that the adoption of this resolution is not inconsistent or in conflict with any of the City's 2030 Comprehensive Plan policies.

<u>SECTION 2</u>. The Mayor is hereby authorized to execute a Quitclaim Deed in substantially the same form attached hereto as <u>Exhibit "C"</u> and any other conveyance document(s) necessary to complete the vacation and abandonment of the PUEs described herein and the City Secretary is authorized to attest thereto on behalf of the City of Georgetown.

Resolution No. _____ Description: Vacation and abandonment of two PUEs Lot 1, Bonnet Subdivision Date Approved: ______ Page 272 of 736 <u>SECTION 3</u>. This resolution shall be effective immediately upon adoption.

RESOLVED this _____ day of _____, 2019.

CITY OF GEORGETOWN

ATTEST:

BY:

Dale Ross, Mayor

Robyn Densmore, City Secretary

APPROVED AS TO FORM:

Charlie McNabb, City Attorney

ACKNOWLEDGMENT

BEFORE ME, the undersigned authority, on this date personally Dale Ross, Mayor of the City of Georgetown, a Texas home-rule municipal corporation, 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, as the act and deed of said municipality, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____day of ______, 2019.

Notary Public, State of Texas





FIELD NOTES

FOR

A 0.209 ACRE, OR 9,089 SQUARE FEET, TRACT OF LAND BEING OUT OF LOT 1 BONNETT SUBDIVISION RECORDED IN CABINET Q, SLIDES 119-120 OF THE PLAT RECORDS OF WILLIAMSON COUNTY, TEXAS, CONVEYED TO MORRIS CORNERS COLLECTION IN, LTD IN DOCUMENT NO. 2013068474 OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS, BEING SITUATED IN THE JOSEPH B. PULSIFER SURVEY, ABSTRACT NO. 498, IN WILLIAMSON COUNTY, TEXAS. SAID 0.209 ACRE TRACT BEING MORE FULLY DESCRIBED AS FOLLOWS, WITH BEARINGS BASED ON THE NORTH AMERICAN DATUM OF 1983 (NA 2011) EPOCH 2010.00, FROM THE TEXAS COORDINATE SYSTEM ESTABLISHED FOR THE CENTRAL ZONE;

COMMENCING at an iron rod with illegible cap found in the south right-of-way line of County Road 265, a variable width right-of-way, at the northwest corner of said Lot 1, same being the northeast corner of a called 5.027-acre tract conveyed to Morris Venture Partners IV, LLC, recorded in Document No. 2007062233 of the Official Public Records of Williamson County, Texas;

THENCE N 78°59'29'' E, departing the south right-of-way line of said County Road 265, through the interior of said Lot 1, a distance of 404.95 feet to a calculated point for the northwest corner and POINT OF BEGINNING hereof;

THENCE continuing through the interior of said Lot 1 the following eight (8) courses and distances:

- 1. N 75°47'36'' E, a distance of 15.10 feet to a calculated point for the northeast corner hereof, from which an iron rod with cap marked "RPLS-5784" found bears N 73°13'00" E, 182.57 feet;
- 2. S 07°29'12" E, a distance of 519.45 feet to a calculated point for the southeast corner hereof;
- 3. S 87°39'29" W, a distance of 15.06 feet to a calculated point for the southwest corner hereof, from which an iron rod with cap marked "RPLS-5784" found in the north boundary line of a called 0.593 acre tract recorded in Document No. 2004064765 of the Official Public Records of Williamson County, Texas, same being the southwest corner of said Lot 1, also being the southeast corner of said 5.027-acre tract bears S 85°05'32" W, 446.72 feet,
- 4. N 07°29'12" W, a distance of 248.76 feet to a calculated angle point hereof,

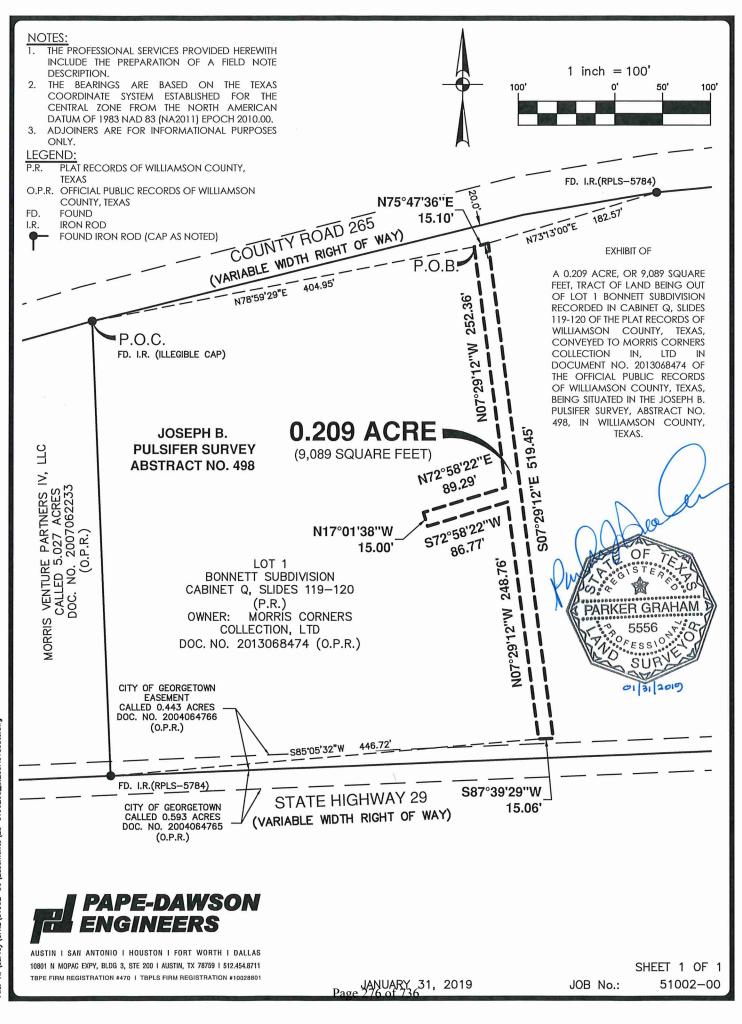
- 5. S 72°58'22" W, a distance of 86.77 feet to a calculated angle point hereof,
- 6. N 17°01'38" W, a distance of 15.00 feet to a point calculated angle point hereof,
- 7. N 72°58'22'' E, a distance of 89.29 feet to a calculated angle point hereof, and
- 8. **N 07°29'12'' W**, a distance of **252.36 feet** to the **POINT OF BEGINNING** and containing 0.209 acres in Williamson County, Texas. Said tract being described in accordance with an exhibit prepared by Pape Dawson Engineers, Inc. under Job No. 51002-00.

PREPARED BY: Pape-Dawson Engineers, Inc.DATE:January 31, 2019JOB No.:51002-00DOC.ID.:H:\survey\CIVIL\51002-00\Easements\Word\FN51002-00_0.209Ac_Vacate.docxTBPE Firm Registration #470TBPLS Firm Registration #100288-01

Janla







Date: Jan 31, 2019, 10:32am User ID: Jmiranda File: H: \survey\CML\51002-00\Easements\ES-5100200_0.209AcVacate.dwg Exhibit "B"



FIELD NOTES

FOR

A 0.119 ACRE, OR 5,164 SQUARE FOOT, TRACT OF LAND BEING OUT OF LOT 1 OF THE BONNETT SUBDIVISION RECORDED IN CABINET Q, SLIDES 119-120 OF THE PLAT RECORDS OF WILLIAMSON COUNTY, TEXAS, CONVEYED TO MORRIS CORNERS COLLECTION, LTD IN DOCUMENT NO. 2013068474 OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS, BEING SITUATED IN THE JOSEPH B. PULSIFER SURVEY, ABSTRACT NO. 498, IN WILLIAMSON COUNTY, TEXAS. SAID 0.119 ACRE TRACT BEING MORE FULLY DESCRIBED AS FOLLOWS, WITH BEARINGS BASED ON THE NORTH AMERICAN DATUM OF 1983 (NA 2011) EPOCH 2010.00, FROM THE TEXAS COORDINATE SYSTEM ESTABLISHED FOR THE CENTRAL ZONE;

COMMENCING at a 1/2" iron rod found in the south right-of-way line of County Road 265, a variable width right-of-way, and a point in the west right-of-way line of Wolf Ranch Parkway, a variable width right-of-way, at the northeast corner of said Lot 1;

THENCE S 10°57'56" E, departing the south right-of-way line of said County Road 265 and the west right-of-way line of said Wolf Ranch Parkway, through the interior of said lot 1, a distance of 205.42 feet to a calculated point for the northeast corner and POINT OF BEGINNING hereof;

THENCE continuing through the interior of said Lot 1 the following six (6) courses and distances:

- 1. S 20°46'32" E, a distance of 10.00 feet to a calculated point in a south boundary line of said Lot 1, same being the north boundary line of Lot 2 of said Bonnett Subdivision for the easternmost corner hereof,
- 2. S 69°13'28" W, a distance of 154.71 feet to a calculated angle point hereof,
- 3. S 20°46'27" E, a distance of 353.38 feet to a calculated point for the southeast corner hereof, from which a 1/2" iron rod with yellow cap marked "Pape-Dawson" found in the north boundary line of a called 0.199 acre tract recorded in Document No. 2005002363, same being the southernmost southeast corner of said Lot 2, bears S 78°34'41" E, 103.48 feet,
- 4. S 87°39'29" W, a distance of 10.54 feet to a calculated point for the southwest corner hereof,

TBPE Firm Registration #470 | TBPLS Firm Registration #10028801 Austin | San Antonio | Houston | Fort Worth | Dallas Transportation | Water Resources | Land Development | Surveying | Environmental

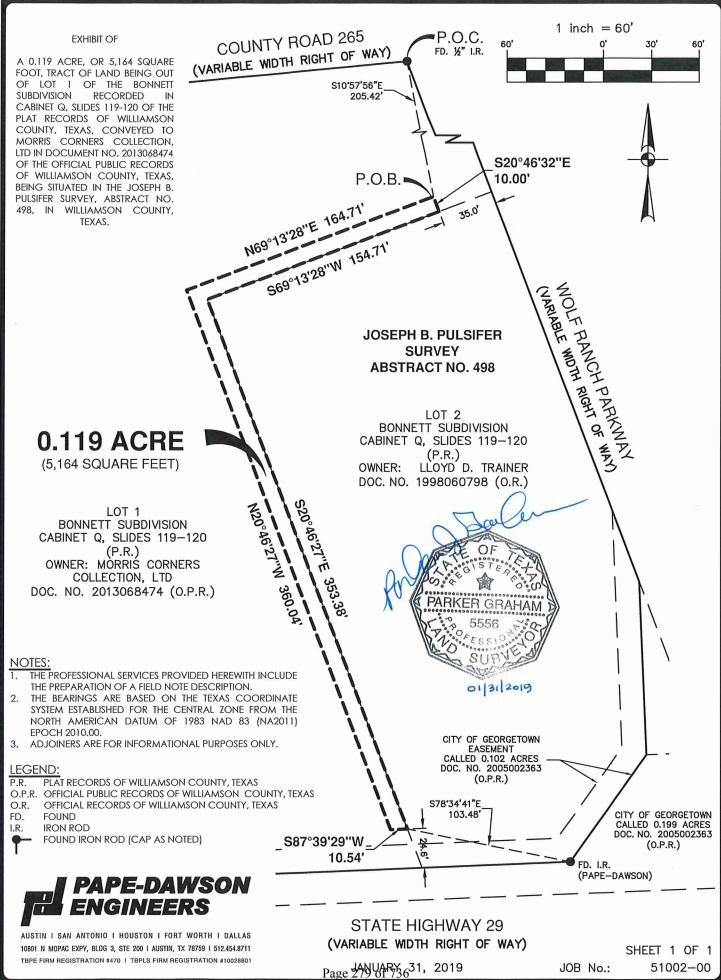
10801 N MoPac Expy., Bldg. 3, Suite 200, Austin, TX 78759 512.454.8711 www.Pape-Dawson.com Page 277 of 736

- 5. N 20°46'27" W, a distance of 360.04 feet to a calculated point for the northwest corner hereof, and
- 6. **N 69°13'28'' E**, a distance of **164.71 feet** to the **POINT OF BEGINNING** and containing 0.119 acres in Williamson County, Texas. Said tract being described in accordance with an exhibit prepared by Pape Dawson Engineers, Inc. under Job No. 51002-00.

PREPARED BY: Pape-Dawson Engineers, Inc.DATE:January 31, 2019JOB No.:51002-00DOC.ID.:H:\survey\CIVIL\51002-00\Easements\Word\FN51002-00_0.119Ac_Vacate.docxTBPE Firm Registration #470TBPLS Firm Registration #100288-01

Anny. De 31 2019





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Exhibit: "B"

QUITCLAIM DEED

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.

DATE: _____, 2019

GRANTOR: City of Georgetown, a Texas home-rule municipal corporation

GRANTOR'S Mailing Address (including County): P.O. Box 409, Georgetown, Williamson County, Texas 78627

GRANTEE: Morris Corners Collection, Ltd., a Texas limited company

GRANTEE'S Mailing Address (including County): 2200 Willowick, 1B, Houston, Harris County, Texas, 77027

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

PROPERTY:

BEING portions of two Public Utility Easements (PUEs), said PUEs being described by metes and bounds with the sketches on **Exhibits "A" & "B"** attached hereto and incorporated herein by reference.

For the consideration, GRANTOR quitclaims to GRANTEE all of GRANTOR'S right, title, and interest in and to the above described property, to have and to hold it to GRANTEE, GRANTEE'S successors and assigns, forever. Neither GRANTOR, nor GRANTOR'S successors and assigns, shall have, claim or demand any right or title to the property or any part of it.

Exhibit: "B"

EXECUTED this the	_day of	, 2019.
GRANTOR CITY OF GEORGETOWN		ATTEST:
BY: Dale Ross, Mayor	-	Robyn Densmore, City Secretary
STATE OF TEXAS COUNTY OF WILLIAMSON))	ACKNOWLEDGMENT

BEFORE ME, the undersigned authority, on this date personally Dale Ross, Mayor of the City of Georgetown, a Texas home-rule municipal corporation, 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, as the act and deed of said municipality, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____day of _____, 2019.

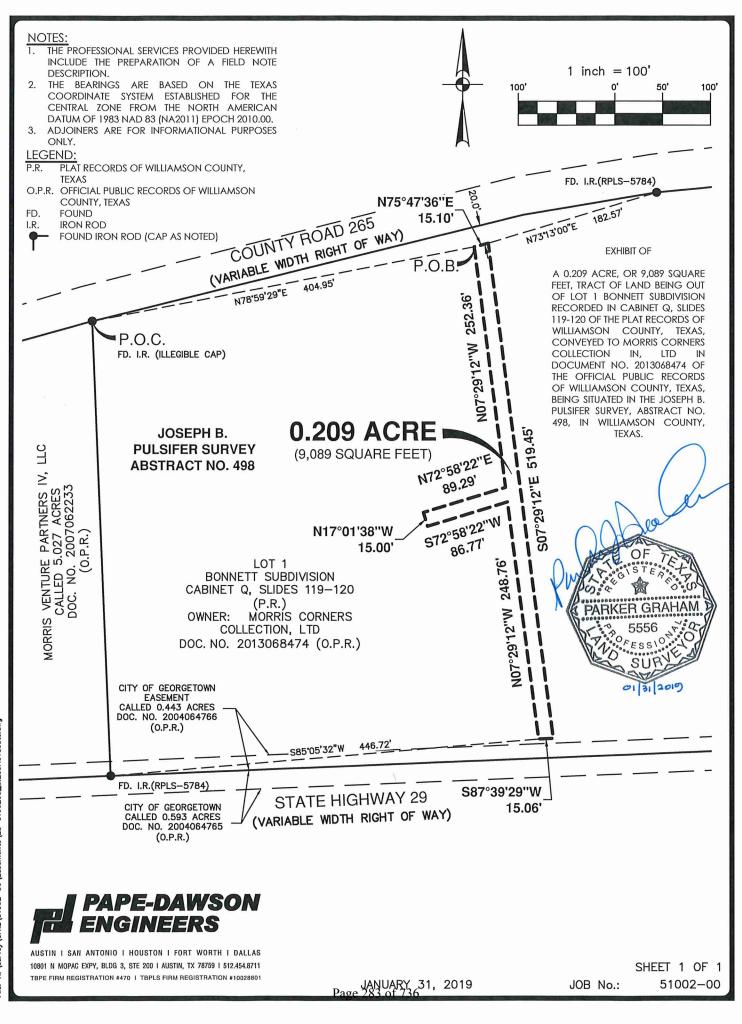
Notary Public, State of Texas

APPROVED AS TO FORM:

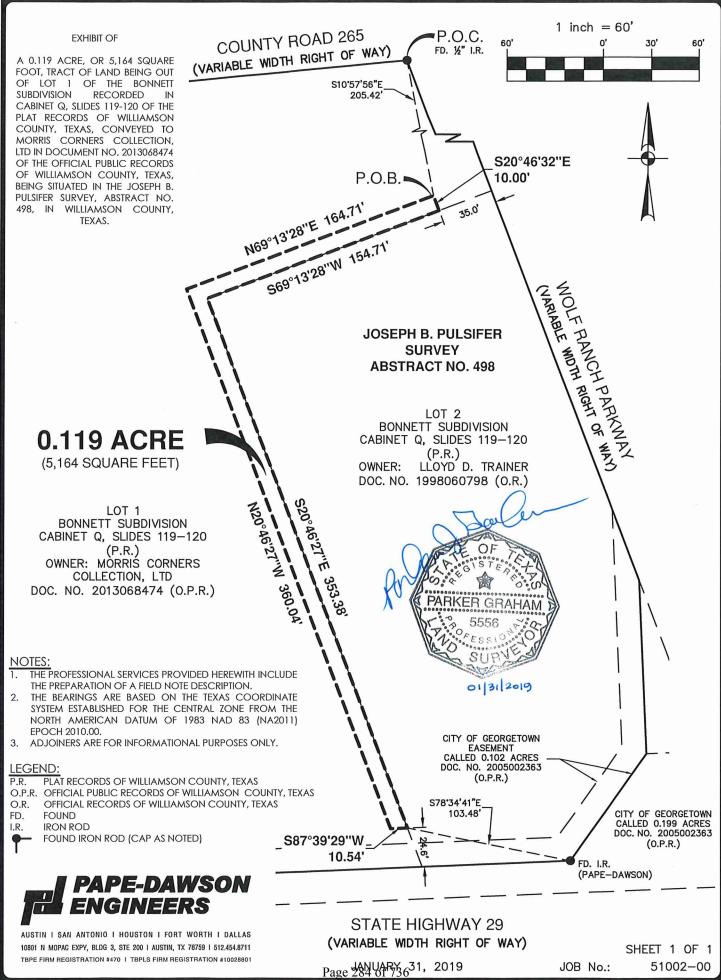
Charlie McNabb, City Attorney

[Exhibits "A" & "B" to Quitclaim Deed]

Exhibits "A" & "B" to the Quitclaim Deed are heretofore attached as Exhibits "A" & "B"" to the foregoing Resolution and will be attached accordingly to the original Quitclaim Deed prior to execution and recording.



Date: Jan 31, 2019, 10:32am User ID: Jmiranda File: H: \survey\CML\51002-00\Easements\ES-5100200_0.209AcVacate.dwg



City of Georgetown, Texas City Council Regular Meeting February 12, 2019

SUBJECT:

Consideration and possible action to **release** and **abandon** a **public utility easement** situated across **Lot 2**, **Bonnet Subdivision**, and recorded as Cabinet Q, Slides 119-120 in the Official Public Records of Williamson County, and to authorize the Mayor to execute all documents necessary to complete the abandonment -- Travis Baird, Real Estate Services Manager

ITEM SUMMARY:

This item is a request from the owner of Lot 2, in concert with the developer of portions of the Bonnet Subdivision to remove a public utility easement from the property, as part of a vacation of the subdivision and redevelopment of the land. The owner is cooperating with a developer who is seeking to redevelop portions or all of the property, including a purchase of Lot 2. The easement to be abandoned is located along the boundary of Lots 1 & 2, and will hinder redevelopment of the site as it will bisect a future lot. This easement is currently being used for utility infrastructure. The vacation of the existing subdivision is scheduled for P&Z on Feb. 5th. Staff recommends approval of this item.

FINANCIAL IMPACT: N/A. Replacement easements to be provided as part of the replat of the property.

SUBMITTED BY: Travis Baird-Real Estate Services Manager

ATTACHMENTS:

Resolution Package Exhibit

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GEORGETOWN VACATING AND ABANDONING A PORTION OF A PUBLIC UTILITY EASEMENT ACROSS LOT 2, BONNET SUBDIVISION, AS RECORDED IN THAT CERTAIN MAP OR PLAT IN CABINET Q, PAGE 119 OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS (THE "PUE"), AND BEING LOCATED ON SH-29 IN GEORGETOWN, TEXAS.

WHEREAS, the City of Georgetown has received a request for the vacation and abandonment of the above described PUE, as the owners of Lots 1 & 2 are seeking to vacate the Bonnet Subdivision and the lots will be combined and the future lot(s) will be bisected by this easement; and

WHEREAS, the City of Georgetown ("City") has received a request from Lloyd D. Trainer, the current owner of property encumbered by the above described easement. The bisection of the newly created lot(s) by this easement will hinder development of the lot. The easement requested to be abandoned and vacated is described by the metes and bounds with sketch on **Exhibit "A"** attached hereto (the "Property"); and

WHEREAS, upon considering the request for vacation and abandonment of the subject PUE and additional information pertaining to the request, the City Council finds that a public need for the areas sought to be vacated and abandoned no longer exists and that said PUE may be vacated and abandoned pursuant to City Ordinance No. 2009-47 relating to disposition of City property; and

WHEREAS, nothing herein shall operate to vacate or abandon any other PUE or easement.

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

SECTION 1. The facts and recitations contained in the preamble of this resolution are hereby found and declared to be true and correct, and are incorporated by reference herein and expressly made a part hereof, as if copied verbatim. The City Council hereby finds that the adoption of this resolution is not inconsistent or in conflict with any of the City's 2030 Comprehensive Plan policies.

<u>SECTION 2</u>. The Mayor is hereby authorized to execute a Quitclaim Deed in substantially the same form attached hereto as <u>Exhibit "B"</u> and any other conveyance document(s) necessary to complete the vacation and abandonment of the PUE described herein and the City Secretary is authorized to attest thereto on behalf of the City of Georgetown.

Resolution No
Description: Vacation and abandonment of PUE
Lot 2, Bonnet Subdivision
Date Approved:
$\frac{11}{Page 28}$

<u>SECTION 3</u>. This resolution shall be effective immediately upon adoption.

RESOLVED this _____ day of _____, 2019.

CITY OF GEORGETOWN

ATTEST:

BY:

Dale Ross, Mayor

Robyn Densmore, City Secretary

APPROVED AS TO FORM:

Charlie McNabb, City Attorney

STATE OF TEXAS)) COUNTY OF WILLIAMSON)

ACKNOWLEDGMENT

BEFORE ME, the undersigned authority, on this date personally Dale Ross, Mayor of the City of Georgetown, a Texas home-rule municipal corporation, 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, as the act and deed of said municipality, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____day of ______, 2019.

Notary Public, State of Texas

Exhibit "A"



FIELD NOTES

FOR

A 0.115 ACRE, OR 4,998 SQUARE FOOT, TRACT OF LAND BEING OUT OF LOT 2 OF THE BONNETT SUBDIVISION RECORDED IN CABINET Q, SLIDES 119-120 OF THE PLAT RECORDS OF WILLIAMSON COUNTY, TEXAS, CONVEYED TO LLOYD D. TRAINER IN DOCUMENT NO. 1998060798 OF THE OFFICIAL RECORDS OF WILLIAMSON COUNTY, TEXAS, BEING SITUATED IN THE JOSEPH B. PULSIFER SURVEY, ABSTRACT NO. 498, IN WILLIAMSON COUNTY, TEXAS. SAID 0.115 ACRE TRACT BEING MORE FULLY DESCRIBED AS FOLLOWS, WITH BEARINGS BASED ON THE NORTH AMERICAN DATUM OF 1983 (NA 2011) EPOCH 2010.00, FROM THE TEXAS COORDINATE SYSTEM ESTABLISHED FOR THE CENTRAL ZONE;

COMMENCING at a 1/2" iron rod found in the south right-of-way line of County Road 265, a variable width right-of-way, and a point in the west right-of-way line of Wolf Ranch Parkway, a variable width right-of-way, at the northeast corner of Lot 1 of the Bonnett Subdivision;

THENCE S 11°25'09" E, departing the south right-of-way line of said County Road 265 and the west right-of-way line of said Wolf Ranch Parkway, through the interior of said lot 1, a distance of 215.28 feet to a calculated point in a south boundary line of said Lot 1, said point being in the north boundary line of said Lot 2 for the northeast corner and POINT OF BEGINNING hereof;

THENCE, departing a south boundary line of said Lot 1, through the interior of said Lot 2 the following six (6) courses and distances:

- 1. S 20°46'32" E, a distance of 10.00 feet to a calculated point for the easternmost corner hereof.
- 2. S 69°13'28" W, a distance of 144.71 feet to a calculated angle point hereof,
- 3. S 20°46'27" E, a distance of 346.71 feet to a calculated point for the southeast corner hereof, from which a 1/2" iron rod with yellow cap marked "Pape-Dawson" found in the north boundary line of a called 0.199 acre tract recorded in Document No. 2005002363, same being the southernmost southeast corner of said Lot 2, bears S 77°02'14" E, 93.27 feet,
- 4. S 87°39'29" W, a distance of 10.54 feet to a calculated point in the west boundary line of said Lot 2, same being an east boundary line of said Lot 1 for the southwest corner hereof,

TBPE Firm Registration #470 | TBPLS Firm Registration #10028801

Austin | San Antonio | Houston | Fort Worth | Dallas Transportation | Water Resources | Land Development | Surveying | Environmental

10801 N MoPac Expy., Bldg. 3, Suite 200, Austin, TX 78759 512.454.8711 www.Pape-Dawson.com Page 288 of 736

- 5. N 20°46'27'' W, a distance of 353.38 feet to a calculated point for the northwest corner hereof, and
- 6. **N 69°13'28''** E, a distance of **154.71 feet** to the **POINT OF BEGINNING** and containing 0.115 acres in Williamson County, Texas. Said tract being described in accordance with an exhibit prepared by Pape Dawson Engineers, Inc. under Job No. 51002-00.

PREPARED BY: Pape-Dawson Engineers, Inc.

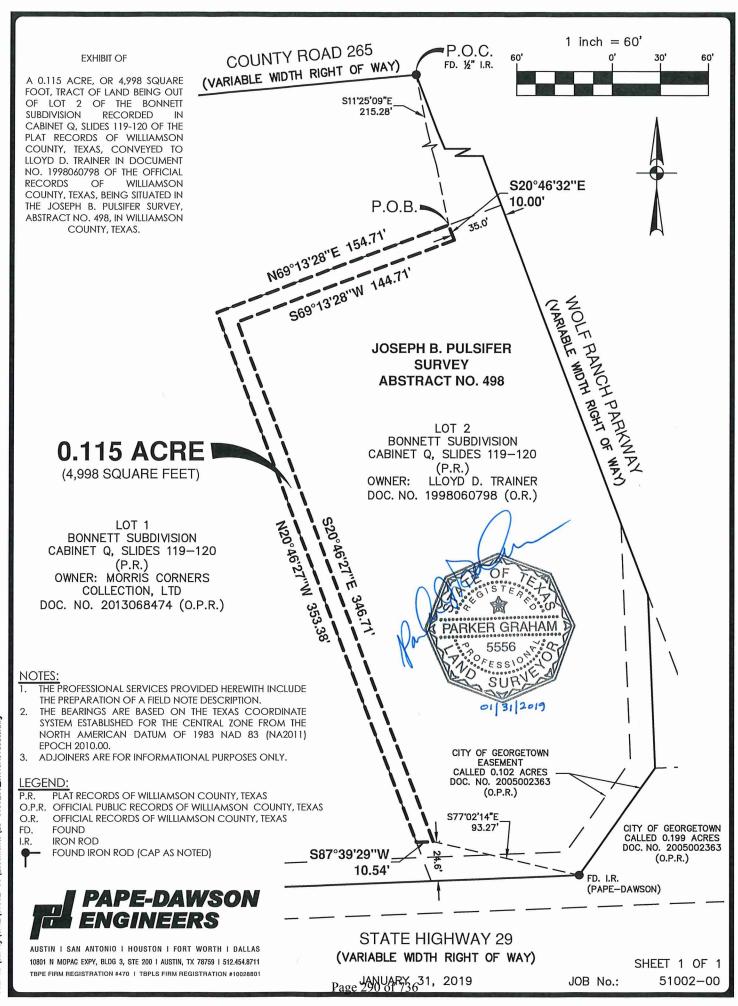
DATE: January 31, 2019

JOB No.: 51002-00

DOC.ID.: H:\survey\CIVIL\51002-00\Easements\Word\FN51002-00_0.115Ac_Vacate.docx TBPE Firm Registration #470 TBPLS Firm Registration #100288-01

Park J. 1





Date: Jan 31, 2019, 11:29am User ID: Jiniranda File: H: \survey\CML\51002-00\Easements\ES-5100200_0.115AcVacate.dwg

Exhibit: "B"

QUITCLAIM DEED

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.

DATE: _____, 2019

GRANTOR: City of Georgetown, a Texas home-rule municipal corporation

GRANTOR'S Mailing Address (including County): P.O. Box 409, Georgetown, Williamson County, Texas 78627

GRANTEE: Lloyd D. Trainer

GRANTEE'S Mailing Address (including County): 2200 Willowick, 1B, Houston, Harris County, Texas, 77027

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

PROPERTY:

BEING portions of a Public Utility Easement (PUE), said PUE being described by metes and bounds with the sketches on **Exhibit "A"** attached hereto and incorporated herein by reference.

For the consideration, GRANTOR quitclaims to GRANTEE all of GRANTOR'S right, title, and interest in and to the above described property, to have and to hold it to GRANTEE, GRANTEE'S successors and assigns, forever. Neither GRANTOR, nor GRANTOR'S successors and assigns, shall have, claim or demand any right or title to the property or any part of it.

Exhibit: "B"

EXECUTED this the	_day of	, 2019.
GRANTOR CITY OF GEORGETOWN		ATTEST:
BY: Dale Ross, Mayor	-	Robyn Densmore, City Secretary
STATE OF TEXAS COUNTY OF WILLIAMSON))	ACKNOWLEDGMENT

BEFORE ME, the undersigned authority, on this date personally Dale Ross, Mayor of the City of Georgetown, a Texas home-rule municipal corporation, 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, as the act and deed of said municipality, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____day of _____, 2019.

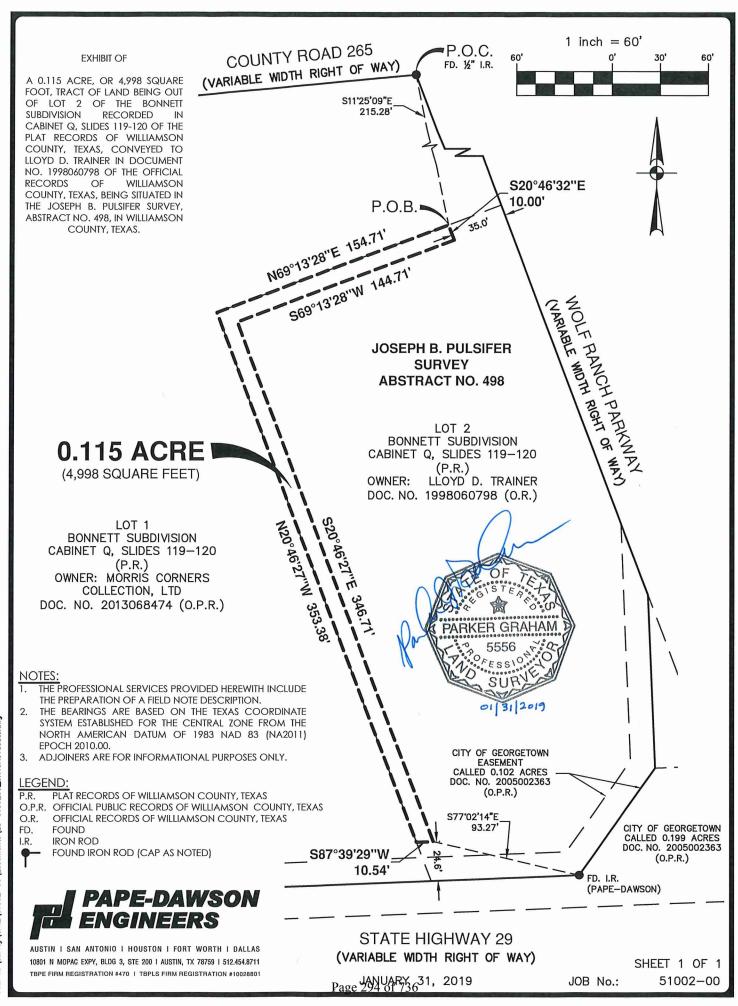
Notary Public, State of Texas

APPROVED AS TO FORM:

Charlie McNabb, City Attorney

[Exhibit "A" to Quitclaim Deed]

Exhibit "A" to the Quitclaim Deed are heretofore attached as Exhibit "A" to the foregoing Resolution and will be attached accordingly to the original Quitclaim Deed prior to execution and recording.



Date: Jan 31, 2019, 11:29am User ID: Jiniranda File: H: \survey\CML\51002-00\Easements\ES-5100200_0.115AcVacate.dwg

City of Georgetown, Texas City Council Regular Meeting February 12, 2019

SUBJECT:

Consideration and possible action to **release** and **abandon** a **utility easement** situated in the Antonio Flores Survey, Abstract No. 235, and recorded as Document No. 2011015855 in the Official Public Records of Williamson County, to **Lennar Homes of Texas Land and Construction, Ltd.**, and to authorize the Mayor to execute all documents necessary to complete the abandonment -- Jim Kachelmeyer, Real Estate Services Coordinator

ITEM SUMMARY:

Lennar Homes of Texas Land and Construction, Ltd. has requested the vacation and abandonment of one easement granted to the City of Georgetown across property that it owns near along Northeast Inner Loop just south of the Georgetown Railroad line. The property is immediately south of the Katy Crossing neighborhood.

The easement was granted in 2011 for the installation of a rural waterline to serve several properties now owned by, or adjacent to, Lennar. Lennar is now developing the area as part of the Stillwater neighborhood, and new water infrastructure is being installed by the developer. The older infrastructure is being retired and replaced by Lennar, which is granting additional easements to the City in return for the abandonment.

Staff recommends approval of this item.

FINANCIAL IMPACT: N/A. Lennar will be granting replacement easements for infrastructure.

SUBMITTED BY: Jim Kachelmeyer, Real Estate Services Coordinator

ATTACHMENTS:

Proposed Resolution Map of Water Line to be Abandoned Easement to be Abandoned

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GEORGETOWN RELEASING AND ABANDONING A UTILITY EASEMENT SITUATED IN THE ANTONIO FLORES SURVEY, ABSTRACT NO. 235, GRANTED TO THE CITY OF GEORGETOWN AND RECORDED AS DOCUMENT NO. 2011015855 IN THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TO LENNAR HOMES OF TEXAS LAND AND CONSTRUCTION, LTD.

WHEREAS, the City of Georgetown (the "City") has received an application from Lennar Homes of Texas Land and Construction, Ltd., for the release and abandonment of the utility easement granted to the City in Document No. 2011015855 in the Official Public Records of Williamson County, Texas (the "Easement"); and

WHEREAS, said Easement was acquired for the purpose of constructing and maintaining a potable water line across property of which the easement tract was a part; and,

WHEREAS, the current owner of the property encumbered by the above-described easement, Lennar Homes of Texas Land and Construction, Ltd. (the "Owner"), has requested the abandonment of the Easement as the Easement hinders use or conveyance of the property. The Easement requested to be abandoned and released is described in the utility easement granted to the City in Document No. 2011015855 in the Official Public Records of Williamson County, Texas (the "Property"); and

WHEREAS, the Owner is providing replacement easements to the City and will construct new waterline infrastructure as part of its development; and,

WHEREAS, upon considering the request for release and abandonment of the Property, and additional information pertaining to the request, the City Council now finds that a public need for the Property no longer exists and it may, therefore, be abandoned and released.

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

<u>SECTION 1</u>. The facts and recitations contained in the preamble of this resolution are hereby found and declared to be true and correct and are incorporated by reference herein and expressly made a part hereof, as if copied verbatim. The City Council hereby finds that the adoption of this resolution is not inconsistent or in conflict with any of the City's 2030 Comprehensive Plan policies.

<u>SECTION 2</u>. The Mayor is hereby authorized to execute a Quitclaim Deed in substantially the same form attached hereto as <u>Exhibit "A"</u> and any other conveyance document(s) necessary to complete the release and abandonment of the utility easement described herein, and the City Secretary is hereby authorized to attest thereto on behalf of the City of Georgetown.

<u>SECTION 3</u>. This resolution shall be effective immediately upon adoption.

RESOLVED this _____ day of _____, 2019.

CITY OF GEORGETOWN

ATTEST:

By:

Dale Ross, Mayor

Robyn Densmore, City Secretary

APPROVED AS TO FORM:

Charlie McNabb, City Attorney

Exhibit "A"

QUITCLAIM DEED

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.

DATE: , 2019

GRANTOR: City of Georgetown, a Texas home-rule municipal corporation

GRANTOR'S Mailing Address (including County): P.O. Box 409, Georgetown, Williamson County, Texas 78627

GRANTEE: Lennar Homes of Texas Land and Construction, Ltd., a Texas limited partnership

GRANTEE'S Mailing Address (including County): c/o Kevin Pape, 13620 N. FM 620, Bldg. B, Ste. 150, Austin, Travis County, Texas 78717

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

PROPERTY:

BEING all of those easement rights as described in Document No. 2011015855 in the Official Public Records of Williamson County, Texas.

For the consideration, GRANTOR quitclaims to GRANTEE all of GRANTOR'S right, title, and interest in and to the above described property, to have and to hold it to GRANTEE, GRANTEE'S successors and assigns, forever. Neither GRANTOR, nor GRANTOR'S successors and assigns, shall have, claim or demand any right or title to the Property or any part of it.

Quitclaim Deed abandoning Utility Easement Lennar Stillwater Site CoG Map Quad E-54 Page 1 of 2

EXECUTED this the	_day of		_, 2019.
GRANTOR: CITY OF GEORGETOWN		ATTEST:	
BY: Dale Ross, Mayor		Shelley Nowling, Cit	y Secretary
STATE OF TEXAS COUNTY OF WILLIAMSON)))	ACKNOWLEDGM	ENT

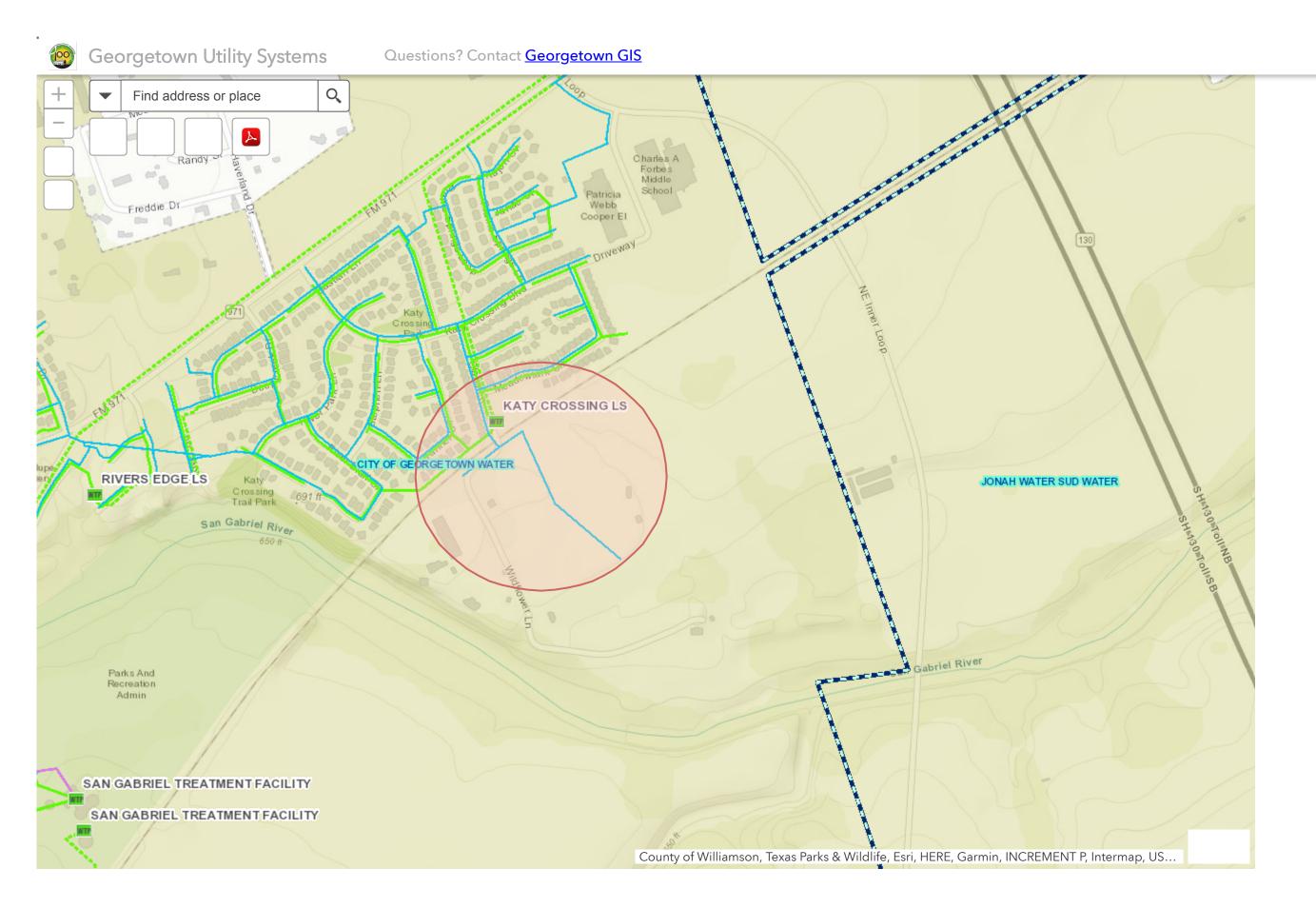
BEFORE ME, the undersigned authority, on this date personally Dale Ross, Mayor of the City of Georgetown, a Texas home-rule municipal corporation, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, as the act and deed of said municipality, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2019.

Notary Public, State of Texas

APPROVED AS TO FORM:

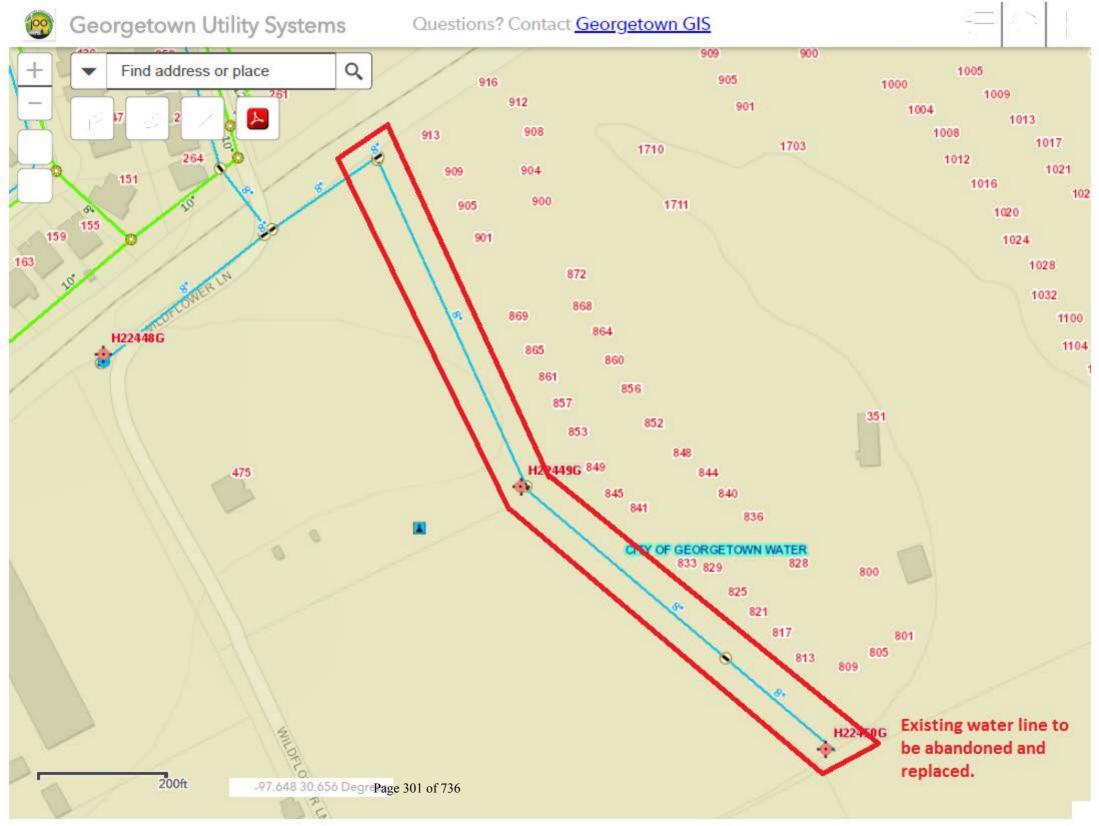
Charlie McNabb, City Attorney



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Page 300 of 736



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6 PGS

GEORGETOWN UTILITY EASEMENT

§ § §

STATE OF TEXAS

COUNTY OF WILLIAMSON

KNOW ALL MEN BY THESE PRESENTS:

This Agreement (this "Agreement") is made on the <u>Mark</u> day of February, 2011, at Georgetown, Texas, between Milton D. Carlson and wife, Nancy Davis Carlson, whose address is 351 Wildflower Lane, Georgetown, Texas 78626 (hereinafter referred to as "Grantor"), and the City of Georgetown, a Texas home-rule municipal corporation, whose address is P.O. Box 409 Georgetown, Texas 78627, <u>ATTN</u>: Georgetown City Secretary (herein referred to as "Grantee").

1. For the good and valuable consideration described in Paragraph 2 below, Grantor hereby GRANTS, SELLS and CONVEYS to Grantee, its successors and assigns, an exclusive easement and right-of-way (the "Easement") for the placement, construction, operation, repair, maintenance, replacement, upgrade, rebuilding, relocation and/or removal of water lines and related facilities (collectively, the "Facilities") on, over, under, and across the following described property of the Grantor, to wit:

Being all that certain tract, piece or parcel of land lying and being situated in the County of Williamson, State of Texas, being more particularly described by metes and bounds in **Exhibit A** and by diagram in **Exhibit B** attached hereto and made a part hereof for all purposes (herein sometimes referred to as the "Easement Area" or the "Property").

- 2. The Easement and the rights and privileges herein conveyed, are granted for and in consideration of the sum of Six Thousand Six Hundred Nineteen and No/100 Dollars (\$6,619.00) and other good and valuable consideration to Grantor in hand paid by Grantee, the receipt and sufficiency of which is hereby acknowledged and confessed.
- 3. The Easement, with its rights and privileges, shall be used only for the purpose of placing, constructing, operating, repairing, maintaining, rebuilding, replacing, upgrading, relocating, and/or removing the Facilities.
- 4. The duration of the Easement is perpetual.
- 5. Grantor and Grantor's heirs, personal representatives, successors, and assigns are and shall be bound to WARRANT and FOREVER DEFEND the Easement and the rights conveyed in this Agreement to Grantee and Grantee's successors and assigns, against every person lawfully claiming or to claim all or any part thereof.
- 6. The Easement, and the rights and privileges granted by this Agreement, are EXCLUSIVE to Grantee, and Grantee's successors and assigns, and Grantor covenants that Grantor shall not convey any other easement, license, or conflicting right to use in any manner, the area (or any portion thereof) covered by this grant without the prior written consent of Grantee, which consent shall not be unreasonably withheld or delayed. Notwithstanding anything herein to the contrary, Grantor retains, reserves, and shall continue to enjoy the use of the surface of the Easement Area and the air space above the Easement Area for any and all purposes that do not interfere with and prevent Grantee's use of the easement. This includes without limitation, the right to plant agricultural crops, graze livestock, and to build and use the surface of the easement for drainage ditches, overhead utilities, and private streets, roads, driveways, alleys, walks, gardens, lawns, planting or parking areas and signage.

- 7. In addition to the Easement, rights, and privileges herein granted, Grantee shall have the temporary right to use the surface of Grantor's adjacent property depicted by diagram on Exhibit B attached hereto and made a part hereof for all purposes (the "Temporary Construction Easement") to the extent necessary to construct and install the Facilities within the Easement Area. The duration of the Temporary Construction Easement shall be for a period of six (6) months from the date work begins on the Property. Upon the completion of such construction and installation, Grantee shall, as reasonably possible, restore the surface of the Temporary Construction Easement to the condition in which it was found before any such work was undertaken, and Grantee's right to use the Temporary Construction Easement shall thereupon terminate for all purposes.
- 8. This Agreement contains the entire agreement between the parties relating to its subject matter. Any oral representations or modifications concerning this Agreement shall be of no force and effect. Any subsequent amendment or modification must be in writing and agreed to by all parties.
- 9. The terms of this Agreement shall be binding upon Grantor, and Grantor's heirs, personal representatives, successors, and assigns; shall bind and inure to the benefit of the Grantee and any successors or assigns of Grantee; and shall be deemed to be a covenant running with the land.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed on this 17 the day of February, 2011.

GRANTOR: Milton D. Carlson

is Carls

ancv Davis Carlson

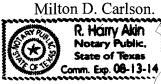
STATE OF TEXAS

COUNTY OF WILLIAMSON

This instrument was acknowledged before me on this the *M* day of February, 2011, by

§

§ § §



RHauy Ch. Notary Public, State of Zexas

STATE OF TEXAS

COUNTY OF WILLIAMSON

This instrument was acknowledged before me on this the *t* day of February, 2011, by Nancy Davis Carlson.

RYPUS	R, Harry Akin
R(A)	Notary Public, State of Texas
Pro-	Comm. Exp. 08-13-14

R Harry Alice Notary Public, State of Texas

APPROVED AS TO FORM:

Ton Soluco

Mark T. Sokolow, City Attorney

AFTER RECORDING, RETURN TO GRANTEE: Georgetown City Secretary P.O. Box 409 Georgetown, Texas 78627

RETURNTO Longkorn Tille Co., Inc.

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EXHIBIT "A"

PROPERTY DESCRIPTION

DESCRIPTION OF A 0.547 ACRE (23,826 SQUARE FOOT), TRACT OF LAND SITUATED IN THE ANTONIO FLORES SURVEY, ABSTRACT NO. 235, WILLIAMSON COUNTY, TEXAS, BEING A PORTION OF THAT 24.230 ACRE TRACT OF LAND CONVEYED TO MILTON D. CARLSON, BY INSTRUMENT RECORDED IN VOLUME 725, PAGE 655 OF THE DEED RECORDS OF WILLIAMSON COUNTY, TEXAS, SAID 0.547 ACRE (23,826 SQUARE FOOT) TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2" iron rod found, being the northwest corner of said 24.230 acre tract, same being the northeast corner of that 6.061 acre tract of land, conveyed to Ed R. Wallace and wife Cathie Wallace, by instrument recorded in Volume 795 Page 384 of the Deed Records of Williamson County, Texas, also being the southerly right-of-way line of the Georgetown Railroad (right-of-way width 100') for the northwest corner of the herein described tract;

 THENCE, with the southerly right-of-way line of said Georgetown Railroad, same being the northerly boundary line of said 24.230 acre tract, along a curve to the right, having a radius of 5,634.03 feet, a central angle of 00°12'22", a chord which bears N 54°38'49" E, a distance of 20.26 feet, with an arc length of 20.26 feet, to a calculated point for the northeast corner of the herein described tract;

THENCE, departing the southerly right-of-way line of said Georgetown Railroad, through the interior of said 24.230 acre tract, the following two (2) courses:

- 2) S 26°10'55" E for a distance of 565.22 feet to a calculated point for an angle point of the herein described tract;
- 3) S 51°08'03" E for a distance of 627.39 feet to a calculated point, being the southerly boundary line of said 24.230 acre tract, same being the northerly boundary line of that 10.00 acre tract of land conveyed to Nathan Scott Robins et ux, by instrument recorded in Document No. 2004044048 of the Official Public Records of Williamson County, Texas, for the southeast corner of the herein described tract;
- 4) THENCE, with the southerly boundary line of said 24.230 acre tract, same being the northerly boundary line of said 10.00 acre tract, S 62°04'45" W, a distance of 21.76 feet, to a 1/2" iron rod found, being the southwest corner of said 24.230 acre tract, same being the southeast corner of that 15.057 acre tract of land conveyed to Mark Shepherd and Jane Shepherd, by instrument recorded in Document No. 2007043619 of the Official Public Records of Williamson County, Texas, same being an angle point in the northerly boundary line of said 77.29 acre tract, for the southwest corner of the herein described tract;

- 5) THENCE, departing the northerly boundary line of said 77.29 acre tract, with the westerly boundary line of said 24.230 acre tract, same being the easterly boundary line of said 15.057 acre tract, N 51°08'03" W for a distance of 623.23 feet to an iron rod found, being the southeast corner of said 6.061 acre tract, same being the northeast corner of said 15.057 acre tract, for an angle point of the herein described tract;
- 6) THENCE, continuing with the westerly boundary line of said 24.230 acre tract, same being the easterly boundary line of said 6.061 acre tract, N 26°10'55" W for a distance of 566.42 feet to the POINT OF BEGINNING, containing 0.547 acres (23,826 square feet) of land, more or less.

NOTE: This parcel is accompanied by a Temporary Construction (Easement (TCE) being generally easterly of courses two (2) and three (3) from the metes and bounds description there of and depicted in the parcel plat. The TCE emanates from a point in the southerly right-of-way line of said Georgetown Railroad, being N 55°33'13" E for a distance of 158.06 feet, from the northeast corner of herein described parcel. The TCE departs said southerly right-of-way line and through said 24.230 acre tract the following courses:

S 26°10'55" E for a distance of 163.88 feet to a point for angle; S 63°49'05" W for a distance of 141.42 feet to a point for angle;

Thence, 15 feet in width, easterly of, adjacent to, and parallel with the southerly remainder of course two (2) and all of course three (3) terminating in the northerly boundary line of said 10.00 acre tract described herein. The TCE will encompass an area of 39,685 square feet.

All bearings recited herein are based on the Texas State Plane Coordinate System, Central Zone No. 4203, NAD 83.

This property description is accompanied by a separate plat.

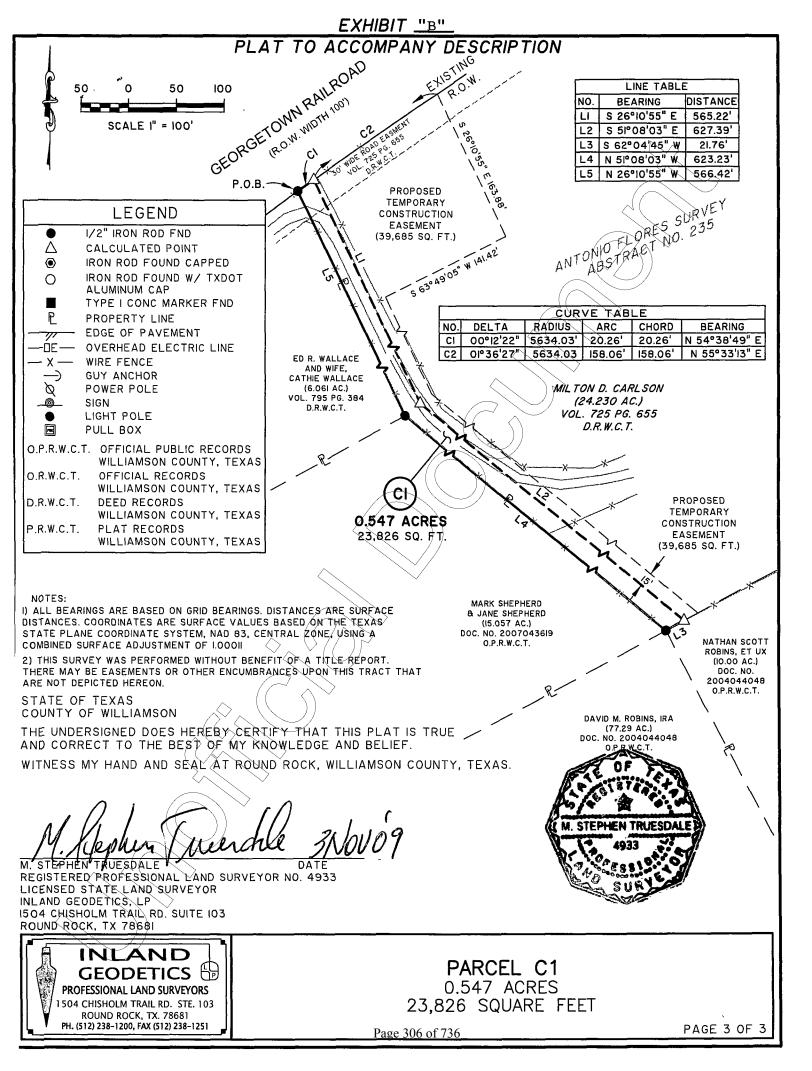
That I, M. Stephen Truesdale, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground under my direction and supervision.

WITNESS MY HAND AND SEAL at Round Rock, Williamson County, Texas.

M. Stephen Truesdale Registered Professional Land Surveyor No. 4933 Licensed State Land Surveyor Inland Geodetics, L.P. 1504 Chisholm Trail Road Suite 103 Round Rock, TX 78681 512-238-1200

Date





FILED AND RECORDED

OFFICIAL PUBLIC RECORDS 2011015855

Nancy E. Rister

03/09/2011 03:44 PM CPHELPS \$36.00 NANCY E. RISTER, COUNTY CLERK WILLIAMSON COUNTY, TEXAS

RETURN TO Longkorn Fille Co., Inc.

Page 307 of 736

City of Georgetown, Texas City Council Regular Meeting February 12, 2019

SUBJECT:

Consideration and possible action to accept the **2018 Racial Profiling Report** as mandated by the State Legislature --Cory J. Tchida, Assistant Chief of Police

ITEM SUMMARY:

This report is required by Texas law (Texas Code of Criminal Procedure 2.131-2.138) and chief administrators are required to submit this report to their governing bodies. No action is required on the part of council. This report and analysis is transparent and readily available on-line to the public via the TCOLE website in accordance with law

FINANCIAL IMPACT: N/A

SUBMITTED BY: Cory J. Tchida

ATTACHMENTS:

2018 Racial Profiling Report

GEORGETOWN POLICE DEPARTMENT

2018

RACIAL PROFILING ANALYSIS



PREPARED BY:

Assistant Chief of Police Cory J. Tchida

Introduction

Since the year 2001, the Georgetown Police Department, along with all other Texas law enforcement agencies, has collected data regarding stops of motor vehicles in order to analyze whether or not the agency has engaged in racial profiling contrary to Texas law. That data and analysis has been codified into a written report which is presented annually to the Georgetown City Council for review and possible discussion.

Recent legislative changes to the laws governing the collection and reporting of racial profiling data are worthy of note. Effective in 2018, agencies are now required to collect data regarding stops that result in a warning as well as citation and/or arrest, the location of the stop, the reason for the stop, and whether or not force resulting in bodily injury was used during the stop. With the exception of the force question, the Georgetown Police Department has historically collected and reported this data already. In regard to the force question, no stops in 2018 used force that resulted in bodily injury.

This particular report is an analysis of the Georgetown Police Department's policies, training, and statistical information on racial profiling for the year 2018. This report complies with Article 2.132 of the Texas Code of Criminal Procedure.

The report is divided into relevant sections. The first section covers the applicable statutes and laws governing racial profiling to set forth the framework in which data is collected, analyzed, and reported. The second section covers the Georgetown Police Department's policy as it relates to racial profiling. The third section addresses the training of Georgetown Police Department officers on topics relating to racial profiling and cultural diversity. The fourth section concerns itself with the Georgetown Police Department's public education measures to ensure that the public is aware of our commitment to not engage in racial profiling and what to do if they feel that they have been a victim of racial profiling. The final section of the report contains the data collected for year 2018 and an analysis of that data.

Racial Profiling Statutes and Laws

The applicable laws regarding the prohibition of racial profiling, collection of data, reporting, and training for peace officers is contained in the Texas Code of Criminal Procedure and the Texas Occupations Code. Those laws, with their most recent amendments, have been set forth below in their entirety.

Code of Criminal Procedure

Art. 3.05. RACIAL PROFILING.

In this code, "racial profiling" means a law enforcement-initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 2, eff. Sept. 1, 2001.

Art. 2.131. RACIAL PROFILING PROHIBITED.

A peace officer may not engage in racial profiling.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Art. 2.132. LAW ENFORCEMENT POLICY ON RACIAL PROFILING.

(a) In this article:

(1) "Law enforcement agency" means an agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make motor vehicle stops in the routine performance of the officers' official duties.

(2) "Motor vehicle stop" means an occasion in which a peace officer stops a motor vehicle for an alleged violation of a law or ordinance.

- (3) "Race or ethnicity" means the following categories:
 - (A) Alaska native or American Indian;
 - (B) Asian or Pacific Islander;
 - (C) black;
 - (D) white; and
 - (E) Hispanic or Latino.

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

(1) clearly define acts constituting racial profiling;

(2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;

(3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;

(4) provide public education relating to the agency's compliment and complaint process, including providing the telephone number, mailing address, and email address to make a compliment or complaint with respect to each ticket, citation, or warning issued by a peace officer;

(5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;

(6) require collection of information relating to motor vehicle stops in which a ticket, citation, or warning is issued and to arrests made as a result of those stops, including information relating to:

(A) the race or ethnicity of the individual detained;

(B) whether a search was conducted and, if so, whether the individual detained consented to the search;

(C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual;

(D) whether the peace officer used physical force that resulted in bodily injury, as that term is defined by Section 1.07, Penal Code, during the stop;

(E) the location of the stop; and

(F) the reason for the stop; and

(7) require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit an annual report of the information collected under Subdivision (6) to:

(A) the Texas Commission on Law Enforcement; and

(B) the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.

(c) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make motor vehicle stops and transmitter-activated equipment in each agency law enforcement motorcycle regularly used to make motor vehicle stops. The agency also shall examine the feasibility of equipping each peace officer who regularly detains or stops motor vehicles with a body worn camera, as that term is defined by Section <u>1701.651</u>, Occupations Code. If a law enforcement agency installs video or audio equipment or equips peace officers with body worn cameras as provided by this subsection, the policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(e) A report required under Subsection (b)(7) may not include identifying information about a peace officer who makes a motor vehicle stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the collection of information as required by a policy under Subsection (b)(6).

(f) On the commencement of an investigation by a law enforcement agency of a complaint described by Subsection (b)(3) in which a video or audio recording of the occurrence on which the complaint is based was made, the agency shall promptly provide a copy of the recording to the peace officer who is the subject of the complaint on written request by the officer.

(g) On a finding by the Texas Commission on Law Enforcement that the chief administrator of a law enforcement agency intentionally failed to submit a report required under Subsection (b)(7), the commission shall begin disciplinary procedures against the chief administrator.

(h) A law enforcement agency shall review the data collected under Subsection(b)(6) to identify any improvements the agency could make in its practices and policies regarding motor vehicle stops.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. <u>3389</u>), Sec. 25, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. <u>686</u>), Sec. 2.05, eff. May 18, 2013.
Acts 2017, 85th Leg., R.S., Ch. 173 (H.B. <u>3051</u>), Sec. 1, eff. September 1, 2017.
Acts 2017, 85th Leg., R.S., Ch. 950 (S.B. <u>1849</u>), Sec. 5.01, eff. September 1, 2017.

Art. 2.133. REPORTS REQUIRED FOR MOTOR VEHICLE STOPS.

(a) In this article, "race or ethnicity" has the meaning assigned by Article 2.132(a).

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of any person operating the motor vehicle who is detained as a result of the stop, including:

(A) the person's gender; and

(B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;

(2) the initial reason for the stop;

(3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;

(4) whether any contraband or other evidence was discovered in the course of the search and a description of the contraband or evidence;

(5) the reason for the search, including whether:

- (A) any contraband or other evidence was in plain view;
- (B) any probable cause or reasonable suspicion existed to

perform the search; or

(C) the search was performed as a result of the towing of the motor vehicle or the arrest of any person in the motor vehicle;

(6) whether the officer made an arrest as a result of the stop or the search, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of a traffic law or ordinance, or an outstanding warrant and a statement of the offense charged;

(7) the street address or approximate location of the stop;

(8) whether the officer issued a verbal or written warning or a ticket or citation as a result of the stop; and

(9) whether the officer used physical force that resulted in bodily injury, as that term is defined by Section 1.07, Penal Code, during the stop.

(c) The chief administrator of a law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, is responsible for auditing reports under Subsection (b) to ensure that the race or ethnicity of the person operating the motor vehicle is being reported.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 26, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 950 (S.B. 1849), Sec. 5.02, eff. September 1, 2017.

Art. 2.134. COMPILATION AND ANALYSIS OF INFORMATION COLLECTED.

(a) In this article:

- (1) "Motor vehicle stop" has the meaning assigned by Article 2.132(a).
- (2) "Race or ethnicity" has the meaning assigned by Article 2.132(a).

(b) A law enforcement agency shall compile and analyze the information contained in each report received by the agency under Article 2.133. Not later than March 1 of each year, each law enforcement agency shall submit a report containing the incident-based data compiled during the previous calendar year to the Texas Commission on Law Enforcement and, if the law enforcement agency is a local law enforcement agency, to the governing body of each county or municipality served by the agency.

(c) A report required under Subsection (b) must be submitted by the chief administrator of the law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, and must include:

(1) a comparative analysis of the information compiled under Article2.133 to:

(A) evaluate and compare the number of motor vehicle stops, within the applicable jurisdiction, of persons who are recognized as racial or ethnic minorities and persons who are not recognized as racial or ethnic minorities;

(B) examine the disposition of motor vehicle stops made by officers employed by the agency, categorized according to the race or ethnicity of the affected persons, as appropriate, including any searches resulting from stops within the applicable jurisdiction; and (C) evaluate and compare the number of searches resulting from motor vehicle stops within the applicable jurisdiction and whether contraband or other evidence was discovered in the course of those searches; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

(d) A report required under Subsection (b) may not include identifying information about a peace officer who makes a motor vehicle stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the reporting of information required under Article 2.133(b)(1).

(e) The Texas Commission on Law Enforcement, in accordance with Section 1701.162, Occupations Code, shall develop guidelines for compiling and reporting information as required by this article.

(f) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.

(g) On a finding by the Texas Commission on Law Enforcement that the chief administrator of a law enforcement agency intentionally failed to submit a report required under Subsection (b), the commission shall begin disciplinary procedures against the chief administrator.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 27, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 2.06, eff. May 18, 2013. Acts 2017, 85th Leg., R.S., Ch. 950 (S.B. 1849), Sec. 5.03, eff. September 1, 2017.

Art. 2.136. LIABILITY.

A peace officer is not liable for damages arising from an act relating to the collection or reporting of information as required by Article 2.133 or under a policy adopted under

Article 2.132.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Art. 2.137. PROVISION OF FUNDING OR EQUIPMENT.

(a) The Department of Public Safety shall adopt rules for providing funds or video and audio equipment to law enforcement agencies for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras, including specifying criteria to prioritize funding or equipment provided to law enforcement agencies. The criteria may include consideration of tax effort, financial hardship, available revenue, and budget surpluses. The criteria must give priority to:

(1) law enforcement agencies that employ peace officers whose primary duty is traffic enforcement;

- (2) smaller jurisdictions; and
- (3) municipal and county law enforcement agencies.

(b) The Department of Public Safety shall collaborate with an institution of higher education to identify law enforcement agencies that need funds or video and audio equipment for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras. The collaboration may include the use of a survey to assist in developing criteria to prioritize funding or equipment provided to law enforcement agencies.

(c) To receive funds or video and audio equipment from the state for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras, the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency needs funds or video and audio equipment for that purpose.

(d) On receipt of funds or video and audio equipment from the state for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras, the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency has taken the necessary actions to use and is using video and audio equipment and body worn cameras for those purposes.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001. Amended by: Acts 2017, 85th Leg., R.S., Ch. 950 (S.B. <u>1849</u>), Sec. 5.04, eff. September 1, 2017.

Art. 2.138. RULES.

The Department of Public Safety may adopt rules to implement Articles 2.131-2.137. Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Art. 2.1385. CIVIL PENALTY.

(a) If the chief administrator of a local law enforcement agency intentionally fails to submit the incident-based data as required by Article 2.134, the agency is liable to the state for a civil penalty in an amount not to exceed \$5,000 for each violation. The attorney general may sue to collect a civil penalty under this subsection.

(b) From money appropriated to the agency for the administration of the agency, the executive director of a state law enforcement agency that intentionally fails to submit the incident-based data as required by Article 2.134 shall remit to the comptroller the amount of \$1,000 for each violation.

(c) Money collected under this article shall be deposited in the state treasury to the credit of the general revenue fund.

Added by Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 29, eff. September 1, 2009.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 950 (S.B. 1849), Sec. 5.05, eff. September 1, 2017.

Occupations Code

Sec. 1701.253. SCHOOL CURRICULUM.

(a) The commission shall establish minimum curriculum requirements for preparatory and advanced courses and programs for schools subject to approval under Section 1701.251(c)(1).

(b) In establishing requirements under this section, the commission shall require courses and programs to provide training in:

(1) the investigation and documentation of cases that involve:

(A) child abuse or neglect;

- (B) family violence; and
- (C) sexual assault;

(2) issues concerning sex offender characteristics; and

(3) crime victims' rights under Chapter 56, Code of Criminal Procedure, and Chapter 57, Family Code, and the duty of law enforcement agencies to ensure that a victim is afforded those rights.

(c) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on civil rights, racial sensitivity, and cultural diversity for persons licensed under this chapter.

(d) Training in documentation of cases required by Subsection (b) shall include instruction in:

(1) making a written account of the extent of injuries sustained by the victim of an alleged offense;

(2) recording by photograph or videotape the area in which an alleged offense occurred and the victim's injuries; and

(3) recognizing and recording a victim's statement that may be admissible as evidence in a proceeding concerning the matter about which the statement was made.

(e) As part of the minimum curriculum requirements relating to the vehicle and traffic laws of this state, the commission shall require an education and training program on laws relating to the operation of motorcycles and to the wearing of protective headgear by motorcycle operators and passengers. In addition, the commission shall require education and training on motorcycle operator profiling awareness and sensitivity training.

(f) Training for officers and recruits in investigation of cases required by Subsection (b)(1)(B) shall include instruction in preventing dual arrest whenever possible and conducting a thorough investigation to determine which person is the predominant aggressor when allegations of family violence from two or more opposing persons are received arising from the same incident.

(g) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on asset forfeiture under Chapter 59, Code of Criminal Procedure, for officers licensed under this chapter.

An officer shall complete a program established under this subsection not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

(h) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on racial profiling for officers licensed under this chapter. An officer shall complete a program established under this subsection not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

(i) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on identity theft under Section 32.51, Penal Code, for officers licensed under this chapter. An officer shall complete a program established under this subsection not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

(j) As part of the minimum curriculum requirements, the commission shall require an officer to complete a 40-hour statewide education and training program on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments. An officer shall complete the program not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier. An officer may not satisfy the requirements of this subsection or Section 1701.402(g) by taking an online course on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments.

(k) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program for officers licensed under this chapter that covers the laws of this state and of the United States pertaining to peace officers.

(1) As part of the minimum curriculum requirements, the commission shall require an officer licensed by the commission on or after January 1, 2016, to complete a canine encounter training program established by the commission under Section 1701.261. An officer shall complete the program not later than the second anniversary of the date the officer is licensed under this chapter unless the officer completes the program as part of the officer's basic training course.

(m) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on procedures for

interacting with drivers who are deaf or hard of hearing, as defined by Section 81.001, Human Resources Code, including identifying specialty license plates issued to individuals who are deaf or hard of hearing under Section 504.204, Transportation Code. An officer shall complete a program established under this subsection not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

Text of subsection as added by Acts 2017, 85th Leg., R.S., Ch. 513 (S.B. 30), Sec. 5

(n) As part of the minimum curriculum requirements, the commission shall require an officer to complete the civilian interaction training program developed under Section 1701.268. An officer shall complete the program not later than the second anniversary of the date the officer is licensed under this chapter unless the officer completes the program as part of the officer's basic training course.

Text of subsection as added by Acts 2017, 85th Leg., R.S., Ch. 950 (S.B. 1849), Sec. 4.02

(n) As part of the minimum curriculum requirements, the commission shall require an officer to complete a statewide education and training program on deescalation techniques to facilitate interaction with members of the public, including techniques for limiting the use of force resulting in bodily injury.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 657, Sec. 4, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 897, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 929, Sec. 5, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 947, Sec. 4, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1034, Sec. 14, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 14.007, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1326, Sec. 8, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 393 (S.B. 1473), Sec. 3, eff. September 1, 2005. Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 12, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 31 (H.B. 593), Sec. 1, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 642 (S.B. 1987), Sec. 2, eff. January 1, 2016. Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(31), eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 513 (S.B. 30), Sec. 5, eff. September 1, 2017.
Acts 2017, 85th Leg., R.S., Ch. 950 (S.B. 1849), Sec. 4.02, eff. September 1, 2017.

Sec. 1701.352. CONTINUING EDUCATION PROGRAMS.

(a) The commission shall recognize, prepare, or administer continuing education programs for officers and county jailers.

(b) The commission shall require a state, county, special district, or municipal agency that appoints or employs peace officers to provide each peace officer with a training program at least once every 48 months that is approved by the commission and consists of:

(1) topics selected by the agency; and

(2) for an officer holding only a basic proficiency certificate, not more than 20 hours of education and training that contain curricula incorporating the learning objectives developed by the commission regarding:

(A) civil rights, racial sensitivity, and cultural diversity;

(B) de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments;

(C) de-escalation techniques to facilitate interaction with members of the public, including techniques for limiting the use of force resulting in bodily injury; and

(D) unless determined by the agency head to be inconsistent with the officer's assigned duties:

(i) the recognition and documentation of cases that involve child abuse or neglect, family violence, and sexual assault; and

(ii) issues concerning sex offender characteristics.

(c) A course provided under Subsection (b) may use instructional materials developed by the agency or its trainers or by entities having training agreements with the commission in addition to materials included in curricula developed by the commission.

(d) A peace officer who is appointed or will be appointed to the officer's first supervisory position must receive in-service training on supervision as part of the course

provided for the officer under Subsection (b) not earlier than the 12th month before the date of that appointment or later than the first anniversary of the date of that appointment.

(e) The commission may require a state, county, special district, or municipal agency that appoints or employs a reserve law enforcement officer, county jailer, or public security officer to provide each of those persons with education and training in civil rights, racial sensitivity, and cultural diversity at least once every 48 months.

(f) Training in documentation of cases required by Subsection (b) shall include instruction in:

(1) making a written account of the extent of injuries sustained by the victim of an alleged offense;

(2) recording by photograph or videotape the area in which an alleged offense occurred and the victim's injuries; and

(3) recognizing and recording a victim's statement that may be admissible as evidence in a proceeding concerning the matter about which the statement was made.

(g) The training and education program on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments under Subsection (b)(2)(B) may not be provided as an online course. The commission shall:

(1) determine best practices for interacting with persons with mental impairments, in consultation with the Bill Blackwood Law Enforcement Management Institute of Texas; and

(2) review the education and training program under Subsection (b)(2)(B) at least once every 24 months.

(h) The commission shall require a state, county, special district, or municipal agency that employs telecommunicators to provide each telecommunicator with 24 hours of crisis communications instruction approved by the commission. The instruction must be provided on or before the first anniversary of the telecommunicator's first day of employment.

(i) A state agency, county, special district, or municipality that appoints or employs a telecommunicator shall provide training to the telecommunicator of not less than 20 hours during each 24-month period of employment. The training must be approved by the commission and consist of topics selected by the commission and the employing entity.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1157, Sec. 2, eff. Sept. 1, 2001.

Amended by:

2017.

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 16, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 855 (H.B. 3823), Sec. 8, eff. September 1, 2011. Acts 2013, 83rd Leg., R.S., Ch. 968 (H.B. 1951), Sec. 8, eff. January 1, 2014. Acts 2015, 84th Leg., R.S., Ch. 418 (H.B. 3211), Sec. 1, eff. September 1, 2015. Acts 2017, 85th Leg., R.S., Ch. 950 (S.B. 1849), Sec. 4.04, eff. September 1,

Sec. 1701.402. PROFICIENCY CERTIFICATES.

(a) The commission shall issue certificates that recognize proficiency based on law enforcement training, education, and experience. For this purpose the commission shall use the employment records of the employing agency.

(b) As a requirement for a basic proficiency certificate, the commission shall require completion of local courses or programs of instruction on federal and state statutes that relate to employment issues affecting peace officers, telecommunicators, and county jailers, including:

- (1) civil service;
- (2) compensation, including overtime compensation, and vacation time;
- (3) personnel files and other employee records;
- (4) management-employee relations in law enforcement organizations;
- (5) work-related injuries;
- (6) complaints and investigations of employee misconduct; and
- (7) disciplinary actions and the appeal of disciplinary actions.

(c) An employing agency is responsible for providing the training required by this section.

(d) As a requirement for an intermediate proficiency certificate, an officer must complete an education and training program on asset forfeiture established by the commission under Section 1701.253(g).

(e) As a requirement for an intermediate proficiency certificate, an officer must complete an education and training program on racial profiling established by the commission under Section 1701.253(h).

(f) As a requirement for an intermediate proficiency certificate, an officer must complete an education and training program on identity theft established by the commission under Section 1701.253(i).

(g) As a requirement for an intermediate proficiency certificate or an advanced proficiency certificate, an officer must complete the education and training program described by Section 1701.253 regarding de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments.

(h) As a requirement for an intermediate proficiency certificate, an officer must complete an education and training program on investigative topics established by the commission under Section 1701.253(b).

(i) As a requirement for an intermediate proficiency certificate, an officer must complete an education and training program on civil rights, racial sensitivity, and cultural diversity established by the commission under Section 1701.253(c).

(j) As a requirement for an intermediate or advanced proficiency certificate issued by the commission on or after January 1, 2011, an officer must complete the basic education and training program on the trafficking of persons described by Section 1701.258(a).

(k) As a requirement for an intermediate or advanced proficiency certificate issued by the commission on or after January 1, 2015, an officer must complete an education and training program on missing and exploited children. The commission by rule shall establish the program. The program must:

(1) consist of at least four hours of training;

(2) include instruction on reporting an attempted child abduction to the missing children and missing persons information clearinghouse under Chapter 63, Code of Criminal Procedure;

(3) include instruction on responding to and investigating situations in which the Internet is used to commit crimes against children; and

(4) include a review of the substance of Chapters 20 and 43, Penal Code.
(1) As a requirement for an intermediate or advanced proficiency certificate issued by the commission on or after January 1, 2016, an officer must complete the canine encounter training program established by the commission under Section 1701.261.

(m) As a requirement for an intermediate or advanced proficiency certificate issued by the commission on or after January 1, 2016, an officer must complete an education and training program on the Texas Crime Information Center's child safety check alert list established by the commission under Section 1701.266.

(n) As a requirement for an intermediate proficiency certificate or an advanced proficiency certificate, an officer must complete the education and training program regarding de-escalation techniques to facilitate interaction with members of the public established by the commission under Section 1701.253(n).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 929, Sec. 6, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 947, Sec. 5, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 14.008, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1326, Sec. 9, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 393 (S.B. 1473), Sec. 4, eff. September 1, 2005. Acts 2009, 81st Leg., R.S., Ch. 1002 (H.B. 4009), Sec. 6, eff. September 1,

2009.

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 17, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(48), eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 855 (H.B. 3823), Sec. 9, eff. September 1, 2011. Acts 2013, 83rd Leg., R.S., Ch. 571 (S.B. 742), Sec. 9, eff. September 1, 2013. Acts 2015, 84th Leg., R.S., Ch. 31 (H.B. 593), Sec. 3, eff. September 1, 2015. Acts 2015, 84th Leg., R.S., Ch. 1056 (H.B. 2053), Sec. 8, eff. September 1,

2015.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.002(12), eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 950 (S.B. 1849), Sec. 4.05, eff. September 1, 2017.

Georgetown Police Department Policy on Racial Profiling

Article 2.132 of the Texas Code of Criminal Procedure requires that each law enforcement agency have a detailed written policy in regard to the topic of racial profiling. That policy must define racial profiling, prohibit the act of racial profiling, implement a complaint process, provide for public education, require corrective action if racial profiling occurs, require collection of data, and require the submission of an annual report.

The updated policy issued by the Georgetown Police Department in September 2017 fully complies with Article 2.132.

The policy is set forth below in its entirety.

314.1 PURPOSE AND SCOPE (*TPCA 2.01*)

This policy provides guidance to department members that affirms the Georgetown Police Department's commitment to policing that is fair and objective.

Nothing in this policy prohibits the use of specified characteristics in law enforcement activities designed to strengthen the department's relationship with its diverse communities (e.g., cultural and ethnicity awareness training, youth programs, community group outreach and partnerships).

314.1.1 DEFINITIONS

Definitions related to this policy include:

Racial- or bias-based profiling - An inappropriate reliance on characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, economic status, age, cultural group, disability or affiliation with any other non-criminal group (protected characteristics) as the basis for providing differing law enforcement service or enforcement (Tex. Code of Crim. Pro. art. 3.05).

314.2 POLICY

The Georgetown Police Department is committed to providing law enforcement services to the community with due regard for the racial, cultural or other differences of those served. It is the policy of this department to provide law enforcement services and to enforce the law equally, fairly, objectively and without discrimination toward any individual or group.

314.3 RACIAL- OR BIAS-BASED POLICING PROHIBITED

Racial- or bias-based policing is strictly prohibited. However, nothing in this policy is intended to prohibit an officer from considering protected characteristics in combination with credible, timely and distinct information connecting a person or people of a specific characteristic to a specific unlawful incident, or to specific unlawful incidents, specific criminal patterns or specific schemes.

314.4 MEMBER RESPONSIBILITIES

Every member of this department shall perform his/her duties in a fair and objective manner and is responsible for promptly reporting any known instances of racial- or biasbased policing to a supervisor. Members should, whenever reasonable to do so, intervene to prevent any biased-based actions by another member.

314.4.1 REASON FOR CONTACT

Officers contacting a person shall be prepared to articulate sufficient reason for the contact, independent of the protected characteristics of the individual.

To the extent that written documentation would otherwise be completed (e.g., arrest report, Field Interview (FI) card), the involved officer should include those facts giving rise to the contact, as applicable.

Except for required data-collection forms or methods, nothing in this policy shall require any officer to document a contact that would not otherwise require reporting.

314.4.2 REPORTING TRAFFIC STOPS

Any officer conducting an enforcement stop on any motor vehicle shall collect the following information relating to the stop (<u>Tex. Code of Crim. Pro art. 2.132 (Tier One</u>); <u>Tex. Code of Crim. Pro. art. 2.133 (Teir Two</u>)):

- 1) The location of the stop
- 2) The initial reason for the stop
- 3) The physical description of the driver, including:
 - a) The person's gender
 - b) The person's race or ethnicity as stated by the person or as best as can be determined by the officer
- 4) Whether the officer knew the race or ethnicity of the detained person before the stop
- 5) Whether the officer used physical force against the detained person, which resulted in bodily injury
- 6) Whether a citation or a warning was issued as a result of the stop
- 7) Whether an arrest was made and, if so, for what offense
- 8) Whether the oRacefficer conducted a search and, if so, whether the search was based on consent, probable cause or reasonable suspicion, incident to arrest, contraband or evidence in plain view, the result of towing the vehicle for evidence or safekeeping or any other reason
- 9) Whether any contraband or evidence was discovered and whether it was in plain view
- 10) A description of any contraband or evidence located

The above data shall be collected and completely and properly reported using the racial profiling module in the SunGard Records Management System or the SunGard Mobile Computing System.

314.5 SUPERVISOR RESPONSIBILITIES (TPCA 2.01)

Supervisors shall monitor those individuals under their command for compliance with this policy and shall handle any alleged or observed violations in accordance with the Personnel Complaints Policy.

1) Supervisors should discuss any issues with the involved officer and his/her supervisor in a timely manner. Supervisors should document these discussions in the prescribed manner.

- Supervisors of officers who record their public contacts either by MAV or ICVS shall review three (3) random recordings per officer each calendar quarter (3 months), to ensure compliance with racial profiling laws (<u>Tex. Code Crim. Pro. art. 2.132(d</u>)) and this policy.
 - a) Supervisors shall document these periodic reviews on the <u>Monthly Inspection</u> <u>Report</u>.
 - b) Recordings that capture a potential instance of racial- or bias-based profiling should be appropriately retained for administrative investigation purposes.
- 3) Supervisors shall initiate investigations of any actual or alleged violations of this policy.
- 4) Supervisors should take prompt and reasonable steps to address any retaliatory action taken against any member of this department who discloses information concerning racial- or bias-based policing.

314.6 STATE REPORTING

The Chief of Police shall annually submit a report of the information required in <u>Tex.</u> <u>Code of Crim. Pro. art 2.132</u> to the Texas Commission on Law Enforcement (TCOLE) and to each governing body served by the Department.

The Chief of Police shall also provide to TCOLE and each governing body served by the Department a report containing an analysis of the information required by <u>Tex. Code of Crim. Pro. art 2.133</u>. The report must be submitted by March 1 of each year (<u>Tex. Code of Crim. Pro. art 2.134</u>).

These reports may not include identifying information about any officer who made the contact or about any individual who was stopped or arrested (<u>Tex. Code of Crim. Pro. art.</u> 2.132; <u>Tex. Code of Crim. Pro. art 2.134</u>).

314.7 ADMINISTRATION

Each year, the Professional Standards Lieutenant shall review the efforts of the Department to provide fair and objective policing and submit an annual report, including public concerns and complaints, to the Chief of Police. The annual report should not contain any identifying information regarding any specific complaint, member of the public, or officer. It should be reviewed by the Chief of Police to identify any changes in training or operations that should be made to improve service (Tex. Code of Crim. Pro. art 2.132).

Supervisors shall review the annual report submitted to TCOLE and the governing body and discuss the results with those they are assigned to supervise.

314.8 COMPLIMENTS AND COMPLAINTS

The Professional Standards Lieutenant is responsible for educating the public on the Department's compliment and complaint process (see Personnel Complaints Policy). This education may be achieved by information provided through the Department

website. This information shall include the telephone number, mailing address and email address to make a compliment or complaint regarding a ticket, citation or warning issued by an officer.

In the event that an investigation is initiated against an officer for a violation of this policy, the Professional Standards Lieutenant should ensure that a copy of any related recording is provided as soon as practicable to the officer upon written request (<u>Tex.</u> Code of Crim. Pro. art. 2.132)

314.9 TRAINING

All sworn members of this department will complete all TCOLE-approved and required training on the subject of bias-based policing.

Georgetown Police Department Training and Education on Racial Profiling

The Texas Occupations Code requires that all peace officers in the State of Texas receive a course of instruction on the topic of racial profiling. According to Section 1701.253 this training is to be received either before the second anniversary of licensure or application for the intermediate proficiency certificate, whichever date is earlier.

The Texas Occupations Code further requires that all peace officers receive training on racial diversity and cultural sensitivity.

Georgetown Police Department Complaint Process and Public Education on Racial Profiling

During the year of 2018, there was one complaint of racial profiling which was investigated by the involved officer's supervisor and Professional Standards. That investigation was initiated at the end of December so it is still open but the body camera video does not suggest any racial profiling occurred.

Pursuant to the Texas Code of Criminal Procedure and Georgetown Police Department policy, the Department will provide public education on the filing of compliments and complaints, the department's stance on the practice of racial profiling, and how to file a racial profiling complaint. In the age of the Internet, the primary method for delivering this information will be the City of Georgetown Police Department website.

Data Analysis

Before contemplating a review of the data and attempting to analyze said data, some important caveats must be mentioned. Given the nature of the data collection required by law, it is nearly impossible to make an easy determination that racial profiling has occurred or not occurred within the Georgetown Police Department. The law dictates that law enforcement agencies in Texas compile aggregate level data. Using aggregate level data to make inferences regarding racial profiling by individual officers is not methodologically sound. This error is referred to as the "ecological fallacy". The fallacy assumes that individual members of a group have the average characteristics of the group.

The law currently does not require the presentation of individual officer data in the annual report and actually prohibits the naming of individual officers. It should be noted that this does not affect the ability of the Georgetown Police Department to review individual officer data if the need arises.

A proper analysis is further hampered by the census treatment of Hispanics versus the racial profiling law's treatment of Hispanics. The 2010 census properly separates race and ethnicity as two distinct categories. An individual can be of Hispanic ethnicity but belong to different races such as white or black. The racial profiling law does not differentiate between race and ethnicity and has Hispanics classified as if they are a distinct race. Officers are required to make subjective determinations regarding someone's race and ethnicity. The State of Texas does not provide this information objectively within the driver's license and identification card system.

Selecting an appropriate population base rate measure is also problematic. One of the most common choices used by law enforcement agencies is the data compiled by the United States Census Bureau. In addition to the race versus ethnicity problem stated above, as each year passes, the census data becomes less and less reliable due to population fluctuations.

Choosing which census data to use presents challenges for analysis. Part of the data collected involves whether or not the person stopped was a resident of the City of Georgetown. Beyond knowing that, only speculation is possible. If the answer is no, it is not known if the person is a resident of Williamson County, Texas, another state, or even another country. The City of Georgetown is bisected by IH 35 which runs from Mexico to Duluth, Minnesota. A significant portion of the Georgetown Police Department's contacts can occur on IH 35 leaving non-resident origin open to many possibilities.

Finally, we record the gender and race/ethnicity of the vehicle drivers and that is the information reported herein. However, information regarding searches and stop dispositions relate to the entire vehicle and all its occupants. This has the potential for some data to be unintentionally misleading. For example, a black male driver may be stopped for a speeding infraction. If that vehicle had a white male passenger who was identified and discovered to have an arrest warrant, that stop would be cleared with a search incident to arrest and a warrant arrest. The black male driver may have been

released with a verbal warning for the speeding infraction. The racial profiling record will however reflect an arrest and search for a black male even though the actual arrest and search was of a white male because searches and dispositions apply to the vehicle and not just the driver. This will result in some level of data confidence issues as long as the law maintains its current structure.

Understanding the caveats listed above is crucial to fully understanding the data presented and its limitations.

Table 1 listed below details the racial/ethnic and gender breakdown of the sworn members of the Georgetown Police Department including the Chief and Assistant Chief.

	Demo	Demographics of Georgetown Police Sworn Personnel							
	Male	%	Female	%	Total	Total %			
White	59	69.41%	12	14.12%	71	83.53%			
Black	2	2.35%	1	1.18%	3	3.53%			
Hispanic/Latino	10	11.76%	0	0.00%	10	11.76%			
Asian/Pacific Islander	1	1.18%	0	0.00%	1	1.18%			
Alaska Native/American									
Indian	0	0.00%	0	0.00%	0	0.00%			
Total	72	84.71%	13	15.29%	85	100.00%			

Table 1

Since 2010, 41% of the new hires for sworn have been either female and/or minority. Since last year's report, the number of female officers has increased by 1 and Hispanic officers have increased by 1. The sworn supervisory ranks of the Georgetown Police Department are currently 18.5% female and/or minority. All of the non-sworn units in the Department with the exception of Code Enforcement (Records, Communications, and Animal Services) are commanded by female employees. 84% of the Department's nonsworn staff are either female and/or minority.

In 2009, the racial profiling law was amended to require the collection of data about whether or not the officer knew the race/ethnicity of the driver before making the stop. This question addresses the issue of pre-stop racial profiling. As can be seen from the table below, in 96% of all contacts, the officer was not aware of the race/ethnicity prior to making the stop.

This is supported by the fact that many violations are moving violations where, due to distance, the decision to stop is made long before an officer is able to identify the driver. There are also a significant number of stops that occur at night where in many cases the officer cannot see the driver until the officer has contacted the driver at the window.

Based on the data collected, there is no evidence of pre-stop racial profiling in the Georgetown Police Department.

Was Race/Ethnicity Known Prior to Stop? (Total)							
Yes % No %							
450	4.03%	10,705	95.97%				
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Table 2

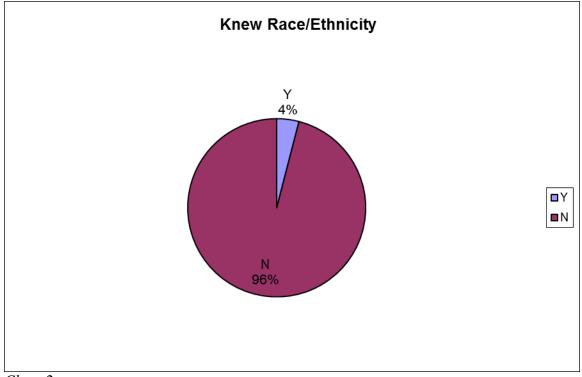


Chart 2

In reviewing 2010 census data for the City of Georgetown, Williamson County, and the State of Texas, males and females were equally represented. As can be seen from Table 3 males were stopped at a greater frequency than females. This holds true with all race/ethnicity groups.

Gender (Total)						
Male	Female					
6,503	3,349					

Table 3

Table 4 details the highest order of aggregate data for contacts by race/ethnicity of the Georgetown Police Department in 2018. This includes all types of contacts such as stops of motor vehicles, bicycles, pedestrians, and even golf carts. Even though it is no longer legally required to collect data on anything other than a motor vehicle stop, all records in the racial profiling system were included for completeness and transparency purposes. The table includes residents and non-residents alike.

	Stops by Race				
	Ν	%			
White	9,711	68.55%			
Black	1,262	8.91%			
Hispanic or Latino	2,928	20.67%			
Asian or Pacific Islander	209	1.48%			
Alaska Native or American Indian	57	0.40%			
Table 4					

Table 4

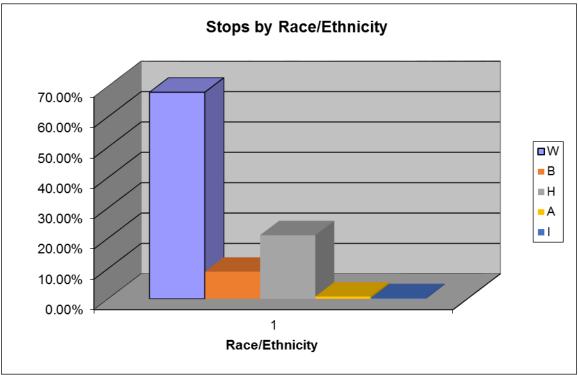


Chart 4

Table 5 takes the data in Table 4 and begins to break it down by stop type. As is evident, the vast majority of all stops (98%) involve motor vehicles. The remaining percentage is divided between commercial vehicles, motorcycles, golf carts, bicycles, and pedestrians.

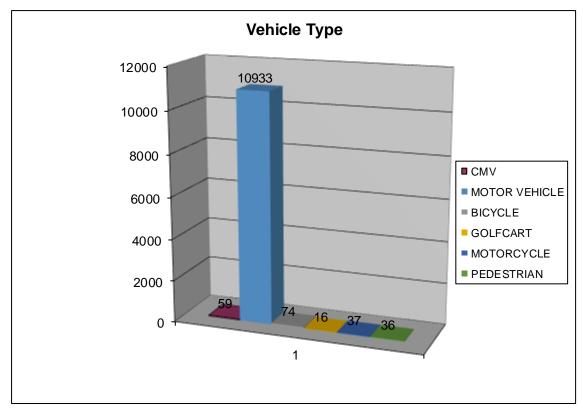




Table 6 shows the breakdown of stops of Georgetown residents versus non-residents. As was explained earlier, with the data collected, it is not currently possible to determine the residency status of non-residents other than to state that they are not residents of Georgetown. As can be seen from Table 6 and Table 7a, the stops of Georgetown residents are fairly consistent with their racial/ethnic proportion in the community. Even the stops of non-residents are not inconsistent with the racial/ethnic proportions found in the population of Williamson County (Table 7b) and the State of Texas (Table 7c).

	Resident of Georgetown? (by Race/Ethnicity)						
	Y	%	Ν	%			
White	4,787	74.24%	2,793	59.53%			
Black	356	5.52%	643	13.70%			
Hispanic or Latino	1,220	18.92%	1,118	23.83%			
Asian or Pacific Islander	78	1.21%	116	2.47%			
Alaska Native or American							
Indian	7	0.11%	22	0.47%			

Table 6

Census 201	0 Population by Ethnicity (G	eorgetown)							
	N	%							
Hispanic or Latino	10,317	21.77%							
Non Hispanic or Latino	37,083	78.23%							
Census 2010 Population by Race (Georgetown)									
	Ν	%							
White	40,866	86.22%							
African American	1,746	3.69%							
Asian	488	1.03%							
American Indian and Alaska									
Native	270	0.57%							
Native Hawaiian and Pacific									
Islander	40	0.07%							
Other	2,935	6.19%							
Identified by two or more	1,055	2.23%							
	· · · · · · · · · · · · · · · · · · ·								

Table 7a

Census 2010 P	opulation by Ethnicity (Willia	amson County)								
	Ν	%								
Hispanic or Latino	98,034	23.19%								
Non Hispanic or Latino	324,645	76.81%								
Census 2010 Population by Race (Williamson County)										
	N %									
White	330,191	78.12%								
African American	26,196	6.20%								
Asian	20,433	4.83%								
American Indian and Alaska										
Native	2,629	0.62%								
Native Hawaiian and Pacific										
Islander	413	0.10%								
Other	29,336	6.94%								
Identified by two or more	13,481	3.19%								

Table 7b

Census	2010 Population by Ethnicity	(Texas)							
	Ν	%							
Hispanic or Latino	9,460,921	37.62%							
Non Hispanic or Latino	15,684,640	62.38%							
Census 2010 Population by Race (Texas)									
N %									
White	17,701,552	70.40%							
African American	2,979,598	11.85%							
Asian	964,596	3.84%							
American Indian and Alaska									
Native	170,972	0.68%							
Native Hawaiian and Pacific									
Islander	21,656	0.08%							
Other	2,628,186	10.45%							
Identified by two or more	679,001	2.70%							

Table 7c

Table 8 details the reasons why persons were stopped and contacted by officers of the Georgetown Police Department. This table must be viewed in the context of Table 2 where it was stated that in 96% of the stops, the officer did not know the race/ethnicity of the driver. This is corroborated by Table 8 where the majority of stop reasons are for moving violations such as speeding, stop sign and red light violations, fail to signal violations, and others where it is not likely that the officer saw the driver before seeing the violation. The other category of traffic violation, Vehicle Traffic Violations, includes those violation that are considered non-moving violations such as equipment violations and expired registration violations.

Since Table 2 must be considered in context with Table 8, nothing can logically be inferred from the data presented. The percentages presented are fairly equal across all racial/ethnic boundaries.

	Stop Reasons										
	Violation of Law		Pre-Existing Knowledge		Moving Traffic Violation		Vehicle Traffic Violation				
	N	%	N	%	N	%	N	%			
White	72	0.95%	30	0.40%	5,276	69.49%	2,128	28.03%			
Black	15	1.50%	2	0.20%	621	62.10%	353	35.30%			
Hispanic or Latino	36	1.54%	10	0.43%	1,464	62.56%	798	34.10%			
Asian or Pacific Islander	1	0.52%	0	0.00%	144	74.23%	48	24.74%			
Alaska Native or American Indian	1	3.45%	0	0.00%	19	65.52%	9	31.03%			

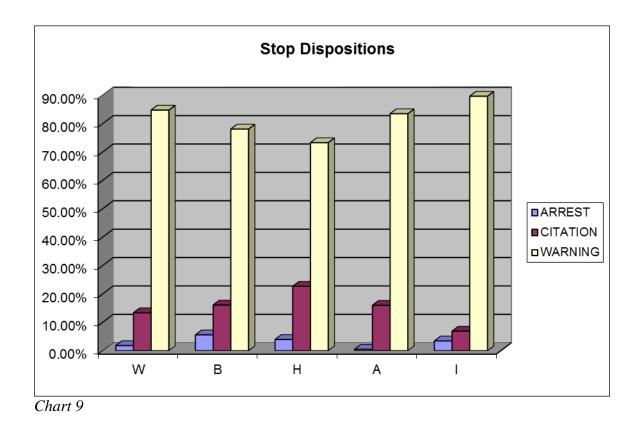
Table 8

Table 9 details the dispositions of all stops by the Georgetown Police Department. The majority of stops are cleared with a warning. Blacks and Hispanics were arrested in greater percentages than Whites but that must be viewed in context with Table 10 which details the reasons for arrests. Warrant arrests, most drug violations, and subsequent suspended license offenses would generally be considered non-discretionary and therefore a mandatory arrest by the officer. The most common violations of the penal law from traffic stops are DWI and drug violations. The most common violation of the traffic law from traffic stops where arrests are made is DWLI.

Hispanics were cited at a greater percentage than other ethnicities. This has historically been the case in years past as well. Hispanics tend to be cited at significantly higher rates than Whites and Blacks in the category of license violations. This is likely due to the presence of non-resident aliens who are operating vehicles without valid driver's licenses.

	Stop Dispositions									
		Warning	Citation		Warning and Arrest		Citation and Arrest		Arrest	
	Ν	%	Ν	%	Ν	%	Ν	%	Ν	%
White	6,437	84.79%	1,015	13.37%	0	0.00%	1	0.01%	139	1.83%
Black	781	78.10%	161	16.10%	0	0.00%	2	0.20%	56	5.60%
Hispanic or Latino	1,715	73.29%	531	22.69%	0	0.00%	1	0.04%	93	3.97%
Asian or Pacific Islander	162	83.51%	31	15.98%	0	0.00%	0	0.00%	1	0.52%
Alaska Native or American Indian	26	89.66%	2	6.90%	0	0.00%	0	0.00%	1	3.45%

Table 9



	Arrest Charges								
	Violation of Penal Law		Violation of Traffic Law		Violation of City Ordinance		Outstanding Warrant		
	Ν	%	Ν	%	Ν	%	Ν	%	
White	85	60.71%	50	35.71%	0	0.00%	29	20.71%	
Black	27			48.28%	0	0.00%	9	15.52%	
Hispanic or Latino	44 46.81%		51	54.26%	0	0.00%	27	28.72%	
Asian or Pacific Islander	1	100.00%	0	0.00%	0	0.00%	0	0.00%	
Alaska Native or American Indian	1	100.00%	0	0.00%	0	0.00%	0	0.00%	

Table 10

In addition to pre-stop profiling concerns, much of the racial profiling debate has revolved around the topic of searching. Searches are broken down between nondiscretionary searches and discretionary searches. Non-discretionary searches are those searches where the circumstances dictate that an officer shall or should conduct a search. Searching someone after arresting them and before placing them in a secure facility such as a jail is an example of a mandatory type search. Seeing obvious contraband or smelling obvious contraband, marijuana for example, is another example where a search should be conducted.

Table 11a details the non-discretionary searches for the Georgetown Police Department for the year 2018. The percentages next to the number represents the percentage of the time that particular type of search was conducted when any searching was done. It is important to note that a stop may yield multiple types of searches. For example, if an officer stopped a vehicle, noticed marijuana laying on the seat, arrested the driver for the drug offense, and towed the vehicle that stop would involve 3 searches. It would involve a contraband in plain view search (a specific form of probable cause), a search incident to arrest of the driver, and an inventory of the vehicle before impoundment.

	Non-Discretionary Searches (Numbers and Percentages)									
	Incident to Arrest		Plain View			Probable Cause	Inventory			
	Ν	%	N	%	Ν	%	N	%		
White	140	48.78%	14	4.88%	102	35.54%	79	27.53%		
Black	59	54.63%	2	1.85%	53	49.07%	27	25.00%		
Hispanic or Latino	94	60.65%	4	2.58%	39	25.16%	54	34.84%		
Asian or Pacific Islander	1	16.67%	0	0.00%	3	50.00%	1	16.67%		
Alaska Native or American Indian	1	50.00%	0	0.00%	0	0.00%	0	0.00%		

Table 11a

The primary discretionary search and the one that generates the most debate is the consent search. This is a search where the officer, using their knowledge, experience, and intuition, has a set of facts and circumstances that do not rise to the level of reasonable suspicion or probable cause but give the officer enough suspicion that contraband may be present where the officer feels compelled to ask for consent to search a vehicle or person. Consent searches are often used in drug interdiction stops where drivers and passengers are giving defined verbal and physical cues that can be indicative of smuggling. It should be noted that there are no valid or accepted indicators that rely on race or ethnicity. Narcotics, money, and human smuggling is a criminal activity that crosses all racial/ethnic, socio-economic, and gender boundaries.

Table 11b details the consent searches of the Georgetown Police Department for the year 2018. Of the 11,155 profiling data records collected in 2018, less than 1.5% of those resulted in a consent search. The rates of consent searches varied from a low of 1.24% for Whites to a high of 6.90% for Alaska Native or American Indian.

It has been argued that a more important statistic than the overall percentage searched is what is called the hit rate percentage. The hit rate percentage is the percentage of consent searches in which some form of illegal contraband was located.

	Discretionary Searches (Consent)			
	N	Contraband Located	Percentage Searched	Hit Rate Percentage
White	94	22	1.24%	23.40%
Black	23	7	2.30%	30.43%
Hispanic or Latino	41	12	1.75%	29.27%
Asian or Pacific Islander	3	1	1.55%	33.33%
Alaska Native or American				
Indian	2	1	6.90%	50.00%
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Table 11b

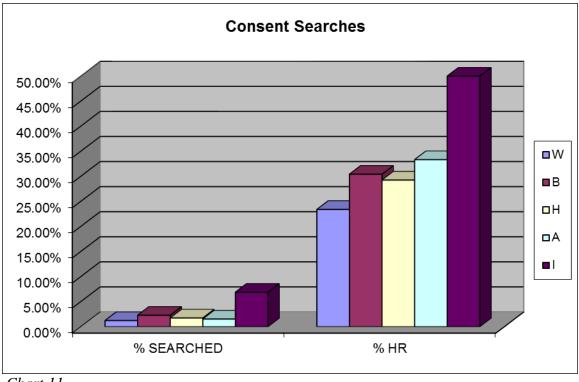


Chart 11

Table 11c lists the types of illegal contraband found during non-discretionary and discretionary searches by the Georgetown Police Department. Illegal drugs is the most prevalent item discovered when contraband is located during a search.

	Contraband Located (Numbers and Percentages)											
	Drugs		Currency		Weapons		Alcohol		Stolen Property		Other	
	Ν	%	Ν	%	Ν	%	Ν	%	Ν	%	Ν	%
White	81	74.31%	0	0.00%	3	2.75%	15	13.76%	2	1.83%	18	16.51%
Black	39	95.12%	0	0.00%	2	4.88%	2	4.88%	0	0.00%	1	2.44%
Hispanic or Latino	43	78.18%	0	0.00%	0	0.00%	9	16.36%	1	1.82%	4	7.27%
Asian or Pacific Islander	3	100.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	1	33.33%
Alaska Native or American Indian	1	100.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%

Table 11c

City of Georgetown, Texas City Council Regular Meeting February 12, 2019

SUBJECT:

Public Hearing and possible action to approve a **request** for a **Development Agreement** for a **multifamily** and **commercial development** on approximately **54 acres** out of the Francis A. Hudson Survey, Abstract No. 295, J.S. Patterson Survey, Abstract No. 502, and the John Powell Survey, Abstract No. 491, generally located in the **500 block of Westinghouse Rd**, to be known as **Chapel Hill** -- Sofia Nelson, CNU-A, Planning Director

ITEM SUMMARY:

Background

Subject Property

The subject property is approximately 54 acres in size and located at 551 Westinghouse Road. Generally, the property is located north of Westinghouse, east of I-35 and west of Rabbit Hill Road. The property is generally located outside the city limits for the exception of a small portion located inside the city limits with a zoning of Residential Single Family (RS).

Overview of the Request

The applicant is seeking approval of a development agreement which establishes provisions of annexation, zoning process, and utilities. The overall intent of the development is to develop the subject property as a multifamily development (maximum of 600 units)and commercial/business park development along the frontage of Westinghouse Road (approximately 18 acres in size). The applicant is seeking to entitle the property inside and outside the city limits at one time. The purpose of the development agreement allows the developer to understand if the request is in compliance with the comprehensive plan prior to annexation, and if it is, are there any additional development standards needed that the applicant should incorporate in advance of coming in for PUD approval.

Proposed Development

The proposed development would allow for local commercial/business park uses along the frontage of Westinghouse Road and multifamily development for the remainder of the property.

Criteria for Approval

UDC Sec. 3.20.030. - Approval Criteria.

In determining whether to approve, approve with modifications or disapprove a proposed Development Agreement or amendment, the City Council shall consider the following matters:

1. The proposed agreement promotes the health, safety or general welfare of the City and the safe orderly, and healthful development of the City.

2. The proposed agreement is consistent with the Comprehensive Plan.

Planning and Zoning Commission Recommendation:

On February 5, 2019 the Planning and Zoning Commission made a recommendation to approve the development agreement with a vote of 6-0.

FINANCIAL IMPACT:

n/a

SUBMITTED BY: Sofia Nelson, Planning Director

ATTACHMENTS:

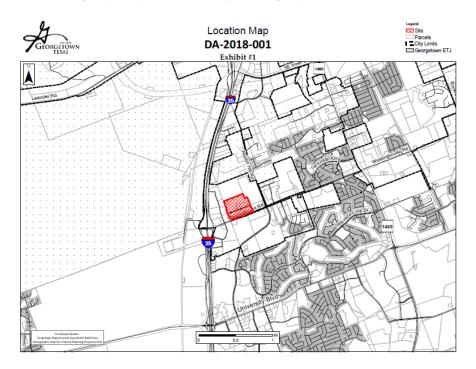
Staff Report exhibit 1- location map exhibit 2- future land use map exhibit 3- zoning map exhibit 4- contours exhibit 6 letter of intent exhibit 5- development agreement combined development agreement exhbits land plan



Planning and Zoning Commission Planning Department Staff Report

Report Date:	January 31, 2019
Case No:	DA-2018-001
Project Planner:	Sofia Nelson, Planning Director
Item Details	
Project Name: Project Location: Total Acreage: Legal Description:	Chapel Hill Development 551 Westinghouse Road 54 acres 54 Acres out of Hudson & Patterson Survey
Applicant: Representative: Property Owner:	Halff Associates c/o Jordan Maddox Halff Associates c/o Jordan Maddox Children at Heart Foundation
Request:	Development Agreement to establish provisions and timing for annexation, process for requesting zoning and utilities and review of land use concept.
Case History:	This is the first public hearing on the request. The development Agreement request was presented to City Council on October 9, 2018- No action was taken (discussion only presentation). Presentation made to City Council can be found at the following link:

http://georgetowntx.swagit.com/play/10092018-818



Overview of Applicant's Request

The applicant is seek approval of a Development Agreement, which establishes provisions of annexation, zoning process, and utilities. The overall intent of the project is to develop the subject property as a mixed-use development consisting of multi-family on the northern portion and commercial/business park along the frontage of Westinghouse Road (southern portion). The applicant is seeking to entitle the subject property inside and outside the city limits at one time. The purpose of this development agreement is to allow the developer to understand if the request is in compliance with the comprehensive plan, and if it is are there any additional development standards that the applicant should incorporate in advance of submitting a request for a Planned Unit Development (PUD).

Site Information

Location:

The subject property is approximately 54 acres in size and located at 551 Westinghouse Road. Generally, the property is located north of Westinghouse, east of I-35 and west of Rabbit Hill Road. The property is located outside the city limits for the exception of a small portion located inside the city limits with a zoning of Residential Single Family (RS).



Physical and Natural Features:

The subject property has significant physical and natural features limiting and contributing to the development possibilities on this property. Topographically, the property is divided into two/three development zones. Exhibit 4 identifies the difference in elevation height, the presence of a significant tree stand and pond.

Future Land Use:

The subject property has a Future Land Use designation of Employment Center. The area of employment center generally stretches from approximately the intersection of Austin Avenue and Leander Road to the southernmost tip of the City's planning jurisdiction along Mays Street (south of

Westinghouse). This area of employment center is approximately 1300 acres in size.

The *Employment Center* category is intended for tracts of undeveloped land located at strategic locations, which are designated for well planned, larger scale employment and business activities, as well as supporting uses such as retail, services, hotels, and high density residential development (stand-alone or in mixed-use buildings) as a conditional use. These areas often act as a transition between more intensely developed commercial uses and residential neighborhoods. Primary uses include offices, flex offices, and technology research and development, as well as environmentally friendly manufacturing.

Surrounding Properties:

The subject property is located along Westinghouse Road. The corridor from I-35 to FM 1460 is made of a variety of different uses. Uses along this corridor range from car dealerships at the intersection of I-35 and Westinghouse Road to developed multi-family (Anatole Apartments) and entitled residential (under construction) to industrial type uses (both north and south of Westinghouse), single family (Vista Point and Tierra Vista) to neighborhood residential uses (Terra Vista commercial and fuel stations with convenience store)

The current zoning, Future Land Use designation, and existing uses of the adjacent properties to the north, south, east and west are outlined in the table below:

DIRECTION	ZONING DISTRICT	FUTURE LAND USE	EXISTING USE	
North	Public Facilities	Employment Center	Church	
	(PF)	F · · · · · · · · · · · · · · · · · ·		
	PUD (residential			
South	and nonresidential	Employment Center	Undeveloped	
	uses permitted)			
East	Public Facilities	Employment Center	Church	
EdSt	(PF)	Employment Center		
West	General	Employment Center	Car Dealership	
west	Commercial (C3)	Employment Center		

Comprehensive Plan Guidance

Future Land Use Map:

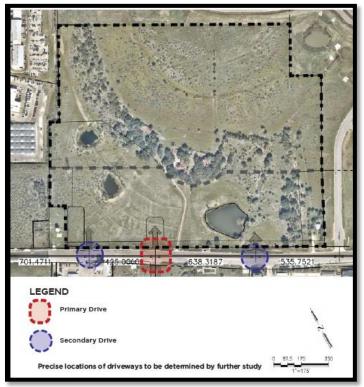
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Utilities

The proposed development agreement outlines provisions for the subject property to utilize city water, wastewater, and electric service.

Transportation

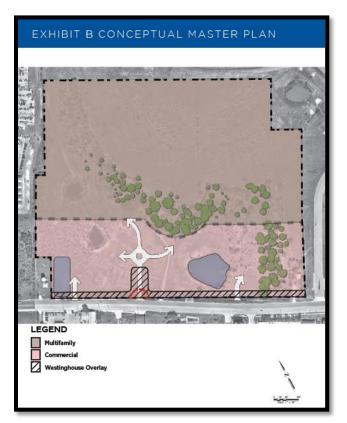
Westinghouse Road is identified on the Overall Transportation Plan as a major arterial. Arterial streets provide traffic movement through and between different areas within the city and access to adjacent land uses. Access is more controllable because driveway spacing requirements are much greater and, if safety dictates, overall access can be limited to specific turning movements. Major Arterials connect major traffic generators and land use concentrations and serve much larger traffic volumes over greater distances. Precise locations of driveways will be studied at the time of site plan. However given the site visibility challenges coupled with the rate of speed and traffic coming downhill the applicant has identified one main entrance onto the property. See below exhibit.



A Traffic Impact Analysis (TIA) will be required at time of Site Development Plan for any development that generates more than two thousand (2,000) average daily trips based upon the latest edition of the Institute of Transportation Engineers (ITE) Trip Generation Manual.

Proposed Development

The applicant is proposing a conceptual plan that allows for local commercial and business park uses along the frontage of Westinghouse Road with Multifamily development for the remainder of the property. Below is a conceptual plan prepared by the applicant.



The applicant is seeking a density of 24 units per acre for the proposed multi-family development. Architectural standards have been established in the proposed development standards. These standards have been included in full in the exhibits and pasted in summary below. The architectural standards prioritize the use of brick, natural stone, and stucco and the development that will front the Westinghouse Corridor. Should the development agreement be approved, the PUD will include the below standards.

DESIGN STANDARDS

Architectural building enhancements include a minimum percentage of high-quality masonry materials throughout the site. Architectural masonry requirements are delineated by base zoning district and a Westinghouse Road overlay that ensure a minimum level of masonry on the street-facing building facades, as set out in Table D.1, below.

Table D.1 Building Masonry Standards

Area	Class I Minimum %	Class II Maximum %				
Commercial	60	40				
Multi-family	60	40				
Westinghouse / Entry Overlay	75	25				
Note: Windows, doors, trim, and architectural features are exempt from						
masonry requirements						

Class I Masonry is defined as exterior finish materials including brick, natural stone, engineered stone, thin brick, and stucco.

Class II Masonry is defined as exterior finish materials including split-faced concrete masonry units, fiber cement siding, synthetic wood, EIFS and embossed or pre-finished architectural metal panel.

Westinghouse / Entry Overlay is conceptually depicted on the Conceptual Master Plan ("Exhibit B"). Enhanced architectural masonry shall apply to the building facades on the first row of buildings facing Westinghouse and Barton Drive(way). The depth represented in the exhibit is conceptual; all such first buildings in this vicinity shall express the enhanced facade towards the street.

Staff Analysis and Approval Criteria

Staff Analysis

The property under consideration is a unique property along Westinghouse Road. The property's uniqueness is in large part due to physical and natural features on the property. The topography, the ponds and drainage patterns create 2-3 separate developable areas. The applicant is seeking to develop the property based on the contours of the land and develop multifamily on the north end of the property and non-residential uses on the portion of the property that is generally closer to Westinghouse Road. The attached development plan in large part maintains the requirements of the UDC. Specific standards include enhanced masonry requirements have been included, enhanced land uses for the non-residential portion to remove non-desirable uses, parking requirements have been specified; and deviations from the sign ordinance have been included as well.

The UDC identifies the following applicability criteria and approval criteria for Development Agreements:

Sec. 3.20.030. - Approval Criteria.

In determining whether to approve, approve with modifications or disapprove a proposed Development Agreement or amendment, the City Council shall consider the following matters:

1. The proposed agreement promotes the health, safety or general welfare of the City and the safe orderly, and healthful development of the City.

2. The proposed agreement is consistent with the Comprehensive Plan.

Staff has reviewed the request and has made the following findings:

- The site provisions for access help improve the safety of the site.
- The enhanced masonry standards help to improve the aesthetics of the corridor.
- The provision of local commercial uses near a high density residential use help to support the nearby residential both adjacent to this site as well as long corridor.
- The proposed layout and natural land features allows for an orderly transition between commercial and multi-family.
- Staff's review of the Westinghouse Corridor (map attached) shows the various land uses along the Westinghouse Road corridor between I-35 and FM 1460. The corridor includes some 1,208 acres or nearly 2 square miles. It consists of a mix of uses, including commercial (496 acres), single-family (420 acres), multi-family (208 acres), and civic (88 acres).
- The proposed development appears to be partially consistent with the Comprehensive Plan's vision for employment center. The employment center allows for a mix of supporting uses. One of which is high density residential and retail services. There does appear to be a need for local commercial uses within this area and in support of the overall vision of the future land use district. While there is minimal high density residential development within this specific employment center district staff does have an overall concern given the amount of multifamily units entitled/developed surrounding this particular location if the multifamily unit count has exceeded a supporting activity in this portion of the employment center.

Meetings Schedule

February 5, 2019 – Planning and Zoning Commission

February 12, 2019 – City Council action on Development Agreement (one reading only required)

** This is only approval of the development agreement. Should the development agreement be approved action on an annexation request and PUD will be separate and will be required to meet the approval criteria outlined for PUDs

Public Notification

As required by the Unified Development Code, all property owners within a 200-foot radius of the subject property and within the subdivision were notified and a legal notice advertising the public hearing was placed in the Sun Newspaper. To date, staff has received 0 written comments in favor, and 0 in opposition to the request

Attachments

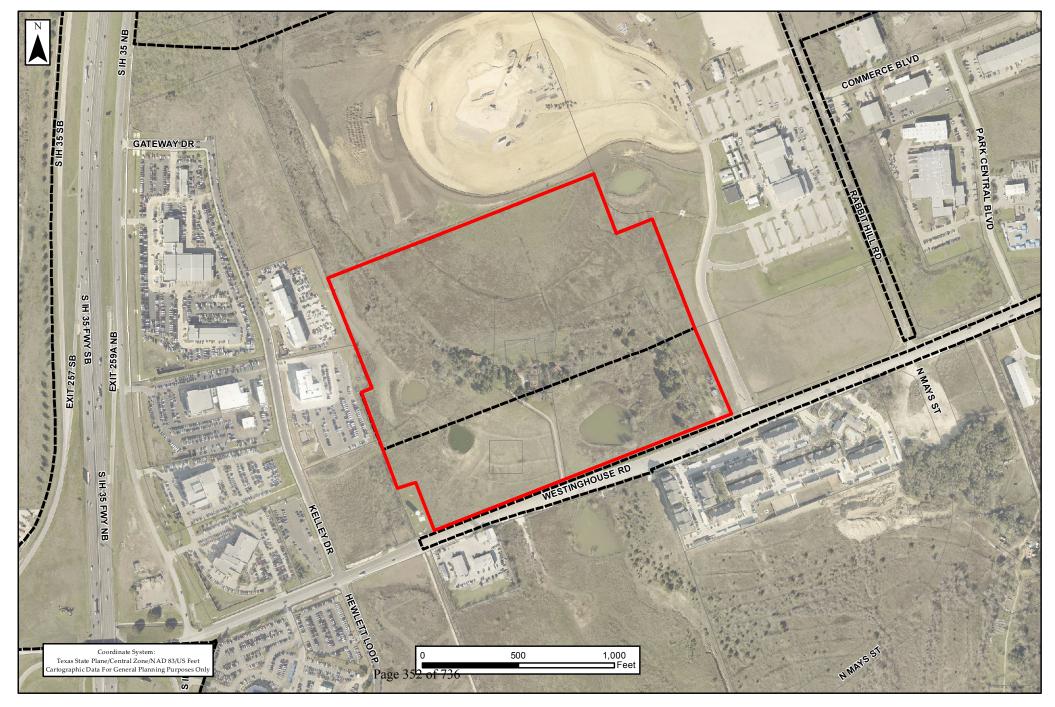
Exhibit 1 – Location Map Exhibit 2 – Future Land Use Map Exhibit 3 – Zoning Map Exhibit 4- Contour Map of Site Exhibit 5 – Development Agreement Exhibit 6 – Letter of Intent



DA-2018-001

Aerial





L_City Limits GEORGETOWN TEXAS Exhibit #2 Georgetown ETJ COMMERCE BLVD RABBIT HILL RD PARK CENTRAL BLVD **GATEWAY DR** Legend Thoroughfare S 1H.35 SB Existing Collector Existing Freeway Existing Major Arterial Existing Minor Arterial VISTA VIEN DR SIH 35 FWX-NE Existing Ramp Proposed Collector PROMONTORY P Proposed Freeway KELLEY DR ---- Propsed Frontage Road Proposed Major Arterial Proposed Minor Arterial Proposed Railroad BIRKSHIRE DR Future Land Use SE RD Institutional Regional Commercial Community Commercial Ag / Rural Residential Employment Center High Density Residential WINDOM WAY A IH 35 FR Low Density Residential NMAYSST NWAYSST Mining S IH 35 FR Mixed Use Community 000 Mixed Use Neighborhood Center Moderate Density Residential GREATVIEW DR Open Space Specialty Mixed Use Area S H 35 FW PAGE WHITNE Page 1 1⁄4 1/2 Coordinate System: Texas State Plane/Central Zone/NAD 83/US Feet artographic Data For General Planning Purposes Only ⊐Mi



Future Land Use / Overall Transportation Plan

Legend

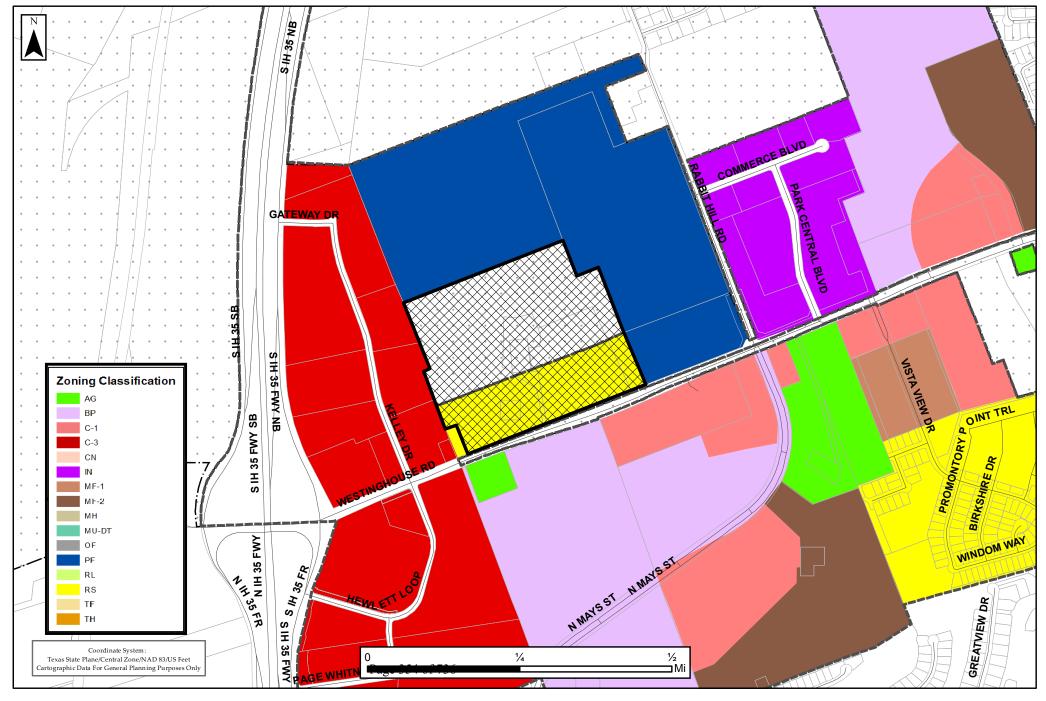
Site Parcels

DA-2018-001



Zoning Information DA-2018-001 Exhibit #3



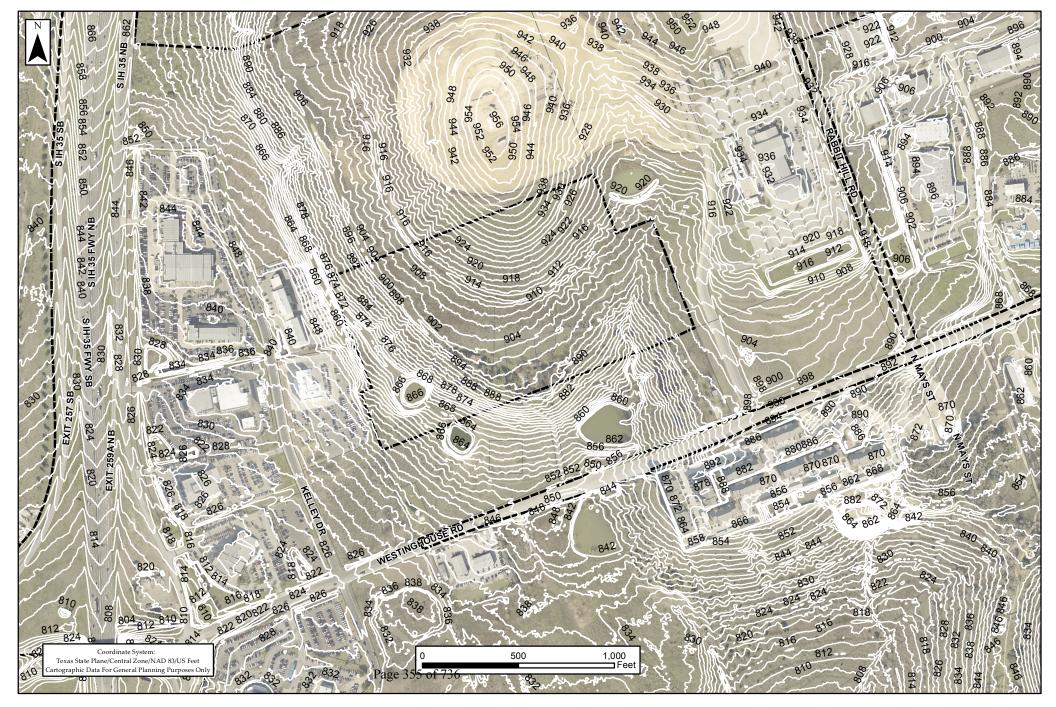




DA-2018-001

Aerial





Dear Ms. Nelson,

On behalf of the landowners and development team, Halff Associates is pleased to submit the development agreement for the Chapel Hill development in Georgetown. The project team is excited about continuing the process with the City of Georgetown to move the project vision forward.

The development agreement became necessary to address the land uses and development standards for the property. After conversations with staff, a development agreement was recommended to address entitlements so that the landowner was not annexed prior to zoning consideration. After many discussions with staff, the land use mix presented in this agreement is consistent with the 2030 Comprehensive Plan.

This development agreement provides for a mix of commercial and residential that is tailored to this specific piece of land in a unique way. The agreement presented to the City focuses on land use and development standards; utility provisions and cost-sharing on regional water improvements; and addresses future annexation and zoning processes to fully entitle the property for development. This will be a multi-party agreement with the owners and the City.

This agreement as sets a higher quality standard for Chapel Hill than the UDC requires. These higher standards will include a higher standard of masonry, higher-quality design for buildings along Westinghouse and integration of open space and trees throughout the site. Following the agreement, an annexation petition and PUD application will be submitted to the City, consistent with this agreement.

The regional water line that the City has planned would be constructed by the owners who would subsequently be reimbursed by the City for those efforts. In addition, the owners intend to partner with an adjacent landowner to ensure that wastewater will be handled in the manner desired by the City without additional lift stations and force mains. A transportation study has been included to project trips based on known information. A full TIA will be completed at a later date.

We look forward to working with staff to complete this development agreement and continue to move forward in this process.

DEVELOPMENT AND UTILITY CONSTRUCTION AGREEMENT

This Development and Utility Construction Agreement ("<u>Agreement</u>") is by and between the CITY OF GEORGETOWN, a Texas home rule municipality (the "<u>City</u>"), CHILDREN AT HEART FOUNDATION, a Texas non-profit corporation ("<u>CAH</u>"), CARRIE ANN BARTON SEPARATE PROPERTY REVOCABLE TRUST, a Texas revocable trust ("<u>Barton</u>"), MLL Horizon Investments LLC and Bill Nations (MLL Horizon Investments LLC and Bill Nations are referred to collectively herein as "<u>Nations</u>"), and Duke, Inc., a Texas corporation ("<u>Duke</u>"). " The City, CAH, Barton, Nations and Duke are referred to collective herein as the "**Parties**."

ARTICLE 1. RECITALS

1.01. CAH is the owner of the CAH Property (defined herein). Barton is the owner of the Barton Property (defined herein). Nations is the owner of the Nations Property (herein defined). The CAH Property, the Barton Property and the Nations Property are collectively referred to herein as the "**Property**."

1.02. The Property is currently vacant and undeveloped; however, Duke is under contract with CAH and Barton to purchase and develop the Duke Portion of the Property (defined herein) not later than the Closing Date (defined herein).

1.03. As of the Effective Date (defined herein) the Property is located partially within the City's corporate limits and partially within the City's extraterritorial jurisdiction ("<u>ETJ</u>").

1.04. Owners (defined herein) and Duke desire for the ETJ Portion of the Property (defined herein) to be voluntarily annexed into the City's corporate limits on or before the Annexation Deadline (defined herein).

1.05. After annexation of the ETJ Portion of the Property into the corporate limits of the City, Owners and Duke desire to develop the Property consistent with the PUD Ordinance (defined herein).

1.06. The Parties acknowledge and agree that this Agreement is made for the purpose of promoting the orderly development of the Property and the extension of City services to the Property upon annexation.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 2. DEFINITIONS

2.01. As used herein, the following words when capitalized shall have the meanings set forth in this Article.

2.01.01 "Applicable Laws" means all federal, state and local laws, ordinances, orders, specifications, standards, rules, and regulations pertaining and applicable to the activities and obligations described in this Agreement, including, without limitation, the Texas Local Government Code; the laws, rules and permits issued by the Texas Commission on Environmental Quality (TCEQ) to the City for construction and operation of the City's water and wastewater treatment plants and pertaining to its water and wastewater utility systems; the City's Code of Ordinances, Unified Development Code (defined herein), Construction Specifications and Standards Manual, Drainage Criteria Manual, Building Codes, Fire Codes, Inspection Guidelines, and Development Manual; the City-approved final plats for the Property (defined herein); the PUD Ordinance (defined herein); and the Approved Plans (defined herein), all applied as if the Property were located entirely within the corporate limits of the City as of the Effective Date (defined herein), all as may be amended, modified, reissued, or renewed in the future by the City in its sole discretion, except as vesting rights obtained pursuant to Chapter 245 of the Texas Local Government Code to the extent applicable to the Unified Development Code and City-approved final plats.

2.01.02 "*Approved Plans*" means the design and construction plans and specifications for the Internal Facilities (defined herein), the Water Line (defined herein), and the Wastewater Line (defined herein); and the Traffic Impact Analysis required by Section 7.01 of this Agreement, all as prepared by a registered professional engineer licensed to practice in the State of Texas retained by Owners, as said plans, studies, and documents are approved by the City in its regulatory capacity.

2.01.03 *"Barton"* means the Carrie Ann Barton Separate Property Revocable Trust, a Texas revocable trust, having the address stated in Section 10.13 of this Agreement pertaining to Notice, and Barton's permitted successors and assigns.

2.01.04 *"Barton LUE Limit"* means TWO HUNDRED TEN (210) LUEs (defined herein).

2.01.05 *"Barton Property"* means that certain property located on the north side of Westinghouse Road/CR 111 between Kelley Drive and Rabbit Hill Road, and adjacent to the CAH Property (defined herein) in Williamson County, Texas and consisting of approximately 28 acres of land being Tracts 2 and 4, as further described on *Exhibit A-2*, attached hereto.

2.01.06 *"CAH"* means the Children at Heart Foundation, a Texas non-profit corporation having the address stated in Section 10.13 of this Agreement pertaining to Notice, and CAH's permitted heirs, successors and assigns.

2.01.07 "*CAH Property*" means that certain property located on the north side of Westinghouse Road/CR 111 between Kelley Drive and Rabbit Hill Road, and adjacent to the Barton Property in Williamson County, Texas consisting of approximately 16.14 acres of land and being Tracts 1 and 3 as further described by metes and bounds and shown on *Exhibit A-1*, attached hereto.

2.01.08 *"City"* means the City of Georgetown, Texas, a Texas home rule municipality.

2.01.09 *"City Council"* means the city council of the City.

2.01.10 *"Closing Date"* means the earlier of (i) the date of purchase of the Duke Portion of the Property by a Duke Assignee (defined herein) or (ii) 5:00 PM CST on January 31, 2020.

2.01.11 *"Development" or "Develop"* means initiation of any activity governed by the UDC (defined herein) related to land or property modification whether for imminent or future construction activities including, but not limited to, division of a parcel of land into two or more parcels; alteration of the surface or subsurface of the land including grading, filling, or excavating; mining or drilling operations; clearing or removal of natural vegetation and/or trees; installation of public infrastructure including utilities, roadways, and drainage facilities; and construction or enlargement of any building, structure, or impervious surface. Exclusions from this definition include maintenance of lawns, gardens, and trees; repairs to existing utilities; minimal clearing of vegetation for surveying and testing; and bona fide agricultural activities

2.01.12 *"Duke"* means Duke Inc., a Texas corporation, having the address stated in Section 10.13 of this Agreement pertaining to Notice, its successors or assigns, including but not limited to a single purpose entity formed to purchase the Duke Portion of the Property.

2.01.13 *"Duke Assignee"* means Duke, an assignee of Duke, or any other owner of the Duke Portion of the Property.

2.01.14 *"Duke LUE Limit"* means THREE HUNDRED TWENTY-SIX (326) LUEs (defined herein).

2.01.15 *"Duke Portion of the Property"* means collectively, all the CAH Property and a portion of the Barton Property consisting of approximately twenty-seven (27) acres of land and further described on *Exhibit A-3*, attached hereto.

2.01.16 *"ETJ"* means the area outside of the corporate limits of the City as generally described by Chapter 42 of the Texas Local Government Code and as modified by resolutions and ordinances adopted by the City Council and on file with the City Secretary of the City.

2.01.17 *"ETJ Portion of the Property"* means that portion of the Property (defined herein) consisting of approximately 36.085 acres of land being further described by metes and bounds and shown on *Exhibit A-4*, attached hereto, which, as of the Effective Date (defined herein), lies outside of and immediately adjacent to the City limits.

2.01.18 *"Effective Date"* means the latest date accompanying the signature lines of the duly authorized representatives of each of the Parties (defined herein) to this Agreement.

2.01.19 *"Impact Fees"* means, collectively, the water and wastewater impact fees adopted from time to time by ordinance of the City Council of the City pursuant to Chapter 395, Texas Local Government Code, in the amounts in effect at the time of final platting of the Property (or a portion of the Property if the Property is platted in phases, as the term *"Property"* is defined herein), and as said fees may be revised from time to time by the City in the City's sole discretion.

2.01.20 *"Internal Facilities"* means the internal water and wastewater pipes, lines, appurtenances, and related infrastructure necessary for providing retail water and wastewater service to customers within the Property (defined herein), to be constructed on the Property by or on behalf of Owners (defined herein), Duke, and/or Nations (defined herein), at no cost to the City and, after written acceptance by the City, transferred to the City at no cost to the City for ownership, operation, and maintenance.

2.01.21 *"Land Plan"* means the allowed uses of and development standards applicable to the Property anticipated to be included in the PUD Ordinance (defined herein) consistent with *Exhibit B*, *Exhibit C*, *Exhibit D*, *Exhibit E*, and *Exhibit F*, attached hereto.

2.01.22 *"LUE"* means a living unit equivalent based on THREE HUNDRED FIFTY (350) gallons per day.

2.01.23 *"LUE Limit"* means SIX HUNDRED SIXTY-FOUR (664) LUEs.

2.01.24 *"Nations"* means collectively, MLL Horizon Investments L.L.C., a Texas limited liability company, and Bill Nations, an individual, having the address stated in Section 10.13 of this Agreement pertaining to Notice, and Nation's permitted successors and assigns.

2.01.25 *"Nations LUE Limit"* means ONE HUNDRED TWENTY-EIGHT (128) LUEs (defined herein).

2.01.26 *"Nations Property"* means that certain property located on the northeast corner of the intersection of Westinghouse Road/CR 111 and Kelley Drive in Williamson County, Texas consisting of approximately 10.01 acres of land out of the Barton Property, which is further described on *Exhibit A-5*, attached hereto.

2.01.27 *"Owners"* means, collectively, Nations (defined herein), CAH (defined herein), Barton (defined herein) and their permitted heirs, successors and assigns.

2.01.28 *"Parties"* means, collectively, the City, Owners, and Duke.

2.01.29 *"Property"* means, collectively, CAH Property (defined herein) and the Barton Property (defined herein).

2.01.30 "*PUD Ordinance*" means the ordinance, if any, adopted by the City Council of the City governing use and Development of the Property and having as base zoning "C-1 Commercial" (defined in the UDC) for the commercial areas of the Property shown on the Land Plan (defined herein), and "MF (Multifamily)-2" (defined in the UDC) for the multifamily areas of the Property shown on the Land Plan (defined herein), and having other terms and provisions that are consistent with the Land Plan (defined herein).

2.01.31 *"Remainder of the Barton Property"* means that certain portion of the Barton Property *save and except the* Nations Property (defined herein) and the Duke Portion of the Property (defined herein), consisting of approximately _____ acres of land and further described on *Exhibit A-6*, attached hereto.

2.01.32 *"Restrictive Covenant"* means the Restrictive Covenant for the Property in the form attached hereto as *Exhibit G*.

2.01.33 *"UDC"* or *"Unified Development Code"* means the Title 17 of the City of Georgetown Code of Ordinances entitled *"Unified Development Code,"* as the same may be amended from time to time by the City.

2.01.34 *"Voluntary Annexation Petition Deadline"* means 5:00 pm CST, on the date that is ten (10) business days after the Closing Date.

2.01.35 *"Voluntary Annexation Petition"* means Owners' petition for voluntary annexation of the Property in the form attached hereto as *Exhibit H*, together with all supporting documentation and fees.

2.01.36 *"Wastewater Line"* means the wastewater line to be constructed at no cost to the City by Owners having a diameter determined by the City during design commencing at a point within the Property and extending to connect with the City's lift station commonly known as the Westinghouse Region Lift Station located south of Mays Street, Georgetown, Texas.

2.01.37 *"Water Line"* means the sixteen-inch (16") water line to be constructed by Owners at no cost to the City commencing at a point within the Property and extending to connect with the twelve-inch (12") water line stub located at the City's Rabbit Hill Water Tank.

ARTICLE 3. CONDITIONS PRECEDENT

3.01. **Sale and Transfer of Duke Portion of the Property by CAH and Barton**. CAH and Barton shall (i) sell and transfer to a Duke Assignee all rights, title, and interest in the Duke Portion of the Property; (ii) simultaneously execute on behalf of CAH and Barton, and cause to be executed by a Duke Assignee on behalf of the Duke Assignee, an assignment and assumption agreement comporting with the requirements of Section 10.04.02 of this Agreement, on or before the Closing Date, and shall also provide to the City Attorney a copy of the recorded deed(s) and assignment and assumption agreement(s) on or before the date that is five (5) business days after the Closing Date.

3.02. **Reimbursement of City Expenses**. As additional consideration for this Agreement and as an additional condition precedent to the effectiveness of Article 5 and Article 6 of this Agreement, Owners shall pay the City's staff and outside consultant and legal fees and expenses associated with preparing of this Agreement, which invoiced amounts must be received by the City on or before the date that this item is first scheduled to be considered by the City Council, and all remaining or additional amounts must be received by the City on or before the Effective Date. Payment by check to the City must be remitted to the City Manager at the address for Notice provided in this Agreement. Owners shall request wiring instructions from the City Manager prior to remitting payment by bank wire.

3.03. **Effect of Failure to Perform Conditions Precedent**. The Parties' rights and remedies resulting from failure to satisfy the requirements of Sections 3.01 and 3.02 of this Agreement are as set forth in Section 8.01.03 of this Agreement. This Agreement shall be void *ab initio* and shall have no force or effect if any one or more of the conditions precedent described in Sections 3.01 and 3.02 of this Agreement are not fully performed on or before the dates such performances are required by this Agreement.

ARTICLE 4. RESTRICTIVE COVENANT; VOLUNTARY ANNEXATION; ZONING; PROHIBITION ON DEVELOPMENT;

4.01. **Restrictive Covenant**. Within seven (7) business days after the Effective Date of this Agreement, Owners shall file, or cause to be filed, in the Official Public Records of Williamson County, a Restrictive Covenant in the form attached hereto as *Exhibit H* stating that the Property is subject to a Development and Utility Construction Agreement, that the ETJ Portion of the Property is to be annexed into the corporate limits of the City, that a zoning application requesting zoning of the Property as a Planned Unit Development or "PUD" having land use and development standards conforming to the Land Plan has been filed by Owners with the City, and that Development of the Property prior to annexation of the ETJ Portion of the Property is prohibited. If this Agreement is terminated, the City acknowledges and agrees that the Owner shall have the right to unilaterally record a termination of the Restrictive Covenant promptly after said termination. This provision shall survive termination of this Agreement.

4.02. **Subsequent Owner('s)(s') Consent to Restrictive Covenant**. Owners agree that, for all transactions prior to the effective date of ordinance(s) approving the full annexation of the ETJ Portion of the Property into the corporate boundaries of the City, Owners shall obtain, or cause to be obtained, from each Subsequent Owner(s) (defined below), written acknowledgement of receipt of the Restrictive Covenant and promise to comply with the Restrictive Covenant. Owners shall cause each such Restrictive Covenant to be recorded in the Official Public Records of Williamson County, Texas. For the purposes of this Section, the term "Subsequent Owner(s)" means any and all future owner(s) of a fee interest in the Property, the ETJ Portion of the Property, or any other portion of the Property (whether such interest is obtained through a purchase from Owners or through a purchase at a foreclosure sale or trustee's sale or through a deed in lieu of foreclosure or any other means) and his/her/their heirs, successors, and assigns.

4.03. **Consent to Voluntary Annexation and Initial Limitation on Development**. It is the intent of the Parties that the ETJ Portion of the Property shall be located wholly inside the corporate limits of the City prior to Development of any part of the Property and prior to provision by the City of water and wastewater service to any part of the Property, and thereafter for the ETJ Portion of the Property to continue to remain in the corporate limits of the City in perpetuity. Therefore, **OWNERS AND ALL FUTURE OWNERS OF THE PROPERTY**, **(INCLUDING FUTURE END-BUYERS AND DEVELOPERS) IRREVOCABLY AND UNCONDITIONALLY CONSENT TO THE ANNEXATION OF THE ETJ PORTION OF THE PROPERTY INTO THE CORPORATE LIMITS OF THE CITY OF GEORGETOWN, TEXAS AND WAIVE ALL OBJECTIONS AND**

PROTESTS TO SUCH ANNEXATION, AND FURTHER CONSENT TO THE PROHIBITION ON DEVELOPMENT OF THE PROPERTY PRIOR TO ADOPTION BY THE CITY COUNCIL OF THE PUD ORDINANCE PERTAINING TO THE PROPERTY.

4.04. **Submittal of Voluntary Annexation Petition and Zoning Request**. On or before the Voluntary Annexation Petition Deadline, CAH and Barton shall submit (*a*) a Voluntary Annexation Petition in the form attached hereto as *Exhibit I* to the City Secretary; and (*b*) all supporting documentation and fees for processing the Voluntary Annexation Petition, with complete copies of same simultaneously provided to the City Manager and City Planning Director. CAH and Barton expressly waive their respective rights to withdraw the Voluntary Annexation Petition from consideration after submittal of the Voluntary Annexation Petition to the City.

4.05. **Effect of Failure to File Voluntary Annexation Petition.** The Parties agree that failure of CAH and Barton to file, or cause to be filed, the Voluntary Annexation Petition as required by Section 4.04 of this Agreement is a material breach of this Agreement, and in such instance the provisions of Section 8.01.04 of this Agreement shall apply.

ARTICLE 5. DEVELOPMENT OF THE PROPERTY

5.01. **Land Plan**. Subject to the provisions of Section 4.01 of this Agreement and to the other provisions of Article 5 of this Agreement, the City Council hereby approves the Land Plan attached hereto as *Exhibit B*, *Exhibit C*, *Exhibit D*, *Exhibit E*, and *Exhibit F*.

5.02. **Prohibition of Development Prior to Annexation of the ETJ Portion of the Property**. Notwithstanding the City Council's approval of the Land Plan, Owners agree that, prior to annexation of the ETJ Portion of the Property and adoption by the City Council of the PUD Ordinance for the Property, Development of the Property or any portion of the Property is prohibited. Owners further agree that after annexation of the ETJ Portion of the Property and adoption of the PUD Ordinance, Development of the Property is limited as follows: (i) Up to six hundred (600) multi-family residential units and up to 18 acres of commercial development; and (ii) in accordance with the Applicable Laws. In addition, no septic tanks or other uses are allowed on the Property.

5.03. Waiver of Development Rights Prior to Annexation and Adoption of PUD Ordinance. By their signatures on this Agreement, Owners and Duke expressly and irrevocably waive all rights to Develop, or cause suffer or allow Development of, the Property for any purpose whatsoever prior to annexation of the ETJ Portion of the Property into the corporate limits of the City and adoption by the City Council of the PUD Ordinance. Owners and Duke further agree that any zoning application filed with the City for the Property or any portion of the Property shall conform to the Land Plan, and that after the adoption of the PUD Ordinance, the Land Plan shall be null and void

and the provisions of this Agreement, the PUD Ordinance and the Applicable Laws shall govern Development of the Property.

ARTICLE 6. UTILITY REQUIREMENTS

6.01. **City as Exclusive Water, Wastewater, and Electric Utility Provider**. The Parties agree that, on the terms and conditions set forth in this Agreement, the City shall be the exclusive provider of retail water and wastewater service to the Property up to the LUE Limit, and that the LUE Limit will be allocated to the Duke Portion of the Property up to the Duke LUE Limit, to the Nation Property up to the Nation LUE Limit, and to the Remainder of the Barton Property up to the Barton LUE Limit. The Parties further agree that the City shall also be the exclusive retail electric services provider to all electric customers on the Property.

6.02. **General Conditions of Water and Wastewater Service**. The City's agreement to provide retail water and wastewater service to active connections within the Duke Portion of the Property up to the Duke LUE Limit, the Nations Property up to the Nations LUE limit, and to the Remainder of the Barton Property up to the Barton LUE Limit, is expressly contingent on the conditions precedent set forth below and in Section 6.03 of this Agreement; provided however, that pursuant to Section 8.01.05, the responsibilities of each of the Owners of the Property are several and not joint:

6.02.01 Owners and/or Duke, as applicable, have complied with their obligations under this Agreement and with Applicable Laws, including, without limitation, the obligations regarding annexation and the restrictions on Development set forth in Article 3, Article 4 and Article 5 of this Agreement.

6.02.02 A duly authorized representative of the City has approved and signed final plats for the portion of the Property to be furnished with water and wastewater service.

6.02.03 Owners and/or Duke, as applicable, have completed construction of the Internal Facilities required to provide retail water and wastewater service to the portion of the Property owned by said party to be furnished service, and such improvements are operational, dedicated to, and have been accepted by the City.

6.02.04 Owners and/or Duke, as applicable, have paid to the City all required fees and charges (including but not limited to Impact Fees) or said fees have been paid on behalf of Owner by customers within the portion of the Property to be served.

6.03. Additional Requirements for Water and Wastewater Service

6.03.01 Owners and/or Duke, as applicable, acknowledge and agree that, an additional prerequisite to the City's provision of retail water service to connections

on the Property is the construction by Owners and/or Duke, as applicable, at no cost to the City, of the Water Line.

6.03.02 Owners and/or Duke, as applicable, acknowledge and agree that, an additional prerequisite to the City's provision of retain wastewater service to connections on the Property is the construction by Owners and/or Duke, as applicable, at no cost to the City, of the Wastewater Line.

6.03.03 Owners and/or Duke, as applicable, shall comply with all Applicable Laws in permitting, designing, constructing, and transfer to the City of the Internal Facilities, Water Line, and Wastewater Line.

6.04. Electric Service

6.04.01 Owners agree that the City shall be the exclusive provider of electric services to the Property on the same terms and conditions that are applicable to similarly situated and classified electric customers of the City.

ARTICLE 7. TRAFFIC IMPACT ANALYSIS AND OTHER DEVELOPMENT REQUIREMENTS

7.01. **Traffic Impact Analysis**. Simultaneously with submittal to the City of the first site plan application for any portion of the Property by Owners or Duke (whichever of them shall first submit a site plan for any portion of the Property, called the "<u>Submitting Party</u>" in this Section), a proposed Traffic Impact Analysis ("<u>TIA</u>") analyzing traffic impacts resulting from Development of the Property to the maximum extent allowed under the PUD Ordinance, prepared in accordance with the requirements of the UDC pertaining to TIAs shall be submitted. The proposed TIA shall also bear the signature or other evidence of approval from the non-Submitting Party. The City shall review and provide written comments on the proposed TIA to the Submitting Party within sixty (60) days of submittal. The Submitting Party shall have thirty (30) days to respond to the City's comments on the proposed TIA and submit or resubmit the proposed TIA to the City for approval. This process shall continue until the City advises the Submitting Party in writing that the TIA is approved and final.

7.02. **Other Development Requirements**. The Owners' and Duke's Development activities on the Property must comply with all Applicable Laws and this Agreement.

ARTICLE 8. DEFAULT AND REMEDIES.

8.01. **Owners' or Duke's Default**.

8.01.01 **Non-Monetary Default**. Except as otherwise provided in Section 8.01.04 of this Agreement, in the event of a default by Owners or Duke that cannot be cured by the payment of money to the City ("<u>Non-Monetary Default</u>"), the City

may give Owners or Duke written Notice specifying the Non-Monetary Default. Owners or Duke shall be allowed thirty (30) days to cure the Non-Monetary Default after the date of Notice thereof is issued by the City; if however, Owners or Duke have commenced performance of or compliance with its obligations with the thirty (30) day period, Owners or Duke shall be allowed up to sixty (60) days from the date of the City's Notice to cure the non-performance or non-compliance. During the event of Non-Monetary Default, the City shall not be required to process any applications, issue any approvals, or grant any permits to Owners or Duke for any Development or other City approvals pertaining to of the Property.

8.01.02 **Monetary Default**. Except as otherwise provided in Section 8.01.04 of this Agreement, in the event of default by Owners or Duke that can be cured by the payment of money to the City ("<u>Monetary Default</u>"), the City may give Owners or Duke written Notice specifying the default and amount owed. Owners or Duke shall be allowed seven (7) days after receipt of the Notice specifying the Monetary Default to cure the Monetary Default, after which the City shall not be required to process any applications, issue any approvals, or grant any permits to Owners or Duke for any Development or other City approvals pertaining to of the Property until the Monetary Default is cured.

8.01.03 **Voluntary Annexation Petition Deadline Default**. The Parties agree that if CAH or Barton fail to perform the requirements of Section 3.01 of this Agreement pertaining to the sale and transfer of, and simultaneous assignment and assumption of rights and duties regarding, the Duke Portion of the Property to a Duke Assignee, this Agreement shall automatically terminate at 5:00 0'clock PM on the date of the Voluntary Annexation Petition Deadline without the necessity of further action by the Parties. If this Agreement is terminated for the reason described in this Section, the Parties shall have no further duties to each other and specifically, but without limitation, unless otherwise expressly stated herein: (x) the City shall have no obligation to provide water or wastewater service to connections on the Property or to prepare or consider adoption of the PUD Ordinance, and (y) the Land Plan shall not apply to the Property.

8.01.04 **Annexation Default**. The Parties agree that if the Voluntary Annexation Petition is not received by the City as required by Section 4.04 of this Agreement on or before the Voluntary Annexation Petition Deadline, this Agreement shall automatically terminate at 5:00 pm CST or CDT on the date of the Voluntary Annexation Petition Deadline without the necessity of further action by the Parties. If this Agreement is terminated for the reason described in this subsection, the Parties shall have no further duties to each other and specifically, but without limitation: (x) the City shall have no obligation to provide water or wastewater service to connections on the Property or to prepare or consider adoption of the PUD Ordinance; and (y) the Land Plan shall not apply to the Property.

8.01.05 **Uncured Owners or Duke Defaults.** Except as otherwise provided in Section 8.01.03 and Section 8.01.04 of this Agreement, if a Non-Monetary or Monetary Default is not cured within the applicable cure period, and if the City has not waived the default in writing, then after the expiration of the applicable cure period, the City may, in its sole discretion, and without prejudice to any other right or remedy allowed under this Agreement, seek any other relief available at law or in equity, all of which are cumulative and are in addition to any other right or remedy given under this Agreement which may now or subsequently exist in law or in equity by statute or otherwise, and the exercise of any one remedy does not preclude the exercise of another.

8.01.06 **Owners' Respective Liability**. Except as expressly set forth herein: (a) the liabilities, obligations and responsibilities under this Agreement of each owner of the Property or any portion thereof, or their permitted successors and assigns, are several, and not joint; and (b) no owner of the Property or any portion thereof, or their permitted successors or assigns, will be in default under this Agreement or otherwise liable or responsible for any default which is not caused by such landowner or by any person acting by, through or under such owner or successor or assign.

8.02. **City Default**. In the event of a default by the City under this Agreement, Owners or Duke may petition a court to require the City to specifically perform its obligations under the terms and conditions of this Agreement. However, in no event shall the City be liable for any monetary, consequential, or incidental damages, however caused, except to the extent (a) permitted under the Texas Tort Claims Act; or (b) arising from the City's or its agents' damage to the Property when inspecting or entering such property under this Agreement.

ARTICLE 9. TERM

9.01. **Term.** Except for the provisions of this Agreement that expressly survive termination, this Agreement shall commence and bind the Parties on the Effective Date and continue until a date which is ten (10) years after the Effective Date, unless sooner terminated by express written agreement executed by all Parties.

ARTICLE 10.MISCELLANEOUS

10.01. **No Special Districts**. In furtherance of the purposes of this Agreement, the Parties, on behalf of themselves and their respective successors and assigns, covenant and

agree that none of them shall initiate, seek, petition, sign, support, join in, associate with, consent to, or direct to be signed any petition or request seeking the creation of any other special taxing or assessment jurisdiction over the Property.

10.02. **Agreement Binds Successors and Permitted Assigns**. This Agreement shall bind and inure to the benefit of the Parties, their successors, heirs, and those assigns permitted by Section 10.04 of this Agreement.

10.03. **Amendments**. The Parties may amend this Agreement only by a written agreement of the Parties that identifies itself as an amendment to this Agreement.

10.04. Assignment.

10.04.01 Except as otherwise specifically allowed under Section 10.04.02 of this Agreement: (i) no Party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Parties which shall not be unreasonably withheld; and (ii) all assignments of rights and delegations of duties are prohibited under this subsection, whether they are voluntary or involuntary, by merger, consolidation, dissolution, operation of law, or any other manner. As used in this definition, a "change of control" is deemed to be an assignment of rights, and "merger" refers to any merger in which a Party participates, regardless of whether it is the surviving or disappearing entity.

10.04.02 Owner(s) may assign to a Duke Assignee the following rights and duties under this Agreement in whole but not in part: (i) the right to Develop the Duke Portion of the Property consistently with the PUD Ordinance pertaining to the Duke Portion of the Property; (ii) the duty to design and construct the Water Line and the Wastewater Line, and (iii) the right to receive retail water and wastewater service from the City up to the Duke LUE Limit, provided that such assignment to a Duke Assignee shall be effective only if the assignment is in writing, specifically sets forth those of Owners' rights assigned and duties delegated as allowed by this Agreement, requires the Duke Assignee to assume the assigned duties and obligations set forth in subsections (i) through (iii) of this Section, is executed by duly authorized representatives of Owners and the Duke Assignee, and a copy of the assignment and assumption agreement is delivered to the City within fifteen (15) days after the effective date of such assignment and assumption agreement. Any other purported assignment or delegation by Owners is void. Unless provided otherwise in the assignment and assumption agreement between Owners and the Duke Assignee, contemporaneously with an assignment and assumption agreement between Owners and the Duke Assignee confirming to the requirements of this Section of the Agreement, Owners shall be released by the City of Owners' rights and duties pertaining to assigned and delegated obligations, and the City shall be released of its corresponding duties to

Owners under this Agreement. For the avoidance of doubt, pursuant to Section 3.01 above, CAH and Barton shall be the only "Owners" required to execute the assignment for the Duke Portion of the Property.

10.04.03 The mere conveyance of a lot or any portion of the Property without a written assignment comporting with the requirements of Section 10.04 shall not be sufficient to constitute an assignment of the rights or obligations of Owners hereunder.

10.05. **No Waiver**. The Parties may waive any provision of this Agreement only by a writing executed by the Party or Parties against whom the waiver is sought to be enforced. A waiver made in writing on one occasion is effective only in that one instance and only for the purpose stated. A waiver once given is not to be construed as a waiver on any future occasion or against any other Party who is not a signatory to the waiver instrument. No failure or delay in exercising any right or remedy or in requiring satisfaction of any condition under this Agreement, and no act, omission, or course of dealing among the Parties operates as a waiver or estoppel of any right, remedy, or condition.

10.06. **Severability**. If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions of this Agreement shall not apply, and the Agreement shall be considered to be terminated by mutual agreement of the parties.

10.07. **Governing Law/Venue**. The laws of the State of Texas (without giving effect to its conflict of laws principles) govern all matters arising out of or relating to this Agreement and the transactions it contemplates, including, without limitation, its interpretation, construction, performance, and enforcement. Venue over any legal action or proceeding against any other Party arising out of or relating to this Agreement shall be in Williamson County, Texas.

10.08. **Signature Warranties**. Each of the Parties hereby represent and warrant on behalf of itself that the Party has full power to execute and deliver and perform the terms, duties, and obligations of this Agreement and all the foregoing has been duly and validly authorized by all necessary proceedings. This Agreement constitutes the legal, valid and binding obligations of the Parties, enforceable in accordance with its terms.

10.09. **Counterparts**. The Parties may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one Agreement. The signatures of all the Parties need not appear on the same counterpart, and delivery of an executed counterpart signature page via e-mail or by facsimile is as effective as executing and delivering this Agreement in the presence of the other Parties to this Agreement.

10.10. **Recording**. This Agreement shall be recorded by the City in the Official Public Records of Williamson County, Texas, at Duke's expense.

10.11. **Effect on Individual Lot Owner**. Except regarding Article 3 of this Agreement, pertaining to annexation, this Agreement is not intended to be binding upon, or create any encumbrance to title as to, any ultimate consumer who purchases a fully developed and improved lot within the Property.

10.12. Entire Agreement. This Agreement and the attached Exhibits contain the entire agreement between the Parties and correctly sets forth the rights, duties, and obligations of each to the other as of the Effective Date. Any oral representations or modifications or amendments concerning this Agreement shall be of no force or effect excepting a subsequent written amendment to this Agreement executed by duly authorized representatives of all Parties.

10.13. **Notice**. Any notice given under this Agreement must be in writing and may be given: (i) by depositing it in the United States mail, certified, with return receipt requested, addressed to the party to be notified and with all charges prepaid; or (ii) by depositing it with Federal Express or another service guaranteeing "next day delivery," addressed to the party to be notified and with all charges prepaid; (iii) by personally delivering it to the party, or any agent of the party listed in this Agreement, or (iv) by facsimile with confirming copy sent by one of the other described methods of notice set forth. Notice by United States mail will be effective on the earlier of the date of receipt or three (3) days after the date of mailing. Notice given in any other manner will be effective only when actually received. For purposes of notice, the addresses of the Parties will, until changed as provided below, be as follows:

If to City:	City Manager City of Georgetown City Hall 808 Martin Luther King Jr. St. Georgetown, Texas 78626-5527
With a copy to:	City Attorney City of Georgetown

City Hall 808 Martin Luther King Jr. St. Georgetown, Texas 78626-5527

If to Owners:	Carrie Ann Barton Smith Separate Property Revocable Trust 310 Lazy Lane San Marcos, TX 78666 Attn: Terri Leanne Wisian and Merry Carol Rodriguez Email: mrodriguez@vvisd.org; terri.wisian@comalisd.org
With a copy to:	Children at Heart Foundation 1301 N. Mays Street Round Rock, TX 78664 Attn: Todd Roberson Fax: (512) 388-2857 Email: todd.roberson@cahm.org
With a copy to:	Highground Advisors 1601 Elm Street, Suite 1700 Dallas, TX 75201 Fax: (214) 978-3397 Email: <u>Joe.hancock@highgroundadvisors.org</u>
With a copy to:	Bill Nations MLL Horizon Investments P.O. Box 1105 Georgetown, TX 78627 Fax: Email: <u>billnations@nationstx.com</u>
With a copy to:	Ron Habitzreiter 1208 West Avenue Austin, TX 78701 Fax: Email:
If to Duke:	Duke, Inc. 13740 Midway Road, Suite 804 Dallas, TX 75244 Attn: Robert J. Stone, III Fax: (972)385-7454 Email: <u>rob.stone@dukecompanies.com</u>

With a copy to:	Metcalfe Wolff Stuart and Williams, LLP
	221 West 6th St., Suite 1300
	Austin, TX 78701
	Attn: Talley Williams
	Fax: (512) 404-2245
	Email: <u>twilliams@mwswtexas.com</u>

ARTICLE 11.Effect of Recitals.

11.01. The Recitals in this Agreement are found and agreed to be true and correct and are incorporated into this Agreement by reference as if set forth in full.

ARTICLE 12.Exhibits.

12.01. The following exhibits are attached hereto and made a part of this Agreement:

Exhibit A-1	CAH Property	
Exhibit A-2	Barton Property	
Exhibit A-3	Duke Portion of the Property	
Exhibit A-4	ETJ Portion of the Property	
Exhibit A-5	Nations Property	
Exhibit A-6	Remainder of the Barton Property	
Exhibit B	Land Plan -	
Exhibit C	Land Plan -	
Exhibit D	Land Plan -	
Exhibit E	Land Plan -	
Exhibit F	Land Plan -	
Exhibit G	Restrictive Covenant	
Exhibit H	Voluntary Annexation Petition	

CITY:

By: DALE ROSS, MAYOR

ATTEST:

By:_____

Robyn Densmore, City Secretary

APPROVED AS TO FORM:

By:_____

Charlie McNabb, City Attorney

STATE OF TEXAS § S COUNTY OF WILLIAMSON §

This instrument was acknowledged before me on the _____ day of _____, 2019, by Dale Ross, Mayor of the City of Georgetown, Texas, a home-rule city, on behalf of the City.

(seal)

OWNERS (CAH):

CHILDREN AT HEART FOUNDATION, a Texas non-profit corporation

By:	
Name:	
Title:	
Date:	

STATE OF TEXAS § S COUNTY OF WILLIAMSON §

This instrument was acknowledged before me on the ____ day of _______, 2019, by ________, of the Children at Heart Foundation, a Texas non-profit corporation, of behalf of said non-profit corporation.

(seal)

OWNERS (BARTON):

CARRIE ANN BARTON SEPARATE PROPERTY REVOCABLE TRUST, a Texas revocable trust

Name: Title:
Title:
Date:
STATE OF TEXAS §
§
COUNTY OF WILLIAMSON §
This instrument was acknowledged before me on the day of
, 2019, by,
of the CARRIE ANN BARTON SEPARATE
PROPERTY REVOCABLE TRUST, a Texas revocable trust, of behalf of said trust.

(seal)

OWNERS (NATIONS):

MLL HORIZON INVESTMENTS, L.L.C., a Texas limited liability company

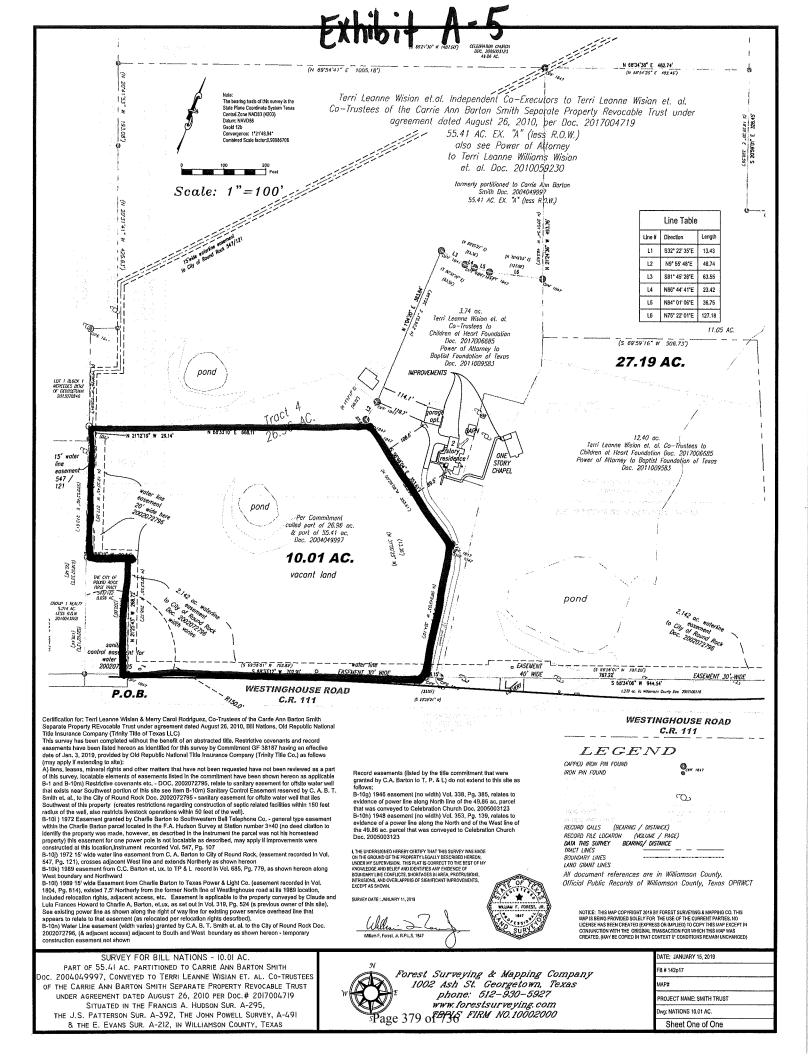
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COUNTY OF WILLIAMSC							
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(seal)							
			Notary P	Public Si	gnature	2	
		BILL N	JATION	S			 -
STATE OF TEXAS	§ §						
COUNTY OF WILLIAMSC							

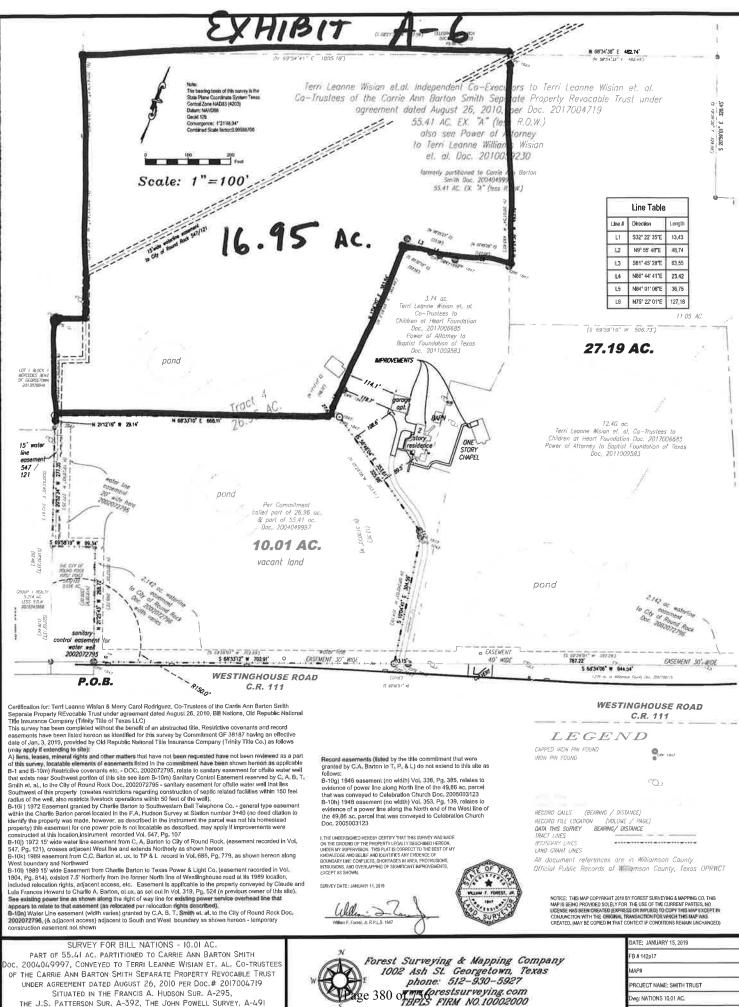
This instrument was acknowledged before me on the _____ day of _____, 2019, by Bill Nations.

(seal)

DUKE:	D	ıke, Inc., a T	exas corpo	oration		
	Ti	: ume: le: te:				_
STATE OF TEXAS	§ §					
COUNTY OF						
This instrument	was acknowled 2019, by	0			day	
	of Dr	ke, Inc., on b	ehalf of D	uke Inc.		

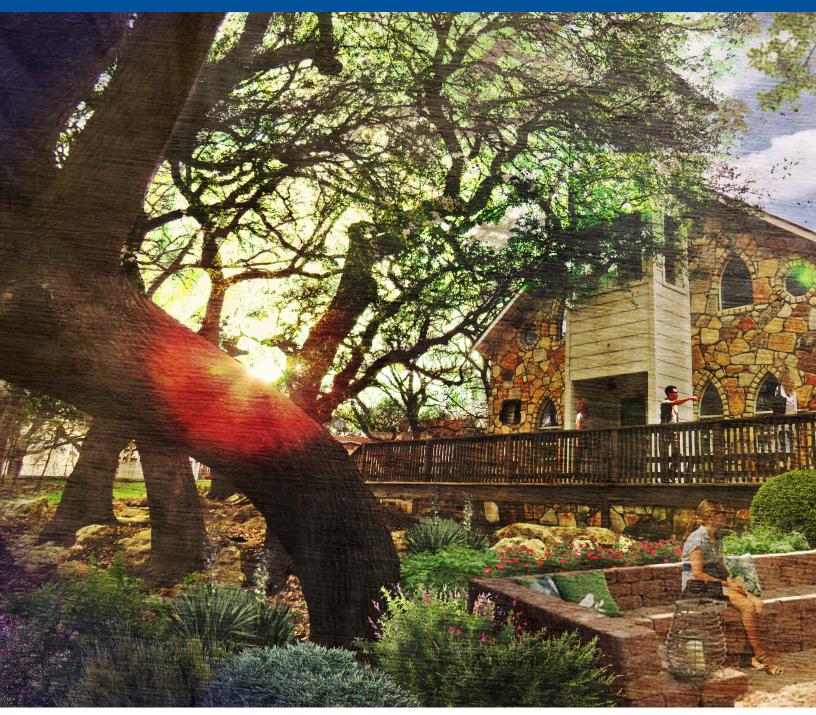
(seal)





SITUATED IN THE FRANCIS A. HUDSON SUR. A-295, THE J.S. PATTERSON SUR, A-392, THE JOHN POWELL SURVEY, A-491 & THE E. EVANS SUR. A-212, IN WILLIAMSON COUNTY, TEXAS

wg: NATIONS 10.01 AC Sheet One of One



CHAPEL HILL Planned Unit Development

HALFF

Chapel Hill is planned as a cohesive, mixed-use Additional Permitted Land Uses environment supportive of the mix of uses in the corridor. The Multifamily area is intended for attached residential development, such as apartments and condominiums. The Commercial area is intended to provide areas for commercial retail and employment Any "Permitted" uses added by the City to the C-1 activities.

General Land Use

Except as provided in this Exhibit, Chapel Hill land uses shall be governed by the allowances and procedures established in Chapter 5 of the UDC, as of the effective date of this agreement. Within the development, the designated commercial area shall adhere to the C-1 District requirements and the designated multifamily area shall adhere to the MF-2 District requirements.

Prohibited Land Uses

In addition to specified land uses that are prohibited in Chapter 5 of the UDC, the uses outlined in Table C.1 are also prohibited throughout the Chapel Hill development.

Table C.1 Prohibited Land Uses

Prohibited Land Uses

- 1. Cemetery, Mortuary, or funeral home
- 2. Correction Facility
- 3. Firing Range (Indoor or Outdoor)
- 4. Manufactured Housing
- 5. Manufactured Housing Sales
- 6. Pawn Shop
- RV Sales, Rental or Service 7.
- 8. Self-Storage, Outdoor
- 9. Sexually-oriented business
- 10. Transient Service Facility
- 11. Waste-Related Uses
- 12. Wrecking, Scrap and Salvage Yard

In addition to the stated land use allowances, Chapel Hill includes additional permitted land uses, as described in Table C.2.

and MF-2 Districts in the UDC following the effective date of this agreement shall, upon adoption, become a Permitted use in the Chapel Hill development.

Table C.2 Additional Permitted Land Uses

Additional Land Uses (Commercial)

- 1. Restaurant, General
- 2. Restaurant, Drive-Through
- 3. Food Catering Services
- 4. Live Music or Entertainment
- 5. Printing and Publishing
- 6. Office/Warehouse
- 7. Office/Showroom
- 8. Research, Testing and Development Lab
- 9. Manufacturing, Processing and Assembly, Limited
- 10. Commercial Document Storage

Additional Land Uses (Multifamily)

- 1. Office
- 2. Multifamily, Low-Density
- 3. Townhouse

Notes:

• All land uses in this table are permitted by-right without supplemental requirements or special use permits.

DESIGN STANDARDS

Architectural building minimum percentage materials throughout the	of high-qua	lity masonry	Development Standards	Land U	se Area
requirements are delineat and a Westinghouse Ro	ad overlay t	hat ensure a		Com- mercial	Multi- family
minimum level of masc building facades, as set ou			Minimum Lot Size	None	None
Table D.1 Building Maso	onry Standar	ds	Minimum Lot Width (feet)	15	15
	-		Street Setback to Westinghouse Road (feet)	15	15
Area	Class I Minimum %	Class II Maximum %	Perimeter ¹ Setback (feet)	10	10
Commercial	60	40	Internal Commercial Lot Setback (feet)	0	N/A
Multi-family	60	40	Setback to a Residential District (feet)	10	10
Westinghouse / Entry Overlav	75	25			
Note: Windows, doors, trim, and architectural features are exempt from			Building Height (feet)	45	45
masonry requirements			Building Separation (feet)	10	10
Class I Masonry is defined	has exterior fi	nich materials	Residential Units per Building (max.)	50 ²	30
Class I Masonry is defined as exterior finish materials including brick, natural stone, engineered stone, thin			Residential Dwelling Unit Size (min.)	No min.	No min.
brick, and stucco.					
Class II Masonry is defined as exterior finish materials			Sidewalk - Westinghouse Road (feet)	6	6
including split-faced concrete masonry units, fiber cement siding, synthetic wood, EIFS and embossed or pre-finished architectural metal panel.			Notes ¹ Perimeter Setback applies to outer boundary of pr ² Residential Units in commercial area allowed for up		lv
Westinghouse / Entry Overlay is conceptually					•• 3

depicted on the Conceptual Master Plan ("Exhibit B"). Enhanced architectural masonry shall apply to the building facades on the first row of buildings facing Westinghouse and Barton Drive(way). The depth represented in the exhibit is conceptual; all such first buildings in this vicinity shall express the enhanced facade towards the street.

Table D.2 Development Standards

SITE ACCESS

Access to the 54 acres will be taken from Westinghouse in the form of three driveways, as generally depicted in Exhibit E. The number of driveways and locations of each will be studied with the T.I.A. to determine the number of and precise locations, based on speed and sight distance analysis.

In order to promote a cohesive site, shared access points and private driveway circulation will ensure a sense of inclusion and commonality.

The main entry, to be known as Barton Drive, can be constructed and designated as a private street or driveway, serving both the residential and commercial uses on the site. If designated as a private street, interior lots within the site may utilize the main entry to provide minimum lot frontage.

Traffic circulation throughout the site will primarily be achieved through private driveways. A traffic calming feature such as a traffic circle may be installed at the developer's choosing.

Gated access is allowed for the multifamily development. Stacking depths for gates located on an internal driveway (not designated a public or private street) shall not be required to exceed one (1) car length. If a gated entry is directly adjacent to a public street, a stacking of four (4) car lengths is required.

PEDESTRIAN AND BICYCLE

Along Westinghouse Road, a 6-foot sidewalk will be designed within the public utility easement or rightof-way at the time of Site Development Plan and constructed with the first phase of building permits.

To ensure connectivity within the site and nonvehicular access to the office and retail areas within the site, a private pedestrian/bike path may be constructed from the multifamily site(s) down to the commercial area, with a connection to Westinghouse. This 10' multi-use path would count towards one of the required residential common amenity areas mentioned in Exhibit F to provide shared access for multiple residential development and the developer.

PARKING SPACE / PARKING LOT DESIGN

Tandem Parking may be utilized for multi-family up to 20% of required parking, but only when the front vehicle is designated inside of a garage or carport. All

such parking shall be demarcated as reserved.

Aisle Widths for driveways interior to the site without parking on either side of the aisle shall be a minimum of 22 feet in width. Driveways shall be signed for no parking.

OFF-STREET PARKING REQUIREMENTS

Off-street parking shall generally adhere to the UDC Chapter 9 requirements, except as specified in Table E.1 below. Shared parking may be considered by the Director in areas where commercial and office uses are permitted.

Table E.1 Vehicular Parking

Land Use Category (UDC)	Chapel Hill Areas					
	Commercial	Multifamily				
Household Living	1 per 1 BR-unit; 1.5 per 2+ BR-unit	1 per 1 BR-unit; 2 per 2+ BR-unit				
Mixed-Use Retail Center (GFA)	1 per 200	1 per 200				
Professional and Business Offices (GFA)	1 per 300	1 per 300				
All Other Uses	As specified in U	JDC Chapter 9				
Terms: BR = Bedroom						

GFA = Gross Floor Area square footage

Open space and shared stormwater facilities are **IMPERVIOUS COVER** necessary components of this development due to Impervious cover maximum per-acre percentages the ridgeline and topography throughout the site. are specified below in Table F.1. To achieve higher Retaining much of the natural ridgeline, preserving impervious cover percentages, the following features the beautifully rough "Rocky Grove" tree stand on the are established on the Conceptual Master Plan east ridge, and maintaining the regional wet pond east ("Exhibit B"): of the entry will not only enhance the site but allow for improved stormwater and water quality controls. 1. Low Impact Design - Regional wet pond;

COMMON AREA AMENITIES

Development within the multifamily area shall provide on-site amenities according to the UDC,

LANDSCAPING AND BUFFERING

All landscaping on site shall be in conformance wi Chapter 6 of the UDC except as stated below f bufferyards and boundary walls.

Bufferyards internal to the site shall not be require between the commercial and multifamily areas.

Residential Boundary Walls are not required so as to maintain the open aesthetic of the natur landscape. Wrought-iron or similar fencing may l constructed along Westinghouse at the developer discretion, not to exceed six (6) feet in height.

TREE PRESERVATION/MITIGATION

Trees shall be protected on-site and mitigation measures taken for removals in accordance with Chapter 8 of the UDC except as stated below for tree survey.

EXHIBIT F: OPEN SPACE, LANDSCAPING & IMPERVIOUS COVER

- 2. Preservation of Natural Areas The Rocky Grove tree stand: and
- 3. Over-provision of Landscaping.

Table F.1 Impervious Cover

Impervious Cover	Chapel Hill Areas			
	Commercial	Multifamily		
Impervious Cover - Overall (max.)	60%	50%		
Regional Wet Pond	+7%	+7%		
Preservation of Native Tree Stands +5% +5%				
Extra Landscaping +3% +3%				
 Bonuses may be achieved for all uses. All uses may get credit for a regional wet pond if the pond retains drainage from each. Multifamily development may include portions of the commercial area property as part of the calculation of impervious cover as long as the area and calculation are depicted on a Site Development Plan. 				

Signage and commercial identification are critical to the success of the project because most of the development will not have frontage on Westinghouse Road. So that internal businesses and multifamily providers can advertise their presence to the public, additional signs and sizes are permitted. A cohesive design theme along Westinghouse Road will be presented with a Master Sign Plan, to be submitted with the first Site Development Plan for any portion of the property. Except as specified in this exhibit, all other signage shall be in conformance with Chapter 10 of the UDC.

SIGN TYPES ESTABLISHED

The following sign types are permitted within the site:

- Westinghouse Low-Profile Monument Signs
- Westinghouse Entry Monument Signs
- Interior Low-Profile Monument Signs
- Building Wall Signs
- Exempt and Provisionally Exempt Signage

SIGN DESIGN AND MATERIALS

Sign materials will tend to evoke the architectural elements associated with nearby buildings. Accordingly, the sign design and material palette may vary based on the sign location and context but will remain consistent with the general design theme established in the master sign plan.

Sign height and area maximum dimensions can be found in Table G.1, below. Sign Base materials shall consist of Class I masonry material at a minimum height established in Table G.1. Additional landscaping, beyond minimum requirements, will be provided around the base of the signs, to be submitted at the time of sign permit.

SIGN LOCATIONS

Signs will be placed to for optimal identification and direction for the end-users on the site. Final locations will be determined by, but not limited to, lot boundaries, driveway layouts, building locations, etc. Sign location swill be established at the Site Development Plan. Sign setbacks shall be in accordance with the UDC.

ENTRY SIGNAGE

The primary front door for Chapel Hill is the Barton Drive shared private entry from Westinghouse Road. It is essential that any multi-user development also has relevant signage and street expression to advertise their locations. The Westinghouse Entry monument signs will have plant and monument landscaping features in addition to the signage allowed in Table G.1. These features will help define a sense of place for both residents and patrons.

		_	
Table	G.1	Sian	Standards

Sign Type	Sign Dimensional Standards				
	Max. # of Signs	Sign Height (max. ft.)	Sign Face Area (max. sq. ft.)	Total Sign Area (max. sq. ft.)	Sign Base (min. height)
Westinghouse Low-Profile Monument	4	6	45	60	18"
Westinghouse Entry Monument	2	8	64	80	24"
Interior Low-Profile Monument	4	5	32	40	18"
Building Wall Signs	As set out in Chapter 10 of the UDC				
Exempt and Provisionally Exempt	As set out in Chapter 10 of the UDC				
Note: Directional signage within the site may	, contain the nan	nes of businesses a	and residential communitie	es located within the sit	e

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

<u>RESTRICTIVE COVENANT FOR DEVELOPMENT AND UTILITY</u> <u>CONSTRUCTION AGREEMENT</u>

This Restrictive Covenant for the Development and Utility Construction Agreement (the "<u>Restrictive Covenant</u>") is entered into as of ______

_____, 2019 (the "<u>Effective Date</u>"), by CHILDREN AT HEART FOUNDATION, a Texas non-profit corporation ("<u>CAH</u>"), the CARRIE ANN BARTON SEPARATE PROPERTY REVOCABLE TRUST, a Texas revocable trust ("<u>Barton</u>"), and BILL NATIONS AND MLL HORIZON INVESTMENTS, L.L.C. ("<u>Nations</u>"). CAH, Barton Trust and Nations are collectively referred to herein as the "<u>Declarants</u>". and is as follows:

RECITALS

- A. Declarants are the owners of land more particularly described in *Exhibit A-1*, *Exhibit A-2* and *Exhibit A-5* attached hereto, which are incorporated herein by reference for all purposes (collectively, the "**Property**"), on which Declarants intend to develop and construct, or cause suffer and allow to be developed and constructed, an approximately _____-unit multifamily rental apartment complex, approximately _____ acres of commercial development, and related improvements.
- B. Pursuant to Section 212.172 of the Texas Local Government Code, Declarants have entered into that certain "Development and Utility Construction Agreement" with the City of Georgetown, Texas, a home-rule municipality principally situated in Williamson County, Texas (the "<u>City</u>"), concerning the Property, which is recorded as Document Number ______ in the Official Public Records of Williamson County, Texas (the "<u>Agreement</u>").
- C. The Agreement provides, among other things, that Declarants and Owners (i) consent to annexation of the ETJ Portion of the Property (described in and shown on *Exhibit B*) and waive all challenges to such annexation under Chapter 43 of the Texas Local Government Code or any other applicable law; and (ii) consent not to cause, suffer or allow Development (as that term is defined in the Agreement) of the Property (described in and shown on *Exhibit A-1, Exhibit A-2 and Exhibit A-*

<u>5</u>) prior to annexation of the ETJ Portion of the Property and adoption by the City Council of the City of Georgetown of a PUD Ordinance governing Development of the entire Property.

- D. For the purposes of this Restrictive Covenant, the term "<u>Owner</u>" means, individually, and the term "<u>Owners</u>" means, collectively, Declarants and all future owners of the fee interest or any portion of the Property (whether such fee interest is obtained through a purchase from Declarants or through a purchase at a foreclosure sale or trustee's sale or through a deed in lieu of foreclosure) and their successors and assigns authorized under the Agreement.
- E. Declarants have agreed to impose upon the Property these covenants and restrictions in order to confirm the applicability of the terms and conditions of the Agreement on all Owners and to ensure orderly development of the Property.

NOW, THEREFORE, Declarants declare that the Property is subject to the following covenants, conditions and restrictions, which run with the Property and bind all parties having right, title, or interest in or to such portion of the Property or any part, their respective heirs, successors, and assigns, and which inure to the benefit of each Owner. Each contract, deed, or conveyance of any kind conveying all or a portion of the Property will conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether they are set out in full or by reference in said contract, deed, or conveyance.

SPECIFIC AGREEMENTS AND RESTRICTIONS

- 1. <u>Recitals Incorporated</u>. The above recitals and all terms defined therein are incorporated into this Restrictive Covenant by reference for all purposes.
- 2. <u>Applicability of Agreement to all Owners</u>. Pursuant to Section 212.172(f) of the Texas Local Government Code, the Agreement is binding on Declarants, Owners, and on Declarants' and Owner's permitted successors and assigns for the term of the Agreement.
- 3. <u>Consent to Annexation of the ETJ Portion of the Property and to Initial Limitation on Development of the Property</u>. Declarants and all Owners hereby (i) consent to annexation of the ETJ Portion of the Property (described in and shown on <u>Exhibit</u> <u>B</u>) and waive all challenges to such annexation under Chapter 43 of the Texas Local Government Code or any other applicable law; and (ii) consent not to cause, suffer

or allow Development (as that term is defined in the Agreement) of the Property (described in and shown on *Exhibit A-1, Exhibit A-2 and Exhibit A-5*) prior to annexation of the ETJ Portion of the Property and adoption by the City Council of the City of Georgetown of a PUD Ordinance governing Development of the Therefore, OWNERS AND ALL FUTURE OWNERS OF THE Property. PROPERTY, (INCLUDING FUTURE END-BUYERS AND DEVELOPERS) IRREVOCABLY AND UNCONDITIONALLY CONSENT TO THE ANNEXATION OF THE ETJ PORTION OF THE PROPERTY INTO THE CORPORATE LIMITS OF THE CITY OF GEORGETOWN, TEXAS AND WAIVE ALL OBJECTIONS AND PROTESTS TO SUCH ANNEXATION, AND FURTHER CONSENT TO THE PROHIBITION ON DEVELOPMENT OF THE PROPERTY PRIOR TO ADOPTION BY THE CITY COUNCIL OF THE PUD ORDINANCE PERTAINING TO THE PROPERTY.

- 4. <u>Duration</u>. Unless modified, amended, or terminated in accordance with the terms hereof, this Restrictive Covenant shall be coterminous with the term of the Agreement. If the Agreement is terminated, Declarants shall record a termination of this Restrictive Covenant promptly after said termination.
- 5. <u>Non-Merger</u>. This Restrictive Covenant will not be subject to the doctrine of merger, even though the underlying fee ownership of the Property, or any parts thereof, is vested in one party or entity.
- 6. <u>Severability</u>. The provisions of this Restrictive Covenant must be deemed to be independent and severable, and the invalidity or partial invalidity of any provision or portion hereof does not affect the validity or enforceability of any other provision.
- 7. <u>Captions</u>. The captions preceding the text of each section and subsection hereof are included only for convenience of reference and will be disregarded in the construction and interpretation of this Restrictive Covenant.
- 8. <u>Governing Law; Place of Performance</u>. This Restrictive Covenant and all rights and obligations created hereby will be governed by the laws of the State of Texas. This Restrictive Covenant is performable only in Williamson County, Texas, where the Property is located.
- 9. <u>Enforcement</u>. If any person, persons, corporation, or entity of any other character, violates or attempts to violate this Restrictive Covenant, it will be lawful for the

City, its successors and assigns, to prosecute proceedings at law, or in equity, against the person or entity violating or attempting to violate these Restrictive Covenant and to prevent said person or entity from violating or attempting to violate such covenant. The failure at any time to enforce this Restrictive Covenant by the City, its successors and assigns, whether any violations hereof are known or not, does not constitute a waiver or estoppel of the right to do so.

10. <u>Modification and Amendment.</u> This Restrictive Covenant may only be modified, amended or terminated upon the filing of a written modification, amendment or termination document in the Official Public Records of Williamson County, Texas, executed, acknowledged and approved by (a) the City; (b) all of the Owners of the Property at the time of the modification, amendment, or termination, and (c) any mortgagees holding first lien security interests on any portion of the Property.

EXECUTED as of the Effective Date above-written.

DECLARANT (CAH):

CHILDREN AT HEART FOUNDATION, a Texas non-profit corporation

By:		
Name:		
Title:		
Date:		

STATE OF TEXAS § S COUNTY OF WILLIAMSON §

(seal)

DECLARANT (BARTON):	CARRIE ANN BARTON SEPARATE PROPERTY REVOCABLE TRUST, a Texas revocable trust
	By: Name: Title: Date:
STATE OF TEXAS § §	
COUNTY OF WILLIAMSON §	
This instrument was acknow, 2019,	vledged before me on the day of,
	of the CARRIE ANN BARTON SEPARATE xas revocable trust, of behalf of said trust.

(seal)

DECLARANT (NATIONS):	MLL HORIZON INVESTMENTS, L.L.C., a Texas limited liability company
	By: Name: Title: Date:
STATE OF TEXAS	\$ \$
COUNTY OF WILLIAMSON	§
, 2019,	cknowledged before me on the day of by of MLL HORIZON INVESTMENTS, L.L.C., a
	of behalf of said limited liability company.
(seal)	
	Notary Public Signature
	BILL NATIONS
STATE OF TEXAS	\$ \$
COUNTY OF WILLIAMSON	§
This instrument was a , 2019, by Bill 1	cknowledged before me on the day of Nations.
(seal)	
	Notary Public Signature

OWNER(S):

Owner(s) of Lot	, Block	/	 _Subdivision,	Georgetown,
Texas				

ACCEPTED AND AGREED TO:

By:_____

Printed Name:_____

Mailing Address:_____

Date:_____

Printed Name:_____

Mailing Address:_	

TO THE MAYOR OF THE GOVERNING BODY OF THE CITY OF GEORGETOWN, TEXAS:

The undersigned owners of the hereinafter described tract of land, which is vacant and without residents, or on which fewer than three qualified voters reside, hereby waive the requirement to be offered a development agreement pursuant to Section 43.035 of the Texas Local Government Code, and petition the City of Georgetown, Texas to extend the present city limits to include as part of the City of Georgetown, Texas, the following described territory, to wit:

Approximately _____ acres of land described by metes and bounds and by sketch on *Exhibit A*, attached to this petition, and further described in the _____ deeds from _____ to _____ recorded as Document Number ______ and from _____ to _____ recorded as Document Number ______ in the Official Public Records of Williamson County, Texas (the "**Property**").

Owners certify that the Property is contiguous and adjacent to the City of Georgetown, Texas, is not more than one-half mile in width.

Owners certify that they understand that construction of any capital improvements necessary for development on the Property will not be the responsibility of the City of Georgetown after annexation; rather, such improvements will occur through non-City financial assistance through the City's subdivision and construction processes.

By submitting this Petition for Voluntary Annexation to the City, Owners expressly agree to waive their right to withdraw this Petition for Voluntary Annexation from consideration prior to the effective date of an ordinance passed and approved by the City Council of the City of Georgetown, Texas, annexing the Property into the corporate limits of the City of Georgetown, Texas.

Owners also request that on annexation the Property be initially zoned by the City as "Planned Unit Development" having base zonings of C-1 Commercial for the commercial areas shown on the Land Plan attached to the Development and Utility Construction Agreement pertaining to the Property, and MF-1 Multifamily for the multifamily areas shown on said Land Plan, and certify that simultaneously with submittal of this Petition for Voluntary Annexation, Owner have submitted an application to the City for such zoning.

Owners certify that this petition is signed and duly acknowledged by each and every person or entity having an ownership or other interest in the Property.

OWNERS/PROPERTY INTEREST HOLDERS:

By: _____

Printed Name:_____

THE STATE OF TEXAS§COUNTY OF WILLIAMSON§

BEFORE ME, the undersigned authority, on this day personally appeared ______, known to me to be a person whose name is subscribed to the Voluntary Annexation Petition and he/she acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office, this _____ day of _____, 2019.

[seal]

OWNERS/PROPERTY INTEREST HOLDERS (CONT'D):

By:_____

Printed Name:_____

THE STATE OF TEXAS§COUNTY OF WILLIAMSON§

BEFORE ME, the undersigned authority, on this day personally appeared ______, known to me to be a person whose name is subscribed to the Voluntary Annexation Petition and he/she acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office, this _____ day of _____, 2019.

[seal]

OWNERS/PROPERTY INTEREST HOLDERS (CONT'D):

By: _____

Printed Name:_____

THE STATE OF TEXAS§COUNTY OF WILLIAMSON§

BEFORE ME, the undersigned authority, on this day personally appeared ______, known to me to be a person whose name is subscribed to the Voluntary Annexation Petition and he/she acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office, this _____ day of _____, 2019.

[seal]

OWNERS/PROPERTY INTEREST HOLDERS (CONT'D):

By: _____

Printed Name:_____

THE STATE OF TEXAS§COUNTY OF WILLIAMSON§

BEFORE ME, the undersigned authority, on this day personally appeared ______, known to me to be a person whose name is subscribed to the Voluntary Annexation Petition and he/she acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office, this _____ day of _____, 2019.

[seal]

EXHIBIT B CONCEPTUAL MASTER PLAN



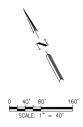
LEGEND



Multifamily

Commercial

Westinghouse Overlay



City of Georgetown, Texas City Council Regular Meeting February 12, 2019

SUBJECT:

Second Public Hearing for the **Voluntary Annexation** of an approximate **262.011-acre tract** of land situated in the William Roberts League Survey, Abstract No. 524, and a portion of Shell Road, a right-of-way of varying width of record described to the Williamson County, Texas, for the property **generally located along Shell Road** approximately 6,800 feet north of Williams Drive, to be known as the **Shell Road development** -- Sofia Nelson, CNU-A, Planning Director

ITEM SUMMARY:

The subject property is located along Shell Road, north of Williams Drive, within the City's extraterritorial jurisdiction. The property has a Moderate Density Residential Future Land Use designation. It is the intent of the applicant to develop the subject property as a mixed-use community.

The action required of Council is to conduct the first public hearing for voluntary annexation submitted in accordance with State Law. No action is required for this public hearing.

In order to complete the annexation, the following process is being followed:

- July 24, 2018: Grant the Petition for Annexation COMPLETED
- February 12, 2019: Conduct 1st Public Hearing held at City Council Meeting @ 3 p.m.- COMPLETED
- February 12, 2019: Conduct 2nd Public Hearing held at City Council Meeting @ 6 p.m.
- March 12, 2019: Action and 1st Reading of Annexation Ordinance
- March 26, 2019: 2nd Reading of Annexation Ordinance

FINANCIAL IMPACT:

City services, including police and fire protection, emergency medical services, solid waste collection and disposal are immediately subject to the property. Extension of capital improvements such as water and wastewater systems will be subject to the City's utility extension and improvement policy or the terms of any potential agreement with the property owner.

SUBMITTED BY: Jordan Feldman, Planner

ATTACHMENTS:

Annexation Petition Exhibit A - Location Map Exhibit B - Legal Description exhibit c- service plan

GreenBuilders-

May 3, 2018

Mr. Wayne Reed, Assistant City Manager City of Georgetown 113 E. Eighth St. Georgetown, TX 78626

Dcar Wayne,

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Re: Letter of Intent for Annexation of the Shell Road Public Improvement District

My name is Jay Gouline, Secretary of Green Builders, Inc. ("Applicant"), which is the owner of the property as shown on Exhibit "A", located along Shell Road contiguous to the current City of Georgetown city limits and within the extra territorial jurisdiction of the City of Georgetown, (the "Property"). The Property is currently vacant, used for agricultural purposes and there are no residents living on the Property

It is the intent of the Applicant to develop a 1,000 lot detached single family and multifamily development and mixed-use development, a concept plan of which is attached as Exhibit "B" (the "Project"), including streets, drainage, water quality and residential amenities, including but not limited to, hike and bike trails, parks and park improvements, pocket parks, landscape areas, street trees, sidewalks, trails, alleyways, distinctive lighting and signage, recreational and hydration and parking facilities, water quality facilities, and other related improvements. The Applicant further intends to process an application for the creation of the Shell Road Public Improvement District, obtain Planned Unit Development Zoning for the Property and to negotiate, other process and enter into other agreements with the City to insure the consistent and orderly development of the Property.

It is the intention of the Applicant to provide, along with the development and sale of lots in the Property, the necessary streets, drainage, water, wastewater, water quality and residential amenities to serve the full build-out of the Project (the "Infrastructure"). With the filing of a petition for voluntary annexation, the landowner understands that construction of any capital improvements necessary for development on the property will not be the responsibility of the City of Georgetown if approved for annexation; rather, such improvements will occur through non-City financial assistance through the subdivision and construction process unless agree to otherwise by the City and the Applicant.

Consequently, it is the intention of the Applicant to file and process a request for voluntary annexation of the Property contemporaneously with the processing of a request for the

creation of the Shell Road Public Improvement District, the zoning of the Property as a Planned Unit Development consistent with the development regulations of the Georgetown Planned Unit Development, Ord. No. 98-21approved by the City of Georgetown on April 28, 1998, Ord. No. 98-21 and other related agreements in furtherance of the Project.

The City by the acceptance of this Letter of Intent, will accept all applications filed with respect to the Project, including the Public Improvement District, and agree to process such, under applicable rules and regulations of the City of Georgetown, and approve such, if such applications meet applicable ordinances and regulation of the City of Georgetown.

Applicant reserves the right to withdraw the petition for voluntary annexation application from consideration at any time during the proceedings.

Sincerely, Gouline

GREEN BUILDERS, INC., a Texas corporation

By:

1

Jay Gouline, Secretary

INANY LAND

COUNTY OF BALTINGA

This instrument was acknowledged before me on the $-\frac{4}{5}$ day of May, 2018, by Jay Gouline, Secretary of Green Builders, Inc.

tary Public, State of

4819-7882-6073.v1

June 19, 2018

Mr. Wayne Reed, Assistant City Manager City of Georgetown 113 E. Eighth St. Georgetown, TX 78626

Dear Wayne,

Re: Letter of Intent for Annexation

My name is Dr. Fred Brent, Superintendent of Georgetown Independent School District ("Applicant"), which is the owner of 25.918 acres as shown on Exhibit "A", located along Shell Road and Bellaire Drive (the "Property"). The Property is contiguous to the current City of Georgetown city limits and within the extra territorial jurisdiction of the City of Georgetown. There is an existing elementary school on the Property as well as two other vacant lots that will be developed as schools. There are no residents living on the Property.

With this signed petition for voluntary annexation, the landowner understands that construction of any capital improvements necessary for development on the property will not be the responsibility of the City of Georgetown if approved for annexation; rather, such improvements will occur through non-City financial assistance through the subdivision and construction process. Applicant reserves the right to withdraw the petition for voluntary annexation application from consideration at any time during the proceedings.

Sincerely,

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GEORGETOWN INDEPENDENT SCHOOL DISTRICT

By: Dr. Fred Brent

THE STATE OF TEXAS

COUNTY OF WILLIAMSON

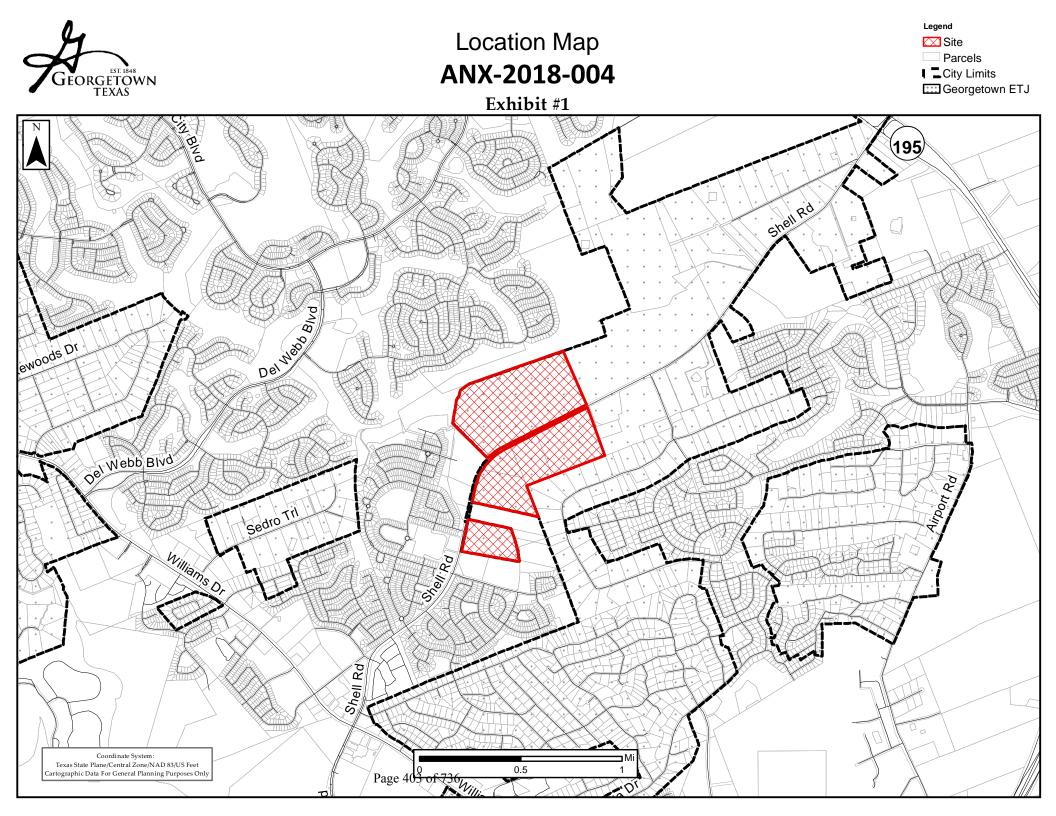
This instrument was acknowledged before me on the <u>21</u> day of June <u>2018</u>, 2018, by Dr. Fred Brent, Superintendent of Georgetown Independent School District.

\$ \$ \$



Notary Public, State of Texas

4819-7882-6073.v1



Resolution Exhibit "B"

County:WilliamsonProject:Georgetown VillageHalff AVO:32312.000

Page 1 of 4 May 4, 2018

BEING A DESCRIPTION OF 262.011 ACRES OF LAND, SITUATED IN THE WILLIAM ROBERTS LEAGUE, ABSTRACT NO. 524, WILLIAMSON COUNTY, TEXAS, BEING ALL OF THOSE CERTAIN TRACTS DESCRIBED AS TRACT I CONTAINING 42.552 ACRES AND TRACT II CONTAINING 124.708 ACRES IN A WARRANTY DEED TO GREEN BUILDERS, INC., OF RECORD IN DOCUMENT NO. 2017040134, OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS (O.P.R.W.C.T.); ALL OF THAT CERTAIN TRACT DESCRIBED AS 30.0 ACRES IN A WARRANTY DEED TO GREEN BUILDERS, INC., OF RECORD IN DOCUMENT NO. 2016045203, O.P.R.W.C.T.; ALL OF THAT CERTAIN TRACT DESCRIBED AS 30.000 ACRES IN A WARRANTY DEED TO GREEN BUILDERS, INC., OF RECORD IN DOCUMENT NO. 2016045203, O.P.R.W.C.T.; ALL OF THAT CERTAIN TRACT DESCRIBED AS 30.000 ACRES IN A WARRANTY DEED TO GREEN BUILDERS, INC. OF RECORD IN DOCUMENT NO. 2016045203, O.P.R.W.C.T.; ALL OF THAT CERTAIN TRACT DESCRIBED AS 30.000 ACRES IN A WARRANTY DEED TO GREEN BUILDERS, INC. OF RECORD IN DOCUMENT NO. 2015036587, O.P.R.W.C.T.; A PORTION OF THAT CERTAIN TRACT CALLED 10.01 ACRES IN A WARRANTY DEED TO WILSON FAMILY COMMUNITIES, INC., OF RECORD IN DOCUMENT NO. 2011045887, O.P.R.W.C.T.; ALL OF THAT CERTAIN 25.918 ACRE TRACT DESCRIBED IN A SPECIAL WARRANTY DEED TO GEORGETOWN I.S.D., OF RECORD IN DOCUMENT NO. 2011045942, O.P.R.W.C.T.; AND A PORTION OF SHELL ROAD (DESCRIBED AS 35.50 ACRES IN A WARRANTY DEED TO WILLIAMSON COUNTY, TEXAS OF RECORD IN VOLUME 1751, PG. 872, OF THE DEED RECORDS OF WILLIAMSON COUNTY, TEXAS); SAID 262.011 ACRES OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at the northeasterly corner of said 42.552 acre tract, same being the northwesterly corner of a called 6.00 acre tract of land described in a Warranty Deed to Daniel E. Adkins, of record in Document No. 2002047344, O.P.R.W.C.T., same being in the southerly right-of-way line of said Shell Road;

THENCE, with the easterly line of said 42.522 acre tract, the following two (2) courses and distances:

- 1. S19°34'38"E, a distance of 876.23 feet (Called S19°34'38"E, a distance of 876.23 feet) to a point; and
- 2. S19°37'03"E, a distance of 456.59 feet (Called S19°37'03"E, a distance of 456.59 feet) to a point for the southeast corner of said 42.522 acre tract;

THENCE, with the southerly line of said 42.522 acre tract, S69°02'22"W, a distance of 1458.77 feet (Called S69°02'22"W, a distance of 1458.77 feet) to a point for the southwesterly corner of said 42.522 acre tract, same being the southeasterly corner of said 30.0 acre tract;

THENCE, with the southerly line of said 30.0 acre tract, S69°00'45"W, a distance of 745.31 feet (Called S69°00'14"W, a distance of 745.31 feet) to a point in the easterly line of said 30.000 acre tract, for the southwesterly corner of said 30.0 acre tract;

THENCE, with the easterly line of said 30.000 acre tract, the following two (2) courses and distances:

- S21°06'42"E, a distance of 625.65 feet (Called S21°07'13"E, a distance of 625.65 feet) to a point; and
- S20°32'42"E, a distance of 237.18 feet (Called S20°33'23"E, a distance of 237.18 feet) to a point for the southeasterly corner of said 30.000 acre tract, same being the northeasterly corner of that certain 19.997 acre tract described in a Warranty Deed to Wilson Family Communities, Inc., of record in Document No. 2012032637, O.P.R.W.C.T.;

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THENCE, with the southerly line of said 30.000 acre tract and the northerly line of said 19.997 acre tract, N77°34'31"W, a distance of 1766.33 feet (Called S77°35'03"W, a distance of 1766.26 feet) to a point in the easterly right-of-way line of said Shell Road, for the southwesterly corner of said 30.000 acre tract and the northwesterly corner of said 19.997 acre tract;

THENCE, with the easterly right-of-way line of Shell Road, and the westerly line of said 19.997 acre tract, S12°25′29″W, a distance of 455.23 feet (Called N12°24′54″E, a distance of 455.24 feet) to a point for the southwesterly corner of said 19.997 acre tract, same being the northwesterly corner of said 10.01 acre tract;

THENCE, with the northerly line of said 10.01 acre tract, same being the southerly line of said 19.997 acre tract, S77°34'35"E, a distance of 1129.95 feet (Called S77°35'45"E), to a point;

THENCE, over and across said 10.01 acre tract, in part with the easterly line of said 25.918 acre Georgetown ISD tract, S18°48′48″E, a distance of 325.38 feet (Called S18°48′45″E) to a point;

THENCE, continuing with the easterly line of said 25.918 acre Georgetown ISD tract, 581.37 feet along the arc of a curve to the right, with a radius of 2440.00 feet, and whose chord bears, S11°59'15"E, a distance of 580.00 feet (Called 581.37 feet along the arc, with a radius of 2440.00 feet and whose chord bears, S11°59'15"E, a distance of 580.00 feet) to a point for the southeasterly corner of said 25.918 acre Georgetown ISD tract, same being the northeasterly corner of that certain 14.60 acre tract described in a Special Warranty Deed to Georgetown ISD, of record in Document No. 2009066516, O.P.R.W.C.T.;

THENCE, with the southerly line of said 25.918 acre tract, N79°50′30″W, a distance of 801.05 feet (Called N79°50′30″W, a distance of 801.05 feet) to a point for the northwesterly corner of said 14.60 acre Georgetown ISD tract, same being the northeasterly corner of that certain 10.304 acre tract described in a Special Warranty Deed to Georgetown ISD, of record in Document No. 2016071812, O.P.R.W.C.T.;

THENCE, continuing with the southerly line of said 25.918 acre Georgetown ISD tract, N79°52'45"W, a distance of 737.72 feet (Called N79°52'45"W, a distance of 737.73 feet) to a point in the easterly right-of-way line of Shell Road, same being the southwesterly corner of said 25.918 acre tract and the northwesterly corner of said 10.304 acre tract;

THENCE, with the easterly right-of-way line of Shell Road, with the westerly line of said 25.918 acre Georgetown ISD tract, N12°21'37"E, a distance of 786.05 feet (Called N12°28'45"E) to a point;

THENCE, over and across the right-of-way of Shell Road, N77°35′06″W, a distance of 79.96 feet (Called 80.00 feet) to a point in the westerly right-of-way line of said Shell Road, same being the most southerly corner of that certain 1.552 acre tract described as Tract I in a Warranty Deed to Wilson Family Communities, Inc., of record in Document No. 2010029370, O.P.R.W.C.T.;

THENCE, with the westerly right-of-way line of Shell Road, in part with the easterly line of said 1.552 acre tract, and in part with the easterly line of that certain 7.173 acre tract described as Tract II in said Warranty Deed to Wilson Family Communities, Inc., of record in Document No. 2010029370, O.P.R.W.C.T., N12°27'28"E, a distance of 934.29 feet (Called S12°24'54"W, a distance of 934.29 feet) to a point for the

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northeasterly corner of said 7.173 acre tract, same being the southeasterly corner of that certain 30.289 acre tract described in a Warranty Deed to Green Builders, Inc., of record in Document No. 2013052419, O.P.R.W.C.T.;

THENCE, continuing with the westerly right-of-way line of Shell Road, same being the easterly line of said 30.289 acre tract, 854.49 feet along the arc of a curve to the right, with a radius of 1535.24 feet, and whose chord bears, N28°22′58″E, a distance of 843.51 feet (Called an arc distance of 854.59 feet, a radius of 1535.24 feet, and a chord of which bears S28°21′48″W, a distance of 843.60 feet) to a point for the northeasterly corner of said 30.289 acre tract;

THENCE, with the westerly line of said 124.708 acre tract, same being the northeasterly line of said 30.289 acre tract, N44°56′11″W, a distance of 1281.69 feet (Called N44°56′11″W, a distance of 1281.69 feet) to a point in the easterly line of that certain called 22.0206 acre tract described in a Correction Special Warranty Deed to Wilson Family Communities, Inc. of record in Document No. 2013095533, O.P.R.W.C.T.;

THENCE, continuing with the westerly line of said 124.708 acre tract, same being the easterly line of said 22.0206 acre tract, the following five (5) courses and distances:

- 1. N09°15′06″E, a distance of 321.18 feet (Called N09°15′06″E, a distance of 321.18 feet) to a point;
- 2. N08°10'49"E, a distance of 299.25 feet (Called N08°10'49"E, a distance of 299.25 feet) to a point;
- 3. N34°28'50"E, a distance of 144.20 feet (Called N34°28'50"E, a distance of 144.20 feet) to a point;
- 4. N07°34′12″E, a distance of 132.10 feet (N07°34′12″E, a distance of 132.10 feet) to a point; and
- 5. N55°28'27"E, a distance of 277.69 feet (Called N55°28'27"E, a distance of 277.69 feet) to a point in the southerly line of Tract "R", Open Space and Drainage Easement, Amended Plat of Sun City Georgetown Neighborhoods One and Two, a subdivision of record in Cabinet U, Slides 239-250, Plat Records of Williamson County, Texas (P.R.W.C.T.), for the northwesterly corner of said 124.708 acre tract and the northeasterly corner of said 22.0206 acre tract;

THENCE, with the northerly line of said 124.708 acre tract, N70°48'43"E, a distance of 2603.50 feet (Called N70°48'43"E, a distance of 2603.50 feet) to a point for the northeasterly corner of said 124.708 acre tract;

THENCE, with the easterly line of said 124.708 acre tract, S23°34′25″E, a distance of 1516.04 feet (Called S23°34′25″E, a distance of 1516.04 feet) to a point in the northerly right-of-way line of said Shell Road, same being the southeasterly corner of said 124.708 acre tract;

THENCE, over and across the right-of-way of Shell Road, S27°22'26"E, a distance of 80.01 feet (Called S27°22'26"E, a distance of 80.01 feet) to the **POINT OF BEGINNING** and containing 262.011 acres of land, more or less, within these metes and bounds.

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Basis of bearings is Tracts I & II in Warranty Deed to Green Builders, Inc., of record in Document No. 2017040134, O.P.R.W.C.T.

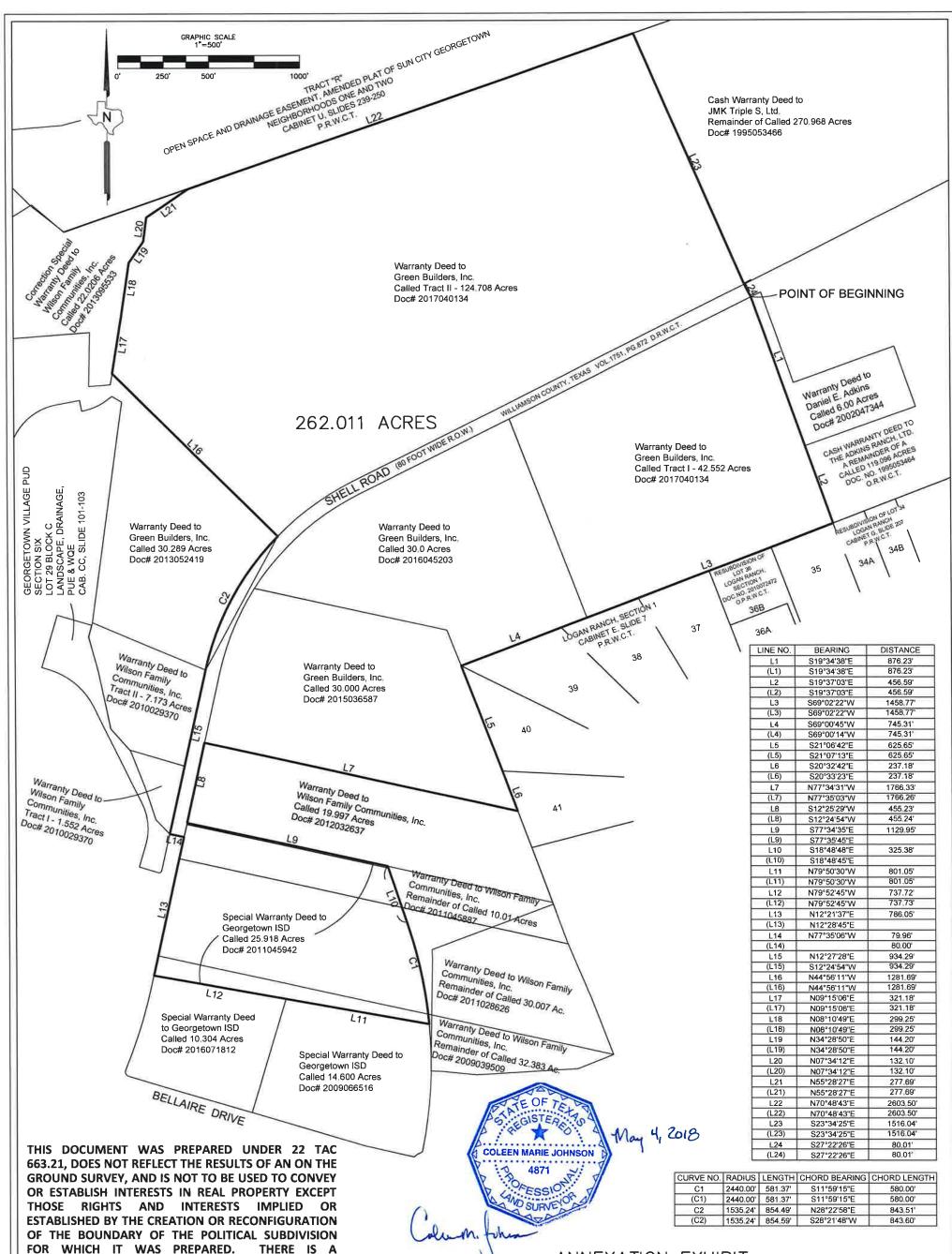
This document was prepared under 22 TAC 663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political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

Prepared by:

2018 Date



Coleen M. Johnson, R.P.L.S. Registered Professional Land Surveyor Texas Registration No. 4871 Halff Associates, Inc., TBPLS Firm No. 10029607 9500 Amberglen Blvd., Bldg. F, Suite 125 Austin, Texas 78729 512-777-4600cp Resolution Exhibit "B"



FOR WHICH IT WAS PREPARED. **DESCRIPTION TO ACCOMPANY THIS EXHIBIT.**

BASIS OF BEARINGS IS TRACTS I & II IN WARRANTY DEED TO GREEN BUILDERS, INC., OF RECORD IN DOCUMENT NO. 2017040134, O.P.R.W.C.T.



(L20)	N07°34'12"E	132,10'
L21	N55°28'27"E	277.69'
(L21)	N55°28'27"E	277.69'
L22	N70°48'43"E	2603.50
(L22)	N70°48'43"E	2603,50'
L23	S23°34'25"E	1516.04'
(L23)	S23°34'25"E	1516.04
£24	S27°22'26"E	80.01'
(L24)	S27°22'26"E	80.01

CURVE NO.	RADIUS	LENGTH	CHORD BEARING	CHORD LENGTH
C1	2440.00'	581.37'	S11°59'15"E	580.00'
(C1)	2440.00'	581.37'	S11°59'15"E	580.00'
C2	1535.24'	854.49'	N28°22'58"E	843.51
(C2)	1535.24	854,59'	S28°21'48"W	843.60'

ANNEXATION EXHIBIT

OF 262.011 ACRES OUT OF THE WILLIAM ROBERTS LEAGUE, ABSTRACT NO. 524, BEING ALL OF THOSE CERTAIN TRACTS DESCRIBED AS TRACT I CONTAINING 42.552 ACRES AND TRACT II CONTAINING 124.708 ACRES IN A WARRANTY DEED TO GREEN BUILDERS, INC., OF RECORD IN DOCUMENT NO. 2017040134, OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS (O.P.R.W.C.T.); ALL OF THAT CERTAIN TRACT DESCRIBED AS 30.0 ACRES IN A WARRANTY DEED TO GREEN BUILDERS, INC., OF RECORD IN DOCUMENT NO. 2016045203, O.P.R.W.C.T.; ALL OF THAT CERTAIN TRACT DESCRIBED AS 30.000 ACRES IN A WARRANTY DEED TO GREEN BUILDERS, INC. OF RECORD IN DOCUMENT NO. 2015036587, O.P.R.W.C.T.; A PORTION OF THAT CERTAIN TRACT CALLED 10.01 ACRES IN A WARRANTY DEED TO WILSON FAMILY COMMUNITIES, INC., OF RECORD IN DOCUMENT NO. 2011045887, O.P.R.W.C.T.; ALL OF THAT CERTAIN 25.918 ACRE TRACT DESCRIBED IN A SPECIAL WARRANTY DEED TO GEORGETOWN I.S.D., OF RECORD IN DOCUMENT NO. 2011045942, O.P.R.W.C.T.; AND A PORTION OF SHELL ROAD (DESCRIBED AS 35.50 ACRES IN A WARRANTY DEED TO WILLIAMSON COUNTY, TEXAS Page 408 QF7RECORD IN VOLUME 1751, PG. 872, OF THE DEED RECORDS OF WILLIAMSON COUNTY, TEXAS)

Exhibit C

CITY OF GEORGETOWN ANNEXATION SERVICE PLAN AREA: SHELL ROAD DEVELOPMENT COUNCIL DISTRICT NO.: 5 DATE: FEBRUARY 5, 2019

I. INTRODUCTION

This Service Plan (the "Plan") is made by the City of Georgetown, Texas ("City") pursuant to Sections 43.056(b)-(o); 43.062, and 43.052(h)(1) of the Texas Local Government Code ("LGC"). This Plan relates to the annexation into the City of the land shown on Exhibit "A" to this Service Plan, which is referred to as "**Shell Road Development**". The provisions of this Plan were made available for public inspection and explained to the public at the two public hearings held by the City on February 12, 2019 3pm and February 12, 2019 6pm in accordance with Section 43.056(j) of the LGC.

II. TERM OF SERVICE PLAN

Pursuant to Section 43.056(l) of the LGC, this Plan shall be in effect for a ten-year period commencing on the effective date of the ordinance approving the annexation. Renewal of the Plan shall be at the discretion of the City Council and must be accomplished by Ordinance.

III. INTENT

It is the intent of the City that municipal services under this Plan shall provide municipal services in accordance with the timetables required by the LGC. The City reserves the rights guaranteed to it by the LGC to amend this Plan if the City Council determines that changed conditions, subsequent occurrences, or any other legally sufficient circumstances exist under the LGC or other Texas laws that make this Plan unworkable, obsolete, or unlawful.

IV. CATEGORIZATION OF MUNICIPAL SERVICES

The municipal services described herein are categorized by those services which are (1) available to the annexed area immediately upon annexation; (2) those services which will be available to the annexed area within $2\frac{1}{2}$ years from the effective date of the annexation; and (3) those services for which capital improvements are needed and which will be available within $4\frac{1}{2}$ years from the effective date of the annexation of such improvements as set forth herein.

For the purposes of this Plan, "provision of services" includes having services provided by any method or means by which the City provides municipal services to any other areas of the City, and may include causing or allowing private utilities, governmental entities and other public service organizations to provide such services by contract, in whole or in part, and may include duties on the part of a private landowner with regard to such services.

In addition, in accordance with Section 43.056(g) of the LGC, if before annexation the annexed area had a lower level of services, infrastructure, and infrastructure maintenance than the same being provided by the City to other areas within the City limits, this Plan shall be construed to allow for the provision to the annexed area of a level of services, infrastructure, and infrastructure maintenance that is comparable to the level of services, infrastructure, and infrastructure maintenance in other parts of the City with topography, land use, and population density similar to those reasonably contemplated or projected in the annexed area.

V. SERVICES TO BE PROVIDED UPON ANNEXATION

- 1. **Police Protection** –Upon annexation, the Georgetown Police Department will extend regular and routine patrols to the area.
- 2. **Fire Protection and Emergency Medical Services** Upon annexation, in the areas where the City has jurisdiction over fire protection and emergency medical services or a contract under which the City provides such services, the City of Georgetown Fire Department will provide response services in the annexed area consisting of: fire suppression and rescue; emergency response to 9-1-1 calls; fire prevention education efforts, and other duties and services provided by the Georgetown Fire Department to areas within the City limits.
- 3. **Solid Waste Collection** Upon annexation, for occupied structures, the City will provide solid waste collection services to the annexed area in accordance with City ordinances and policies in effect on the date of the annexation. However, per the terms of Sections 43.056(n) and (o) of the LGC, if a property owner chooses to continue to use the services of a privately owned solid waste management provider, the City is prevented from providing solid waste services for 2 years.
- 4. **Operation and Maintenance of Water and Wastewater Facilities in the Annexed Area that Are Not Within the Area of Another Water or Wastewater Utility** – Cityowned water and wastewater facilities that exist in the annexed area will be maintained upon annexation and such maintenance shall be governed by the City's ordinances, standards, policies and procedures. Per the provisions of Section 13.01. 020 of the Unified Development Code ("UDC"), for unplatted tracts in the annexed area, the City shall not repair, maintain, install or provide any public utilities or services in any subdivision for which a Final Plat has not been approved and filed for record, nor in which the standards contained in the UDC or referred to therein have not been complied with in full.

- 5. **Operation and Maintenance of Streets, Roads, and Street Lighting** – The City will provide preventative maintenance of the existing public streets and roads in the annexed area over which it has jurisdiction through maintenance and preventative maintenance services such as emergency pavement repair; ice and snow monitoring; crack seal, sealcoat, slurry seal, and PM overlay; and other routine repair. The City shall not maintain private roads in the annexed area. Preventative maintenance projects are prioritized on a City-wide basis and scheduled based on a variety of factors, including surface condition, rideability, age, traffic volume, functional classification, and available funding. As new streets are dedicated and accepted for maintenance they will be included in the City's preventative maintenance program. Per the provisions of Section 13.01.020 of the UDC, for unplatted tracts in the annexed area, the City shall not repair, maintain, install or provide any streets or street lighting to any subdivision for which a Final Plat has not been approved and filed for record, nor in which the standards contained in the UDC or referred to therein have not been complied with in full. With regard to street lighting, it is the policy of the City of Georgetown that adequate street lighting for the protection of the public and property be installed in all new subdivisions. Installation procedures and acceptable standards for street lights shall be governed by the utility standards of the City in effect at the time of subdivision construction or addition thereto.
- 6. **Operation and Maintenance of Public Parks, Playgrounds, and Swimming Pools** -Upon annexation, publicly owned parks, playgrounds, and swimming pools in the annexed area (if any) will be operated and maintained by the City in accordance with the Section 12.20 of the City Code of Ordinances, and other applicable ordinances, policies, and procedures in effect at the time of annexation for other areas in the City limits. Privately owned parks, playgrounds, and pools will be unaffected by the annexation and shall not be maintained by the City.
- Operation and Maintenance of Publicly Owned Buildings, Facilities, and Services

 Should the City acquire any buildings, facilities or services necessary for municipal services in the annexed area, an appropriate City department will operate and maintain them.
- 8. **Library** Upon annexation, library privileges will be available to anyone residing in the annexed area.
- 9. **Planning and Development, Building Permits, and Inspections Services;** Upon annexation, the City's Unified Development Code and Title 15 of the City Code of Ordinances will apply in the area. These services include: site plan review, zoning approvals, Building Code and other standard Code inspection services and City Code enforcement; sign regulations and permits; and Stormwater Permit services. For a full description of these services, see the City's Unified Development Code and Title 15 of the City Code of Ordinances.

- 10. **Animal Control Services** The provisions of Chapter 7 of the City Code of Ordinances relating to animal control services shall apply in the annexed area.
- 11. **Business Licenses and Regulations** The provisions of Chapter 6 of the City Code of Ordinances relating to business licenses and regulations (Carnivals Circuses and Other Exhibitions; Electrician's Licenses; Gross Receipts Charge or Street Rental; Peddlers and Solicitors; Taxicabs, Buses and Other Vehicles for Hire; Horse Drawn Carriages and other Non-Motorized Vehicles for Hire; Sexually Oriented Businesses; and Alcoholic Beverages) shall apply in the annexed area.
- 12. **Health and Safety Regulations** The provisions of Chapter 8 of the City Code of Ordinance relating to health and safety regulations (Fire Prevention Code; Fireworks; Food Sanitation; Noise Control; Nuisances; Junked Motor Vehicles; and Smoking in Public Places) shall apply in the annexed area.
- 13. **Regulations Pertaining to Peace, Morals and Welfare** -- The provisions of Chapter 9 of the City Code of Ordinance relating to peace, morals and welfare (Housing Discrimination; Weapons; and Enforcement of Other Miscellaneous Violations) shall apply in the annexed area.

VI. SERVICES TO BE PROVIDED WITHIN 4¹/₂ Years of Annexation; Capital Improvements Program

- 1. **In General –** The City will initiate the construction of capital improvements necessary for providing municipal services for the annexation area as necessary for services that are provided directly by the City.
- 2. Water and Wastewater Services– Water and wastewater services are only provided to occupied lots that have been legally subdivided and platted or are otherwise a legal lot, and that are located within the boundaries of the City's authorized service areas. Further, existing residences in the annexed area that were served by a functioning onsite sewer system (septic system) shall continue to use such private system for wastewater services in conformance with the provisions of Section 13.20 of the City Code of Ordinances. Existing non-residential establishments in the annexed area may continue to use an onsite sewer system (septic system) for sewage disposal in conformance with the provisions of Section 13.20 of the City Code of Ordinances. Upon the Development of any property in the annexed area, the provisions of Chapter 13 of the UDC shall apply. The City shall have no obligation to extend water or wastewater service to any part of the annexed area that is within the service area of another water or wastewater utility. For annexed areas located within the City's authorized service areas, the City shall, subject to the terms and conditions of this Plan, extend water and wastewater service in accordance with the service extension ordinances, policies, and standards that are summarized in Section X of this Plan, which may require that the property owner or developer of a newly developed tract install water and wastewater lines. The extension

of water and wastewater services will be provided in accordance with the policies summarized in Section X of this Plan and with any applicable construction and design standards manuals adopted by the City.

- 3. Water and Wastewater Capital Improvements Schedule Because of the time required to design and construct the necessary water and wastewater facilities to serve the annexed area, certain services cannot be reasonably provided within 2½ years of the effective date of annexation. Therefore, in accordance with Sections 43.065(b) and (e) of the LGC, the City shall implement a program, which will be initiated after the effective date of the annexation and include the acquisition or construction of capital improvements necessary for providing water and wastewater services to the area. The following schedule for improvements is proposed: construction will commence within 2 ½ years from the effective date of annexation. However, the provisions of Section VII of this Plan shall apply to the schedule for completion of all capital improvements. In addition, the acquisition or construction of the improvements shall be accomplished by purchase, lease, or other contract or by the City succeeding to the powers, duties, assets, and obligations of a conservation and reclamation district as authorized or required by law.
- 4. **Roads and Streets** No road or street related capital improvements are necessary at this time. Future extension of roads or streets and installation of traffic control devices will be governed by the City's Comprehensive Plan, the City's Overall Transportation Plan, the City's Capital Improvements Plan; the City's regular or non-impact fee Capital Improvements Program, and any applicable City ordinances, policies, and procedures, which may require that the property owner or developer install roads and streets at the property owner's or developer's expense. It is anticipated that the developer of new subdivisions in the area will install street lighting in accordance with the City's standard policies and procedures. Provision of street lighting will be in accordance with the City's street lighting policies.
 - 5. Capital Improvements for Other Municipal Services No capital improvements are necessary at this time to provide municipal Police; Fire Protection; Emergency Medical Services; Solid Waste Collection; Public Parks, Playgrounds, or Swimming Pools; Public Buildings or Facilities; or Library Services. The annexed area will be included in the City's future planning for new or expanded capital improvements and evaluated on the same basis and in accordance with the same standards as similarly situated areas of the City.

VII. FORCE MAJEURE AND SCHEDULE EXTENSIONS

1. Certain events, described as Force Majeure Events in this Plan, are those over which the City has no control. Force Majeure Events shall include, but not be limited to, acts of God; terrorism or acts of a public enemy; war; blockages; riots; strikes; epidemics; forces

of nature including landslides, lightening, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes; arrest and restraint of government; explosions; collisions, and all other inabilities of the City, whether similar to those enumerated or otherwise, which are not within the control of the City. Any deadlines or other provisions of this Plan that are affected by a Force Majeure Event shall be automatically extended to account for delays caused by such Force Majeure Event.

2. In accordance with Section 43.056(e) of the LGC, this Plan and the schedules for capital improvements necessary to provide full municipal services to the annexed area may be amended by the City to extend the period for construction if the construction is proceeding with all deliberate speed. The construction of the improvements shall be accomplished in a continuous process and shall be completed as soon as reasonably possible, consistent with generally accepted local engineering and architectural standards and practices. However, the City does not violate this Plan if the construction process is interrupted for any reason by circumstances beyond the direct control of the City.

VIII. AMENDMENTS

Pursuant to the provisions of Section 43.056(k) of the LGC, on approval by the City Council, the Plan is a contractual obligation that is not subject to amendment or repeal except as provided by state law. Section 43.056(k) of the LGC provides that if the City Council determines, after public hearings, that changed conditions or subsequent occurrences make the Plan unworkable or obsolete, the City Council may amend the Plan to conform to the changed conditions or subsequent occurrences. An amended Plan must provide for services that are comparable to or better than those established in the Plan before amendment. Before any Plan amendments are adopted, the City Council must provide an opportunity for interested persons to be heard at public hearings called and held in the manner provided by Section 43.0561 of the LGC.

IX. FEES

The City may impose a fee for any municipal service in the area annexed if the same type of fee is imposed within the corporate boundaries of the City. All City fees are subject to revision from time to time by the City in its sole discretion.

X. SUMMARY OF CURRENT WATER AND WASTEWATER SERVICE EXTENSION POLICIES

Per the requirements of Section 43.056(e) of the LGC, the following summary is provided regarding the City's current service extension policies for water and wastewater service. However, this is a summary of the current policies, and the policies and regulations related to water and wastewater utility extensions that are included in the City Code of Ordinances, the Unified Development Code, the City's Construction and Specifications Manual; Drainage

Manual, and other published policies and technical manuals, as the same may be amended from time to time, shall control the extension of water and wastewater services to the annexed area. In addition, these policies and ordinances are set by City Council and can be amended in the future:

- 1. **In General** -- The provisions of Chapter 13 of the City's Unified Development Code ("UDC") shall apply in the annexed area and Chapter 13 of the City Code of Ordinances. Portions of the current Chapter 13 of the UDC and the current Chapter 13 of the Code of Ordinances are summarized below. Note that these provisions are established by ordinance of the City Council and are subject to change from time to time.
 - A. The City shall not repair, maintain, install or provide any water services, wastewater service, gas, electricity or any other public utilities or services to any property that has not been legally subdivided or is a non-legal lot.
 - B. For property that is required by the City's UDC or other City regulations to construct water or wastewater facilities, funding and construction of those facilities are the responsibility of the property owner or developer (the "subdivider").
 - C. Subdividers shall be responsible for providing an approved public water supply system for fire protection and domestic/ commercial/ industrial usage consistent with the Comprehensive Plan. Where an approved public water supply or distribution main is within reasonable distance of the subdivision, but in no case less than one-quarter mile away, and connection to the system is both possible and permissible (including adequate system capacity), the subdivider shall be required to bear the cost of connecting the subdivision to such existing water supply. The subdivider shall, consistent with all existing ordinances, make a prorata contribution to funding of needed storage facilities, treatment facilities, and specific distribution lines as determined necessary by the City.
 - D. Subdividers shall be responsible for providing an approved public sanitary sewer system, consistent with the Comprehensive Plan, throughout the entire subdivision such that all lots, parcels, or tracts of land will be capable of connecting to the sanitary sewer system except as otherwise provided herein. Where an approved public sanitary sewer collection main or outfall line is in no ease less than one-half mile away, and connection to the system is both possible and permissible (including adequate system capacity), the subdivider shall be required to bear the cost of connecting the subdivision to such existing sanitary sewer system. Where an approved public wastewater collection main or outfall line is more than one-half mile away from the property boundary, and where extension of a sanitary sewer collection main or outfall line is scheduled in the City's Capital Improvements Plan to be completed to a point within one-half mile of the property boundary within five (5) years from the date of the Preliminary Plat approval, the subdivider shall be required to install a public

wastewater collection system. The design and construction of a public sanitary sewer system shall comply with regulations covering extension of public sanitary sewer systems adopted by the Texas Commission on Environmental Quality.

- E. All infrastructure and public improvements must be designed and installed in accordance with all of the elements of the Comprehensive Plan and shall meet the minimum requirements established by the UDC, the City's Construction Standards and Specifications for Roads, Streets, Structures and Utilities, and any other adopted City design or technical criteria. No main water line extension shall be less than eight inches. All new public sanitary sewer systems shall be designed and constructed to conform with the City's Construction Standards and Specifications and to operate on a gravity flow basis by taking advantage of natural topographic conditions and thereby reducing the need for lift stations and force mains.
- 2. If the specific undeveloped property does not have City water or wastewater facilities and capacity fronting the property the owner may make an application for an extension of service to the property. If the Assistant City Manager for Utilities determines in writing that adequate water or wastewater capacity is available, or will be available, and if the project does not include City cost participation or reimbursement, if the proposed facilities are depicted on the City's Water and Wastewater Master Plans, and the requested service otherwise meets the City's requirements, the extension size, capacity, and routing may be approved by the Assistant City Manager for Utilities for construction by the developer at the developer's cost and expense.
- 3. If the specific undeveloped property does have adequate City water or wastewater facilities and capacity fronting the property the owner may receive water or wastewater service from the City by applying for a tap permit and paying the required fees.
- 4. If any property in the annexed area is using a septic system - the property owner remains responsible for the operation and maintenance of the septic system. If the property is in a Rural Residential Subdivision as defined in Chapter 13 of the UDC, or is a legal lot greater than one acre in size and used for single family residential purposes, the property shall continue the use of a septic system after annexation until such time that the use of the property changes, the property is further subdivided or developed, or a public sanitary sewer line has been extended to within 200 feet of the property boundary and the property owner has received notification from the City of the City's desire for the property to be connected to the public sanitary sewer line. If the septic system fails before the City's centralized wastewater service is extended to within 200 feet of the property and the City determines that the provision of centralized wastewater service is not feasible or practical at that time, then the property owner must either repair or replace the septic system in accordance with the provisions of Section 13.20 of the City Code of Ordinances. Properties using a septic system that are not in a Rural Residential Subdivision, or are not legal lots greater than one acre in size and used for

single family residential purposes at the time of annexation, but that are designated as either residential, open space or agricultural on the City's Future Land Use Plan shall continue the use of a septic system until such time that the use of the property changes, the property is further subdivided or developed, or a public sanitary sewer line has been extended to within 200 feet of the property boundary and the property owner has received notification from the City of the City's desire for the property to be connected to the public sanitary sewer line.

- 5. **Reimbursement and cost participation by the City** Pursuant to Section 13.09.030 of the UDC, the City, in its sole discretion and with City Council approval, may participate with a property owner or developer in the cost of oversized facilities or line extensions. The actual calculation of the cost participation and reimbursement amounts, including limits and schedules for the payments, are set forth in the UDC.
- 6. **City Code of Ordinances:** (The following provisions are set by the City Council and can be amended in the future by ordinance.)

Chapter 13.10 of the City Code of Ordinances currently provides as follows:

Section 13.10.010 Policy established.

This policy shall apply to improvements to the City's utility systems, including system upgrades, system expansion, and plant capacity additions. In this Section, the term "utility system" shall mean the City's water system, wastewater system, reuse irrigation system, and stormwater drainage system.

Section 13.10.020 System Planning.

The City shall maintain and periodically update system plans for each utility so that system improvements are implemented to maintain adequate capacity for growth while maintaining proper service levels to existing customers.

Section 13.10.030 Project Timing.

A. Projects designed to expand or upgrade a utility system must be completed and ready for operations such that capacity requirements by state regulatory agencies and City system plans are met.

B. When possible, the City should coordinate the construction of system improvements in a particular location with the expansion or maintenance of other utility infrastructure to minimize the future impact on each utility.

C. Projects should begin the design phase when existing demand at a specific location exceeds 75% of current capacity and future demand is expected to exceed the current total capacity.

D. Projects should begin the construction phase when existing demand at a specific location exceeds 90% of current capacity and future demand is expected to exceed the current total capacity.

E. Projects required to facilitate the development of a specific tract shall be done in accordance with the Unified Development Code.

F. Projects required as a result of an annexation service plan shall be provided as stated in the approved Service Plan for such annexed tracts.

Section 13.10.040 Project Financing.

A. Projects required to facilitate the subdivision of a specific tract shall be paid by the subdivider in accordance with the Unified Development Code, unless otherwise authorized in writing and approved by the City Council in accordance with the terms of Section 13.09 of the Unified Development Code or other applicable law.

B. When utility expansion is requested within a portion of the City's utility service area, but the City is not otherwise required to provide service or planning to provide service as reflected in the City's Capital Improvements Plan, the City may nonetheless, at the City's sole option, facilitate the design and construction of the required utility extensions or upgrades by managing the project with the cost of such extensions to be shared and fully paid by the requesting landowners or subdividers prior to commencement of the project.

C. When utility expansion is requested within a portion of the City's utility service area, the City shall evaluate degree to which the project 1) facilitates contiguous growth, 2) maximizes the provision of service to the service area, 3) enhances economic development, 4) improves system operations, 5) contributes to conservation or other environmental concern, and 6) facilitates the completion of the utility master plan.

D. At the City's sole option, the City may also facilitate the installation of utility expansion requests through 1) financial cost contribution, 2) financing of the improvement using individual contracts between the City and each landowner for a proportionate share of the project cost to be paid out over a specified period of time at a specified rate of interest, 3) Impact Fee or connection fee reduction or waiver.

Chapter 13.20 of the City Code of Ordinances currently provides as follows:

Sec. 13.20.010. General.

A. It is unlawful for any owner or lessee, tenant or other person in possession of any premises where any person lives or works, or occupies the same, to establish, maintain or use any water closet, bathtub, lavatory or sink except by one of the following means and consistent with the other terms, conditions and requirements of this Chapter and with the City's Unified Development Code:

- 1. connection to an approved Onsite Sewage Facility that is constructed and maintained in accordance with the rules and regulations of all appropriate state and local agencies having jurisdiction over such facilities; or
- 2. connection to a public centralized wastewater collection main with all wastewater discharged to a centralized public wastewater collection system.
- B. Upon the "Development" of property, the provisions of Chapter 13 of the Unified Development Code (pertaining to Infrastructure and Public Improvements) shall govern the provision of wastewater service to the property. For the purposes of this section, the term "Development" shall have the same meaning as in Section 16.05 of the City's Unified Development Code.
- C. It is the duty of each such person referenced in subsection (A), above, to connect such fixtures to an approved wastewater system, and to maintain the same.

Sec. 13.20.020. On Site Sewage Facilities.

- A. <u>General</u>. All On Site Sewage Facilities must be constructed and maintained in accordance with the rules and regulations of the appropriate state and local agencies having jurisdiction over such facilities.
- B. <u>Availability of a Public Centralized Wastewater Collection Main</u>. If a public centralized wastewater collection main is located within 200 feet of a property line, and the wastewater collection main has adequate capacity to receive and transport the wastewater flow produced by the property, then property owner shall connect that property to said utility line at the earliest to occur of either of the following events: failure of the On Site Sewage Facility servicing the property, or the date that is five (5) years after receipt of notice of the availability of a wastewater collection main within 200-feet of the property line.
- C. <u>Failure of On Site Sewage Facility</u>. When an Onsite Sewage Facility fails, the following provisions shall apply:
 - a. If a public centralized wastewater collection main is located within 200 feet of the property boundary, and the wastewater collection main has adequate capacity to receive and transport the wastewater flow produced by the property, then the property must be connected to said utility line by the property owner;
 - b. If no public centralized wastewater collection main is located within 200 feet of the property boundary, the City shall evaluate the feasibility of providing centralized wastewater collection services to the property via a gravity or low pressure system. Where the provision of gravity sewer service or low pressure system is technically feasible, utility system improvements may be made in accordance with Chapters 13.10;
 - c. If the City determines that the provision of wastewater service via a centralized wastewater collection main is not necessary due to existing or future land use, then the On Site Sewage Facility may be repaired or replaced.

(Prior code § 12-101)

Sec. 13.20.030. Privies prohibited.

It is unlawful for any owner or lessee, tenant or other person in possession of any premises in the City to establish or maintain any privy or dry closet.

Sec.13.20.040 Low Pressure Sewer Systems

- A. A "Low Pressure Sewer System" is an individual lift station located at each utility customer or property owner location having a private force main connecting to a public force main or gravity main located in a public utility easement or public right-of-way.
- B. Each property owner and utility customer shall be responsible for the cost of installation and maintenance of the individual lift station and private force main.

Section 13.20.050. Prohibited Discharges into Sewer System

No person shall discharge, cause to be discharged, or permit to be discharged, either directly or indirectly into the public sewer system, waste or wastewater from any of the following sources unless allowed by the City Manager, or his/her designee:

- A. Any wastes or wastewater that does not meet the limitations imposed by Section 13.24 of the Code of Ordinances.
- B. Any stormwater, groundwater, rainwater, street drainage, subsurface drainage, or yard drainage;
- C. Any unpolluted water, including, but not limited to, cooling water, process water or blow-down water from cooling towers or evaporative coolers;
- D. Any wastes or wastewater, or any object, material, or other substance directly into a manhole or other opening into the sewer facilities other than wastes or wastewater through an approved service connection.
- E. Any holding tank waste, provided, that such waste may be placed into facilities designed to receive such wastes and approved by the City Manager, or his/her designee.

Section 13.20.060 Sewer System Maintenance

- A. For properties with gravity wastewater service, the property owner and utility customer shall be responsible for the proper operation, maintenance, and repairs of the sewer system in the building and the service lateral between the building and the point of connection into the public sewer main.
- B. For properties with low pressure service, the property owner and utility customer shall be responsible for the proper operation, maintenance, and repairs of the

sewer system in the building and the service lateral, lift station (grinder pump) and force main between the building and the point of connection into the public sewer main.

- C. When, as a part of sewer system testing, the City identifies a flaw in a private service lateral or force main where a repair is necessary to prevent infiltration or inflow, the property owner and utility customer shall be responsible to cause the repairs to be made within one (1) year of the date of notification by the City.
- D. If repairs are not complete within one year of notification by the City, City may engage the services of a contractor to make the necessary repairs with the costs for such repairs to be paid by the City and subsequently charged to property owner and utility customer.

City of Georgetown, Texas City Council Regular Meeting February 12, 2019

SUBJECT:

Second Public Hearing for the Voluntary Annexation and designation of Residential Estate (RE) zoning district for an approximate 23.10 acre tract of land out of the Joseph Pulsifer Survey, Abstract No. 498, generally located at 34 Skyline Road, to be known as Maravilla Subdivision -- Chelsea Irby, Senior Planner

ITEM SUMMARY:

Overview of Applicant's Request:

The subject property is located east of DB Wood Road, north of State Highway 29 (University Ave). The property is situated between the River Chase neighborhood and the Wolf Ranch West neighborhood, which is currently in development.

The property has a Future Land Use designation of Low Density Residential and Moderate Density Residential.

The item under consideration tonight is to conduct the first public hearing for voluntary annexation and designation of Residential Estate (RE) as the initial zoning district designation, submitted in accordance with State Law. No action is required for this public hearing.

Meeting Schedule:

- 1/8/2019 City Council Grant Petition for Annexation COMPLETED
- 2/5/2019 P&Z Public Hearing and Recommendation for Zoning Only COMPLETED
- 2/12/2019 at 3pm City Council Public Hearing #1 COMPLETED
- 2/12/2019 at 6pm City Council Public Hearing #2
- 3/12/2019 City Council First Reading of Ordinance
- 3/26/2019 City Council Second Reading of Ordinance

Planning and Zoning Commission (P&Z) Recommendation:

At their February 5, 2019 meeting, the Planning and Zoning Commission held a public hearing and recommended approval of the zoning designation request.

FINANCIAL IMPACT:

City services, including police and fire protection, emergency medical services, solid waste collection and disposal are immediately subject to the property. Extension of capital improvements such as water and wastewater systems will be subject to the City's utility extension and improvement policy or the terms of any potential agreement with the property owner.

SUBMITTED BY: Chelsea Irby, Senior Planner

ATTACHMENTS:

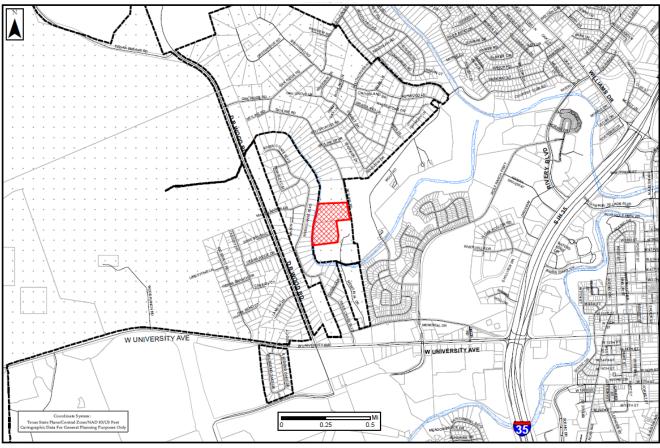
ANX-2018-009 P&Z Staff Report (Rezoning)

Exhibit 1 - Location Map Exhibit 2 - Future Land Use Map Exhibit 3 - Zoning Map Exhibit 4 - RE Standards and Permitted Uses Exhibit 5 - Letter of Intent Metes and Bounds Draft Service Plan



Planning and Zoning Commission Planning Department Staff Report

Report Date: Case No: Project Planner:	February 1, 2019 ANX-2018-009 Chelsea Irby, Senior Planner
Item Details	
Project Name:	Maravilla Subdivision
Project Location:	34 Skyline Road within the Extraterritorial Jurisdiction (City Council District 2, upon annexation).
Total Acreage:	23.10
Legal Description:	23.10 acres out of the Joseph Pulsifer Survey, Abstract No. 498
Applicant: Property Owner:	Matkin Hoover Engineering, c/o Matt Synatschk Ashby Signature Homes, c/o Norm Ashby
Request:	Zoning Map Amendment to rezone the subject property to Residential Estate (RE) upon annexation.
Case History:	This is the first public hearing of this request.



Location Map

Overview of Applicant's Request

The applicant is requesting to zone 23.10 acres of land to the Residential Estate (RE) zoning district upon annexation in lieu of the default Agriculture (AG) zoning designation. The annexation petition was accepted by the City Council on January 8, 2019. The applicant intends to subdivide the property into 19, 1-acre residential lots. See *Exhibit 5* for the applicant's letter of intent.

Site Information

Location:

The property is located east of DB Wood Road, north of State Highway 29 (University Ave). The property is situated between the River Chase neighborhood and the Wolf Ranch West neighborhood, which is currently in development.

Physical and Natural Features:

The Middle Fork San Gabriel River runs along the western boundary of the property, and because of this the eastern portion of the property slopes toward the river. The property also has heavy tree cover.

Future Land Use and Zoning Designations:

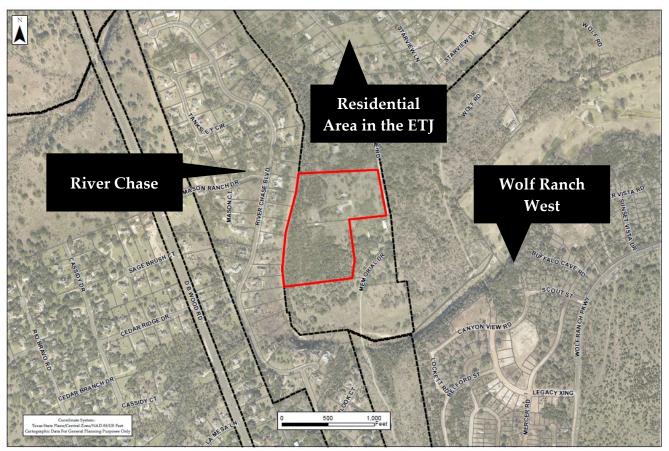
The subject property is split between two Future Land Use designations, Low Density Residential and Moderate Density Residential. There is not a zoning designation because the property is currently in the Extraterritorial Jurisdiction (ETJ).

Surrounding Properties:

The area surrounding the property is entirely used for single-family residential. There are residential acre lots and rural residential subdivisions to the north. To the east and south, the area has grown and developed with higher density single-family residential, as well as multi-family and commercial along the major corridors such as Wolf Ranch Pkwy and University Ave.

The current zoning, Future Land Use designation, and existing uses of the adjacent properties to the north, south, east and west are outlined in the table below:

DIRECTION	ZONING DISTRICT	FUTURE LAND USE	EXISTING USE
North	N/A (ETJ)	Low Density Residential	
South	N/A (ETJ)	Moderate Density and Low Density Residential	
	Planned Unit		
	Development		
East	(PUD) with a base	Moderate Density and Low	Single-Family Residential
EdSt	district of	Density Residential	
	Residential Single-		
	Family (RS)		
West	Residential Single-	Low Donoity Posidontial	
west	Family (RS)	Low Density Residential	



Aerial Map with Surrounding Uses

Property History:

There is no notable property history. The property is located in the ETJ.

Comprehensive Plan Guidance

Future Land Use Map:

The property is split between two Future Land Use designations, Low Density Residential and Moderate Density Residential.

The Low Density Residential category includes the city's predominantly single-family neighborhoods that can be accommodated at a density between 1.1 and 3 dwelling units per gross acre. Conservation subdivisions are also encouraged in this land use district. Modifications to development standards applicable to this category could address minimum open space requirements, public facility impacts, and greater roadway connectivity. This category may also support complementary non-residential uses along arterial roadways such as neighborhood-serving retail, office, institutional, and civic uses, although such uses may not be depicted on the Future Land Use Map. Standards should be established to maximize compatibility of these uses with adjacent land uses, minimize traffic congestion and overloading of public infrastructure, and also ensure a high standard of site, landscape, and architectural design.

The Moderate Density Residential category is described in the 2030 Comprehensive Plan as comprising

single family neighborhoods that can be accommodated at a density ranging between 3.1 and 6 dwelling units per gross acre, with housing types including small-lot detached and attached single-family dwellings (such as townhomes). This category may also support complementary non-residential uses along major roadways such as neighborhood-serving retail, office, institutional, and civic uses, although such uses may not be depicted on the Future Land Use Map.

Growth Tier:

The property is located within Growth Tier 2.

Tier 2 lies outside the city limits, but within the City's extraterritorial jurisdiction (ETJ). Until annexation occurs, land use and development controls are limited to subdivision review and signage, and in some cases building permits where City utilities are connected to new construction. However, the City may consider requests for annexation, extension of City services, and rezonings in this area.

Utilities

The subject property is located within the City's service area for water and electric. Upon annexation, the subject property would also be within the City's service area for wastewater; however, wastewater services are proposed to be provided through on-site sewage facilities (OSSF). It is anticipated that there is adequate water capacity to serve the subject property at this time. A Utility Evaluation may be required at time of Subdivision Plat to determine capacity and any necessary utility improvements.

Transportation

The property has frontage on Skyline Road, which is a private local street where adjacent to the subject property. The roadway provides access to DB Wood Road (Minor Arterial, south of Oakridge Rd; Major Arterial north of Oakridge Rd). Skyline Road currently terminates near the property. The Wolf Ranch West development will be connecting to Skyline Road north of the subject property and this will create a route to Wolf Ranch Parkway (Major Collector).

Skyline Road is currently a public street up until the property owned by Hillwood and is private for the portion adjacent to the subject property. It will remain private prior to the subdivision of the subject property. During the platting process, Skyline Road will need to be extended as a public street along the entire length of the property. The UDC would allow the roadway to be extended as a rural/local street.

Additional local streets would need to be constructed on the property to support residential development.

Proposed Zoning district

The Residential Estate District (RE) is intended for areas of very low density single-family residential use and associated uses. The district has a lot size minimum of one acre to retain a rural character and is appropriate where topography or lack of public utilities and services may necessitate a low density.

Permitted land uses within the district include detached single-famil, group homes with six residents or less, and minor utilities. Elementary schools, churches, neighborhood amenity centers, and golf

courses are permitted subject to specific design limitations to ensure compatibility with the surrounding properties. Other uses such as accessory dwelling units, bed and breakfasts, group day cares, and youth or senior activity centers may be permitted subject to approval of a Special Use Permit (SUP). *Exhibit 4* contains a comprehensive list of RE district permitted uses and development standards.

Interdepartmental Review

The proposed rezoning request was reviewed by all applicable City Departments to determine the appropriateness of the requested zoning on the subject property. No comments were issued regarding the zoning request.

Approval Criteria

Staff has reviewed the proposed rezoning request and has found that it **complies with 4 of the 5** criteria established in UDC Section 3.06.030 for a Zoning Map Amendment, as outlined below:

R	EZONING APPROVAL CRITERIA	Findings	STAFF COMMENTS
1.	The application is complete and the information contained within the application is sufficient and correct enough to allow adequate review and final action.	Complies	An application must provide the necessary information to review and make a knowledgeable decision in order for staff to schedule an application for consideration by the Planning and Zoning Commission and City Council. This application was reviewed by staff and deemed to be complete.
2.	The zoning change is consistent with the Comprehensive Plan.	Does Not Comply	The majority of the subject property is designated as Low Density Residential on the Future Land Use Map. This category includes the city's predominantly single-family neighborhoods that can be accommodated at a density between 1.1 and 3 dwelling units per gross acre. The Rural Estate (RE) zoning district has a minimum lot size of 1 acre, which allows 1 dwelling unit per gross acre. However, this zoning district may also allow lots that have less than 1 dwelling
			unit per gross acre as the 1-acre lot size is a minimum requirement in order to retain a rural character. Due to the purpose of the RE zoning

REZONING APPROVAL CRITERIA	FINDINGS	STAFF COMMENTS
		district, this district is most appropriate in the Agricultural/Rural Residential Future Land Use Designation, which is intended to accommodate very low levels of population and require very limited array of public services. Because of this, this designation is generally located in the outer portion of the ETJ.
 The zoning change promotes the health, safety or general welfare of the City and the safe orderly, and healthful development of the City. 	Complies	There is currently not a zoning designation on the subject property; however, it is located at the end of rural local street that has been primarily developed with rural residential subdivisions within the ETJ. The proposed RE zoning district allows for an orderly development due to the decrease in density closer to and adjacent to the ETJ residential subdivision to the north. Additionally, the subject property is situated between two single-family residential neighborhoods, one of which is a one-acre lot subdivision (River Chase to the west). Access to the property would be primarily through the ETJ subdivisions, or through one of the Wolf Ranch West subdivision to the east, once the connection to Skyline Rd is completed.
4. The zoning change is compatible with the present zoning and conforming uses of nearby property and with the character of the neighborhood.	Complies	The subject property is compatible with the present zoning and land uses because it is completely surrounded by single- family residential areas. To the east and west of the property are Residential Single-Family (RS) zoned areas and to the north and south are rural residential subdivisions within the ETJ. The proposed zoning district, should it be approved, would allow the subject property to develop at a density consistent with the residential neighborhoods to the north and west (1- ac lot subdivisions)
5. The property to be rezoned is suitable for uses	Complies	The subject property is suitable for the permitted uses of the Rural Estate (RE)

REZONING APPROVAL CRITERIA	FINDINGS	STAFF COMMENTS
permitted by the District		district because it has sufficient acreage
that would be applied by		to create lots that conform to the required
the proposed amendment.		dimensional standards.

Based on the findings listed above, the zoning of the property to Residential Estate (RE) is generally appropriate because is maintains the character of the area, fills a gap between two residential areas, and location of the property at the end of a rural street. However, it is important to note that that the request does not comply with the Comprehensive Plan because the intent of the RE zoning district was for the outer fringe of the City/ETJ where a lack of public utilities and services may necessitate a low density, as well as to retain the rural character.

Meetings Schedule

2/5/2019 – P&Z Public Hearing and Recommendation for Zoning Only 2/12/2019 at 3pm – City Council Public Hearing #1 2/12/2019 at 6pm – City Council Public Hearing #2 3/12/2019 – City Council First Reading of Ordinance 3/26/2019 – City Council Second Reading of Ordinance

Public Notification

As required by the Unified Development Code, all property owners within a 200-foot radius of the subject property were notified of the Zoning Map Amendment request (17 notices), a legal notice advertising the public hearing was placed in the Sun Newspaper (January 20, 2019) and signs were posted on-site. To date, staff has received zero (0) written comments in favor, and zero (0) in opposition to the request.

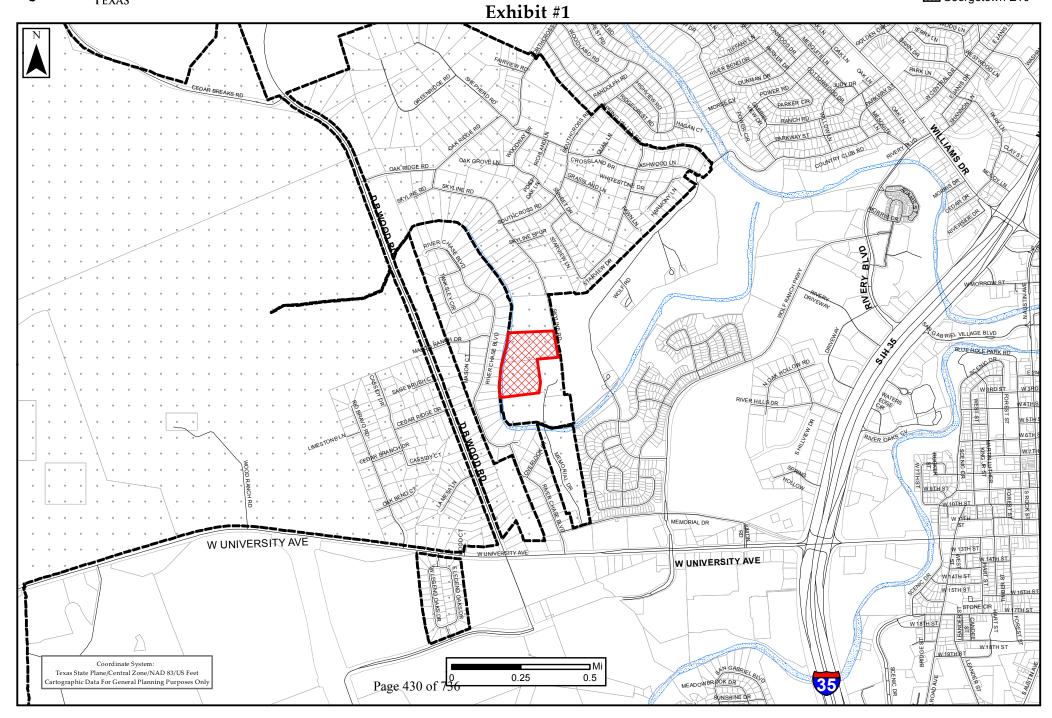
Attachments

Exhibit 1 – Location Map Exhibit 2 – Future Land Use Map Exhibit 3 – Zoning Map Exhibit 4 – Design and development standards of the RE district Exhibit 5 – Letter of Intent



Location Map ANX-2018-009





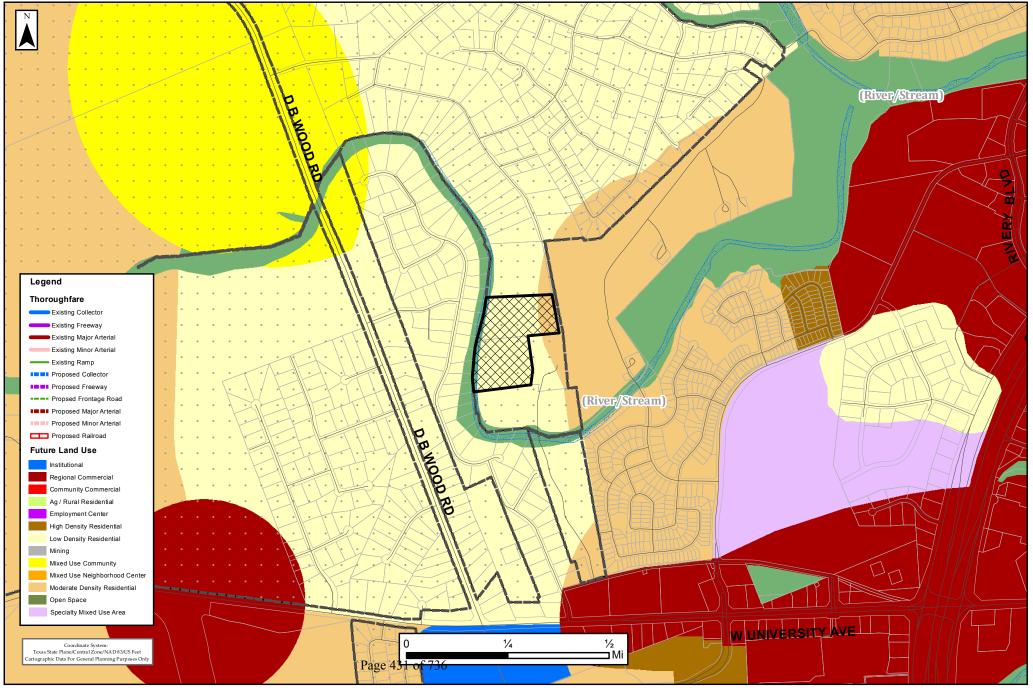


Future Land Use / Overall Transportation Plan

ANX-2018-009

Exhibit #2

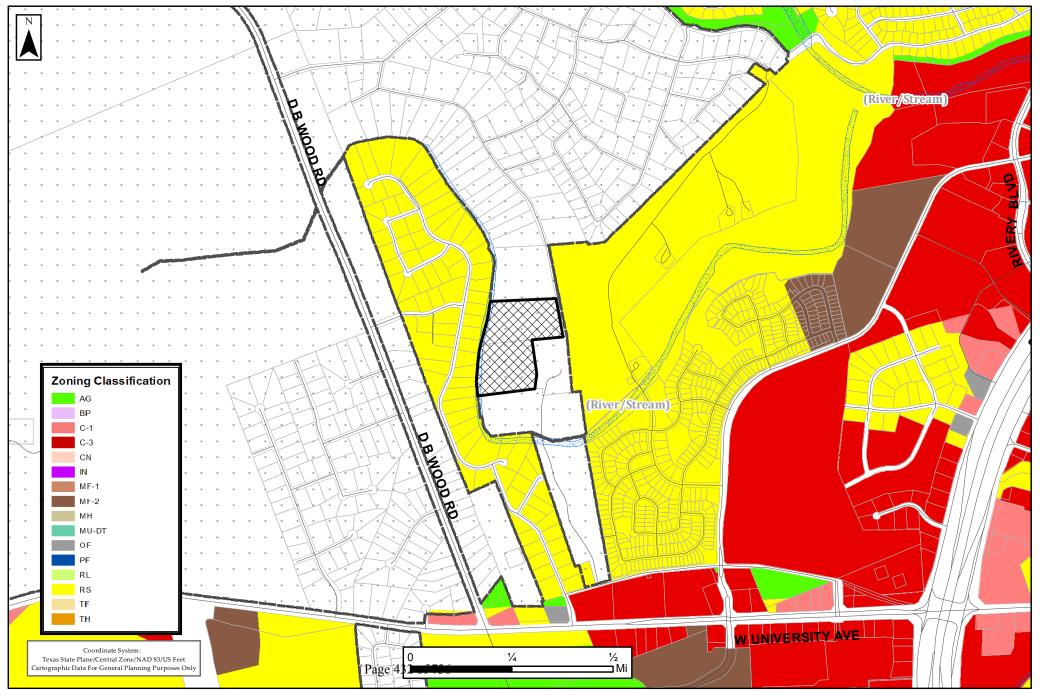
Legend Site Parcels City Limits Georgetown ETJ





Zoning Information ANX-2018-009 Exhibit #3

Legend Site Parcels City Limits



Residential Estate (RE) District

District Development Standards		
District Size-min. acreage = 1	Side Setback = 10 feet	Bufferyard = 10 feet with plantings
Maximum Building Height = 35 feet	Rear Setback = 20 feet	when non-residential develops
Accessory Building Height = 25 feet	Front Setback = 25 feet	adjacent to residential
	Lot width = 100 feet	

December 9, 2018

Ms. Sofia Nelson Planning Director City of Georgetown, TX

Dear Ms. Nelson,

The property owner of the 23 acres located at 34 Skyline Road wishes to submit this application for voluntary annexation. The property is contiguous to the current City of Georgetown city limits, and water to the site will be provided by Georgetown Utility Systems.

The property is currently vacant, with the most recent use being a single family residence. There are currently no residents living on the property.

The applicant wishes to submit this application concurrently with an application to zone the property to Rural Estate (RE), allowing the development of a residential subdivision comprising 19 total lots. The applicant reserves the right to withdraw this annexation application from consideration at any time in the proceedings.

With this signed petition for voluntary annexation, the property owner understands that construction of any capital improvements necessary for development on the property will not be the responsibility of the City of Georgetown if approved for annexation; rather, such improvements will occur through non-City financial assistance through the subdivision and construction process.

Sincerely,

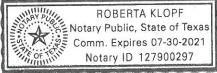
Norm Ashby Ashby Signature Homes

Before me, the undersigned, a notary public in and for said county and state, on this day personally appeared <u>NOVM AShopy</u>, known to me to be the person whose name is subscribed to this foregoing instrument.

Given under my sign and seal of office this 2l day of 2c, 2018.

Notary Public, State of Texas My commission expires on: ____

7/30/2021





QUICK INC. LAND SURVEYING

Office Address: 3303 Shell Rd. Suite 4, Georgetown, Texas 78628 Phone: 512-915-4950

FIELD NOTES FOR A 23.120 ACRE TRACT OF LAND:

BEING A 23.120 ACRE TRACT OF LAND, LOCATED IN THE JOSEPH PULSIFER SURVEY, ABSTRACT NO. 498, WILLIAMSON COUNTY, TEXAS; SAID 23.120 ACRE TRACT, BEING ALL OF THAT CALLED 12.09 ACRE TRACT RECORDED IN VOLUME 1620, PAGE 700, OFFICIAL PUBLIC RECORDS, WILLIAMSON COUNTY, TEXAS, AND BEING ALL OF THAT CALLED 11.20 ACRE TRACT OF LAND RECORDED IN VOLUME 1855, PAGE 39, OFFICIAL PUBLIC RECORDS, WILLIAMSON COUNTY, TEXAS; SAID 23.120 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2" iron rod located for the northeast corner of a 12.09 acre tract, being the southeast corner of a called 12.84 acre tract of land recorded in Volume 2477, Page 240, Official Public Records, Williamson County, Texas, being in the west line of a called 1.43 acre, 50' wide access easement recorded in Volume 2477, Page 240, Official Public Records, Williamson County, Texas, said point being the northeast corner of the herein described tract of land which bears S 11° 07' 46" E, a distance of 707.99' from a 1/2" iron rod located for the northeast corner of said 12.84 acre tract, the southeast corner of Lot 1, Oak Crest Ranchettes, recorded in the plat of record in Cabinet B, Slide 150-153, Plat Records, Williamson County, Texas, and the northwest corner of said 1.43 acre access easement, said point being the northeast corner of the herein described tract of land;

- Thence, with the east line of said 12.09 acre tract, the west line of said 1.43 acre access easement, S 10° 42' 16" E, a distance of 540.77' (Record: S 07° 12' 00" E, a distance of 539.73'), to a 1/2" iron rod located for the southeast corner of said 12.09 acre tract, the southwest corner of said 1.43 acre access easement, the southeast corner of a called 1.37 acre access easement recorded in Volume 1620, Page 700, Official Public Records, Williamson County, Texas, being in the north line of a called 7.21 acre tract of land recorded in Volume 2031, Page 413, Official Public Records, Williamson County, Texas, said point being the most easterly southeast corner of the herein described tract of land;
- Thence, with the south line of said 12.09 acre tract, the south line of said 1.37 acre access easement, the north line of said 7.21 acre tract, S 83° 39' 51" W, a distance of 370.81' (Record: S 87° 07' 00" W, a distance of 371.20'), to a 1/2" located in the south line of said 12.09 acre tract, being the northeast corner of said 11.20 acre tract, the northwest corner of said 7.21 acre tract, and being an interior corner of the herein described tract of land;

- 3. Thence, with the east line of said 11.20 acre tract, the west line of said 7.21 acre tract, S 09° 10' 00" E, a distance of 454.78' (Record: S 05° 45' 00" E, a distance of 454.79'), to a 1/2" iron rod with a blue "Quick Inc. RPLS 6447" plastic cap set for an angle point of said 11.20 acre tract, and angle point of said 7.21 acre tract, and being an angle point of the herein described tract of land;
- 4. Thence, continuing with the east line of said 11.20 acre tract, the west line of said 7.21 acre tract, S 01° 54' 00" W, a distance of 166.31' (Record: S 05° 19' 00" W, a distance of 166.31'), to a 1/2" iron rod located for the southeast corner of said 11.20 acre tract, being in the west line of said 7.21 acre tract, being an exterior corner of a called 39.17 acre tract of land recorded in Volume 1620, Page 700, Official Public Records, Williamson County, Texas, and being the most southerly southeast corner of the herein described tract of land;
- 5. Thence, with the south line of said 11.20 acre tract, a north line of said 39.17 acre tract, S 83° 55' 01" W, passing a 1/2" iron rod at a distance of 755.77' for reference, continuing an all distance of 826.76' (Record: S 87° 24' 00" W, a distance of 804.82'), to a calculated point in the center of Middle Fork San Gabriel River, located for the southwest corner of said 11.20 acre tract, the northwest corner of said 39.17 acre tract, and being the southwest corner of the herein described tract of land;

Thence, with the centerline of Middle Fork San Gabriel River, the west lines of said 11.20 acre tract and said 12.09 acre tract, the following five (5) courses and distances;

- 6. N 00° 40' 19" W, a distance of 138.28', to a calculated point for an angle point of the herein described tract of land;
- 7. N 05° 30' 59" E, a distance of 353.84', to a calculated point for an angle point of the herein described tract of land;
- 8. N 08° 47' 26" E, a distance of 282.79', to a calculated point for an angle point of the herein described tract of land;
- 9. N 13° 43' 35" E, a distance of 269.10', to a calculated point for an angle point of the herein described tract of land;
- 10. N 10° 17' 27" E, a distance of 145.34', to a calculated point for the northwest corner of said 12.09 acre tract, the southwest corner of said 12.84 acre tract, and being the northwest corner of the herein described tract of land;
- 11. Thence, with the north line of said 12.09 acre tract, the south line of said 12.84 acre tract, N 83° 18' 09" E, passing an 8" cedar post at a distance of 138.59', continuing an all

distance of **863.73'** (Record: N 87° 07' 00" E, a distance of 872.54'), to the **POINT OF BEGINNING** containing **23.120 acres** of land.

Basis of Bearing: Texas State Plane, Central Zone, NAD83



Travis L. Quicksall Date: 09/25/2018 RPLS #6447 Job #18-2212

Exhibit C

CITY OF GEORGETOWN ANNEXATION SERVICE PLAN AREA: MARAVILLA COUNCIL DISTRICT NO.: 2 DATE: MARCH 26, 2019

I. INTRODUCTION

This Service Plan (the "Plan") is made by the City of Georgetown, Texas ("City") pursuant to Sections 43.056(b)-(o); 43.062, and 43.052(h)(1) of the Texas Local Government Code ("LGC"). This Plan relates to the annexation into the City of the land shown on Exhibit "A" to this Service Plan, which is referred to as "**Maravilla**". The provisions of this Plan were made available for public inspection and explained to the public at the two public hearings held by the City on February 12, 2019, at 3pm, and February 12, 2019, at 6pm, in accordance with Section 43.056(j) of the LGC.

II. TERM OF SERVICE PLAN

Pursuant to Section 43.056(l) of the LGC, this Plan shall be in effect for a ten-year period commencing on the effective date of the ordinance approving the annexation. Renewal of the Plan shall be at the discretion of the City Council and must be accomplished by Ordinance.

III. INTENT

It is the intent of the City that municipal services under this Plan shall provide municipal services in accordance with the timetables required by the LGC. The City reserves the rights guaranteed to it by the LGC to amend this Plan if the City Council determines that changed conditions, subsequent occurrences, or any other legally sufficient circumstances exist under the LGC or other Texas laws that make this Plan unworkable, obsolete, or unlawful.

IV. CATEGORIZATION OF MUNICIPAL SERVICES

The municipal services described herein are categorized by those services which are (1) available to the annexed area immediately upon annexation; (2) those services which will be available to the annexed area within $2\frac{1}{2}$ years from the effective date of the annexation; and (3) those services for which capital improvements are needed and which will be available within $4\frac{1}{2}$ years from the effective date of the annexation of such improvements as set forth herein.

For the purposes of this Plan, "provision of services" includes having services provided by any method or means by which the City provides municipal services to any other areas of the City, and may include causing or allowing private utilities, governmental entities and other public service organizations to provide such services by contract, in whole or in part, and may include duties on the part of a private landowner with regard to such services.

In addition, in accordance with Section 43.056(g) of the LGC, if before annexation the annexed area had a lower level of services, infrastructure, and infrastructure maintenance than the same being provided by the City to other areas within the City limits, this Plan shall be construed to allow for the provision to the annexed area of a level of services, infrastructure, and infrastructure maintenance that is comparable to the level of services, infrastructure, and infrastructure maintenance in other parts of the City with topography, land use, and population density similar to those reasonably contemplated or projected in the annexed area.

V. SERVICES TO BE PROVIDED UPON ANNEXATION

- 1. **Police Protection** –Upon annexation, the Georgetown Police Department will extend regular and routine patrols to the area.
- 2. **Fire Protection and Emergency Medical Services** Upon annexation, in the areas where the City has jurisdiction over fire protection and emergency medical services or a contract under which the City provides such services, the City of Georgetown Fire Department will provide response services in the annexed area consisting of: fire suppression and rescue; emergency response to 9-1-1 calls; fire prevention education efforts, and other duties and services provided by the Georgetown Fire Department to areas within the City limits.
- 3. **Solid Waste Collection** Upon annexation, for occupied structures, the City will provide solid waste collection services to the annexed area in accordance with City ordinances and policies in effect on the date of the annexation. However, per the terms of Sections 43.056(n) and (o) of the LGC, if a property owner chooses to continue to use the services of a privately owned solid waste management provider, the City is prevented from providing solid waste services for 2 years.
- 4. **Operation and Maintenance of Water and Wastewater Facilities in the Annexed Area that Are Not Within the Area of Another Water or Wastewater Utility** – Cityowned water and wastewater facilities that exist in the annexed area will be maintained upon annexation and such maintenance shall be governed by the City's ordinances, standards, policies and procedures. Per the provisions of Section 13.01. 020 of the Unified Development Code ("UDC"), for unplatted tracts in the annexed area, the City shall not repair, maintain, install or provide any public utilities or services in any subdivision for which a Final Plat has not been approved and filed for record, nor in which the standards contained in the UDC or referred to therein have not been complied with in full.

- 5. **Operation and Maintenance of Streets, Roads, and Street Lighting** – The City will provide preventative maintenance of the existing public streets and roads in the annexed area over which it has jurisdiction through maintenance and preventative maintenance services such as emergency pavement repair; ice and snow monitoring; crack seal, sealcoat, slurry seal, and PM overlay; and other routine repair. The City shall not maintain private roads in the annexed area. Preventative maintenance projects are prioritized on a City-wide basis and scheduled based on a variety of factors, including surface condition, rideability, age, traffic volume, functional classification, and available funding. As new streets are dedicated and accepted for maintenance they will be included in the City's preventative maintenance program. Per the provisions of Section 13.01.020 of the UDC, for unplatted tracts in the annexed area, the City shall not repair, maintain, install or provide any streets or street lighting to any subdivision for which a Final Plat has not been approved and filed for record, nor in which the standards contained in the UDC or referred to therein have not been complied with in full. With regard to street lighting, it is the policy of the City of Georgetown that adequate street lighting for the protection of the public and property be installed in all new subdivisions. Installation procedures and acceptable standards for street lights shall be governed by the utility standards of the City in effect at the time of subdivision construction or addition thereto.
- 6. **Operation and Maintenance of Public Parks, Playgrounds, and Swimming Pools** -Upon annexation, publicly owned parks, playgrounds, and swimming pools in the annexed area (if any) will be operated and maintained by the City in accordance with the Section 12.20 of the City Code of Ordinances, and other applicable ordinances, policies, and procedures in effect at the time of annexation for other areas in the City limits. Privately owned parks, playgrounds, and pools will be unaffected by the annexation and shall not be maintained by the City.
- Operation and Maintenance of Publicly Owned Buildings, Facilities, and Services

 Should the City acquire any buildings, facilities or services necessary for municipal services in the annexed area, an appropriate City department will operate and maintain them.
- 8. **Library** Upon annexation, library privileges will be available to anyone residing in the annexed area.
- 9. **Planning and Development, Building Permits, and Inspections Services;** Upon annexation, the City's Unified Development Code and Title 15 of the City Code of Ordinances will apply in the area. These services include: site plan review, zoning approvals, Building Code and other standard Code inspection services and City Code enforcement; sign regulations and permits; and Stormwater Permit services. For a full description of these services, see the City's Unified Development Code and Title 15 of the City Code of Ordinances.

- 10. **Animal Control Services** The provisions of Chapter 7 of the City Code of Ordinances relating to animal control services shall apply in the annexed area.
- 11. **Business Licenses and Regulations** The provisions of Chapter 6 of the City Code of Ordinances relating to business licenses and regulations (Carnivals Circuses and Other Exhibitions; Electrician's Licenses; Gross Receipts Charge or Street Rental; Peddlers and Solicitors; Taxicabs, Buses and Other Vehicles for Hire; Horse Drawn Carriages and other Non-Motorized Vehicles for Hire; Sexually Oriented Businesses; and Alcoholic Beverages) shall apply in the annexed area.
- 12. **Health and Safety Regulations** The provisions of Chapter 8 of the City Code of Ordinance relating to health and safety regulations (Fire Prevention Code; Fireworks; Food Sanitation; Noise Control; Nuisances; Junked Motor Vehicles; and Smoking in Public Places) shall apply in the annexed area.
- 13. **Regulations Pertaining to Peace, Morals and Welfare** -- The provisions of Chapter 9 of the City Code of Ordinance relating to peace, morals and welfare (Housing Discrimination; Weapons; and Enforcement of Other Miscellaneous Violations) shall apply in the annexed area.

VI. SERVICES TO BE PROVIDED WITHIN 4¹/₂ Years of Annexation; Capital Improvements Program

- 1. **In General –** The City will initiate the construction of capital improvements necessary for providing municipal services for the annexation area as necessary for services that are provided directly by the City.
- 2. Water and Wastewater Services– Water and wastewater services are only provided to occupied lots that have been legally subdivided and platted or are otherwise a legal lot, and that are located within the boundaries of the City's authorized service areas. Further, existing residences in the annexed area that were served by a functioning onsite sewer system (septic system) shall continue to use such private system for wastewater services in conformance with the provisions of Section 13.20 of the City Code of Ordinances. Existing non-residential establishments in the annexed area may continue to use an onsite sewer system (septic system) for sewage disposal in conformance with the provisions of Section 13.20 of the City Code of Ordinances. Upon the Development of any property in the annexed area, the provisions of Chapter 13 of the UDC shall apply. The City shall have no obligation to extend water or wastewater service to any part of the annexed area that is within the service area of another water or wastewater utility. For annexed areas located within the City's authorized service areas, the City shall, subject to the terms and conditions of this Plan, extend water and wastewater service in accordance with the service extension ordinances, policies, and standards that are summarized in Section X of this Plan, which may require that the property owner or developer of a newly developed tract install water and wastewater lines. The extension

of water and wastewater services will be provided in accordance with the policies summarized in Section X of this Plan and with any applicable construction and design standards manuals adopted by the City.

- 3. Water and Wastewater Capital Improvements Schedule Because of the time required to design and construct the necessary water and wastewater facilities to serve the annexed area, certain services cannot be reasonably provided within 2½ years of the effective date of annexation. Therefore, in accordance with Sections 43.065(b) and (e) of the LGC, the City shall implement a program, which will be initiated after the effective date of the annexation and include the acquisition or construction of capital improvements necessary for providing water and wastewater services to the area. The following schedule for improvements is proposed: construction will commence within 2 ½ years from the effective date of annexation. However, the provisions of Section VII of this Plan shall apply to the schedule for completion of all capital improvements. In addition, the acquisition or construction of the improvements shall be accomplished by purchase, lease, or other contract or by the City succeeding to the powers, duties, assets, and obligations of a conservation and reclamation district as authorized or required by law.
- 4. **Roads and Streets** No road or street related capital improvements are necessary at this time. Future extension of roads or streets and installation of traffic control devices will be governed by the City's Comprehensive Plan, the City's Overall Transportation Plan, the City's Capital Improvements Plan; the City's regular or non-impact fee Capital Improvements Program, and any applicable City ordinances, policies, and procedures, which may require that the property owner or developer install roads and streets at the property owner's or developer's expense. It is anticipated that the developer of new subdivisions in the area will install street lighting in accordance with the City's standard policies and procedures. Provision of street lighting will be in accordance with the City's street lighting policies.
 - 5. Capital Improvements for Other Municipal Services No capital improvements are necessary at this time to provide municipal Police; Fire Protection; Emergency Medical Services; Solid Waste Collection; Public Parks, Playgrounds, or Swimming Pools; Public Buildings or Facilities; or Library Services. The annexed area will be included in the City's future planning for new or expanded capital improvements and evaluated on the same basis and in accordance with the same standards as similarly situated areas of the City.

VII. FORCE MAJEURE AND SCHEDULE EXTENSIONS

1. Certain events, described as Force Majeure Events in this Plan, are those over which the City has no control. Force Majeure Events shall include, but not be limited to, acts of God; terrorism or acts of a public enemy; war; blockages; riots; strikes; epidemics; forces

of nature including landslides, lightening, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes; arrest and restraint of government; explosions; collisions, and all other inabilities of the City, whether similar to those enumerated or otherwise, which are not within the control of the City. Any deadlines or other provisions of this Plan that are affected by a Force Majeure Event shall be automatically extended to account for delays caused by such Force Majeure Event.

2. In accordance with Section 43.056(e) of the LGC, this Plan and the schedules for capital improvements necessary to provide full municipal services to the annexed area may be amended by the City to extend the period for construction if the construction is proceeding with all deliberate speed. The construction of the improvements shall be accomplished in a continuous process and shall be completed as soon as reasonably possible, consistent with generally accepted local engineering and architectural standards and practices. However, the City does not violate this Plan if the construction process is interrupted for any reason by circumstances beyond the direct control of the City.

VIII. AMENDMENTS

Pursuant to the provisions of Section 43.056(k) of the LGC, on approval by the City Council, the Plan is a contractual obligation that is not subject to amendment or repeal except as provided by state law. Section 43.056(k) of the LGC provides that if the City Council determines, after public hearings, that changed conditions or subsequent occurrences make the Plan unworkable or obsolete, the City Council may amend the Plan to conform to the changed conditions or subsequent occurrences. An amended Plan must provide for services that are comparable to or better than those established in the Plan before amendment. Before any Plan amendments are adopted, the City Council must provide an opportunity for interested persons to be heard at public hearings called and held in the manner provided by Section 43.0561 of the LGC.

IX. FEES

The City may impose a fee for any municipal service in the area annexed if the same type of fee is imposed within the corporate boundaries of the City. All City fees are subject to revision from time to time by the City in its sole discretion.

X. SUMMARY OF CURRENT WATER AND WASTEWATER SERVICE EXTENSION POLICIES

Per the requirements of Section 43.056(e) of the LGC, the following summary is provided regarding the City's current service extension policies for water and wastewater service. However, this is a summary of the current policies, and the policies and regulations related to water and wastewater utility extensions that are included in the City Code of Ordinances, the Unified Development Code, the City's Construction and Specifications Manual; Drainage

Manual, and other published policies and technical manuals, as the same may be amended from time to time, shall control the extension of water and wastewater services to the annexed area. In addition, these policies and ordinances are set by City Council and can be amended in the future:

- 1. **In General** -- The provisions of Chapter 13 of the City's Unified Development Code ("UDC") shall apply in the annexed area and Chapter 13 of the City Code of Ordinances. Portions of the current Chapter 13 of the UDC and the current Chapter 13 of the Code of Ordinances are summarized below. Note that these provisions are established by ordinance of the City Council and are subject to change from time to time.
 - A. The City shall not repair, maintain, install or provide any water services, wastewater service, gas, electricity or any other public utilities or services to any property that has not been legally subdivided or is a non-legal lot.
 - B. For property that is required by the City's UDC or other City regulations to construct water or wastewater facilities, funding and construction of those facilities are the responsibility of the property owner or developer (the "subdivider").
 - C. Subdividers shall be responsible for providing an approved public water supply system for fire protection and domestic/ commercial/ industrial usage consistent with the Comprehensive Plan. Where an approved public water supply or distribution main is within reasonable distance of the subdivision, but in no case less than one-quarter mile away, and connection to the system is both possible and permissible (including adequate system capacity), the subdivider shall be required to bear the cost of connecting the subdivision to such existing water supply. The subdivider shall, consistent with all existing ordinances, make a prorata contribution to funding of needed storage facilities, treatment facilities, and specific distribution lines as determined necessary by the City.
 - D. Subdividers shall be responsible for providing an approved public sanitary sewer system, consistent with the Comprehensive Plan, throughout the entire subdivision such that all lots, parcels, or tracts of land will be capable of connecting to the sanitary sewer system except as otherwise provided herein. Where an approved public sanitary sewer collection main or outfall line is in no ease less than one-half mile away, and connection to the system is both possible and permissible (including adequate system capacity), the subdivider shall be required to bear the cost of connecting the subdivision to such existing sanitary sewer system. Where an approved public wastewater collection main or outfall line is more than one-half mile away from the property boundary, and where extension of a sanitary sewer collection main or outfall line is scheduled in the City's Capital Improvements Plan to be completed to a point within one-half mile of the property boundary within five (5) years from the date of the Preliminary Plat approval, the subdivider shall be required to install a public

wastewater collection system. The design and construction of a public sanitary sewer system shall comply with regulations covering extension of public sanitary sewer systems adopted by the Texas Commission on Environmental Quality.

- E. All infrastructure and public improvements must be designed and installed in accordance with all of the elements of the Comprehensive Plan and shall meet the minimum requirements established by the UDC, the City's Construction Standards and Specifications for Roads, Streets, Structures and Utilities, and any other adopted City design or technical criteria. No main water line extension shall be less than eight inches. All new public sanitary sewer systems shall be designed and constructed to conform with the City's Construction Standards and Specifications and to operate on a gravity flow basis by taking advantage of natural topographic conditions and thereby reducing the need for lift stations and force mains.
- 2. If the specific undeveloped property does not have City water or wastewater facilities and capacity fronting the property the owner may make an application for an extension of service to the property. If the Assistant City Manager for Utilities determines in writing that adequate water or wastewater capacity is available, or will be available, and if the project does not include City cost participation or reimbursement, if the proposed facilities are depicted on the City's Water and Wastewater Master Plans, and the requested service otherwise meets the City's requirements, the extension size, capacity, and routing may be approved by the Assistant City Manager for Utilities for construction by the developer at the developer's cost and expense.
- 3. If the specific undeveloped property does have adequate City water or wastewater facilities and capacity fronting the property the owner may receive water or wastewater service from the City by applying for a tap permit and paying the required fees.
- 4. If any property in the annexed area is using a septic system - the property owner remains responsible for the operation and maintenance of the septic system. If the property is in a Rural Residential Subdivision as defined in Chapter 13 of the UDC, or is a legal lot greater than one acre in size and used for single family residential purposes, the property shall continue the use of a septic system after annexation until such time that the use of the property changes, the property is further subdivided or developed, or a public sanitary sewer line has been extended to within 200 feet of the property boundary and the property owner has received notification from the City of the City's desire for the property to be connected to the public sanitary sewer line. If the septic system fails before the City's centralized wastewater service is extended to within 200 feet of the property and the City determines that the provision of centralized wastewater service is not feasible or practical at that time, then the property owner must either repair or replace the septic system in accordance with the provisions of Section 13.20 of the City Code of Ordinances. Properties using a septic system that are not in a Rural Residential Subdivision, or are not legal lots greater than one acre in size and used for

single family residential purposes at the time of annexation, but that are designated as either residential, open space or agricultural on the City's Future Land Use Plan shall continue the use of a septic system until such time that the use of the property changes, the property is further subdivided or developed, or a public sanitary sewer line has been extended to within 200 feet of the property boundary and the property owner has received notification from the City of the City's desire for the property to be connected to the public sanitary sewer line.

- 5. **Reimbursement and cost participation by the City** Pursuant to Section 13.09.030 of the UDC, the City, in its sole discretion and with City Council approval, may participate with a property owner or developer in the cost of oversized facilities or line extensions. The actual calculation of the cost participation and reimbursement amounts, including limits and schedules for the payments, are set forth in the UDC.
- 6. **City Code of Ordinances: (**The following provisions are set by the City Council and can be amended in the future by ordinance.)

Chapter 13.10 of the City Code of Ordinances currently provides as follows:

Section 13.10.010 Policy established.

This policy shall apply to improvements to the City's utility systems, including system upgrades, system expansion, and plant capacity additions. In this Section, the term "utility system" shall mean the City's water system, wastewater system, reuse irrigation system, and stormwater drainage system.

Section 13.10.020 System Planning.

The City shall maintain and periodically update system plans for each utility so that system improvements are implemented to maintain adequate capacity for growth while maintaining proper service levels to existing customers.

Section 13.10.030 Project Timing.

A. Projects designed to expand or upgrade a utility system must be completed and ready for operations such that capacity requirements by state regulatory agencies and City system plans are met.

B. When possible, the City should coordinate the construction of system improvements in a particular location with the expansion or maintenance of other utility infrastructure to minimize the future impact on each utility.

C. Projects should begin the design phase when existing demand at a specific location exceeds 75% of current capacity and future demand is expected to exceed the current total capacity.

D. Projects should begin the construction phase when existing demand at a specific location exceeds 90% of current capacity and future demand is expected to exceed the current total capacity.

E. Projects required to facilitate the development of a specific tract shall be done in accordance with the Unified Development Code.

F. Projects required as a result of an annexation service plan shall be provided as stated in the approved Service Plan for such annexed tracts.

Section 13.10.040 Project Financing.

A. Projects required to facilitate the subdivision of a specific tract shall be paid by the subdivider in accordance with the Unified Development Code, unless otherwise authorized in writing and approved by the City Council in accordance with the terms of Section 13.09 of the Unified Development Code or other applicable law.

B. When utility expansion is requested within a portion of the City's utility service area, but the City is not otherwise required to provide service or planning to provide service as reflected in the City's Capital Improvements Plan, the City may nonetheless, at the City's sole option, facilitate the design and construction of the required utility extensions or upgrades by managing the project with the cost of such extensions to be shared and fully paid by the requesting landowners or subdividers prior to commencement of the project.

C. When utility expansion is requested within a portion of the City's utility service area, the City shall evaluate degree to which the project 1) facilitates contiguous growth, 2) maximizes the provision of service to the service area, 3) enhances economic development, 4) improves system operations, 5) contributes to conservation or other environmental concern, and 6) facilitates the completion of the utility master plan.

D. At the City's sole option, the City may also facilitate the installation of utility expansion requests through 1) financial cost contribution, 2) financing of the improvement using individual contracts between the City and each landowner for a proportionate share of the project cost to be paid out over a specified period of time at a specified rate of interest, 3) Impact Fee or connection fee reduction or waiver.

Chapter 13.20 of the City Code of Ordinances currently provides as follows:

Sec. 13.20.010. General.

A. It is unlawful for any owner or lessee, tenant or other person in possession of any premises where any person lives or works, or occupies the same, to establish, maintain or use any water closet, bathtub, lavatory or sink except by one of the following means and consistent with the other terms, conditions and requirements of this Chapter and with the City's Unified Development Code:

- 1. connection to an approved Onsite Sewage Facility that is constructed and maintained in accordance with the rules and regulations of all appropriate state and local agencies having jurisdiction over such facilities; or
- 2. connection to a public centralized wastewater collection main with all wastewater discharged to a centralized public wastewater collection system.
- B. Upon the "Development" of property, the provisions of Chapter 13 of the Unified Development Code (pertaining to Infrastructure and Public Improvements) shall govern the provision of wastewater service to the property. For the purposes of this section, the term "Development" shall have the same meaning as in Section 16.05 of the City's Unified Development Code.
- C. It is the duty of each such person referenced in subsection (A), above, to connect such fixtures to an approved wastewater system, and to maintain the same.

Sec. 13.20.020. On Site Sewage Facilities.

- A. <u>General</u>. All On Site Sewage Facilities must be constructed and maintained in accordance with the rules and regulations of the appropriate state and local agencies having jurisdiction over such facilities.
- B. <u>Availability of a Public Centralized Wastewater Collection Main</u>. If a public centralized wastewater collection main is located within 200 feet of a property line, and the wastewater collection main has adequate capacity to receive and transport the wastewater flow produced by the property, then property owner shall connect that property to said utility line at the earliest to occur of either of the following events: failure of the On Site Sewage Facility servicing the property, or the date that is five (5) years after receipt of notice of the availability of a wastewater collection main within 200-feet of the property line.
- C. <u>Failure of On Site Sewage Facility</u>. When an Onsite Sewage Facility fails, the following provisions shall apply:
 - a. If a public centralized wastewater collection main is located within 200 feet of the property boundary, and the wastewater collection main has adequate capacity to receive and transport the wastewater flow produced by the property, then the property must be connected to said utility line by the property owner;
 - b. If no public centralized wastewater collection main is located within 200 feet of the property boundary, the City shall evaluate the feasibility of providing centralized wastewater collection services to the property via a gravity or low pressure system. Where the provision of gravity sewer service or low pressure system is technically feasible, utility system improvements may be made in accordance with Chapters 13.10;
 - c. If the City determines that the provision of wastewater service via a centralized wastewater collection main is not necessary due to existing or future land use, then the On Site Sewage Facility may be repaired or replaced.

(Prior code § 12-101)

Sec. 13.20.030. Privies prohibited.

It is unlawful for any owner or lessee, tenant or other person in possession of any premises in the City to establish or maintain any privy or dry closet.

Sec.13.20.040 Low Pressure Sewer Systems

- A. A "Low Pressure Sewer System" is an individual lift station located at each utility customer or property owner location having a private force main connecting to a public force main or gravity main located in a public utility easement or public right-of-way.
- B. Each property owner and utility customer shall be responsible for the cost of installation and maintenance of the individual lift station and private force main.

Section 13.20.050. Prohibited Discharges into Sewer System

No person shall discharge, cause to be discharged, or permit to be discharged, either directly or indirectly into the public sewer system, waste or wastewater from any of the following sources unless allowed by the City Manager, or his/her designee:

- A. Any wastes or wastewater that does not meet the limitations imposed by Section 13.24 of the Code of Ordinances.
- B. Any stormwater, groundwater, rainwater, street drainage, subsurface drainage, or yard drainage;
- C. Any unpolluted water, including, but not limited to, cooling water, process water or blow-down water from cooling towers or evaporative coolers;
- D. Any wastes or wastewater, or any object, material, or other substance directly into a manhole or other opening into the sewer facilities other than wastes or wastewater through an approved service connection.
- E. Any holding tank waste, provided, that such waste may be placed into facilities designed to receive such wastes and approved by the City Manager, or his/her designee.

Section 13.20.060 Sewer System Maintenance

- A. For properties with gravity wastewater service, the property owner and utility customer shall be responsible for the proper operation, maintenance, and repairs of the sewer system in the building and the service lateral between the building and the point of connection into the public sewer main.
- B. For properties with low pressure service, the property owner and utility customer shall be responsible for the proper operation, maintenance, and repairs of the

sewer system in the building and the service lateral, lift station (grinder pump) and force main between the building and the point of connection into the public sewer main.

- C. When, as a part of sewer system testing, the City identifies a flaw in a private service lateral or force main where a repair is necessary to prevent infiltration or inflow, the property owner and utility customer shall be responsible to cause the repairs to be made within one (1) year of the date of notification by the City.
- D. If repairs are not complete within one year of notification by the City, City may engage the services of a contractor to make the necessary repairs with the costs for such repairs to be paid by the City and subsequently charged to property owner and utility customer.

City of Georgetown, Texas City Council Regular Meeting February 12, 2019

SUBJECT:

Public Hearing and **First Reading** of an Ordinance **rezoning** approximately **10.89 acres** in the Barney C. Low survey, Abstract No. 385, located at **878 Westinghouse Road**, from the **Agriculture (AG)** zoning district to a Planned Unit Development (**PUD**) zoning district, to be known as **Toolmen Corp** -- Chelsea Irby, Senior Planner

ITEM SUMMARY:

Overview of Applicant's Request:

The applicant is requesting to rezone the property at 878 Westinghouse Road from Agriculture to a Planned Unit Development to expand the existing manufacturing operations.

Staff's Analysis:

Staff has reviewed the request in accordance with the Unified Development Code (UDC) and other applicable codes. Staff has determined that the proposed request meets the criteria established in UDC Section 3.06.030 for a Rezoning and Section 3.06.040 for a Planned Unit Development (PUD), as outlined in the attached Staff Report.

Public Comments:

As required by the Unified Development Code, all property owners within a 200-foot radius of the subject property were notified of the Zoning Map Amendment request (12 notices), a legal notice advertising the public hearing was placed in the Sun Newspaper (December 30,2018) and signs were posted on- site. To date, staff has received one email inquiring about the application.

Planning and Zoning Commission Recommendation:

At their January 15, 2019 meeting, the Planning and Zoning Commission recommended approval (7-0) of the request.

FINANCIAL IMPACT: None. The applicant has paid the required application fees.

SUBMITTED BY: Chelsea Irby, Senior Planner

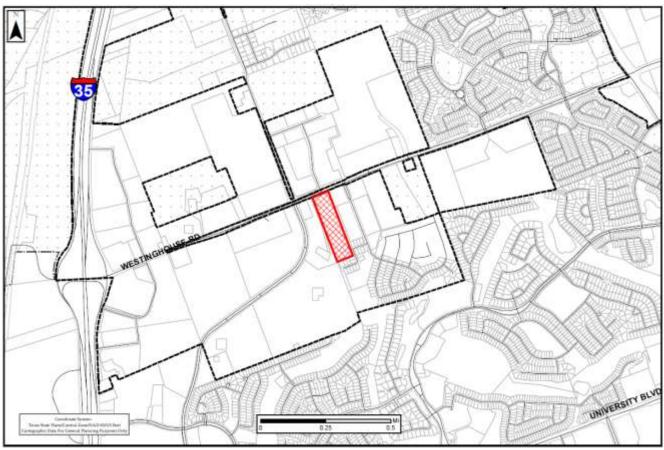
ATTACHMENTS:

PUD-2018-006 - P&Z Staff Report Exhibit 1 - Location Map Exhibit 2 - Future Land Use Map Exhibit 3 - Zoning Map Exhibit 4 - PUD Development Plan Exhibit 5 - Letter of Intent Ordinance with Exhibits



Planning and Zoning Commission Planning Department Staff Report

Report Date:	January 11, 2019
Case No:	PUD-2018-006
Project Planner:	Chelsea Irby, Senior Planner
Item Details	
Project Name:	Toolmen Corp. PUD
Project Location:	878 Westinghouse Road, within City Council district No. 1
Total Acreage:	10.89
Legal Description:	Low, B.c. Sur., ACRES 10.893
Applicant:	John Potts
Property Owner:	John Potts
Request:	Zoning Map Amendment to rezone the subject property from Agriculture (AG) to a Planned Unit Development (PUD) with a base zoning of Business Park.
Case History:	This is the first public hearing of this request.



Location Map

Overview of Applicant's Request

According to the applicant's letter of Intent (*Exhibit 5*), the subject property currently has two, 15,000 sq. ft. buildings on the northern portion of the subject property closest to Westinghouse Road. These buildings are currently being utilized for manufacturing of machine tools and glass. The applicant's intent is to convert the existing buildings into commercial uses within the next two years. The manufacturing uses would be relocated to two new approximately 16,000 sq. ft. buildings south of the existing buildings. It is anticipated the project would be completed in phases.

The proposed PUD provides specific development standards relating to the creation of a zoning district that limits the existing manufacturing use, allows new commercial uses, and protects the surrounding residential areas.

Site Information

Location:

The property is located near the southeast corner of Westinghouse Road and N. Mays Street, approximately 0.8 miles east of IH-35. The property is currently used for the manufacturing of machine tools and glass.

Physical and Natural Features:

The property contains two 15,000 sq. ft. buildings. The property is generally flat with tree cover in the southwest corner.

Future Land Use and Zoning Designations:

The subject property has a Future Land Use Designation of Employment Center and is currently zoned Agriculture (AG). It is also located within Growth Tier 1B.

Surrounding Properties:

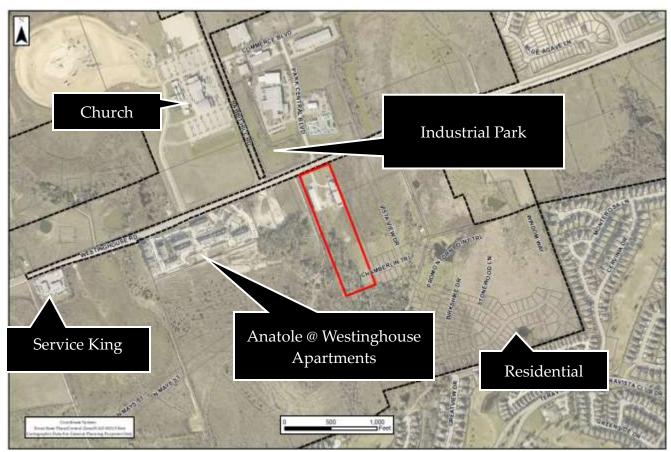
The area is primarily made-up of large parcels of land, with a variety of uses. Across Westinghouse Road there is a church and Industrial Park. To the south and east of the subject property is a singlefamily residential area. To the south and west of the subject property is vacant, undeveloped land; however, these properties have received zoning approval for a mix of residential and non-residential uses, including Class A office, hotel, indoor self-storage, commercial, and multi-family residential uses, such as the Summit at Westinghouse PUD and Westinghouse Investors Inc PUD located to the west along Mays St.

Other major developments and uses located within a 1-mile radius of the subject property include Celebration Church, Texas Department of Public Safety facility, Teravista, Round Rock Premium Outlets, and Bass Pro Shop, as well as other commercial, industrial and residential uses.

The current zoning, Future Land Use designation, and existing uses of the adjacent properties to the north, south, east and west are outlined in the table below:

Planning Department Staff Report

DIRECTION	ZONING DISTRICT	FUTURE LAND USE	EXISTING USE
North (across Westinghouse Road)	Industrial (IN)	Employment Center	Industrial
South	Residential Single- Family (RS)	High-Density Residential	Residential
East	Local Commercial (C-1), Low-Density Multi- Family (MF-1), and Residential Single- Family (RS)	Employment Center	Undeveloped
West	Agriculture (AG)	Employment Center	Residential



Aerial Map

Property History:

The subject property was annexed in 2011 (Ordinance No. 2011-055) and given the Agriculture (AG) zoning designation upon annexation.

The subject property is also located within the South Georgetown Tax Reinvestment Increment Zone (TIRZ). This TIRZ was created in 2014 to create a program to "promote local economic development and to stimulate business and commercial activity in the city." The City acted as a partner to local landowners to facilitate needed infrastructure improvements for the area, while promoting quality

commercial/mixed-use development. Public improvements within and around the TIRZ included sewer, water, electric and road improvements such as the extension of Mays St from Westinghouse Rd to the southern city limits.

Comprehensive Plan Guidance

Future Land Use Map:

The *Employment Center* category is intended for tracts of undeveloped land located at strategic locations, which are designated for well planned, larger scale employment and business activities, as well as supporting uses such as retail, services, hotels, and high density residential development (stand-alone or in mixed-use buildings) as a conditional use. These areas often act as a transition between more intensely developed commercial uses and residential neighborhoods. Primary uses include offices, flex offices, and technology research and development, as well as environmentally friendly manufacturing.

Growth Tier:

Tier 1B is the area within the present city limits, or subject to a development agreement, surrounding Tier 1A that is generally under-served by infrastructure and where such service and facilities will likely be needed to meet the growth needs of the city once Tier 1A (that portion of the city where infrastructure systems are in place or can be provided) approaches build-out. This includes area subject to development agreements or annexation service plans, which mandate the provision of public facilities at varying levels of service. Other than this commitment, the City's priorities for capital improvements should focus on the development of a full array of services and facilities with adequate capacities in Tier 1A, prior to initiating additional major investments in Tier 1B.

Utilities

The subject property is located within the City's service area for water and wastewater. Additionally, it is located within the Georgetown and Oncor service areas for electric. It is anticipated that there is adequate capacity to serve the subject property at this time. A Utility Evaluation may be required at time of Site Development Plan to determine capacity and any necessary utility improvements.

Transportation

The subject property is located along Westinghouse Road, which is an existing Major Arterial.

Arterial streets provide traffic movement through and between different areas within the city and access to adjacent land uses. Access is more controllable because driveway spacing requirements are much greater and, if safety dictates, overall access can be limited to specific turning movements. Major Arterials connect major traffic generators and land use concentrations and serve much larger traffic volumes over greater distances.

A Traffic Impact Analysis (TIA) will be required at time of Site Development Plan for any development that generates more than two thousand (2,000) average daily trips based upon the latest edition of the Institute of Transportation Engineers (ITE) Trip Generation Manual.

Proposed Zoning District

The proposed zoning district is Planned Unit Development (PUD) district. The PUD is a special purpose zoning district intended to allow flexibility in planning and designing for unique or environmentally sensitive properties and that are to be developed in accordance with a common development scheme. PUD zoning is designed to accommodate various types of development, including multiple housing types, neighborhood and community retail, professional and administrative areas, industrial and business parks, and other uses or a combination thereof. A PUD may be used to permit new or innovative concepts in land use and standards not permitted by zoning or the standards of this Code.

The proposed PUD has base district of Business Park (BP). The Business Park (BP) District is intended to provide a location for office, research, and light industrial uses typically located as part of a large development. The BP District may be appropriate adjacent to residential areas, provided that there is adequate buffering and pedestrian and vehicular access to the residential area for workers in the business park. The BP District typically has more traffic than in an office area, but fewer heavy vehicles than in an industrial area. The BP District is a special purpose district because it has a minimum size acreage for limited complementary uses that may expand with the size of the park. Larger parks often include commercial activities such as restaurants, banks, day care and similar uses that are intended to serve the on-site community and may include some limited high-density residential.

The main purpose of the proposed PUD is to establish an industrial-commercial mixed-use development to allow the existing manufacturing uses, while adding new commercial and personal service uses. See *Exhibit 4* for the PUD document.

In accordance with the UDC, the standards and requirements of the specified base districts shall apply save and except those that are specifically outlined in the PUD Development Plan. The proposed PUD contains the following specific regulations:

- Permits manufacturing uses, with limitations subject to the following additional standards:
 - Maximum of 45,000 sq. ft. combined
 - Greater setbacks when adjacent to residential (25' minimum for for manufacturing use, 20' minimum for other allowed uses)
- Prohibits automotive uses and outdoor storage
- Requires a residential boundary wall where industrial uses abut residential
- Roadway stub to future Chamberlain Trail
- Medium-level bufferyard
- Max building height of 45'

The proposed PUD includes the following sections of the UDC of the specified base district:

- Impervious Cover and Stormwater
- Exterior Lighting
- Architectural and Building Design Elements
- Parking
- Tree Preservation
- Landscaping
- Signage

Intergovernmental and Interdepartmental Review

The proposed rezoning request was reviewed by all applicable City Departments to determine the appropriateness of the requested zoning on the subject property. No comments were issued regarding the zoning request.

Approval Criteria

Staff has reviewed the proposed rezoning request and has found that it **complies** with the criteria established in UDC Section 3.06.030 for a Zoning Map Amendment, as outlined below:

RI	ZONING APPROVAL CRITERIA	FINDINGS	STAFF COMMENTS
1.	The application is complete and the information contained within the application is sufficient and correct enough to allow adequate review and final action.	Complies	An application must provide the necessary information to review and make a knowledgeable decision in order for staff to schedule an application for consideration by the Planning and Zoning Commission and City Council. This application was reviewed by staff and deemed to be complete.
2.	The zoning change is consistent with the Comprehensive Plan.	Complies	The existing and proposed use provides employment opportunities in the manufacturing and commercial industries. This property is designated as Employment Center on the Future Land Use Map. The Employment Center is generally centered around IH-35 and Westinghouse Road, mostly extending west and north.
3.	The zoning change promotes the health, safety or general welfare of the City and the safe orderly, and healthful development of the City.	Complies	The property is currently zoned Agriculture (AG). The PUD, with a base district of Business Park (BP), is suitable with the surrounding uses. Additional standards are proposed because of the heavy industrial use that would be allowed next to residential. The only industrial use permitted is the existing manufacturing use, which has a square footage limitation of 45,000 sq ft. All new uses will be commercial in nature.
4.	The zoning change is compatible with the present zoning and conforming uses of nearby property and with	Complies	The proposed uses are compatible with the surrounding area, as there are existing Local Commercial (C-1), Public Facilities (PF), Business Park (BP), and

REZONING APPROVAL CRITERIA	FINDINGS	STAFF COMMENTS
the character of the		Industrial (IN) districts in the
neighborhood.		surrounding area. Other approved
0		Planned Unit Developments (PUD)
		within the area are for a mix of
		commercial, employment and other
		supporting uses.
		Additionally, the development provides
		a masonry boundary wall and open
		space adjacent to the existing residential
		area.
		The proposed PUD contains the following
		specific regulations to create a zoning
		district that is compatible with the
		surrounding area:
		• Permits manufacturing uses, with
		limitations subject to the following
		additional standards:
		• Maximum of 45,000 sq. ft.
		combined
		o Greater setbacks when
		adjacent to residential (25'
		minimum for for
		manufacturing use, 20'
		minimum for other
		allowed uses)
		• Prohibits automotive uses and
		outdoor storage
		• Requires a residential boundary
		wall where industrial uses abut
		residential
		Roadway stub to future
		Chamberlain Trail
		Medium-level bufferyard
		• Max building height of 45'
5. The property to be rezoned		This site is currently used in a Business
is suitable for uses		Park function. This PUD allows for
permitted by the District		appropriate expansion of the current uses
that would be applied by	Complies	and the addition of a manufacturing use.
the proposed amendment.		and the unuffort of a manufacturing doc.
ale proposed untertainent.		

In addition to the rezoning criteria above, staff has reviewed the request and determined that the proposed request **complies** the criteria and objectives established in UDC Section 3.06.040 for a Planned Unit Development (PUD), as outlined below:

	PUD CRITERIA	FINDINGS	STAFF COMMENTS
1.	A variety of housing types, employment opportunities, or commercial services to achieve a balanced community.	Complies	The proposed PUD provides employment opportunities through the commercial, manufacturing and other supporting uses permitted in the district.
2.	An orderly and creative arrangement of all land uses with respect to each other and to the entire community.	Complies	The proposed uses are compatible with the surrounding area. The PUD, with a base district of Business Park (BP), is compatible with the nearby Local Commercial (C-1) and Business Park (BP) districts.
3.	A planned and integrated comprehensive transportation system providing for a separation of pedestrian and vehicular traffic, to include facilities such as roadways, bicycle ways, and pedestrian walkways.	Complies	The subject property has frontage along Westinghouse Road, where its primary access will be located. In addition, the proposed PUD provides area for the future extension of Chamberlain Trail from the east to the west that will ultimately be extended to connect to Mays St and enhance the existing street network of the area.
4.	The provisions of cultural or recreational facilities for all segments of the community.	Does Not Comply	This PUD does not provide recreational facilities.
5.	The location of general building envelopes to take maximum advantage of the natural and manmade environment.	Complies	The site design takes the natural landscaping into consideration and leaves a large amount of open space. The placement of the existing and proposed buildings reduces the impact on the surrounding residential areas because no loading docks are on the rear of the buildings. The buildings are also positioned closer to the MF-1 zoned area, rather than the RS area.
6.	The staging of development in a manner which can be accommodated by the timely provision of public utilities, facilities, and services.	Complies	All adequate utilities are in place to support the development.

Based on the findings listed above, the applicant's request meets five of the five criteria of the UDC for

a rezoning, and four of the five for a Planned Unit Development (PUD). The proposed PUD with a based zoning of Business Park, should it be approved, would allow for a mixed development consisting of commercial and industrial uses with a unified character consistent with the Employment Center future land use designation of the area. In addition, it would be in character with the other industrial, office and commercial uses of the area, particularly to the north, west and southwest.

Meetings Schedule

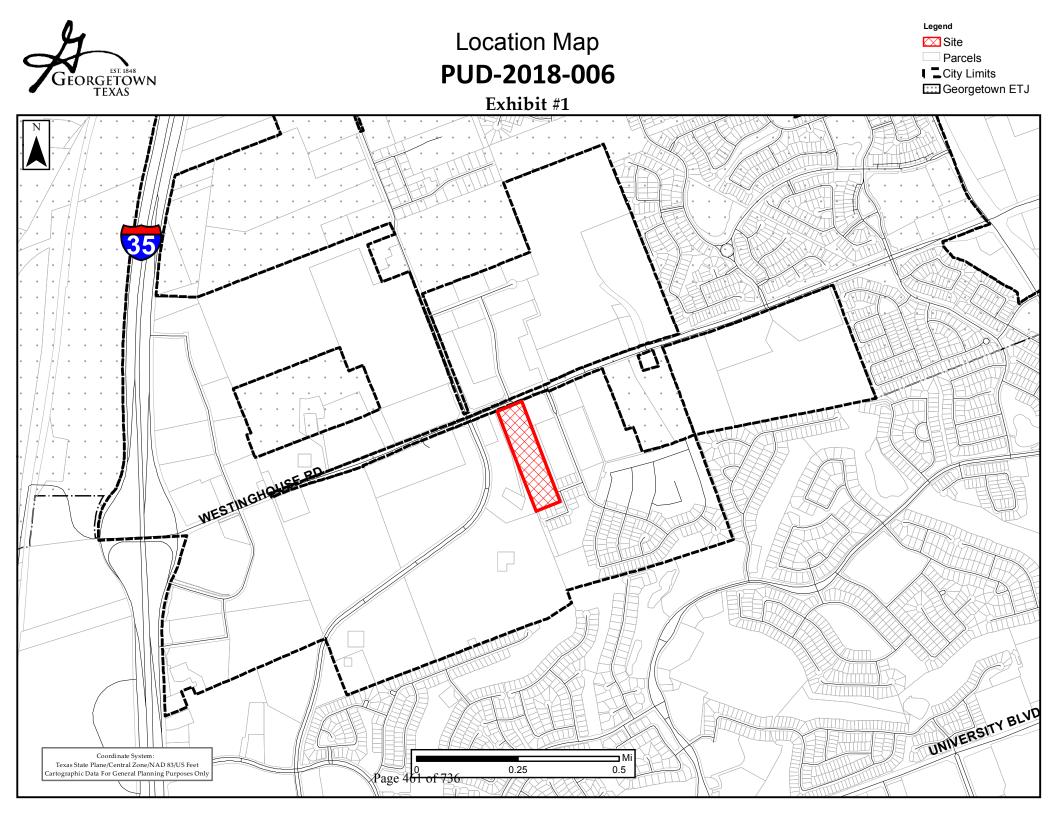
January 15, 2019 – Planning and Zoning Commission February 12, 2019 – City Council First Reading of the Ordinance February 26, 2019 – City Council Second Reading of the Ordinance

Public Notification

As required by the Unified Development Code, all property owners within a 200-foot radius of the subject property were notified of the Zoning Map Amendment request (12 notices), a legal notice advertising the public hearing was placed in the Sun Newspaper (December 30, 2018) and signs were posted on-site. To date, staff has received one email inquiring about the application.

Attachments

Exhibit 1 – Location Map Exhibit 2 – Future Land Use Map Exhibit 3 – Zoning Map Exhibit 4 – PUD Document Exhibit 5 – Letter of Intent



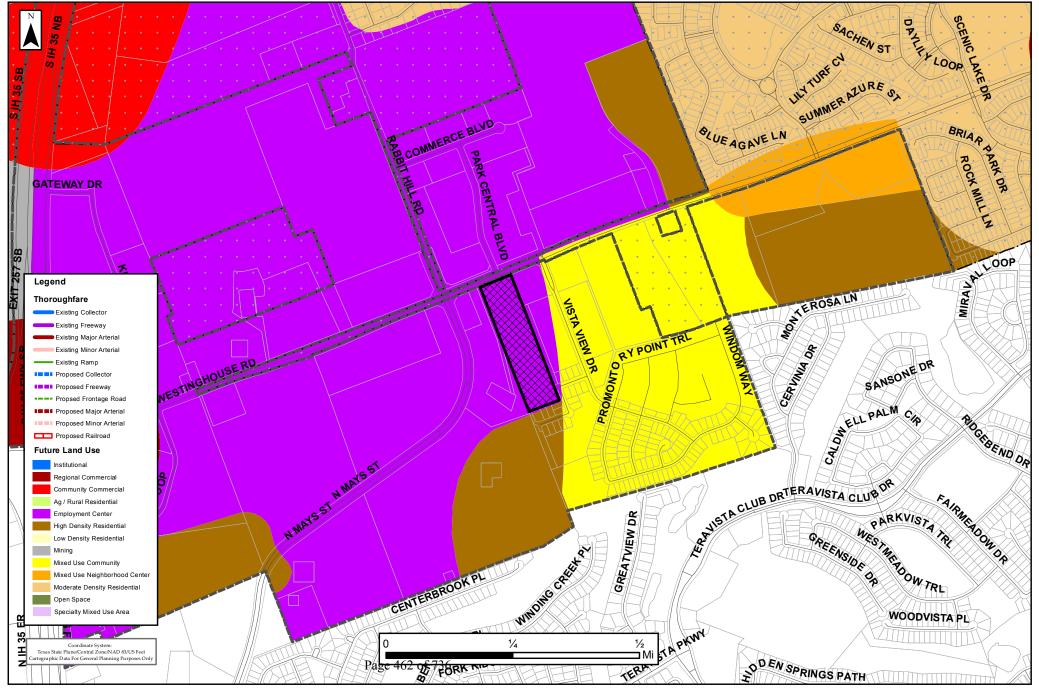


Future Land Use / Overall Transportation Plan

PUD-2018-006

Exhibit #2

Legend Site Parcels City Limits Georgetown ETJ





Zoning Information PUD-2018-006 Exhibit #3



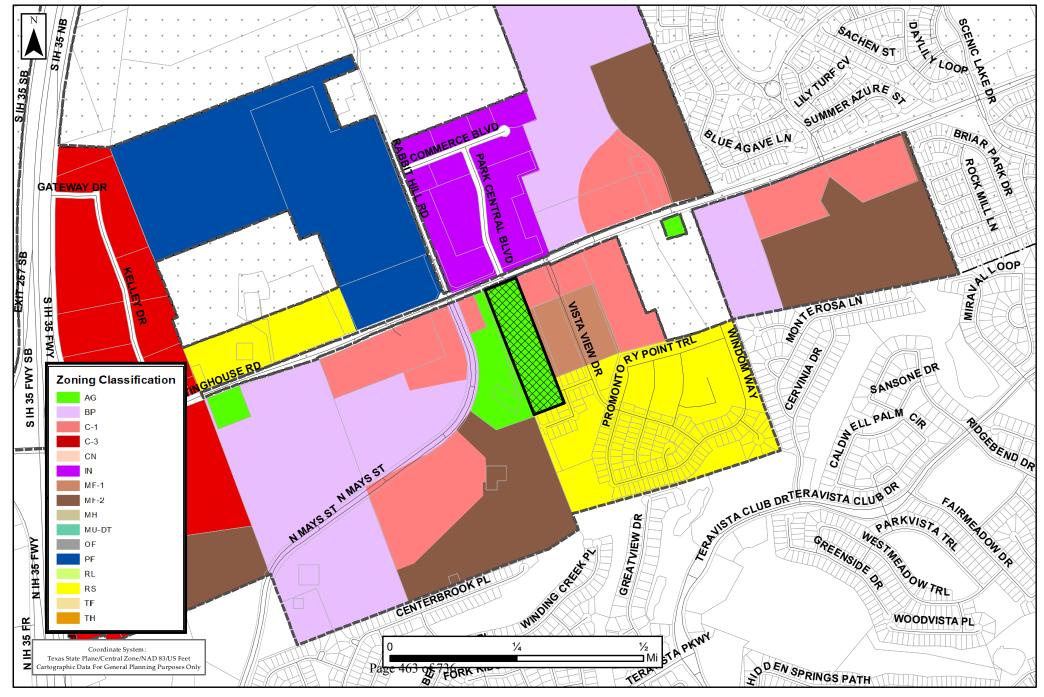


Exhibit A Toolmen Corp Business Park Planned Unit Development Development Plan

A. PROPERTY

The Toolmen Corp Business Park Planned Unit Development District (PUD) is located at 878 Westinghouse Road and encompasses approximately 10.89 acres in the Barney C. Low Survey, recorded in Volume 848, Page 817 in the Official Public Records of Williamson County, herein defined as the "Property".

B. PURPOSE

The purpose of the PUD is to address the specific development pressures of the property and to guide relationship of land use and design criteria to nearby residential development. It is the vision of the PUD to provide a mechanism to allow the existing industrial uses to expand operations at the site while allowing for its adaptive reuse as a future, neighborhood-serving commercial development.

This PUD serves to augment and/or modify the standards for development outlined in the City's Unified Development Code (UDC) in order to implement the vision for the property and insure a cohesive, quality development not otherwise anticipated by the underlying base zoning district. In accordance with UDC Section 4.06.010.C "Development Plan Required", this Development Plan titled **Exhibit A** is a summary of the development and design standards for the Property.

C. APPLICABILITY AND BASE ZONING

In accordance with UDC Section 4.06.010.4 "Compatibility with Base Zoning District", all development of the property shall conform to the base zoning district of Business Park (BP). Except for those requirements specifically deviated by this Development Plan, all development standards established in the most current version of the UDC at time of development shall be applicable, including amendments or ordinances adopted after the date of this PUD. In the case that this Development Plan does not address a specific item, the City of Georgetown UDC and any other applicable Ordinances shall apply. In the event of a conflict between the regulations of this PUD and the regulations of the UDC, this PUD shall control.

D. CONCEPTUAL LAND PLAN

A Conceptual Land Plan has been attached to this Development Plan as **Exhibit B** to illustrate the land use and design intent for the property. The Conceptual Land Plan is intended to serve as a guide to illustrate the general vision and design concepts and is not intended to serve as a final document. As such, the proposed building, parking, and tree configurations are subject to refinement at time of Site Development Plan review. The Conceptual Land Plan depicts a series of buildings, parking, outdoor areas, and landscaping that may be developed in phases, provided the minimum requirements of this PUD and the UDC are met. Approval of this Development Plan and Conceptual Land Plan does not constitute approval of a Site Development Plan per Section 3.09 of the UDC.

E. LAND USES

- 1. Primary Use. The primary use of the Property shall be for:
 - Artisan Studio/Gallery
 - Automotive Parts Sales (indoor)
 - Banking/Financial Services
 - Consumer Repair
 - Dry Cleaning Service
 - Farmer's Market
 - Fitness Center
 - Food Catering Services
 - General Retail
 - General Office
 - Home Health Care Services
 - Integrated Office Center
 - Landscape/Garden Sales
 - Library/Museum
 - Membership Club/Lodge
 - Personal Services (inc. Restricted)
 - Restaurant (general/drive-through)
 - Theater (movie/live)
 - Veterinary Clinic (indoor only)
- 2. Other Permitted Uses. The following uses may be permitted subject to limitations as established in the most current version of the UDC at time of development:
 - Athletic Facility, Indoor or Outdoor
 - Bar/Tavern/Pub
 - Commercial Recreation
 - Community Center
 - Dance Hall/Night Club
 - Data Center
 - Day Care (group/commercial)
 - Event Facility
 - Hospital, Psychiatric
 - Live Music/Entertainment
 - Meat Market

- Micro Brewery/Winery
- Upper-story Residential
- Research, Testing/Development Lab
- 3. Prohibited Uses. The following uses are prohibited:
 - Activity Center (youth/senior)
 - Auto. Parts Sales (outdoor)
 - Auto. Repair & Service, General
 - Auto. Repair and Service, Limited
 - Auto. Sales, Rental, Leasing
 - Bus Barn
 - Cemetery, Columbaria, Mausoleum, or Memorial Park
 - Correctional Facility
 - Driving Range
 - Flea Market
 - Firing Range, Indoor
 - Fuel Sales
 - Kennel
 - Laundromat
 - Lumber Yard
 - Nature Preserve/Community Garden
 - Major Event Entertainment
 - Manufactured Housing Sales
 - Multifamily Attached
 - Parking Lot (commercial/park-n-ride)
 - Recreational Vehicle Sales, Rental, Service
 - Self-Storage (indoor or outdoor)
 - Substance Abuse Treatment Facility
 - Transient Service Facility
 - Wireless Transmission Facility (41'+)
- 4. Special Use Permit Required. The following uses may be permitted subject to approval of a Special Use Permit as established in the most current version of the UDC at time of development:
 - Business/Trade School
 - Church (with columbarium)

- College/University
- Heliport
- Neighborhood Amenity Center
- Park (neighborhood/regional)
- Pest Control/Janitorial Services
- School (Elementary, Middle, High)
- Wireless Transmission Facility (<41')
- Agricultural Sales
- Assisted Living
- Blood/Plasma Center
- Car Wash
- Emergency Services Station
- Event Catering/Equipment Rental
- Funeral Home
- Government/Postal Office
- Medical Diagnostic Center
- Medical Office/Clinic/Complex
- Nursing/Convalescent/Hospice
- Printing/Mailing/Copying Services
- Private Transport Dispatch Facility
- Small Engine Repair
- Social Service Facility
- Surgery/Post Surgery Recovery
- Transit Passenger Terminal
- Urgent Care Facility
- Utilities (Minor/Intermediate/Major)
- Hospital
- Hotel/Inn/Motel (incl. extended stay)
- 5. Specific Limitations to Permitted Uses. The following use is permitted subject to the limitations of Section F of this Development Plan
 - Manufacturing, Processing, Assembly General

F. DESIGN STANDARDS

1. **Density.** A maximum of 45,000 square feet of gross floor area shall be permitted for the "Manufacturing, Processing, Assembly – General" use. The density for all other

uses permitted by this Development Plan shall be subject to the requirements of the UDC.

2. Setbacks. The setbacks on the Property shall be as follows:

	"Manufacturing, Processing, Assembly – General" Use	All Other Uses Permitted by this Development Plan
Front Setback	25 foot minimum	25 foot minimum
Side Setback	10 foot minimum	10 foot minimum
Side Setback to Residential District	25 foot minimum	20 foot minimum
Rear Setback	10 foot minimum	10 foot minimum
Rear Setback to Residential District	35 foot minimum	25 foot minimum

- 3. Building Height. The maximum building height on the Property shall be 45 feet.
- **4. Exterior Lighting.** Exterior Lighting on the Property and its buildings will comply with the requirements set forth in Section 7.05 of the UDC related to outdoor lighting.
- 5. Architectural and Building Design Elements. The architectural and building design elements shall be in conformance with Chapter 7 of the UDC.

G. PARKING.

Parking on the Property shall be in conformance with Chapter 9 of the UDC.

H. VEHICULAR ACCESS AND CIRCULATION

- 1. Transportation Impact Analysis (TIA). A TIA may be required based on future development at the time of platting or site development plan as established in the most current version of the UDC at time of development.
- 2. Driveway Access. There shall be one driveway access point along Westinghouse Road.
- **3. Circulation.** Cross access is required between adjacent properties. The roadway stub to Chamberlin Trail shall be provided.

I. TREE PRESERVATION

Tree Preservation on the Property shall be in conformance with Chapter 8 of the UDC unless otherwise stated in this Development Plan.

J. LANDSCAPE AND BUFFER REQUIREMENTS

1. Landscaping. Landscaping shall be based on the requirements of a non-residential landscape requirements as established in the most current version of the UDC at time of development.

- 2. Bufferyards. Bufferyards shall be based on the requirements of a Business Park (BP) zoning as established in the most current version of the UDC at time of development. A medium level bufferyard shall be required.
- 3. Residential Boundary Wall. A solid six-foot high screening wall constructed of brick, stone, reinforced concrete or other similar two-sided masonry materials shall be required along all property boundaries that are adjacent to a single-family or multi-family residential district. An Administrative Exception to the building materials and design requirements of the boundary wall along the southern property line may be considered.

K. OUTDOOR STORAGE

Outdoor storage shall not be permitted.

L. SIGNAGE

Signage on the Property shall be in conformance with Chapter 10 of the UDC. A Master Sign Plan for all business within the Property will be required. All signage must follow a uniform theme. Only one monument sign will be permitted along Westinghouse Road.

M. IMPERVIOUS COVERAGE

Impervious coverage on the Property shall be in conformance with the base zoning district of this PUD per Chapter 11 of the Unified Development Code.

N. STORMWATER

Stormwater management on the Property shall be in conformance with Chapter 11 of the Unified Development Code.

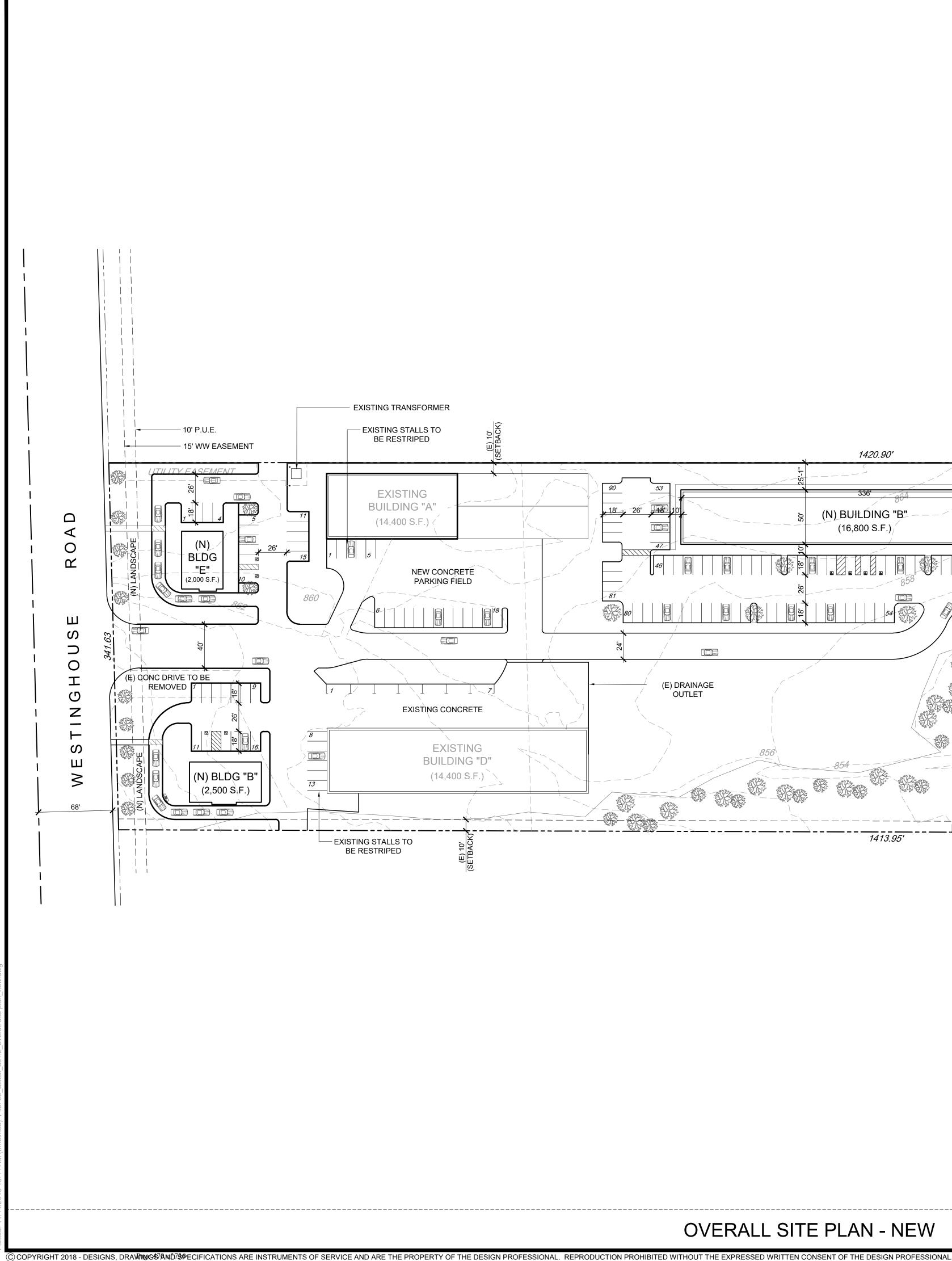
O. PUD MODIFICATIONS

In conformance with Section 4.06.010.D.3 of the UDC, modifications to this Development Plan shall require City Council approval of an amendment to this PUD processed pursuant to Section 3.06 of the UDC, except, where the Director of Planning determines such modifications to be minor, the Director may authorize such modifications. Minor modifications may include changes to building sizes, uses, or locations providing those modifications conform to the general intent of this PUD, uses authorized by this PUD, or to applicable provisions of the UDC and any other applicable regulations.

P. LIST OF EXHIBITS

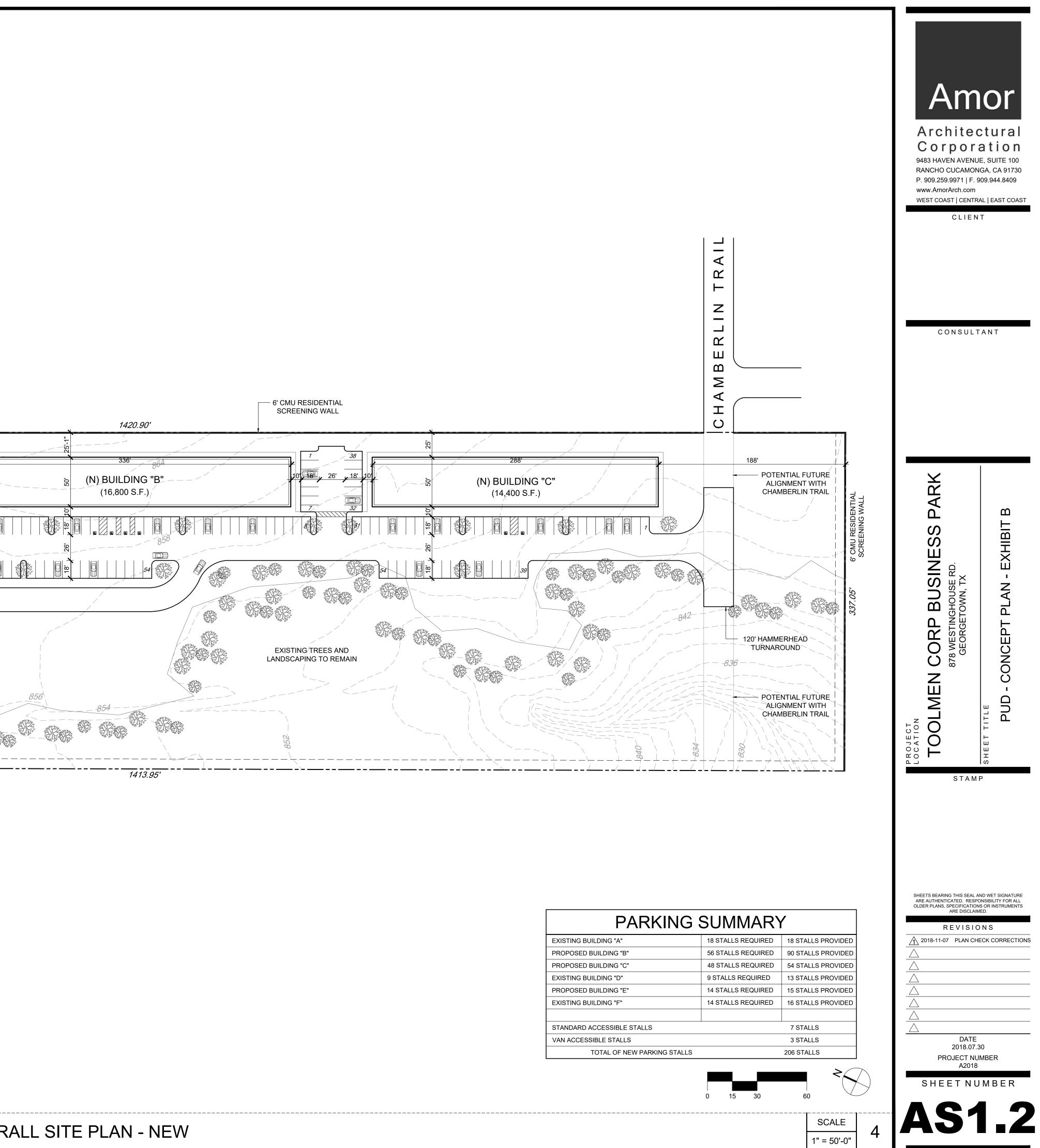
Exhibit A – PUD Development Plan

Exhibit B - Conceptual Land Plan



6' CMU RESIDENTIAL SCREENING WALL 1420.90' 90 53 - 38 .0' 26' 18' 18' 26' (N) BUILDING "B" (16,800 S.F.) 32 17 31 81 AT BE . KAR AK SUR . (E) DRAINAGE OUTLET EXISTING/TREES AND LANDSCAPING TO REMAIN - SA

OVERALL SITE PLAN - NEW





November 1, 2017

City of Georgetown Planning Department 406 W. 8th St. Georgetown, TX 78626

Letter of Intent: 878 Westinghouse Rd

To Whom It May Concern:

Toolmen Corporation is submitting this application to the City of Georgetown Planning Department for consideration to rezone our property from the current AG to C-1 zoning districts.

878 Westinghouse Road is a 10.89 acre property in the Barney Low Survey. The front portion of the property, consisting of two buildings of 15,000 sq. ft. each is located on 2 acres located closest to Westinghouse Road. These buildings are currently being used by several businesses for manufacturing of machine tools and glass. Our intent is to convert this property to commercial use within the next two years. As part of the development, Toolmen Corporation would like to construct two new buildings (approximately 16,000 square feet each) south of the existing buildings on the east side of the property and to relocate all current businesses into the new buildings. The current buildings will then be retrofitted for commercial use. This will all be completed in phases.

We feel this is the best use of this property in the near future as this area (rural land on the east side of I-35 in southeast Georgetown) is being largely developed for residential use made up of both singlefamily and multifamily units. This will make for a more attractive property from Westinghouse Road and allow for more small business and economic growth in this area. This change we feel will help implement the goals Georgetown has laid out in their 2030 Comprehensive Plan and specifically mentioned in Chapter 3: Land use element page 3.7-3.8. We feel having some commercial business here along Westinghouse Road is attractive in that it will serve the residents of South East Georgetown with convenience and enhance the desirability of the area.

Westinghouse Road has become much more accessible and easier to drive over the years, being expanded into 4 lanes with a center turning lane. The completion of the Mays Street extension directly to the East of our property further expands the traffic flow and accessibility to our area. The utilities are easily accessible with the development of a multifamily unit directly west of the property that has brought water lines nearby. Also the new sewer system is being constructed directly east of our property which runs to future residential zones behind the property.

Our intent is to build attractive buildings with minimal impervious coverage. Over four acres will not be developed and perhaps could be converted into parkland.

Thank you for your consideration in this matter. If you have any questions about this project please contact John Potts, President of Toolmen Corporation and current property owner of 878 Westinghouse Rd, at 512-863-9685.

Sincerely,

John Potts President Toolmen Corporation 878 Westinghouse Rd Georgetown, TX 78626

ORDINANCE NO.

An Ordinance of the City Council of the City of Georgetown, Texas, amending part of the Official Zoning Map to rezone approximately 10.89 acres out of the B.C. Low Survey, Abstract No. 385, from the Agriculture (AG) zoning district to a Planned Unit Development (PUD), to be known as Toolmen Corp.; repealing conflicting ordinances and resolutions; including a severability clause; and establishing an effective date.

Whereas, an application has been made to the City for the purpose of amending the Official Zoning Map, adopted on the 12th day of June, 2012, for the specific Zoning District classification of the following described real property ("The Property"):

10.89 acres of the Barney C. Low Survey, Abstract No. 485, consisting of a portion of an 11.058 acre tract in the Barney C. Low Survey, Abstract No. 485, as recorded in Volume 848, Page 817 (Tract 2) of the Official Public Records of Williamson County, Texas, save and except 0.165 acres conveyed for the Westinghouse Road Right-of-Way, as described in Document No. 2007074529 of the Official Public Records of Williamson County, Texas, hereinafter referred to as "The Property"; and

Whereas, public notice of such hearing was accomplished in accordance with State Law and the City's Unified Development Code through newspaper publication, signs posted on the Property, and mailed notice to nearby property owners; and

Whereas, the Planning and Zoning Commission, at a meeting on January 15, 2019, held the required public hearing and submitted a recommendation of approval to the City Council for the requested rezoning of the Property; and

Whereas, the City Council, at a meeting on February 12, 2019, held an additional public hearing prior to taking action on the requested rezoning of the Property.

Now, therefore, be it ordained by the City Council of the City of Georgetown, Texas, that:

Section 1. The facts and recitations contained in the preamble of this Ordinance are hereby found and declared to be true and correct, and are incorporated by reference herein and expressly made a part hereof, as if copied verbatim. The City Council hereby finds that this Ordinance implements the vision, goals, and policies of the Georgetown 2030 Comprehensive Plan and further finds that the enactment of this Ordinance is not inconsistent or in conflict with any other policies or provisions of the 2030 Comprehensive Plan and the City's Unified Development Code.

<u>Section 2</u>. The Official Zoning Map, as well as the Zoning District classification(s) for the Property is hereby amended from the Agriculture District (AG) to the Planned Unit Development District (PUD), in accordance with the attached *Exhibit A-B* (PUD Development

Ordinance Number:

Description: Toolmen Corp. PUD Date Approved: February 26, 2019 Page 1 of 2 Case File Number: PUD-2018-006 Exhibits A-D Attached Plan), *Exhibit C* (Location Map) and *Exhibit D* (Legal Description) and incorporated herein by reference.

<u>Section 3</u>. All ordinances and resolutions, or parts of ordinances and resolutions, in conflict with this Ordinance are hereby repealed, and are no longer of any force and effect.

<u>Section 4</u>. If any provision of this Ordinance or application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the other provisions, or application thereof, of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are hereby declared to be severable.

<u>Section 5</u>. The Mayor is hereby authorized to sign this ordinance and the City Secretary to attest. This ordinance shall become effective in accordance with the provisions of state law and the City Charter of the City of Georgetown.

APPROVED on First Reading on the 12th day of February, 2019.

APPROVED AND ADOPTED on Second Reading on the 26th day of February, 2019.

THE CITY OF GEORGETOWN:

Dale Ross Mayor Robyn Densmore, TRMC City Secretary

ATTEST:

APPROVED AS TO FORM:

Charlie McNabb City Attorney

Ordinance Number: _____

Description: Toolmen Corp. PUD Date Approved: February 26, 2019 Page 2 of 2 Case File Number: PUD-2018-006 Exhibits A-D Attached

Exhibit A Toolmen Corp Business Park Planned Unit Development Development Plan

A. PROPERTY

The Toolmen Corp Business Park Planned Unit Development District (PUD) is located at 878 Westinghouse Road and encompasses approximately 10.89 acres in the Barney C. Low Survey, recorded in Volume 848, Page 817 in the Official Public Records of Williamson County, herein defined as the "Property".

B. PURPOSE

The purpose of the PUD is to address the specific development pressures of the property and to guide relationship of land use and design criteria to nearby residential development. It is the vision of the PUD to provide a mechanism to allow the existing industrial uses to expand operations at the site while allowing for its adaptive reuse as a future, neighborhood-serving commercial development.

This PUD serves to augment and/or modify the standards for development outlined in the City's Unified Development Code (UDC) in order to implement the vision for the property and insure a cohesive, quality development not otherwise anticipated by the underlying base zoning district. In accordance with UDC Section 4.06.010.C "Development Plan Required", this Development Plan titled **Exhibit A** is a summary of the development and design standards for the Property.

C. APPLICABILITY AND BASE ZONING

In accordance with UDC Section 4.06.010.4 "Compatibility with Base Zoning District", all development of the property shall conform to the base zoning district of Business Park (BP). Except for those requirements specifically deviated by this Development Plan, all development standards established in the most current version of the UDC at time of development shall be applicable, including amendments or ordinances adopted after the date of this PUD. In the case that this Development Plan does not address a specific item, the City of Georgetown UDC and any other applicable Ordinances shall apply. In the event of a conflict between the regulations of this PUD and the regulations of the UDC, this PUD shall control.

D. CONCEPTUAL LAND PLAN

A Conceptual Land Plan has been attached to this Development Plan as **Exhibit B** to illustrate the land use and design intent for the property. The Conceptual Land Plan is intended to serve as a guide to illustrate the general vision and design concepts and is not intended to serve as a final document. As such, the proposed building, parking, and tree configurations are subject to refinement at time of Site Development Plan review. The Conceptual Land Plan depicts a series of buildings, parking, outdoor areas, and landscaping that may be developed in phases, provided the minimum requirements of this PUD and the UDC are met. Approval of this Development Plan and Conceptual Land Plan does not constitute approval of a Site Development Plan per Section 3.09 of the UDC.

E. LAND USES

- 1. Primary Use. The primary use of the Property shall be for:
 - Artisan Studio/Gallery
 - Automotive Parts Sales (indoor)
 - Banking/Financial Services
 - Consumer Repair
 - Dry Cleaning Service
 - Farmer's Market
 - Fitness Center
 - Food Catering Services
 - General Retail
 - General Office
 - Home Health Care Services
 - Integrated Office Center
 - Landscape/Garden Sales
 - Library/Museum
 - Membership Club/Lodge
 - Personal Services (inc. Restricted)
 - Restaurant (general/drive-through)
 - Theater (movie/live)
 - Veterinary Clinic (indoor only)
- 2. Other Permitted Uses. The following uses may be permitted subject to limitations as established in the most current version of the UDC at time of development:
 - Athletic Facility, Indoor or Outdoor
 - Bar/Tavern/Pub
 - Commercial Recreation
 - Community Center
 - Dance Hall/Night Club
 - Data Center
 - Day Care (group/commercial)
 - Event Facility
 - Hospital, Psychiatric
 - Live Music/Entertainment
 - Meat Market

- Micro Brewery/Winery
- Upper-story Residential
- Research, Testing/Development Lab
- 3. Prohibited Uses. The following uses are prohibited:
 - Activity Center (youth/senior)
 - Auto. Parts Sales (outdoor)
 - Auto. Repair & Service, General
 - Auto. Repair and Service, Limited
 - Auto. Sales, Rental, Leasing
 - Bus Barn
 - Cemetery, Columbaria, Mausoleum, or Memorial Park
 - Correctional Facility
 - Driving Range
 - Flea Market
 - Firing Range, Indoor
 - Fuel Sales
 - Kennel
 - Laundromat
 - Lumber Yard
 - Nature Preserve/Community Garden
 - Major Event Entertainment
 - Manufactured Housing Sales
 - Multifamily Attached
 - Parking Lot (commercial/park-n-ride)
 - Recreational Vehicle Sales, Rental, Service
 - Self-Storage (indoor or outdoor)
 - Substance Abuse Treatment Facility
 - Transient Service Facility
 - Wireless Transmission Facility (41'+)
- 4. Special Use Permit Required. The following uses may be permitted subject to approval of a Special Use Permit as established in the most current version of the UDC at time of development:
 - Business/Trade School
 - Church (with columbarium)

- College/University
- Heliport
- Neighborhood Amenity Center
- Park (neighborhood/regional)
- Pest Control/Janitorial Services
- School (Elementary, Middle, High)
- Wireless Transmission Facility (<41')
- Agricultural Sales
- Assisted Living
- Blood/Plasma Center
- Car Wash
- Emergency Services Station
- Event Catering/Equipment Rental
- Funeral Home
- Government/Postal Office
- Medical Diagnostic Center
- Medical Office/Clinic/Complex
- Nursing/Convalescent/Hospice
- Printing/Mailing/Copying Services
- Private Transport Dispatch Facility
- Small Engine Repair
- Social Service Facility
- Surgery/Post Surgery Recovery
- Transit Passenger Terminal
- Urgent Care Facility
- Utilities (Minor/Intermediate/Major)
- Hospital
- Hotel/Inn/Motel (incl. extended stay)
- 5. Specific Limitations to Permitted Uses. The following use is permitted subject to the limitations of Section F of this Development Plan
 - Manufacturing, Processing, Assembly General

F. DESIGN STANDARDS

1. **Density.** A maximum of 45,000 square feet of gross floor area shall be permitted for the "Manufacturing, Processing, Assembly – General" use. The density for all other

uses permitted by this Development Plan shall be subject to the requirements of the UDC.

2. Setbacks. The setbacks on the Property shall be as follows:

	"Manufacturing, Processing, Assembly – General" Use	All Other Uses Permitted by this Development Plan
Front Setback	25 foot minimum	25 foot minimum
Side Setback	10 foot minimum	10 foot minimum
Side Setback to Residential District	25 foot minimum	20 foot minimum
Rear Setback	10 foot minimum	10 foot minimum
Rear Setback to Residential District	35 foot minimum	25 foot minimum

- 3. Building Height. The maximum building height on the Property shall be 45 feet.
- **4. Exterior Lighting.** Exterior Lighting on the Property and its buildings will comply with the requirements set forth in Section 7.05 of the UDC related to outdoor lighting.
- 5. Architectural and Building Design Elements. The architectural and building design elements shall be in conformance with Chapter 7 of the UDC.

G. PARKING.

Parking on the Property shall be in conformance with Chapter 9 of the UDC.

H. VEHICULAR ACCESS AND CIRCULATION

- 1. Transportation Impact Analysis (TIA). A TIA may be required based on future development at the time of platting or site development plan as established in the most current version of the UDC at time of development.
- 2. Driveway Access. There shall be one driveway access point along Westinghouse Road.
- **3. Circulation.** Cross access is required between adjacent properties. The roadway stub to Chamberlin Trail shall be provided.

I. TREE PRESERVATION

Tree Preservation on the Property shall be in conformance with Chapter 8 of the UDC unless otherwise stated in this Development Plan.

J. LANDSCAPE AND BUFFER REQUIREMENTS

1. Landscaping. Landscaping shall be based on the requirements of a non-residential landscape requirements as established in the most current version of the UDC at time of development.

- 2. Bufferyards. Bufferyards shall be based on the requirements of a Business Park (BP) zoning as established in the most current version of the UDC at time of development. A medium level bufferyard shall be required.
- 3. Residential Boundary Wall. A solid six-foot high screening wall constructed of brick, stone, reinforced concrete or other similar two-sided masonry materials shall be required along all property boundaries that are adjacent to a single-family or multi-family residential district. An Administrative Exception to the building materials and design requirements of the boundary wall along the southern property line may be considered.

K. OUTDOOR STORAGE

Outdoor storage shall not be permitted.

L. SIGNAGE

Signage on the Property shall be in conformance with Chapter 10 of the UDC. A Master Sign Plan for all business within the Property will be required. All signage must follow a uniform theme. Only one monument sign will be permitted along Westinghouse Road.

M. IMPERVIOUS COVERAGE

Impervious coverage on the Property shall be in conformance with the base zoning district of this PUD per Chapter 11 of the Unified Development Code.

N. STORMWATER

Stormwater management on the Property shall be in conformance with Chapter 11 of the Unified Development Code.

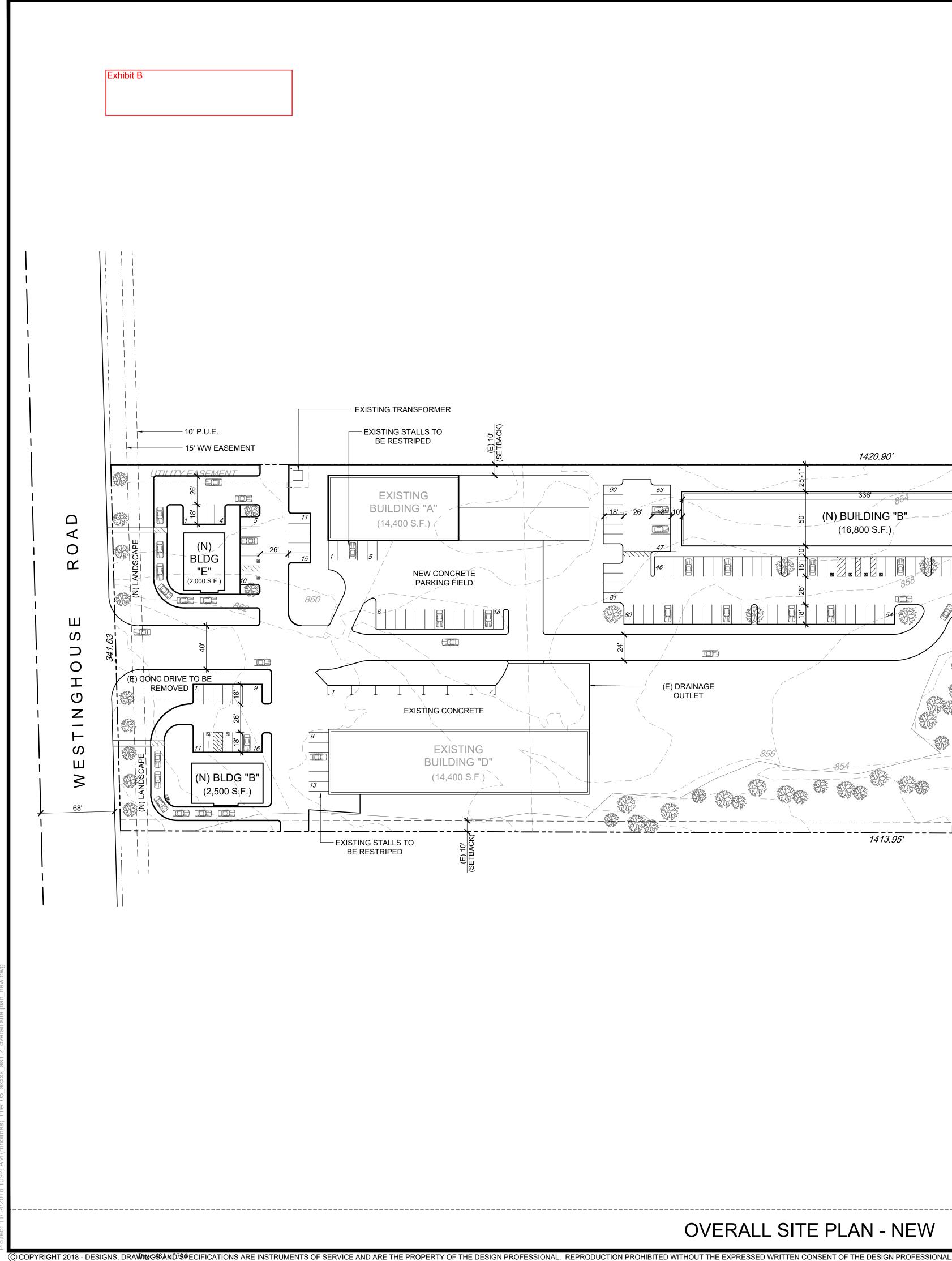
O. PUD MODIFICATIONS

In conformance with Section 4.06.010.D.3 of the UDC, modifications to this Development Plan shall require City Council approval of an amendment to this PUD processed pursuant to Section 3.06 of the UDC, except, where the Director of Planning determines such modifications to be minor, the Director may authorize such modifications. Minor modifications may include changes to building sizes, uses, or locations providing those modifications conform to the general intent of this PUD, uses authorized by this PUD, or to applicable provisions of the UDC and any other applicable regulations.

P. LIST OF EXHIBITS

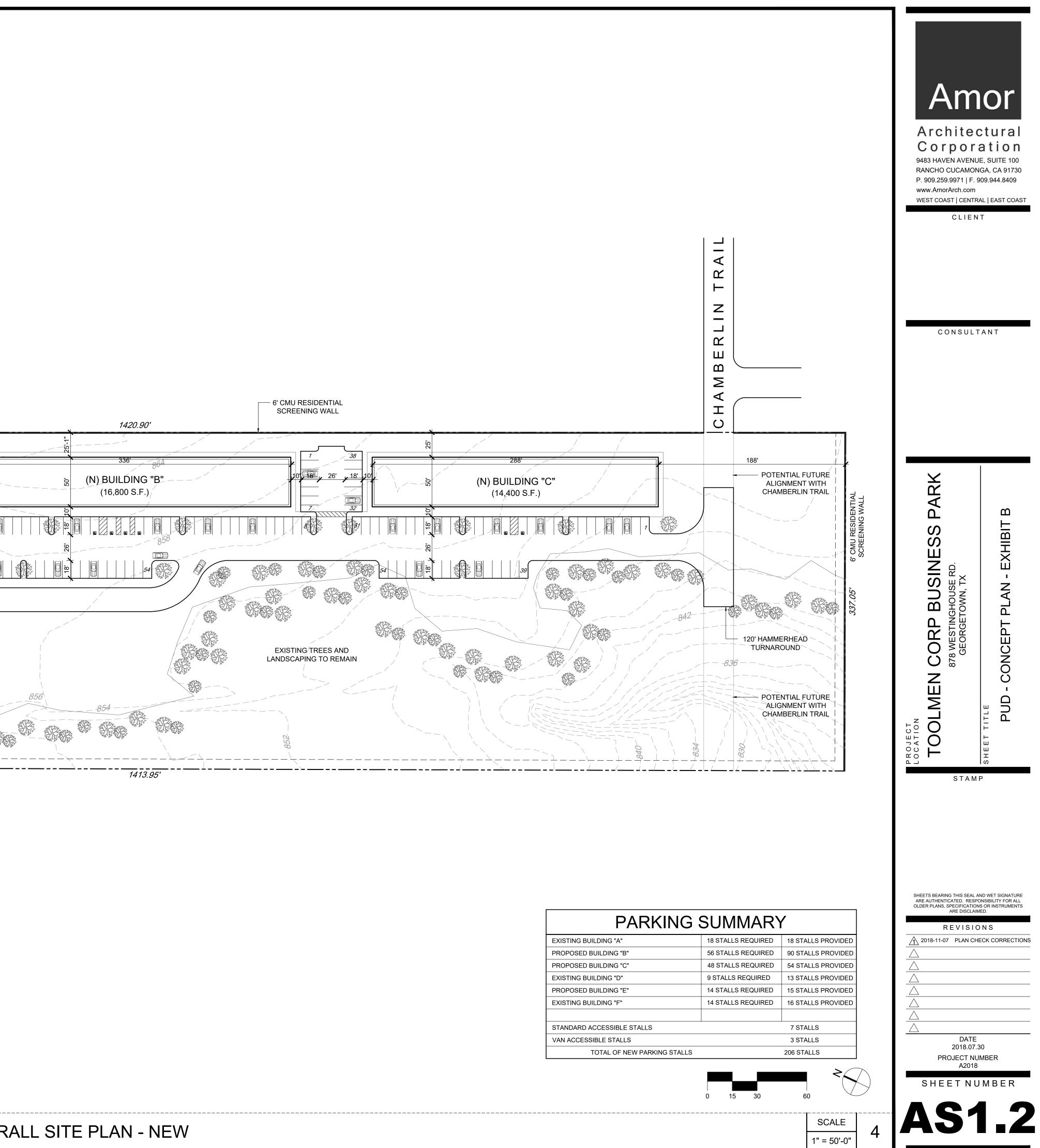
Exhibit A – PUD Development Plan

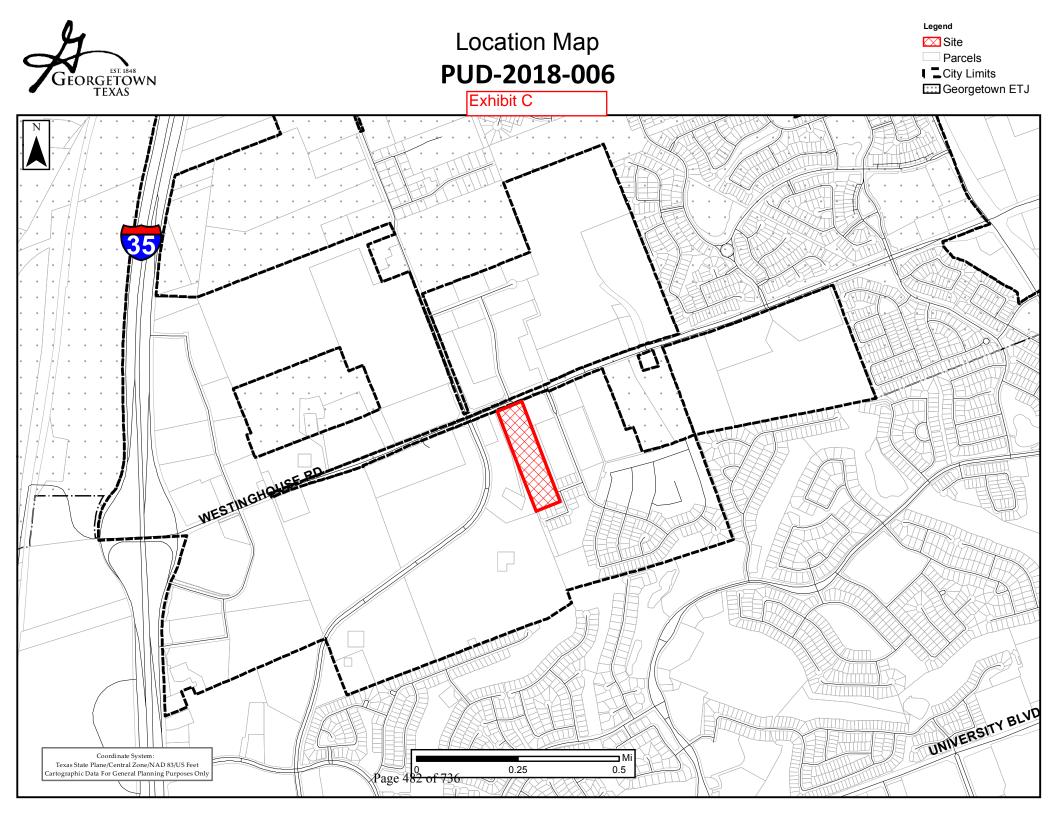
Exhibit B - Conceptual Land Plan

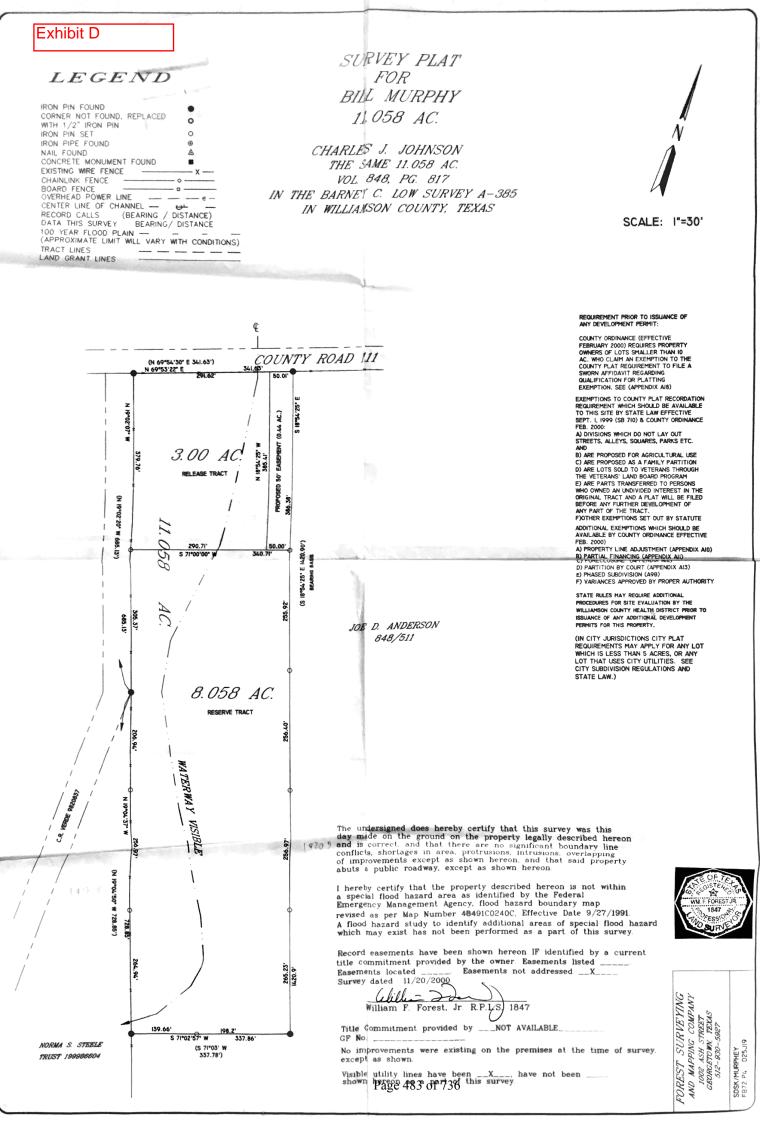


6' CMU RESIDENTIAL SCREENING WALL 1420.90' 90 53 - 38 18' 26' (N) BUILDING "B" (16,800 S.F.) 32 17 31 8 81 AT BE . KAR AK SIK. (E) DRAINAGE OUTLET EXISTING/TREES AND LANDSCAPING TO REMAIN - SA

OVERALL SITE PLAN - NEW







DEED 2007074529

Westinghouse-Postcel 5

SPECIAL WARRANTY DEED Westinghouse Road Right of Way

> 5 1

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THE STATE OF TEXAS

COUNTY OF WILLIAMSON

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.

WHEREAS, Williamson County, Texas is authorized to purchase land and such other property rights deemed necessary or convenient for the construction, expansion, enlargement, extension, improvement, or operation of a portion of the proposed Westinghouse roadway improvements ("Project"); and,

WHEREAS, the purchase of the hereinafter-described premises has been deemed necessary or convenient for the construction, expansion, enlargement, extension, improvement, or operation of the Project;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That TOOLMEN CORPORATION, hereinafter referred to as Grantor, whether one or more, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to Grantor in hand paid by Williamson County, Texas, receipt and sufficiency of which is hereby acknowledged, and for which no lien is retained, either expressed or implied, have this day Sold and by these presents do Grant, Bargain, Sell and Convey unto Williamson County, Texas all those certain tracts or parcels of land lying and being situated in the County of Williamson, State of Texas, along with any improvements thereon, being more particularly described as follows:

All of that certain 0.165 acre tract of land situated in the Barney Low Survey, Abstract No. 385 in Williamson County, Texas; said tract being more fully described by metes and bounds in Exhibit "A", attached hereto and incorporated herein (Parcel 5).

RESERVATIONS FROM AND EXCEPTIONS TO CONVEYANCE AND WARRANTY: Easements and rights-of-way of record; all presently recorded restrictions, reservations, covenants, conditions, oil, gas or other mineral leases, mineral severances, and other instruments, other than liens and conveyances, that affect the property; rights of adjoining owners in any walls and fences situated on a common boundary; and any encroachments or overlapping of improvements.

TO HAVE AND TO HOLD the premises herein described and herein conveyed together with all and singular the rights and appurtenances thereto in any wise belonging unto Williamson County, Texas and its assigns forever; and Grantors do hereby bind ourselves, our heirs, executors, administrators, successors and assigns to Warrant and Forever Defend all and singular the said premises herein conveyed unto Williamson County, Texas and its assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through, or under Grantors, but not otherwise.

ONWDOX/WMCOlauson/WESTINGHOUSE/PARCELS/WD100118223.DOC

This deed is being delivered in lieu of condomnation.

IN WITNESS WHEREOF, this instrument is executed on this the 20th day of August, 2007.

GRANTOR:

TOOLMEN CORPORATION

Its

ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF Williamson

This instrument was acknowledged before me on this the 20th day of <u>August</u>, 2007 by <u>Jehn Potts</u>, in the capacity and for the purposes and consideration recited therein.

5

LORI R BIBLE NOTARY PUBLIC State of Texas Comm. Exp. 08-15-2000

Kon R Selle Notary Public, State of Texas

PREPARED IN THE OFFICE OF:

Sheets & Crossfield, P.C. 309 East Main Round Rock, Texas

AFTER RECORDING RETURN TO;

Alamo Title Company 810 Hesters Crossing #155 Round Rock, Texas 78681 GF\$ 07-7111410-16)

2.



Murphy 0.165 Acres Tract Page 7 of 3

> FOR A 0.165 ACRE TRACT OF LAND SITUATED IN THE BARNEY LOW SURVEY, ABSTRACT NO. 385 IN WILLIAMSON COUNTY, TEXAS, BEING A PORTION OF A CALLED 11.058 ACRE TRACT DESCRIBED IN DEED THE WP MURPHY FAMILY LIMITED FARTNERSHIP OF RECORD IN DOCUMENT NO. 2002009882 OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS, SAID 0.165-ACRE TRACT AS SHOWN ON THE ACCOMPANYING SURVEY PLAT IS MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS

BEGINNING at a 1/2" iron rod found on a point in the south right-of-way line of County Road No. 111 (Westinghouse Road), said point being the northeast corner of said 11.058 acre tract, same being the northwest corner of a called 82.060 acre tract of land described in deed to the Trustees of the Joe D. Anderson and Vera R. Anderson Living Trust of record in Document No. 2001034688 of the Official Public Records of Williamson County, Texas for the northeast corner and POINT OF BEGINNING hereof;

THENCE with the east boundary line of said 11.058 acre tract, same being the west boundary line of said 82.060 acre tract, S 21*05'82" E for a distance of 21.06 feet to a 1/2" iron rod with plastic cap stamped "Baker-Aicklen" set for the southeast corner hereof;

THENCE departing the west boundary line of said 82.060 acre tract through the interior of said 11.058 acre tract, S 67°42'46" W for a distance of 342.32 feet to a 1/2" iron rod with plastic cap stamped "Baker-Aickien" set on a point in the south right-of-way line of said County Road 111, same being the west boundary line of said 11.058 acre tract, for the southwest corner hereof;

THENCE with the south right-of-way line of said County Road 111, same being the west boundary line of said 11.058 acre tract, N 19*09*04" W for a distance of 21.09 feet to a 1/2" iron rod with plastic cap stamped "Baker-Aicklen" set at the northwest corner of said 11.058 acre tract, for the northwest corner hereof; Murphy 0.165 Acres Tract Page 2 of 3

THENCE with the south right-of-way line of said County Road 111, same being the west boundary line of said 11.058 acre tract, N 67°42'48" E for a distance of 341.61 feet to the POINT OF BEGINNING hereof and containing 0.165 acres of land, more or less.

Bearings shown hereon are referenced to Grid North for the Texas State Plane Coordinate System, Central Zone NAD 83 per GPS survey performed during September 2004.

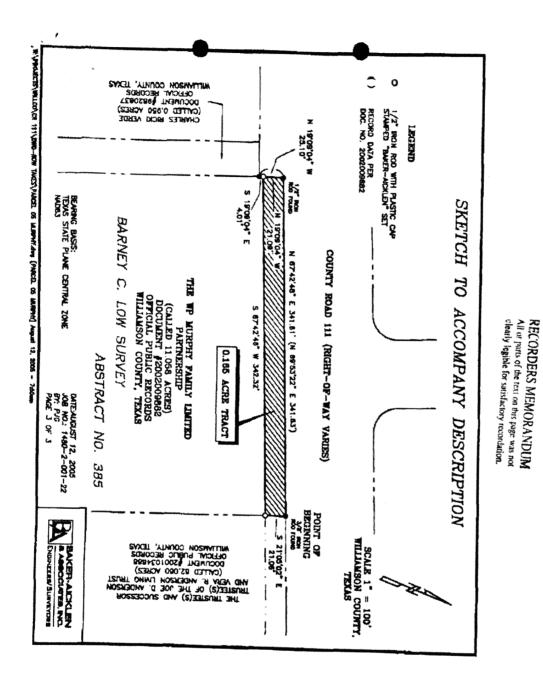
Surveyed under the direct supervision of the undersigned during September 2004-June 2005:

<u> 8/12/0</u>5 Parker J. Graham 7

Registered Professional Land Surveyor No. 5556 BAKER-AICKLEN & ASSOCIATES, INC. 405 Brushy Creek Road Cedar Park, Texas 78613 (512) 260-3700



Job No.: 1480-2-001-22 Filename: WAPROJECTS/WILLCO/CR 111/METES & BOUNDS/Parcel 05 Murphy Doc



FILED AND RECORDED OFFICIAL PUBLIC RECORDS 2007074529

ey E. Riter

08/29/2007 84:19 PM PHERBRICH 532.00 NANCY E. RISTER, COUNTY CLERK WILLIAMSON COUNTY, TEXAS

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City of Georgetown, Texas City Council Regular Meeting February 12, 2019

SUBJECT:

Public Hearing and First Reading of an Ordinance rezoning approximately 1.8 acres out of Block 51, Snyder Addition, Blocks 6, 7 and 11, Coffee Addition, generally located at 800 17th Street, from the Residential Single-Family (RS) zoning district to the Two-Family (TF) zoning district -- Andreina Dávila-Quintero, AICP, Current Planning Manager

ITEM SUMMARY:

Overview of Applicant's Request:

The applicant is requesting the Two-Family (TF) zoning district for a proposed eight lot subdivision for duplexes.

Staff's Analysis:

Staff has reviewed the request in accordance with the Unified Development Code (UDC) and other applicable codes. Staff has determined that the proposed request meets the criteria established in UDC Section 3.06.030 for a rezoning, as outlined in the attached Staff Report.

Public Comment:

As required by the Unified Development Code, all property owners within a 200-foot radius of the subject property and within the subdivision were notified of the Zoning Map Amendment request (31 notices), a legal notice advertising the public hearing was placed in the Sun Newspaper (December 30, 2018) and signs were posted on-site. To date, staff has not received any public comment.

Planning and Zoning Commission Recommendation:

At their January 15, 2019 meeting, the Planning and Zoning Commission recommended approval (6-1) of the request.

FINANCIAL IMPACT: None. The applicant has paid all the required fees.

SUBMITTED BY: Chelsea Irby, Senior Planner

ATTACHMENTS:

REZ-2018-027 - Staff Report Exhibit 1 - Location Map Exhibit 2 - Future Land Use Map Exhibit 3 - Zoning Map Exhibit 4 - TF Standards and Permitted Uses Exhibit 5 - Letter of Intent Ordinance and Exhibits



Planning and Zoning Commission Planning Department Staff Report

Report Date:	January 11, 2019
Case No:	REZ-2018-027
Project Planner:	Chelsea Irby, Senior Planner
Item Details	
Project Name:	Pine & 17 th Villas
Project Location:	800 17 th Street, within City Council district No. 1
Total Acreage:	1.8
Legal Description:	Snyder Addition, Block 51, and Blocks 6, 7 and 11, Coffee Addition
Applicant:	Severino Homes, c/o Frank Severino
Property Owner:	Delorez Flatter Rev Living Trust c/o Michael Laughlin
Request:	Zoning Map Amendment to rezone the subject property from Residential Single-Family (RS) to Two-Family (TF)
Case History:	This is the first public hearing of this request.



Location Map

Overview of Applicant's Request

As noted in the Letter of Intent (*Exhibit 5*), the applicant is requesting the Two-Family (TF) zoning district to allow for the subdivision of the property into eight lots. The applicant plans to construct duplexes, to be known as Pine & 17th Villas.

Site Information

Location:

The subject property is generally located at Pine Street and 17th Street, south of University Avenue. It has street frontage and access from Pine St, E 17th St and E 18th St. The subject site is currently undeveloped.

Physical and Natural Features:

The subject property is undeveloped, flat, and has minimal tree cover. The railroad runs along the eastern property line.

Future Land Use and Zoning Designations:

The subject property has a Future Land Use designation of Moderate Density Residential and is currently zoned Residential Single-Family (RS). It is located within Growth Tier 1A.

Surrounding Properties:

The surrounding properties are primarily all single-family residential. Overall, the area as seen redevelopment in recent years with infill development. To the east of the subject property is the railroad track, which creates a boundary. Nearby there is also a neighborhood park and school.

The current zoning, Future Land Use designation, and existing uses of the adjacent properties to the north, south, east and west are outlined in the table below:

DIRECTION	ZONING DISTRICT	FUTURE LAND USE	EXISTING USE
North			
South	Residential Single-	Moderate Density	Cinala Family Desidential
East	Family (RS)	Residential	Single-Family Residential
West			



Aerial Map

Property History:

The property was annexed in 1915 and designated its current single-family residential zoning district.

Comprehensive Plan Guidance

Future Land Use Map:

The *Moderate Density Residential* category is described in the 2030 Comprehensive Plan as comprising single family neighborhoods that can be accommodated at a density ranging between 3.1 and 6 dwelling units per gross acre, with housing types including small-lot detached and attached single-family dwellings (such as townhomes). This category may also support complementary non-residential uses along major roadways such as neighborhood-serving retail, office, institutional, and civic uses, although such uses may not be depicted on the Future Land Use Map.

Growth Tier:

Tier 1A is that portion of the city where infrastructure systems are in place, or can be economically provided, and where the bulk of the city's growth should be guided over the near term. Within Tier 1A, the city is called on to conduct assessments of public facility conditions and capacities, and to prioritize short and long term capital investments so as to ensure that infrastructure capacity is sufficient to serve development intensities as indicated on the Future Land Use Map and in the zoning districts.

Utilities

The subject property is located within the City's service area for water, wastewater, and electric. It is anticipated that there is adequate capacity to serve the subject property at this time. A Utility Evaluation may be required at time of Subdivision Plat to determine capacity and any necessary utility improvements.

Transportation

The subject property has frontage along Pine Street, 17th Street and 18th St, which are residential local streets. These streets are intended to provide access to adjoining properties by collecting the traffic from surrounding areas and distributing it to adjoining collectors or arterial streets. Local streets can access both collector level streets and arterial level streets.

The subject property is located approximately 1,200 feet from Maple St, and 1,500 feet from University Ave, measured by way of travel. These roads are the two major thoroughfares (Major Collector and Major Arterial, respectively) closest to the subject property. In addition, the GoGeo Orange line runs along Maple St providing access to the Downtown and other areas of the City. The nearest bus stop is approximately 1,800 feet from the subject property.

Proposed Zoning district

The Two-Family (TF) District is intended for two-family dwellings that are located on one lot. The TF District also includes single-family attached and single-family detached development and associated uses. Two-family and single-family dwellings are permitted on individual lots, but the lot, dimensional and design standards are intended for two dwellings in one structure on a single lot. The TF District is a moderate density District that may be used to separate residential areas zoned Residential Estate (RE), Residential Low Density (RL), or Residential Single-Family (RS) from higher density residential and commercial areas.

Permitted land uses within the district include group homes with six residents or less, detached single-family, attached single-family, two-family, and minor utilities. Schools, churches, family home day cares, and neighborhood amenity centers, among other uses, are permitted subject to specific design limitations to ensure compatibility with the surrounding properties. Other uses such as accessory dwelling units, bed and breakfasts with events, group day cares, and general office may be permitted subject to approval of a Special Use Permit (SUP). *Exhibit 4* contains a comprehensive list of TF district permitted uses and development standards.

Intergovernmental and Interdepartmental Review

The proposed rezoning request was reviewed by all applicable City Departments to determine the appropriateness of the requested zoning on the subject property. No comments were issued regarding the zoning request.

Approval Criteria

Staff has reviewed the proposed rezoning request and has found that it complies with the criteria established in UDC Section 3.06.030 for a Zoning Map Amendment, as outlined below:

Planning Department Staff Report

RE	ZONING APPROVAL CRITERIA	FINDINGS	STAFF COMMENTS
1.	The application is complete and the information contained within the application is sufficient and correct enough to allow adequate review and final action.	Complies	An application must provide the necessary information to review and make a knowledgeable decision in order for staff to schedule an application for consideration by the Planning and Zoning Commission and City Council. This application was reviewed by staff and deemed to be complete.
2.	The zoning change is consistent with the Comprehensive Plan. The zoning change	Complies	The Future Land Use designation of the subject property is Moderate Density Residential. The Two-Family (TF) zoning district is consistent with this designation. The 2030 Comprehensive Plan states, "The Moderate Density Residential category is described in the 2030 Comprehensive Plan as comprising single family neighborhoods that can be accommodated at a density ranging between 3.1 and 6 dwelling units per gross acre, with housing types including small-lot detached and attached single- family dwellings (such as townhomes)." The Two-Family (TF) zoning district
	promotes the health, safety or general welfare of the City and the safe orderly, and healthful development of the City.	Complies	maintains the character of single-family neighborhoods by providing a compatible housing product and also allowing for diversity in housing types.
4.	The zoning change is compatible with the present zoning and conforming uses of nearby property and with the character of the neighborhood.	Complies	The Two-Family (TF) zoning district is suitable adjacent to the Residential Single-Family (RS) zoning district. It is suitable because the housing product allowed by the TF district is similar to the attached single-family residential that is permitted within the RS district. Additionally, due to compatibility, the UDC does not require any buffering between the TF and RS districts.
5.	The property to be rezoned is suitable for uses permitted by the District	Complies	The property has the required land area to create lots that fit within the minimum square foot requirement of the TF zoning

REZONING APPROVAL CRITERIA	FINDINGS	STAFF COMMENTS
that would be applied by		district (7,000 sq. ft.). The applicant is
the proposed amendment.		proposing eight lots that are all over
		7,000 sq. ft. The property also the
		necessary street frontage required by the
		UDC.

Overall, the requested rezoning complies with the 2030 Comprehensive Plan and fits the character of the surrounding residential area.

Meetings Schedule

1/15/2019 – Planning and Zoning Commission2/12/2019 – City Council First Reading of the Ordinance2/26/2019 – City Council Second Reading of the Ordinance

Public Notification

As required by the Unified Development Code, all property owners within a 200-foot radius of the subject property and within the subdivision were notified of the Zoning Map Amendment request (31 notices), a legal notice advertising the public hearing was placed in the Sun Newspaper (December 30, 2018) and signs were posted on-site. To date, staff has not received any public comment.

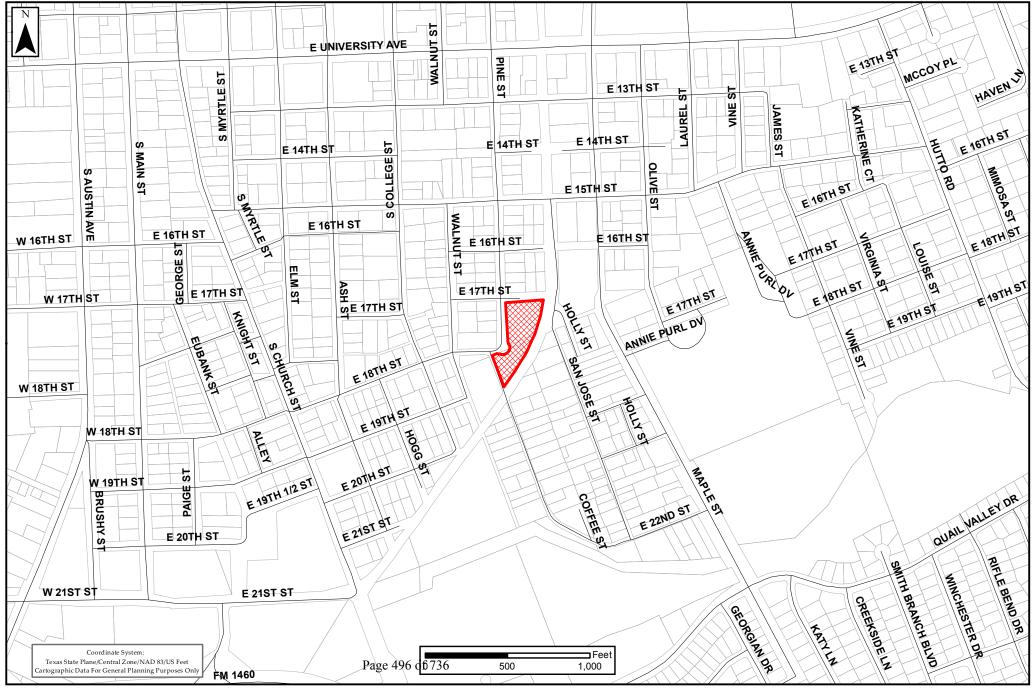
Attachments

Exhibit 1 – Location Map Exhibit 2 – Future Land Use Map Exhibit 3 – Zoning Map Exhibit 4 – Design and development standards of the TF zoning district Exhibit 5 – Letter of Intent



Location Map REZ-2018-027 Legend Site Parcels City Limits Georgetown ETJ





GEORGETOWN TEXAS

Future Land Use / Overall Transportation Plan

Legend

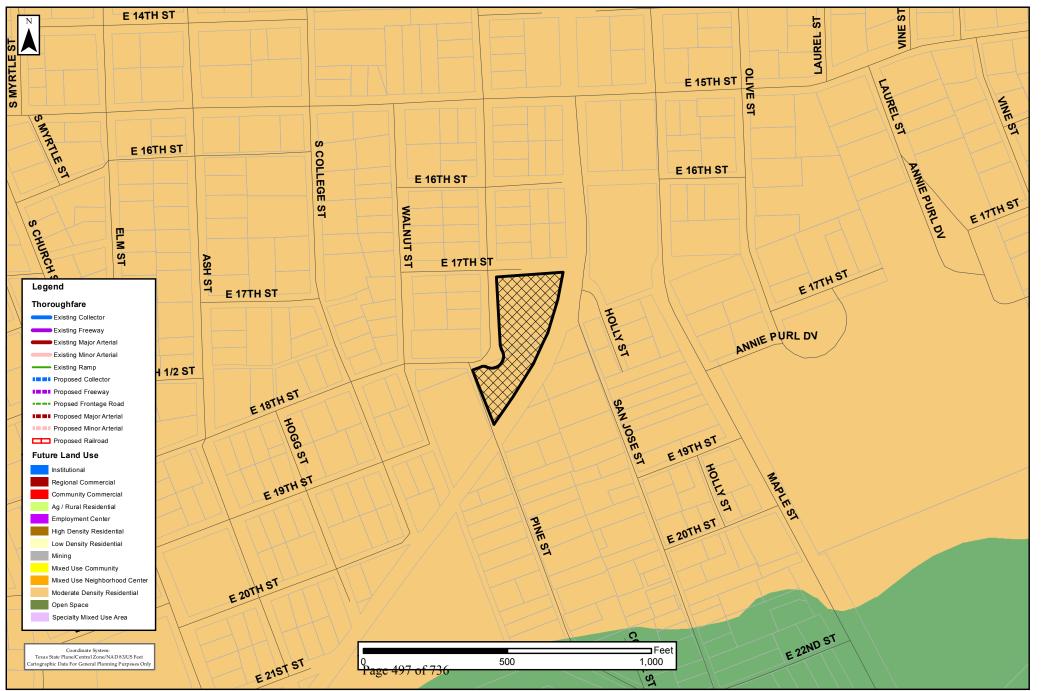
Site Darcels

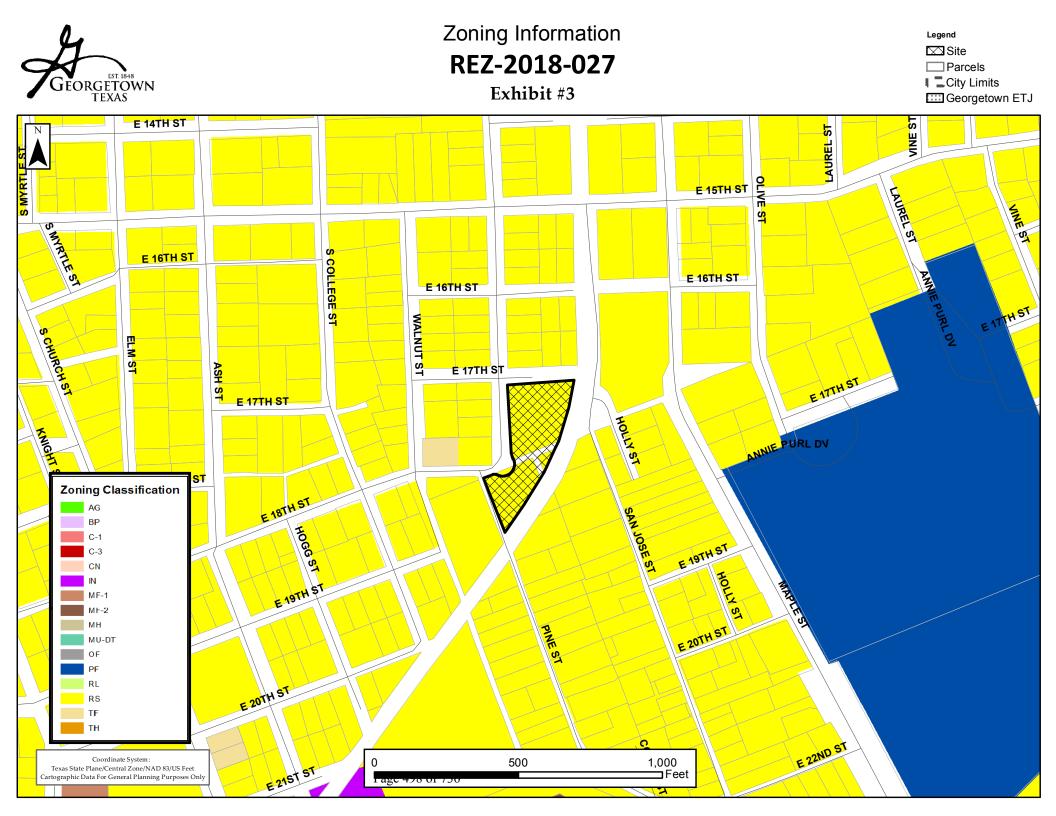
L_City Limits

Georgetown ETJ

REZ-2018-027

Exhibit #2





Two-family District (TF)

District Development Standards

Minimum Lot Size = 7,000 square feet Minimum Lot Width = 70 feet Maximum Building Height = 35 feet Dwelling size, min. square feet = 3,500 Dwellings per Structure, max = 2 Front Setback = 20 feet Side Setback = 6 feet Rear Setback = 10 feet Bufferyard = 10 feet with plantings when non-residential develops adjacent to residential

	Specific Uses Allowed within the Distr	ict
Allowed by Right	Subject to Limitations	Special Use Permit (SUP) Required
Group Home (<7 residents)	Church (with columbarium)	Accessory Dwelling Unit
ingle-family Detached	Church	Activity Center (youth/senior)
ingle-family Attached	Concrete Products, Temporary	Bed and Breakfast (with events)
wo-Family	Construction Field Office	Cemetary/Columbaria/Mausoleum
Itilities (Minor)	Construction Staging, Off-Site	Community Center
	Day Care (family home)	Day Care (Group)
	Golf Course	Emergency Services Station
	Home Based Business	General Office
	Nature Preserve/Community Garden	Halfway House
	Neighborhood Amenity Center	Hospice Facility
	Park (Neighborhood)	Rooming/Boarding House
	Parking Lot, Temporary	School (Middle)
	Portable Classrooms	
	Residential Sales Offices/Models	
	Seasonal Product Sales	
	School (Elementary)	
	Utilities (Intermediate)	
	Wireless Transmission Facility (<41')	
	······································	

TO: City of Georgetown Planning Dept

RE: 2 acres +-, Pine St & 17th St, Georgetown Re-Zoning from RS to TF Letter of Intent

Dear Planning Department:

This Letter of Intent is submitted to rezone the 2 Acres +- at Pine St & 17th St from RS residential to TF residential to develop 8 lots with 2 family, or duplex, homes. The TF zoning is compatible with the neighborhood and similar to existing zoning and land use in the neighborhood.

The development is going to be an 8 lot residential subdivision. Each home will be approximately 1500 square feet per side, or approximately 3000 square feet per duplex. The duplexes will be 2 story.

Homes will be constructed of quality materials with brick, stone and hardy plank accent material.

The proposed 8 lot subdivision plan is attached. We will be utilizing existing roads on Pine St and 17th St. We will be extending sanitary sewer and possibly public water lines to service the 8 lots. We will also be building storm water management facilities to address existing storm water runoff, as well as any additional runoff created by the development of the 8 lots. Please let me know if you have any questions or if you need any additional information.

Sincerely, Frank Severino. President

Severino Homes

ORDINANCE NO.

An Ordinance of the City Council of the City of Georgetown, Texas, amending part of the Official Zoning Map to rezone approximately 1.8 acres out of Block 51, Snyder Addition, and Blocks 6, 7 and 11, Coffee Addition, from the Residential Single-Family (RS) District to the Two-Family (TF) District, to be known as Pine & 17th Villas; repealing conflicting ordinances and resolutions; including a severability clause; and establishing an effective date.

Whereas, an application has been made to the City for the purpose of amending the Official Zoning Map, adopted on the 12th day of June, 2012, for the specific Zoning District classification of the following described real property ("The Property"):

1.8 acres out of Block 51, Snyder Addition, and Blocks 6, 7 and 11, Coffee Addition, as more fully described in *Exhibit B* attached hereto, hereinafter referred to as "The Property"; and

Whereas, public notice of such hearing was accomplished in accordance with State Law and the City's Unified Development Code through newspaper publication, signs posted on the Property, and mailed notice to nearby property owners; and

Whereas, the Planning and Zoning Commission, at a meeting on January 15, 2019, held the required public hearing and submitted a recommendation of approval to the City Council for the requested rezoning of the Property; and

Whereas, the City Council, at a meeting on February 12, 2019, held an additional public hearing prior to taking action on the requested rezoning of the Property.

Now, therefore, be it ordained by the City Council of the City of Georgetown, Texas, that:

Section 1. The facts and recitations contained in the preamble of this Ordinance are hereby found and declared to be true and correct, and are incorporated by reference herein and expressly made a part hereof, as if copied verbatim. The City Council hereby finds that this Ordinance implements the vision, goals, and policies of the Georgetown 2030 Comprehensive Plan and further finds that the enactment of this Ordinance is not inconsistent or in conflict with any other policies or provisions of the 2030 Comprehensive Plan and the City's Unified Development Code.

<u>Section 2</u>. The Official Zoning Map, as well as the Zoning District classification(s) for the Property is hereby amended from the Residential Single-Family District (RS) to the Two-Family District (TF), in accordance with the attached *Exhibit A* (Location Map) and *Exhibit B* (Legal Description) and incorporated herein by reference.

Ordinance Number: _____ Description: Pine & 17th Villas Rezoning Date Approved: February 26, 2019 Page 1 of 2 Case File Number: REZ-2018-027 Exhibits A-B Attached <u>Section 3</u>. All ordinances and resolutions, or parts of ordinances and resolutions, in conflict with this Ordinance are hereby repealed, and are no longer of any force and effect.

Section 4. If any provision of this Ordinance or application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the other provisions, or application thereof, of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are hereby declared to be severable.

<u>Section 5</u>. The Mayor is hereby authorized to sign this ordinance and the City Secretary to attest. This ordinance shall become effective in accordance with the provisions of state law and the City Charter of the City of Georgetown.

APPROVED on First Reading on the 12th day of February, 2019.

APPROVED AND ADOPTED on Second Reading on the 26th day of February, 2019.

THE CITY OF GEORGETOWN:

City Secretary

Robyn Densmore, TRMC

ATTEST:

Dale Ross Mayor

APPROVED AS TO FORM:

Charlie McNabb City Attorney

Ordinance Number: ____

Description: Pine & 17th Villas Rezoning Date Approved: February 26, 2019 Page 2 of 2 Case File Number: REZ-2018-027 Exhibits A-B Attached



Location Map REZ-2018-027 Legend Site Parcels City Limits

Exhibit A

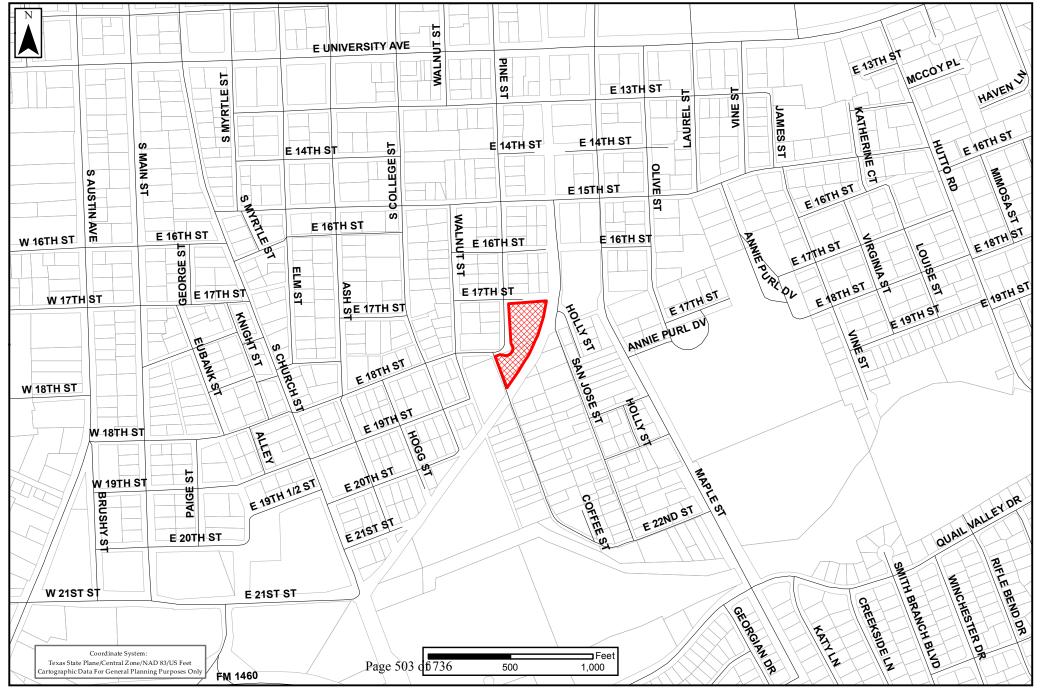


Exhibit B			

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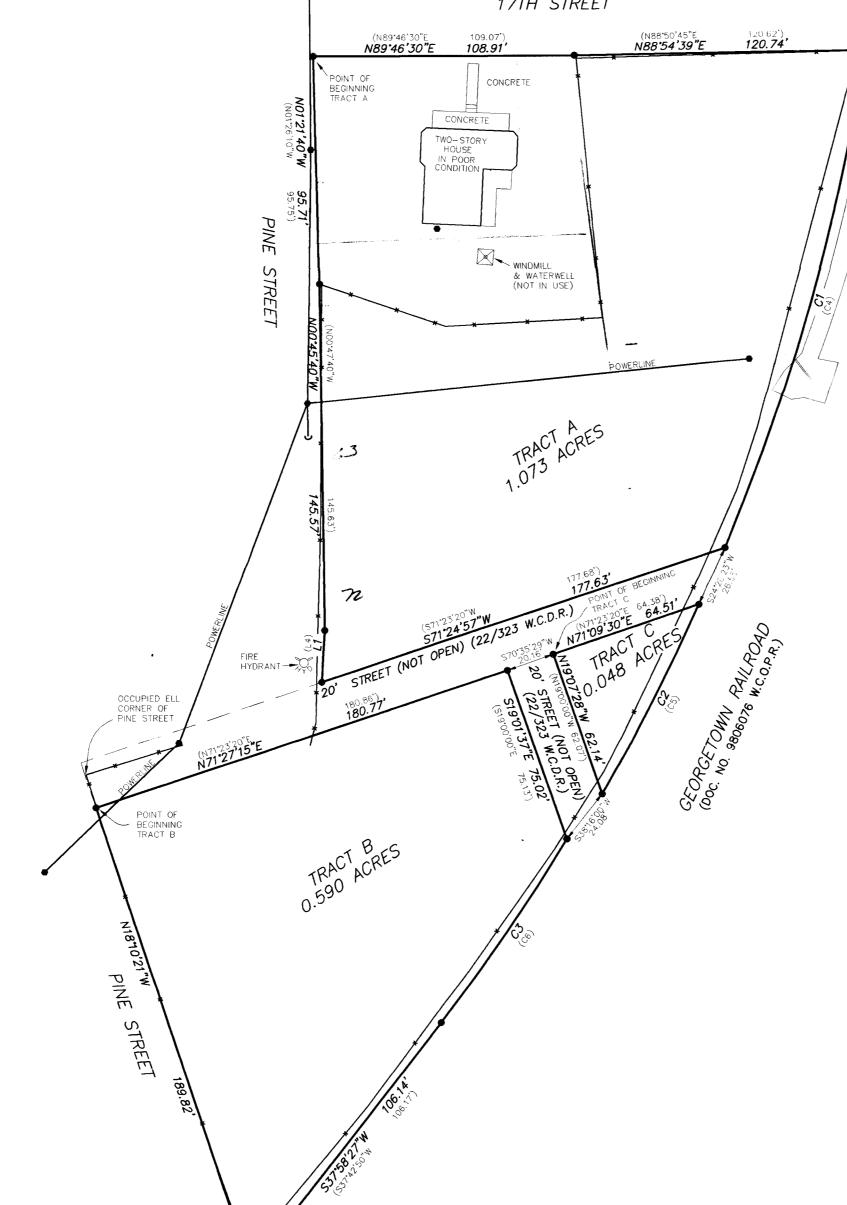
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		te.	
CELCO SURVEYING	SURVEY	PLAT	200 MONACO DRIVE
TEL: 828–7009 FAX: 828–7200			CEDAR PARK, TEXAS 78613

.

SCALE 1" = 40'

A TTU OTOFFT



LEGAL DESCRIPTION:

TRACT A:

A 1.073 ACRE TRACT OF LAND SITUATED IN WILLIAMSON COUNTY, TEXAS, BEING OUT OF AND A PART OF BLOCK 51, OF THE REVISED MAP OF SYNDER'S ADDITION TO THE CITY OF GEORGETOWN, RECORDED IN VOLUME 67, PAGE 502, OF THE DEED RECORDS OF WILLIAMSON COUNTY, TEXAS, AND BEING ALL OF TRACT I, AS DESCRIBED IN A GUARDIAN'S DEED TO JOHN T. MONTGOMERY, ET AL, RECORDED IN DOCUMENT NO. 2000031366, OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS.

TRACT B:

A 0.590 ACRE TRACT OF LAND SITUATED IN WILLIAMSON COUNTY, TEXAS, BEING OUT OF AND A PART OF BLOCKS 6 & 7 OF COFFEE'S ADDITION TO THE CITY OF GEORGETOWN, RECORDED IN VOLUME 22, PAGE 323, OF THE DEED RECORDS OF WILLIAMSON



	LINE TABLE						
LINE	BEARING	DISTANCE					
L1	N03*28'29"E	21.82'					
L2	S37*58'27"W	23.78'					
L3	N18"10'21"W	13.21'					
(L4)	N04°01'45"E	21.74'					
(L5)	S37'42'50"W	23.74'					
(L6)	N18'09'40"W	13.17'					

	CURVE TABLE								
CURVE	LENGTH	RADIUS	TANGENT	CHORD	BEARING	DELTA			
C1	217.67	886.88	109.38	217.12	S15'35'48"W	14°03'44"			
C2	89.39	886.88	44.73	89.35	S27'05'31"W	5*46'30"			
C3	93.34	883.88	46.72	93.30	S3478'18"W	6*03'03"			
(C4)	217.71	886.88		217.16	S15*35'45"W				
(C5)	89.16	886.88		89.13	S2715'00"₩				
(C6)	93.41	883.88		<i>93.3</i> 6	S34°41'10"W				

VOLUME 22, PAGE 323, OF THE DEED RECORDS OF WILLIAMSON COUNTY, TEXAS, AND BEING ALL OF TRACTS II AND IV, AS DESCRIBED IN A GUARDIAN'S DEED TO JOHN T. MONTGOMERY, ET AL, RECORDED IN DOCUMENT NO. 2000031366, OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS.

TRACT C:

A 0.048 ACRE TRACT OF LAND SITUATED IN WILLIAMSON COUNTY, TEXAS, BEING OUT OF AND A PART OF BLOCK 11 OF COFFEE'S ADDITION TO THE CITY OF GEORGETOWN, RECORDED IN VOLUME 22, PAGE 323, OF THE DEED RECORDS OF WILLIAMSON COUNTY, TEXAS, AND BEING ALL OF TRACT III, AS DESCRIBED IN A GUARDIAN'S DEED TO JOHN T. MONTGOMERY, ET AL, RECORDED IN DOCUMENT NO. 2000031366, OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS.

-	ERTIFICATION	ADDRESS: 17TH STREET, GEORGETOWN, TEXAS	
REPRESENTS A SURVEY MADE UPON THE G	TO THE PARTIES LISTED BELOW THAT THIS PLAT CORRECTLY ROUND OF THE PROPERTY SHOWN HEREON, AND THAT THERE PROVEMENTS, EXCEPT AS SHOWN HEREON, AND THAT THIS AY, EXCEPT AS SHOWN HEREON.	LEGAL DESCRIPTION: "SEE ABOVE"	
BUYER: FLATTER REVOCABLE LIVING TRUST TITLE CO: FIRST AMERICAN TITLE COMPANY PLAN No.: 6-206-SUR	LENDER: N/A G.F.#: 874831-AU15 SURVEY DATE: AUGUST 31, 2006	FLOOD STATEMENT: ACCORDING TO FLOOD INSURANCE RATE MAP (FIRM) NO. 48491C0230 C, DATED 09/27/91, THIS PROPERTY IS LOCATED IN ZONE X, DEFINED THEREON AS "AREAS DETERMINED TO BE OUTSIDE 500-YEAR FLOODPLAIN".	GEORGE E. LUCAS, R.P.L.S. 4160

City of Georgetown, Texas City Council Regular Meeting February 12, 2019

SUBJECT:

Public Hearing and **First Reading** of an Ordinance to **close** and **abandon a portion** of **East 6th Street between Pine Street (Taylor Street)** and **East 7th Street (San Gabriel Street)**, pursuant to Section 311.007 of the Texas Transportation Code, for the safety and public benefit of the municipality at large, to Williamson County, Texas, and to authorize the Mayor to execute all documents necessary to complete the abandonment. --Jim Kachelmeyer, Real Estate Services Coordinator

ITEM SUMMARY:

The City plans to construct sidewalks along East 6th Street and East 7th Street in Northeast Old Town, including adjacent to the property owned by Williamson County and located at 505 Pine Street, as part of an approved Capital Improvement Plan (CIP) project. In order to facilitate the sidewalk project and enhance the safety of the intersections of Pine Street, East 6th Street, and East 7th Street, Staff recommends the closure of East 6th Street between Pine Street and the point where East 6th Street merges with East 7th Street. The plans for the proposed improvements are attached as an exhibit to this item.

The City has received a request from Williamson County to abandon the right-of-way to the County, which owns the abutting property on either side of the section of the street to be closed. With the closure of the street, the right-of-way would no longer be necessary, serving no homes, businesses, nor any developable lots other than the County's property. There are no existing utilities in the right-of-way to be abandoned. Therefore, it is recommended that the right-of-way be vacated and abandoned to Williamson County as a thin strip of otherwise unusable land for minimal value. Staff recommends approval of this item.

FINANCIAL IMPACT:

N/A. In exchange for the abandonment of the right of way, the City would receive the sidewalk easement sought for it's project.

SUBMITTED BY: Jim Kachelmeyer, Real Estate Services Coordinator

ATTACHMENTS:

Proposed Ordinance Presentation Planned Sidewalk Improvements ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GEORGETOWN PROVIDING FOR THE CLOSURE AND ABANDONMENT BY QUITCLAIM DEED OF A STREET, ALLEY, AND/OR PUBLIC RIGHT-OF-WAY, OR A PORTION THEREOF; PROVIDING FOR THE TERMS AND CONDITIONS OF SUCH ABANDONMENT; CALLING A PUBLIC HEARING; PROVIDING A CONFLICT AND SEVERABILITY CLAUSE AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Georgetown has received a request to abandon the street, alley, and/or public right-of-way of East 6th Street between Pine Street (Taylor Street) and East 7th Street (San Gabriel Street); the same being generally depicted in *Exhibits "A" and "B"* attached hereto.

WHEREAS, notice of the time and place, where and when this Ordinance would be given a public hearing and considered for final passage, was published in the *Williamson County Sun*, a newspaper of general circulation in the City of Georgetown, said publication being on the 5th day of February, 2019, and the 19th day of February, 2019, the same being more than seventytwo (72) hours prior to the times designated for said hearing.

WHEREAS, upon considering the Application and additional information pertaining to the Application, the City Council now finds that (a) there are no existing utilities located within the property to be abandoned; OR (b) the utilities existing in the area of the street, alley, and/or public right-of-way will be sufficiently protected by being either relocated or placed into easements and that the utility companies serving the area including and surrounding the right-of-way have determined that their utilities, if existing, will also be sufficiently protected by the same means.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GEORGETOWN, TEXAS:

<u>SECTION 1</u>. The facts and recitations contained in the preamble of this ordinance are hereby found and declared to be true and correct, and are incorporated by reference herein and expressly made a part hereof, as if copied verbatim. The City Council hereby finds that this ordinance implements the following policies of the 2030 Comprehensive Plan- Policy Plan Element(s):

4. Effective Governance

4.1 Effective, Responsive Government

B. We have created and enforced innovative, effective and fair regulatory codes and development standards to guide and improve development quality.

The City Council further finds that the adoption of this ordinance is not inconsistent or in conflict with any other 2030 Comprehensive Plan Policies.

<u>SECTION 2</u>. That the above described street, alley, and/or public right-of-way, being also generally depicted on <u>Exhibits "A" and "B"</u> attached hereto and made a part of this ordinance for all purposes, is, and the same is hereby abandoned, vacated and closed insofar as the right, title or easement of the public is concerned.

<u>SECTION 3</u>. That said street, alley, and/or public right-of-way is not needed for public purposes and it is in the public interest of the City of Georgetown to abandon said street, alley, and/or public right-of-way.

<u>SECTION 4</u>. That the abandonment provided for herein shall extend only to the public right, title and easement in and to the tracts of land described in SECTION 2 of this ordinance, and shall be construed only to that interest the governing body of the City of Georgetown may legally and lawfully abandon.

<u>SECTION 5</u>. The City Attorney is hereby authorized to issue and the Mayor authorized to execute a Quitclaim Deed in the form attached hereto as <u>Exhibit "C"</u> and the City Secretary is authorized to attest thereto on behalf of the City of Georgetown.

<u>SECTION 6</u>. This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Georgetown, and this ordinance shall not operate to repeal or affect any of such other ordinances, except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any in such other ordinance or ordinances, are hereby superseded.

<u>SECTION 7</u>. If any provision of this ordinance or application thereof to any person or circumstance, shall be held invalid, such invalidity shall not affect the other provisions, or application thereof, of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are hereby declared to be severable.

<u>SECTION 8</u>. The Mayor is hereby authorized to sign this ordinance and the City Secretary to attest. This ordinance shall become effective and be in full force and effect in accordance with the provisions of the Charter of the City of Georgetown.

PASSED AND APPROVED on First Reading on the	_ day of	, 2019.
PASSED AND APPROVED on Second Reading on the_	day of	, 2019.

ATTEST:

THE CITY OF GEORGETOWN:

By:_

By:

Robyn Densmore, City Secretary

Dale Ross, Mayor

APPROVED AS TO FORM:

By:_____ Charlie McNabb, City Attorney

Exhibit "A"



Feet



EXHIBIT "C"

QUITCLAIM DEED

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.

DATE: _____, 2019

GRANTOR: City of Georgetown, a Texas home-rule municipal corporation

GRANTOR'S Mailing Address (including County): P.O. Box 409, Georgetown, Williamson County, Texas 78627

GRANTEE: Williamson County, Texas, a political subdivision of the State of Texas

GRANTEE'S Mailing Address (including County): 710 Main Street, Suite 101, Georgetown, Williamson County, Texas 78626

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

PROPERTY:

BEING all of Block No. Thirteen (13) in Shell's Addition to the city of Georgetown, Williamson County, Texas, as shown by the Plat of said Addition recorded in Cab. A Slide 40B, of the Official Public Records of Williamson County, Texas, and being the same land heretofore conveyed to Williamson County, Texas, by deed dated August 30, 1916, and recorded as Document No. 191601901 in the Deed Records of Williamson County, Texas.

For the consideration, GRANTOR quitclaims to GRANTEE all of GRANTOR'S right, title, and interest in and to the above described property, to have and to hold it to GRANTEE, GRANTEE'S successors and assigns, forever. Neither GRANTOR, nor GRANTOR'S successors and assigns, shall have, claim or demand any right or title to the property or any part of it.

EXECUTED this the	day of	, 2019.
GRANTOR CITY OF GEORGETOWN		ATTEST:
BY: Dale Ross, Mayor		Robyn Densmore, City Secretary
STATE OF TEXAS COUNTY OF WILLIAMSON)))	ACKNOWLEDGMENT

BEFORE ME, the undersigned authority, on this date personally Dale Ross, Mayor of the City of Georgetown, a Texas home-rule municipal corporation, 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, as the act and deed of said municipality, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____day of _____, 2019.

Notary Public, State of Texas

APPROVED AS TO FORM:

_____, City Attorney

ROW Abandonment: E. 6th St. between Pine St. and E. 7th St.

Public Hearing and First Reading of an Ordinance to close and abandon a portion of East Sixth Street between Pine Street (Taylor Street) and East Seventh Street (San Gabriel Street), pursuant to Section 311.007 of the Texas Transportation Code, for the safety and public benefit of the municipality at large, to Williamson County, Texas, and to authorize the Mayor to execute all documents necessary to complete the abandonment.

 Jim Kachelmeyer, Real Estate Services Coordinator; Travis Baird, Real Estate Services Manager



Background Information

- City plans to make sidewalk improvements to East 6th St. and East 7th St. as part of the approved Northeast Old Town Sidewalk Improvements CIP project
- The project will enhance pedestrian and bicycle safety between downtown and Southwestern University
- To facilitate the sidewalk project, staff proposes to close East 6th St. east of Pine St., which will also enhance the safety of the intersections of East 6th St., Pine St., and East 7th St.
- Williamson County has requested that the City abandon the right-ofway back to the County as the abutting landowner

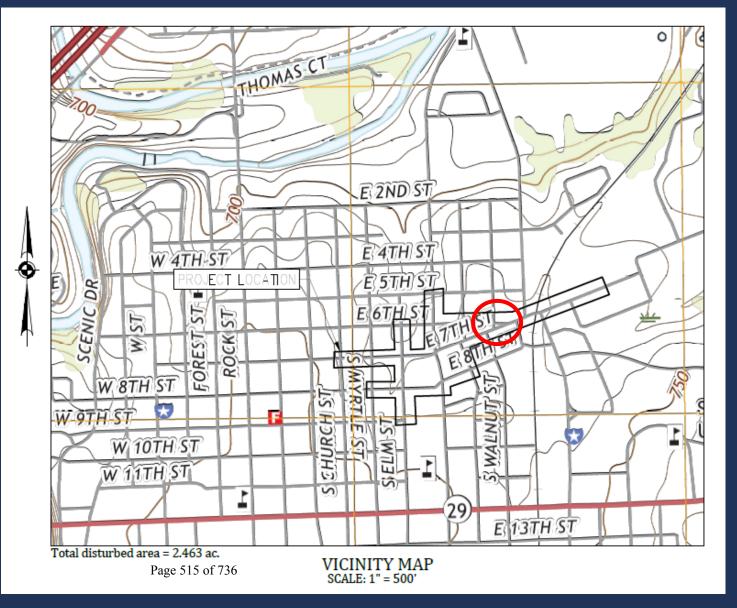


General Area

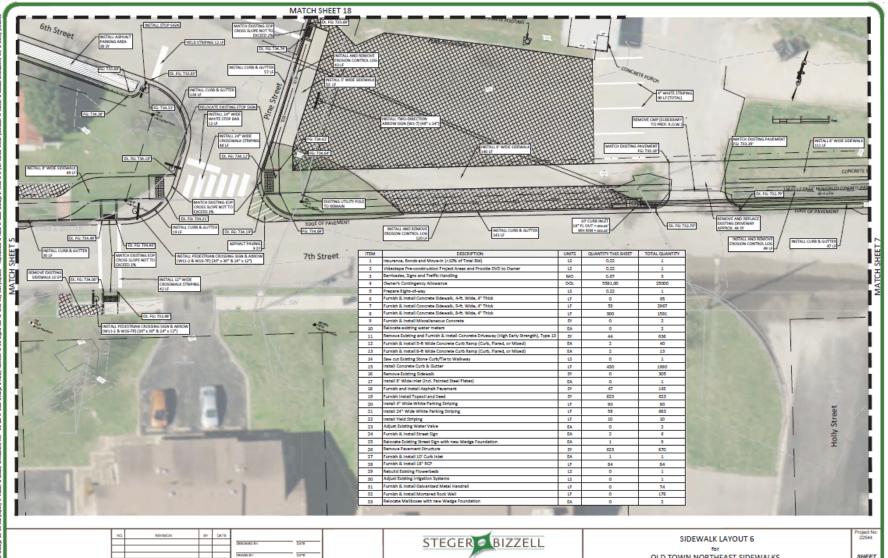
- Areas of Northeast Old Town Sidewalk Improvements Project

- Location of proposed closure of East Sixth Street





Planned Improvements



Page 516 of 736

for OLD TOWN NORTHEAST SIDEWALKS CITY OF GEORGETOWN WILLIAMSON COUNTY, TEXAS

11

of 25

Portion to be Closed





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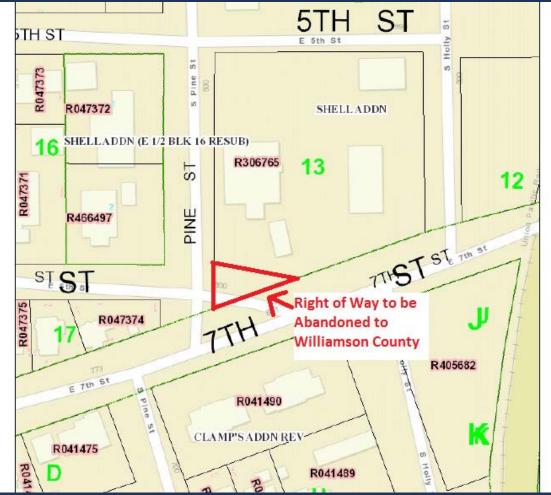
Terms

- The City will quitclaim the described areas to Williamson County.
- No easements are to be retained, as there are no utilities in the right-of-way to be abandoned.
- Williamson County will grant the City a separate sidewalk easement for the proposed Seventh Street sidewalk improvements.



Fagits of \$36 Georgetown

Right-of-Way to be Abandoned





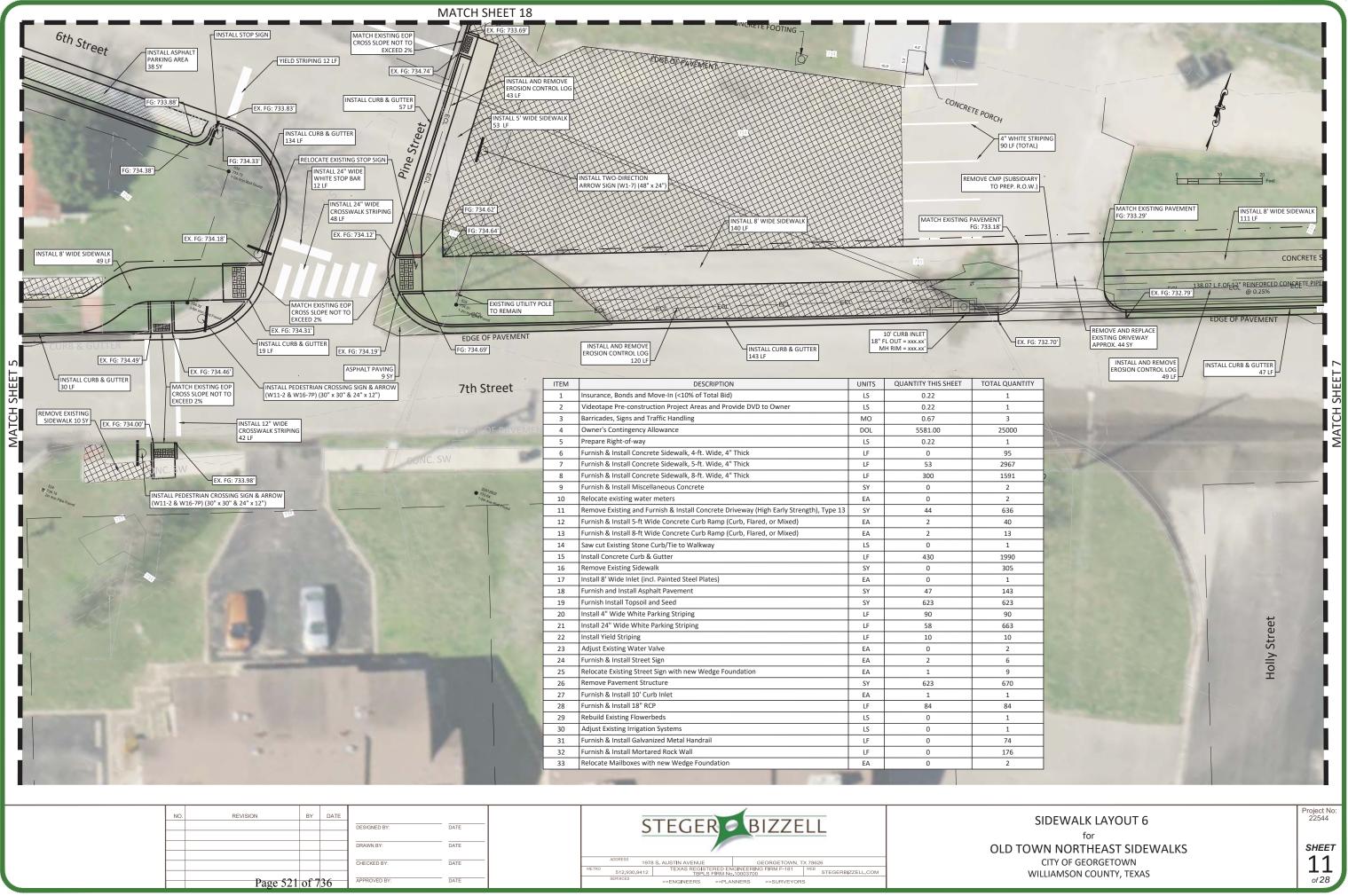
Fagity of 53 Georgetown

Ordinance Caption

• AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GEORGETOWN PROVIDING FOR THE CLOSURE AND ABANDONMENT BY QUITCLAIM DEED OF A STREET, ALLEY, AND/OR PUBLIC RIGHT-OF-WAY, OR A PORTION THEREOF; PROVIDING FOR THE TERMS AND CONDITIONS OF SUCH ABANDONMENT; CALLING A PUBLIC HEARING; PROVIDING A CONFLICT AND SEVERABILITY CLAUS AND ESTABLISHING AN EFFECTIVE DATE.

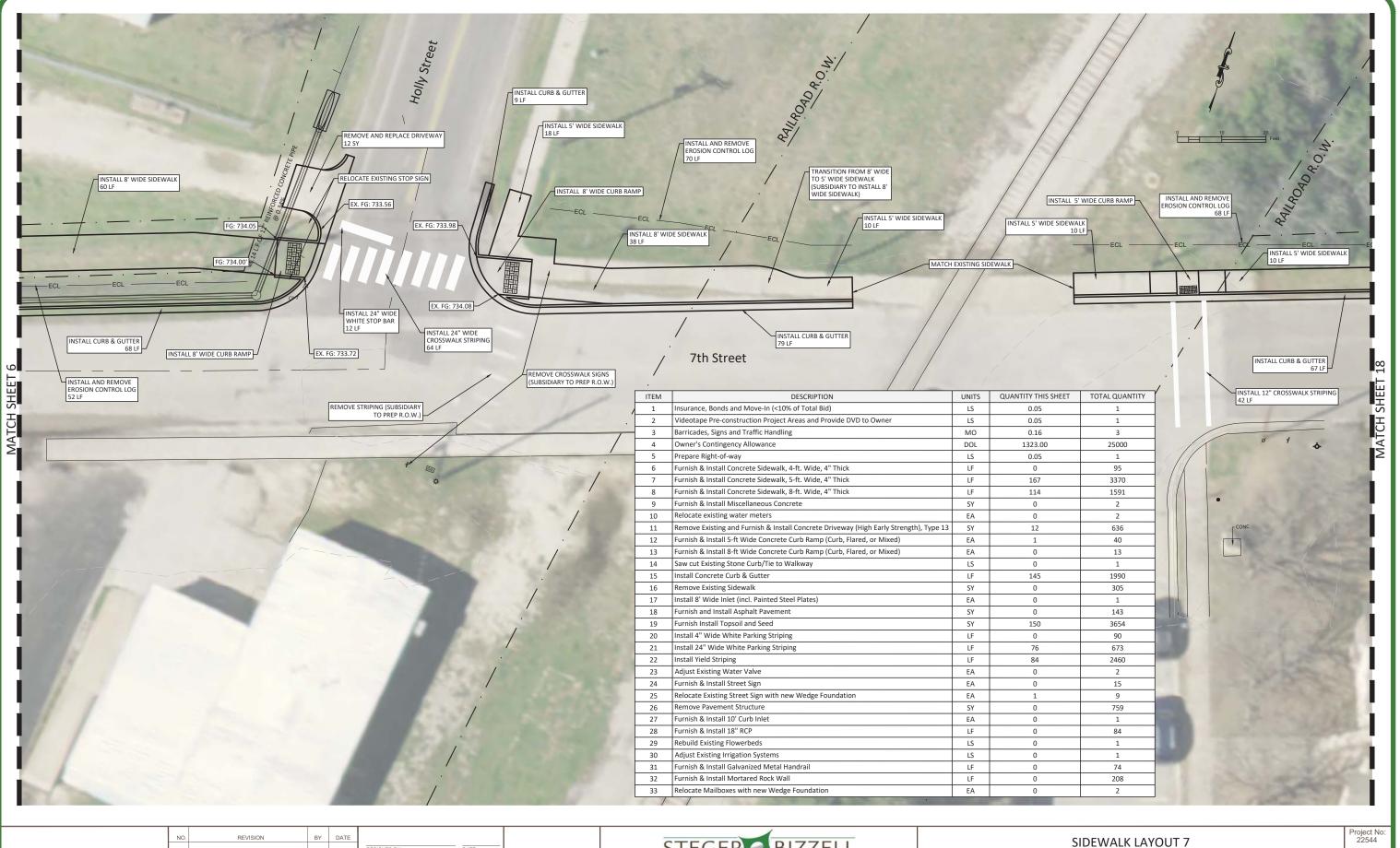


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DESIGNED BY: DATE	
	DATE
DRAWN BY: DATE	DATE
CHECKED BY: DATE	DATE
Page 521 of 736 APPROVED BY: DATE	DATE





NO.	REVISION	BY	DATE		
				DESIGNED BY:	DATE
				DRAWN BY:	DATE
				CHECKED BY:	DATE
<u> </u>				CHECKED BT:	DATE
	Page 522	of 7	36	APPROVED BY:	DATE

STEGER									
	ADDRESS	1978	S. AUSTIN AVENUE		G	EORGETOWN, T	X 7862	26	
METRO	512,930,9	9412	TEXAS REGIST TBPLS		GINEERING	FIRM F-181	WEB	STEGERBIZZELL.COM	
	SERVICES		>>ENGINEERS	>>PLA	NNERS	>>SURVEYORS	3		

OLD TOWN NORTHEAST SIDEWALKS CITY OF GEORGETOWN WILLIAMSON COUNTY, TEXAS



City of Georgetown, Texas City Council Regular Meeting February 12, 2019

SUBJECT:

First Reading of an Ordinance amending Title 2 of the Code of Ordinances by adding Chapter 2.30 relating to the **Police Department** -- Amy Janik, Police Captain

ITEM SUMMARY:

The Police Department is actively working toward becoming an accredited law enforcement agency through the Texas Police Chiefs' Association's Best Practices Recognition Program. The accreditation process requires the Department to prove compliance with 168 standards which have been identified by the TPCA as among the best practices for professional police organizations nationwide, and specifically in Texas.

Three of the standards in particular require the City to affirmatively authorize in the Code of Ordinances:

- the existence of the police department, and define its jurisdictional boundaries (1.05);
- specifically state the authority of police officers to act as Peace Officers for the City of Georgetown (1.06);
- designate the Chief of Police as having authority over the Georgetown Police Department (1.07)

While such authority is given to municipalities by various state and federal statutes, the Best Practices Recognition Program requires that the City's Charter or Code of Ordinances specifically confer this authority. Upon diligent research in collaboration with the City Secretary and the City's Legal department, it was determined that no such affirmations or stipulations exist in the current Code of Ordinances. Therefore, the proposed ordinance will reaffirm the existence, authority and jurisdiction of the Georgetown Police Department, it will designate the authority of the Chief of Police, and it will bring us into compliance with the related standards for Best Practices.

FINANCIAL IMPACT: N/A

SUBMITTED BY: RLD for AMy Janik

City of Georgetown, Texas City Council Regular Meeting February 12, 2019

SUBJECT:

Forwarded from the General Government and Finance Advisory Board (GGAF): Consideration and possible action to approve a Construction Contract with O'Haver Contractors of San Antonio, Texas for the Construction of Fire Station No. 6 in the amount of \$4,619,200.00 -- Eric Johnson, CIP Manager

ITEM SUMMARY:

On November 16, 2018, the City of Georgetown issued a Request for Proposals for the *Construction of Fire Station No. 6 and No. 7*. The members of the selection committee were Eric Johnson, Trish Long, Clay Shell and Jeff Davis. Of the five responses received, the selection committee unanimously agreed that O'Haver Contractors, provided the best value based on their proposal, and subsequent referral check.

The selection committee recommends acceptance of:

• Base Bid of \$4,560,000

· Alternate 5 - \$52,000 (Direct Capture Exhaust)

· Alternate 7 - \$7,200 (Additional Irrigation)

For a total contract amount of \$4,619,200

FINANCIAL IMPACT:

The total budget for Fire Station No. 6 is \$5,499,725. Including:

- · Construction
- · Professional Services
- · Owner Contingency
- · Furniture, Fixtures and Equipment
- · Commissioning
- · Station Alerting
- · Audio Visual
- · Materials Testing
- · Security
- · Data Cabling

Funding was approved by the Council in the 2018 Budget amendment. Fire Station No. 6 is funded through Certificates of Obligation which will be issued through the 2019 annual debt issuance. Funding for the initial design work was provided by Emergency Services District No. 8.

SUBMITTED BY:

Eric Johnson, CIP Manager

ATTACHMENTS:

Presentation Bid Tab - FS 6 & 7 Agreement FS 6 Construction General Conditions Agreement FS 6 Construction Legal

Fire Station No. 6 & 7 Construction Contracts

February 12, 2019



Page 525 of 736

Background

- Released RFP November 16, 2018
- RFP Due December 19, 2018
- 5 Respondents
 - Don Kruger Construction Co.
 - FT WOODS Construction
 - Key Construction
 - O'Haver Contractors
 - Trimbuilt Construction



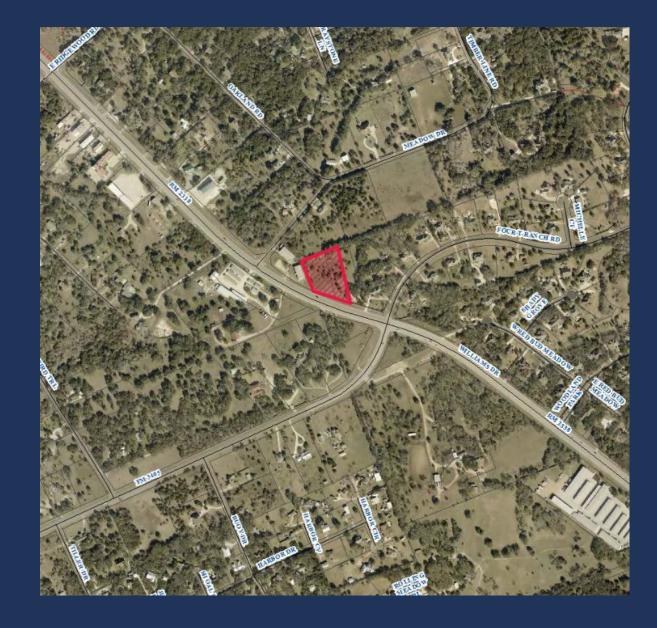
Background cont'

Evaluation Team

- Asst Chief Clay Shell
- Asst Chief Jeff Davis
- Trish Long, Facilities Superintendent
- Eric Johnson, CIP Manager
- O'Haver Contractors is recommended by the team for both Fire Stations



Fire Station 6 Location





Fagity of \$36 Georgetown

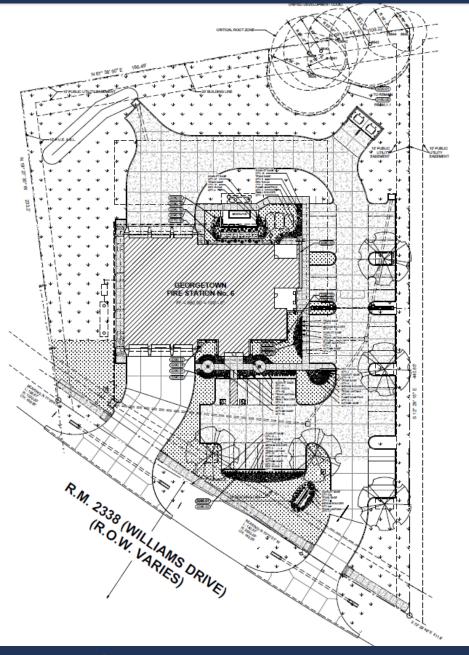
Fire Station No. 6





Fagitzy off3Georgetown

Fire Station 6 Site Plan



2290. 2290. 2290.



Gage 530 of 73 Georgetown

Fire Station 6 - Contract

• Total Contract - \$4,619,200

- Base Bid \$4,560,000
- Accept Alternate 5 \$52,000 (Direct Capture Exhaust)
- Accept Alternate 7 \$7,200 (Additional Irrigation)



Faget331 of \$36 Georgetown

Fire Station 6 - Budget - \$5,499,725

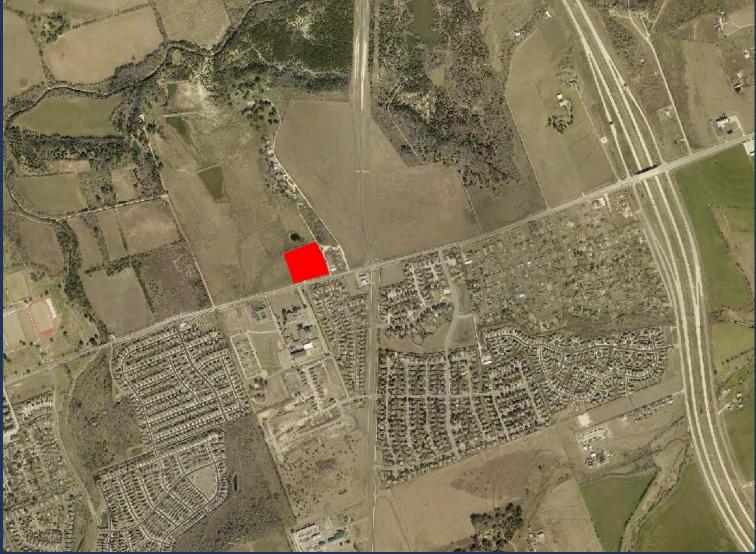
Contract	Total
Construction	\$4,619,200
Owner Contingency (5%)	\$230,960
Professional Services	\$131,000
Station Alerting	\$50,000
Other Contracted Services*	\$468,565
TOTAL	\$5,499,725

* Furniture, Equipment, A/V, Security, Data Cabling, Commissioning, Materials Testing,



Fage 532 of \$36 Georgetown

Fire Station 7 Location





Fagity3 Gf3Georgetown

Fire Station No. 7





Fagit334 6f 53 Georgetown

Fire Station 7 Site Plan



Fage 535 of \$3 Georgetown



Fire Station 7 - Contract

Total Contract – \$5,261,000

- Base Bid \$5,300,000
- Accept Alternate 1 \$11,000 (Additional Irrigation)
- Discount \$50,000 (For awarding both 6 & 7)



Fage \$36 of \$36 Georgetown

Fire Station 7 - Budget - \$6,250,000

Contract	Total
Construction	\$5,261,000
Owner Contingency (8%)	\$420,880
Station Alerting	\$50,000
Other Contracted Services*	\$518,120
TOTAL	\$6,250,000

* Furniture, Equipment, A/V, Security, Data Cabling, Commissioning, Materials Testing



Fagit337 Gf36Georgetown

Next Steps



- Execute Contracts
- Construction
 - Begin March 2019
 - Completion March 2020





Fagit338 Gf36 Georgetown

Bid Invitation No.: 20 Division: Co

Bid Opening Date:

201912 Construction Services for Fire Station No. 6 & No. 7 December 19, 2018, 2PM

ITEM#	Don Krueger Construction Victoria, TX	FT Woods, Georgetown TX	Key Construction LLC, Forth Worth, TX	O'Haver Constractors, San Antonio, TX	Trinbuilt Construction, Inc. Austin, TX	International Finishers Inc.,
FIRE STATION NO. 6						
CALENDAR DAYS	365			330	355	
Base Price	\$ 4,804,000.00	\$ 4,770,000.00	\$ 4,996,000.00	\$ 4,560,000.00	\$ 4,646,000.00	
A1	\$ (51,000.00			\$ (44,000.00)		
A2	\$ (16,000.00) \$ (4,000.00)	\$ (9,800.00)		\$ (22,500.00)	
A3	\$ (1,000.00) \$ (6,000.00)	\$ (16,000.00)	\$ (17,500.00)	\$ (1,130.00)	
A4	\$ (9,900.00) \$ (81,000.00)	\$ (120,000.00)	\$ (126,000.00)	\$ (121,000.00)	
A5	\$ 58,000.00	\$ 58,000.00	\$ 58,000.00	\$ 52,000.00	\$ 47,500.00	
A6	\$ 23,000.00	\$ 20,000.00	\$ 32,000.00	\$ 37,000.00	\$ 10,500.00	
A7	\$ 9,600.00	\$ 2,000.00	\$ 12,100.00	\$ 7,200.00	\$ 9,735.00	
A8	\$ 58,000.00	\$ 54,000.00	\$ 86,100.00	\$ 71,000.00	\$ 36,520.00	e/e
SUBTOTAL	\$ 4,874,700.00	\$ 4,763,000.00	\$ 4,993,400.00	\$ 4,536,700.00	\$ 4,546,925.00	responsive
FIRE STATION NO. 7						ũ
CALENDAR DAYS	365	281	300	330	355	ŏ
Base Price	\$ 5,645,000.00	\$ 5,570,000.00	\$ 6,266,000.00	\$ 5,300,000.00	\$ 5,545,000.00	es
A1	\$ 16,800.00	\$ 22,000.00	\$ 9,800.00	\$ 11,000.00	\$ 16,990.00	
SUBTOTAL	\$ 5,661,800.00	\$ 5,592,000.00	\$ 6,275,800.00	\$ 5,311,000.00	\$ 5,561,990.00	uou
FIRE STATION NO. 6 DISCOUNT	\$ (63,000.00) \$ (50,000.00))\$-	\$-	\$ (43,000.00)	
FIRE STATION NO. 7 DISCOUNT	\$ (63,000.00) \$ (50,000.00)	- \$	\$ (50,000.00)	\$ (43,000.00)	
TOTAL	\$ 10,410,500.00	\$ 10,255,000.00	\$ 11,269,200.00	\$ 9,797,700.00	\$ 10,022,915.00	
1 ORIGINAL 4 COPIES	YES	YES	YES	YES	YES	
DIGITAL	YES	YES	YES	YES	YES	
BID BONDS	YES	YES	YES	YES	YES	
ADDENDUM NO. 1-5	√	√	√	√	√	
C&A	√	√	√	✓	✓	

FOR REFERENCE ONLY - This document summarizes proposals received and some key pieces of information which may be located with a brief examination of the proposals, and is not intended to replace a complete detailed evaluation of each proposal.

Fire 6 w/ alternates	\$ 4,871,600.00	\$ 4,830,000.00	\$ 5,066,100.00	\$ 4,619,200.00	\$ 4,703,235.00
Fire 7 w/ alternates	\$ 5,661,800.00	\$ 5,592,000.00	\$ 6,275,800.00	\$ 5,311,000.00	\$ 5,561,990.00
Fire 6&7 w/ alternate	\$ 10,407,400.00	\$ 10,322,000.00	\$ 11,341,900.00	\$ 9,880,200.00	\$ 10,179,225.00

General Conditions

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Article 1. Definitions

Unless the context clearly requires another meaning, the following terms have the meaning assigned herein.

- 1.1 *Application for Payment* means Contractor's monthly partial invoice for payment that includes any portion of the Work that has been completed for which an invoice has not been submitted and performed in accordance with the requirements of the Contract Documents. The Application for Payment accurately reflects the progress of the Work, is itemized based on the Schedule of Values, bears the notarized signature of Contractor, and shall not include subcontracted items for which Contractor does not intend to pay.
- 1.2 *Application for Final Payment* means Contractor's final invoice for payment that includes any portion of the Work that has been completed for which an invoice has not been submitted, amounts owing to adjustments to the final Contract Sum resulting from approved change orders, and release of remaining Contractor's retainage.
- 1.3 *Architect/Engineer (A/E)* means a person registered as an architect pursuant to Tex. Occ. Code Ann., Chapter 1051, as a landscape architect pursuant to Tex. Occ. Code Ann., Chapter 1052, a person licensed as a professional engineer pursuant Tex. Occ. Code Ann., Chapter 1001, and/or a firm employed by Owner or Design-Build Contractor to provide professional architectural or engineering services and to exercise overall responsibility for the design of a Project or a significant portion thereof, and to perform the contract administration responsibilities set forth in the Contract.
- 1.4 *Baseline Schedule* means the initial time schedule prepared by Contractor for Owner's information and acceptance that conveys Contractor's and Subcontractors' activities (including coordination and review activities required in the Contract Documents to be performed by A/E and ODR), durations, and sequence of work related to the entire Project to the extent required by the Contract Documents. The schedule clearly demonstrates the critical path of activities, durations and necessary predecessor conditions that drive the end date of the schedule. The Baseline Schedule shall not exceed the time limit current under the Contract Documents.
- 1.5 *Certificate of Final Completion* means the certificate issued by A/E that documents, to the best of A/E's knowledge and understanding, Contractor's completion of all Contractor's Punchlist items and pre-final Punchlist items, final cleanup and Contractor's provision of Record Documents, operations and maintenance manuals, and all other Close-Out documents required by the Contract Documents.
- 1.6 *Change Order* means a written modification of the Contract between Owner and Contractor, signed by Owner, Contractor and A/E.
- 1.7 *Close-out Documents* mean the product brochures, submittals, product/equipment maintenance and operations instructions, manuals, and other documents/warranties, record documents, affidavit of payment, release of lien and claim, and as may be further defined, identified, and required by the Contract Documents.
- 1.8 *Contract* means the entire agreement between Owner and Contractor, including all of the Contract Documents.
- 1.9 *Contract Date* is the date when the agreement between Owner and Contractor becomes effective.
- 1.10 *Contract Documents* mean those documents identified as a component of the agreement (Contract) between Owner and Contractor. These may include, but are not limited to, Drawings; Specifications; these General Conditions and Owner's Special Conditions; and all pre-bid and/or pre-proposal addenda.
- 1.11 *Contract Sum* means the total compensation payable to Contractor for completion of the Work in accordance with the terms of the Contract.
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- 1.12 *Contract Time* means the period between the start date identified in the Notice to Proceed with construction and the Substantial Completion date identified in the Notice to Proceed or as subsequently amended by a Change Order.
- 1.13 *Contractor* means the individual, corporation, limited liability company, partnership, firm, or other entity contracted to perform the Work, regardless of the type of construction contract used, so that the term as used herein includes a Construction Manager-at-Risk or a Design-Build firm as well as a general or prime Contractor. The Contract Documents refer to Contractor as if singular in number.
- 1.14 *Construction Documents* mean the Drawings, Specifications, and other documents issued to build the Project. Construction Documents become part of the Contract Documents when listed in the Contract or any Change Order.
- 1.15 *Construction Manager-at-Risk*, means a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general Contractor and provides consultation to Owner regarding construction during and after the design of the facility.
- 1.16 *Date of Commencement* means the date designated in the Notice to Proceed for Contractor to commence the Work.
- 1.17 *Day* means a calendar day unless otherwise specifically stipulated.
- 1.18 *Design-Build* means a project delivery method in which the detailed design and subsequent construction is provided through a single contract with a Design-Build firm; a team, partnership, or legal entity that includes design professionals and a builder.
- 1.19 *Drawings* mean that product of A/E which graphically depicts the Work.
- 1.20 *Final Completion* means the date determined and certified by A/E and Owner on which the Work is fully and satisfactorily complete in accordance with the Contract.
- 1.21 *Final Payment* means the last and final monetary compensation made to Contractor for any portion of the Work that has been completed and accepted for which payment has not been made, amounts owing to adjustments to the final Contract Sum resulting from approved change orders, and release of Contractor's retainage.
- 1.22 *Historically Underutilized Business (HUB)* pursuant to Tex. Gov't Code, Chapter 2161, means a business that is at least 51% owned by an Asian Pacific American, a Black American, a Hispanic American, a Native American and/or an American Woman; is an entity with its principal place of business in Texas; and has an owner residing in Texas with proportionate interest that actively participates in the control, operations, and management of the entity's affairs.
- 1.23 *Laws and Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
- 1.24 *Notice to Proceed* means written document informing Contractor of the dates beginning Work and the dates anticipated for Substantial Completion.
- 1.24 *Open Item List* means a list of work activities, Punchlist items, changes or other issues that are not expected by Owner and Contractor to be complete prior to Substantial Completion.
- 1.25 *Owner* means the City of Georgetown.

1.26 *Owner's Designated Representative (ODR)* means the individual assigned by Owner to act on its behalf {00010282 / v / / LEGAL / FORMS / 11/16/2018}

and to undertake certain activities as specifically outlined in the Contract. ODR is the only party authorized to direct changes to the scope, cost, or time of the Contract.

- 1.27 *Owner's Special Conditions* mean the documents containing terms and conditions which may be unique to the Project. Owner's Special Conditions are a part of the Contract Documents and have precedence over the Uniform General Conditions
- 1.28 *Project* means all activities necessary for realization Owner's desired building or other structure including all ancillary and related work. This includes design, contract award(s), execution of the Work itself, work by Owner's forces and/or other Contractors and fulfillment of all Contract and warranty obligations.
- 1.29 *Proposed Change Order (PCO)* means a document that informs Contractor of a proposed change in the Work and appropriately describes or otherwise documents such change including Contractor's response of pricing for the proposed change.
- 1.30 *Punchlist* means a list of items of Work to be completed or corrected by Contractor before Final Completion. Punchlists indicate items to be finished, remaining Work to be performed, or Work that does not meet quality or quantity requirements as required in the Contract Documents.
- 1.31 *Record Documents* mean the drawing set, Specifications, and other materials maintained by Contractor that documents all addenda, Architect's Supplemental Instructions, Change Orders and postings and markings that record the as-constructed conditions of the Work and all changes made during construction.
- 1.32 *Request for Information (RFI)* means a written request by Contractor directed to A/E or ODR for a clarification of the information provided in the Contract Documents or for direction concerning information necessary to perform the Work that may be omitted from the Contract Documents.
- 1.33 *Samples* mean representative physical examples of materials, equipment, or workmanship used to confirm compliance with requirements and/or to establish standards for use in execution of the Work.
- 1.34 *Schedule of Values* means the detailed breakdown of the cost of the materials, labor, and equipment necessary to accomplish the Work as described in the Contract Documents, submitted by Contractor for approval by Owner and A/E.
- 1.35 *Shop Drawings* mean the drawings, diagrams, illustrations, schedules, performance charts, brochures, and other data prepared by Contractor or its agents which detail a portion of the Work.
- 1.36 *Site* means the geographical area of the location of the Work.
- 1.37 *Specifications* mean the written product of A/E that establishes the quality and/or performance of products utilized in the Work and processes to be used, including testing and verification for producing the Work.
- 1.38 *Subcontractor* means a business entity that enters into an agreement with Contractor to perform part of the Work or to provide services, materials, or equipment for use in the Work.
- 1.39 *Submittal Register* means a list provided by Contractor of all items to be furnished for review and approval by A/E and Owner and as identified in the Contract Documents including anticipated sequence and submittal dates.
- 1.40 *Substantial Completion* means the date determined and certified by Contractor, A/E, and Owner when the Work, or a designated portion thereof, is sufficiently complete, in accordance with the Contract, so as to be operational and fit for the use intended.

- 1.41 *Unit Price Work* means the Work, or a portion of the Work, paid for based on incremental units of measurement.
- 1.42 *Unilateral Change Order (ULCO)* means a Change Order issued by Owner without the complete agreement of Contractor, as to cost and/or time.
- 1.43 *Work* means the administration, procurement, materials, equipment, construction and all services necessary for Contractor, and/or its agents, to fulfill Contractor's obligations under the Contract.
- 1.44 *Work Progress Schedule* means the continually updated time schedule prepared and monitored by Contractor that accurately indicates all necessary appropriate revisions as required by the conditions of the Work and the Project while maintaining a concise comparison to the Baseline Schedule.

Article 2. Wage Rates and Other Laws Governing Construction

- 2.1 Laws and Regulations.
 - 2.1.1. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, the City shall not be responsible for monitoring Contractor's compliance with any Laws or Regulations.
 - 2.1.2. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations.
 - 2.1.3. Changes in Laws or Regulations not known at the time of opening of Bids having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Time.
 - 2.1.4. Contractor shall conduct activities in compliance with applicable laws and regulations and other requirements of the Contract relating to the environment and its protection at all times. Unless otherwise specifically determined, Contractor is responsible for obtaining and maintaining permits related to stormwater run-off. Contractor shall conduct operations consistent with stormwater run-off permit conditions. Contractor is responsible for all items it brings to the Site, including hazardous materials, and all such items brought to the Site by its SubContractors and suppliers, or by other entities subject to direction of Contractor. Contractor shall not incorporate hazardous materials into the Work without prior approval of Owner, and shall provide an affidavit attesting to such in association with request for Substantial Completion inspection.

2.2 <u>Prevailing Wage Rates.</u>

- 2.2.1. *Duty to pay Prevailing Wage Rates.* The Contractor shall comply with all requirements of Chapter 2258, Texas Government Code (as amended), including the payment of not less than the rates determined by the City Council of the City of Georgetown to be the prevailing wage rates in accordance with Chapter 2258. Such current prevailing wage rates are made part of these Contract Documents and can be found at https://www.wdol.gov/wdol/scafiles/davisbacon/TX
- 2.2.2. *Penalty for Violation*. A Contractor or any Subcontractor who does not pay the prevailing wage shall, upon demand made by the City, pay to the City \$60 for each worker employed for each

calendar day or part of the day that the worker is paid less than the prevailing wage rates stipulated in these contract documents. This penalty shall be retained by the City to offset its administrative costs, pursuant to Texas Government Code 2258.023.

- 2.2.3. Complaints of Violations and City Determination of Good Cause. On receipt of information, including a complaint by a worker, concerning an alleged violation of 2258.023, Texas Government Code, by a Contractor or Subcontractor, the City shall make an initial determination, before the 31st day after the date the City receives the information, as to whether good cause exists to believe that the violation occurred. The City shall notify in writing the Contractor or Subcontractor and any affected worker of its initial determination. Upon the City's determination that there is good cause to believe the Contractor or Subcontractor has violated Chapter 2258, the City shall retain the full amounts claimed by the claimant or claimants as the difference between wages paid and wages due under the prevailing wage rates, such amounts being subtracted from successive progress payments pending a final determination of the violation.
- 2.2.4. Arbitration Required if Violation Not Resolved. An issue relating to an alleged violation of Section 2258.023, Texas Government Code, including a penalty owed to the City or an affected worker, shall be submitted to binding arbitration in accordance with the Texas General Arbitration Act (Article 224 et seq., Revised Statutes) if the Contractor or Subcontractor and any affected worker does not resolve the issue by agreement before the 15th day after the date the City makes its initial determination pursuant to Paragraph C above. If the persons required to arbitrate under this section do not agree on an arbitrator before the 11th day after the date that arbitration is required, a district court shall appoint an arbitrator on the petition of any of the persons. The City is not a party in the arbitration. The decision and award of the arbitrator is final and binding on all parties and may be enforced in any court of competent jurisdiction.
- 2.2.5 *Records to be Maintained.* The Contractor and each Subcontractor shall, for a period of three (3) years following the date of acceptance of the work, maintain records that show (i) the name and occupation of each worker employed by the Contractor in the construction of the Work provided for in this Contract; and (ii) the actual per diem wages paid to each worker. The records shall be open at all reasonable hours for inspection by the City. The provisions of Paragraph 16.4, Right to Audit, shall pertain to this inspection.
- 2.2.6. *Progress Payments*. With each progress payment or payroll period, whichever is less, the Contractor shall submit an affidavit stating that the Contractor has complied with the requirements of Chapter 2258, Texas Government Code.
- 2.2.7. *Posting of Wage Rates*. The Contractor shall post prevailing wage rates in a conspicuous place at all times.
- 2.2.8. *Subcontractor Compliance*. The Contractor shall include in its subcontracts and/or shall otherwise require all of its Subcontractors to comply with the provisions above.
- 2.3 <u>Venue for Suits.</u> The venue for any suit arising from the Contract will be in a court of competent jurisdiction in County, Texas.
- 2.4 <u>Licensing of Trades.</u> Contractor shall comply with all applicable provisions of State law related to license requirements for skilled tradesmen, Contractors, suppliers and or laborers, as necessary to accomplish the Work. In the event Contractor, or one of its Subcontractors, loses its license during the term of performance of the Contract, Contractor shall promptly hire or contract with a licensed provider of the service at no additional cost to Owner.
- 2.5 <u>Royalties, Patents, and Copyrights.</u> Contractor shall pay all royalties and license fees, defend suits or claims for infringement of copyrights and patent rights, and shall hold Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process
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or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by Owner or A/E. However, if Contractor has reason to believe that the required design, process, or product is an infringement of a copyright or a patent, Contractor shall be responsible for such loss unless such information is promptly furnished to A/E.

2.6 <u>State Sales and Use Taxes.</u> Owner qualifies for exemption from certain State and local sales and use taxes pursuant to the provisions of Tex. Tax Code, Chapter 151. Upon request from Contractor, Owner shall furnish evidence of tax exempt status. Contractor may claim exemption from payment of certain applicable State taxes by complying with such procedures as prescribed by the State Comptroller of Public Accounts. Owner acknowledges not all items qualify for exemption. Owner is not obligated to reimburse Contractor for taxes paid on items that qualify for tax exemption.

Article 3. General Responsibilities of Owner and Contractor

- 3.1 <u>Owner's General Responsibilities.</u> Owner is the entity identified as such in the Contract and referred to throughout the Contract Documents as if singular in number.
 - 3.1.1 <u>Preconstruction Conference.</u> Prior to, or concurrent with, the issuance of Notice to Proceed with construction, a conference will be convened for attendance by Owner, Contractor, A/E and appropriate Subcontractors. The purpose of the conference is to establish a working understanding among the parties as to the Work, the operational conditions at the Project Site, and general administration of the Project. Topics include communications, schedules, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, maintaining required records and all other matters of importance to the administration of the Project and effective communications between the Project team members.
 - 3.1.2 <u>Owner's Designated Representative.</u> Prior to the start of construction, Owner will identify Owner's Designated Representative (ODR), who has the express authority to act and bind Owner to the extent and for the purposes described in the various Articles of the Contract, including responsibilities for general administration of the Contract.
 - 3.1.2.1 Unless otherwise specifically defined elsewhere in the Contract Documents, ODR is the single point of contact between Owner and Contractor. Notice to ODR, unless otherwise noted, constitutes notice to Owner under the Contract.
 - 3.1.2.2 All directives on behalf of Owner will be conveyed to Contractor and A/E by ODR in writing.
 - 3.1.2.3 Owner will furnish or cause to be furnished, free of charge, the number of complete sets of the Drawings, Specifications, and addenda as provided in the Agreement or Owner's Special Conditions.
 - 3.1.3 <u>Owner Supplied Materials and Information.</u>
 - 3.1.3.1 Owner will furnish to Contractor those surveys describing the physical characteristics, legal description, limitations of the Site, Site utility locations, and other information used in the preparation of the Contract Documents.
 - 3.1.3.2 Owner will provide information, equipment, or services under Owner's control to Contractor with reasonable promptness.
 - 3.1.4 <u>Availability of Lands.</u> Owner will furnish, as indicated in the Contract, all required rights to use the lands upon which the Work occurs. This includes rights-of-way and easements for access and such other lands that are designated for use by Contractor. Contractor shall comply

with all Owner identified encumbrances or restrictions specifically related to use of lands so furnished. Owner will obtain and pay for easements for permanent structures or permanent changes in existing facilities, unless otherwise required in the Contract Documents.

- 3.1.5 Limitation on Owner's Duties.
 - 3.1.5.1 Owner will not supervise, direct, control or have authority over or be responsible for Contractor's means, methods, technologies, sequences or procedures of construction or the safety precautions and programs incident thereto. Owner is not responsible for any failure of Contractor to comply with laws and regulations applicable to the Work. Owner is not responsible for the failure of Contractor to perform or furnish the Work in accordance with the Contract Documents. Except as provided in Section 2.5, Owner is not responsible for the acts or omissions of Contractor, or any of its Subcontractors, suppliers or of any other person or organization performing or furnishing any of the Work on behalf of Contractor.
 - 3.1.5.2 Owner will not take any action in contravention of a design decision made by A/E in preparation of the Contract Documents, when such actions are in conflict with statutes under which A/E is licensed for the protection of the public health and safety.
- 3.2 <u>Role of Architect/Engineer.</u> Unless specified otherwise in the Contract between Owner and Contractor, A/E shall provide general administration services for Owner during the construction phase of the project. Written correspondence, requests for information, and Shop Drawings/submittals shall be directed to A/E for action. A/E has the authority to act on behalf of Owner to the extent provided in the Contract Documents, unless otherwise modified by written instrument, which will be furnished to Contractor by ODR, upon request.
 - 3.2.1 <u>Site Visits.</u>
 - 3.2.1.1 A/E will make visits to the Site at intervals as provided in the A/E's Contract with Owner, to observe the progress and the quality of the various aspects of Contractor's executed Work and report findings to Owner.
 - 3.2.1.2 A/E has the authority to interpret Contract Documents and inspect the Work for compliance and conformance with the Contract. Except as referenced in Paragraph 3.1.5.2, Owner retains the sole authority to accept or reject Work and issue direction for correction, removal, or replacement of Work.
 - 3.2.2 <u>Clarifications and Interpretations.</u> It may be determined that clarifications or interpretations of the Contract Documents are necessary. Upon direction by ODR, such clarifications or interpretations will be provided by A/E consistent with the intent of the Contract Documents. A/E will issue these clarifications with reasonable promptness to Contractor as A/E's supplemental instruction ("ASI") or similar instrument. If Contract Document such clarification or interpretation justifies an adjustment in the Contract Sum or the Contract Time, Contractor shall so notify Owner in accordance with the provisions of Article 11.
 - 3.2.3 <u>Limitations on Architect/Engineer Authority</u>. A/E is not responsible for:
 - 3.2.3.1 Contractor's means, methods, techniques, sequences, procedures, safety, or programs incident to the Project, nor will A/E supervise, direct, control or have authority over the same;
 - 3.2.3.2 The failure of Contractor to comply with laws and regulations applicable to the furnishing or performing the Work;

- 3.2.3.3 Contractor's failure to perform or furnish the Work in accordance with the Contract Documents; or
- 3.2.3.4 Acts or omissions of Contractor, or of any other person or organization performing or furnishing any of the Work.
- 3.3 <u>Contractor's General Responsibilities.</u> Contractor is solely responsible for implementing the Work in full compliance with all applicable laws and the Contract Documents and shall supervise and direct the Work using the best skill and attention to assure that each element of the Work conforms to the Contract requirements. Contractor is solely responsible for all construction means, methods, techniques, safety, sequences, coordination and procedures.

Contractor shall visit the Site before commencing the Work and become familiar with local conditions such as the location, accessibility and general character of the Site and/or building.

- 3.3.1 <u>Project Administration</u>. Contractor shall provide Project administration for all Subcontractors, vendors, suppliers, and others involved in implementing the Work and shall coordinate administration efforts with those of A/E and ODR in accordance with these general conditions, Division 1 of the Specifications and other provisions of the Contract, and as outlined in the preconstruction conference.
- 3.3.2 <u>Contractor's Management Personnel.</u> Contractor shall employ a competent person or persons who will be present at the Project Site during the progress of the Work to supervise or oversee the work. The competent persons are subject to the approval of ODR. Contractor shall not change approved staff during the course of the project without the written approval of ODR unless the staff member leaves the employment of Contractor. Contractor shall provide additional quality control, safety and other staff as stated in the Contract Documents.
- 3.3.3 <u>Labor.</u> Contractor shall provide competent, suitably qualified personnel to survey, lay-out, and construct the Work as required by the Contract Documents and maintain good discipline and order at the Site at all times.
- 3.3.4 <u>Services, Materials, and Equipment.</u> Unless otherwise specified, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities, incidentals, and services necessary for the construction, performance, testing, start-up, inspection and completion of the Work.
- 3.3.5 <u>Contractor General Responsibility</u>. For Owner furnished equipment or material that will be in the care, custody, and control of Contractor, Contractor is responsible for damage or loss.
- 3.3.6 <u>Non-Compliant Work.</u> Should A/E and/or ODR identify Work as non-compliant with the Contract Documents, A/E and/or ODR shall communicate the finding to Contractor, and Contractor shall correct such Work at no additional cost to the Owner. The approval of Work or the failure to find non-compliant Work by either A/E or ODR does not relieve Contractor from the obligation to comply with all requirements of the Contract Documents.
- 3.3.7 <u>Subcontractors</u>. Contractor shall not employ any Subcontractor, supplier or other person or organization, whether initially or as a substitute, against whom Owner shall have reasonable objection. Owner will communicate such objections in writing within ten (10) days of receipt of Contractor's intent to use such Subcontractor, supplier, or other person or organization. Contractor is not required to employ any Subcontractor, supplier or other person or organization to furnish any of the work to whom Contractor has reasonable objection. Contractor shall not substitute Subcontractors without the acceptance of Owner.

- 3.3.7.1 All Subcontracts and supply contracts shall be consistent with and bind the Subcontractors and suppliers to the terms and conditions of the Contract Documents including provisions of the Contract between Contractor and Owner.
- 3.3.7.2 Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with Contractor. Require all Subcontractors, suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with Owner only through Contractor. Contractor shall furnish to Owner a copy, at Owner's request, of each first-tier subcontract promptly after its execution. Contractor agrees that Owner has no obligation to review or approve the content of such contracts and that providing Owner such copies in no way relieves Contractor of any of the terms and conditions of the Contract, including, without limitation, any provisions of the Contract which require the Subcontractor to be bound to Contractor in the same manner in which Contractor is bound to Owner.
- 3.3.8 <u>Continuing the Work.</u> Contractor shall carry on the Work and adhere to the progress schedule during all disputes, disagreements, or alternative resolution processes with Owner. Contractor shall not delay or postpone any Work because of pending unresolved disputes, disagreements or alternative resolution processes, except as Owner and Contractor may agree in writing.
- 3.3.9 <u>Cleaning.</u> Contractor shall at all times, keep the Site and the Work clean and free from accumulation of waste materials or rubbish caused by the construction activities under the Contract. Contractor shall ensure that the entire Project is thoroughly cleaned prior to requesting Substantial Completion inspection and, again, upon completion of the Project prior to the final inspection.
- 3.3.10 <u>Acts and Omissions of Contractor, its Subcontractors and Employees.</u> Contractor shall be responsible for acts and omissions of his employees and all its Subcontractors, their agents and employees. Owner may, in writing, require Contractor to remove from the Project any of Contractor's or its Subcontractor's employees whom ODR finds to be careless, incompetent, unsafe, uncooperative, disruptive, or otherwise objectionable.
- 3.3.11 <u>Ancillary Areas.</u> Contractor shall operate and maintain operations and associated storage areas at the site of the Work in accordance with the following:
 - 3.3.11.1 All Contractor operations, including storage of materials and employee parking upon the Site of Work, shall be confined to areas designated by Owner.
 - 3.3.11.2 Contractor may erect, at its own expense, temporary buildings that will remain its property. Contractor shall remove such buildings and associated utility service lines upon completion of the Work, unless Contractor requests and Owner provides written consent that it may abandon such buildings and utilities in place.
 - 3.3.11.3 Contractor shall use only established roadways or construct and use such temporary roadways as may be authorized by Owner. Contractor shall not allow load limits of vehicles to exceed the limits prescribed by appropriate regulations or law. Contractor shall provide protection to road surfaces, curbs, sidewalks, trees, shrubbery, sprinkler systems, drainage structures and other like existing improvements to prevent damage and repair any damage thereto at the expense of Contractor.
 - 3.3.11.4 Owner may restrict Contractor's entry to the Site to specifically assigned entrances and routes.

- 3.3.12 <u>Separate Contracts.</u> Owner reserves the right to award other contracts in connection with the Project under the same or substantially similar contract terms, including those portions related to insurance and waiver of subrogation. Owner reserves the right to perform operations related to the Project with Owner's own forces.
- 3.3.13 Under a system of separate contracts, the conditions described herein continue to apply except as may be amended by change order.
- 3.3.14 Contractor shall cooperate with other contractors or forces employed on the Project by Owner, including providing access to Site, integration of activities within Contractor's Work Progress Schedule and Project information as requested.
- 3.3.15 Owner shall be reimbursed by Contractor for costs incurred by Owner which are payable to a separate Contractor because of delays, improperly timed activities, or defective construction by Contractor. Owner will equitably adjust the Contract by Change Order for costs incurred by Contractor because of delays, improperly timed activities, damage to the Work or defective construction by a separate contractor.

3.4 Indemnification of Owner.

- 3.4.1 Contractor covenants and agrees to indemnify, hold harmless and defend, at its own expense, the City, its officers, servants and employees, from and against any and all claims arising out of, or alleged to arise out of, the work and services to be performed by the Contractor, its officers, agents, employees, subcontractors, licenses or invitees under this Contract. THIS INDEMNIFICATION PROVISION IS SPECIFICALLY INTENDED TO OPERATE AND BE EFFECTIVE EVEN IF IT IS ALLEGED OR PROVEN THAT ALL OR SOME OF THE DAMAGES BEING SOUGHT WERE CAUSED, IN WHOLE OR IN PART, BY ANY ACT, OMISSION OR NEGLIGENCE OF THE CITY. This indemnity provision is intended to include, without limitation, indemnity for costs, expenses and legal fees incurred by the City in defending against such claims and causes of actions.
- 3.4.2 Contractor covenants and agrees to indemnify and hold harmless, at its own expense, the City, its officers, servants and employees, from and against any and all loss, damage or destruction of property of the City, arising out of, or alleged to arise out of, the work and services to be performed by the Contractor, its officers, agents, employees, subcontractors, licensees or invitees under this Contract. <u>THIS INDEMNIFICATION PROVISION IS SPECIFICALLY INTENDED TO OPERATE AND BE EFFECTIVE EVEN IF IT IS ALLEGED OR PROVEN THAT ALL OR SOME OF THE DAMAGES BEING SOUGHT WERE CAUSED, IN WHOLE OR IN PART. BY ANY ACT, OMISSION OR NEGLIGENCE OF THE CITY.</u>
- 3.4.3 The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- 3.4.4 Contractor shall promptly advise Owner in writing of any claim or demand against Owner or against Contractor which involves Owner and known to Contractor and related to or arising out of Contractor's activities under this Contract.
- 3.4.5 These indemnity provisions shall survive the termination of this Agreement regardless of the reason for termination.

Article 4. Bonds and Insurance

4.1 <u>Construction Bonds.</u> Contractor is required to tender to Owner, prior to commencing the Work, performance and payment bonds, as required by Tex. Gov't Code, Chapter 2253. On Construction

Manager-at-Risk and Design-Build Projects the Owner shall require a security bond, as described in Subsection 5.1.2 below.

- 4.1.1 <u>Bond Requirements.</u> Each bond shall be executed by a corporate surety or sureties authorized to do business in the State of Texas and acceptable to Owner, on Owner's form, and in compliance with the relevant provisions of the Texas Insurance Code. If any bond is for more than ten (10) percent of the surety's capital and surplus, Owner may require certification that the company has reinsured the excess portion with one or more reinsurers authorized to do business in the State. A reinsurer may not reinsure for more than ten (10) percent of its capital and surplus. If a surety upon a bond loses its authority to do business in the State, Contractor shall, within thirty (30) days after such loss, furnish a replacement bond at no added cost to Owner.
 - 4.1.1.1 A Performance bond is required if the Contract Sum is in excess of \$100,000. The performance bond is solely for the protection of Owner. The performance bond is to be for the Contract Sum to guarantee the faithful performance of the Work in accordance with the Contract Documents. The form of the bond shall be approved by the Office of the Attorney General of Texas. The performance bond shall be effective through Contractor's warranty period.
 - 4.1.1.2 A Payment bond is required if the Contract price is in excess of \$25,000. The payment bond is to be for the Contract Sum and is payable to Owner solely for the protection and use of payment bond beneficiaries. The form of the bond shall be approved by the Office of the Attorney General of Texas.
- 4.1.2 <u>Security Bond.</u> The security bond provides protection to Owner if Contractor presents an acceptable guaranteed maximum price ("GMP") to Owner but is unable to deliver the required payment and performance bonds within the time period stated below.
- 4.1.3 When Bonds Are Due
 - 4.1.3.1 Security bonds are due before execution of a Construction Manager-at-Risk or Design-Build Contract.
 - 4.1.3.2 Payment and performance bonds are due before execution of a contract on competitively bid or competitively sealed proposal projects or before execution of a GMP proposal on Construction Manager-at-Risk projects or Design-Build projects.
- 4.1.4 <u>Power of Attorney.</u> Each bond shall be accompanied by a valid power of attorney (issued by the surety company and attached, signed and sealed with the corporate embossed seal, to the bond) authorizing the attorney-in-fact who signs the bond to commit the company to the terms of the bond, and stating any limit in the amount for which the attorney can issue a single bond.
- 4.1.5 <u>Bond Indemnification</u>. The process of requiring and accepting bonds and making claims thereunder shall be conducted in compliance with Tex. Gov't Code, Chapter 2253. IF FOR ANY REASON A STATUTORY PAYMENT OR PERFORMANCE BOND IS NOT HONORED BY THE SURETY, CONTRACTOR SHALL FULLY INDEMNIFY AND HOLD OWNER HARMLESS OF AND FROM ANY COSTS, LOSSES, OBLIGATIONS OR LIABILITIES IT INCURS AS A RESULT.
- 4.1.6 <u>Furnishing Bond Information</u>. Owner shall furnish certified copies of the payment bond and the related Contract to any qualified person seeking copies who complies with Tex. Gov't Code § 2253.026.
- 4.1.7 <u>Claims on Payment Bonds.</u> Claims on payment bonds must be sent directly to Contractor and his surety in accordance with Tex. Gov't Code § 2253.041. All payment bond claimants are {00010282/v//LEGAL/FORMS/11/16/2018}

cautioned that no lien exists on the funds unpaid to Contractor on such Contract, and that reliance on notices sent to Owner may result in loss of their rights against Contractor and/or his surety. Owner is not responsible in any manner to a claimant for collection of unpaid bills, and accepts no such responsibility because of any representation by any agent or employee.

- 4.1.8 <u>Payment Claims when Payment Bond not Required.</u> The rights of Subcontractors regarding payment are governed by Tex. Prop. Code §§ 53.231 53.239 when the value of the Contract between Owner and Contractor is less than \$25,000.00. These provisions set out the requirements for filing a valid lien on funds unpaid to Contractor as of the time of filing the claim, actions necessary to release the lien and satisfaction of such claim.
- 4.1.9 <u>Sureties.</u> A surety shall be listed on the US Department of the Treasury's Listing of Approved Sureties maintained by the Bureau of Financial Management Service (FMS), www.fms.treas.gov/c570, stating companies holding Certificates of Authority as acceptable sureties on Federal bonds and acceptable reinsuring companies (FMS Circular 570).
- 4.2 <u>Insurance Requirements.</u> Contractor shall carry insurance in the types and amounts indicated in this Article for the duration of the Contract. The required insurance shall include coverage for Owner's property prior to construction, during construction and during the warranty period. The insurance shall be evidenced by delivery to Owner of certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Upon request, Owner, and/or its agents, shall be entitled to receive without expense, copies of the policies and all endorsements. Contractor shall update all expired policies prior to submission for monthly payment. Failure to update policies shall be reason for withholding of payment until renewal is provided to Owner.
 - 4.2.1 Contractor, consistent with its status as an independent Contractor, shall provide and maintain all insurance coverage with the minimum amounts described below until the end of the warranty period unless otherwise stated in Owner's Special Conditions. Failure to maintain insurance coverage, as required, is grounds for suspension of Work for cause pursuant to Article 14. The Contractor will be notified of the date on which the Builder's Risk insurance policy may be terminated by any means deemed appropriate by Owner.
 - 4.2.2 Coverage shall be written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and rated A-, VII or better by A.M. Best Company or similar rating company or otherwise acceptable to Owner.
 - 4.2.2.1 Insurance Coverage Required.
 - 4.2.2.1.1 <u>Workers' Compensation.</u> Insurance with limits as required by the Texas Workers' Compensation Act and Employer's Liability Insurance with limits of not less than:
 - \$1,000,000 each accident;
 - \$1,000,000 disease each employee; and
 - \$1,000,000 disease policy limit.

Policies must include (a) Other States Endorsement to include TEXAS if business is domiciled outside the State of Texas, and (b) a waiver of all rights of subrogation in favor of Owner.

4.2.2.1.2 <u>Commercial General Liability Insurance, including premises</u>, operations, independent Contractor's liability, products and completed operations and contractual liability, covering, but not limited to, the

liability assumed under the indemnification provisions of this Contract, fully insuring Contractor's (or Subcontractor's) liability for bodily injury (including death) and property damage with a minimum limit of:

\$1,000,000 per occurrence;

\$2,000,000 general aggregate;

\$2,000,000 products and completed operations aggregate; and

Coverage shall be on an "occurrence" basis.

The policy shall include coverage extended to apply to completed operations and explosion, collapse, and underground hazards. The policy shall include endorsement CG2503 Amendment of Aggregate Limits of Insurance (per Project) or its equivalent.

If the Work involves any activities within fifty (50) feet of any railroad, railroad protective insurance as may be required by the affected railroad, written for not less than the limits required by such railroad.

4.2.2.1.3 <u>Asbestos Abatement Liability Insurance</u>, including coverage for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos containing materials. *This requirement applies if the Work or the Project includes asbestos containing materials.

The combined single limit for bodily injury and property damage will be a minimum of \$1,000,000 per occurrence.

*Specific requirement for claims-made form: Required period of coverage will be determined by the following formula: continuous coverage for life of the Contract, plus one (1) year (to provide coverage for the warranty period), and an extended discovery period for a minimum of five (5) years which shall begin at the end of the warranty period.

Employer's liability limits for asbestos abatement will be:

- \$1,000,000 each accident;
- \$1,000,000 disease each employee; and
- \$1,000,000 disease policy limit.

If this Contract is for asbestos abatement only, the All-Risk Builder's Risk or all-risk installation floater (5.2.2.1.5.e) is not required.

4.2.2.1.4 <u>Business Automobile Liability Insurance</u>, covering all owned, hired, and non-owned vehicles, with a minimum combined single limit for bodily injury (including death) and property damage of \$1,000,000 per occurrence. No aggregate shall be permitted for this type of coverage.

Such insurance is to include coverage for loading and unloading hazards.

Contractor or any subcontractor responsible for transporting asbestos or other hazardous materials defined as asbestos shall provide pollution coverage for any vehicle hauling asbestos containing cargo. The policy must include a MCS 90 endorsement with a \$5,000,000 limit and the CA 9948 Pollution Endorsement, or its equivalent.

4.2.2.1.5 <u>All-Risk Builder's Risk Insurance</u>, if applicable (or all-risk installation floater for instances in which the project involves solely the installation of material and/or equipment). Coverage is determined by the Contract Sum, as detailed, below.

BUILDERS RISK REQUIREMENT FOR PROJECTS WITH A CONTRACT SUM <\$20 MILLION

- 4.2.2.1.5.1 Contractor shall purchase and maintain in force builders risk insurance on the entire Work. Such insurance shall be written in the amount of the original contract, plus any subsequent change orders and plus the cost of materials supplied or installed by others, comprising Total Value for the entire Project at the site. The insurance shall apply on a replacement cost basis with no coinsurance provision. A sublimit may be applicable to flood coverage, but sublimit must be at least 20% of the Total Value of the Project. The limit for all other perils, including Named Windstorm, Wind, and Hail, must be equal to the Total Value for the entire Project at the site. (If Installation Floater, limit shall be equal to 100 percent of the contract cost.)
- 4.2.2.1.5.2 This insurance shall name as insureds the Owner, the Contractor, and all subcontractors and subsubcontractors in the Work.
- 4.2.2.1.5.3 Builders risk insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against fire and extended coverage perils, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, boiler and machinery/mechanical breakdown, testing and startup, and terrorism.
- 4.2.2.1.5.4 This insurance shall cover the entire work at the site as required in 4.2.2.1.5.1, including, but not limited to, the following:
 - Temporary works including but not limited to scaffolding, form work, fences, shoring, hoarding, falsework and temporary buildings
 - Offsite Storage
 - Portions of the work in transit
 - Debris removal
 - Extra Expense
 - Expediting Expenses
 - Demolition and Increased Cost of Construction
 - Pollutant Clean-Up and Removal
 - Trees, Shrubs, Plants, Lawns and Landscaping (if applicable)
 - Errors & Omissions (applicable to purchase of Builders Risk policy only)
- 4.2.2.1.5.5 This insurance shall not contain an occupancy clause suspending or reducing coverage should the Owner occupy, or begin beneficial occupancy before the Owner has accepted final completion.
- 4.2.2.1.5.6 This insurance shall be specific as to coverage and shall be primary to any permanent insurance or self-insurance that may be maintained on the property by Owner.
- 4.2.2.1.5.7 This insurance shall include a waiver of subrogation in favor of Owner, the Contractor, and all

subcontractors and sub-subcontractors in the work.

- 4.2.2.1.5.8 As applicable, Flood deductible shall not exceed \$250,000 for Zone A, \$100,000 for Zone B and \$50,000 for all other Zones. For Tier 1 and Tier 2, Named Windstorm deductible shall not exceed 2% of the project values in place at the time of the loss.
- 4.2.2.1.5.9 Before the commencement of the work, Contractor shall provide to Owner an accurate certificate of insurance that provides specific evidence of all requirements outlined in Section 4.2.2.1.5. A copy of the policy itself shall be provided to Owner within 30 days after Notice to Proceed.
- 4.2.2.1.5.10 Refer to Owner's Special Conditions for possible additional Builders Risk insurance requirements.

BUILDERS RISK REQUIREMENT FOR PROJECTS WITH A CONTRACT SUM ≥\$20 MILLION

- 4.2.2.1.5.1 Contractor shall purchase and maintain in force builders risk insurance on the entire Work. Such insurance shall be written in the amount of the original contract, plus any subsequent change orders and plus the cost of materials supplied or installed by others, comprising Total Value for the entire Project at the site. The insurance shall apply on a replacement cost basis with no coinsurance provision and shall include a margin clause of plus/minus 10% on project value. A sublimit may be applicable to flood coverage, but sublimit must be at least 20% of the Total Value of the Project. A sublimit of \$50 million or the Total Value of the Project, whichever is less, is acceptable for Earthquake. The limit for all other perils, including Named Windstorm, Wind, and Hail, must be equal to the Total Value for the entire Project at the site. (If Installation Floater, limit shall be equal to 100 percent of the contract cost.)
- 4.2.2.1.5.2 This insurance shall name as insureds the Owner, the Contractor, and all subcontractors and subsubcontractors in the Work.
- 4.2.2.1.5.3 Builders risk insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against fire and extended coverage perils, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, boiler and machinery/mechanical breakdown, testing and startup, and terrorism.
- 4.2.2.1.5.4 This insurance shall cover the entire work at the site as required in 4.2.2.1.5.1, including, but not limited to, the following:

Coverage	Minimum Limit Required
Temporary works including but not limited to	\$1 million
scaffolding, form work, fences, shoring, hoarding,	
falsework and temporary buildings	
Offsite Storage	Sufficient to cover the anticipated maximum values
	stored offsite
Portions of the work in Transit	Sufficient to cover the anticipated maximum values in
	transit
Debris Removal	25% of Physical damage amount subject to maximum
	of \$5 million or 25% of Total Value of Project
	whichever is higher
Expediting Expenses	\$1 million
Extra Expense	\$5 million
Demolition and Increased Cost of Construction	\$2 million or 10% of Total Value of Project whichever
	is higher
Pollutant Clean-Up and Removal	\$250,000
Trees, Shrubs, Plants, Lawns and Landscaping (if	\$2,500 per item subject to a maximum of \$1 million
applicable)	
Errors & Omissions (applicable to purchase of Builders	\$2.5 million

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Risk policy or	nly)	
4.2.2.1.5.5	This insurance shall not contain an occupancy clause suspending or reducing coverage should the Owner occupy, or begin beneficial occupancy before the Owner has accepted final completion.	
4.2.2.1.5.6	This insurance shall be specific as to coverage and shall be primary to any permanent insurance or self-insurance that may be maintained on the property by Owner.	
4.2.2.1.5.7	This insurance shall include a waiver of subrogation in favor of Owner, the Contractor, and all subcontractors and sub-subcontractors in the work.	
4.2.2.1.5.8	As applicable, Flood deductible shall not exceed \$250,000 for Zone A, \$100,000 for Zone B and \$50,000 for all other Zones. For Tier 1 and Tier 2, Named Windstorm deductible shall not exceed 2% of the project values in place at the time of the loss.	
4.2.2.1.5.9	Before the commencement of the work, Contractor shall provide to Owner an accurate certificate of insurance that provides specific evidence of all requirements outlined in Section 5.2.2.1.5. A copy of the policy itself shall be provided to Owner within 30 days after Notice to Proceed.	
4.2.2.1.5.10	Refer to Owner's Special Conditions for possible additional Builders Risk insurance requirements.	
	4.2.2.1.6 <u>"Umbrella" Liability Insurance</u> . Contractor shall obtain, pay for and	

- .2.2.1.6 <u>"Umbrella" Liability Insurance.</u> Contractor shall obtain, pay for and maintain umbrella liability insurance during the Contract term, insuring Contractor (or Subcontractor) that provides coverage at least as broad as and applies in excess and follows form of the primary liability coverages required above. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted.
- 4.2.2.1.7 "Umbrella" Liability Insurance coverage shall be in the following amounts:
 - If Contract sum is \$1,000,000 or less: No Umbrella Required
 - If Contract Sum is greater than \$1,000,000 up to \$3,000,000: \$1,000,000 each occurrence and \$2,000,000 annual aggregate
 - If Contract Sum is greater than \$3,000,000 up to \$5,000,000: \$5,000,000 each occurrence and \$5,000,000 annual aggregate
 - If Contract Sum is greater than \$5,000,000 annual aggregate
 If 0,000,000 each occurrence and \$10,000,000 annual aggregate

4.2.3 <u>All Policies must include the following clauses, as applicable:</u>

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- 4.2.3.1 Contractor must provide to Owner immediate notice of cancellation, material change, or non-renewal to any insurance coverages required herein above. This requirement may be satisfied by the Contractor providing a copy of the notice received by the insurer to Owner within two business days of date of receipt or by Endorsement of the policies that require Insurer to provide notice to Owner.
- 4.2.3.2 It is agreed that Contractor's insurance shall be deemed primary with respect to any insurance or self insurance carried by Owner for liability arising out of operations under the Contract with Owner.
- 4.2.3.3 Owner, its officials, directors, employees, representatives, and volunteers are added as additional insureds as respects operations and activities of, or on behalf of the

named insured performed under Contract with Owner. The additional insured status must cover completed operations as well. This is not applicable to workers' compensation policies.

- 4.2.3.4 A waiver of subrogation in favor of Owner shall be provided in all policies.
- 4.2.3.5 If Owner is damaged by the failure of Contractor (or Subcontractor) to maintain insurance as required herein and/or as further described in Owner's Special Conditions, then Contractor shall bear all reasonable costs properly attributable to that failure.
- 4.2.4 Without limiting any of the other obligations or liabilities of Contractor, Contractor shall require each Subcontractor performing work under the Contract, at Subcontractor's own expense, to maintain during the term of the Contract, the same stipulated minimum insurance including the required provisions and additional policy conditions as shown above. As an alternative, Contractor may include its Subcontractors as additional insureds on its own coverage as prescribed under these requirements. Contractor's certificate of insurance shall note in such event that Subcontractors are included as additional insureds and that Contractor agrees to provide workers' compensation for Subcontractors and their employees. Contractor shall obtain and monitor the certificates of insurance from each Subcontractor in order to assure compliance with the insurance requirements. Contractor must retain the certificates of insurance for the duration of the Contract plus five (5) years and shall have the responsibility of enforcing these insurance requirements among its Subcontractors. Owner shall be entitled, upon request and without expense, to receive copies of these certificates.
- 4.2.5 Workers' compensation insurance coverage must meet the statutory requirements of Tex. Lab. Code § 401.011(44) and specific to construction projects for public entities as required by Tex. Lab. Code § 406.096.
- 4.2.5.1 Definitions:
 - 4.2.5.1.1 Certificate of coverage ("certificate")- A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (DWC-81, DWC-82, DWC-83, or DWC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.
 - 4.2.5.1.2 Duration of the project includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the Owner.
 - 4.2.5.1.3 Persons providing services on the project ("subcontractor" in §406.096) includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent Contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
- 4.2.5.2 The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the {00010282/y//LEGAL/FORMS/11/16/2018}

Contractor providing services on the project, for the duration of the project.

- 4.2.5.3 The Contractor must provide a certificate of coverage to the Owner prior to being awarded the contract.
- 4.2.5.4 If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.
- 4.2.5.5 The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- 4.2.5.6 The Contractor shall notify the Owner in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- 4.2.5.7 The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Depart of Insurance Division of Workers' Compensation, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- 4.2.5.8 The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:
 - (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 - (2) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 - (3) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (4) obtain from each other person with whom it contracts, and provide to the Contractor:
 - (a) a certificate of coverage, prior to the other person beginning work on the project; and
 - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 - (6) notify the Owner in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 - (7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) (7), with the certificates of coverage to be provided to the person for whom they are providing services.

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- 4.2.5.9 By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the Owner that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- 4.2.5.10 The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the Owner to declare the contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the Owner.

Article 5. Construction Documents, Coordination Documents, and Record Documents

- 5.1 Drawings and Specifications.
 - 5.1.1 <u>Copies Furnished.</u> Contractor will be furnished, free of charge, the number of complete sets of the Drawings, Specifications, and addenda as provided in the Agreement or the Owner's Special Conditions. Additional complete sets of Drawings and Specifications, if requested, will be furnished at reproduction cost to the entity requesting such additional sets. Electronic copies of such documents will be provided to Contractor without charge.
 - 5.1.2 <u>Ownership of Drawings and Specifications.</u> All Drawings, Specifications and copies thereof furnished by A/E are to remain A/E's property. These documents are not to be used on any other project, and with the exception of the Contract record set and electronic versions needed for warranty operations, are to be returned to the A/E, upon request, following completion of the Work.
 - 5.1.3 <u>Interrelation of Documents.</u> The Contract Documents as referenced in the Contract between Owner and Contractor are complementary, and what is required by one shall be as binding as if required by all.
 - 5.1.4 <u>Resolution of Conflicts in Documents.</u> Where conflicts may exist within the Contract Documents, the documents shall govern in the following order: (a) Change Orders, addenda, and written amendments to the Contract; (b) the Contract; (c) Drawings; (d) Specifications (but Specifications shall control over Drawings as to quality of materials and installation); and (e) other Contract Documents. Among other categories of documents having the same order of precedence, the term or provision that includes the latest date shall control. Contractor shall notify A/E and ODR for resolution of the issue prior to executing the Work in question.
 - 5.1.5 <u>Contractor's Duty to Review Contract Documents.</u> In order to facilitate its responsibilities for completion of the Work in accordance with and as reasonably inferable from the Contract Documents, prior to commencing the Work, Contractor shall examine and compare the Contract Documents, information furnished by Owner, relevant field measurements made by Contractor and any visible or reasonably anticipated conditions at the Site affecting the Work. This duty extends throughout the construction phase prior to commencing each particular work activity and/or system installation.
 - 5.1.6 Discrepancies and Omissions in Drawings and Specifications.
 - 5.1.6.1 Promptly report to ODR and to A/E the discovery of any apparent error, omission

or inconsistency in the Contract Documents prior to execution of the Work.

- 5.1.6.2 It is recognized that Contractor is not acting in the capacity of a licensed design professional, unless it is performing as a Design-Build firm.
- 5.1.6.3 It is further recognized that Contractor's examination of Contract Documents is to facilitate construction and does not create an affirmative responsibility to detect errors, omissions or inconsistencies or to ascertain compliance with applicable laws, building codes or regulations, unless it is performing as a Design-Build firm or a Construction Manager-at-Risk.
- 5.1.6.4 When performing as a Design-Build firm, Contractor has sole responsibility for discrepancies, errors, and omissions in the Drawings and Specifications.
- 5.1.6.5 When performing as a Construction Manager-at-Risk, Contractor has a shared responsibility with A/E for discovery and resolution of discrepancies, errors, and omissions in the Contract Documents. In such case, Contractor's responsibility pertains to review, coordination, and recommendation of resolution strategies within budget constraints.
- 5.1.6.6 Contractor has no liability for errors, omissions, or inconsistencies unless Contractor knowingly failed to report a recognized problem to Owner or the Work is executed under a Design-Build or Construction Manager-at-Risk Contract as outlined above. Should Contractor fail to perform the examination and reporting obligations of these provisions, Contractor is responsible for avoidable costs and direct and/or consequential damages.
- 5.1.6.7 Owner does not warrant or make any representations as to the accuracy, suitability or completeness of any information furnished to Contractor by Owner or it representatives.
- 5.2 <u>Requirements for Record Documents.</u> Contractor shall:
 - 5.2.1 Maintain at the Site one copy of all Drawings, Specifications, addenda, approved submittals, Contract modifications, and all Project correspondence. Keep current and maintain Drawings and Specifications in good order with postings and markings to record actual conditions of Work and show and reference all changes made during construction. Provide Owner and A/E access to these documents.
 - 5.2.2 Maintain the Record Documents which reflect the actual field conditions and representations of the Work performed, whether it be directed by addendum, Change Order or otherwise. Make available the Record Documents and all records prescribed herein for reference and examination by Owner and its representatives and agents.
 - 5.2.3 Update the Record Documents at least monthly prior to submission of periodic partial pay estimates. Failure to maintain current Record Documents constitutes cause for denial of a progress payment otherwise due.
 - 5.2.4 Prior to requesting Substantial Completion inspection Contractor shall furnish a copy of its marked-up Record Documents and a preliminary copy of each instructional manual, maintenance and operating manual, parts catalog, wiring diagrams, spare parts, specified written warranties and like publications, or parts for all installed equipment, systems, and like items and as described in the Contract Documents.
- 5.2.5 Once determined acceptable by ODR with input from A/E, provide one (1) reproducible copy and one (1) electronic media copy in a format acceptable to the ODR `of all Record Documents, {00010282/v//LEGAL/FORMS/11/16/2018}

unless otherwise required by the Owner's Special Conditions.

- 5.2.6 Contractor shall be responsible for updating the Record Documents for all Contractor initiated documents and changes to the Contract Documents due to coordination and actual field conditions, including RFIs.
- 5.2.7 A/E shall be responsible for updating the Record Documents for any addenda, Change Orders, A/E supplemental instructions and any other alterations to the Contract Documents generated by A/E or Owner.

Article 6. Construction Safety

- 6.1 <u>General.</u> It is the duty and responsibility of Contractor and all of its Subcontractors to be familiar with, enforce and comply with all requirements of Public Law No. 91-596, 29 U.S.C. § 651 et. seq., the Occupational Safety and Health Act of 1970, (OSHA) and all amendments thereto. Contractor shall prepare a safety plan specific to the Project and submit it to ODR and A/E prior to commencing Work. In addition, Contractor and all of its Subcontractors shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property to protect them from damage, injury or loss and erect and maintain all necessary safeguards for such safety and protection.
- 6.2 <u>Notices.</u> Contractor shall provide notices as follows:
 - 6.2.1 Notify owners of adjacent property including those that own or operate utility services and/or underground facilities, and utility owners, when prosecution of the Work may affect them or their facilities, and cooperate with them in the protection, removal, relocation and replacement, and access to their facilities and/or utilities.
 - 6.2.2 Coordinate the exchange of material safety data sheets (MSDSs) or other hazard communication information required to be made available to or exchanged between or among employers at the site in connection with laws and regulations. Maintain a complete file of MSDSs for all materials in use on site throughout the construction phase and make such file available to Owner and its agents as requested.
- 6.3 <u>Emergencies.</u> In any emergency affecting the safety of persons or property, Contractor shall act to minimize, mitigate, and prevent threatened damage, injury or loss.
 - 6.3.1 Have authorized agents of Contractor respond immediately upon call at any time of day or night when circumstances warrant the presence of Contractor to protect the Work or adjacent property from damage or to take such action pertaining to the Work as may be necessary to provide for the safety of the public.
 - 6.3.2 Give ODR and A/E prompt notice of all such events.
 - 6.3.3 If Contractor believes that any changes in the Work or variations from Contract Documents have been caused by its emergency response, promptly notify Owner within seventy-two (72) hours of the emergency response event.
 - 6.3.4 Should Contractor fail to respond, Owner is authorized to direct other forces to take action as necessary and Owner may deduct any cost of remedial action from funds otherwise due Contractor.
- 6.4 <u>Injuries.</u> In the event of an incident or accident involving outside medical care for an individual on or near the Work, Contractor shall notify ODR and other parties as may be directed promptly, but no later than twenty-four (24) hours after Contractor learns that an event required medical care.

- 6.4.1 Record the location of the event and the circumstances surrounding it, by using photography or other means, and gather witness statements and other documentation which describes the event.
- 6.4.2 Supply ODR and A/E with an incident report no later than thirty-six (36) hours after the occurrence of the event. In the event of a catastrophic incident (one (1) fatality or three (3) workers hospitalized), barricade and leave intact the scene of the incident until all investigations are complete. A full set of incident investigation documents, including facts, finding of cause, and remedial plans shall be provided within one (1) week after occurrence, unless otherwise directed by legal counsel. Contractor shall provide ODR with written notification within one week of such catastrophic event if legal counsel delays submission of full report.
- 6.5 <u>Environmental Safety.</u> Upon encountering any previously unknown potentially hazardous material, or other materials potentially contaminated by hazardous material, Contractor shall immediately stop work activities impacted by the discovery, secure the affected area, and notify ODR immediately.
 - 6.5.1 Bind all Subcontractors to the same duty.
 - 6.5.2 Upon receiving such notice, ODR will promptly engage qualified experts to make such investigations and conduct such tests as may be reasonably necessary to determine the existence or extent of any environmental hazard. Upon completion of this investigation, ODR will issue a written report to Contractor identifying the material(s) found and indicate any necessary steps to be taken to treat, handle, transport or dispose of the material.
 - 6.5.3 Owner may hire third-party Contractors to perform any or all such steps.
 - 6.5.4 Should compliance with ODR's instructions result in an increase in Contractor's cost of performance, or delay the Work, Owner will make an equitable adjustment to the Contract Sum and/or the time of completion, and modify the Contract in writing accordingly.
- 6.6 <u>Trenching Plan.</u> When the project requires excavation which either exceeds a depth of four (4) feet, or results in any worker's upper body being positioned below grade level, Contractor is required to submit a trenching plan to ODR prior to commencing trenching operations unless an engineered plan is part of the Contract Documents. The plan is required to be prepared and sealed by a professional engineer registered in the State of Texas, and hired or employed by Contractor or Subcontractor to perform the work. Said engineer cannot be anyone who is otherwise either directly or indirectly engaged on this project.

Article 7. Quality Control

- 7.1 <u>Materials & Workmanship.</u> Contractor shall execute Work in a good and workmanlike matter in accordance with the Contract Documents. Contractor shall develop and provide a quality control plan specific to this Project and acceptable to Owner. Where Contract Documents do not specify quality standards, complete and construct all Work in compliance with generally accepted construction industry standards. Unless otherwise specified, incorporate all new materials and equipment into the Work under the Contract.
- 8.2 <u>Testing.</u>
 - 7.2.1 Owner is responsible for coordinating and paying for routine and special tests required to confirm compliance with quality and performance requirements, except as stated below or otherwise required by the Contract Documents.
 - 7.2.2 Contractor shall provide the following testing as well as any other testing required of Contractor by the Specifications:

- 7.2. 2.1 Any test of basic material or fabricated equipment included as part of a submittal for a required item in order to establish compliance with the Contract Documents.
- 7.2. 2.2 Any test of basic material or fabricated equipment offered as a substitute for a specified item on which a test may be required in order to establish compliance with the Contract Documents.
- 7.2. 2.3 Preliminary, start-up, pre-functional and operational testing of building equipment and systems as necessary to confirm operational compliance with requirements of the Contract Documents.
- 7.2. 2.4 All subsequent tests on original or replaced materials conducted as a result of prior testing failure.
- 7.2. 3 All testing shall be performed in accordance with standard test procedures by an accredited laboratory, or special consultant as appropriate, acceptable to Owner. Results of all tests shall be provided promptly to ODR, A/E, and Contractor.
- 7.2. 4 <u>Non-Compliance (Test Results)</u>. Should any of the tests indicate that a material and/or system does not comply with the Contract requirements, the burden of proof remains with Contractor, subject to:
 - 7.2. 4.1 Contractor selection and submission of the laboratory for Owner acceptance.
 - 7.2. 4.2 Acceptance by Owner of the quality and nature of tests.
 - 7.2. 4.3 All tests taken in the presence of A/E and/or ODR, or their representatives.
 - 7.2. 4.4 If tests confirm that the material/systems comply with Contract Documents, Owner will pay the cost of the test.
 - 7.2. 4.5 If tests reveal noncompliance, Contractor will pay those laboratory fees and costs of that particular test and all future tests, of that failing Work, necessary to eventually confirm compliance with Contract Documents.
 - 7.2. 4.6 Proof of noncompliance with the Contract Documents will make Contractor liable for any corrective action which ODR determines appropriate, including complete removal and replacement of non-compliant work or material.
- 7.2. 5 <u>Notice of Testing</u>. Contractor shall give ODR and A/E timely notice of its readiness and the date arranged so ODR and A/E may observe such inspection, testing, or approval.
- 7.2. 6 <u>Test Samples</u>. Contractor is responsible for providing Samples of sufficient size for test purposes and for coordinating such tests with their Work Progress Schedule to avoid delay.
- 7.2. 7 <u>Covering Up Work.</u> If Contractor covers up any Work without providing Owner an opportunity to inspect, Contractor shall, if requested by ODR, uncover and recover the work at Contractor's expense.
- 7.3 <u>Submittals.</u>
 - 7.3.1 <u>Contractor's Submittals.</u> Contractor shall submit with reasonable promptness consistent with the Project schedule and in orderly sequence all Shop Drawings, Samples, or other information required by the Contract Documents, or subsequently required by Change Order. Prior to submitting, Contractor shall review each submittal for general compliance with Contract

Documents and approve submittals for review by A/E and Owner by an approval stamp affixed to each copy. Submittal data presented without Contractor's stamp of approval will be returned without review or comment. Any delay resulting from Contractor's failure to certify approval of the Submittal is Contractor's responsibility.

- 7.3.1.1 Contractor shall within twenty-one (21) days of the effective date of the Notice To Proceed with construction, submit to ODR and A/E, a submittal schedule/register, organized by specification section, listing all items to be furnished for review and approval by A/E and Owner. The list shall include Shop Drawings, manufacturer's literature, certificates of compliance, materials Samples, materials colors, guarantees, and all other items identified throughout the Specifications.
- 7.3.1.2 Contractor shall indicate the type of item, Contract requirements reference, and Contractor's scheduled dates for submitting the item along with the requested dates for approval answers from A/E and Owner. The submittal register shall indicate the projected dates for procurement of all included items and shall be updated at least monthly with actual approval and procurement dates. Contractor's Submittal Register must be reasonable in terms of the review time for complex submittals. Contractor's submittal schedule must be consistent with the Work Progress Schedule and identify critical submittals. Show and allow a minimum of fifteen (15) days duration after receipt by A/E and ODR for review and approval. If resubmittal required, allow a minimum of an additional fifteen (15) days for review. Submit the updated Submittal Register with each request for progress payment. Owner may establish routine review procedures and schedules for submittals at the preconstruction conference and/or elsewhere in the Contract Documents. If Contractor fails to update and provide the Submittal Register as required, Owner may, after seven (7) days notice to Contractor withhold a reasonable sum of money that would otherwise be due Contractor.
- 7.3.1.3 Contractor shall coordinate the Submittal Register with the Work Progress Schedule. Do not schedule Work requiring a submittal to begin prior to scheduling review and approval of the related submittal. Revise and/or update both schedules monthly to ensure consistency and current project data. Provide to ODR the updated Submittal Register and schedule with each application for progress payment. Refer to requirements for the Work Progress Schedule for inclusion of procurement activities therein. Regardless, the Submittal Register shall identify dates submitted and returned and shall be used to confirm status and disposition of particular items submitted, including approval or other action taken and other information not conveniently tracked through the Work Progress Schedule.
- 7.3.1.4 By submitting Shop Drawings, Samples or other required information, Contractor represents that it has determined and verified all applicable field measurements, field construction criteria, materials, catalog numbers and similar data; and has checked and coordinated each Shop Drawing and Sample with the requirements of the Work and the Contract Documents.
- 7.3.2 <u>Review of Submittals.</u> A/E and ODR review is only for conformance with the design concept and the information provided in the Contract Documents. Responses to submittals will be in writing. The approval of a separate item does not indicate approval of an assembly in which the item functions. The approval of a submittal does not relieve Contractor of responsibility for any deviation from the requirements of the Contract unless Contractor informs A/E and ODR of such deviation in a clear, conspicuous, and written manner on the submittal transmittal and at the time of submission, and obtains Owner's written specific approval of the particular deviation.

 $\label{eq:correction} 7.3.3 \quad \underline{Correction \ and \ Resubmission.} \quad Contractor \ shall \ make \ any \ corrections \ required \ to \ a \ submittal \\ \{00010282 \,/ \, v \,/ \,/ \, LEGAL \,/ \, FORMS \,/ \, 11/16/2018 \}$

and resubmit the required number of corrected copies promptly so as to avoid delay, until submittal approval. Direct attention in writing to A/E and ODR, when applicable, to any new revisions other than the corrections requested on previous submissions.

- 7.3.4 <u>Limits on Shop Drawing Review.</u> Contractor shall not commence any Work requiring a submittal until review of the submittal under Subsection 7.3.2. Construct all such work in accordance with reviewed submittals. Comments incorporated as part of the review in Subsection 7.3.2 of Shop Drawings and Samples is not authorization to Contractor to perform extra work or changed work unless authorized through a Change Order. A/E's and ODR's review, if any, does not relieve Contractor from responsibility for defects in the Work resulting from errors or omissions of any kind on the submittal, regardless of any approval action.
- 7.3.5 <u>No Substitutions Without Approval.</u> ODR and A/E may receive and consider Contractor's request for substitution when Contractor agrees to reimburse Owner for review costs and satisfies the requirements of this section. If Contractor does not satisfy these conditions, ODR and A/E will return the request without action except to record noncompliance with these requirements. Owner will not consider the request if Contractor cannot provide the product or method because of failure to pursue the Work promptly or coordinate activities properly. Contractor's request for a substitution may be considered by ODR and A/E when:
 - 7.3.5.1 The Contract Documents do not require extensive revisions; and
 - 7.3.5.2 Proposed changes are in keeping with the general intent of the Contract Documents and the design intent of A/E and do not result in an increase in cost to Owner; and
 - 7.3.5.3 The request is timely, fully documented, properly submitted and one or more of the following apply:
 - 7.3.5.3.1 Contractor cannot provide the specified product, assembly or method of construction within the Contract Time;
 - 7.3.5.3.2 The request directly relates to an "or-equal" clause or similar language in the Contract Documents;
 - 7.3.5.3.3 The request directly relates to a "product design standard" or "performance standard" clause in the Contract Documents;
 - 7.3.5.3.4 The requested substitution offers Owner a substantial advantage in cost, time, energy conservation or other considerations, after deducting additional responsibilities Owner must assume;
 - 7.3.5.3.5 The specified product or method of construction cannot receive necessary approval by an authority having jurisdiction, and ODR can approve the requested substitution;
 - 7.3.5.3.6 Contractor cannot provide the specified product, assembly or method of construction in a manner that is compatible with other materials and where Contractor certifies that the substitution will overcome the incompatibility;
 - 7.3.5.3.7 Contractor cannot coordinate the specified product, assembly or method of construction with other materials and where Contractor certifies they can coordinate the proposed substitution; or
 - 7.3.5.3.8 The specified product, assembly or method of construction cannot provide a warranty required by the Contract Documents and where

Contractor certifies that the proposed substitution provides the required warranty.

- 7.3.6 <u>Unauthorized Substitutions at Contractor's Risk.</u> Contractor is financially responsible for any additional costs or delays resulting from unauthorized substitution of materials, equipment or fixtures other than those specified. Contractor shall reimburse Owner for any increased design or contract administration costs resulting from such unauthorized substitutions.
- 7.4 Field Mock-up.
 - 7.4.1 Mock-ups shall be constructed prior to commencement of a specified scope of work to confirm acceptable workmanship.
 - 7.4.1.1 As a minimum, field mock-ups shall be constructed for roofing systems, exterior veneer / finish systems, glazing systems, and any other Work requiring a mock-up as identified throughout the Contract Documents. Mock-ups for systems not part of the Project scope shall not be required.
 - 7.4.1.2 Mock-ups may be incorporated into the Work if allowed by the Contract Documents and if acceptable to ODR. If mock-ups are freestanding, they shall remain in place until otherwise directed by Owner.
 - 7.4.1.3 Contractor shall include field mock-ups in their Work Progress Schedule and shall notify ODR and A/E of readiness for review sufficiently in advance to coordinate review without delay.

7.5 Inspection During Construction.

- 7.5.1 Contractor shall provide sufficient, safe, and proper facilities, including equipment as necessary for safe access, at all reasonable times for observation and/or inspection of the Work by Owner and its agents.
- 7.5.2 Contractor shall not cover up any Work with finishing materials or other building components prior to providing Owner and its agents an opportunity to perform an inspection of the Work.
 - 7.5.2.1 Should corrections of the Work be required for approval, Contractor shall not cover up corrected Work until Owner indicates approval.
 - 7.5.2.2 Contractor shall provide notification of at least five (5) working days or otherwise as mutually agreed, to ODR of the anticipated need for a cover-up inspection. Should ODR fail to make the necessary inspection within the agreed period, Contractor may proceed with cover-up Work, but is not relieved of responsibility for Work to comply with requirements of the Contract Documents.

Article 8. Construction Schedules

8.1 <u>Contract Time.</u> **TIME IS AN ESSENTIAL ELEMENT OF THE CONTRACT**. The Contract Time is the time between the dates indicated in the Notice to Proceed for commencement of the Work and for achieving Substantial Completion. The Contract Time can be modified only by Change Order. Failure to achieve Substantial Completion within the Contract Time *or* as otherwise agreed to in writing will cause damage to Owner and may subject Contractor to liquidated damages as provided in the Contract Documents. If Contractor fails to achieve Final Completion in a reasonable time after Substantial Completion, Contractor shall be responsible for Owner's damages including, but not limited to, additional inspection, project management, and maintenance cost to the extent caused by Contractor's failure to achieve Final Completion.

- 8.2 <u>Notice to Proceed.</u> Owner will issue a Notice to Proceed which shall state the dates for beginning Work and for achieving Substantial Completion of the Work.
- 8.3 <u>Work Progress Schedule</u>. Refer to Owner's Special Conditions and Division 1 of the Specifications for additional schedule requirements. Unless indicated otherwise in those documents, Contractor shall submit their initial Work Progress Schedule for the Work in relation to the entire Project not later than twenty-one (21) calendar days after the effective date of the Notice to Proceed to ODR and A/E. Unless otherwise indicated in the Contract Documents, the Work Progress Schedule shall be computerized Critical Path Method (CPM) with fully editable logic. This initial schedule shall indicate the dates for starting and completing the various aspects required to complete the Work, including mobilization, procurement, installation, testing, inspection, delivery of Close-out Documents and acceptance of all the Work of the Contract. When acceptable to Owner, the initially accepted schedule shall be the Baseline Schedule for comparison to actual conditions throughout the Contract duration.

Note: This article pertains to construction phase schedules. Additional requirements for design phase scheduling for Construction Manager-at-Risk and Design-Build contracts are outlined in Division 1 Project Planning and Scheduling Specifications.

- 8.3.1 <u>Schedule Requirements.</u> Contractor shall submit electronic and paper copy of the initial Work Progress Schedule reflecting accurate and reliable representations of the planned progress of the Work, the Work to date if any, and of Contractor's actual plans for its completion. Contractor shall organize and provide adequate detail so the schedule is capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities.
 - 8.3.1.1 Contractor shall re-submit initial schedule as required to address review comments from A/E and ODR until such schedule is accepted as the Baseline Schedule.
 - 8.3.1.2 Submittal of a schedule, schedule revision or schedule update constitutes Contractor's representation to Owner of the accurate depiction of all progress to date and that Contractor will follow the schedule as submitted in performing the Work.
- 8.3.2 <u>Schedule Updates.</u> Contractor shall update the Work Progress Schedule and the Submittal Register monthly, as a minimum, to reflect progress to date and current plans for completing the Work, while maintaining original schedule as Baseline Schedule and submit paper and electronic copies of the update to A/E and ODR as directed, but as a minimum with each request for payment. Owner has no duty to make progress payments unless accompanied by the updated Work Progress Schedule. Show the anticipated date of completion reflecting all extensions of time granted through Change Order as of the date of the update. Contractor may revise the Work Progress Schedule when in Contractor's judgment it becomes necessary for the management of the Work. Contractor shall identify all proposed changes to schedule logic to Owner and to A/E via an executive summary accompanying the updated schedule for review prior to final implementation of revisions into a revised Baseline Schedule. Schedule changes that materially impact Owner's operations shall be communicated promptly to ODR and shall not be incorporated into the revised Baseline Schedule without ODR's consent.
- 8.3.3 The Work Progress Schedule is for Contractor's use in managing the Work and submittal of the schedule, and successive updates or revisions, is for the information of Owner and to demonstrate that Contractor has complied with requirements for planning the Work. Owner's acceptance of a schedule, schedule update or revision constitutes Owner's agreement to coordinate its own activities with Contractor's activities as shown on the schedule.
 - 8.3.3.1 Acceptance of the Work Progress Schedule, or update and/or revision thereto does not indicate any approval of Contractor's proposed sequences and duration.
- 8.3.3.2 Acceptance of a Work Progress Schedule update or revision indicating early or late completion does not constitute Owner's consent, alter the terms of the Contract, or {00010282/y//LEGAL/FORMS/11/16/2018}

waive either Contractor's responsibility for timely completion or Owner's right to damages for Contractor's failure to do so.

- 8.3.3.3 Contractor's scheduled dates for completion of any activity or the entire Work do not constitute a change in terms of the Contract. Change Orders are the only method of modifying the Substantial Completion Date(s) and Contract Time.
- 8.4 <u>Ownership of Float.</u> Unless indicated otherwise in the Contract Documents, Contractor shall develop its schedule, pricing, and execution plan to provide a minimum of ten (10) percent total float at acceptance of the Baseline Schedule. Float time contained in the Work Progress Schedule is not for the exclusive benefit of Contractor or Owner, but belongs to the Project and may be consumed by either party. Before Contractor uses any portion of the float Contractor must submit a written request to do so to the Owner and receive Owner's written authorization to use the float. Owner's approval shall not be unreasonably withheld.
- 8.5 <u>Completion of Work.</u> Contractor is accountable for completing the Work within the Contract Time stated in the Contract, or as otherwise amended by Change Order.
 - 8.5.1 If, in the judgment of Owner, the work is behind schedule and the rate of placement of work is inadequate to regain scheduled progress to insure timely completion of the entire work or a separable portion thereof, Contractor, when so informed by Owner, shall immediately take action to increase the rate of work placement by:
 - 8.5.1.1 An increase in working forces.
 - 8.5.1.2 An increase in equipment or tools.
 - 8.5.1.3 An increase in hours of work or number of shifts.
 - 8.5.1.4 Expedite delivery of materials.
 - 8.5.1.5 Other action proposed if acceptable to Owner.
 - 8.5.2 Within ten (10) days after such notice from ODR, Contractor shall notify ODR in writing of the specific measures taken and/or planned to increase the rate of progress. Contactor shall include an estimate as to the date of scheduled progress recovery and an updated Work Progress Schedule illustrating Contractor's plan for achieving timely completion of the Project. Should ODR deem the plan of action inadequate, Contractor shall take additional steps or make adjustments as necessary to its plan of action until it meets with ODR's approval.

8.6 <u>Modification of the Contract Time.</u>

- 8.6.1 Delays and extension of time as hereinafter described are valid only if executed in accordance with provisions set forth in Article 10.
- 8.6.2 When a delay defined herein as excusable prevents Contractor from completing the Work within the Contract Time, Contractor is entitled to an extension of time. Owner will make an equitable adjustment and extend the number of days lost because of excusable delay or Weather Days, as measured by Contractor's progress schedule. All extensions of time will be granted in calendar days. In no event, however, will an extension of time be granted for delays that merely extend the duration of non-critical activities, or which only consume float without delaying the project Substantial Completion date(s).
- 8.6.2.1 A "Weather Day" is a day on which Contractor's current schedule indicates Work is to be done, and on which inclement weather and related site conditions prevent Contractor from performing seven (7) hours of Work between the hours of 7:00 a.m. {00010282/y//LEGAL/FORMS/11/16/2018}

and 6:00 p.m. Weather days are excusable delays. When weather conditions at the site prevent work from proceeding, Contractor shall immediately notify ODR for confirmation of the conditions. At the end of each calendar month, Contractor shall submit to ODR and A/E a list of Weather Days occurring in that month along with documentation of the impact on critical activities. Based on confirmation by ODR, any time extension granted will be issued by Change Order. If Contractor and Owner cannot agree on the time extension, Owner may issue a ULCO for fair and reasonable time extension.

- 8.6.2.2 <u>Excusable Delay.</u> Contractor is entitled to an equitable adjustment of the Contract Time, issued via change order, for delays caused by the following:
 - 8.6.2.2.1 Errors, omissions and imperfections in design, which A/E corrects by means of changes in the Drawings and Specifications.
 - 8.6.2.2.2 Unanticipated physical conditions at the Site, which A/E corrects by means of changes to the Drawings and Specifications or for which ODR directs changes in the Work identified in the Contract Documents.
 - 8.6.2.2.3 Changes in the Work that effect activities identified in Contractor's schedule as "critical" to completion of the entire Work, if such changes are ordered by ODR or recommended by A/E and ordered by ODR.
 - 8.6.2.2.4 Suspension of Work for unexpected natural events (sometimes called "acts of God"), civil unrest, strikes or other events which are not within the reasonable control of Contractor.
 - 8.6.2.2.5 Suspension of Work for convenience of ODR, which prevents Contractor from completing the Work within the Contract Time.
- 8.6.3 Contractor's relief in the event of such delays is the time impact to the critical path as determined by analysis of Contractor's schedule. In the event that Contractor incurs additional direct costs because of the excusable delays other than described in Subparagraph 8.6.2.2.4 and within the reasonable control of Owner, the Contract price and Contract Time are to be equitably adjusted by Owner pursuant to the provisions of Article 10.
- 8.7 <u>No Damages for Delay.</u> An extension of the Contract Time shall be the sole remedy of Contractor for delays in performance of the Work, whether or not such delays are foreseeable, except for delays caused solely by acts of Owner that constitute intentional interference with Contractor's performance of the Work and then only to the extent such acts continue after Contractor notifies Owner in writing of such interference. For delays caused by any act(s) other than the sole intentional interference of Owner, Contractor shall not be entitled to any compensation or recovery of any damages including, without limitation, consequential damages, lost opportunity costs, impact damages, loss of productivity, or other similar damages. Owner's exercise of any of its rights or remedies under the Contract including, without limitation, ordering changes in the Work or directing suspension, rescheduling, or correction of the Work, shall not be construed as intentional interference with Contractor's performance of the Work regardless of the extent or frequency of Owner's exercise of such rights or remedies.
- 8.8 <u>Concurrent Delay.</u> When the completion of the Work is simultaneously delayed by an excusable delay and a delay arising from a cause not designated as excusable, Contractor may not be entitled to a time extension for the period of concurrent delay.
- 8.9 <u>Other Time Extension Requests.</u> Time extensions requested in association with changes to the Work directed or requested by Owner shall be included with Contractor's proposed costs for such change. Time extensions requested for inclement weather are covered by Paragraph 8.6.2.1 above. If Contractor

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believes that the completion of the Work is delayed by a circumstance other than for changes directed to the Work or weather, they shall give ODR written notice, stating the nature of the delay and the activities potentially affected, within five (5) days after the onset of the event or circumstance giving rise to the excusable delay. Contractor shall provide sufficient written evidence to document the delay. In the case of a continuing cause of delay, only one notice of claim is necessary. Claims for extensions of time shall be stated in numbers of whole or half days.

- 8.9.1 Within ten (10) days after the cessation of the delay, Contractor shall formalize its request for extension of time in writing to include a full analysis of the schedule impact of the delay and substantiation of the excusable nature of the delay. All changes to the Contract Time or made as a result of such claims is by Change Order, as set forth in Article 10.
- 8.9.2 No extension of time releases Contractor or the Surety furnishing a performance or payment bond from any obligations under the Contract or such a bond. Those obligations remain in full force until the discharge of the Contract.
- 8.9.3 <u>Contents of Time Extension Requests.</u> Contractor shall provide with each Time Extension Request a quantitative demonstration of the impact of the delay on project completion time, based on the Work Progress Schedule. Contractor shall include with Time Extension Requests a reasonably detailed narrative setting forth:
 - 8.9.3.1 The nature of the delay and its cause; the basis of Contractor's claim of entitlement to a time extension.
 - 8.9.3.2 Documentation of the actual impacts of the claimed delay on the critical path indicated in Contractor's Work Progress Schedule, and any concurrent delays.
 - 8.9.3.3 Description and documentation of steps taken by Contractor to mitigate the effect of the claimed delay, including, when appropriate, the modification of the Work Progress Schedule.
- 8.9.4 <u>Owner's Response.</u> Owner will respond to the Time Extension Request by providing to Contractor written notice of the number of days granted, if any, and giving its reason if this number differs from the number of days requested by Contractor.
 - 8.9.4.1 Owner will not grant time extensions for delays that do not affect the Contract Substantial Completion date.
 - 8.9.4.2 Owner will respond to each properly submitted Time Extension Request within fifteen (15) days following receipt. If Owner cannot reasonably make a determination about Contractor's entitlement to a time extension within that time, Owner will notify Contractor in writing. Unless otherwise agreed by Contractor, Owner has no more than fifteen (15) additional days to prepare a final response. If Owner fails to respond within forty-five (45) days from the date the Time Extension Request is received, Contractor's request for a time extension shall be deemed rejected by Owner.
- 8.10 Failure to Complete Work Within the Contract Time. TIME IS AN ESSENTIAL ELEMENT OF THE CONTRACT. Contractor's failure to substantially complete the Work within the Contract Time or to achieve Substantial Completion as required will cause damage to Owner. These damages shall *may* be liquidated by agreement of Contractor and Owner, in the amount per day as set forth in the Contract Documents.
- 8.11 <u>Liquidated Damages.</u> Owner may collect liquidated damages due from Contractor directly or indirectly by reducing the Contract Sum in the amount of liquidated damages stated in the Agreement or the Owner's Special Conditions.
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Article 9. Payments

- 9.1 <u>Schedule of Values.</u> Contractor shall submit to ODR and A/E for acceptance a Schedule of Values accurately itemizing material and labor for the various classifications of the Work based on the organization of the specification sections and of sufficient detail acceptable to ODR. The accepted Schedule of Values will be the basis for the progress payments under the Contract.
 - 9.1.1 No progress payments will be made prior to receipt and acceptance of the Schedule of Values, provided in such detail as required by ODR, and submitted not less than twenty-one (21) days prior to the first request for payment. The Schedule of Values shall follow the order of trade divisions of the Specifications and include itemized costs for general conditions, costs for preparing Close-Out documents, fees, contingencies, and Owner cash allowances, if applicable, so that the sum of the items will equal the Contract price. As appropriate, assign each item labor and/or material values, the subtotal thereof equaling the value of the work in place when complete.
 - 9.1.1.1 Owner requires that the Work items be inclusive of the cost of the Work items only. Any contract markups for overhead and profit, general conditions, etc., shall be contained within separate line items for those specific purposes which shall be divided into at least two (2) lines, one (1) for labor and one (1) for materials.
 - 9.1.2 Contractor shall retain a copy of all worksheets used in preparation of its bid or proposal, supported by a notarized statement that the worksheets are true and complete copies of the documents used to prepare the bid or proposal. Make the worksheets available to ODR at the time of Contract execution. Thereafter Contractor shall grant Owner during normal business hours access to said copy of worksheets at any time during the period commencing upon execution of the Contract and ending one year after final payment.
- 9.2. <u>Progress Payments.</u> Contractor will receive periodic progress payments for Work performed, materials in place, suitably stored on Site, or as otherwise agreed to by Owner and Contractor. Payment is not due until receipt by ODR or his designee of a correct and complete Pay Application in electronic and/or hard copy format as set forth in the Agreement or the Owner's Special Conditions, and certified by A/E. Progress payments are made provisionally and do not constitute acceptance of work not in accordance with the Contract Documents. Owner will not process payment applications for Change Order Work until all parties execute the Change Order.
 - 9.2.1 <u>Preliminary Pay Worksheet</u>. Once each month that a progress payment is to be requested, the Contractor shall submit to A/E and ODR a complete, clean copy of a preliminary pay worksheet or preliminary pay application, to include the following:
 - 9.2.1.1 Contractor's estimate of the amount of Work performed, labor furnished and materials incorporated into the Work, using the established Schedule of Values;
 - 9.2.1.2 An updated Work Progress Schedule including the executive summary and all required schedule reports;
 - 9.2.1.3 Such additional documentation as Owner may require as set forth in the elsewhere in the Contract Documents; and
 - 9.2.1.4 Construction payment affidavit.
 - 9.2.2 <u>Contractor's Application for Payment.</u> As soon as practicable, but in no event later than seven (7) days after receipt of the preliminary pay worksheet, A/E and ODR will meet with Contractor to review the preliminary pay worksheet and to observe the condition of the Work. Based on this review, ODR and A/E may require modifications to the preliminary pay worksheet prior to

the submittal of an Application for Payment, and will promptly notify Contractor of revisions necessary for approval. As soon as practicable, Contractor shall submit its Application for Payment on the appropriate and completed form, reflecting the required modifications to the Schedule of Values required by A/E and/or ODR. Attach all additional documentation required by ODR and/or A/E, as well as an affidavit affirming that all payrolls, bills for labor, materials, equipment, subcontracted work and other indebtedness connected with Contractor's Application for Payment are paid or will be paid within the time specified in Tex. Gov't Code, Chapter 2251. No Application for Payment is complete unless it fully reflects all required modifications, and attaches all required documentation including Contractor's affidavit.

- 9.2.3 <u>Certification by Architect/Engineer.</u> Within five (5) days or earlier following A/E's receipt of Contractor's formal Application for Payment, A/E will review the Application for Payment for completeness, and forward it to ODR. A/E will certify that the application is complete and payable, or that it is incomplete, stating in particular what is missing. If the Application for Payment is incomplete, Contractor shall make the required corrections and resubmit the Application for Payment for processing.
- 9.3 <u>Owner's Duty to Pay.</u> Owner has no duty to pay the Contractor except on receipt by ODR of: 1) a complete Application for Payment certified by A/E; 2) Contractor's updated Work Progress Schedule; and 3) confirmation that Contractor has maintained and updated the Record Documents kept at the Site.
 - 9.3.1 Payment for stored materials and/or equipment confirmed by Owner and A/E to be on-site or otherwise properly stored is limited to eighty-five (85) percent of the invoice price or eighty-five (85) percent of the scheduled value for the materials or equipment, whichever is less.
 - 9.3.2 <u>Retainage.</u> Owner will withhold from each progress payment, as retainage, five (5) percent of the total earned amount, the amount authorized by law, or as otherwise set forth in the Owner's Special Conditions. Retainage is managed in conformance with Tex. Gov't Code, Chapter 2252, Subchapter B.
 - 9.3.2.1 Contractor shall provide written consent of its surety for any request for reduction or release of retainage.
 - 9.3.2.2 Contractor shall not withhold retainage from their Subcontractors and suppliers in amounts that are any percentage greater than that withheld in its Contract with Owner under this subsection, unless otherwise acceptable to Owner.
 - 9.3.3 <u>Price Reduction to Cover Loss.</u> Owner may reduce any Application for Payment, prior to payment to the extent necessary to protect Owner from loss on account of actions of Contractor including, but not limited to, the following:
 - 9.3.3.1 Defective or incomplete Work not remedied;
 - 9.3.3.2 Damage to Work of a separate Contractor;
 - 9.3.3.3 Failure to maintain scheduled progress or reasonable evidence that the Work will not be completed within the Contract Time;
 - 9.3.3.4 Persistent failure to carry out the Work in accordance with the Contract Documents;
 - 9.3.3.5 Reasonable evidence that the Work cannot be completed for the unpaid portion of the Contract Sum;
 - 9.3.3.6 Assessment of fines for violations of prevailing wage rate law; or

 $9.3.3.6 \qquad Failure \ to \ include \ the \ appropriate \ amount \ of \ retainage \ for \ that \ periodic \ progress \ \{00010282 / v / / LEGAL / FORMS / 11/16/2018\}$

payment.

- 9.3.4 Title to all material and Work covered by progress payments transfers to Owner upon payment.
 - 9.3.4.1 Transfer of title to Owner does not relieve Contractor and its Subcontractors of the sole responsibility for the care and protection of materials and Work upon which payments have been made until final acceptance, or the restoration of any damaged Work, or waive the right of Owner to require the fulfillment of all the terms of the Contract.
- 9.4 <u>Progress Payments.</u> Progress payments to Contractor do not release Contractor or its surety from any obligations under the Contract.
 - 9.4.1 Upon Owner's request, Contractor shall furnish manifest proof of the status of Subcontractor's accounts in a form acceptable to Owner.
 - 9.4.2 Pay estimate certificates must be signed by a corporate officer or a representative duly authorized by Contractor.
 - 9.4.3 Provide copies of bills of lading, invoices, delivery receipts or other evidence of the location and value of such materials in requesting payment for materials.
 - 9.4.4 For purposes of Tex. Gov't Code § 2251.021(a)(2), the date the performance of service is complete is the date when ODR approves the Application for Payment.
- 9.5 <u>Off-Site Storage.</u> With prior approval by Owner and in the event Contractor elects to store materials at an off-site location, abide by the following conditions, unless otherwise agreed to in writing by Owner.
 - 9.5.1 Store materials in a commercial warehouse meeting the criteria stated below.
 - 9.5.2 Provide insurance coverage adequate not only to cover materials while in storage, but also in transit from the off-site storage areas to the Project Site. Copies of duly authenticated certificates of insurance, made out to insure the State agency which is signatory to the Contract, must be filed with Owner's representative.
 - 9.5.3 Inspection by Owner's representative is allowed at any time. Owner's inspectors must be satisfied with the security, control, maintenance, and preservation measures.
 - 9.5.4 Materials for this Project are physically separated and marked for the Project in a sectioned-off area. Only materials which have been approved through the submittal process are to be considered for payment.
 - 9.5.5 Owner reserves the right to reject materials at any time prior to final acceptance of the complete Contract if they do not meet Contract requirements regardless of any previous progress payment made.
 - 9.5.6 With each monthly payment estimate, submit a report to ODR and A/E listing the quantities of materials already paid for and still stored in the off-site location.
 - 9.5.7 Make warehouse records, receipts and invoices available to Owner's representatives, upon request, to verify the quantities and their disposition.
 - 9.5.8 In the event of Contract termination or default by Contractor, the items in storage off-site, upon which payment has been made, will be promptly turned over to Owner or Owner's agents at a location near the jobsite as directed by ODR. The full provisions of performance and payment bonds on this Project cover the materials off-site in every respect as though they were stored on

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the Project Site.

- 9.6 <u>Time for Payment by Contractor Pursuant to Tex. Gov't Code § 2251.022.</u>
 - 9.6.1 Contractor who receives a payment from Owner shall pay Subcontractor the appropriate share of the payment not later than the tenth (10th) day after the date Contractor receives the payment.
 - 9.6.2 The appropriate share is overdue on the eleventh (11th) day after the date Contractor receives the payment.

Article 10. Changes

- 10.1 <u>Change Orders.</u> A Change Order issued after execution of the Contract is a written order to Contractor, signed by ODR, Contractor, and A/E, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time can only be changed by Change Order. A Change Order signed by Contractor indicates his agreement therewith, including the adjustment in the Contract Sum and/or the Contract Time. ODR may issue a written authorization for Contractor to proceed with Work of a Change Order in advance of final execution by all parties in accordance with Section 10.9.
 - 10.1.1 Owner, without invalidating the Contract *and without approval of Contractor's Surety*, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, and the Contract Sum and the Contract Time will be adjusted accordingly. All such changes in the Work shall be authorized by Change Order or ULCO, and shall be performed under the applicable conditions of the Contract Documents. If such changes cause an increase or decrease in Contractor's cost of, or time required for, performance of the Contract, an equitable adjustment shall be made and confirmed in writing in a Change Order or a ULCO.
 - 10.1.2 Owner and Contractor acknowledge and agree that the Specifications and Drawings may not be complete or free from errors, omissions and imperfections and that they may require changes or additions in order for the Work to be completed to the satisfaction of Owner. Therefore, any minor errors, omissions or imperfections in the Specifications or Drawings, or any changes in or additions to the Specifications or Drawings to correct minor errors or omissions or to the Work ordered by Owner shall not constitute or give rise to any claim, demand or cause of action of any nature whatsoever in favor of Contractor, whether for breach of Contract, or otherwise. However, should the nature of the errors or omissions necessitate substantial changes in the Work such that a Change Order is appropriate, Owner shall be liable to Contractor for the sum stated to be due Contractor in any Change Order approved and signed by both parties. The sum established in any Change Order, together with any extension of time contained in said Change Order, shall constitute full compensation to Contractor for all costs, expenses and damages to Contractor for the changes in the Work described in the Change Order, as permitted under Tex. Gov't Code, Chapter 2260.
 - 10.1.3 Procedures for administration of Change Orders shall be established by Owner and stated in the Owner's Special Conditions, or elsewhere in the Contract Documents.
 - 10.1.4 No verbal order, verbal statement, or verbal direction of Owner or his duly appointed representative shall be treated as a change under this article or entitle Contractor to an adjustment.
 - 10.1.5 Contractor agrees that Owner or any of its duly authorized representatives shall have access and the right to examine any directly pertinent books, documents, papers, and records of Contractor. Further, Contractor agrees to include in all its subcontracts a provision to the effect that Subcontractor agrees that Owner or any of its duly authorized representatives shall have access

to and the right to examine any directly pertinent books, documents, papers and records of such Subcontractor relating to any claim arising from the Contract, whether or not the Subcontractor is a party to the claim. The period of access and examination described herein which relates to appeals under the Disputes article of the Contract, litigation, or the settlement of claims arising out of the performance of the Contract shall continue until final disposition of such claims, appeals or litigation.

10.2 <u>Unit Prices.</u> If unit prices are stated in the Contract Documents or subsequently agreed upon and if the quantities originally contemplated in setting the unit prices are so changed in a Proposed Change Order that application of the agreed unit prices to the quantities of work proposed will cause substantial inequity to Owner or Contractor, the applicable unit prices shall be equitably adjusted as provided in the Owner's Special Conditions or as agreed to by the parties and incorporated into a Change Order.

10.3 <u>Claims for Additional Costs.</u>

- 10.3.1 If Contractor wishes to make a claim for an increase in the Contract Sum not related to a requested change, it shall give Owner and A/E written notice thereof within twenty-one (21) days after the occurrence of the event or discovery of any conditions giving rise to such claim. Contractor must notify Owner and A/E before proceeding to execute any Work considered to add additional cost or time, except in an emergency endangering life or property in which case Contractor shall act in accordance with Subsection 6.2.1., and failure to provide the required notice will invalidate any subsequent notice or claim for additional cost or time for the Work. If Owner and Contractor cannot agree on the amount of the adjustment in the Contract Sum, it shall be determined as set forth under Article 14. Any change in the Contract Sum resulting from such claim shall be authorized by a Change Order or a ULCO.
- 10.3.2 If Contractor claims that additional cost is involved because of, but not limited to, 1) any written interpretation of the Contract Documents, 2) any order by Owner to stop the Work pursuant to Article 13 where Contractor was not at fault, or 3) any written order for a minor change in the Work issued pursuant to Section 10.4, Contractor shall make such claim as provided in Subsection 10.3.1.
- 10.3.3 Should Contractor or his Subcontractors fail to call attention of A/E to discrepancies or omissions in the Contract Documents, but claim additional costs for corrective Work after Contract award, Owner may assume intent to circumvent competitive bidding for necessary corrective Work. In such case, Owner may choose to let a separate Contract for the corrective Work, or issue a ULCO to require performance by Contractor. Claims for time extensions or for extra cost resulting from delayed notice of patent Contract Document discrepancies or omissions will not be considered by Owner.
- 10.4 <u>Minor Changes.</u> A/E, with concurrence of ODR, will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be effected by written order which Contractor shall carry out promptly and record on the Record Documents.
- 10.5 <u>Concealed Site Conditions.</u> Contractor is responsible for visiting the Site and being familiar with local conditions such as the location, accessibility, and general character of the Site and/or building. If, in the performance of the Contract, subsurface, latent, or concealed conditions at the Site are found to be materially different from the information included in the Contract Documents, or if unknown conditions of an unusual nature are disclosed differing materially from the conditions usually inherent in Work of the character shown and specified, ODR and A/E shall be notified in writing of such conditions before they are disturbed. Upon such notice, or upon its own observation of such conditions, A/E, with the approval of ODR, will promptly make such changes in the Drawings and Specifications as they deem necessary to conform to the different conditions, and any increase or decrease in the cost of the Work, or in the time within which the Work is to be completed, resulting from such changes will be adjusted by Change Order, subject to the prior approval of ODR.
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- 10.6 <u>Extension of Time.</u> All changes to the Contract Time shall be made as a consequence of requests as required under Section 8.6, and as documented by Change Order as provided under Section 10.1.
- 10.7 <u>Administration of Change Order Requests.</u> All changes in the Contract shall be administered in accordance with procedures approved by Owner, and when required, make use of such electronic information management system(s) as Owner may employ.
 - 10.7.1 Routine changes in the construction Contract shall be formally initiated by A/E by means of a PCO form detailing requirements of the proposed change for pricing by Contractor. This action may be preceded by communications between Contractor, A/E and ODR concerning the need and nature of the change, but such communications shall not constitute a basis for beginning the proposed Work by Contractor. Except for emergency conditions described below, approval of Contractor's cost proposal by A/E and ODR will be required for authorization to proceed with the Work being changed. Owner will not be responsible for the cost of Work changed without prior approval and Contractor may be required to remove Work so installed.
 - 10.7.2 All proposed costs for change order Work must be supported by itemized accounting of material, equipment and associated itemized installation costs in sufficient detail, following the outline and organization of the established Schedule of Values, to permit analysis by A/E and ODR using current estimating guides and/or practices. Photocopies of Subcontractor and vendor proposals shall be furnished unless specifically waived by ODR. Contractor shall provide written response to a change request within twenty-one (21) days of receipt.
 - 10.7.3 Any unexpected circumstance which necessitates an immediate change in order to avoid a delay in progress of the Work may be expedited by verbal communication and authorization between Contractor and Owner, with written confirmation following within twenty-four (24) hours. A limited scope not-to-exceed estimate of cost and time will be requested prior to authorizing Work to proceed. Should the estimate be impractical for any reason, ODR may authorize the use of detailed cost records of such work to establish and confirm the actual costs and time for documentation in a formal Change Order.
 - 10.7.4 Emergency changes to save life or property may be initiated by Contractor alone (see Section 6.3) with the claimed cost and/or time of such work to be fully documented as to necessity and detail of the reported costs and/or time.
 - 10.7.5 The method of incorporating approved Change Orders into the parameters of the accepted Schedule of Values must be coordinated and administered in a manner acceptable to ODR.
- 10.8 <u>Pricing Change Order Work.</u> The amounts that Contractor and/or its Subcontractor adds to a Change Order for profit and overhead will also be considered by Owner before approval is given. The amounts established hereinafter are the maximums that are acceptable to Owner.
 - 10.8.1 For Work performed by its forces, Contractor will be allowed its actual costs paid for materials, the total amount of its actual wages paid for labor, plus its actual cost paid for State and Federal payroll taxes and for worker's compensation and comprehensive general liability insurance, plus its actual additional bond and builders risk insurance cost if the change results in an increase in the premium paid by Contractor. To the total of the above costs, Contractor will be allowed to add a percentage as noted below to cover overhead and profit combined. Overhead shall be considered to include insurance other than mentioned above, field and office supervisors and assistants, including safety and scheduling personnel, use of small tools, incidental job burdens and general Home Office expenses, and no separate allowance will be made therefore.

 $\label{eq:allowable} Allowable \ percentages \ for \ overhead \ and \ profit \ on \ changes \ will \ not \ exceed \ 15 \ percent \ if \ the \ \{00010282\,/\,v\,/\,/\,LEGAL\,/\,FORMS\,/\,11/16/2018\}$

total of self-performed work is less than or equal to \$10,000, 10 percent if the total of self-performed work is between \$10,000 and \$20,000 and 7.5 percent if the total of self-performed work is over \$20,000, for any specific change priced.

- 10.8.2 For subcontracted Work each affected Subcontractor shall figure its costs, overhead and profit as described above for Contractor's Work, all Subcontractor costs shall be combined, and to that total Subcontractor cost Contractor will be allowed to add a maximum mark-up of ten (10) percent if the total of all subcontracted work is less than or equal to \$10,000, seven and half (7.5) percent if the total of all subcontracted work is between \$10,000 and \$20,000 and five (5) percent if the total of all subcontractor work is over \$20,000.
- 10.8.3 On changes involving both additions and deletions, percentages for overhead and profit will be allowed only on the net addition. Owner does not accept and will not pay for additional Contract cost identified as indirect or consequential damages or as damages caused by delay.
- 10.8.4 For Contracts based on a Guaranteed Maximum Price (GMP), the Construction Manager-at-Risk or Design Builder shall NOT be entitled to a percentage mark-up on any Change Order Work unless the Change Order increases the Guaranteed Maximum Price.
- 10.9 <u>Unilateral Change Order (ULCO)</u>. Owner may issue a written ULCO directing a change in the Work prior to reaching agreement with Contractor on the adjustment, if any, in the Contract price and/or the Contract Time.
 - 10.9.1 Owner and Contractor shall negotiate for appropriate adjustments, as applicable, to the Contract Sum or the Contract Time arising out of a ULCO. As the changed Work is performed, Contractor shall submit its costs for such Work with its Application for Payment beginning with the next Application for Payment within thirty (30) days of the issuance of the ULCO. The Parties reserve their rights to dispute the ULCO amount, subject to Article 14.
- 10.10 <u>Finality of Changes Contractor.</u> Upon execution of a Change Order and/or a ULCO by Owner, Contractor and A/E, all costs and time issues claimed by Contractor regarding that change are final and not subject to increase.
- 10.11 <u>Audit of Changes Owner.</u> All Changes Orders are subject to audit by Owner or its representative at any time in accordance with Article 16.4 and Change Order amounts may be adjusted lower as a result of such audit.

Article 11. Project Completion and Acceptance

- 11.1 <u>Closing Inspections.</u>
 - 11.1.1 <u>Substantial Completion Inspection.</u> When Contractor considers the entire Work or part thereof Substantially Complete, it shall notify ODR in writing that the Work will be ready for Substantial Completion inspection on a specific date. Contractor shall include with this notice Contractor's Punchlist to indicate that it has previously inspected all the Work associated with the request for inspection, noting items it has corrected and included all remaining work items with date scheduled for completion or correction prior to final inspection. The failure to include any items on this list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents. If any of the items on this list prevents the Project from being used as intended, Contractor shall not request a Substantial Completion Inspection. Owner and its representatives will review the list of items and schedule the requested inspection, or inform Contractor in writing that such an inspection is premature because the Work is not sufficiently advanced or conditions are not as represented on Contractor's list.
 - 11.1.1.1 Prior to the Substantial Completion inspection, Contractor shall furnish a copy of its

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marked-up Record Documents and a preliminary copy of each instructional manual, maintenance and operating manual, parts catalog, wiring diagrams, spare parts, specified written warranties, and like publications or parts for all installed equipment, systems, and like items as described in the Contract Documents. Delivery of these items is a prerequisite for requesting the Substantial Completion inspection.

- 11.1.1.2 On the date requested by Contractor, or as mutually agreed upon pending the status of the Open Items List, A/E, ODR, Contractor, and other Owner representatives as determined by Owner will jointly attend the Substantial Completion inspection, which shall be conducted by ODR or their delegate. If ODR concurs with the determination of Contractor and A/E that the Work is Substantially Complete, ODR will issue a Certificate of Substantial Completion to be signed by A/E, Owner, and Contractor establishing the date of Substantial Completion and identifying responsibilities for security, insurance and maintenance. A/E will provide with this certificate a list of Punchlist items (the pre-final Punchlist) for completion prior to final inspection. This list may include items in addition to those on Contractor's Punchlist, which the inspection team deems necessary to correct or complete prior to final inspection. If Owner occupies the Project upon determination of Substantial Completion, Contractor shall complete all corrective Work at the convenience of Owner, without disruption to Owner's use of the Project for its intended purposes.
- 11.1.2 <u>Final Inspection.</u> Contractor shall complete the list of items identified on the pre-final Punchlist prior to requesting a final inspection. Unless otherwise specified, or otherwise agreed in writing by the parties as documented on the Certificate of Substantial Completion, Contractor shall complete and/or correct all Work within thirty (30) days of the Substantial Completion date. Upon completion of the pre-final Punchlist work, Contractor shall give written notice to ODR and A/E that the Work will be ready for final inspection on a specific date. Contractor shall accompany this notice with a copy of the updated pre-final Punchlist indicating resolution of all items. On the date specified or as soon thereafter as is practicable, ODR, A/E and Contractor will inspect the Work. A/E will submit to Contractor a final Punchlist of open items that the inspection team requires corrected or completed before final acceptance of the Work.
 - 11.1.2.1 Correct or complete all items on the final Punchlist before requesting Final Payment. Unless otherwise agreed to in writing by the parties, complete this work within seven (7) days of receiving the final Punchlist. Upon completion of the final Punchlist, notify A/E and ODR in writing stating the disposition of each final Punchlist item. A/E, Owner, and Contractor shall promptly inspect the completed items. When the final Punchlist is complete, and the Contract is fully satisfied according to the Contract Documents ODR will issue a certificate establishing the date of Final Completion. Completion of all Work is a condition precedent to Contractor's right to receive Final Payment.
- 11.1.3 <u>Annotation</u>. Any Certificate issued under this Article may be annotated to indicate that it is not applicable to specified portions of the Work, or that it is subject to any limitation as determined by Owner.
- 11.1.4 <u>Purpose of Inspection</u>. Inspection is for determining the completion of the Work, and does not relieve Contractor of its overall responsibility for completing the Work in a good and competent fashion, in compliance with the Contract. Work accepted with incomplete Punchlist items or failure of Owner or other parties to identify Work that does not comply with the Contract Documents or is defective in operation or workmanship does not constitute a waiver of Owner's rights under the Contract or relieve Contractor of its responsibility for performance or warranties.
- 11.1.5 Additional Inspections.

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- 11.1.5.1 If Owner's inspection team determines that the Work is not substantially complete at the Substantial Completion inspection, ODR or A/E will give Contractor written notice listing cause(s) of the rejection. Contractor will set a time for completion of incomplete or defective work acceptable to ODR. Contractor shall complete or correct all work so designated prior to requesting a second Substantial Completion inspection.
- 11.1.5.2 If Owner's inspection team determines that the Work is not complete at the final inspection, ODR or A/E will give Contractor written notice listing the cause(s) of the rejection. Contractor will set a time for completion of incomplete or defective work acceptable to ODR. Contractor shall complete or correct all Work so designated prior to again requesting a final inspection.
- 11.1.5.3 The Contract contemplates three (3) comprehensive inspections: the Substantial Completion inspection, the Final Completion inspection, and the inspection of completed final Punchlist items. The cost to Owner of additional inspections resulting from the Work not being ready for one or more of these inspections is the responsibility of Contractor. Owner may issue a ULCO deducting these costs from Final Payment. Upon Contractor's written request, Owner will furnish documentation of any costs so deducted. Work added to the Contract by Change Order after Substantial Completion inspection is not corrective Work for purposes of determining timely completion, or assessing the cost of additional inspections.
- 11.1.6 <u>Phased Completion</u>. The Contract may provide, or Project conditions may warrant, as determined by ODR, that designated elements or parts of the Work be completed in phases. Where phased completion is required or specifically agreed to by the parties, the provisions of the Contract related to closing inspections, occupancy, and acceptance apply independently to each designated element or part of the Work. For all other purposes, unless otherwise agreed by the parties in writing, Substantial Completion of the Work as a whole is the date on which the last element or part of the Work completed receives a Substantial Completion certificate. Final Completion of the Work as a whole is the date on which the last element or part of the Work as a whole is the date or part of the Work completed receives a Final Completion certificate or notice.
- 11.2 <u>Owner's Right of Occupancy.</u> Owner may occupy or use all or any portion of the Work following Substantial Completion, or at any earlier stage of completion. Should Owner wish to use or occupy the Work, or part thereof, prior to Substantial Completion, ODR will notify Contractor in writing and identify responsibilities for security, insurance and maintenance Work performed on the premises by third parties on Owner's behalf does not constitute occupation or use of the Work by Owner for purposes of this Article. All Work performed by Contractor after occupancy, whether in part or in whole, shall be at the convenience of Owner so as to not disrupt Owner's use of, or access to occupied areas of the Project.

11.3 Acceptance and Payment

- 11.3.1 <u>Request for Final Payment.</u> Following the certified completion of all work, including all final Punchlist items, cleanup, and the delivery of record documents, Contractor shall submit a certified Application for Final Payment and include all sums held as retainage and forward to A/E and ODR for review and approval.
- 11.3.2 <u>Final Payment Documentation.</u> Contractor shall submit, prior to or with the Application for Final Payment, final copies of all Close-Out documents, maintenance and operating instructions, guarantees and warranties, certificates, Record Documents and all other items required by the Contract. Contractor shall submit evidence of return of access keys and cards, evidence of delivery to Owner of attic stock, spare parts, and other specified materials. Contractor shall submit consent of surety to Final Payment form and an affidavit that all {00010282/v//LEGAL/FORMS/11/16/2018}

payrolls, bills for materials and equipment, subcontracted work and other indebtedness connected with the Work, except as specifically noted, are paid, will be paid, after payment from Owner or otherwise satisfied within the period of time required by Tex. Gov't Code, Chapter 2251. Contractor shall furnish documentation establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of claims and liens arising out of the Contract. Contractor may not subsequently submit a claim on behalf of Subcontractor or vendor unless Contractor's affidavit notes that claim as an exception.

- 11.3.3 <u>Architect/Engineer Approval.</u> A/E will review a submitted Application for Final Payment promptly but in no event later than ten (10) days after its receipt. Prior to the expiration of this deadline, A/E will either: 1) return the Application for Final Payment to Contractor with corrections for action and resubmission; or 2) accept it, note their approval, and send to Owner.
- 11.3.4 Offsets and Deductions. Owner may deduct from the Final Payment all sums due from Contractor. If the Certificate of Final Completion notes any Work remaining, incomplete, or defects not remedied, Owner may deduct the cost of remedying such deficiencies from the Final Payment. On such deductions, Owner will identify each deduction, the amount, and the explanation of the deduction on or by the twenty-first (21st) day after Owner's receipt of an approved Application for Final Payment. Such offsets and deductions shall be incorporated via a final Change Order, including a ULCO as may be applicable.
- 11.3.5 <u>Final Payment Due</u>. Final Payment is due and payable by Owner, subject to all allowable offsets and deductions, on the thirtieth (30th) day following Owner's approval of the Application for Payment. If Contractor disputes any amount deducted by Owner, Contractor shall give notice of the dispute on or before the thirtieth (30th) day following receipt of Final Payment. Failure to do so will bar any subsequent claim for payment of amounts deducted.
- 11.3.6 <u>Effect of Final Payment.</u> Final Payment constitutes a waiver of all claims by Owner, relating to the condition of the Work except those arising from:
 - 11.3.6.1 Faulty or defective Work appearing after Substantial Completion (latent defects);
 - 11.3.6.2 Failure of the Work to comply with the requirements of the Contract Documents;
 - 11.3.6.3 Terms of any warranties required by the Contract, or implied by law; or
 - 11.3.6.4 Claims arising from personal injury or property damage to third parties.
- 11.3.7 <u>Waiver of Claims</u>. Final payment constitutes a waiver of all claims and liens by Contractor except those specifically identified in writing and submitted to ODR prior to the application for Final Payment.
- 11.3.8 <u>Effect on Warranty</u>. Regardless of approval and issuance of Final Payment, the Contract is not deemed fully performed by Contractor and closed until the expiration of all warranty periods.

Article 12. Warranty and Guarantee

12.1 <u>Contractor's General Warranty and Guarantee.</u> Contractor warrants to Owner that all Work is executed in accordance with the Contract, complete in all parts and in accordance with approved practices and customs, and of the required finish and workmanship. Contractor further warrants that unless otherwise specified, all materials and equipment incorporated in the Work under the Contract are new. Owner may, at its option, agree in writing to waive any failure of the Work to conform to the Contract, and to accept a reduction in the Contract price for the cost of repair or diminution in value of the Work by reason of such defect. Absent such a written agreement, Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute and is not waived by any inspection or

observation by Owner, A/E or others, by making any progress payment or final payment, by the use or occupancy of the Work or any portion thereof by Owner, at any time, or by any repair or correction of such defect made by Owner.

- 12.2 <u>Warranty Period.</u> Except as may be otherwise specified or agreed, Contractor shall repair all defects in materials, equipment, or workmanship appearing within one (1) year from the date of Substantial Completion of the Work. If Substantial Completion occurs by phase, then the warranty period for the Work performed for each phase begins on the date of Substantial Completion of that phase, or as otherwise stipulated on the Certificate of Substantial Completion for the particular phase.
- 12.3 <u>Limits on Warranty</u>. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 - 12.3.1 Modification or improper maintenance or operation by persons other than Contractor, Subcontractors, or any other individual or entity for whom Contractor is not responsible, unless Owner is compelled to undertake maintenance or operation due to the neglect of Contractor.
 - 12.3.2 Normal wear and tear under normal usage after acceptance of the Work by Owner.
- 12.4 <u>Events Not Affecting Warranty.</u> Contractor's obligation to perform and complete the Work in a good and workmanlike manner in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or relieve the Contractor from its obligation to perform the Work in accordance with the Contract Documents:
 - 12.4.1 Observations by Owner and/or A/E;
 - 12.4.2 Recommendation to pay any progress or final payment by A/E;
 - 12.4.3 The issuance of a certificate of Substantial Completion or any payment by Owner to Contractor under the Contract Documents;
 - 12.4.4 Use or occupancy of the Work or any part thereof by Owner;
 - 12.4.5 Any acceptance by Owner or any failure to do so;
 - 12.4.6 Any review of a Shop Drawing or sample submittal; or
 - 12.4.7 Any inspection, test or approval by others.
- 12.5 <u>Separate Warranties.</u> If a particular piece of equipment or component of the Work for which the Contract requires a separate warranty is placed in continuous service before Substantial Completion, the warranty period for that equipment or component will not begin until Substantial Completion, regardless of any warranty agreements in place between suppliers and/or Subcontractors and Contractor. ODR will certify the date of service commencement in the Substantial Completion certificate.
 - 12.5.1 In addition to Contractor's warranty and duty to repair, Contractor expressly assumes all warranty obligations required under the Contract for specific building components, systems and equipment.
 - 12.5.2 Contractor may satisfy any such obligation by obtaining and assigning to Owner a complying warranty from a manufacturer, supplier, or Subcontractor. Where an assigned warranty is tendered and accepted by Owner which does not fully comply with the requirements of the Contract, Contractor remains liable to Owner on all elements of the required warranty not provided by the assigned warranty.

12.6 <u>Correction of Defects.</u> Upon receipt of written notice from Owner, or any agent of Owner designated as $\{00010282/v//LEGAL/FORMS/11/16/2018\}$

responsible for management of the warranty period, of the discovery of a defect, Contractor shall promptly remedy the defect(s), and provide written notice to Owner and designated agent indicating action taken. In case of emergency where delay would cause serious risk of loss or damage to Owner, or if Contractor fails to remedy within thirty (30) days, or within another period agreed to in writing, Owner may correct the defect and be reimbursed the cost of remedying the defect from Contractor or its surety.

Article 13. Suspension and Termination

- 13.1 <u>Suspension of Work for Cause</u>. Owner may, at any time without prior notice, suspend all or any part of the Work if, after reasonable observation and/or investigation, Owner determines it is necessary to do so to prevent or correct any condition of the Work which constitutes an immediate safety hazard or which may reasonably be expected to impair the integrity, usefulness or longevity of the Work when completed.
 - 13.1.1 Owner will give Contractor a written notice of suspension for cause, setting forth the reason for the suspension and identifying the Work suspended. Upon receipt of such notice, Contractor shall immediately stop the Work so identified. As soon as practicable following the issuance of such a notice, Owner will initiate and complete a further investigation of the circumstances giving rise to the suspension, and issue a written determination of the findings.
 - 13.1.2 If it is confirmed that the cause was within the control of Contractor, Contractor will not be entitled to an extension of time for delay resulting from the suspension. If the cause is determined not to have been within the control of Contractor, and the suspension has prevented Contractor from completing the Work within the Contract Time, the suspension is an excusable delay and a time extension will be granted through a Change Order.
 - 13.1.3 Suspension of Work under this provision will be no longer than is reasonably necessary to remedy the conditions giving rise to the suspension.
- 13.2 Suspension of Work for Owner's Convenience. Upon seven (7) days written notice to Contractor, Owner may at any time without breach of the Contract suspend all or any portion of the Work for a period of up to sixty (60) days for its own convenience. Owner will give Contractor a written notice of suspension for convenience, which sets forth the number of suspension days for which the Work, or any portion of it, and the date on which the suspension of Work will cease. When such a suspension prevents Contractor from completing the Work within the Contract Time, it is an excusable delay. A notice of suspension for convenience may be modified by Owner at any time on seven (7) days written notice to Contractor. If Owner suspends the Work for its convenience for more than sixty (60) consecutive days, Contractor may elect to terminate the Contract pursuant to the provisions of the Contract.
- 13.3 <u>Termination by Owner for Cause.</u>
 - 13.3.1 Upon thirty (30) days written notice to Contractor and its surety, Owner may, without prejudice to any right or remedy, terminate the Contract and take possession of the Site and of all materials, equipment, tools, construction equipment, and machinery thereon owned by Contractor under any of the following circumstances:
 - 13.3.1.1 Persistent or repeated failure or refusal, except during complete or partial suspensions of work authorized under the Contract, to supply enough properly skilled workmen or proper materials;
 - 13.3.1.2 Persistent disregard of laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, including ODR;
 - 13.3.1.3 Persistent failure to prosecute the Work in accordance with the Contract, and to ensure its completion within the time, or any approved extension thereof, specified

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in the Contract;

- 13.3.1.4 Failure to remedy defective work condemned by ODR;
- 13.3.1.5 Failure to pay Subcontractors, laborers, and material suppliers pursuant to Tex. Gov't Code, Chapter 2251;
- 13.3.1.6 Persistent endangerment to the safety of labor or of the Work;
- 13.3.1.7 Failure to supply or maintain statutory bonds or to maintain required insurance, pursuant to the Contract;
- 13.3.1.8 Any material breach of the Contract; or
- 13.3.1.9 Contractor's insolvency, bankruptcy, or demonstrated financial inability to perform the Work.
- 13.3.2 Failure by Owner to exercise the right to terminate in any instance is not a waiver of the right to do so in any other instance.
- 13.3.3 Upon receipt of a termination notice, the Contractor or its Surety has thirty (30) days to cure the reasons for the termination or demonstrate to the satisfaction of the Owner that it is prepared to remedy to the condition(s) upon which the notice of termination was based with diligence and promptness. If the Owner is satisfied that the Contractor or its Surety can remedy the reasons for the termination and complete the Work as required, the notice of termination shall be rescinded in writing by the Owner and the Work shall continue without an extension of time.
- 13.3.4 If at the conclusion of the thirty (30) day cure period the Contractor or its Surety is unable to demonstrate to the satisfaction of the Owner its ability to remedy the reasons for termination, the Owner may immediately terminate the employment of the Contractor, make alternative arrangements for completion of the Work and deduct the cost of completion from the unpaid Contract Sum.
 - 13.3.4.1 Owners cost to complete the Work includes, but is not limited to, fees for additional services by A/E and other consultants, and additional contract administration costs.
 - 13.3.4.2 Owner will make no further payment to Contractor or its surety unless the costs to complete the Work are less than the Contract balance, then the difference shall be paid to Contractor or its surety. If such costs exceed the unpaid balance, Contractor or its surety will pay the difference to Owner.
 - 13.3.4.3 This obligation for payment survives the termination of the Contract.
 - 13.3.4.4 Owner reserves the right in termination for cause to take assignment of all the Contracts between Contractor and its Subcontractors, vendors, and suppliers. ODR will promptly notify Contractor of the contracts Owner elects to assume. Upon receipt of such notice, Contractor shall promptly take all steps necessary to effect such assignment.
- 13.4 <u>Conversion to Termination for Convenience.</u> In the event that any termination of Contractor for cause under Section 13.3 is later determined to have been improper, the termination shall automatically convert to a termination for convenience under Section 13.5 and Contractor's recovery for termination shall be strictly limited to the payments allowable under Section 13.5.

13.5 <u>Termination for Convenience of Owner</u>. Owner reserves the right, without breach, to terminate the Contract prior to, or during the performance of the Work, for any reason. Upon such an occurrence, the {00010282/v//LEGAL/FORMS/11/16/2018}

following shall apply:

- 13.5.1 Owner will notify Contractor and A/E in writing specifying the reason for and the effective date of the Contract termination. The notice may also contain instructions necessary for the protection, storage or decommissioning of incomplete work or systems, and for safety.
- 13.5.2 Upon receipt of the notice of termination, Contractor shall immediately proceed with the following obligations, regardless of any dispute in determining or adjusting any amounts due at that point in the Contract:
 - 13.5.2.1 Stop all work.
 - 13.5.2.2 Place no further subcontracts or orders for materials or services.
 - 13.5.2.3 Terminate all subcontracts for convenience.
 - 13.5.2.4 Cancel all materials and equipment orders as applicable.
 - 13.5.2.5 Take appropriate action that is necessary to protect and preserve all property related to the Contract which is in the possession of Contractor.
- 13.5.3 When the Contract is terminated for Owner's convenience, Contractor may recover from Owner payment for all Work executed. Contractor may not claim lost profits or lost business opportunities.
- 13.6 <u>Termination By Contractor</u>. If the Work is stopped for a period of ninety (90) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of Contractor or Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with Contractor, then Contractor may, upon thirty (30) additional days written notice to ODR, terminate the Contract and recover from Owner payment for all Work executed, but not lost profits or lost business opportunities. If the cause of the Work stoppage is removed prior to the end of the thirty (30) day notice period, Contractor may not terminate the Contract.
- 13.7 <u>Settlement on Termination.</u> When the Contract is terminated for any reason, at any time prior to one hundred eighty (180) days after the effective date of termination, Contractor shall submit a final termination settlement proposal to Owner based upon recoverable costs as provided under the Contract. If Contractor fails to submit the proposal within the time allowed, Owner may unilaterally determine the amount due to Contractor because of the termination and pay the determined amount to Contractor.

Article 14. Dispute Resolution

14.1 If either the Contractor or the City has a claim or dispute, the parties shall first attempt to resolve the matter through non-binding mediation. The disputing party shall notify the other party in writing as soon as practicable after discovering the claim, dispute, or breach. The notice shall state the nature of the dispute and list the party's specific reasons for such dispute. Within ten (10) business days of receipt of the notice, both parties shall make a good faith effort, in person or through generally accepted means, to resolve any claim, dispute, breach or other matter in question that may arise out of, or in connection with, this Contract. If the parties cannot resolve the dispute through mediation, then either party shall have the right to exercise any and all remedies available under law regarding the dispute. If there is a dispute, the Contractor agrees to continue performance under the Contract.

Article 15. Certification of No Asbestos Containing Material or Work

15.1 Contractor shall insure that Texas Department of State Health Services licensed individuals, consultants {00010282/v//LEGAL/FORMS/11/16/2018}

or companies are used for any required asbestos work including asbestos inspection, asbestos abatement plans/specifications, asbestos abatement, asbestos project management and third-party asbestos monitoring.

- 15.2 Contractor shall provide a notarized certification to Owner that all equipment and materials used in fulfillment of its Contract responsibilities are non-Asbestos Containing Building Materials (ACBM). This certification must be provided no later than Contractor's application for Final Payment.
- 15.3 The Contractor shall insure compliance with the following acts from all of his subcontractors and assigns:
 - Asbestos Hazard Emergency Response Act (AHERA—40 CFR 763-99 (7));
 - National Emission Standards for Hazardous Air Pollutants (NESHAP—EPA 40 CFR 61, Subpart M—National Emission Standard for Asbestos;
 - Texas Asbestos Health Protection Rules (TAHPR—Tex. Admin. Code Title 25, Part 1, Ch. 295C, Asbestos Health Protection

Article 16. Miscellaneous

- 16.1 <u>Owner's Special Conditions.</u> When the Work contemplated by Owner is of such a character that the foregoing General Conditions of the Contract cannot adequately cover necessary and additional contractual relationships, the Contract may include Owner's Special Conditions that relate to the Project. In the event of a conflict between the General Conditions and the Owner's Special Conditions, the Owner's Special Conditions will govern.
- 16.2 <u>Federally Funded Projects.</u> On Federally funded projects, Owner may waive, suspend or modify any Article in these Uniform General Conditions which conflicts with any Federal statue, rule, regulation or procedure, where such waiver, suspension or modification is essential to receipt by Owner of such Federal funds for the Project. In the case of any Project wholly financed by Federal funds, any standards required by the enabling Federal statute, or any Federal rules, regulations or procedures adopted pursuant thereto, shall be controlling.
- 16.3 <u>Internet-based Project Management Systems.</u> At its option, Owner may administer its design and construction management through an Internet-based management system. In such cases, Contractor shall conduct communication through this media and perform all Project related functions utilizing this database system. This includes correspondence, submittals, Requests for Information, vouchers or payment requests and processing, amendment, Change Orders and other administrative activities.
 - 16.3.1 Accessibility and Administration.
 - 16.3.1.1 When used, Owner will make the software accessible via the Internet to all Project team members.
 - 16.3.1.2 Owner shall administer the software.
 - 16.3.2 <u>Training</u>. When used, Owner shall provide training to the Project team members.
- 16.4 <u>Right to Audit.</u>
 - 16.4.1 Contractor understands that acceptance of funds under this Contract acts as acceptance of the authority of the State Auditor's Office, Owner, any successor agency and their representatives, including independent auditors, to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with any party conducting the audit or investigation, including providing all records requested.

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- 16.4.2 Contractor shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under this Contract funds were expended in accordance with the terms of this Contact, the requirements of Owner, and with the laws and regulations of the State of Texas including, but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. Contractor shall maintain all such documents and other records relating to this Contract and Owner's property for a period of four (4) years after the date of submission of a request for Final Payment or until a resolution of all billing questions, whichever is later. Contractor shall make available at reasonable times and upon reasonable notice and for reasonable periods all documents and other information related to the Work of this Contract.
- 16.4.3 Contractor shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the Contractor and the requirement to cooperate is included in any subcontract it awards.
- 16.5 <u>179 D Benefit Allocation. Owner may decide to seek the allocation of certain tax benefits pursuant to</u> Section 179D of the Internal Revenue Code of 1986, as amended, (the "Code") through its Agreement with Contractor

If the Owner and the Internal Revenue Service (IRS) determine that the Contractor is eligible to receive the 179D deduction allocation as a "Designer" for the purposes of Section 179D of the Code or that Contractor could otherwise profit financially from the monetization of the benefit (separately and collectively, the "Rebate"), Contractor hereby agrees to allocate to the Owner a portion of the Rebate in an amount to be determined and contracted for on mutually agreeable terms when the value of the Rebate becomes ascertainable, net of associated costs realized by the Owner and Project Architect. At its sole discretion, the Owner shall determine whether to receive its portion of the Rebate in cash, discounted Contractor fees or both.

Owner reserves the right to retain a third party consultant (the "Consultant") to manage and administer the process of obtaining and monetizing the Rebate derived from the Project(s).

Contractor agrees to cooperate in all reasonable respects with the Consultant's efforts to obtain and monetize any such Rebates derived from the Project(s) on behalf of the Owner. Certification of eligibility and negotiation of the Rebates should be facilitated by the Owner's 179D Consultant.

End of General Conditions

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STANDARD AGREEMENT BETWEEN OWNER AND CONTRACTOR

This Agreement is made as of <u>February 12</u>, 20<u>19</u> (the "Effective Date"), by and between

The **Owner**:

City of Georgetown PO Box 409 Georgetown, Texas 78627

and **Contractor**:

O'Haver Contractors 12831 O'Conner Rd San Antonio, TX 78233

for the **Project**:

Construction Services for Fire Station No. 6

Contract Number:

19-0019-CIP

Project Architect:

BRW Architects 75 Century Square Drive Suite 350 College Station, Texas 77840 979.694.1791

The Owner and the Contractor agree as follows:

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LIST OF EXHIBITS

The following Exhibits are incorporated into the Agreement as if set out verbatim.

- Ex.A General Conditions
- Ex.B Owner's Special Conditions and Specifications with the date they were issued (if applicable)
- Ex.C Contractor's Proposal (if incorporated into the Project)
- Ex.D List of Drawings, Specifications Addenda, details and other documents developed by Project Architect that describe the Project with the date they were issued.

ARTICLE 1 SCOPE OF WORK

The Contractor has overall responsibility for and shall provide and furnish all materials, equipment, tools and labor as necessary or reasonably inferable to complete the Work, or any phase of the Work, in accordance with the Owner's requirements and the terms of the Contract Documents.

ARTICLE 2 CONTRACT DOCUMENTS

- 2.1 The Contract Documents consist of:
 - a. This Agreement and all exhibits and attachments listed, contained or referenced in this Agreement;
 - b. The General Conditions;
 - c. Special Conditions and Owner's Specifications;
 - d. All Addenda issued before the Effective Date of this Agreement;
 - e. All Alternate Bid Proposals accepted by the Owner before the Effective Date of this Agreement;
 - f. All Change Orders issued after the Effective Date of this Agreement;
 - g. The Drawings, Specifications, details and other documents developed by Project Architect to describe the Project and accepted by Owner;
 - h. The Drawings and Specifications developed or prepared by Owner's other consultants, if any, and accepted by the Owner; and
 - i. Contractor's Proposal if incorporated into the Project. To the extent of any conflict between Contractor's Proposal and any other Contract Document, the Contact Document shall govern.
- 2.2 The Contract Documents form the entire and integrated Contract between Owner and Contractor and supersede all prior negotiations, representations or agreements, written or oral.

ARTICLE 3 THE CONTRACT SUM:

3.1 The Owner shall pay the Contractor for performance of the Contract, including the Base Proposal and Alternate Proposal(s), the sum of _<u>Four Million Six Hundred and Nineteen Thousand and Two Hundred</u> dollars and 00/100 (\$_4,619,200.00), and make payment on account as provided in the General Conditions.

3.2 The following Alternate Proposals, fully described in the Specifications and Drawings, are included as a part of the contract sum: _____Alternate #5 and Alternate #7______.

ARTICLE 4 TIME OF COMPLETION:

The Owner shall issue a Notice to Proceed identifying the date for commencement of the Work. The commencement date shall be 10 or more days after the date the notice is issued. The Contractor shall achieve substantial completion of the Work within <u>Three Hundred and Thirty</u> (<u>330</u>) calendar days after the commencement date, as such completion date may be extended by approved Change Orders. THE TIME SET FORTH FOR COMPLETION OF THE WORK IS AN ESSENTIAL ELEMENT OF THE CONTRACT.

ARTICLE 5 LIQUIDATED DAMAGES:

For each consecutive calendar day after the expiration of the substantial completion period set forth in Article 4 that any incomplete Work prevents or impairs the Owner's ability to operate and use the Project for its intended purposes, including the correction of deficiencies found during the final testing and inspection, the amount of <u>three hundred dollars (\$300) for projects with a contract sum of less than five million dollars</u> (\$5,000,000) and five hundred dollars (\$500) for projects with a contract sum of five million dollars (\$5,000,000) or more will be deducted from the money due or that becomes due the Contractor, not as a penalty but as liquidated damages representing the parties' estimate at the time of executing this Agreement of the damages that the Owner will sustain for late completion.

ARTICLE 6 SAFETY

6.1 In accordance with the General Conditions, Contractor is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The safety program shall comply with all applicable requirements of the Occupational Safety and Health Act of 1970 and all other applicable federal, state and local laws and regulations and with the requirements of Owner's project safety specification.

6.2 Contractor shall provide recommendations and information to Owner and Project Architect regarding the assignment of responsibilities for safety precautions and programs, temporary Project facilities, and equipment, materials, and services for common use of the Subcontractors. Contractor shall verify that appropriate safety provisions are included in the Construction Documents. The existence or creation of any Owner controlled insurance program in connection with the Work shall not lessen or reduce the Contractor's safety responsibilities.

ARTICLE 7 CERTIFICATION OF NO ASBESTOS CONTAINING MATERIALS OR WORK

7.1 The Contractor shall be responsible for ensuring that no asbestos containing materials or work is included within the scope of the Work. The Contractor shall take whatever measures it deems necessary to insure that all employees, suppliers, fabricators, material men, subcontractors, or their assigns, comply with this requirement.

7.2 The Contractor shall ensure that Texas Department of Health licensed individuals, consultants or companies are used for any required asbestos work including asbestos inspection, asbestos abatement plans/specifications, asbestos abatement, asbestos project management and third-party asbestos monitoring.

7.3 At Substantial Completion and Final Completion the Contractor shall provide a certification letter certifying that the Work does not contain asbestos.

ARTICLE 8 PRE-EXISTING CONDITIONS

The Contractor acknowledges that it has been provided unrestricted access to the existing improvements and conditions on the Project site and that it has thoroughly investigated those conditions. Contractor's investigation was instrumental in preparing its Proposal to perform the Work. Contractor shall not make or be entitled to any adjustment to the Contract Time or the Contract Sum arising from Project conditions that Contractor discovered or, in the exercise of reasonable care, should have discovered in Contractor's investigation.

ARTICLE 9 BONDS AND INSURANCE

9.1 The Contractor shall provide performance and payment bonds on forms prescribed by Owner and in accordance with the requirements set forth in the General Conditions. The penal sum of the payment and performance bonds shall be equal to the Contract Sum.

9.2 The Contractor shall not commence work under the Agreement until it has obtained all insurance coverage as required by the General Conditions and until evidence of the required insurance has been reviewed and approved by the Owner. Owner's review of the insurance shall not relieve nor decrease the liability of the Contractor.

ARTICLE 10 CONTRACTOR'S SPECIAL WARRANTIES AND RESPONSIBILITIES

10.1 Contractor agrees and acknowledges that Owner is entering into this Agreement in reliance on Contractor's represented expertise and ability to provide construction services. Contractor agrees to use its best efforts, skill, judgment, and abilities to perform its obligations and to further the interests of Owner in accordance with Owner's requirements and procedures.

10.2 Contractor represents and agrees that it will perform its services in accordance with the usual and customary standards of Contractor's profession or business and in compliance with all applicable national, federal, state, and municipal, laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction over the Project. Contractor agrees to bear the full cost of correcting Contractor's negligent or improper work and services, those of its consultants, and any harm caused by the negligent or improper work or services.

10.3 Contractor's duties shall not be diminished by any approval by Owner nor shall the Contractor be released from any liability by any approval by Owner, it being understood that the Owner is ultimately relying upon the Contractor's skill and knowledge in performing the services required by this Agreement.

10.4 Contractor represents and agrees that all persons connected with the Contractor directly in charge of its services are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction over the Project if registration is required.

10.5 Contractor represents and agrees to advise Owner of anything of any nature in any drawings, specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to the Contractor (by the Owner or any other party) that is, in its opinion, unsuitable, improper, or inaccurate for the purposes for which the document or data is furnished.

10.6 The Contractor represents and agrees to perform its services under this Agreement in an expeditious and economical manner consistent with good business practices and the interests of Owner.

10.7 Contractor represents and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of its obligations under this Agreement.

10.8 Contractor represents and agrees that the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and to bind Contractor to its terms.

10.9 Contractor shall designate a representative authorized to act on Contractor's behalf with respect to the Project.

10.10 Contractor shall establish and maintain a numbering and tracking system for all Project records including, but not limited to, changes, requests for information, submittals, and supplementary instructions and shall provide updated records to the Owner when requested.

10.11 Except for the obligation of Owner to pay Contractor certain fees, costs, and expenses pursuant to the terms of this Agreement, Owner shall have no liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement. Notwithstanding any obligation or liability of Owner to Contractor, no present or future partner or affiliate of Owner or any agent, officer, director, or employee of Owner, or anyone claiming under Owner has or shall have any personal liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement.

ARTICLE 11 INDEMNITY

11.1 SEE ARTICLE 3 OF THE GENERAL CONDITIONS FOR CONTRACTOR'S GENERAL INDEMNIFICATION OBLIGATIONS.

ARTICLE 12 PARTY REPRESENTATIVES

12.1 The Owner's Designated Representative authorized to act in the Owner's behalf with respect to the Project is:

Eric Johnson Capital Improvements Project Manager PO Box 409, Georgetown, Texas 78627 (512) 819-3145 Eric.Johnson@Georgetown.org

12.2 The Contractor's designated representative authorized to act on the Contractor's behalf and bind the Contractor with respect to the Project is:

Don O'Haver President 12831 O'Conner Rd., San Antonio, Texas 78233 (210) 590-2889 Don@ohcltd.net

12.3 The parties may make reasonable changes in their designated representatives upon advance written notice to the other party.

ARTICLE 13 NOTICES

Notices of claims or disputes or other legal notices required by this Agreement shall be sent to the following persons at the indicated locations.

If to Owner:

City of Georgetown 300-1 Industrial Ave. Georgetown, Texas 78626

Attn: Purchasing

With Copies to:

N/A

If to Contractor:

O'Haver Contractors Don O'Haver, President 12831 O'Conner Rd. San Antonio, Texas 78233 (210) 798-3187 fax

The parties may make reasonable changes in the person or place designated for receipt of notices upon advance written notice to the other party.

ARTICLE 14 MISCELLANEOUS PROVISIONS

14.1 Assignment. This Agreement is a personal service contract for the services of Contractor, and Contractor's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party without the written consent of the Owner.

14.2 Records of expenses pertaining to Additional Services and services performed on the basis of a Worker Wage Rate or Monthly Salary Rate shall be kept on the basis of generally accepted accounting principles and in accordance with cost accounting standards promulgated by the Federal Office of Management and Budget Cost Accounting Standards Board and shall be available for audit by the Owner or the Owner's authorized representative on reasonable notice.

14.3 Family Code Child Support Certification. Pursuant to Section 231.006, Texas Family Code, Service Provider certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

14.4 Franchise Tax Certification. A corporate or limited liability company Contractor certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

14.5 Entire Agreement; Modifications. This Agreement supersedes all prior agreements, written or oral, between Contractor and Owner and shall constitute the entire Agreement and understanding between the parties with respect to the Project. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Contractor and Owner.

14.6 Captions. The captions of paragraphs in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

14.7 Governing Law and Venue. This Agreement and all of the rights and obligations of the parties and all of the terms and conditions shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas without reference to its conflicts of law provisions.

Williamson County, Texas or the county where the Project is located shall be the sole places of venue for any legal action arising from or related to this Agreement or the Project in which the Owner is a party.

14.8 Waivers. No delay or omission by either party in exercising any right or power arising from non-compliance or failure of performance by the other party with any of the provisions of this Agreement shall impair or constitute a waiver of any such right or power. A waiver by either party of any covenant or condition of this Agreement shall not be construed as a waiver of any subsequent breach of that or of any other covenant or condition of the Agreement.

14.9 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted assigns and successors.

14.10 Appointment. Owner hereby expressly reserves the right from time to time to designate by notice to Contractor a representative(s) to act partially or wholly for Owner in connection with the performance of Owner's obligations. Contractor shall act only upon instructions from the designated representative(s) unless otherwise specifically notified to the contrary.

14.11 Records. Records of Contractor's costs, reimbursable expenses pertaining to the Project and payments shall be available to Owner or its authorized representative during business hours and shall be retained for four (4) years after final Payment or abandonment of the Project, unless Owner otherwise instructs Contractor in writing.

14.12 Notices. All notices, consents, approvals, demands, requests or other communications relied on by the parties shall be in writing. Written notice shall be deemed to have been given when delivered in person to the designated representative of the Contractor or Owner for whom it is intended; or sent by U. S. Mail to the last known business address of the designated representative; or transmitted by fax machine to the last know business fax number of the designated representative. Mail notices are deemed effective upon receipt or on the third business day after the date of mailing, whichever is sooner. Fax notices are deemed effective the next business day after faxing.

14.13 Severability. Should any term or provision of this Agreement be held invalid or unenforceable in any respect, the remaining terms and provisions shall not be affected and this Agreement shall be construed as if the invalid or unenforceable term or provision had never been included.

14.14 Illegal Dumping. The Contractor shall ensure that it and all of its Subcontractors and assigns prevent illegal dumping of litter in accordance with Title 5, *Texas Health and Safety Code*, Chapter 365.

14.15 By signature hereon, Contractor certifies that no member of the City Council, has a financial interest, directly or indirectly, in the transaction that is the subject of this contract.

14.16 Disclosure of Interested Parties. By signature hereon, Contractor certifies that it has complied with Section 2252.908 of the Texas Government Code and Part 1 Texas Administrative Code Sections 46.1 through 46.3 as implemented by the Texas Ethics Commission (TEC), if applicable, and has provided the Owner with a fully executed TEC Form 1295, certified by the TEC and signed and notarized by the Contractor.

14.17 Contractor Certification regarding Boycotting Israel. Pursuant to Chapter 2270, *Texas Government Code*, Contractor certifies Contractor (1) does not currently boycott Israel; and (2) will not boycott Israel during the Term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

14.18 Contractor Certification regarding Business with Certain Countries and Organizations. Pursuant to Subchapter F, Chapter 2252, *Texas Government Code*], Contractor certifies Contractor is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

14.19 Domestic Iron and Steel Certification. Pursuant to Sections 2252.201-2252.205 of the Government Code, Service Provider certifies that it is in compliance with the requirement that any iron or steel product produced through a manufacturing process and used in the project is produced in the United States.

BY SIGNING BELOW, the Parties have executed and bound themselves to this Agreement as of the day and year first above written.

[SIGNATURES PROVIDED ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the day and year first written above.

CITY OF GEORGETOWN By: _____ ATTEST: City Secretary APPROVED AS TO FORM: By: _____ City Attorney THE STATE OF TEXAS § § COUNTY OF WILLIAMSON § This instrument was acknowledged before me on the _____ day of _____, ____, by _____, Mayor of the City of Georgetown, on behalf of the City. Notary Public – State of Texas Project Contractor Printed Name: Title: THE STATE OF TEXAS § § COUNTY OF WILLIAMSON § This instrument was acknowledged before me on the _____ day of _____, ___, by _____ on behalf of ______.

Notary Public – State of Texas

City of Georgetown, Texas City Council Regular Meeting February 12, 2019

SUBJECT:

Forwarded from the General Government and Finance Advisory Board (GGAF): Consideration and possible action to approve a Construction Contract with O'Haver Contractors of San Antonio, Texas for the Construction of Fire Station No. 7 in the amount of \$5,261,000.00 -- Eric Johnson, CIP Manager

ITEM SUMMARY:

On November 16, 2018, the City of Georgetown issued a Request for Proposals for the *Construction of Fire Station No. 6 and No. 7*. The members of the selection committee were Eric Johnson, Trish Long, Clay Shell and Jeff Davis. Of the five responses received, the selection committee unanimously agreed that O'Haver Contractors, provided the best value based on their proposal, and subsequent referral check.

The selection committee recommends acceptance of:

• Base Bid of \$5,300,000

· Alternate 1 - \$11,000 (Additional Irrigation)

· Discount - \$50,000 (For awarding both 6 &7)

For a total contract amount of \$5,261,000

FINANCIAL IMPACT:

The total budget for Fire Station No. 7 is \$6,250,000. Including:

- · Construction
- · Owner Contingency
- · Furniture, Fixtures and Equipment
- · Commissioning
- · Station Alerting
- · Audio Visual
- · Materials Testing
- · Security
- · Data Cabling

Fire Station No. 7 is funded through Certificates of Obligation which will be issued through the 2019 annual debt issuance.

SUBMITTED BY:

Eric Johnson, CIP Manager

ATTACHMENTS:

Presentation Bid Tab - FS 6 & 7 Agreement FS 7 Construction General Conditions

Agreement FS 7 Construction Legal

Fire Station No. 6 & 7 Construction Contracts

February 12, 2019



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Background

- Released RFP November 16, 2018
- RFP Due December 19, 2018
- 5 Respondents
 - Don Kruger Construction Co.
 - FT WOODS Construction
 - Key Construction
 - O'Haver Contractors
 - Trimbuilt Construction



Background cont'

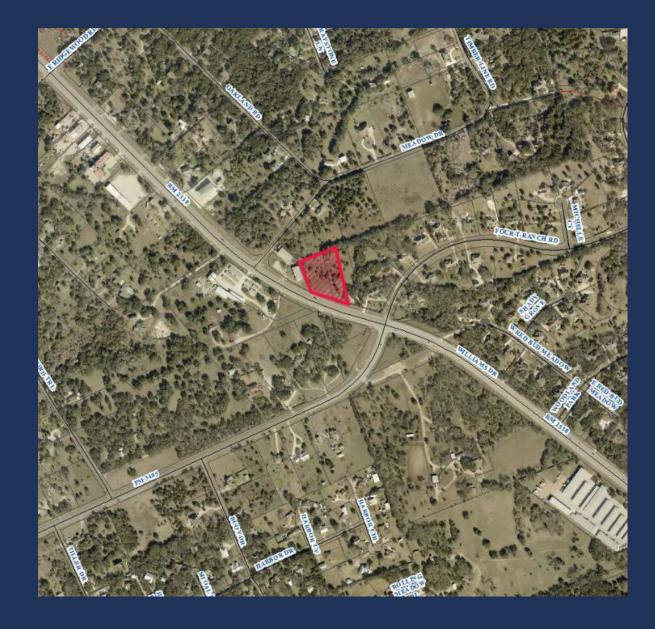
Evaluation Team

- Asst Chief Clay Shell
- Asst Chief Jeff Davis
- Trish Long, Facilities Superintendent
- Eric Johnson, CIP Manager

• O'Haver Contractors is recommended by the team for both Fire Stations



Fire Station 6 Location





Fagiton of \$3 Georgetown

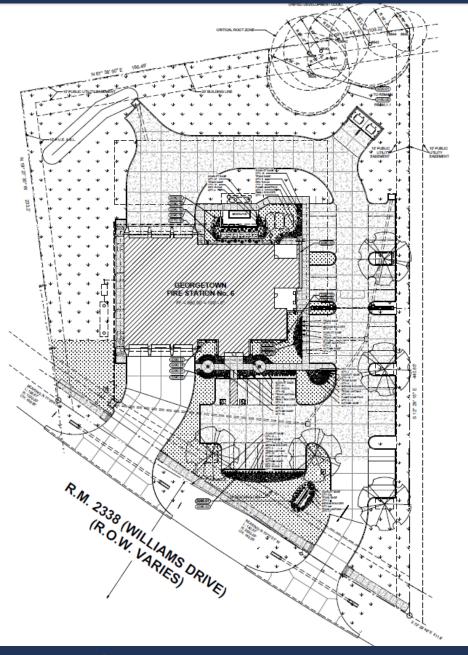
Fire Station No. 6





Fage 602 of 73 Georgetown

Fire Station 6 Site Plan



2290. 2290. 2290.



Fage 603 of 73 Georgetown

Fire Station 6 - Contract

• Total Contract - \$4,619,200

- Base Bid \$4,560,000
- Accept Alternate 5 \$52,000 (Direct Capture Exhaust)
- Accept Alternate 7 \$7,200 (Additional Irrigation)



Fage 604 of \$36 Georgetown

Fire Station 6 - Budget - \$5,499,725

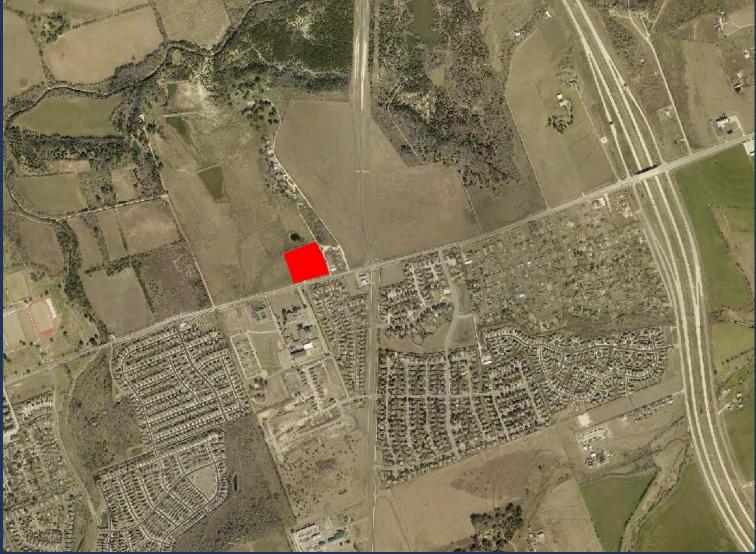
Contract	Total
Construction	\$4,619,200
Owner Contingency (5%)	\$230,960
Professional Services	\$131,000
Station Alerting	\$50,000
Other Contracted Services*	\$468,565
TOTAL	\$5,499,725

* Furniture, Equipment, A/V, Security, Data Cabling, Commissioning, Materials Testing



Fage 605 of \$36 Georgetown

Fire Station 7 Location





Fagito Gf3Georgetown

Fire Station No. 7





Fage to A fage or getown

Fire Station 7 Site Plan



Fage 508 of \$3 Georgetown



Fire Station 7 - Contract

Total Contract – \$5,261,000

- Base Bid \$5,300,000
- Accept Alternate 1 \$11,000 (Additional Irrigation)
- Discount \$50,000 (For awarding both 6 & 7)



Fage 609 of \$36 Georgetown

Fire Station 7 - Budget - \$6,250,000

Contract	Total
Construction	\$5,261,000
Owner Contingency (8%)	\$420,880
Station Alerting	\$50,000
Other Contracted Services*	\$518,120
TOTAL	\$6,250,000

* Furniture, Equipment, A/V, Security, Data Cabling, Commissioning, Materials Testing



Fagity of 56 Georgetown

Next Steps



- Execute Contracts
- Construction
 - Begin March 2019
 - Completion March 2020





Fage 6/1 of \$3 Georgetown

Bid Invitation No.: 20 Division: Co

Bid Opening Date:

201912 Construction Services for Fire Station No. 6 & No. 7 December 19, 2018, 2PM

Don Krueger Construction ITEM# Victoria, TX		FT Woods, Georgetown TX	Key Construction LLC, Forth Worth, TX	O'Haver Constractors, San Antonio, TX	Trinbuilt Construction, Inc. Austin, TX	International Finishers Inc.,	
FIRE STATION NO. 6							
CALENDAR DAYS	365			330	355		
Base Price	\$ 4,804,000.00	\$ 4,770,000.00	\$ 4,996,000.00	\$ 4,560,000.00	\$ 4,646,000.00		
A1	\$ (51,000.00			\$ (44,000.00)			
A2	\$ (16,000.00) \$ (4,000.00)	\$ (9,800.00)		\$ (22,500.00)		
A3	\$ (1,000.00) \$ (6,000.00)	\$ (16,000.00)	\$ (17,500.00)	\$ (1,130.00)		
A4	\$ (9,900.00) \$ (81,000.00)	\$ (120,000.00)	\$ (126,000.00)	\$ (121,000.00)		
A5	\$ 58,000.00	\$ 58,000.00	\$ 58,000.00	\$ 52,000.00	\$ 47,500.00		
A6	\$ 23,000.00	\$ 20,000.00	\$ 32,000.00	\$ 37,000.00	\$ 10,500.00		
A7	\$ 9,600.00	\$ 2,000.00	\$ 12,100.00	\$ 7,200.00	\$ 9,735.00		
A8	\$ 58,000.00	\$ 54,000.00	\$ 86,100.00	\$ 71,000.00	\$ 36,520.00	e/e	
SUBTOTAL	\$ 4,874,700.00	\$ 4,763,000.00	\$ 4,993,400.00	\$ 4,536,700.00	\$ 4,546,925.00	responsive	
FIRE STATION NO. 7						ũ	
CALENDAR DAYS	365	281	300	330	355	ŏ	
Base Price	\$ 5,645,000.00	\$ 5,570,000.00	\$ 6,266,000.00	\$ 5,300,000.00	\$ 5,545,000.00	es	
A1	\$ 16,800.00	\$ 22,000.00	\$ 9,800.00	\$ 11,000.00	\$ 16,990.00		
SUBTOTAL	\$ 5,661,800.00	\$ 5,592,000.00	\$ 6,275,800.00	\$ 5,311,000.00	\$ 5,561,990.00	uou	
FIRE STATION NO. 6 DISCOUNT	\$ (63,000.00) \$ (50,000.00))\$-	\$-	\$ (43,000.00)		
FIRE STATION NO. 7 DISCOUNT	\$ (63,000.00) \$ (50,000.00)	- \$	\$ (50,000.00)	\$ (43,000.00)		
TOTAL	\$ 10,410,500.00	\$ 10,255,000.00	\$ 11,269,200.00	\$ 9,797,700.00	\$ 10,022,915.00		
1 ORIGINAL 4 COPIES	YES	YES	YES	YES	YES		
DIGITAL	YES	YES	YES	YES	YES		
BID BONDS	YES	YES YES		YES	YES		
ADDENDUM NO. 1-5	√	✓ ✓		√	√		
C&A	√	√	√	✓	✓		

FOR REFERENCE ONLY - This document summarizes proposals received and some key pieces of information which may be located with a brief examination of the proposals, and is not intended to replace a complete detailed evaluation of each proposal.

Fire 6 w/ alternates	\$ 4,871,600.00	\$ 4,830,000.00	\$ 5,066,100.00	\$ 4,619,200.00	\$ 4,703,235.00
Fire 7 w/ alternates	\$ 5,661,800.00	\$ 5,592,000.00	\$ 6,275,800.00	\$ 5,311,000.00	\$ 5,561,990.00
Fire 6&7 w/ alternate	\$ 10,407,400.00	\$ 10,322,000.00	\$ 11,341,900.00	\$ 9,880,200.00	\$ 10,179,225.00

General Conditions

Table of Contents

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Article 2.	Wage Rates and Other Laws Governing Construction
Article 3.	General Responsibilities of Owner and Contractor
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Article 5.	Construction Documents, Coordination Documents, and Record Documents
Article 6.	Construction Safety
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Article 9.	Payments
Article 10.	Changes
Article 11.	Project Completion and Acceptance
Article 12.	Warranty and Guarantee
Article 13.	Suspension and Termination
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Article 16.	Miscellaneous

Article 1. Definitions

Unless the context clearly requires another meaning, the following terms have the meaning assigned herein.

- 1.1 *Application for Payment* means Contractor's monthly partial invoice for payment that includes any portion of the Work that has been completed for which an invoice has not been submitted and performed in accordance with the requirements of the Contract Documents. The Application for Payment accurately reflects the progress of the Work, is itemized based on the Schedule of Values, bears the notarized signature of Contractor, and shall not include subcontracted items for which Contractor does not intend to pay.
- 1.2 *Application for Final Payment* means Contractor's final invoice for payment that includes any portion of the Work that has been completed for which an invoice has not been submitted, amounts owing to adjustments to the final Contract Sum resulting from approved change orders, and release of remaining Contractor's retainage.
- 1.3 *Architect/Engineer (A/E)* means a person registered as an architect pursuant to Tex. Occ. Code Ann., Chapter 1051, as a landscape architect pursuant to Tex. Occ. Code Ann., Chapter 1052, a person licensed as a professional engineer pursuant Tex. Occ. Code Ann., Chapter 1001, and/or a firm employed by Owner or Design-Build Contractor to provide professional architectural or engineering services and to exercise overall responsibility for the design of a Project or a significant portion thereof, and to perform the contract administration responsibilities set forth in the Contract.
- 1.4 *Baseline Schedule* means the initial time schedule prepared by Contractor for Owner's information and acceptance that conveys Contractor's and Subcontractors' activities (including coordination and review activities required in the Contract Documents to be performed by A/E and ODR), durations, and sequence of work related to the entire Project to the extent required by the Contract Documents. The schedule clearly demonstrates the critical path of activities, durations and necessary predecessor conditions that drive the end date of the schedule. The Baseline Schedule shall not exceed the time limit current under the Contract Documents.
- 1.5 *Certificate of Final Completion* means the certificate issued by A/E that documents, to the best of A/E's knowledge and understanding, Contractor's completion of all Contractor's Punchlist items and pre-final Punchlist items, final cleanup and Contractor's provision of Record Documents, operations and maintenance manuals, and all other Close-Out documents required by the Contract Documents.
- 1.6 *Change Order* means a written modification of the Contract between Owner and Contractor, signed by Owner, Contractor and A/E.
- 1.7 *Close-out Documents* mean the product brochures, submittals, product/equipment maintenance and operations instructions, manuals, and other documents/warranties, record documents, affidavit of payment, release of lien and claim, and as may be further defined, identified, and required by the Contract Documents.
- 1.8 *Contract* means the entire agreement between Owner and Contractor, including all of the Contract Documents.
- 1.9 *Contract Date* is the date when the agreement between Owner and Contractor becomes effective.
- 1.10 *Contract Documents* mean those documents identified as a component of the agreement (Contract) between Owner and Contractor. These may include, but are not limited to, Drawings; Specifications; these General Conditions and Owner's Special Conditions; and all pre-bid and/or pre-proposal addenda.
- 1.11 *Contract Sum* means the total compensation payable to Contractor for completion of the Work in accordance with the terms of the Contract.
- {00010282 / v / / LEGAL / FORMS / 11/16/2018}

- 1.12 *Contract Time* means the period between the start date identified in the Notice to Proceed with construction and the Substantial Completion date identified in the Notice to Proceed or as subsequently amended by a Change Order.
- 1.13 *Contractor* means the individual, corporation, limited liability company, partnership, firm, or other entity contracted to perform the Work, regardless of the type of construction contract used, so that the term as used herein includes a Construction Manager-at-Risk or a Design-Build firm as well as a general or prime Contractor. The Contract Documents refer to Contractor as if singular in number.
- 1.14 *Construction Documents* mean the Drawings, Specifications, and other documents issued to build the Project. Construction Documents become part of the Contract Documents when listed in the Contract or any Change Order.
- 1.15 *Construction Manager-at-Risk*, means a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general Contractor and provides consultation to Owner regarding construction during and after the design of the facility.
- 1.16 *Date of Commencement* means the date designated in the Notice to Proceed for Contractor to commence the Work.
- 1.17 *Day* means a calendar day unless otherwise specifically stipulated.
- 1.18 *Design-Build* means a project delivery method in which the detailed design and subsequent construction is provided through a single contract with a Design-Build firm; a team, partnership, or legal entity that includes design professionals and a builder.
- 1.19 *Drawings* mean that product of A/E which graphically depicts the Work.
- 1.20 *Final Completion* means the date determined and certified by A/E and Owner on which the Work is fully and satisfactorily complete in accordance with the Contract.
- 1.21 *Final Payment* means the last and final monetary compensation made to Contractor for any portion of the Work that has been completed and accepted for which payment has not been made, amounts owing to adjustments to the final Contract Sum resulting from approved change orders, and release of Contractor's retainage.
- 1.22 *Historically Underutilized Business (HUB)* pursuant to Tex. Gov't Code, Chapter 2161, means a business that is at least 51% owned by an Asian Pacific American, a Black American, a Hispanic American, a Native American and/or an American Woman; is an entity with its principal place of business in Texas; and has an owner residing in Texas with proportionate interest that actively participates in the control, operations, and management of the entity's affairs.
- 1.23 *Laws and Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
- 1.24 *Notice to Proceed* means written document informing Contractor of the dates beginning Work and the dates anticipated for Substantial Completion.
- 1.24 *Open Item List* means a list of work activities, Punchlist items, changes or other issues that are not expected by Owner and Contractor to be complete prior to Substantial Completion.
- 1.25 *Owner* means the City of Georgetown.

1.26 *Owner's Designated Representative (ODR)* means the individual assigned by Owner to act on its behalf {00010282 / v / / LEGAL / FORMS / 11/16/2018}

and to undertake certain activities as specifically outlined in the Contract. ODR is the only party authorized to direct changes to the scope, cost, or time of the Contract.

- 1.27 *Owner's Special Conditions* mean the documents containing terms and conditions which may be unique to the Project. Owner's Special Conditions are a part of the Contract Documents and have precedence over the Uniform General Conditions
- 1.28 *Project* means all activities necessary for realization Owner's desired building or other structure including all ancillary and related work. This includes design, contract award(s), execution of the Work itself, work by Owner's forces and/or other Contractors and fulfillment of all Contract and warranty obligations.
- 1.29 *Proposed Change Order (PCO)* means a document that informs Contractor of a proposed change in the Work and appropriately describes or otherwise documents such change including Contractor's response of pricing for the proposed change.
- 1.30 *Punchlist* means a list of items of Work to be completed or corrected by Contractor before Final Completion. Punchlists indicate items to be finished, remaining Work to be performed, or Work that does not meet quality or quantity requirements as required in the Contract Documents.
- 1.31 *Record Documents* mean the drawing set, Specifications, and other materials maintained by Contractor that documents all addenda, Architect's Supplemental Instructions, Change Orders and postings and markings that record the as-constructed conditions of the Work and all changes made during construction.
- 1.32 *Request for Information (RFI)* means a written request by Contractor directed to A/E or ODR for a clarification of the information provided in the Contract Documents or for direction concerning information necessary to perform the Work that may be omitted from the Contract Documents.
- 1.33 *Samples* mean representative physical examples of materials, equipment, or workmanship used to confirm compliance with requirements and/or to establish standards for use in execution of the Work.
- 1.34 *Schedule of Values* means the detailed breakdown of the cost of the materials, labor, and equipment necessary to accomplish the Work as described in the Contract Documents, submitted by Contractor for approval by Owner and A/E.
- 1.35 *Shop Drawings* mean the drawings, diagrams, illustrations, schedules, performance charts, brochures, and other data prepared by Contractor or its agents which detail a portion of the Work.
- 1.36 *Site* means the geographical area of the location of the Work.
- 1.37 *Specifications* mean the written product of A/E that establishes the quality and/or performance of products utilized in the Work and processes to be used, including testing and verification for producing the Work.
- 1.38 *Subcontractor* means a business entity that enters into an agreement with Contractor to perform part of the Work or to provide services, materials, or equipment for use in the Work.
- 1.39 *Submittal Register* means a list provided by Contractor of all items to be furnished for review and approval by A/E and Owner and as identified in the Contract Documents including anticipated sequence and submittal dates.
- 1.40 *Substantial Completion* means the date determined and certified by Contractor, A/E, and Owner when the Work, or a designated portion thereof, is sufficiently complete, in accordance with the Contract, so as to be operational and fit for the use intended.

- 1.41 *Unit Price Work* means the Work, or a portion of the Work, paid for based on incremental units of measurement.
- 1.42 *Unilateral Change Order (ULCO)* means a Change Order issued by Owner without the complete agreement of Contractor, as to cost and/or time.
- 1.43 *Work* means the administration, procurement, materials, equipment, construction and all services necessary for Contractor, and/or its agents, to fulfill Contractor's obligations under the Contract.
- 1.44 *Work Progress Schedule* means the continually updated time schedule prepared and monitored by Contractor that accurately indicates all necessary appropriate revisions as required by the conditions of the Work and the Project while maintaining a concise comparison to the Baseline Schedule.

Article 2. Wage Rates and Other Laws Governing Construction

- 2.1 Laws and Regulations.
 - 2.1.1. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, the City shall not be responsible for monitoring Contractor's compliance with any Laws or Regulations.
 - 2.1.2. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations.
 - 2.1.3. Changes in Laws or Regulations not known at the time of opening of Bids having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Time.
 - 2.1.4. Contractor shall conduct activities in compliance with applicable laws and regulations and other requirements of the Contract relating to the environment and its protection at all times. Unless otherwise specifically determined, Contractor is responsible for obtaining and maintaining permits related to stormwater run-off. Contractor shall conduct operations consistent with stormwater run-off permit conditions. Contractor is responsible for all items it brings to the Site, including hazardous materials, and all such items brought to the Site by its SubContractors and suppliers, or by other entities subject to direction of Contractor. Contractor shall not incorporate hazardous materials into the Work without prior approval of Owner, and shall provide an affidavit attesting to such in association with request for Substantial Completion inspection.

2.2 <u>Prevailing Wage Rates.</u>

- 2.2.1. *Duty to pay Prevailing Wage Rates.* The Contractor shall comply with all requirements of Chapter 2258, Texas Government Code (as amended), including the payment of not less than the rates determined by the City Council of the City of Georgetown to be the prevailing wage rates in accordance with Chapter 2258. Such current prevailing wage rates are made part of these Contract Documents and can be found at https://www.wdol.gov/wdol/scafiles/davisbacon/TX
- 2.2.2. *Penalty for Violation.* A Contractor or any Subcontractor who does not pay the prevailing wage shall, upon demand made by the City, pay to the City \$60 for each worker employed for each

calendar day or part of the day that the worker is paid less than the prevailing wage rates stipulated in these contract documents. This penalty shall be retained by the City to offset its administrative costs, pursuant to Texas Government Code 2258.023.

- 2.2.3. Complaints of Violations and City Determination of Good Cause. On receipt of information, including a complaint by a worker, concerning an alleged violation of 2258.023, Texas Government Code, by a Contractor or Subcontractor, the City shall make an initial determination, before the 31st day after the date the City receives the information, as to whether good cause exists to believe that the violation occurred. The City shall notify in writing the Contractor or Subcontractor and any affected worker of its initial determination. Upon the City's determination that there is good cause to believe the Contractor or Subcontractor has violated Chapter 2258, the City shall retain the full amounts claimed by the claimant or claimants as the difference between wages paid and wages due under the prevailing wage rates, such amounts being subtracted from successive progress payments pending a final determination of the violation.
- 2.2.4. Arbitration Required if Violation Not Resolved. An issue relating to an alleged violation of Section 2258.023, Texas Government Code, including a penalty owed to the City or an affected worker, shall be submitted to binding arbitration in accordance with the Texas General Arbitration Act (Article 224 et seq., Revised Statutes) if the Contractor or Subcontractor and any affected worker does not resolve the issue by agreement before the 15th day after the date the City makes its initial determination pursuant to Paragraph C above. If the persons required to arbitrate under this section do not agree on an arbitrator before the 11th day after the date that arbitration is required, a district court shall appoint an arbitrator on the petition of any of the persons. The City is not a party in the arbitration. The decision and award of the arbitrator is final and binding on all parties and may be enforced in any court of competent jurisdiction.
- 2.2.5 *Records to be Maintained.* The Contractor and each Subcontractor shall, for a period of three (3) years following the date of acceptance of the work, maintain records that show (i) the name and occupation of each worker employed by the Contractor in the construction of the Work provided for in this Contract; and (ii) the actual per diem wages paid to each worker. The records shall be open at all reasonable hours for inspection by the City. The provisions of Paragraph 16.4, Right to Audit, shall pertain to this inspection.
- 2.2.6. *Progress Payments*. With each progress payment or payroll period, whichever is less, the Contractor shall submit an affidavit stating that the Contractor has complied with the requirements of Chapter 2258, Texas Government Code.
- 2.2.7. *Posting of Wage Rates*. The Contractor shall post prevailing wage rates in a conspicuous place at all times.
- 2.2.8. *Subcontractor Compliance*. The Contractor shall include in its subcontracts and/or shall otherwise require all of its Subcontractors to comply with the provisions above.
- 2.3 <u>Venue for Suits.</u> The venue for any suit arising from the Contract will be in a court of competent jurisdiction in County, Texas.
- 2.4 <u>Licensing of Trades.</u> Contractor shall comply with all applicable provisions of State law related to license requirements for skilled tradesmen, Contractors, suppliers and or laborers, as necessary to accomplish the Work. In the event Contractor, or one of its Subcontractors, loses its license during the term of performance of the Contract, Contractor shall promptly hire or contract with a licensed provider of the service at no additional cost to Owner.
- 2.5 <u>Royalties, Patents, and Copyrights.</u> Contractor shall pay all royalties and license fees, defend suits or claims for infringement of copyrights and patent rights, and shall hold Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process
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or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by Owner or A/E. However, if Contractor has reason to believe that the required design, process, or product is an infringement of a copyright or a patent, Contractor shall be responsible for such loss unless such information is promptly furnished to A/E.

2.6 <u>State Sales and Use Taxes.</u> Owner qualifies for exemption from certain State and local sales and use taxes pursuant to the provisions of Tex. Tax Code, Chapter 151. Upon request from Contractor, Owner shall furnish evidence of tax exempt status. Contractor may claim exemption from payment of certain applicable State taxes by complying with such procedures as prescribed by the State Comptroller of Public Accounts. Owner acknowledges not all items qualify for exemption. Owner is not obligated to reimburse Contractor for taxes paid on items that qualify for tax exemption.

Article 3. General Responsibilities of Owner and Contractor

- 3.1 <u>Owner's General Responsibilities.</u> Owner is the entity identified as such in the Contract and referred to throughout the Contract Documents as if singular in number.
 - 3.1.1 <u>Preconstruction Conference.</u> Prior to, or concurrent with, the issuance of Notice to Proceed with construction, a conference will be convened for attendance by Owner, Contractor, A/E and appropriate Subcontractors. The purpose of the conference is to establish a working understanding among the parties as to the Work, the operational conditions at the Project Site, and general administration of the Project. Topics include communications, schedules, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, maintaining required records and all other matters of importance to the administration of the Project and effective communications between the Project team members.
 - 3.1.2 <u>Owner's Designated Representative</u>. Prior to the start of construction, Owner will identify Owner's Designated Representative (ODR), who has the express authority to act and bind Owner to the extent and for the purposes described in the various Articles of the Contract, including responsibilities for general administration of the Contract.
 - 3.1.2.1 Unless otherwise specifically defined elsewhere in the Contract Documents, ODR is the single point of contact between Owner and Contractor. Notice to ODR, unless otherwise noted, constitutes notice to Owner under the Contract.
 - 3.1.2.2 All directives on behalf of Owner will be conveyed to Contractor and A/E by ODR in writing.
 - 3.1.2.3 Owner will furnish or cause to be furnished, free of charge, the number of complete sets of the Drawings, Specifications, and addenda as provided in the Agreement or Owner's Special Conditions.
 - 3.1.3 Owner Supplied Materials and Information.
 - 3.1.3.1 Owner will furnish to Contractor those surveys describing the physical characteristics, legal description, limitations of the Site, Site utility locations, and other information used in the preparation of the Contract Documents.
 - 3.1.3.2 Owner will provide information, equipment, or services under Owner's control to Contractor with reasonable promptness.
 - 3.1.4 <u>Availability of Lands.</u> Owner will furnish, as indicated in the Contract, all required rights to use the lands upon which the Work occurs. This includes rights-of-way and easements for access and such other lands that are designated for use by Contractor. Contractor shall comply

with all Owner identified encumbrances or restrictions specifically related to use of lands so furnished. Owner will obtain and pay for easements for permanent structures or permanent changes in existing facilities, unless otherwise required in the Contract Documents.

- 3.1.5 Limitation on Owner's Duties.
 - 3.1.5.1 Owner will not supervise, direct, control or have authority over or be responsible for Contractor's means, methods, technologies, sequences or procedures of construction or the safety precautions and programs incident thereto. Owner is not responsible for any failure of Contractor to comply with laws and regulations applicable to the Work. Owner is not responsible for the failure of Contractor to perform or furnish the Work in accordance with the Contract Documents. Except as provided in Section 2.5, Owner is not responsible for the acts or omissions of Contractor, or any of its Subcontractors, suppliers or of any other person or organization performing or furnishing any of the Work on behalf of Contractor.
 - 3.1.5.2 Owner will not take any action in contravention of a design decision made by A/E in preparation of the Contract Documents, when such actions are in conflict with statutes under which A/E is licensed for the protection of the public health and safety.
- 3.2 <u>Role of Architect/Engineer.</u> Unless specified otherwise in the Contract between Owner and Contractor, A/E shall provide general administration services for Owner during the construction phase of the project. Written correspondence, requests for information, and Shop Drawings/submittals shall be directed to A/E for action. A/E has the authority to act on behalf of Owner to the extent provided in the Contract Documents, unless otherwise modified by written instrument, which will be furnished to Contractor by ODR, upon request.
 - 3.2.1 <u>Site Visits.</u>
 - 3.2.1.1 A/E will make visits to the Site at intervals as provided in the A/E's Contract with Owner, to observe the progress and the quality of the various aspects of Contractor's executed Work and report findings to Owner.
 - 3.2.1.2 A/E has the authority to interpret Contract Documents and inspect the Work for compliance and conformance with the Contract. Except as referenced in Paragraph 3.1.5.2, Owner retains the sole authority to accept or reject Work and issue direction for correction, removal, or replacement of Work.
 - 3.2.2 <u>Clarifications and Interpretations.</u> It may be determined that clarifications or interpretations of the Contract Documents are necessary. Upon direction by ODR, such clarifications or interpretations will be provided by A/E consistent with the intent of the Contract Documents. A/E will issue these clarifications with reasonable promptness to Contractor as A/E's supplemental instruction ("ASI") or similar instrument. If Contract Document that such clarification or interpretation justifies an adjustment in the Contract Sum or the Contract Time, Contractor shall so notify Owner in accordance with the provisions of Article 11.
 - 3.2.3 <u>Limitations on Architect/Engineer Authority.</u> A/E is not responsible for:
 - 3.2.3.1 Contractor's means, methods, techniques, sequences, procedures, safety, or programs incident to the Project, nor will A/E supervise, direct, control or have authority over the same;
 - 3.2.3.2 The failure of Contractor to comply with laws and regulations applicable to the furnishing or performing the Work;

- 3.2.3.3 Contractor's failure to perform or furnish the Work in accordance with the Contract Documents; or
- 3.2.3.4 Acts or omissions of Contractor, or of any other person or organization performing or furnishing any of the Work.
- 3.3 <u>Contractor's General Responsibilities.</u> Contractor is solely responsible for implementing the Work in full compliance with all applicable laws and the Contract Documents and shall supervise and direct the Work using the best skill and attention to assure that each element of the Work conforms to the Contract requirements. Contractor is solely responsible for all construction means, methods, techniques, safety, sequences, coordination and procedures.

Contractor shall visit the Site before commencing the Work and become familiar with local conditions such as the location, accessibility and general character of the Site and/or building.

- 3.3.1 <u>Project Administration</u>. Contractor shall provide Project administration for all Subcontractors, vendors, suppliers, and others involved in implementing the Work and shall coordinate administration efforts with those of A/E and ODR in accordance with these general conditions, Division 1 of the Specifications and other provisions of the Contract, and as outlined in the preconstruction conference.
- 3.3.2 <u>Contractor's Management Personnel.</u> Contractor shall employ a competent person or persons who will be present at the Project Site during the progress of the Work to supervise or oversee the work. The competent persons are subject to the approval of ODR. Contractor shall not change approved staff during the course of the project without the written approval of ODR unless the staff member leaves the employment of Contractor. Contractor shall provide additional quality control, safety and other staff as stated in the Contract Documents.
- 3.3.3 <u>Labor.</u> Contractor shall provide competent, suitably qualified personnel to survey, lay-out, and construct the Work as required by the Contract Documents and maintain good discipline and order at the Site at all times.
- 3.3.4 <u>Services, Materials, and Equipment.</u> Unless otherwise specified, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities, incidentals, and services necessary for the construction, performance, testing, start-up, inspection and completion of the Work.
- 3.3.5 <u>Contractor General Responsibility.</u> For Owner furnished equipment or material that will be in the care, custody, and control of Contractor, Contractor is responsible for damage or loss.
- 3.3.6 <u>Non-Compliant Work</u>. Should A/E and/or ODR identify Work as non-compliant with the Contract Documents, A/E and/or ODR shall communicate the finding to Contractor, and Contractor shall correct such Work at no additional cost to the Owner. The approval of Work or the failure to find non-compliant Work by either A/E or ODR does not relieve Contractor from the obligation to comply with all requirements of the Contract Documents.
- 3.3.7 <u>Subcontractors.</u> Contractor shall not employ any Subcontractor, supplier or other person or organization, whether initially or as a substitute, against whom Owner shall have reasonable objection. Owner will communicate such objections in writing within ten (10) days of receipt of Contractor's intent to use such Subcontractor, supplier, or other person or organization. Contractor is not required to employ any Subcontractor, supplier or other person or organization to furnish any of the work to whom Contractor has reasonable objection. Contractor shall not substitute Subcontractors without the acceptance of Owner.

- 3.3.7.1 All Subcontracts and supply contracts shall be consistent with and bind the Subcontractors and suppliers to the terms and conditions of the Contract Documents including provisions of the Contract between Contractor and Owner.
- 3.3.7.2 Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with Contractor. Require all Subcontractors, suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with Owner only through Contractor. Contractor shall furnish to Owner a copy, at Owner's request, of each first-tier subcontract promptly after its execution. Contractor agrees that Owner has no obligation to review or approve the content of such contracts and that providing Owner such copies in no way relieves Contractor of any of the terms and conditions of the Contract, including, without limitation, any provisions of the Contract which require the Subcontractor to be bound to Contractor in the same manner in which Contractor is bound to Owner.
- 3.3.8 <u>Continuing the Work.</u> Contractor shall carry on the Work and adhere to the progress schedule during all disputes, disagreements, or alternative resolution processes with Owner. Contractor shall not delay or postpone any Work because of pending unresolved disputes, disagreements or alternative resolution processes, except as Owner and Contractor may agree in writing.
- 3.3.9 <u>Cleaning.</u> Contractor shall at all times, keep the Site and the Work clean and free from accumulation of waste materials or rubbish caused by the construction activities under the Contract. Contractor shall ensure that the entire Project is thoroughly cleaned prior to requesting Substantial Completion inspection and, again, upon completion of the Project prior to the final inspection.
- 3.3.10 <u>Acts and Omissions of Contractor, its Subcontractors and Employees.</u> Contractor shall be responsible for acts and omissions of his employees and all its Subcontractors, their agents and employees. Owner may, in writing, require Contractor to remove from the Project any of Contractor's or its Subcontractor's employees whom ODR finds to be careless, incompetent, unsafe, uncooperative, disruptive, or otherwise objectionable.
- 3.3.11 <u>Ancillary Areas.</u> Contractor shall operate and maintain operations and associated storage areas at the site of the Work in accordance with the following:
 - 3.3.11.1 All Contractor operations, including storage of materials and employee parking upon the Site of Work, shall be confined to areas designated by Owner.
 - 3.3.11.2 Contractor may erect, at its own expense, temporary buildings that will remain its property. Contractor shall remove such buildings and associated utility service lines upon completion of the Work, unless Contractor requests and Owner provides written consent that it may abandon such buildings and utilities in place.
 - 3.3.11.3 Contractor shall use only established roadways or construct and use such temporary roadways as may be authorized by Owner. Contractor shall not allow load limits of vehicles to exceed the limits prescribed by appropriate regulations or law. Contractor shall provide protection to road surfaces, curbs, sidewalks, trees, shrubbery, sprinkler systems, drainage structures and other like existing improvements to prevent damage and repair any damage thereto at the expense of Contractor.
 - 3.3.11.4 Owner may restrict Contractor's entry to the Site to specifically assigned entrances and routes.

- 3.3.12 <u>Separate Contracts.</u> Owner reserves the right to award other contracts in connection with the Project under the same or substantially similar contract terms, including those portions related to insurance and waiver of subrogation. Owner reserves the right to perform operations related to the Project with Owner's own forces.
- 3.3.13 Under a system of separate contracts, the conditions described herein continue to apply except as may be amended by change order.
- 3.3.14 Contractor shall cooperate with other contractors or forces employed on the Project by Owner, including providing access to Site, integration of activities within Contractor's Work Progress Schedule and Project information as requested.
- 3.3.15 Owner shall be reimbursed by Contractor for costs incurred by Owner which are payable to a separate Contractor because of delays, improperly timed activities, or defective construction by Contractor. Owner will equitably adjust the Contract by Change Order for costs incurred by Contractor because of delays, improperly timed activities, damage to the Work or defective construction by a separate contractor.

3.4 Indemnification of Owner.

- 3.4.1 Contractor covenants and agrees to indemnify, hold harmless and defend, at its own expense, the City, its officers, servants and employees, from and against any and all claims arising out of, or alleged to arise out of, the work and services to be performed by the Contractor, its officers, agents, employees, subcontractors, licenses or invitees under this Contract. THIS INDEMNIFICATION PROVISION IS SPECIFICALLY INTENDED TO OPERATE AND BE EFFECTIVE EVEN IF IT IS ALLEGED OR PROVEN THAT ALL OR SOME OF THE DAMAGES BEING SOUGHT WERE CAUSED, IN WHOLE OR IN PART, BY ANY ACT, OMISSION OR NEGLIGENCE OF THE CITY. This indemnity provision is intended to include, without limitation, indemnity for costs, expenses and legal fees incurred by the City in defending against such claims and causes of actions.
- 3.4.2 Contractor covenants and agrees to indemnify and hold harmless, at its own expense, the City, its officers, servants and employees, from and against any and all loss, damage or destruction of property of the City, arising out of, or alleged to arise out of, the work and services to be performed by the Contractor, its officers, agents, employees, subcontractors, licensees or invitees under this Contract. <u>THIS INDEMNIFICATION PROVISION IS SPECIFICALLY INTENDED TO OPERATE AND BE EFFECTIVE EVEN IF IT IS ALLEGED OR PROVEN THAT ALL OR SOME OF THE DAMAGES BEING SOUGHT WERE CAUSED, IN WHOLE OR IN PART, BY ANY ACT, OMISSION OR NEGLIGENCE OF THE CITY.</u>
- 3.4.3 The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- 3.4.4 Contractor shall promptly advise Owner in writing of any claim or demand against Owner or against Contractor which involves Owner and known to Contractor and related to or arising out of Contractor's activities under this Contract.
- 3.4.5 These indemnity provisions shall survive the termination of this Agreement regardless of the reason for termination.

Article 4. Bonds and Insurance

4.1 <u>Construction Bonds.</u> Contractor is required to tender to Owner, prior to commencing the Work, performance and payment bonds, as required by Tex. Gov't Code, Chapter 2253. On Construction

Manager-at-Risk and Design-Build Projects the Owner shall require a security bond, as described in Subsection 5.1.2 below.

- 4.1.1 <u>Bond Requirements.</u> Each bond shall be executed by a corporate surety or sureties authorized to do business in the State of Texas and acceptable to Owner, on Owner's form, and in compliance with the relevant provisions of the Texas Insurance Code. If any bond is for more than ten (10) percent of the surety's capital and surplus, Owner may require certification that the company has reinsured the excess portion with one or more reinsurers authorized to do business in the State. A reinsurer may not reinsure for more than ten (10) percent of its capital and surplus. If a surety upon a bond loses its authority to do business in the State, Contractor shall, within thirty (30) days after such loss, furnish a replacement bond at no added cost to Owner.
 - 4.1.1.1 A Performance bond is required if the Contract Sum is in excess of \$100,000. The performance bond is solely for the protection of Owner. The performance bond is to be for the Contract Sum to guarantee the faithful performance of the Work in accordance with the Contract Documents. The form of the bond shall be approved by the Office of the Attorney General of Texas. The performance bond shall be effective through Contractor's warranty period.
 - 4.1.1.2 A Payment bond is required if the Contract price is in excess of \$25,000. The payment bond is to be for the Contract Sum and is payable to Owner solely for the protection and use of payment bond beneficiaries. The form of the bond shall be approved by the Office of the Attorney General of Texas.
- 4.1.2 <u>Security Bond.</u> The security bond provides protection to Owner if Contractor presents an acceptable guaranteed maximum price ("GMP") to Owner but is unable to deliver the required payment and performance bonds within the time period stated below.
- 4.1.3 When Bonds Are Due
 - 4.1.3.1 Security bonds are due before execution of a Construction Manager-at-Risk or Design-Build Contract.
 - 4.1.3.2 Payment and performance bonds are due before execution of a contract on competitively bid or competitively sealed proposal projects or before execution of a GMP proposal on Construction Manager-at-Risk projects or Design-Build projects.
- 4.1.4 <u>Power of Attorney.</u> Each bond shall be accompanied by a valid power of attorney (issued by the surety company and attached, signed and sealed with the corporate embossed seal, to the bond) authorizing the attorney-in-fact who signs the bond to commit the company to the terms of the bond, and stating any limit in the amount for which the attorney can issue a single bond.
- 4.1.5 <u>Bond Indemnification.</u> The process of requiring and accepting bonds and making claims thereunder shall be conducted in compliance with Tex. Gov't Code, Chapter 2253. IF FOR ANY REASON A STATUTORY PAYMENT OR PERFORMANCE BOND IS NOT HONORED BY THE SURETY, CONTRACTOR SHALL FULLY INDEMNIFY AND HOLD OWNER HARMLESS OF AND FROM ANY COSTS, LOSSES, OBLIGATIONS OR LIABILITIES IT INCURS AS A RESULT.
- 4.1.6 <u>Furnishing Bond Information</u>. Owner shall furnish certified copies of the payment bond and the related Contract to any qualified person seeking copies who complies with Tex. Gov't Code § 2253.026.
- 4.1.7 <u>Claims on Payment Bonds.</u> Claims on payment bonds must be sent directly to Contractor and his surety in accordance with Tex. Gov't Code § 2253.041. All payment bond claimants are {00010282/v//LEGAL/FORMS/11/16/2018}

cautioned that no lien exists on the funds unpaid to Contractor on such Contract, and that reliance on notices sent to Owner may result in loss of their rights against Contractor and/or his surety. Owner is not responsible in any manner to a claimant for collection of unpaid bills, and accepts no such responsibility because of any representation by any agent or employee.

- 4.1.8 <u>Payment Claims when Payment Bond not Required.</u> The rights of Subcontractors regarding payment are governed by Tex. Prop. Code §§ 53.231 53.239 when the value of the Contract between Owner and Contractor is less than \$25,000.00. These provisions set out the requirements for filing a valid lien on funds unpaid to Contractor as of the time of filing the claim, actions necessary to release the lien and satisfaction of such claim.
- 4.1.9 <u>Sureties.</u> A surety shall be listed on the US Department of the Treasury's Listing of Approved Sureties maintained by the Bureau of Financial Management Service (FMS), www.fms.treas.gov/c570, stating companies holding Certificates of Authority as acceptable sureties on Federal bonds and acceptable reinsuring companies (FMS Circular 570).
- 4.2 <u>Insurance Requirements.</u> Contractor shall carry insurance in the types and amounts indicated in this Article for the duration of the Contract. The required insurance shall include coverage for Owner's property prior to construction, during construction and during the warranty period. The insurance shall be evidenced by delivery to Owner of certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Upon request, Owner, and/or its agents, shall be entitled to receive without expense, copies of the policies and all endorsements. Contractor shall update all expired policies prior to submission for monthly payment. Failure to update policies shall be reason for withholding of payment until renewal is provided to Owner.
 - 4.2.1 Contractor, consistent with its status as an independent Contractor, shall provide and maintain all insurance coverage with the minimum amounts described below until the end of the warranty period unless otherwise stated in Owner's Special Conditions. Failure to maintain insurance coverage, as required, is grounds for suspension of Work for cause pursuant to Article 14. The Contractor will be notified of the date on which the Builder's Risk insurance policy may be terminated by any means deemed appropriate by Owner.
 - 4.2.2 Coverage shall be written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and rated A-, VII or better by A.M. Best Company or similar rating company or otherwise acceptable to Owner.
 - 4.2.2.1 Insurance Coverage Required.
 - 4.2.2.1.1 <u>Workers' Compensation.</u> Insurance with limits as required by the Texas Workers' Compensation Act and Employer's Liability Insurance with limits of not less than:
 - \$1,000,000 each accident;
 - \$1,000,000 disease each employee; and
 - \$1,000,000 disease policy limit.

Policies must include (a) Other States Endorsement to include TEXAS if business is domiciled outside the State of Texas, and (b) a waiver of all rights of subrogation in favor of Owner.

4.2.2.1.2 <u>Commercial General Liability Insurance, including premises</u>, operations, independent Contractor's liability, products and completed operations and contractual liability, covering, but not limited to, the

liability assumed under the indemnification provisions of this Contract, fully insuring Contractor's (or Subcontractor's) liability for bodily injury (including death) and property damage with a minimum limit of:

\$1,000,000 per occurrence;

\$2,000,000 general aggregate;

\$2,000,000 products and completed operations aggregate; and

Coverage shall be on an "occurrence" basis.

The policy shall include coverage extended to apply to completed operations and explosion, collapse, and underground hazards. The policy shall include endorsement CG2503 Amendment of Aggregate Limits of Insurance (per Project) or its equivalent.

If the Work involves any activities within fifty (50) feet of any railroad, railroad protective insurance as may be required by the affected railroad, written for not less than the limits required by such railroad.

4.2.2.1.3 <u>Asbestos Abatement Liability Insurance</u>, including coverage for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos containing materials. *This requirement applies if the Work or the Project includes asbestos containing materials.

The combined single limit for bodily injury and property damage will be a minimum of \$1,000,000 per occurrence.

*Specific requirement for claims-made form: Required period of coverage will be determined by the following formula: continuous coverage for life of the Contract, plus one (1) year (to provide coverage for the warranty period), and an extended discovery period for a minimum of five (5) years which shall begin at the end of the warranty period.

Employer's liability limits for asbestos abatement will be:

- \$1,000,000 each accident;
- \$1,000,000 disease each employee; and
- \$1,000,000 disease policy limit.

If this Contract is for asbestos abatement only, the All-Risk Builder's Risk or all-risk installation floater (5.2.2.1.5.e) is not required.

4.2.2.1.4 <u>Business Automobile Liability Insurance</u>, covering all owned, hired, and non-owned vehicles, with a minimum combined single limit for bodily injury (including death) and property damage of \$1,000,000 per occurrence. No aggregate shall be permitted for this type of coverage.

Such insurance is to include coverage for loading and unloading hazards.

Contractor or any subcontractor responsible for transporting asbestos or other hazardous materials defined as asbestos shall provide pollution coverage for any vehicle hauling asbestos containing cargo. The policy must include a MCS 90 endorsement with a \$5,000,000 limit and the CA 9948 Pollution Endorsement, or its equivalent.

4.2.2.1.5 <u>All-Risk Builder's Risk Insurance</u>, if applicable (or all-risk installation floater for instances in which the project involves solely the installation of material and/or equipment). Coverage is determined by the Contract Sum, as detailed, below.

BUILDERS RISK REQUIREMENT FOR PROJECTS WITH A CONTRACT SUM <\$20 MILLION

- 4.2.2.1.5.1 Contractor shall purchase and maintain in force builders risk insurance on the entire Work. Such insurance shall be written in the amount of the original contract, plus any subsequent change orders and plus the cost of materials supplied or installed by others, comprising Total Value for the entire Project at the site. The insurance shall apply on a replacement cost basis with no coinsurance provision. A sublimit may be applicable to flood coverage, but sublimit must be at least 20% of the Total Value of the Project. The limit for all other perils, including Named Windstorm, Wind, and Hail, must be equal to the Total Value for the entire Project at the site. (If Installation Floater, limit shall be equal to 100 percent of the contract cost.)
- 4.2.2.1.5.2 This insurance shall name as insureds the Owner, the Contractor, and all subcontractors and subsubcontractors in the Work.
- 4.2.2.1.5.3 Builders risk insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against fire and extended coverage perils, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, boiler and machinery/mechanical breakdown, testing and startup, and terrorism.
- 4.2.2.1.5.4 This insurance shall cover the entire work at the site as required in 4.2.2.1.5.1, including, but not limited to, the following:
 - Temporary works including but not limited to scaffolding, form work, fences, shoring, hoarding, falsework and temporary buildings
 - Offsite Storage
 - Portions of the work in transit
 - Debris removal
 - Extra Expense
 - Expediting Expenses
 - Demolition and Increased Cost of Construction
 - Pollutant Clean-Up and Removal
 - Trees, Shrubs, Plants, Lawns and Landscaping (if applicable)
 - Errors & Omissions (applicable to purchase of Builders Risk policy only)
- 4.2.2.1.5.5 This insurance shall not contain an occupancy clause suspending or reducing coverage should the Owner occupy, or begin beneficial occupancy before the Owner has accepted final completion.
- 4.2.2.1.5.6 This insurance shall be specific as to coverage and shall be primary to any permanent insurance or self-insurance that may be maintained on the property by Owner.
- 4.2.2.1.5.7 This insurance shall include a waiver of subrogation in favor of Owner, the Contractor, and all

subcontractors and sub-subcontractors in the work.

- 4.2.2.1.5.8 As applicable, Flood deductible shall not exceed \$250,000 for Zone A, \$100,000 for Zone B and \$50,000 for all other Zones. For Tier 1 and Tier 2, Named Windstorm deductible shall not exceed 2% of the project values in place at the time of the loss.
- 4.2.2.1.5.9 Before the commencement of the work, Contractor shall provide to Owner an accurate certificate of insurance that provides specific evidence of all requirements outlined in Section 4.2.2.1.5. A copy of the policy itself shall be provided to Owner within 30 days after Notice to Proceed.
- 4.2.2.1.5.10 Refer to Owner's Special Conditions for possible additional Builders Risk insurance requirements.

Builders Risk Requirement for Projects with a Contract Sum \geq \$20 million

- 4.2.2.1.5.1 Contractor shall purchase and maintain in force builders risk insurance on the entire Work. Such insurance shall be written in the amount of the original contract, plus any subsequent change orders and plus the cost of materials supplied or installed by others, comprising Total Value for the entire Project at the site. The insurance shall apply on a replacement cost basis with no coinsurance provision and shall include a margin clause of plus/minus 10% on project value. A sublimit may be applicable to flood coverage, but sublimit must be at least 20% of the Total Value of the Project. A sublimit of \$50 million or the Total Value of the Project, whichever is less, is acceptable for Earthquake. The limit for all other perils, including Named Windstorm, Wind, and Hail, must be equal to the Total Value for the entire Project at the site. (If Installation Floater, limit shall be equal to 100 percent of the contract cost.)
- 4.2.2.1.5.2 This insurance shall name as insureds the Owner, the Contractor, and all subcontractors and subsubcontractors in the Work.
- 4.2.2.1.5.3 Builders risk insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against fire and extended coverage perils, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, boiler and machinery/mechanical breakdown, testing and startup, and terrorism.
- 4.2.2.1.5.4 This insurance shall cover the entire work at the site as required in 4.2.2.1.5.1, including, but not limited to, the following:

Coverage	Minimum Limit Required
Temporary works including but not limited to	\$1 million
scaffolding, form work, fences, shoring, hoarding,	
falsework and temporary buildings	
Offsite Storage	Sufficient to cover the anticipated maximum values
	stored offsite
Portions of the work in Transit	Sufficient to cover the anticipated maximum values in
	transit
Debris Removal	25% of Physical damage amount subject to maximum
	of \$5 million or 25% of Total Value of Project
	whichever is higher
Expediting Expenses	\$1 million
Extra Expense	\$5 million
Demolition and Increased Cost of Construction	\$2 million or 10% of Total Value of Project whichever
	is higher
Pollutant Clean-Up and Removal	\$250,000
Trees, Shrubs, Plants, Lawns and Landscaping (if	\$2,500 per item subject to a maximum of \$1 million
applicable)	
Errors & Omissions (applicable to purchase of Builders	\$2.5 million

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Risk policy o	nly)	
4.2.2.1.5.5	This insurance shall not contain an occupancy clause suspending or reducing coverage should the Owner occupy, or begin beneficial occupancy before the Owner has accepted final completion.	
4.2.2.1.5.6	This insurance shall be specific as to coverage and shall be primary to any permanent insurance or self-insurance that may be maintained on the property by Owner.	
4.2.2.1.5.7	This insurance shall include a waiver of subrogation in favor of Owner, the Contractor, and all subcontractors and sub-subcontractors in the work.	
4.2.2.1.5.8	As applicable, Flood deductible shall not exceed \$250,000 for Zone A, \$100,000 for Zone B and \$50,000 for all other Zones. For Tier 1 and Tier 2, Named Windstorm deductible shall not exceed 2% of the project values in place at the time of the loss.	
4.2.2.1.5.9	Before the commencement of the work, Contractor shall provide to Owner an accurate certificate of insurance that provides specific evidence of all requirements outlined in Section 5.2.2.1.5. A copy of the policy itself shall be provided to Owner within 30 days after Notice to Proceed.	
4.2.2.1.5.10	Refer to Owner's Special Conditions for possible additional Builders Risk insurance requirements.	
	4.2.2.1.6 <u>"Umbrella" Liability Insurance.</u> Contractor shall obtain, pay for and maintain umbrella liability insurance during the Contract term,	

- maintain umbrella liability insurance during the Contract term, insuring Contractor (or Subcontractor) that provides coverage at least as broad as and applies in excess and follows form of the primary liability coverages required above. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted.
- 4.2.2.1.7 "Umbrella" Liability Insurance coverage shall be in the following amounts:
 - If Contract sum is \$1,000,000 or less: No Umbrella Required
 - If Contract Sum is greater than \$1,000,000 up to \$3,000,000: \$1,000,000 each occurrence and \$2,000,000 annual aggregate
 - If Contract Sum is greater than \$3,000,000 up to \$5,000,000: \$5,000,000 each occurrence and \$5,000,000 annual aggregate
 - If Contract Sum is greater than \$5,000,000:
 \$10,000,000 each occurrence and \$10,000,000 annual aggregate

4.2.3 <u>All Policies must include the following clauses, as applicable:</u>

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- 4.2.3.1 Contractor must provide to Owner immediate notice of cancellation, material change, or non-renewal to any insurance coverages required herein above. This requirement may be satisfied by the Contractor providing a copy of the notice received by the insurer to Owner within two business days of date of receipt or by Endorsement of the policies that require Insurer to provide notice to Owner.
- 4.2.3.2 It is agreed that Contractor's insurance shall be deemed primary with respect to any insurance or self insurance carried by Owner for liability arising out of operations under the Contract with Owner.
- 4.2.3.3 Owner, its officials, directors, employees, representatives, and volunteers are added as additional insureds as respects operations and activities of, or on behalf of the

named insured performed under Contract with Owner. The additional insured status must cover completed operations as well. This is not applicable to workers' compensation policies.

- 4.2.3.4 A waiver of subrogation in favor of Owner shall be provided in all policies.
- 4.2.3.5 If Owner is damaged by the failure of Contractor (or Subcontractor) to maintain insurance as required herein and/or as further described in Owner's Special Conditions, then Contractor shall bear all reasonable costs properly attributable to that failure.
- 4.2.4 Without limiting any of the other obligations or liabilities of Contractor, Contractor shall require each Subcontractor performing work under the Contract, at Subcontractor's own expense, to maintain during the term of the Contract, the same stipulated minimum insurance including the required provisions and additional policy conditions as shown above. As an alternative, Contractor may include its Subcontractors as additional insureds on its own coverage as prescribed under these requirements. Contractor's certificate of insurance shall note in such event that Subcontractors are included as additional insureds and that Contractor agrees to provide workers' compensation for Subcontractors and their employees. Contractor shall obtain and monitor the certificates of insurance from each Subcontractor in order to assure compliance with the insurance requirements. Contractor must retain the certificates of insurance for the duration of the Contract plus five (5) years and shall have the responsibility of enforcing these insurance requirements among its Subcontractors. Owner shall be entitled, upon request and without expense, to receive copies of these certificates.
- 4.2.5 Workers' compensation insurance coverage must meet the statutory requirements of Tex. Lab. Code § 401.011(44) and specific to construction projects for public entities as required by Tex. Lab. Code § 406.096.
- 4.2.5.1 Definitions:
 - 4.2.5.1.1 Certificate of coverage ("certificate")- A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (DWC-81, DWC-82, DWC-83, or DWC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.
 - 4.2.5.1.2 Duration of the project includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the Owner.
 - 4.2.5.1.3 Persons providing services on the project ("subcontractor" in §406.096) includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent Contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
- 4.2.5.2 The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the

Contractor providing services on the project, for the duration of the project.

- 4.2.5.3 The Contractor must provide a certificate of coverage to the Owner prior to being awarded the contract.
- 4.2.5.4 If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.
- 4.2.5.5 The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- 4.2.5.6 The Contractor shall notify the Owner in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- 4.2.5.7 The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Depart of Insurance Division of Workers' Compensation, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- 4.2.5.8 The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:
 - (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 - (2) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 - (3) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (4) obtain from each other person with whom it contracts, and provide to the Contractor:
 - (a) a certificate of coverage, prior to the other person beginning work on the project; and
 - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 - (6) notify the Owner in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 - (7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) (7), with the certificates of coverage to be provided to the person for whom they are providing services.

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- 4.2.5.9 By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the Owner that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- 4.2.5.10 The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the Owner to declare the contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the Owner.

Article 5. Construction Documents, Coordination Documents, and Record Documents

- 5.1 Drawings and Specifications.
 - 5.1.1 <u>Copies Furnished.</u> Contractor will be furnished, free of charge, the number of complete sets of the Drawings, Specifications, and addenda as provided in the Agreement or the Owner's Special Conditions. Additional complete sets of Drawings and Specifications, if requested, will be furnished at reproduction cost to the entity requesting such additional sets. Electronic copies of such documents will be provided to Contractor without charge.
 - 5.1.2 <u>Ownership of Drawings and Specifications.</u> All Drawings, Specifications and copies thereof furnished by A/E are to remain A/E's property. These documents are not to be used on any other project, and with the exception of the Contract record set and electronic versions needed for warranty operations, are to be returned to the A/E, upon request, following completion of the Work.
 - 5.1.3 <u>Interrelation of Documents.</u> The Contract Documents as referenced in the Contract between Owner and Contractor are complementary, and what is required by one shall be as binding as if required by all.
 - 5.1.4 <u>Resolution of Conflicts in Documents.</u> Where conflicts may exist within the Contract Documents, the documents shall govern in the following order: (a) Change Orders, addenda, and written amendments to the Contract; (b) the Contract; (c) Drawings; (d) Specifications (but Specifications shall control over Drawings as to quality of materials and installation); and (e) other Contract Documents. Among other categories of documents having the same order of precedence, the term or provision that includes the latest date shall control. Contractor shall notify A/E and ODR for resolution of the issue prior to executing the Work in question.
 - 5.1.5 <u>Contractor's Duty to Review Contract Documents.</u> In order to facilitate its responsibilities for completion of the Work in accordance with and as reasonably inferable from the Contract Documents, prior to commencing the Work, Contractor shall examine and compare the Contract Documents, information furnished by Owner, relevant field measurements made by Contractor and any visible or reasonably anticipated conditions at the Site affecting the Work. This duty extends throughout the construction phase prior to commencing each particular work activity and/or system installation.
 - 5.1.6 Discrepancies and Omissions in Drawings and Specifications.
 - 5.1.6.1 Promptly report to ODR and to A/E the discovery of any apparent error, omission

or inconsistency in the Contract Documents prior to execution of the Work.

- 5.1.6.2 It is recognized that Contractor is not acting in the capacity of a licensed design professional, unless it is performing as a Design-Build firm.
- 5.1.6.3 It is further recognized that Contractor's examination of Contract Documents is to facilitate construction and does not create an affirmative responsibility to detect errors, omissions or inconsistencies or to ascertain compliance with applicable laws, building codes or regulations, unless it is performing as a Design-Build firm or a Construction Manager-at-Risk.
- 5.1.6.4 When performing as a Design-Build firm, Contractor has sole responsibility for discrepancies, errors, and omissions in the Drawings and Specifications.
- 5.1.6.5 When performing as a Construction Manager-at-Risk, Contractor has a shared responsibility with A/E for discovery and resolution of discrepancies, errors, and omissions in the Contract Documents. In such case, Contractor's responsibility pertains to review, coordination, and recommendation of resolution strategies within budget constraints.
- 5.1.6.6 Contractor has no liability for errors, omissions, or inconsistencies unless Contractor knowingly failed to report a recognized problem to Owner or the Work is executed under a Design-Build or Construction Manager-at-Risk Contract as outlined above. Should Contractor fail to perform the examination and reporting obligations of these provisions, Contractor is responsible for avoidable costs and direct and/or consequential damages.
- 5.1.6.7 Owner does not warrant or make any representations as to the accuracy, suitability or completeness of any information furnished to Contractor by Owner or it representatives.
- 5.2 <u>Requirements for Record Documents.</u> Contractor shall:
 - 5.2.1 Maintain at the Site one copy of all Drawings, Specifications, addenda, approved submittals, Contract modifications, and all Project correspondence. Keep current and maintain Drawings and Specifications in good order with postings and markings to record actual conditions of Work and show and reference all changes made during construction. Provide Owner and A/E access to these documents.
 - 5.2.2 Maintain the Record Documents which reflect the actual field conditions and representations of the Work performed, whether it be directed by addendum, Change Order or otherwise. Make available the Record Documents and all records prescribed herein for reference and examination by Owner and its representatives and agents.
 - 5.2.3 Update the Record Documents at least monthly prior to submission of periodic partial pay estimates. Failure to maintain current Record Documents constitutes cause for denial of a progress payment otherwise due.
 - 5.2.4 Prior to requesting Substantial Completion inspection Contractor shall furnish a copy of its marked-up Record Documents and a preliminary copy of each instructional manual, maintenance and operating manual, parts catalog, wiring diagrams, spare parts, specified written warranties and like publications, or parts for all installed equipment, systems, and like items and as described in the Contract Documents.
- 5.2.5 Once determined acceptable by ODR with input from A/E, provide one (1) reproducible copy and one (1) electronic media copy in a format acceptable to the ODR `of all Record Documents, {00010282 / y / LEGAL / FORMS / 11/16/2018}

unless otherwise required by the Owner's Special Conditions.

- 5.2.6 Contractor shall be responsible for updating the Record Documents for all Contractor initiated documents and changes to the Contract Documents due to coordination and actual field conditions, including RFIs.
- 5.2.7 A/E shall be responsible for updating the Record Documents for any addenda, Change Orders, A/E supplemental instructions and any other alterations to the Contract Documents generated by A/E or Owner.

Article 6. Construction Safety

- 6.1 <u>General.</u> It is the duty and responsibility of Contractor and all of its Subcontractors to be familiar with, enforce and comply with all requirements of Public Law No. 91-596, 29 U.S.C. § 651 et. seq., the Occupational Safety and Health Act of 1970, (OSHA) and all amendments thereto. Contractor shall prepare a safety plan specific to the Project and submit it to ODR and A/E prior to commencing Work. In addition, Contractor and all of its Subcontractors shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property to protect them from damage, injury or loss and erect and maintain all necessary safeguards for such safety and protection.
- 6.2 <u>Notices.</u> Contractor shall provide notices as follows:
 - 6.2.1 Notify owners of adjacent property including those that own or operate utility services and/or underground facilities, and utility owners, when prosecution of the Work may affect them or their facilities, and cooperate with them in the protection, removal, relocation and replacement, and access to their facilities and/or utilities.
 - 6.2.2 Coordinate the exchange of material safety data sheets (MSDSs) or other hazard communication information required to be made available to or exchanged between or among employers at the site in connection with laws and regulations. Maintain a complete file of MSDSs for all materials in use on site throughout the construction phase and make such file available to Owner and its agents as requested.
- 6.3 <u>Emergencies.</u> In any emergency affecting the safety of persons or property, Contractor shall act to minimize, mitigate, and prevent threatened damage, injury or loss.
 - 6.3.1 Have authorized agents of Contractor respond immediately upon call at any time of day or night when circumstances warrant the presence of Contractor to protect the Work or adjacent property from damage or to take such action pertaining to the Work as may be necessary to provide for the safety of the public.
 - 6.3.2 Give ODR and A/E prompt notice of all such events.
 - 6.3.3 If Contractor believes that any changes in the Work or variations from Contract Documents have been caused by its emergency response, promptly notify Owner within seventy-two (72) hours of the emergency response event.
 - 6.3.4 Should Contractor fail to respond, Owner is authorized to direct other forces to take action as necessary and Owner may deduct any cost of remedial action from funds otherwise due Contractor.
- 6.4 <u>Injuries.</u> In the event of an incident or accident involving outside medical care for an individual on or near the Work, Contractor shall notify ODR and other parties as may be directed promptly, but no later than twenty-four (24) hours after Contractor learns that an event required medical care.

- 6.4.1 Record the location of the event and the circumstances surrounding it, by using photography or other means, and gather witness statements and other documentation which describes the event.
- 6.4.2 Supply ODR and A/E with an incident report no later than thirty-six (36) hours after the occurrence of the event. In the event of a catastrophic incident (one (1) fatality or three (3) workers hospitalized), barricade and leave intact the scene of the incident until all investigations are complete. A full set of incident investigation documents, including facts, finding of cause, and remedial plans shall be provided within one (1) week after occurrence, unless otherwise directed by legal counsel. Contractor shall provide ODR with written notification within one week of such catastrophic event if legal counsel delays submission of full report.
- 6.5 <u>Environmental Safety.</u> Upon encountering any previously unknown potentially hazardous material, or other materials potentially contaminated by hazardous material, Contractor shall immediately stop work activities impacted by the discovery, secure the affected area, and notify ODR immediately.
 - 6.5.1 Bind all Subcontractors to the same duty.
 - 6.5.2 Upon receiving such notice, ODR will promptly engage qualified experts to make such investigations and conduct such tests as may be reasonably necessary to determine the existence or extent of any environmental hazard. Upon completion of this investigation, ODR will issue a written report to Contractor identifying the material(s) found and indicate any necessary steps to be taken to treat, handle, transport or dispose of the material.
 - 6.5.3 Owner may hire third-party Contractors to perform any or all such steps.
 - 6.5.4 Should compliance with ODR's instructions result in an increase in Contractor's cost of performance, or delay the Work, Owner will make an equitable adjustment to the Contract Sum and/or the time of completion, and modify the Contract in writing accordingly.
- 6.6 <u>Trenching Plan.</u> When the project requires excavation which either exceeds a depth of four (4) feet, or results in any worker's upper body being positioned below grade level, Contractor is required to submit a trenching plan to ODR prior to commencing trenching operations unless an engineered plan is part of the Contract Documents. The plan is required to be prepared and sealed by a professional engineer registered in the State of Texas, and hired or employed by Contractor or Subcontractor to perform the work. Said engineer cannot be anyone who is otherwise either directly or indirectly engaged on this project.

Article 7. Quality Control

- 7.1 <u>Materials & Workmanship.</u> Contractor shall execute Work in a good and workmanlike matter in accordance with the Contract Documents. Contractor shall develop and provide a quality control plan specific to this Project and acceptable to Owner. Where Contract Documents do not specify quality standards, complete and construct all Work in compliance with generally accepted construction industry standards. Unless otherwise specified, incorporate all new materials and equipment into the Work under the Contract.
- 8.2 <u>Testing.</u>
 - 7.2.1 Owner is responsible for coordinating and paying for routine and special tests required to confirm compliance with quality and performance requirements, except as stated below or otherwise required by the Contract Documents.
 - 7.2.2 Contractor shall provide the following testing as well as any other testing required of Contractor by the Specifications:

- 7.2. 2.1 Any test of basic material or fabricated equipment included as part of a submittal for a required item in order to establish compliance with the Contract Documents.
- 7.2. 2.2 Any test of basic material or fabricated equipment offered as a substitute for a specified item on which a test may be required in order to establish compliance with the Contract Documents.
- 7.2. 2.3 Preliminary, start-up, pre-functional and operational testing of building equipment and systems as necessary to confirm operational compliance with requirements of the Contract Documents.
- 7.2. 2.4 All subsequent tests on original or replaced materials conducted as a result of prior testing failure.
- 7.2. 3 All testing shall be performed in accordance with standard test procedures by an accredited laboratory, or special consultant as appropriate, acceptable to Owner. Results of all tests shall be provided promptly to ODR, A/E, and Contractor.
- 7.2. 4 <u>Non-Compliance (Test Results)</u>. Should any of the tests indicate that a material and/or system does not comply with the Contract requirements, the burden of proof remains with Contractor, subject to:
 - 7.2. 4.1 Contractor selection and submission of the laboratory for Owner acceptance.
 - 7.2. 4.2 Acceptance by Owner of the quality and nature of tests.
 - 7.2. 4.3 All tests taken in the presence of A/E and/or ODR, or their representatives.
 - 7.2. 4.4 If tests confirm that the material/systems comply with Contract Documents, Owner will pay the cost of the test.
 - 7.2. 4.5 If tests reveal noncompliance, Contractor will pay those laboratory fees and costs of that particular test and all future tests, of that failing Work, necessary to eventually confirm compliance with Contract Documents.
 - 7.2. 4.6 Proof of noncompliance with the Contract Documents will make Contractor liable for any corrective action which ODR determines appropriate, including complete removal and replacement of non-compliant work or material.
- 7.2. 5 <u>Notice of Testing</u>. Contractor shall give ODR and A/E timely notice of its readiness and the date arranged so ODR and A/E may observe such inspection, testing, or approval.
- 7.2. 6 <u>Test Samples.</u> Contractor is responsible for providing Samples of sufficient size for test purposes and for coordinating such tests with their Work Progress Schedule to avoid delay.
- 7.2. 7 <u>Covering Up Work.</u> If Contractor covers up any Work without providing Owner an opportunity to inspect, Contractor shall, if requested by ODR, uncover and recover the work at Contractor's expense.
- 7.3 <u>Submittals.</u>
 - 7.3.1 <u>Contractor's Submittals.</u> Contractor shall submit with reasonable promptness consistent with the Project schedule and in orderly sequence all Shop Drawings, Samples, or other information required by the Contract Documents, or subsequently required by Change Order. Prior to submitting, Contractor shall review each submittal for general compliance with Contract
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Documents and approve submittals for review by A/E and Owner by an approval stamp affixed to each copy. Submittal data presented without Contractor's stamp of approval will be returned without review or comment. Any delay resulting from Contractor's failure to certify approval of the Submittal is Contractor's responsibility.

- 7.3.1.1 Contractor shall within twenty-one (21) days of the effective date of the Notice To Proceed with construction, submit to ODR and A/E, a submittal schedule/register, organized by specification section, listing all items to be furnished for review and approval by A/E and Owner. The list shall include Shop Drawings, manufacturer's literature, certificates of compliance, materials Samples, materials colors, guarantees, and all other items identified throughout the Specifications.
- 7.3.1.2 Contractor shall indicate the type of item, Contract requirements reference, and Contractor's scheduled dates for submitting the item along with the requested dates for approval answers from A/E and Owner. The submittal register shall indicate the projected dates for procurement of all included items and shall be updated at least monthly with actual approval and procurement dates. Contractor's Submittal Register must be reasonable in terms of the review time for complex submittals. Contractor's submittal schedule must be consistent with the Work Progress Schedule and identify critical submittals. Show and allow a minimum of fifteen (15) days duration after receipt by A/E and ODR for review and approval. If resubmittal required, allow a minimum of an additional fifteen (15) days for review. Submit the updated Submittal Register with each request for progress payment. Owner may establish routine review procedures and schedules for submittals at the preconstruction conference and/or elsewhere in the Contract Documents. If Contractor fails to update and provide the Submittal Register as required, Owner may, after seven (7) days notice to Contractor withhold a reasonable sum of money that would otherwise be due Contractor.
- 7.3.1.3 Contractor shall coordinate the Submittal Register with the Work Progress Schedule. Do not schedule Work requiring a submittal to begin prior to scheduling review and approval of the related submittal. Revise and/or update both schedules monthly to ensure consistency and current project data. Provide to ODR the updated Submittal Register and schedule with each application for progress payment. Refer to requirements for the Work Progress Schedule for inclusion of procurement activities therein. Regardless, the Submittal Register shall identify dates submitted and returned and shall be used to confirm status and disposition of particular items submitted, including approval or other action taken and other information not conveniently tracked through the Work Progress Schedule.
- 7.3.1.4 By submitting Shop Drawings, Samples or other required information, Contractor represents that it has determined and verified all applicable field measurements, field construction criteria, materials, catalog numbers and similar data; and has checked and coordinated each Shop Drawing and Sample with the requirements of the Work and the Contract Documents.
- 7.3.2 <u>Review of Submittals.</u> A/E and ODR review is only for conformance with the design concept and the information provided in the Contract Documents. Responses to submittals will be in writing. The approval of a separate item does not indicate approval of an assembly in which the item functions. The approval of a submittal does not relieve Contractor of responsibility for any deviation from the requirements of the Contract unless Contractor informs A/E and ODR of such deviation in a clear, conspicuous, and written manner on the submittal transmittal and at the time of submission, and obtains Owner's written specific approval of the particular deviation.

 $7.3.3 \quad \underline{Correction \ and \ Resubmission.} \quad Contractor \ shall \ make \ any \ corrections \ required \ to \ a \ submittal \\ \{00010282 / v / / LEGAL / FORMS / 11/16/2018\}$

and resubmit the required number of corrected copies promptly so as to avoid delay, until submittal approval. Direct attention in writing to A/E and ODR, when applicable, to any new revisions other than the corrections requested on previous submissions.

- 7.3.4 <u>Limits on Shop Drawing Review.</u> Contractor shall not commence any Work requiring a submittal until review of the submittal under Subsection 7.3.2. Construct all such work in accordance with reviewed submittals. Comments incorporated as part of the review in Subsection 7.3.2 of Shop Drawings and Samples is not authorization to Contractor to perform extra work or changed work unless authorized through a Change Order. A/E's and ODR's review, if any, does not relieve Contractor from responsibility for defects in the Work resulting from errors or omissions of any kind on the submittal, regardless of any approval action.
- 7.3.5 <u>No Substitutions Without Approval.</u> ODR and A/E may receive and consider Contractor's request for substitution when Contractor agrees to reimburse Owner for review costs and satisfies the requirements of this section. If Contractor does not satisfy these conditions, ODR and A/E will return the request without action except to record noncompliance with these requirements. Owner will not consider the request if Contractor cannot provide the product or method because of failure to pursue the Work promptly or coordinate activities properly. Contractor's request for a substitution may be considered by ODR and A/E when:
 - 7.3.5.1 The Contract Documents do not require extensive revisions; and
 - 7.3.5.2 Proposed changes are in keeping with the general intent of the Contract Documents and the design intent of A/E and do not result in an increase in cost to Owner; and
 - 7.3.5.3 The request is timely, fully documented, properly submitted and one or more of the following apply:
 - 7.3.5.3.1 Contractor cannot provide the specified product, assembly or method of construction within the Contract Time;
 - 7.3.5.3.2 The request directly relates to an "or-equal" clause or similar language in the Contract Documents;
 - 7.3.5.3.3 The request directly relates to a "product design standard" or "performance standard" clause in the Contract Documents;
 - 7.3.5.3.4 The requested substitution offers Owner a substantial advantage in cost, time, energy conservation or other considerations, after deducting additional responsibilities Owner must assume;
 - 7.3.5.3.5 The specified product or method of construction cannot receive necessary approval by an authority having jurisdiction, and ODR can approve the requested substitution;
 - 7.3.5.3.6 Contractor cannot provide the specified product, assembly or method of construction in a manner that is compatible with other materials and where Contractor certifies that the substitution will overcome the incompatibility;
 - 7.3.5.3.7 Contractor cannot coordinate the specified product, assembly or method of construction with other materials and where Contractor certifies they can coordinate the proposed substitution; or
 - 7.3.5.3.8 The specified product, assembly or method of construction cannot provide a warranty required by the Contract Documents and where

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Contractor certifies that the proposed substitution provides the required warranty.

- 7.3.6 <u>Unauthorized Substitutions at Contractor's Risk.</u> Contractor is financially responsible for any additional costs or delays resulting from unauthorized substitution of materials, equipment or fixtures other than those specified. Contractor shall reimburse Owner for any increased design or contract administration costs resulting from such unauthorized substitutions.
- 7.4 <u>Field Mock-up.</u>
 - 7.4.1 Mock-ups shall be constructed prior to commencement of a specified scope of work to confirm acceptable workmanship.
 - 7.4.1.1 As a minimum, field mock-ups shall be constructed for roofing systems, exterior veneer / finish systems, glazing systems, and any other Work requiring a mock-up as identified throughout the Contract Documents. Mock-ups for systems not part of the Project scope shall not be required.
 - 7.4.1.2 Mock-ups may be incorporated into the Work if allowed by the Contract Documents and if acceptable to ODR. If mock-ups are freestanding, they shall remain in place until otherwise directed by Owner.
 - 7.4.1.3 Contractor shall include field mock-ups in their Work Progress Schedule and shall notify ODR and A/E of readiness for review sufficiently in advance to coordinate review without delay.

7.5 <u>Inspection During Construction.</u>

- 7.5.1 Contractor shall provide sufficient, safe, and proper facilities, including equipment as necessary for safe access, at all reasonable times for observation and/or inspection of the Work by Owner and its agents.
- 7.5.2 Contractor shall not cover up any Work with finishing materials or other building components prior to providing Owner and its agents an opportunity to perform an inspection of the Work.
 - 7.5.2.1 Should corrections of the Work be required for approval, Contractor shall not cover up corrected Work until Owner indicates approval.
 - 7.5.2.2 Contractor shall provide notification of at least five (5) working days or otherwise as mutually agreed, to ODR of the anticipated need for a cover-up inspection. Should ODR fail to make the necessary inspection within the agreed period, Contractor may proceed with cover-up Work, but is not relieved of responsibility for Work to comply with requirements of the Contract Documents.

Article 8. Construction Schedules

8.1 <u>Contract Time.</u> **TIME IS AN ESSENTIAL ELEMENT OF THE CONTRACT.** The Contract Time is the time between the dates indicated in the Notice to Proceed for commencement of the Work and for achieving Substantial Completion. The Contract Time can be modified only by Change Order. Failure to achieve Substantial Completion within the Contract Time *or* as otherwise agreed to in writing will cause damage to Owner and may subject Contractor to liquidated damages as provided in the Contract Documents. If Contractor fails to achieve Final Completion in a reasonable time after Substantial Completion, Contractor shall be responsible for Owner's damages including, but not limited to, additional inspection, project management, and maintenance cost to the extent caused by Contractor's failure to achieve Final Completion.

- 8.2 <u>Notice to Proceed.</u> Owner will issue a Notice to Proceed which shall state the dates for beginning Work and for achieving Substantial Completion of the Work.
- 8.3 <u>Work Progress Schedule.</u> Refer to Owner's Special Conditions and Division 1 of the Specifications for additional schedule requirements. Unless indicated otherwise in those documents, Contractor shall submit their initial Work Progress Schedule for the Work in relation to the entire Project not later than twenty-one (21) calendar days after the effective date of the Notice to Proceed to ODR and A/E. Unless otherwise indicated in the Contract Documents, the Work Progress Schedule shall be computerized Critical Path Method (CPM) with fully editable logic. This initial schedule shall indicate the dates for starting and completing the various aspects required to complete the Work, including mobilization, procurement, installation, testing, inspection, delivery of Close-out Documents and acceptance of all the Work of the Contract. When acceptable to Owner, the initially accepted schedule shall be the Baseline Schedule for comparison to actual conditions throughout the Contract duration.

Note: This article pertains to construction phase schedules. Additional requirements for design phase scheduling for Construction Manager-at-Risk and Design-Build contracts are outlined in Division 1 Project Planning and Scheduling Specifications.

- 8.3.1 <u>Schedule Requirements.</u> Contractor shall submit electronic and paper copy of the initial Work Progress Schedule reflecting accurate and reliable representations of the planned progress of the Work, the Work to date if any, and of Contractor's actual plans for its completion. Contractor shall organize and provide adequate detail so the schedule is capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities.
 - 8.3.1.1 Contractor shall re-submit initial schedule as required to address review comments from A/E and ODR until such schedule is accepted as the Baseline Schedule.
 - 8.3.1.2 Submittal of a schedule, schedule revision or schedule update constitutes Contractor's representation to Owner of the accurate depiction of all progress to date and that Contractor will follow the schedule as submitted in performing the Work.
- 8.3.2 <u>Schedule Updates.</u> Contractor shall update the Work Progress Schedule and the Submittal Register monthly, as a minimum, to reflect progress to date and current plans for completing the Work, while maintaining original schedule as Baseline Schedule and submit paper and electronic copies of the update to A/E and ODR as directed, but as a minimum with each request for payment. Owner has no duty to make progress payments unless accompanied by the updated Work Progress Schedule. Show the anticipated date of completion reflecting all extensions of time granted through Change Order as of the date of the update. Contractor may revise the Work Progress Schedule when in Contractor's judgment it becomes necessary for the management of the Work. Contractor shall identify all proposed changes to schedule logic to Owner and to A/E via an executive summary accompanying the updated schedule for review prior to final implementation of revisions into a revised Baseline Schedule. Schedule changes that materially impact Owner's operations shall be communicated promptly to ODR and shall not be incorporated into the revised Baseline Schedule without ODR's consent.
- 8.3.3 The Work Progress Schedule is for Contractor's use in managing the Work and submittal of the schedule, and successive updates or revisions, is for the information of Owner and to demonstrate that Contractor has complied with requirements for planning the Work. Owner's acceptance of a schedule, schedule update or revision constitutes Owner's agreement to coordinate its own activities with Contractor's activities as shown on the schedule.
 - 8.3.3.1 Acceptance of the Work Progress Schedule, or update and/or revision thereto does not indicate any approval of Contractor's proposed sequences and duration.
- 8.3.3.2 Acceptance of a Work Progress Schedule update or revision indicating early or late completion does not constitute Owner's consent, alter the terms of the Contract, or {00010282/v//LEGAL/FORMS/11/16/2018}

waive either Contractor's responsibility for timely completion or Owner's right to damages for Contractor's failure to do so.

- 8.3.3.3 Contractor's scheduled dates for completion of any activity or the entire Work do not constitute a change in terms of the Contract. Change Orders are the only method of modifying the Substantial Completion Date(s) and Contract Time.
- 8.4 <u>Ownership of Float.</u> Unless indicated otherwise in the Contract Documents, Contractor shall develop its schedule, pricing, and execution plan to provide a minimum of ten (10) percent total float at acceptance of the Baseline Schedule. Float time contained in the Work Progress Schedule is not for the exclusive benefit of Contractor or Owner, but belongs to the Project and may be consumed by either party. Before Contractor uses any portion of the float Contractor must submit a written request to do so to the Owner and receive Owner's written authorization to use the float. Owner's approval shall not be unreasonably withheld.
- 8.5 <u>Completion of Work.</u> Contractor is accountable for completing the Work within the Contract Time stated in the Contract, or as otherwise amended by Change Order.
 - 8.5.1 If, in the judgment of Owner, the work is behind schedule and the rate of placement of work is inadequate to regain scheduled progress to insure timely completion of the entire work or a separable portion thereof, Contractor, when so informed by Owner, shall immediately take action to increase the rate of work placement by:
 - 8.5.1.1 An increase in working forces.
 - 8.5.1.2 An increase in equipment or tools.
 - 8.5.1.3 An increase in hours of work or number of shifts.
 - 8.5.1.4 Expedite delivery of materials.
 - 8.5.1.5 Other action proposed if acceptable to Owner.
 - 8.5.2 Within ten (10) days after such notice from ODR, Contractor shall notify ODR in writing of the specific measures taken and/or planned to increase the rate of progress. Contactor shall include an estimate as to the date of scheduled progress recovery and an updated Work Progress Schedule illustrating Contractor's plan for achieving timely completion of the Project. Should ODR deem the plan of action inadequate, Contractor shall take additional steps or make adjustments as necessary to its plan of action until it meets with ODR's approval.

8.6 <u>Modification of the Contract Time.</u>

- 8.6.1 Delays and extension of time as hereinafter described are valid only if executed in accordance with provisions set forth in Article 10.
- 8.6.2 When a delay defined herein as excusable prevents Contractor from completing the Work within the Contract Time, Contractor is entitled to an extension of time. Owner will make an equitable adjustment and extend the number of days lost because of excusable delay or Weather Days, as measured by Contractor's progress schedule. All extensions of time will be granted in calendar days. In no event, however, will an extension of time be granted for delays that merely extend the duration of non-critical activities, or which only consume float without delaying the project Substantial Completion date(s).
- 8.6.2.1 A "Weather Day" is a day on which Contractor's current schedule indicates Work is to be done, and on which inclement weather and related site conditions prevent Contractor from performing seven (7) hours of Work between the hours of 7:00 a.m. {00010282/y//LEGAL/FORMS/11/16/2018}

and 6:00 p.m. Weather days are excusable delays. When weather conditions at the site prevent work from proceeding, Contractor shall immediately notify ODR for confirmation of the conditions. At the end of each calendar month, Contractor shall submit to ODR and A/E a list of Weather Days occurring in that month along with documentation of the impact on critical activities. Based on confirmation by ODR, any time extension granted will be issued by Change Order. If Contractor and Owner cannot agree on the time extension, Owner may issue a ULCO for fair and reasonable time extension.

- 8.6.2.2 <u>Excusable Delay.</u> Contractor is entitled to an equitable adjustment of the Contract Time, issued via change order, for delays caused by the following:
 - 8.6.2.2.1 Errors, omissions and imperfections in design, which A/E corrects by means of changes in the Drawings and Specifications.
 - 8.6.2.2.2 Unanticipated physical conditions at the Site, which A/E corrects by means of changes to the Drawings and Specifications or for which ODR directs changes in the Work identified in the Contract Documents.
 - 8.6.2.2.3 Changes in the Work that effect activities identified in Contractor's schedule as "critical" to completion of the entire Work, if such changes are ordered by ODR or recommended by A/E and ordered by ODR.
 - 8.6.2.2.4 Suspension of Work for unexpected natural events (sometimes called "acts of God"), civil unrest, strikes or other events which are not within the reasonable control of Contractor.
 - 8.6.2.2.5 Suspension of Work for convenience of ODR, which prevents Contractor from completing the Work within the Contract Time.
- 8.6.3 Contractor's relief in the event of such delays is the time impact to the critical path as determined by analysis of Contractor's schedule. In the event that Contractor incurs additional direct costs because of the excusable delays other than described in Subparagraph 8.6.2.2.4 and within the reasonable control of Owner, the Contract price and Contract Time are to be equitably adjusted by Owner pursuant to the provisions of Article 10.
- 8.7 <u>No Damages for Delay.</u> An extension of the Contract Time shall be the sole remedy of Contractor for delays in performance of the Work, whether or not such delays are foreseeable, except for delays caused solely by acts of Owner that constitute intentional interference with Contractor's performance of the Work and then only to the extent such acts continue after Contractor notifies Owner in writing of such interference. For delays caused by any act(s) other than the sole intentional interference of Owner, Contractor shall not be entitled to any compensation or recovery of any damages including, without limitation, consequential damages, lost opportunity costs, impact damages, loss of productivity, or other similar damages. Owner's exercise of any of its rights or remedies under the Contract including, without limitation, ordering changes in the Work or directing suspension, rescheduling, or correction of the Work, shall not be construed as intentional interference with Contractor's performance of the Work regardless of the extent or frequency of Owner's exercise of such rights or remedies.
- 8.8 <u>Concurrent Delay.</u> When the completion of the Work is simultaneously delayed by an excusable delay and a delay arising from a cause not designated as excusable, Contractor may not be entitled to a time extension for the period of concurrent delay.
- 8.9 <u>Other Time Extension Requests.</u> Time extensions requested in association with changes to the Work directed or requested by Owner shall be included with Contractor's proposed costs for such change. Time extensions requested for inclement weather are covered by Paragraph 8.6.2.1 above. If Contractor

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believes that the completion of the Work is delayed by a circumstance other than for changes directed to the Work or weather, they shall give ODR written notice, stating the nature of the delay and the activities potentially affected, within five (5) days after the onset of the event or circumstance giving rise to the excusable delay. Contractor shall provide sufficient written evidence to document the delay. In the case of a continuing cause of delay, only one notice of claim is necessary. Claims for extensions of time shall be stated in numbers of whole or half days.

- 8.9.1 Within ten (10) days after the cessation of the delay, Contractor shall formalize its request for extension of time in writing to include a full analysis of the schedule impact of the delay and substantiation of the excusable nature of the delay. All changes to the Contract Time or made as a result of such claims is by Change Order, as set forth in Article 10.
- 8.9.2 No extension of time releases Contractor or the Surety furnishing a performance or payment bond from any obligations under the Contract or such a bond. Those obligations remain in full force until the discharge of the Contract.
- 8.9.3 <u>Contents of Time Extension Requests.</u> Contractor shall provide with each Time Extension Request a quantitative demonstration of the impact of the delay on project completion time, based on the Work Progress Schedule. Contractor shall include with Time Extension Requests a reasonably detailed narrative setting forth:
 - 8.9.3.1 The nature of the delay and its cause; the basis of Contractor's claim of entitlement to a time extension.
 - 8.9.3.2 Documentation of the actual impacts of the claimed delay on the critical path indicated in Contractor's Work Progress Schedule, and any concurrent delays.
 - 8.9.3.3 Description and documentation of steps taken by Contractor to mitigate the effect of the claimed delay, including, when appropriate, the modification of the Work Progress Schedule.
- 8.9.4 <u>Owner's Response.</u> Owner will respond to the Time Extension Request by providing to Contractor written notice of the number of days granted, if any, and giving its reason if this number differs from the number of days requested by Contractor.
 - 8.9.4.1 Owner will not grant time extensions for delays that do not affect the Contract Substantial Completion date.
 - 8.9.4.2 Owner will respond to each properly submitted Time Extension Request within fifteen (15) days following receipt. If Owner cannot reasonably make a determination about Contractor's entitlement to a time extension within that time, Owner will notify Contractor in writing. Unless otherwise agreed by Contractor, Owner has no more than fifteen (15) additional days to prepare a final response. If Owner fails to respond within forty-five (45) days from the date the Time Extension Request is received, Contractor's request for a time extension shall be deemed rejected by Owner.
- 8.10 Failure to Complete Work Within the Contract Time. TIME IS AN ESSENTIAL ELEMENT OF THE CONTRACT. Contractor's failure to substantially complete the Work within the Contract Time or to achieve Substantial Completion as required will cause damage to Owner. These damages shall *may* be liquidated by agreement of Contractor and Owner, in the amount per day as set forth in the Contract Documents.
- 8.11 <u>Liquidated Damages.</u> Owner may collect liquidated damages due from Contractor directly or indirectly by reducing the Contract Sum in the amount of liquidated damages stated in the Agreement or the Owner's Special Conditions.
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Article 9. Payments

- 9.1 <u>Schedule of Values.</u> Contractor shall submit to ODR and A/E for acceptance a Schedule of Values accurately itemizing material and labor for the various classifications of the Work based on the organization of the specification sections and of sufficient detail acceptable to ODR. The accepted Schedule of Values will be the basis for the progress payments under the Contract.
 - 9.1.1 No progress payments will be made prior to receipt and acceptance of the Schedule of Values, provided in such detail as required by ODR, and submitted not less than twenty-one (21) days prior to the first request for payment. The Schedule of Values shall follow the order of trade divisions of the Specifications and include itemized costs for general conditions, costs for preparing Close-Out documents, fees, contingencies, and Owner cash allowances, if applicable, so that the sum of the items will equal the Contract price. As appropriate, assign each item labor and/or material values, the subtotal thereof equaling the value of the work in place when complete.
 - 9.1.1.1 Owner requires that the Work items be inclusive of the cost of the Work items only. Any contract markups for overhead and profit, general conditions, etc., shall be contained within separate line items for those specific purposes which shall be divided into at least two (2) lines, one (1) for labor and one (1) for materials.
 - 9.1.2 Contractor shall retain a copy of all worksheets used in preparation of its bid or proposal, supported by a notarized statement that the worksheets are true and complete copies of the documents used to prepare the bid or proposal. Make the worksheets available to ODR at the time of Contract execution. Thereafter Contractor shall grant Owner during normal business hours access to said copy of worksheets at any time during the period commencing upon execution of the Contract and ending one year after final payment.
- 9.2. <u>Progress Payments.</u> Contractor will receive periodic progress payments for Work performed, materials in place, suitably stored on Site, or as otherwise agreed to by Owner and Contractor. Payment is not due until receipt by ODR or his designee of a correct and complete Pay Application in electronic and/or hard copy format as set forth in the Agreement or the Owner's Special Conditions, and certified by A/E. Progress payments are made provisionally and do not constitute acceptance of work not in accordance with the Contract Documents. Owner will not process payment applications for Change Order Work until all parties execute the Change Order.
 - 9.2.1 <u>Preliminary Pay Worksheet</u>. Once each month that a progress payment is to be requested, the Contractor shall submit to A/E and ODR a complete, clean copy of a preliminary pay worksheet or preliminary pay application, to include the following:
 - 9.2.1.1 Contractor's estimate of the amount of Work performed, labor furnished and materials incorporated into the Work, using the established Schedule of Values;
 - 9.2.1.2 An updated Work Progress Schedule including the executive summary and all required schedule reports;
 - 9.2.1.3 Such additional documentation as Owner may require as set forth in the elsewhere in the Contract Documents; and
 - 9.2.1.4 Construction payment affidavit.
 - 9.2.2 <u>Contractor's Application for Payment.</u> As soon as practicable, but in no event later than seven (7) days after receipt of the preliminary pay worksheet, A/E and ODR will meet with Contractor to review the preliminary pay worksheet and to observe the condition of the Work. Based on this review, ODR and A/E may require modifications to the preliminary pay worksheet prior to

the submittal of an Application for Payment, and will promptly notify Contractor of revisions necessary for approval. As soon as practicable, Contractor shall submit its Application for Payment on the appropriate and completed form, reflecting the required modifications to the Schedule of Values required by A/E and/or ODR. Attach all additional documentation required by ODR and/or A/E, as well as an affidavit affirming that all payrolls, bills for labor, materials, equipment, subcontracted work and other indebtedness connected with Contractor's Application for Payment are paid or will be paid within the time specified in Tex. Gov't Code, Chapter 2251. No Application for Payment is complete unless it fully reflects all required modifications, and attaches all required documentation including Contractor's affidavit.

- 9.2.3 <u>Certification by Architect/Engineer.</u> Within five (5) days or earlier following A/E's receipt of Contractor's formal Application for Payment, A/E will review the Application for Payment for completeness, and forward it to ODR. A/E will certify that the application is complete and payable, or that it is incomplete, stating in particular what is missing. If the Application for Payment is incomplete, Contractor shall make the required corrections and resubmit the Application for Payment for processing.
- 9.3 <u>Owner's Duty to Pay.</u> Owner has no duty to pay the Contractor except on receipt by ODR of: 1) a complete Application for Payment certified by A/E; 2) Contractor's updated Work Progress Schedule; and 3) confirmation that Contractor has maintained and updated the Record Documents kept at the Site.
 - 9.3.1 Payment for stored materials and/or equipment confirmed by Owner and A/E to be on-site or otherwise properly stored is limited to eighty-five (85) percent of the invoice price or eighty-five (85) percent of the scheduled value for the materials or equipment, whichever is less.
 - 9.3.2 <u>Retainage.</u> Owner will withhold from each progress payment, as retainage, five (5) percent of the total earned amount, the amount authorized by law, or as otherwise set forth in the Owner's Special Conditions. Retainage is managed in conformance with Tex. Gov't Code, Chapter 2252, Subchapter B.
 - 9.3.2.1 Contractor shall provide written consent of its surety for any request for reduction or release of retainage.
 - 9.3.2.2 Contractor shall not withhold retainage from their Subcontractors and suppliers in amounts that are any percentage greater than that withheld in its Contract with Owner under this subsection, unless otherwise acceptable to Owner.
 - 9.3.3 <u>Price Reduction to Cover Loss.</u> Owner may reduce any Application for Payment, prior to payment to the extent necessary to protect Owner from loss on account of actions of Contractor including, but not limited to, the following:
 - 9.3.3.1 Defective or incomplete Work not remedied;
 - 9.3.3.2 Damage to Work of a separate Contractor;
 - 9.3.3.3 Failure to maintain scheduled progress or reasonable evidence that the Work will not be completed within the Contract Time;
 - 9.3.3.4 Persistent failure to carry out the Work in accordance with the Contract Documents;
 - 9.3.3.5 Reasonable evidence that the Work cannot be completed for the unpaid portion of the Contract Sum;
 - 9.3.3.6 Assessment of fines for violations of prevailing wage rate law; or

 $9.3.3.6 \qquad Failure \ to \ include \ the \ appropriate \ amount \ of \ retainage \ for \ that \ periodic \ progress \ \{00010282 / v / / LEGAL / FORMS / 11/16/2018\}$

payment.

- 9.3.4 Title to all material and Work covered by progress payments transfers to Owner upon payment.
 - 9.3.4.1 Transfer of title to Owner does not relieve Contractor and its Subcontractors of the sole responsibility for the care and protection of materials and Work upon which payments have been made until final acceptance, or the restoration of any damaged Work, or waive the right of Owner to require the fulfillment of all the terms of the Contract.
- 9.4 <u>Progress Payments.</u> Progress payments to Contractor do not release Contractor or its surety from any obligations under the Contract.
 - 9.4.1 Upon Owner's request, Contractor shall furnish manifest proof of the status of Subcontractor's accounts in a form acceptable to Owner.
 - 9.4.2 Pay estimate certificates must be signed by a corporate officer or a representative duly authorized by Contractor.
 - 9.4.3 Provide copies of bills of lading, invoices, delivery receipts or other evidence of the location and value of such materials in requesting payment for materials.
 - 9.4.4 For purposes of Tex. Gov't Code § 2251.021(a)(2), the date the performance of service is complete is the date when ODR approves the Application for Payment.
- 9.5 <u>Off-Site Storage.</u> With prior approval by Owner and in the event Contractor elects to store materials at an off-site location, abide by the following conditions, unless otherwise agreed to in writing by Owner.
 - 9.5.1 Store materials in a commercial warehouse meeting the criteria stated below.
 - 9.5.2 Provide insurance coverage adequate not only to cover materials while in storage, but also in transit from the off-site storage areas to the Project Site. Copies of duly authenticated certificates of insurance, made out to insure the State agency which is signatory to the Contract, must be filed with Owner's representative.
 - 9.5.3 Inspection by Owner's representative is allowed at any time. Owner's inspectors must be satisfied with the security, control, maintenance, and preservation measures.
 - 9.5.4 Materials for this Project are physically separated and marked for the Project in a sectioned-off area. Only materials which have been approved through the submittal process are to be considered for payment.
 - 9.5.5 Owner reserves the right to reject materials at any time prior to final acceptance of the complete Contract if they do not meet Contract requirements regardless of any previous progress payment made.
 - 9.5.6 With each monthly payment estimate, submit a report to ODR and A/E listing the quantities of materials already paid for and still stored in the off-site location.
 - 9.5.7 Make warehouse records, receipts and invoices available to Owner's representatives, upon request, to verify the quantities and their disposition.
 - 9.5.8 In the event of Contract termination or default by Contractor, the items in storage off-site, upon which payment has been made, will be promptly turned over to Owner or Owner's agents at a location near the jobsite as directed by ODR. The full provisions of performance and payment bonds on this Project cover the materials off-site in every respect as though they were stored on

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the Project Site.

- 9.6 <u>Time for Payment by Contractor Pursuant to Tex. Gov't Code § 2251.022.</u>
 - 9.6.1 Contractor who receives a payment from Owner shall pay Subcontractor the appropriate share of the payment not later than the tenth (10th) day after the date Contractor receives the payment.
 - 9.6.2 The appropriate share is overdue on the eleventh (11th) day after the date Contractor receives the payment.

Article 10. Changes

- 10.1 <u>Change Orders.</u> A Change Order issued after execution of the Contract is a written order to Contractor, signed by ODR, Contractor, and A/E, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time can only be changed by Change Order. A Change Order signed by Contractor indicates his agreement therewith, including the adjustment in the Contract Sum and/or the Contract Time. ODR may issue a written authorization for Contractor to proceed with Work of a Change Order in advance of final execution by all parties in accordance with Section 10.9.
 - 10.1.1 Owner, without invalidating the Contract *and without approval of Contractor's Surety*, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, and the Contract Sum and the Contract Time will be adjusted accordingly. All such changes in the Work shall be authorized by Change Order or ULCO, and shall be performed under the applicable conditions of the Contract Documents. If such changes cause an increase or decrease in Contractor's cost of, or time required for, performance of the Contract, an equitable adjustment shall be made and confirmed in writing in a Change Order or a ULCO.
 - 10.1.2 Owner and Contractor acknowledge and agree that the Specifications and Drawings may not be complete or free from errors, omissions and imperfections and that they may require changes or additions in order for the Work to be completed to the satisfaction of Owner. Therefore, any minor errors, omissions or imperfections in the Specifications or Drawings, or any changes in or additions to the Specifications or Drawings to correct minor errors or omissions or to the Work ordered by Owner shall not constitute or give rise to any claim, demand or cause of action of any nature whatsoever in favor of Contractor, whether for breach of Contract, or otherwise. However, should the nature of the errors or omissions necessitate substantial changes in the Work such that a Change Order is appropriate, Owner shall be liable to Contractor for the sum stated to be due Contractor in any Change Order approved and signed by both parties. The sum established in any Change Order, together with any extension of time contained in said Change Order, shall constitute full compensation to Contractor for all costs, expenses and damages to Contractor for the changes in the Work described in the Change Order, as permitted under Tex. Gov't Code, Chapter 2260.
 - 10.1.3 Procedures for administration of Change Orders shall be established by Owner and stated in the Owner's Special Conditions, or elsewhere in the Contract Documents.
 - 10.1.4 No verbal order, verbal statement, or verbal direction of Owner or his duly appointed representative shall be treated as a change under this article or entitle Contractor to an adjustment.
 - 10.1.5 Contractor agrees that Owner or any of its duly authorized representatives shall have access and the right to examine any directly pertinent books, documents, papers, and records of Contractor. Further, Contractor agrees to include in all its subcontracts a provision to the effect that Subcontractor agrees that Owner or any of its duly authorized representatives shall have access

to and the right to examine any directly pertinent books, documents, papers and records of such Subcontractor relating to any claim arising from the Contract, whether or not the Subcontractor is a party to the claim. The period of access and examination described herein which relates to appeals under the Disputes article of the Contract, litigation, or the settlement of claims arising out of the performance of the Contract shall continue until final disposition of such claims, appeals or litigation.

10.2 <u>Unit Prices.</u> If unit prices are stated in the Contract Documents or subsequently agreed upon and if the quantities originally contemplated in setting the unit prices are so changed in a Proposed Change Order that application of the agreed unit prices to the quantities of work proposed will cause substantial inequity to Owner or Contractor, the applicable unit prices shall be equitably adjusted as provided in the Owner's Special Conditions or as agreed to by the parties and incorporated into a Change Order.

10.3 Claims for Additional Costs.

- 10.3.1 If Contractor wishes to make a claim for an increase in the Contract Sum not related to a requested change, it shall give Owner and A/E written notice thereof within twenty-one (21) days after the occurrence of the event or discovery of any conditions giving rise to such claim. Contractor must notify Owner and A/E before proceeding to execute any Work considered to add additional cost or time, except in an emergency endangering life or property in which case Contractor shall act in accordance with Subsection 6.2.1., and failure to provide the required notice will invalidate any subsequent notice or claim for additional cost or time for the Work. If Owner and Contractor cannot agree on the amount of the adjustment in the Contract Sum, it shall be determined as set forth under Article 14. Any change in the Contract Sum resulting from such claim shall be authorized by a Change Order or a ULCO.
- 10.3.2 If Contractor claims that additional cost is involved because of, but not limited to, 1) any written interpretation of the Contract Documents, 2) any order by Owner to stop the Work pursuant to Article 13 where Contractor was not at fault, or 3) any written order for a minor change in the Work issued pursuant to Section 10.4, Contractor shall make such claim as provided in Subsection 10.3.1.
- 10.3.3 Should Contractor or his Subcontractors fail to call attention of A/E to discrepancies or omissions in the Contract Documents, but claim additional costs for corrective Work after Contract award, Owner may assume intent to circumvent competitive bidding for necessary corrective Work. In such case, Owner may choose to let a separate Contract for the corrective Work, or issue a ULCO to require performance by Contractor. Claims for time extensions or for extra cost resulting from delayed notice of patent Contract Document discrepancies or omissions will not be considered by Owner.
- 10.4 <u>Minor Changes.</u> A/E, with concurrence of ODR, will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be effected by written order which Contractor shall carry out promptly and record on the Record Documents.
- 10.5 <u>Concealed Site Conditions.</u> Contractor is responsible for visiting the Site and being familiar with local conditions such as the location, accessibility, and general character of the Site and/or building. If, in the performance of the Contract, subsurface, latent, or concealed conditions at the Site are found to be materially different from the information included in the Contract Documents, or if unknown conditions of an unusual nature are disclosed differing materially from the conditions usually inherent in Work of the character shown and specified, ODR and A/E shall be notified in writing of such conditions before they are disturbed. Upon such notice, or upon its own observation of such conditions, A/E, with the approval of ODR, will promptly make such changes in the Drawings and Specifications as they deem necessary to conform to the different conditions, and any increase or decrease in the cost of the Work, or in the time within which the Work is to be completed, resulting from such changes will be adjusted by Change Order, subject to the prior approval of ODR.
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- 10.6 <u>Extension of Time.</u> All changes to the Contract Time shall be made as a consequence of requests as required under Section 8.6, and as documented by Change Order as provided under Section 10.1.
- 10.7 <u>Administration of Change Order Requests.</u> All changes in the Contract shall be administered in accordance with procedures approved by Owner, and when required, make use of such electronic information management system(s) as Owner may employ.
 - 10.7.1 Routine changes in the construction Contract shall be formally initiated by A/E by means of a PCO form detailing requirements of the proposed change for pricing by Contractor. This action may be preceded by communications between Contractor, A/E and ODR concerning the need and nature of the change, but such communications shall not constitute a basis for beginning the proposed Work by Contractor. Except for emergency conditions described below, approval of Contractor's cost proposal by A/E and ODR will be required for authorization to proceed with the Work being changed. Owner will not be responsible for the cost of Work changed without prior approval and Contractor may be required to remove Work so installed.
 - 10.7.2 All proposed costs for change order Work must be supported by itemized accounting of material, equipment and associated itemized installation costs in sufficient detail, following the outline and organization of the established Schedule of Values, to permit analysis by A/E and ODR using current estimating guides and/or practices. Photocopies of Subcontractor and vendor proposals shall be furnished unless specifically waived by ODR. Contractor shall provide written response to a change request within twenty-one (21) days of receipt.
 - 10.7.3 Any unexpected circumstance which necessitates an immediate change in order to avoid a delay in progress of the Work may be expedited by verbal communication and authorization between Contractor and Owner, with written confirmation following within twenty-four (24) hours. A limited scope not-to-exceed estimate of cost and time will be requested prior to authorizing Work to proceed. Should the estimate be impractical for any reason, ODR may authorize the use of detailed cost records of such work to establish and confirm the actual costs and time for documentation in a formal Change Order.
 - 10.7.4 Emergency changes to save life or property may be initiated by Contractor alone (see Section 6.3) with the claimed cost and/or time of such work to be fully documented as to necessity and detail of the reported costs and/or time.
 - 10.7.5 The method of incorporating approved Change Orders into the parameters of the accepted Schedule of Values must be coordinated and administered in a manner acceptable to ODR.
- 10.8 <u>Pricing Change Order Work.</u> The amounts that Contractor and/or its Subcontractor adds to a Change Order for profit and overhead will also be considered by Owner before approval is given. The amounts established hereinafter are the maximums that are acceptable to Owner.
 - 10.8.1 For Work performed by its forces, Contractor will be allowed its actual costs paid for materials, the total amount of its actual wages paid for labor, plus its actual cost paid for State and Federal payroll taxes and for worker's compensation and comprehensive general liability insurance, plus its actual additional bond and builders risk insurance cost if the change results in an increase in the premium paid by Contractor. To the total of the above costs, Contractor will be allowed to add a percentage as noted below to cover overhead and profit combined. Overhead shall be considered to include insurance other than mentioned above, field and office supervisors and assistants, including safety and scheduling personnel, use of small tools, incidental job burdens and general Home Office expenses, and no separate allowance will be made therefore.

 $\label{eq:allowable} Allowable \ percentages \ for \ overhead \ and \ profit \ on \ changes \ will \ not \ exceed \ 15 \ percent \ if \ the \ \{00010282\,/\,v\,/\,/\,LEGAL\,/\,FORMS\,/\,11/16/2018\}$

total of self-performed work is less than or equal to \$10,000, 10 percent if the total of self-performed work is between \$10,000 and \$20,000 and 7.5 percent if the total of self-performed work is over \$20,000, for any specific change priced.

- 10.8.2 For subcontracted Work each affected Subcontractor shall figure its costs, overhead and profit as described above for Contractor's Work, all Subcontractor costs shall be combined, and to that total Subcontractor cost Contractor will be allowed to add a maximum mark-up of ten (10) percent if the total of all subcontracted work is less than or equal to \$10,000, seven and half (7.5) percent if the total of all subcontracted work is between \$10,000 and \$20,000 and five (5) percent if the total of all subcontractor work is over \$20,000.
- 10.8.3 On changes involving both additions and deletions, percentages for overhead and profit will be allowed only on the net addition. Owner does not accept and will not pay for additional Contract cost identified as indirect or consequential damages or as damages caused by delay.
- 10.8.4 For Contracts based on a Guaranteed Maximum Price (GMP), the Construction Manager-at-Risk or Design Builder shall NOT be entitled to a percentage mark-up on any Change Order Work unless the Change Order increases the Guaranteed Maximum Price.
- 10.9 <u>Unilateral Change Order (ULCO)</u>. Owner may issue a written ULCO directing a change in the Work prior to reaching agreement with Contractor on the adjustment, if any, in the Contract price and/or the Contract Time.
 - 10.9.1 Owner and Contractor shall negotiate for appropriate adjustments, as applicable, to the Contract Sum or the Contract Time arising out of a ULCO. As the changed Work is performed, Contractor shall submit its costs for such Work with its Application for Payment beginning with the next Application for Payment within thirty (30) days of the issuance of the ULCO. The Parties reserve their rights to dispute the ULCO amount, subject to Article 14.
- 10.10 <u>Finality of Changes Contractor.</u> Upon execution of a Change Order and/or a ULCO by Owner, Contractor and A/E, all costs and time issues claimed by Contractor regarding that change are final and not subject to increase.
- 10.11 <u>Audit of Changes Owner.</u> All Changes Orders are subject to audit by Owner or its representative at any time in accordance with Article 16.4 and Change Order amounts may be adjusted lower as a result of such audit.

Article 11. Project Completion and Acceptance

- 11.1 <u>Closing Inspections.</u>
 - 11.1.1 <u>Substantial Completion Inspection.</u> When Contractor considers the entire Work or part thereof Substantially Complete, it shall notify ODR in writing that the Work will be ready for Substantial Completion inspection on a specific date. Contractor shall include with this notice Contractor's Punchlist to indicate that it has previously inspected all the Work associated with the request for inspection, noting items it has corrected and included all remaining work items with date scheduled for completion or correction prior to final inspection. The failure to include any items on this list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents. If any of the items on this list prevents the Project from being used as intended, Contractor shall not request a Substantial Completion Inspection. Owner and its representatives will review the list of items and schedule the requested inspection, or inform Contractor in writing that such an inspection is premature because the Work is not sufficiently advanced or conditions are not as represented on Contractor's list.
 - 11.1.1.1 Prior to the Substantial Completion inspection, Contractor shall furnish a copy of its

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marked-up Record Documents and a preliminary copy of each instructional manual, maintenance and operating manual, parts catalog, wiring diagrams, spare parts, specified written warranties, and like publications or parts for all installed equipment, systems, and like items as described in the Contract Documents. Delivery of these items is a prerequisite for requesting the Substantial Completion inspection.

- 11.1.1.2 On the date requested by Contractor, or as mutually agreed upon pending the status of the Open Items List, A/E, ODR, Contractor, and other Owner representatives as determined by Owner will jointly attend the Substantial Completion inspection, which shall be conducted by ODR or their delegate. If ODR concurs with the determination of Contractor and A/E that the Work is Substantially Complete, ODR will issue a Certificate of Substantial Completion to be signed by A/E, Owner, and Contractor establishing the date of Substantial Completion and identifying responsibilities for security, insurance and maintenance. A/E will provide with this certificate a list of Punchlist items (the pre-final Punchlist) for completion prior to final inspection. This list may include items in addition to those on Contractor's Punchlist, which the inspection team deems necessary to correct or complete prior to final inspection. If Owner occupies the Project upon determination of Substantial Completion, Contractor shall complete all corrective Work at the convenience of Owner, without disruption to Owner's use of the Project for its intended purposes.
- 11.1.2 <u>Final Inspection.</u> Contractor shall complete the list of items identified on the pre-final Punchlist prior to requesting a final inspection. Unless otherwise specified, or otherwise agreed in writing by the parties as documented on the Certificate of Substantial Completion, Contractor shall complete and/or correct all Work within thirty (30) days of the Substantial Completion date. Upon completion of the pre-final Punchlist work, Contractor shall give written notice to ODR and A/E that the Work will be ready for final inspection on a specific date. Contractor shall accompany this notice with a copy of the updated pre-final Punchlist indicating resolution of all items. On the date specified or as soon thereafter as is practicable, ODR, A/E and Contractor will inspect the Work. A/E will submit to Contractor a final Punchlist of open items that the inspection team requires corrected or completed before final acceptance of the Work.
 - 11.1.2.1 Correct or complete all items on the final Punchlist before requesting Final Payment. Unless otherwise agreed to in writing by the parties, complete this work within seven (7) days of receiving the final Punchlist. Upon completion of the final Punchlist, notify A/E and ODR in writing stating the disposition of each final Punchlist item. A/E, Owner, and Contractor shall promptly inspect the completed items. When the final Punchlist is complete, and the Contract is fully satisfied according to the Contract Documents ODR will issue a certificate establishing the date of Final Completion. Completion of all Work is a condition precedent to Contractor's right to receive Final Payment.
- 11.1.3 <u>Annotation</u>. Any Certificate issued under this Article may be annotated to indicate that it is not applicable to specified portions of the Work, or that it is subject to any limitation as determined by Owner.
- 11.1.4 <u>Purpose of Inspection.</u> Inspection is for determining the completion of the Work, and does not relieve Contractor of its overall responsibility for completing the Work in a good and competent fashion, in compliance with the Contract. Work accepted with incomplete Punchlist items or failure of Owner or other parties to identify Work that does not comply with the Contract Documents or is defective in operation or workmanship does not constitute a waiver of Owner's rights under the Contract or relieve Contractor of its responsibility for performance or warranties.
- 11.1.5 <u>Additional Inspections.</u>

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- 11.1.5.1 If Owner's inspection team determines that the Work is not substantially complete at the Substantial Completion inspection, ODR or A/E will give Contractor written notice listing cause(s) of the rejection. Contractor will set a time for completion of incomplete or defective work acceptable to ODR. Contractor shall complete or correct all work so designated prior to requesting a second Substantial Completion inspection.
- 11.1.5.2 If Owner's inspection team determines that the Work is not complete at the final inspection, ODR or A/E will give Contractor written notice listing the cause(s) of the rejection. Contractor will set a time for completion of incomplete or defective work acceptable to ODR. Contractor shall complete or correct all Work so designated prior to again requesting a final inspection.
- 11.1.5.3 The Contract contemplates three (3) comprehensive inspections: the Substantial Completion inspection, the Final Completion inspection, and the inspection of completed final Punchlist items. The cost to Owner of additional inspections resulting from the Work not being ready for one or more of these inspections is the responsibility of Contractor. Owner may issue a ULCO deducting these costs from Final Payment. Upon Contractor's written request, Owner will furnish documentation of any costs so deducted. Work added to the Contract by Change Order after Substantial Completion inspection is not corrective Work for purposes of determining timely completion, or assessing the cost of additional inspections.
- 11.1.6 <u>Phased Completion</u>. The Contract may provide, or Project conditions may warrant, as determined by ODR, that designated elements or parts of the Work be completed in phases. Where phased completion is required or specifically agreed to by the parties, the provisions of the Contract related to closing inspections, occupancy, and acceptance apply independently to each designated element or part of the Work. For all other purposes, unless otherwise agreed by the parties in writing, Substantial Completion of the Work as a whole is the date on which the last element or part of the Work completed receives a Substantial Completion certificate. Final Completion of the Work as a whole is the date on which the last element or part of the Work as a whole is the date or part of the Work completed receives a Final Completion certificate or notice.
- 11.2 <u>Owner's Right of Occupancy.</u> Owner may occupy or use all or any portion of the Work following Substantial Completion, or at any earlier stage of completion. Should Owner wish to use or occupy the Work, or part thereof, prior to Substantial Completion, ODR will notify Contractor in writing and identify responsibilities for security, insurance and maintenance Work performed on the premises by third parties on Owner's behalf does not constitute occupation or use of the Work by Owner for purposes of this Article. All Work performed by Contractor after occupancy, whether in part or in whole, shall be at the convenience of Owner so as to not disrupt Owner's use of, or access to occupied areas of the Project.

11.3 Acceptance and Payment

- 11.3.1 <u>Request for Final Payment.</u> Following the certified completion of all work, including all final Punchlist items, cleanup, and the delivery of record documents, Contractor shall submit a certified Application for Final Payment and include all sums held as retainage and forward to A/E and ODR for review and approval.
- 11.3.2 <u>Final Payment Documentation.</u> Contractor shall submit, prior to or with the Application for Final Payment, final copies of all Close-Out documents, maintenance and operating instructions, guarantees and warranties, certificates, Record Documents and all other items required by the Contract. Contractor shall submit evidence of return of access keys and cards, evidence of delivery to Owner of attic stock, spare parts, and other specified materials. Contractor shall submit consent of surety to Final Payment form and an affidavit that all

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payrolls, bills for materials and equipment, subcontracted work and other indebtedness connected with the Work, except as specifically noted, are paid, will be paid, after payment from Owner or otherwise satisfied within the period of time required by Tex. Gov't Code, Chapter 2251. Contractor shall furnish documentation establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of claims and liens arising out of the Contract. Contractor may not subsequently submit a claim on behalf of Subcontractor or vendor unless Contractor's affidavit notes that claim as an exception.

- 11.3.3 <u>Architect/Engineer Approval.</u> A/E will review a submitted Application for Final Payment promptly but in no event later than ten (10) days after its receipt. Prior to the expiration of this deadline, A/E will either: 1) return the Application for Final Payment to Contractor with corrections for action and resubmission; or 2) accept it, note their approval, and send to Owner.
- 11.3.4 <u>Offsets and Deductions.</u> Owner may deduct from the Final Payment all sums due from Contractor. If the Certificate of Final Completion notes any Work remaining, incomplete, or defects not remedied, Owner may deduct the cost of remedying such deficiencies from the Final Payment. On such deductions, Owner will identify each deduction, the amount, and the explanation of the deduction on or by the twenty-first (21st) day after Owner's receipt of an approved Application for Final Payment. Such offsets and deductions shall be incorporated via a final Change Order, including a ULCO as may be applicable.
- 11.3.5 <u>Final Payment Due</u>. Final Payment is due and payable by Owner, subject to all allowable offsets and deductions, on the thirtieth (30th) day following Owner's approval of the Application for Payment. If Contractor disputes any amount deducted by Owner, Contractor shall give notice of the dispute on or before the thirtieth (30th) day following receipt of Final Payment. Failure to do so will bar any subsequent claim for payment of amounts deducted.
- 11.3.6 <u>Effect of Final Payment.</u> Final Payment constitutes a waiver of all claims by Owner, relating to the condition of the Work except those arising from:
 - 11.3.6.1 Faulty or defective Work appearing after Substantial Completion (latent defects);
 - 11.3.6.2 Failure of the Work to comply with the requirements of the Contract Documents;
 - 11.3.6.3 Terms of any warranties required by the Contract, or implied by law; or
 - 11.3.6.4 Claims arising from personal injury or property damage to third parties.
- 11.3.7 <u>Waiver of Claims</u>. Final payment constitutes a waiver of all claims and liens by Contractor except those specifically identified in writing and submitted to ODR prior to the application for Final Payment.
- 11.3.8 <u>Effect on Warranty</u>. Regardless of approval and issuance of Final Payment, the Contract is not deemed fully performed by Contractor and closed until the expiration of all warranty periods.

Article 12. Warranty and Guarantee

12.1 <u>Contractor's General Warranty and Guarantee.</u> Contractor warrants to Owner that all Work is executed in accordance with the Contract, complete in all parts and in accordance with approved practices and customs, and of the required finish and workmanship. Contractor further warrants that unless otherwise specified, all materials and equipment incorporated in the Work under the Contract are new. Owner may, at its option, agree in writing to waive any failure of the Work to conform to the Contract, and to accept a reduction in the Contract price for the cost of repair or diminution in value of the Work by reason of such defect. Absent such a written agreement, Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute and is not waived by any inspection or

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observation by Owner, A/E or others, by making any progress payment or final payment, by the use or occupancy of the Work or any portion thereof by Owner, at any time, or by any repair or correction of such defect made by Owner.

- 12.2 <u>Warranty Period.</u> Except as may be otherwise specified or agreed, Contractor shall repair all defects in materials, equipment, or workmanship appearing within one (1) year from the date of Substantial Completion of the Work. If Substantial Completion occurs by phase, then the warranty period for the Work performed for each phase begins on the date of Substantial Completion of that phase, or as otherwise stipulated on the Certificate of Substantial Completion for the particular phase.
- 12.3 <u>Limits on Warranty</u>. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 - 12.3.1 Modification or improper maintenance or operation by persons other than Contractor, Subcontractors, or any other individual or entity for whom Contractor is not responsible, unless Owner is compelled to undertake maintenance or operation due to the neglect of Contractor.
 - 12.3.2 Normal wear and tear under normal usage after acceptance of the Work by Owner.
- 12.4 <u>Events Not Affecting Warranty.</u> Contractor's obligation to perform and complete the Work in a good and workmanlike manner in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or relieve the Contractor from its obligation to perform the Work in accordance with the Contract Documents:
 - 12.4.1 Observations by Owner and/or A/E;
 - 12.4.2 Recommendation to pay any progress or final payment by A/E;
 - 12.4.3 The issuance of a certificate of Substantial Completion or any payment by Owner to Contractor under the Contract Documents;
 - 12.4.4 Use or occupancy of the Work or any part thereof by Owner;
 - 12.4.5 Any acceptance by Owner or any failure to do so;
 - 12.4.6 Any review of a Shop Drawing or sample submittal; or
 - 12.4.7 Any inspection, test or approval by others.
- 12.5 <u>Separate Warranties.</u> If a particular piece of equipment or component of the Work for which the Contract requires a separate warranty is placed in continuous service before Substantial Completion, the warranty period for that equipment or component will not begin until Substantial Completion, regardless of any warranty agreements in place between suppliers and/or Subcontractors and Contractor. ODR will certify the date of service commencement in the Substantial Completion certificate.
 - 12.5.1 In addition to Contractor's warranty and duty to repair, Contractor expressly assumes all warranty obligations required under the Contract for specific building components, systems and equipment.
 - 12.5.2 Contractor may satisfy any such obligation by obtaining and assigning to Owner a complying warranty from a manufacturer, supplier, or Subcontractor. Where an assigned warranty is tendered and accepted by Owner which does not fully comply with the requirements of the Contract, Contractor remains liable to Owner on all elements of the required warranty not provided by the assigned warranty.

12.6 <u>Correction of Defects.</u> Upon receipt of written notice from Owner, or any agent of Owner designated as {00010282 / v / / LEGAL / FORMS / 11/16/2018}

responsible for management of the warranty period, of the discovery of a defect, Contractor shall promptly remedy the defect(s), and provide written notice to Owner and designated agent indicating action taken. In case of emergency where delay would cause serious risk of loss or damage to Owner, or if Contractor fails to remedy within thirty (30) days, or within another period agreed to in writing, Owner may correct the defect and be reimbursed the cost of remedying the defect from Contractor or its surety.

Article 13. Suspension and Termination

- 13.1 <u>Suspension of Work for Cause.</u> Owner may, at any time without prior notice, suspend all or any part of the Work if, after reasonable observation and/or investigation, Owner determines it is necessary to do so to prevent or correct any condition of the Work which constitutes an immediate safety hazard or which may reasonably be expected to impair the integrity, usefulness or longevity of the Work when completed.
 - 13.1.1 Owner will give Contractor a written notice of suspension for cause, setting forth the reason for the suspension and identifying the Work suspended. Upon receipt of such notice, Contractor shall immediately stop the Work so identified. As soon as practicable following the issuance of such a notice, Owner will initiate and complete a further investigation of the circumstances giving rise to the suspension, and issue a written determination of the findings.
 - 13.1.2 If it is confirmed that the cause was within the control of Contractor, Contractor will not be entitled to an extension of time for delay resulting from the suspension. If the cause is determined not to have been within the control of Contractor, and the suspension has prevented Contractor from completing the Work within the Contract Time, the suspension is an excusable delay and a time extension will be granted through a Change Order.
 - 13.1.3 Suspension of Work under this provision will be no longer than is reasonably necessary to remedy the conditions giving rise to the suspension.
- 13.2 Suspension of Work for Owner's Convenience. Upon seven (7) days written notice to Contractor, Owner may at any time without breach of the Contract suspend all or any portion of the Work for a period of up to sixty (60) days for its own convenience. Owner will give Contractor a written notice of suspension for convenience, which sets forth the number of suspension days for which the Work, or any portion of it, and the date on which the suspension of Work will cease. When such a suspension prevents Contractor from completing the Work within the Contract Time, it is an excusable delay. A notice of suspension for convenience may be modified by Owner at any time on seven (7) days written notice to Contractor. If Owner suspends the Work for its convenience for more than sixty (60) consecutive days, Contractor may elect to terminate the Contract pursuant to the provisions of the Contract.
- 13.3 <u>Termination by Owner for Cause.</u>
 - 13.3.1 Upon thirty (30) days written notice to Contractor and its surety, Owner may, without prejudice to any right or remedy, terminate the Contract and take possession of the Site and of all materials, equipment, tools, construction equipment, and machinery thereon owned by Contractor under any of the following circumstances:
 - 13.3.1.1 Persistent or repeated failure or refusal, except during complete or partial suspensions of work authorized under the Contract, to supply enough properly skilled workmen or proper materials;
 - 13.3.1.2 Persistent disregard of laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, including ODR;
 - 13.3.1.3 Persistent failure to prosecute the Work in accordance with the Contract, and to ensure its completion within the time, or any approved extension thereof, specified

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in the Contract;

- 13.3.1.4 Failure to remedy defective work condemned by ODR;
- 13.3.1.5 Failure to pay Subcontractors, laborers, and material suppliers pursuant to Tex. Gov't Code, Chapter 2251;
- 13.3.1.6 Persistent endangerment to the safety of labor or of the Work;
- 13.3.1.7 Failure to supply or maintain statutory bonds or to maintain required insurance, pursuant to the Contract;
- 13.3.1.8 Any material breach of the Contract; or
- 13.3.1.9 Contractor's insolvency, bankruptcy, or demonstrated financial inability to perform the Work.
- 13.3.2 Failure by Owner to exercise the right to terminate in any instance is not a waiver of the right to do so in any other instance.
- 13.3.3 Upon receipt of a termination notice, the Contractor or its Surety has thirty (30) days to cure the reasons for the termination or demonstrate to the satisfaction of the Owner that it is prepared to remedy to the condition(s) upon which the notice of termination was based with diligence and promptness. If the Owner is satisfied that the Contractor or its Surety can remedy the reasons for the termination and complete the Work as required, the notice of termination shall be rescinded in writing by the Owner and the Work shall continue without an extension of time.
- 13.3.4 If at the conclusion of the thirty (30) day cure period the Contractor or its Surety is unable to demonstrate to the satisfaction of the Owner its ability to remedy the reasons for termination, the Owner may immediately terminate the employment of the Contractor, make alternative arrangements for completion of the Work and deduct the cost of completion from the unpaid Contract Sum.
 - 13.3.4.1 Owners cost to complete the Work includes, but is not limited to, fees for additional services by A/E and other consultants, and additional contract administration costs.
 - 13.3.4.2 Owner will make no further payment to Contractor or its surety unless the costs to complete the Work are less than the Contract balance, then the difference shall be paid to Contractor or its surety. If such costs exceed the unpaid balance, Contractor or its surety will pay the difference to Owner.
 - 13.3.4.3 This obligation for payment survives the termination of the Contract.
 - 13.3.4.4 Owner reserves the right in termination for cause to take assignment of all the Contracts between Contractor and its Subcontractors, vendors, and suppliers. ODR will promptly notify Contractor of the contracts Owner elects to assume. Upon receipt of such notice, Contractor shall promptly take all steps necessary to effect such assignment.
- 13.4 <u>Conversion to Termination for Convenience.</u> In the event that any termination of Contractor for cause under Section 13.3 is later determined to have been improper, the termination shall automatically convert to a termination for convenience under Section 13.5 and Contractor's recovery for termination shall be strictly limited to the payments allowable under Section 13.5.

13.5 <u>Termination for Convenience of Owner.</u> Owner reserves the right, without breach, to terminate the Contract prior to, or during the performance of the Work, for any reason. Upon such an occurrence, the {00010282/v//LEGAL/FORMS/11/16/2018}

following shall apply:

- 13.5.1 Owner will notify Contractor and A/E in writing specifying the reason for and the effective date of the Contract termination. The notice may also contain instructions necessary for the protection, storage or decommissioning of incomplete work or systems, and for safety.
- 13.5.2 Upon receipt of the notice of termination, Contractor shall immediately proceed with the following obligations, regardless of any dispute in determining or adjusting any amounts due at that point in the Contract:
 - 13.5.2.1 Stop all work.
 - 13.5.2.2 Place no further subcontracts or orders for materials or services.
 - 13.5.2.3 Terminate all subcontracts for convenience.
 - 13.5.2.4 Cancel all materials and equipment orders as applicable.
 - 13.5.2.5 Take appropriate action that is necessary to protect and preserve all property related to the Contract which is in the possession of Contractor.
- 13.5.3 When the Contract is terminated for Owner's convenience, Contractor may recover from Owner payment for all Work executed. Contractor may not claim lost profits or lost business opportunities.
- 13.6 <u>Termination By Contractor</u>. If the Work is stopped for a period of ninety (90) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of Contractor or Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with Contractor, then Contractor may, upon thirty (30) additional days written notice to ODR, terminate the Contract and recover from Owner payment for all Work executed, but not lost profits or lost business opportunities. If the cause of the Work stoppage is removed prior to the end of the thirty (30) day notice period, Contractor may not terminate the Contract.
- 13.7 <u>Settlement on Termination.</u> When the Contract is terminated for any reason, at any time prior to one hundred eighty (180) days after the effective date of termination, Contractor shall submit a final termination settlement proposal to Owner based upon recoverable costs as provided under the Contract. If Contractor fails to submit the proposal within the time allowed, Owner may unilaterally determine the amount due to Contractor because of the termination and pay the determined amount to Contractor.

Article 14. Dispute Resolution

14.1 If either the Contractor or the City has a claim or dispute, the parties shall first attempt to resolve the matter through non-binding mediation. The disputing party shall notify the other party in writing as soon as practicable after discovering the claim, dispute, or breach. The notice shall state the nature of the dispute and list the party's specific reasons for such dispute. Within ten (10) business days of receipt of the notice, both parties shall make a good faith effort, in person or through generally accepted means, to resolve any claim, dispute, breach or other matter in question that may arise out of, or in connection with, this Contract. If the parties cannot resolve the dispute through mediation, then either party shall have the right to exercise any and all remedies available under law regarding the dispute. If there is a dispute, the Contractor agrees to continue performance under the Contract.

Article 15. Certification of No Asbestos Containing Material or Work

15.1 Contractor shall insure that Texas Department of State Health Services licensed individuals, consultants {00010282 / v / / LEGAL / FORMS / 11/16/2018}

or companies are used for any required asbestos work including asbestos inspection, asbestos abatement plans/specifications, asbestos abatement, asbestos project management and third-party asbestos monitoring.

- 15.2 Contractor shall provide a notarized certification to Owner that all equipment and materials used in fulfillment of its Contract responsibilities are non-Asbestos Containing Building Materials (ACBM). This certification must be provided no later than Contractor's application for Final Payment.
- 15.3 The Contractor shall insure compliance with the following acts from all of his subcontractors and assigns:
 - Asbestos Hazard Emergency Response Act (AHERA—40 CFR 763-99 (7));
 - National Emission Standards for Hazardous Air Pollutants (NESHAP—EPA 40 CFR 61, Subpart M—National Emission Standard for Asbestos;
 - Texas Asbestos Health Protection Rules (TAHPR—Tex. Admin. Code Title 25, Part 1, Ch. 295C, Asbestos Health Protection

Article 16. Miscellaneous

- 16.1 <u>Owner's Special Conditions.</u> When the Work contemplated by Owner is of such a character that the foregoing General Conditions of the Contract cannot adequately cover necessary and additional contractual relationships, the Contract may include Owner's Special Conditions that relate to the Project. In the event of a conflict between the General Conditions and the Owner's Special Conditions, the Owner's Special Conditions will govern.
- 16.2 <u>Federally Funded Projects.</u> On Federally funded projects, Owner may waive, suspend or modify any Article in these Uniform General Conditions which conflicts with any Federal statue, rule, regulation or procedure, where such waiver, suspension or modification is essential to receipt by Owner of such Federal funds for the Project. In the case of any Project wholly financed by Federal funds, any standards required by the enabling Federal statute, or any Federal rules, regulations or procedures adopted pursuant thereto, shall be controlling.
- 16.3 <u>Internet-based Project Management Systems.</u> At its option, Owner may administer its design and construction management through an Internet-based management system. In such cases, Contractor shall conduct communication through this media and perform all Project related functions utilizing this database system. This includes correspondence, submittals, Requests for Information, vouchers or payment requests and processing, amendment, Change Orders and other administrative activities.
 - 16.3.1 Accessibility and Administration.
 - 16.3.1.1 When used, Owner will make the software accessible via the Internet to all Project team members.
 - 16.3.1.2 Owner shall administer the software.
 - 16.3.2 <u>Training.</u> When used, Owner shall provide training to the Project team members.
- 16.4 <u>Right to Audit.</u>
 - 16.4.1 Contractor understands that acceptance of funds under this Contract acts as acceptance of the authority of the State Auditor's Office, Owner, any successor agency and their representatives, including independent auditors, to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with any party conducting the audit or investigation, including providing all records requested.

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- 16.4.2 Contractor shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under this Contract funds were expended in accordance with the terms of this Contact, the requirements of Owner, and with the laws and regulations of the State of Texas including, but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. Contractor shall maintain all such documents and other records relating to this Contract and Owner's property for a period of four (4) years after the date of submission of a request for Final Payment or until a resolution of all billing questions, whichever is later. Contractor shall make available at reasonable times and upon reasonable notice and for reasonable periods all documents and other information related to the Work of this Contract.
- 16.4.3 Contractor shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the Contractor and the requirement to cooperate is included in any subcontract it awards.
- 16.5 <u>179 D Benefit Allocation. Owner may decide to seek the allocation of certain tax benefits pursuant to</u> Section 179D of the Internal Revenue Code of 1986, as amended, (the "Code") through its Agreement with Contractor

If the Owner and the Internal Revenue Service (IRS) determine that the Contractor is eligible to receive the 179D deduction allocation as a "Designer" for the purposes of Section 179D of the Code or that Contractor could otherwise profit financially from the monetization of the benefit (separately and collectively, the "Rebate"), Contractor hereby agrees to allocate to the Owner a portion of the Rebate in an amount to be determined and contracted for on mutually agreeable terms when the value of the Rebate becomes ascertainable, net of associated costs realized by the Owner and Project Architect. At its sole discretion, the Owner shall determine whether to receive its portion of the Rebate in cash, discounted Contractor fees or both.

Owner reserves the right to retain a third party consultant (the "Consultant") to manage and administer the process of obtaining and monetizing the Rebate derived from the Project(s).

Contractor agrees to cooperate in all reasonable respects with the Consultant's efforts to obtain and monetize any such Rebates derived from the Project(s) on behalf of the Owner. Certification of eligibility and negotiation of the Rebates should be facilitated by the Owner's 179D Consultant.

End of General Conditions

{00010282 / v / / LEGAL / FORMS / 11/16/2018}

STANDARD AGREEMENT BETWEEN OWNER AND CONTRACTOR

This Agreement is made as of <u>February 12</u>, 20<u>19</u> (the "Effective Date"), by and between

The **Owner**:

City of Georgetown PO Box 409 Georgetown, Texas 78627

and **Contractor**:

O'Haver Contractors 12831 O'Conner Rd San Antonio, TX 78233

for the **Project**:

Construction Services for Fire Station No. 7

Contract Number:

19-0020-CIP

Project Architect:

BRW Architects 75 Century Square Drive Suite 350 College Station, Texas 77840 979.694.1791

The Owner and the Contractor agree as follows:

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ARTICLE

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LIST OF EXHIBITS

The following Exhibits are incorporated into the Agreement as if set out verbatim.

- Ex.A General Conditions
- Ex.B Owner's Special Conditions and Specifications with the date they were issued (if applicable)
- Ex.C Contractor's Proposal (if incorporated into the Project)
- Ex.D List of Drawings, Specifications Addenda, details and other documents developed by Project Architect that describe the Project with the date they were issued.

ARTICLE 1 SCOPE OF WORK

The Contractor has overall responsibility for and shall provide and furnish all materials, equipment, tools and labor as necessary or reasonably inferable to complete the Work, or any phase of the Work, in accordance with the Owner's requirements and the terms of the Contract Documents.

ARTICLE 2 CONTRACT DOCUMENTS

- 2.1 The Contract Documents consist of:
 - a. This Agreement and all exhibits and attachments listed, contained or referenced in this Agreement;
 - b. The General Conditions;
 - c. Special Conditions and Owner's Specifications;
 - d. All Addenda issued before the Effective Date of this Agreement;
 - e. All Alternate Bid Proposals accepted by the Owner before the Effective Date of this Agreement;
 - f. All Change Orders issued after the Effective Date of this Agreement;
 - g. The Drawings, Specifications, details and other documents developed by Project Architect to describe the Project and accepted by Owner;
 - h. The Drawings and Specifications developed or prepared by Owner's other consultants, if any, and accepted by the Owner; and
 - i. Contractor's Proposal if incorporated into the Project. To the extent of any conflict between Contractor's Proposal and any other Contract Document, the Contact Document shall govern.
- 2.2 The Contract Documents form the entire and integrated Contract between Owner and Contractor and supersede all prior negotiations, representations or agreements, written or oral.

ARTICLE 3 THE CONTRACT SUM:

3.1 The Owner shall pay the Contractor for performance of the Contract, including the Base Proposal and Alternate Proposal(s), the sum of _<u>Five Million Two Hundred and Sixty One Thousand dollars and</u> 00/100 (\$_5,261,000.00 _____), and make payment on account as provided in the General Conditions.

3.2 The following Alternate Proposals, fully described in the Specifications and Drawings, are included as a part of the contract sum: _____Alternate #1 and \$50,000 Discount______.

ARTICLE 4 TIME OF COMPLETION:

The Owner shall issue a Notice to Proceed identifying the date for commencement of the Work. The commencement date shall be 10 or more days after the date the notice is issued. The Contractor shall achieve substantial completion of the Work within <u>Three Hundred and Thirty</u> (<u>330</u>) calendar days after the commencement date, as such completion date may be extended by approved Change Orders. THE TIME SET FORTH FOR COMPLETION OF THE WORK IS AN ESSENTIAL ELEMENT OF THE CONTRACT.

ARTICLE 5 LIQUIDATED DAMAGES:

For each consecutive calendar day after the expiration of the substantial completion period set forth in Article 4 that any incomplete Work prevents or impairs the Owner's ability to operate and use the Project for its intended purposes, including the correction of deficiencies found during the final testing and inspection, the amount of <u>three hundred dollars (\$300) for projects with a contract sum of less than five million dollars</u> (\$5,000,000) and five hundred dollars (\$500) for projects with a contract sum of five million dollars (\$5,000,000) or more will be deducted from the money due or that becomes due the Contractor, not as a penalty but as liquidated damages representing the parties' estimate at the time of executing this Agreement of the damages that the Owner will sustain for late completion.

ARTICLE 6 SAFETY

6.1 In accordance with the General Conditions, Contractor is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The safety program shall comply with all applicable requirements of the Occupational Safety and Health Act of 1970 and all other applicable federal, state and local laws and regulations and with the requirements of Owner's project safety specification.

6.2 Contractor shall provide recommendations and information to Owner and Project Architect regarding the assignment of responsibilities for safety precautions and programs, temporary Project facilities, and equipment, materials, and services for common use of the Subcontractors. Contractor shall verify that appropriate safety provisions are included in the Construction Documents. The existence or creation of any Owner controlled insurance program in connection with the Work shall not lessen or reduce the Contractor's safety responsibilities.

ARTICLE 7 CERTIFICATION OF NO ASBESTOS CONTAINING MATERIALS OR WORK

7.1 The Contractor shall be responsible for ensuring that no asbestos containing materials or work is included within the scope of the Work. The Contractor shall take whatever measures it deems necessary to insure that all employees, suppliers, fabricators, material men, subcontractors, or their assigns, comply with this requirement.

7.2 The Contractor shall ensure that Texas Department of Health licensed individuals, consultants or companies are used for any required asbestos work including asbestos inspection, asbestos abatement plans/specifications, asbestos abatement, asbestos project management and third-party asbestos monitoring.

7.3 At Substantial Completion and Final Completion the Contractor shall provide a certification letter certifying that the Work does not contain asbestos.

ARTICLE 8 PRE-EXISTING CONDITIONS

The Contractor acknowledges that it has been provided unrestricted access to the existing improvements and conditions on the Project site and that it has thoroughly investigated those conditions. Contractor's investigation was instrumental in preparing its Proposal to perform the Work. Contractor shall not make or be entitled to any adjustment to the Contract Time or the Contract Sum arising from Project conditions that Contractor discovered or, in the exercise of reasonable care, should have discovered in Contractor's investigation.

ARTICLE 9 BONDS AND INSURANCE

9.1 The Contractor shall provide performance and payment bonds on forms prescribed by Owner and in accordance with the requirements set forth in the General Conditions. The penal sum of the payment and performance bonds shall be equal to the Contract Sum.

9.2 The Contractor shall not commence work under the Agreement until it has obtained all insurance coverage as required by the General Conditions and until evidence of the required insurance has been reviewed and approved by the Owner. Owner's review of the insurance shall not relieve nor decrease the liability of the Contractor.

ARTICLE 10 CONTRACTOR'S SPECIAL WARRANTIES AND RESPONSIBILITIES

10.1 Contractor agrees and acknowledges that Owner is entering into this Agreement in reliance on Contractor's represented expertise and ability to provide construction services. Contractor agrees to use its best efforts, skill, judgment, and abilities to perform its obligations and to further the interests of Owner in accordance with Owner's requirements and procedures.

10.2 Contractor represents and agrees that it will perform its services in accordance with the usual and customary standards of Contractor's profession or business and in compliance with all applicable national, federal, state, and municipal, laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction over the Project. Contractor agrees to bear the full cost of correcting Contractor's negligent or improper work and services, those of its consultants, and any harm caused by the negligent or improper work or services.

10.3 Contractor's duties shall not be diminished by any approval by Owner nor shall the Contractor be released from any liability by any approval by Owner, it being understood that the Owner is ultimately relying upon the Contractor's skill and knowledge in performing the services required by this Agreement.

10.4 Contractor represents and agrees that all persons connected with the Contractor directly in charge of its services are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction over the Project if registration is required.

10.5 Contractor represents and agrees to advise Owner of anything of any nature in any drawings, specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to the Contractor (by the Owner or any other party) that is, in its opinion, unsuitable, improper, or inaccurate for the purposes for which the document or data is furnished.

10.6 The Contractor represents and agrees to perform its services under this Agreement in an expeditious and economical manner consistent with good business practices and the interests of Owner.

10.7 Contractor represents and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of its obligations under this Agreement.

10.8 Contractor represents and agrees that the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and to bind Contractor to its terms.

10.9 Contractor shall designate a representative authorized to act on Contractor's behalf with respect to the Project.

10.10 Contractor shall establish and maintain a numbering and tracking system for all Project records including, but not limited to, changes, requests for information, submittals, and supplementary instructions and shall provide updated records to the Owner when requested.

10.11 Except for the obligation of Owner to pay Contractor certain fees, costs, and expenses pursuant to the terms of this Agreement, Owner shall have no liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement. Notwithstanding any obligation or liability of Owner to Contractor, no present or future partner or affiliate of Owner or any agent, officer, director, or employee of Owner, or anyone claiming under Owner has or shall have any personal liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement.

ARTICLE 11 INDEMNITY

11.1 SEE ARTICLE 3 OF THE GENERAL CONDITIONS FOR CONTRACTOR'S GENERAL INDEMNIFICATION OBLIGATIONS.

ARTICLE 12 PARTY REPRESENTATIVES

12.1 The Owner's Designated Representative authorized to act in the Owner's behalf with respect to the Project is:

Eric Johnson Capital Improvements Project Manager PO Box 409, Georgetown, Texas 78627 (512) 819-3145 Eric.Johnson@Georgetown.org

12.2 The Contractor's designated representative authorized to act on the Contractor's behalf and bind the Contractor with respect to the Project is:

Don O'Haver President 12831 O'Conner Rd., San Antonio, Texas 78233 (210) 590-2889 Don@ohcltd.net

12.3 The parties may make reasonable changes in their designated representatives upon advance written notice to the other party.

ARTICLE 13 NOTICES

Notices of claims or disputes or other legal notices required by this Agreement shall be sent to the following persons at the indicated locations.

If to Owner:

City of Georgetown 300-1 Industrial Ave. Georgetown, Texas 78626

Attn: Purchasing

With Copies to:

N/A

If to Contractor:

O'Haver Contractors Don O'Haver, President 12831 O'Conner Rd. San Antonio, Texas 78233 (210) 798-3187 fax

The parties may make reasonable changes in the person or place designated for receipt of notices upon advance written notice to the other party.

ARTICLE 14 MISCELLANEOUS PROVISIONS

14.1 Assignment. This Agreement is a personal service contract for the services of Contractor, and Contractor's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party without the written consent of the Owner.

14.2 Records of expenses pertaining to Additional Services and services performed on the basis of a Worker Wage Rate or Monthly Salary Rate shall be kept on the basis of generally accepted accounting principles and in accordance with cost accounting standards promulgated by the Federal Office of Management and Budget Cost Accounting Standards Board and shall be available for audit by the Owner or the Owner's authorized representative on reasonable notice.

14.3 Family Code Child Support Certification. Pursuant to Section 231.006, Texas Family Code, Service Provider certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

14.4 Franchise Tax Certification. A corporate or limited liability company Contractor certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

14.5 Entire Agreement; Modifications. This Agreement supersedes all prior agreements, written or oral, between Contractor and Owner and shall constitute the entire Agreement and understanding between the parties with respect to the Project. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Contractor and Owner.

14.6 Captions. The captions of paragraphs in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

14.7 Governing Law and Venue. This Agreement and all of the rights and obligations of the parties and all of the terms and conditions shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas without reference to its conflicts of law provisions.

Williamson County, Texas or the county where the Project is located shall be the sole places of venue for any legal action arising from or related to this Agreement or the Project in which the Owner is a party.

14.8 Waivers. No delay or omission by either party in exercising any right or power arising from non-compliance or failure of performance by the other party with any of the provisions of this Agreement shall impair or constitute a waiver of any such right or power. A waiver by either party of any covenant or condition of this Agreement shall not be construed as a waiver of any subsequent breach of that or of any other covenant or condition of the Agreement.

14.9 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted assigns and successors.

14.10 Appointment. Owner hereby expressly reserves the right from time to time to designate by notice to Contractor a representative(s) to act partially or wholly for Owner in connection with the performance of Owner's obligations. Contractor shall act only upon instructions from the designated representative(s) unless otherwise specifically notified to the contrary.

14.11 Records. Records of Contractor's costs, reimbursable expenses pertaining to the Project and payments shall be available to Owner or its authorized representative during business hours and shall be retained for four (4) years after final Payment or abandonment of the Project, unless Owner otherwise instructs Contractor in writing.

14.12 Notices. All notices, consents, approvals, demands, requests or other communications relied on by the parties shall be in writing. Written notice shall be deemed to have been given when delivered in person to the designated representative of the Contractor or Owner for whom it is intended; or sent by U. S. Mail to the last known business address of the designated representative; or transmitted by fax machine to the last know business fax number of the designated representative. Mail notices are deemed effective upon receipt or on the third business day after the date of mailing, whichever is sooner. Fax notices are deemed effective the next business day after faxing.

14.13 Severability. Should any term or provision of this Agreement be held invalid or unenforceable in any respect, the remaining terms and provisions shall not be affected and this Agreement shall be construed as if the invalid or unenforceable term or provision had never been included.

14.14 Illegal Dumping. The Contractor shall ensure that it and all of its Subcontractors and assigns prevent illegal dumping of litter in accordance with Title 5, *Texas Health and Safety Code*, Chapter 365.

14.15 By signature hereon, Contractor certifies that no member of the City Council, has a financial interest, directly or indirectly, in the transaction that is the subject of this contract.

14.16 Disclosure of Interested Parties. By signature hereon, Contractor certifies that it has complied with Section 2252.908 of the Texas Government Code and Part 1 Texas Administrative Code Sections 46.1 through 46.3 as implemented by the Texas Ethics Commission (TEC), if applicable, and has provided the Owner with a fully executed TEC Form 1295, certified by the TEC and signed and notarized by the Contractor.

14.17 Contractor Certification regarding Boycotting Israel. Pursuant to Chapter 2270, *Texas Government Code*, Contractor certifies Contractor (1) does not currently boycott Israel; and (2) will not boycott Israel during the Term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

14.18 Contractor Certification regarding Business with Certain Countries and Organizations. Pursuant to Subchapter F, Chapter 2252, *Texas Government Code*], Contractor certifies Contractor is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

14.19 Domestic Iron and Steel Certification. Pursuant to Sections 2252.201-2252.205 of the Government Code, Service Provider certifies that it is in compliance with the requirement that any iron or steel product produced through a manufacturing process and used in the project is produced in the United States.

BY SIGNING BELOW, the Parties have executed and bound themselves to this Agreement as of the day and year first above written.

[SIGNATURES PROVIDED ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the day and year first written above.

CITY OF GEORGETOWN By: _____ ATTEST: City Secretary APPROVED AS TO FORM: By: _____ City Attorney THE STATE OF TEXAS § § COUNTY OF WILLIAMSON § This instrument was acknowledged before me on the _____ day of _____, ____, by _____, Mayor of the City of Georgetown, on behalf of the City. Notary Public – State of Texas Project Contractor Printed Name: Title: THE STATE OF TEXAS § § COUNTY OF WILLIAMSON § This instrument was acknowledged before me on the _____ day of _____, ___, by _____ on behalf of ______.

Notary Public – State of Texas

City of Georgetown, Texas City Council Regular Meeting February 12, 2019

SUBJECT:

Consideration and possible action to approve a Resolution pursuant to **Chapter 2206**, **Government Code § 2206.053** finding that portions of properties located along the southern side of Williams Drive between Rivery Boulevard and West Central Drive, Georgetown, Texas, 78628, are necessary for the **Rivery TIA/Rivery Turn Lanes Project** and authorizing the use of **eminent domain** to condemn the properties, if necessary -- Jim Kachelmeyer, Real Estate Services Coordinator

ITEM SUMMARY:

Staff is in the process of acquiring necessary right-of-way across three properties (known as Parcels 5-7), located on the southern side of Williams Drive between Rivery Boulevard and West Central Drive, for a right-turn lane from eastbound Williams Drive onto Rivery Boulevard. Negotiations are ongoing.

A resolution finding public convenience and necessity ("PCN Resolution") authorizing the acquisition of the necessary land rights by either negotiation or condemnation is necessary to ensure that the acquisition process complies with eminent domain law and to avoid delays in acquiring the properties, if the parties are unable to reach agreements on compensation through negotiation. The attached resolution, if approved, will authorize the acquisition of the subject properties by negotiation or eminent domain, if necessary.

Staff recommends approval of this item.

FINANCIAL IMPACT: N/A, costs associated with this item are as discussed in executive session.

SUBMITTED BY: Jim Kachelmeyer, Real Estate Services Coordinator

ATTACHMENTS:

PCN Resolution Package Aerial Image

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GEORGETOWN, FINDING PUBLIC CONVENIENCE AND NECESSITY AND AUTHORIZING EMINENT DOMAIN PROCEEDINGS, IF NECESSARY, FOR ACQUISITION OF REAL PROPERTY TO EFFECTUATE CERTAIN PUBLIC ROAD AND UTILITY INFRASTRUCTURE IMPROVEMENTS; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, in order to facilitate the safety and movement of traffic and to preserve the financial investment of the public in its roadways and utility infrastructure, and protect the safety of the public, the City of Georgetown (the "City") hereby finds that public convenience and necessity requires the acquisition of fee simple, easement and temporary easement rights from all of those certain tracts of land, as shown on Exhibit "A", located on the south side of Williams Drive, from the north right of way line of Rivery Boulevard to the south right of way line of Central Drive, in Georgetown, Texas (the "Property").

Exhibit "A" is incorporated herein by reference as if fully set out, for public road right of way and a public utility easement, over under and across the Property located in Williamson County, Texas, and for the purposes of laying out, opening, constructing, reconstructing, maintaining, widening, straightening, extending, and operating Williams Drive in Williamson County, Texas.

WHEREAS, as provided for in Section 251.001, 273.001 of the Texas Local Government Code, and under the general authority granted in Section 311.001 of the Texas Transportation Code and Section 2206.053(f) & (g) of the Texas Government Code, the City finds and determines that the Property is necessary or convenient as a part of the roadway system for the purposes of laying out, opening, constructing, reconstructing, maintaining, widening, straightening, extending, and operating Williams Drive between Rivery Boulevard and Central Drive, the hereinafter described Project, in Williamson County, Texas, including utility improvements, the construction of sidewalks, and/or other public uses and purposes related thereto as permitted by law (hereinafter the "Project"), and it is necessary to acquire fee simple title in the Property or such lesser property interests as set forth in the attached exhibit. The City finds and determines that condemnation of the Property may be required.

IT IS THEREFORE ORDERED that the initiation of condemnation proceedings for the Property is adopted and authorized by a single order for the Property, and this first vote by the City applies to all of the Property identified in the attached exhibit.

IT IS FURTHER ORDERED that the City Manager is hereby authorized to proceed to condemnation on the Property, if necessary, and directed to transmit or cause to be transmitted this request of the City to legal counsel to file or cause to be filed against all owners, lienholders, and any owners of any other interests in the Property, proceedings in condemnation to acquire in the name of and on behalf of the City, fee simple title to the Property or such lesser estates or property interests as may be required, save and except oil, gas, and sulfur, as provided by law.

Resolution No._____

Date adopted:__

Finding Public Convenience & Necessity for acquisition of real property, Rivery TIA/Rivery Turn Lanes Page 1 of 3 WHEREAS, in order to effectuate the Project, it will be necessary and convenient that the employees, agents, and/or representatives of the City to lay out the Project and acquire the necessary right of way upon, over, under and across the Property for the purpose of construction, reconstruction, operation, and maintenance of public road, utility infrastructure, and the construction of sidewalks adjacent to the Project, and appurtenances thereto, and for the use of any excavated materials from the Property for use in construction of such roadway and/or utility infrastructure improvements;

WHEREAS, it may be necessary to hire engineers, surveyors, appraisers, attorneys, title companies, architects, or other persons or companies to effect the laying out, establishment, and acquisition of the Property for the Project;

WHEREAS, in order to acquire the Property, it will be or has been necessary for the City's employees, agents, and/or representatives, to enter upon the Property for the purposes of surveying and establishing said land titles and to determine adequate compensation for the Property, to conduct tests, and to negotiate with the owners thereof for the purchase of the land titles; and,

WHEREAS, it was necessary to set out procedures for the establishment and approval of just compensation for Property to be acquired for the Project;

Now, THEREFORE, be it RESOLVED by the City Council of the City of Georgetown:

- 1. That in order to promote the public health, safety, and welfare, public convenience and necessity requires the acquisition of right of way in fee simple, easement and temporary easement rights on, over, under and across the real property described herein above, and in the attached **Exhibit "A"**, for the purposes of laying out, opening, constructing, reconstructing, maintaining, widening, straightening, extending, and operating of the Project in Williamson County, Texas, including utility improvements, the construction of sidewalks, and/or other public uses and purposes as permitted by law.
- 2. That the City's employees, agents, and/or representatives are hereby authorized to:
 - a. Lay out the exact location of the land area needed from the Property or other properties;
 - b. Hire such engineers, surveyors, appraisers, title companies, architects, and other persons or companies needed to effect the laying out of the facilities for the Project, the establishment and acquisition of the required right of way, and the construction of permanent public road, utility infrastructure improvements, sidewalks, and appurtenances thereto;
 - c. Enter upon any property necessary for the purpose of surveying and establishing the title, in order to determine adequate compensation for the right of way being acquired, and to conduct tests;

Resolution No._____ Date adopted:______ Finding Public Convenience & Necessity for acquisition of real property, Rivery TIA/Rivery Turn Lanes Page 2 of 3

- d. Negotiate with the owner(s) of any such properties for the purchase thereof;
- e. To purchase any necessary right of way on, over, under and across the Property, and execute all documents necessary to acquire such Property, all subject to the City Council's express approval of the specific, negotiated terms of the acquisition;
- f. Initiate eminent domain proceedings against the owner(s), lienholders, and any owners of any other interests in the Property to obtain the necessary title(s) for the Property in the event the owner(s) fail(s) to accept a bona fide offer to purchase the Property; and
- g. Take whatever further actions are deemed appropriate to economically effect the establishment of the Project and appurtenances thereto.
- 5. That all previous acts and proceedings done or initiated by the City's employees, agents, and/or representatives for the establishment of the Project, including the negotiation for and/or acquisition of any necessary property rights in the Property are hereby authorized, ratified, approved, confirmed, and validated. This resolution shall take effect immediately from and after its passage.
- 6. The Mayor is hereby authorized to sign this resolution and the City Secretary to attest thereto on behalf of the City of Georgetown.
- 7. This resolution shall be effective immediately upon adoption.

RESOLVED by the City Council of the City of Georgetown this _____ day of _____, 2019.

ATTEST:

THE CITY OF GEORGETOWN:

Robyn Densmore, City Secretary

By:___

Dale Ross, Mayor

APPROVED AS TO FORM:

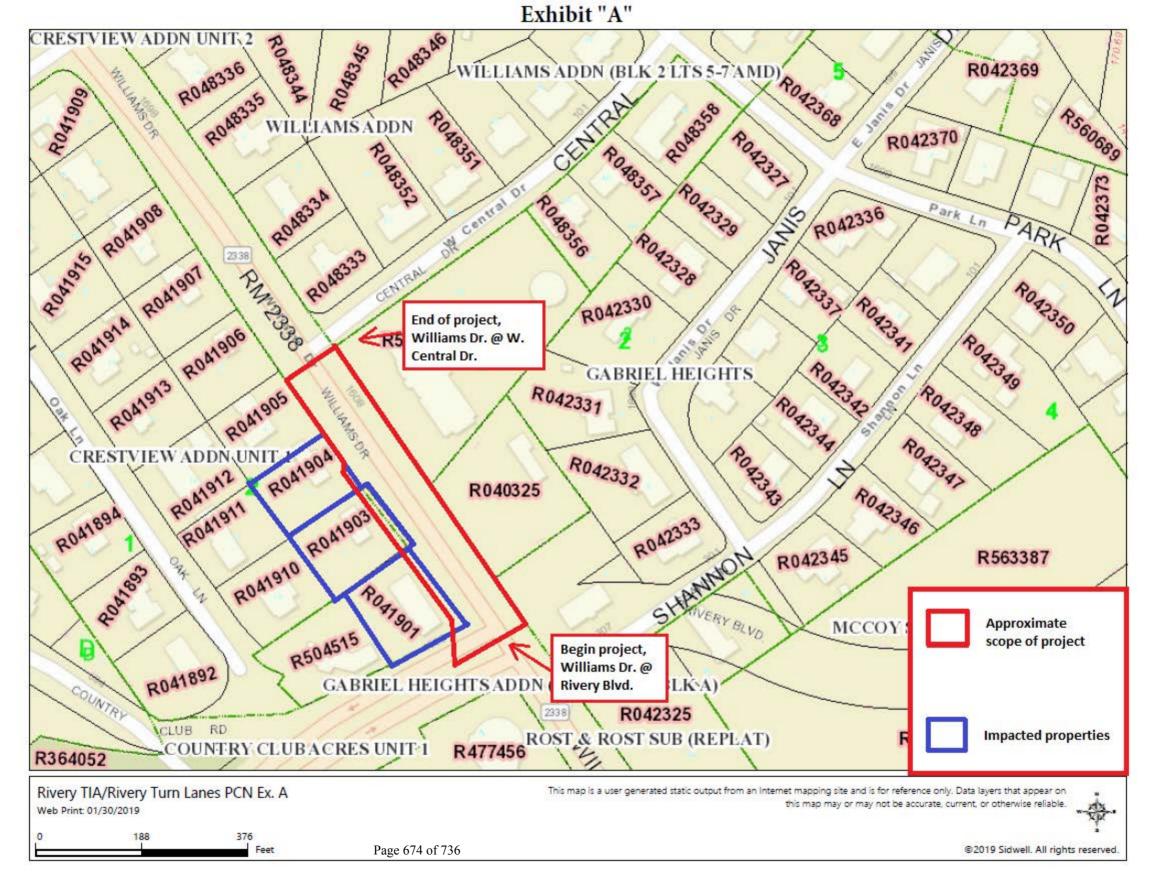
Charlie McNabb, City Attorney

Resolution No._____

Date adopted:___

Finding Public Convenience & Necessity for acquisition of real property, Rivery TIA/Rivery Turn Lanes Page 3 of 3

Page 673 of 736





City of Georgetown, Texas City Council Regular Meeting February 12, 2019

SUBJECT:

Second Reading of an Ordinance rezoning approximately 3.361 acres out of the Nicholas Porter Survey, Abstract No. 497, located in the 200 block of East Janis Drive, from the Residential Single-Family (RS) and General Commercial (C-3) zoning districts to the Townhouse (TH) zoning district -- Andreina Dávila-Quintero, AICP, Current Planning Manager

ITEM SUMMARY:

Overview of the Applicant's Request

The applicant has requested to rezone the subject site from the Residential Single-Family (RS) and General Commercial (C-3) zoning districts to the Townhouse (TH) zoning district.

Staff's Analysis:

Staff has reviewed the zoning request in accordance with the Unified Development Code (UDC) and other applicable codes. Staff finds that it complies with the criteria established in UDC Section 3.06.030 for a Zoning Map Amendment, as outlined in the attached Staff Report.

Public Comments:

As required by the Unified Development Code, all property owners within a 200-foot radius of the subject property were notified of the Zoning Map Amendment request (45 notices), a legal notice advertising the public hearing was placed in the Sun Newspaper (September 30, 2018) and signs were posted on-site. To date, staff has received 1 written comment in favor, and 7 in opposition to the request (see attached).

Planning and Zoning Commission Recommendation:

At their October 16, 2018 meeting, the Planning and Zoning Commission held a public hearing and unanimously recommended approval of the request.

City Council First Reading:

At their January 22, 2019 meeting, the City Council held a public hearing and unanimously approved First Reading of the Ordinance for the request.

FINANCIAL IMPACT:

None. The applicant has paid the required application fees.

SUBMITTED BY: Andreina Dávila-Quintero, AICP, Current Planning Manager

ATTACHMENTS:

REZ-2018-020 P&Z Staff Report

Exhibit 1 - Location Map

Exhibit 2 - Future Land Use Map

Exhibit 3 - Zoning Map

Exhibit 4 - Design and Development Standards of the Townhouse (TH) zoning district

Exhibit 5 - Applicant's Letter of Intent

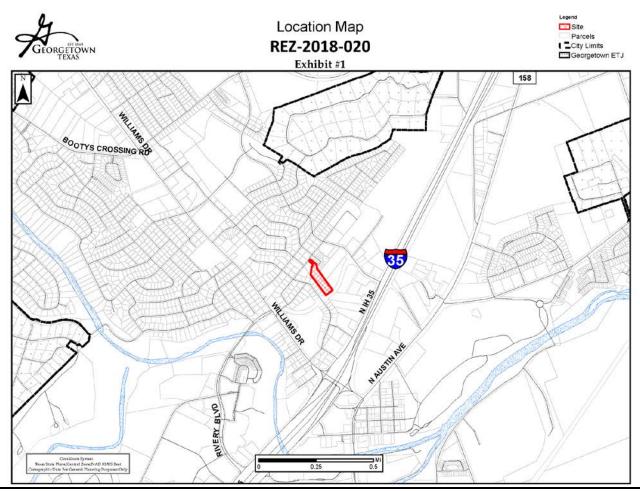
Exhibit 6 - Public Comments

Ordinance with Exhibits



Planning and Zoning Commission Planning Department Staff Report

Report Date: Case No: Project Planner:	October 12, 2018 REZ-2018-020 Andreina Dávila-Quintero, AICP, Current Planning Manager
Item Details	
Project Name: Project Location:	Rivery Gardens 200 block of E Janis Dr, between Park Lane and Northwest Boulevard, within City Council district No. 2.
Total Acreage: Legal Description:	3.361 acres 3.361 acres out of the Nicholas Porter Survey, Abstract No. 497
Applicant: Property Owner:	Haynie Consulting, Inc, c/o Tim Haynie The Bobby Fredrickson 1999 Trust and Ewing Development Company, LLC
Request:	Zoning Map Amendment to rezone the subject property from the current Residential Single-Family (RS) and General Commercial (C-3) zoning districts to the proposed Townhouse (TH) zoning district zoning district.
Case History:	This is the first public hearing of this request.



Overview of Applicant's Request

The applicant has requested to rezone the subject site from the Residential Single-Family (RS) and General Commercial (C-3) zoning districts to the Townhouse (TH) zoning district.

Site Information

Location:

The subject site is located along E Janis Dr, between Williams Dr and Northwest Blvd. The block is bounded by Park Lane to the south, Ryan Ln to the north and the future extension of Rivery Blvd to the east. It is generally located northwest of the IH-35 and Williams Dr intersection, approximately 900 feet from the IH-35 southbound frontage road.

Physical and Natural Features:

The land is fairly flat with some tree cover, although no tree survey has been conducted to determine if any are preserved species.

Future Land Use and Zoning Designations:

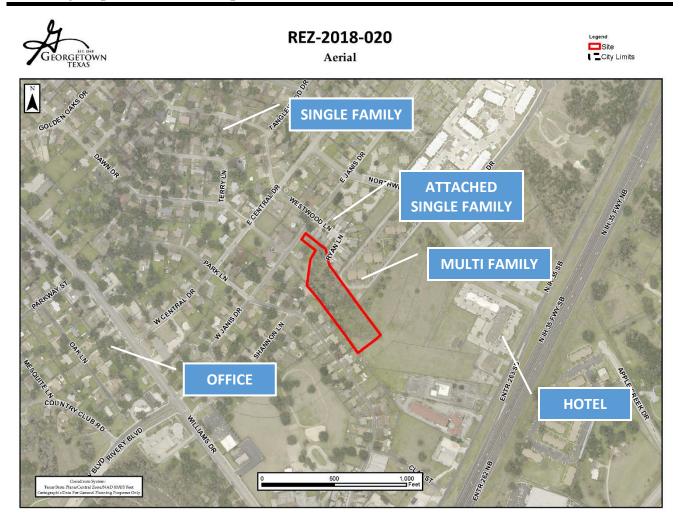
The subject site is primarily considered as Specialty Mixed Use Area Future Land Use but a portion of the site has the Moderate Density Residential designation. It is currently zoned Residential Single-Family (RS) and General Commercial (C-3).

Surrounding Properties:

The subject property is surrounded by established residential neighborhoods that were primarily developed in the 1970s, 80s and 90s. Uses within these neighborhood include single-family residential, attached single-family residential, duplex, and multi-family. In addition, properties located along the IH-35 frontage road have developed with commercial uses, particularly hotels and restaurants. Outdoor self-storage units and administrative offices for the Georgetown Independent School district may also be found within 700 feet of the subject property.

The current zoning, Future Land Use designation, and existing uses of the adjacent properties to the north, south, east and west are outlined in the table below:

DIRECTION	ZONING DISTRICT	FUTURE LAND USE	EXISTING USE	
	High Density Multi-	Moderate Density	Attached single family	
North	Family (MF-2) and	Residential and Special	Attached single-family, and multi-family	
	General Commercial (C-3)	Area Mixed Use		
South	Residential Single-Family (RS)	Moderate Density		
		Residential and Special	Single-family	
	(K3)	Area Mixed Use		
East	General Commercial (C-3)	Special Area Mixed Use	Vacant	
West	Posidontial Single Family	Moderate Density	Single-family	
	Residential Single-Family	Residential		



Property History:

The subject property was annexed into the city in 1964 via Ordinance No. 64-A1, at which time it was designated its current residential zoning district. The property has no record of platting or development.

The subject property falls within the area referred to as the Williams Drive Gateway Redevelopment Area (WDGRA), a 70-acre area along the west side of IH-35 centered approximately by Williams Drive (RM 2338). The City identified this area in 2004 as a high priority for planning and economic development and wanted to revitalize and reimagine the "gateway" to the western half of Georgetown. The goals included improving traffic flow and access to the area, maximizing revenue generation of the area, attracting and recruiting a mix of uses consistent with the vision of the area and the construction of aesthetically pleasing buildings.

A request to rezone the subject property to Low Density Multi-Family (MF-1) was denied in June 2016. Primary concerns relating to this rezoning request included the density that the MF-1 zoning district would allow next to single-family residential, and the timing of the Rivery Blvd extension, which would limit all access to the subject property through E Janis Dr.

In July 2017, the subject property was included in the Williams Drive Study, specifically within the

Planning Department Staff Report

Centers Area boundary. The purpose of this Study was to develop a plan of action that incorporates safety, efficient transportation operations, safe accommodations of all modes, and integration of smart transportation and land use, community needs and the future economic growth of Williams Dr. The focus of the Centers Area included developing a plan for a vibrant mixed-use center and gateway along Williams Drive.

Comprehensive Plan Guidance

Future Land Use Map:

The *Moderate Density Residential* category is described in the 2030 Comprehensive Plan as comprising single family neighborhoods that can be accommodated at a density ranging between 3.1 and 6 dwelling units per gross acre, with housing types including small-lot detached and attached single-family dwellings (such as townhomes). This category may also support complementary non-residential uses along major roadways such as neighborhood-serving retail, office, institutional, and civic uses, although such uses may not be depicted on the Future Land Use Map.

The majority of the property, however, is designated *Specialty Mixed Use Area*. This designation accommodates large-scale mixed-use developments that are mostly commercial and usually near intense regional commercial uses and the IH-35 corridor. This category encourages the creation of well planned "centers" designed to integrate a variety of complementary uses, with an emphasis on retail, offices, and entertainment activities. These centers may also include civic facilities and parks or other green spaces. Housing, in the form of apartments, townhomes, condominiums, and live-work spaces, is also encouraged in these mixed-use areas, generally in higher densities. These areas should be designed in a pattern of pedestrian-oriented, storefront-style shopping streets, with shared parking and strong pedestrian linkages to the surrounding areas.

Growth Tier:

The subject property is located within Growth Tier 1A. *Tier 1A* is that portion of the city where infrastructure systems are in place, or can be economically provided, and where the bulk of the city's growth should be guided over the near term. Within Tier 1A, the city is called on to conduct assessments of public facility conditions and capacities, and to prioritize short and long term capital investments so as to ensure that infrastructure capacity is sufficient to serve development intensities as indicated on the Future Land Use Map and in the zoning districts.

Other Master Plans: Williams Drive Study

The Williams Drive Study recommends a mix of uses within the Centers Area ranging between Urban Mixed Use, to Highway Commercial, to low to high density residential.

FIGURE 34: PROPOSED LAND USE MAP **FUTURE LAND USE** During the charrette week, a future land use map and corresponding proposed zoning districts were prepared based on input from citizens and analysis by the consultant team. The land use map shown in Figure 34 is the basis for land use recommendations and proivdes the underlying foundation for the development of future zoning districts. It was clear that there was too much commercial zoning in the center area, especially in areas with little traffic, where retail is not viable. Each district proposes allowed building types, generalized uses, height, and setbacks. The following pages illustrate each character area and explain in text and pictures the form and character of each area. The number listed with the character area name **New Street Connections** represents the suggested maximum building Urban Mixed Use height to be allowed. Suburban Mixed Use Office/High Density Housing Highway Commercial Small Office/Medium Density Housing High Density Mixed Housing Medium Density Mixed Housing Single-Family Civic Park

Specifically, the Study recommends High Density Mixed Housing (townhousem, apartment and assisted living) for this property and area.

		High Density Mixed Housing
Description: Use: Front Setback: Height:	Variety of higher intensity residential housing. Townhouse, apartment, assisted living. 25 feet min. 4 stories/50 feet.	

Utilities

The subject property is located within the City's service area for water, wastewater and electric. It is anticipated that there is adequate water and wastewater capacity to serve the subject property once it develops. A Utility Evaluation may be required at time of Site Development Plan to determine capacity and any necessary utility improvements.

Transportation

The subject property is currently accessed by the E Janis Dr, which is a local street. However, the City has commenced construction on the Rivery Blvd extension, a Major Collector as classified in the City's Overall Transportation Plan, which will provide street frontage and access to the subject property on the east side. Major collectors are intended to balance traffic between arterial streets and local streets. These streets tend to carry a high volume of traffic over shorter distances, providing access and movement between neighborhoods, parks, schools, retail areas and the arterial street system. The Rivery Blvd extension will connect the subject property to Williams Dr (a Major Arterial), Northwest Blvd (a Major Collector) and ultimately IH-35. The Rivery Blvd extension is anticipated to be completed by July 2019.

A Traffic Impact Analysis (TIA) will be required at time of Site Development Plan for any development that generates more than two thousand (2,000) average daily trips based upon the latest edition of the Institute of Transportation Engineers (ITE) Trip Generation Manual. In addition, the subject property is located in close proximity of the Blue Line fixed GoGeo route, and approximately 600 feet to the nearest bus stop, providing additional access to other portions of the city including the Downtown area.

Proposed Zoning district

The Townhouse District (TH) is intended for townhouse and attached single-family development. The TH District is appropriate for infill development as well as a transition from residential areas to non-residential areas. This District is also appropriate in areas designated on the Future Land Use Plan as one of the Mixed Use Land Use categories. In the TH District, townhomes shall be located on individual lots.

Permitted land uses within the district include attached single-family, townhouse (on individual lots) and group homes with 6 or less residents. Elementary schools, family home daycare, neighborhood public park, and seasonal product sales, among other, are permitted subject to specific design limitations to ensure compatibility with the surrounding properties. Other uses such as hospice facility group daycare, bed and breakfast and other similar uses may be permitted subject to approval of a Special Use Permit (SUP). Exhibit 4 contains a comprehensive list of TH district permitted uses and development standards.

Intergovernmental and Interdepartmental Review

The proposed rezoning request was reviewed by all applicable City Departments to determine the appropriateness of the requested zoning on the subject property. No comments were issued regarding the zoning request.

Approval Criteria

Staff has reviewed the proposed rezoning request and has found that it complies with the criteria established in UDC Section 3.06.030 for a Zoning Map Amendment, as outlined below:

	APPROVAL CRITERIA	FINDINGS	STAFF COMMENTS
1.	The application is complete and the information contained within the application is sufficient and correct enough to allow adequate review and final action.	Complies	An application must provide the necessary information to review and make a knowledgeable decision in order for staff to schedule an application for consideration by the Planning and Zoning Commission and City Council. This application was reviewed by staff and deemed to be complete.
2.	The zoning change is consistent with the Comprehensive Plan.	Complies	The requested Townhouse (TH) zoning district is compatible with the Moderate Density Residential and Special Mixed Use Area Future Land Use designations of the 2030 Comprehensive Plan. Both of these designations encourage diversity of housing types and density in appropriate locations when access, transportation provisions, and adjacent uses support the request. This zoning district provides the level of density consistent with the Comprehensive Plan, while encouraging infill development. In addition, the requested zoning is consistent with the recommended High Density Mixed Housing land use of the Williams Drive Study due to the permitted townhouse use, as well as the mix of housing that the subject property will provide to the established residential neighborhood and area.
3.	The zoning change promotes the health, safety or general welfare of the City and the safe orderly, and healthful development of the City.	Complies	The requested Townhouse (TH) zoning district would not affect the health, safety, or welfare of residents. This zoning district, should it be approved, would allow the subject property to be developed with townhomes or attached single-family residential units

	APPROVAL CRITERIA	FINDINGS	STAFF COMMENTS
			at a slightly higher density than the established single-family residential neighborhood to the west. In addition, it promotes the safe orderly and healthful development of the City by providing a transition from the more intense commercial uses along the IH- 35 frontage road to the east and multi- family to the north.
4.	The zoning change is compatible with the present zoning and conforming uses of nearby property and with the character of the neighborhood.	Complies	The Townhouse (TH) zoning district is compatible with the surrounding uses and character of the area. The subject property is surrounded by an established residential neighborhood that contains a mix of housing types ranging from detached and attached single-family residential, to duplex and multi-family. This district would allow a natural transition from the more intense uses to the north and east, to the single-family residential to the south and west.
5.	The property to be rezoned is suitable for uses permitted by the District that would be applied by the proposed amendment.	Complies	Due to its current size and configuration, the subject property may accommodate approximately 40 dwelling units, depending on the use and size of new individual lots. New development must meet the minimum requirements of the zoning district, including lot size, setbacks, street frontage and connectivity. In addition, the extension of Rivery Blvd, anticipated to be completed by July 2019, will provide ample street frontage and access to the subject property to accommodate the number of units without adversely impacting the residential neighborhood. Thus, the subject property is suitable for the uses permitted by the Townhouse (TH) zoning district.

Based on the findings listed above, staff finds that the requested Townhouse (TH) zoning district complies with the approval criteria for a Zoning Map Amendment. In particular, staff finds that the

Planning Department Staff Report

requested zoning district is compatible with the Future Land Use Map of the Comprehensive Plan and recommendations of the Williams Drive Study by promoting diversity of housing and a density that is more suitable for a livable, mixed-use center. This zoning district can also serve as a transition from the more intense commercial uses along the IH-35 frontage road to the single-family residential uses to the west. In addition, the extension of Rivery Blvd along the east property line of the subject property will provide an alternative access, reducing the traffic impacts that a more intense zoning district may have on the adjacent residential neighborhood.

Meetings Schedule

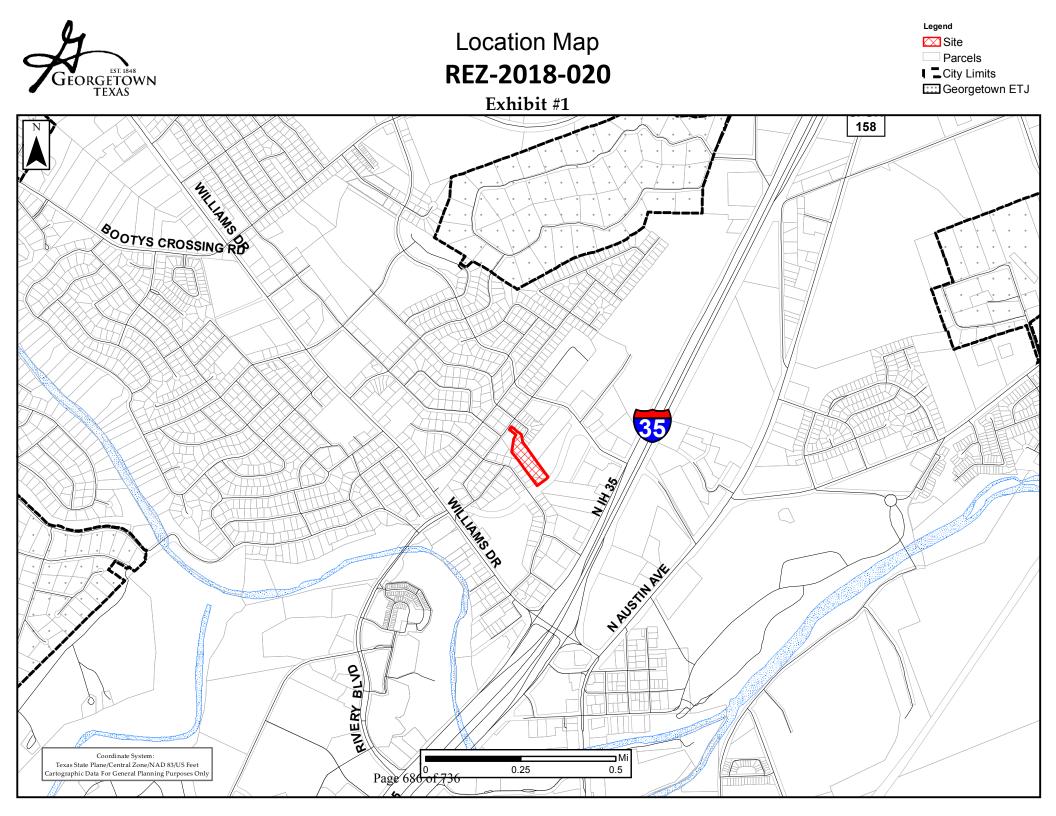
October 16, 2018 – Planning and Zoning Commission November 13, 2018 – City Council First Reading of the Ordinance November 27, 2018 – City Council Second Reading of the Ordinance

Public Notification

As required by the Unified Development Code, all property owners within a 200-foot radius of the subject property were notified of the Zoning Map Amendment request (45 notices), a legal notice advertising the public hearing was placed in the Sun Newspaper (September 30, 2018) and signs were posted on-site. To date, staff has received 1 written comment in favor, and 7 in opposition to the request.

Attachments

Exhibit 1 – Location Map Exhibit 2 – Future Land Use Map Exhibit 3 – Zoning Map Exhibit 4 – Design and development standards of the Townhouse (TH) district Exhibit 5 – Letter of Intent Exhibit 6 – Public Comments



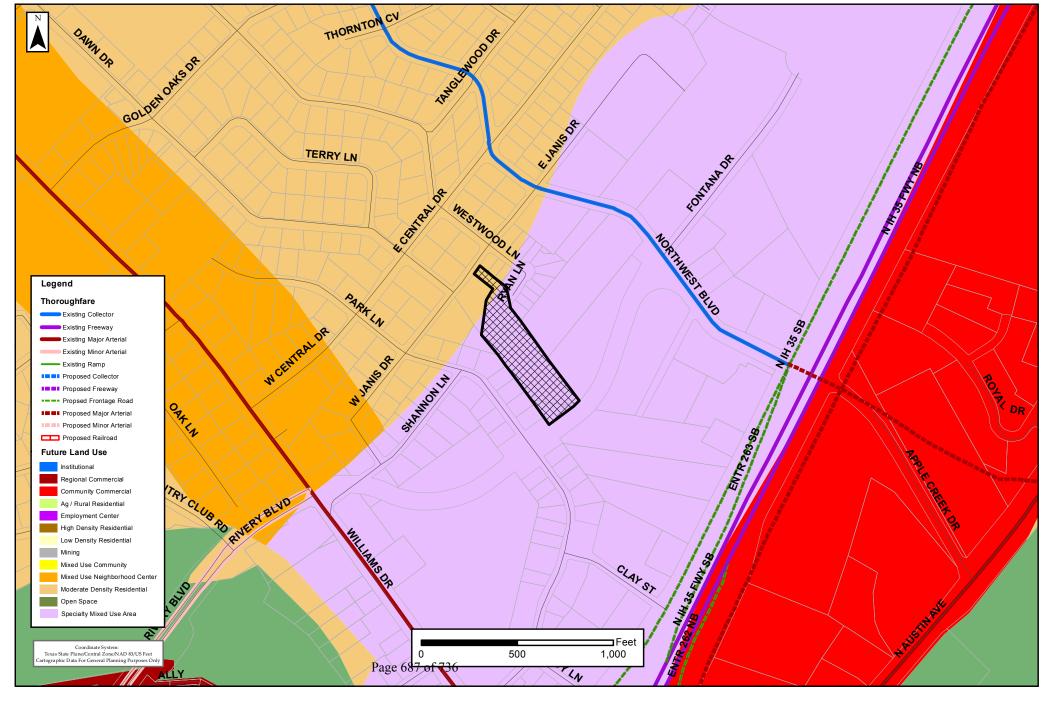


Future Land Use / Overall Transportation Plan

REZ-2018-020

Exhibit #2

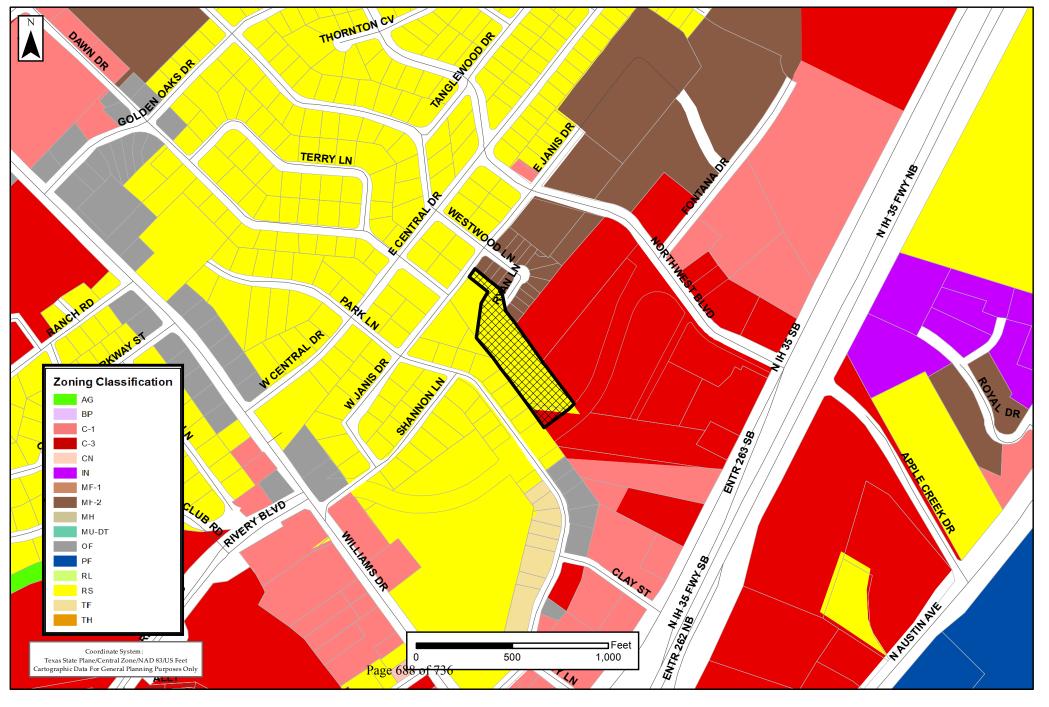
Legend Site Parcels City Limits Georgetown ETJ





Zoning Information REZ-2018-020 Exhibit #3

Legend Site Parcels City Limits



Townhouse District (TH)			
District Development Standards			
Minimum Lot Size = 2,000 square feet Minimum Lot Width = 22 feet Corner Lot Width = 32 feet Maximum Building Height = 35 feet Dwelling Units per Row, max = 6	Front Setback = 15 feet Non-shared Wall Side Setback = 10 feet Shared Wall Side Setback = 0 feet Side/Rear Street Setback = 15 feet Rear Setback = 15 feet Street Facing Garage Setback = 25 feet Unloaded Street Setback = 20 feet	Bufferyard = 10 feet with plantings when non-residential develops; adjacent to residential	
	Specific Uses Allowed within the Distric	t	
Allowed by Right	Subject to Limitations	Special Use Permit (SUP) Required	
Single-family, attached Townhouse (individual lots) Group Home (6 residents or less) Utilities (Minor)	Elementary School Family Home, Daycare Religious Assembly Facilities Religious Assembly Facilities with Nature Preserve or Community Garden Neighborhood Amenity, Activity or Neighborhood Public Park Golf Course Utilities (Intermediate) Wireless Transmission Facility (<41') Seasonal Product Sales Concrete Products, Temporary Construction Field Office Construction Staging, Off-Site Parking Lot, Temporary Portable Classrooms Residential Sales Office/Model Homes	Hospice Facility Halfway House Middle School Group Daycare Activity Center, Youth or Senior Emergency Services Station Bed and Breakfast Bed and Breakfast with Events	



Jordan Feldman, Planner City of Georgetown 46 W. 8th Street Georgetown, Texas 78627

July 24, 2018

RE: Rivery Gardens (previously Colony Park) Townhomes - Rezoning Letter of Intent for Rezoning

Dear Mrs. Feldman,

The following detail information is provided:

- 1. Existing Zoning SF
- 2. Proposed Zoning TH (townhouse)

3. No PUD.

4. Future land use – MF/C-3

5. Justification for request: The re-zoning to TH of the property will be a good transition between SF on the west and Commercial and MF on the east side of the property.

- 6.a. Roads and Access- This tract will be primarily accessed from Rivery Boulevard, which is under construction, on the south end of the tract and a secondary access will be the extension of Ryan Lane to the northeast corner. Access from both streets is planned. There will be a future stub towards Dawn Drive to the north.
 - b. We will connect to the existing water line at the end of Ryan Lane and connect to the waterline planned for in Rivery Boulevard which is under construction. An 8-inch stub will be provided.
 - c. Wastewater service will be available in the Rivery Boulevard. An 8-inch stub will be provided.
 - d. Electric will be from Ryan Lane and Rivery Boulevard.
- 7. No existing structures.

Should you have any questions or need additional information, please feel free to contact me at 512-837-2446, ext 208 or 512-784-6670.

Sincerely, Haynie Consulting, Inc. Texas Registered Engineering Firm # F-2411 Texas Licensed Surveying Firm # 10025000

Timothy E. Haynie, President Professional Engineer (Civil) License No. 36982 Registered Professional Land Surveyor, License No. 2380

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Page 690 of 736



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CITY OF GEORGETOWN OCT 1 9 2018 NOTICE OF PUBLIC HEARING CITY OF GEORGETOWN

PLANNING DEPARTMENT

Comments From Neighboring Property Owners

You are being notified as a requirement of the City of Georgetown Code of Ordinances. You are invited to express your views or concerns regarding the – described petition by returning this comment form and/or by attending one or both of the scheduled public hearings on the matter.

Project Name/Address: Generally in the 200 block of E. Janis Drive.

Project Case Number: <u>REZ-2018-020</u> P&Z Date: <u>Oct 16, 2018</u> Case Manager: <u>Andreina Dávila-Quintero</u>

Name of Respondent: MARK D. KINBACK	
(Please print name)	
Signature of Respondent:	
Address of Respondent:	
(Address required for protest)	
I am in FAVOR: I OBJECT:	
Additional Comments:	
This is a retread " of a development th	at was rejected
by Cry Council a year or two ago. It has	
with time. The plan allows for an even	greater population
densiry in this area (currently 4:1, compa	ved to the rest
	(over)

Written comments may be sent to City of Georgetown Planning Department, P. O. Box 1458 Georgetown, Texas 78627. Emailed comments may be sent to <u>planning@georgetown.org</u>. Any such comments may be presented to the Commission.

of the City. It concentrates (and "gherroizes") "gozen" sporces, no amenities, and insufficient shopping resources the traffic is currently horrible, as Janso to New Blod. have become "raceways". CRIME is up. There is planty of space for public housing elsewhere - why not Wo4 Ranch? This plan was rejected by City Staff last time. Property Values for homeowners will again plenmet. It hook a wiser city council then the p42 commission to realize that this' development is ill-planned, arbitrary and capricious, and may result us the City being such. I will Appear at the meeting.



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OCT 1 2 2018 CITY OF GEORGETOWN NOTICE OF PUBLIC HEARING OF GEORGETOWN PLANNING DEPARTMENT

Comments From Neighboring Property Owners

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Written comments may be sent to City of Georgetown Planning Department, P. O. Box 1458 Georgetown, Texas 78627. Emailed comments may be sent to <u>planning@georgetown.org</u>. Any such comments may be presented to the Commission.

ago. J Spoke with M.S. and the Darula at length and she is aware of our anotions 4 worries.

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	PLANNING DEPARTMENT

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Name of Respondent:USAn Herard	
(Please print name)	
Signature of Respondent: Anna Huard	
(Signature required for protest)	
Address of Respondent: 162 Westwood Lane	
(Address required for protest)	
I am in FAVOR: I OBJECT:	
Additional Comments:	

Written comments may be sent to City of Georgetown Planning Department, P. O. Box 1458 Georgetown, Texas 78627. Emailed comments may be sent to <u>planning@georgetown.org</u>. Any such comments may be presented to the Commission.



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Name of Respondent: <u>WI/IAM Hobbs</u>	
(Please print name)	
Signature of Respondent: (Signature required for protest)	
Address of Respondent: 1609 Westwood LD. GeorgeTown (Address required for protest)	78628
I am in FAVOR: I OBJECT:	
Additional Comments:	

Written comments may be sent to City of Georgetown Planning Department, P. O. Box 1458 Georgetown, Texas 78627. Emailed comments may be sent to <u>planning@georgetown.org</u>. Any such comments may be presented to the Commission.

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Project Case Number: <u>REZ-2018-020</u> P&Z Date: Oct 16, 2018 Case Manager: <u>Andreina Dávila-Quintero</u>

Name of Respondent:AVID_L, MCLAUGHLIN
(Please print name)
Signature of Respondent:(Signature required for protest)
Address of Respondent: 1715 DAWN DR. GEONGETOWN, TX 78628 (Address required for protest)
I am in FAVOR: I OBJECT: YES (See common to below) and on back
Additional Comments: PRIMARY SUGGESTION: The City should purchase this land and develop a neighborhood park. This would be a significant improvement to the entire area, However, The zoning changes are probably already essentially decided, and though townhouses would probably not be a clisaster, there is a concern, though. This land is actually hot located on E. Janis Drive. The primary location will be on the new extension of Rivery Blvd. on the southeast end of the property. The concern, therefore, is with the small strip of land extending from E. Janis Drive to Ryan Lane. Written comments may be sent to planning Department, P. O. Box 1458 Georgetown, Texas 78627. Emailed comments may be sent to planning of porter of any such comments may be
presented to the Commission.

(COMMENTS CONTINUED ON BACK) ->

This small section of land should never be developed, simply landscaped. At most, it might include a walkway and/or possibly a bicycle path.

If, at some point, a roadway for cars should be built on this strip of land, it should be restricted to a one-way drive entering the development from E. Janis Drive. The primary entry and exit for the development, and preferably the only one, should be to and from Rivery Blvd. At the least, there should be no traffic exiting onto E. Janis Drive from the development. Any roadway connecting this development with E. Janis Drive should be restricted to a one-way entry into the development.

Additionally, any access to the development from Ryan have should also be restricted to entrance only.

Again, my preferred resolution of this matter would be for the City of Georgetown to purchase this land and to develop a neighborhood park. And, this park could also include the additional land extending to the northeast of the subject plot and along and to the northwest of she new extension of Rivery Blvd.

Thank you for your consideration.

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OCT 0 8 2018

CITY OF GEORGETOWN NOTICE OF PUBLIC HEARING DEPARTMENT

Comments From Neighboring Property Owners

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Project Name/Address: Generally in the 200 block of E. Janis Drive.

Project Case Number: <u>REZ-2018-020</u> P&Z Date: Oct 16, 2018 Case Manager: Andreina Dávila-Quintero

Name of Respondent: <u>RALPH STUART</u> INC (Please print name)
Signature of Respondent:
Address of Respondent: 308 W 34 St., LAMPASAS TX 76550 (Address required for protest)
I am in FAVOR: I OBJECT:
Additional Comments:

Written comments may be sent to City of Georgetown Planning Department, P. O. Box 1458 Georgetown, Texas 78627. Emailed comments may be sent to <u>planning@georgetown.org</u>. Any such comments may be presented to the Commission.

From:	Claudia McCance
To:	Andreina Davila
Subject:	REZ-2018-020 regarding request of rezoning- 200block of E Janis Drive
Date:	Saturday, October 06, 2018 4:32:58 PM

Ms.Davila,

Really at a loss at what to say... We purchased our townhouse 5 months ago, we moved here from Florida to be closer to our children. We were between 2 homes, we had our realtor go to the planning office so we could make our final decision. We loved the townhouse on Westwood lane the green belt behind our home ,made it very desirable for us loved the nature and privacy. Just 5 1/2 months ago we were told there were NO plans for the land behind us except for the possibility of the extension road for Ryan lane. I feel were misled and possibly lied too.... we would not have chosen this house if we had been aware of the proposed zone change!! How could we not have been told??

I have no problem with the current zoning I realize Georgetown is a growing city. We have been told that low cost housing is a possibility, a 178 units on 3.361 acres that's a huge complex for such a small space it would be assumed all trees and wildlife would be gone. I'm sure that would affect the property values in the neighborhood!!! How could so much change in just 6 months?? For us retired people this is a nightmare and could possibly be a a late in life mistake. Any information you could give me would be much appreciated. We plan on being at both meetings. Thank you for your time,

William Mccance Claudia Mccance 661 317-1927

Sent from my iPad

Caution: This email originated from outside the City of Georgetown. Do not click links or open attachments unless you recognize the sender and know the content is safe.

- COG Helpdesk



RECEIVED

OCT 0 3 2018 CITY OF GEORGETOWN NOTICE OF PUBLIC HEARING GEORGETOWN PLANNING DEPARTMENT

Comments From Neighboring Property Owners

5

You are being notified as a requirement of the City of Georgetown Code of Ordinances. You are invited to express your views or concerns regarding the – described petition by returning this comment form and/or by attending one or both of the scheduled public hearings on the matter.

Project Name/Address: Generally in the 200 block of E. Janis Drive.

Project Case Number: <u>REZ-2018-020</u> P&Z Date: <u>Oct 16, 2018</u> Case Manager: <u>Andreina Dávila-Quintero</u>

4

Name of Respondent: Paul Den on	
(Please print name)	
Signature of Respondent:	
(Signature required for protest)	
Address of Respondent: 106 E JANIS DR (Address required for protest)	
(Address required for protest)	
I am in FAVOR: I OBJECT:	
Additional Comments:	
We have a lot of nulti family housing in our Neigh backhood	Î
alpeady. That small strip of woods should either Remain	N
Single Samily on better yet be made into a grandel	<u>}</u>
We have NO Green bilts and that walk be that propert	i ·les
Best use SOROUR COMMUNITY	

Written comments may be sent to City of Georgetown Planning Department, P. O. Box 1458 Georgetown, Texas 78627. Emailed comments may be sent to <u>planning@georgetown.org</u>. Any such comments may be presented to the Commission.

An Ordinance of the City Council of the City of Georgetown, Texas, amending part of the Official Zoning Map to rezone approximately 3.361 acres out of the Nicholas Porter Survey, Abstract No. 497, located in the 200 block of E Janis Drive, from the Residential Single-Family (RS) and General Commercial (C-3) zoning districts to the Townhouse (TH) zoning district; repealing conflicting ordinances and resolutions; including a severability clause; and establishing an effective date.

Whereas, an application has been made to the City for the purpose of amending the Official Zoning Map, adopted on the 12th day of June, 2012, for the specific Zoning District classification of the following described real property ("The Property"):

3.361 acres out of the Nicholas Porter Survey, Abstract No. 497, as recorded in the Official Public Records of Williamson County, Texas, hereinafter referred to as "The Property"; and

Whereas, public notice of such hearing was accomplished in accordance with State Law and the City's Unified Development Code through newspaper publication, signs posted on the Property, and mailed notice to nearby property owners; and

Whereas, the Planning and Zoning Commission, at a meeting on October 16, 2018, held the required public hearing and submitted a recommendation of approval to the City Council for the requested rezoning of the Property; and

Whereas, the City Council, at a meeting on January 22, 2019, held an additional public hearing prior to taking action on the requested rezoning of the Property.

Now, therefore, be it ordained by the City Council of the City of Georgetown, Texas, that:

Section 1. The facts and recitations contained in the preamble of this Ordinance are hereby found and declared to be true and correct, and are incorporated by reference herein and expressly made a part hereof, as if copied verbatim. The City Council hereby finds that this Ordinance implements the vision, goals, and policies of the Georgetown 2030 Comprehensive Plan and further finds that the enactment of this Ordinance is not inconsistent or in conflict with any other policies or provisions of the 2030 Comprehensive Plan and the City's Unified Development Code.

<u>Section 2</u>. The Official Zoning Map, as well as the Zoning District classification(s) for the Property is hereby amended from the Residential Single-Family (RS) District and General Commercial (C-3) District to the Townhouse (TH) District, in accordance with the attached *Exhibit A* (Location Map) and *Exhibit B* (Legal Description).

<u>Section 3</u>. All ordinances and resolutions, or parts of ordinances and resolutions, in conflict with this Ordinance are hereby repealed, and are no longer of any force and effect.

<u>Section 4</u>. If any provision of this Ordinance or application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the other provisions, or application thereof, of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are hereby declared to be severable.

<u>Section 5</u>. The Mayor is hereby authorized to sign this ordinance and the City Secretary to attest. This ordinance shall become effective in accordance with the provisions of state law and the City Charter of the City of Georgetown.

APPROVED on First Reading on the 22nd day of January, 2019.

APPROVED AND ADOPTED on Second Reading on the 12th day of February, 2019.

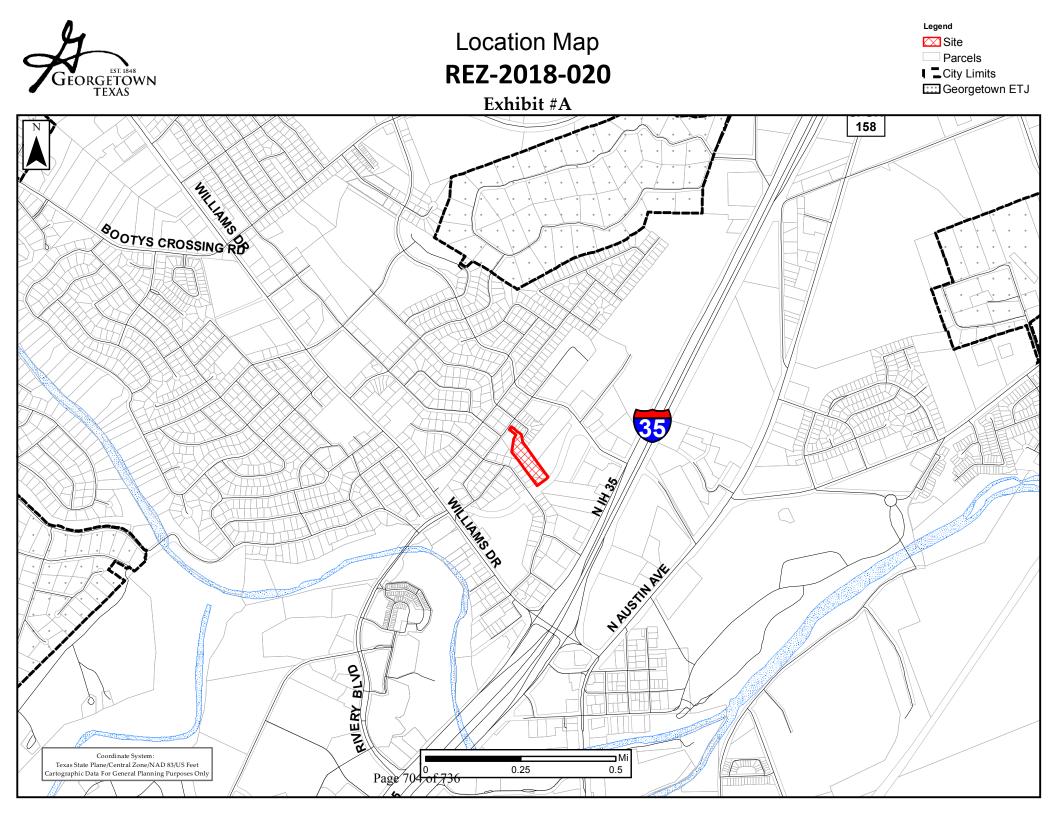
THE CITY OF GEORGETOWN:

ATTEST:

Dale Ross Mayor Robyn Densmore, TRMC City Secretary

APPROVED AS TO FORM:

Charlie McNabb City Attorney



Ordinance Exhibit B

EXHIBIT 'A'

FIELD NOTE DESCRIPTION FOR A 3.066 ACRE TRACT OF LAND OUT OF THE INCHOLAS PORTER SURVEY, ABSTRACT NUMBER 497 STRUATED IN WILLIAMSON COUNTY, TEXAS.

BEING A 3,065 ACRE TRACT OUT OF THE NICHOLAS PORTER SURVEY, ABSTRACT NO. 497, STUATED IN WILLIAMSON COUNTY, TEXAS, AND BEING A PORTION OF A 3,066 ACRE TRACT COMMEYED TO 180 HOLLY STREET, MC. IN A DEED RECORDED IN DOCUMENT NUMBER 2016057920, OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS (O.P.R.W.C.); SAU 3,068 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGENNING AT A 1/2 INCH IRON ROD FOUND AT THE MOST NORTHERLY CORNER OF SAID 3.086 ACRE TRACT, AND BEING IN THE SOUTHEAST RIGHT-OF-WAY OF JANIS DRIVE, ALSO BEING THE SOUTHWEST CORNER OF LOT 1, BLOCK A, OF "RYANS COVE", A SUBDIVISION RECORDED IN CABINET "X", SLIDES 268-269 OF THE PLAT RECORDS OF WILLIAMSON COUNTY, TEXAS, FOR THE FOINT OF BEGINNING OF HEREIN DESCRIBED 3.066 ACRE TRACT OF LAND;

THENCE, ALONG THE NORTHEAST LINE OF HEREIN DESCRIBED 3.066 ACRE TRACT, BEING ALSO THE SOUTHWEST LINE OF SAID "RYANS COVE" SUBDIVISION, S 51'25'29" E, A DISTANCE OF 179.91 FEET TO A FENCE INTERSECTION FOUND FOR A CORNER OF HEREIN DESCRIBED 3.066 ACRE TRACT;

THENCE, CONTINUING ALONG SAID COMMON LINE, S 11'07'55" E, A DISTANCE OF 108.37 FEET TO A 3/8 INCH IRON ROD FOUND FOR AN ANGLE FOINT IN THE NORTHEAST LINE OF HEREIN DESCRIBED 3.066 ACRE TRACT;

THENCE, CONTINUING ALONG SAID NORTHEAST LINE, BEING ALSO THE SOUTHWEST LINE OF SAID "RYANS COVE" SUBDIVISION AND THE SOUTHWEST LINE OF A 4.02 ACRE TRACT DESCRIBED AS "CEDAR RIDGE AT GEORGETOWN CONDOMINIUMS" RECORDED IN DOCUMENT NO. 2005097190, (O.P.R.W.C.), AND THE SOUTHWEST LINE OF A CALLED 8.46 ACRE TRACT AS CONVEYED TO W. D. KELLEY FOUNDATION IN DOCUMENT NUMBER 2002001129, (O.P.R.W.C.), AND DESCRIBED AS "NORTHWEST CROSSING", A SUBDIVISION RECORDED IN CADINET "M", SLIDE 85, OF THE PLAT RECORDS OF WILLIAMSON COUNTY, TEXAS, S 36'20'02" E, A DISTANCE OF 601.16 FEET TO AN ALUMINUM CAP FOUND FOR THE MOST SOUTHEAST CORNER OF HEREIN DESCRIBED 3.066 ACRE TRACT, AND BEING IN THE NORTH LINE OF A PROPOSED RIGHT-OF-WAY TAKE FOR RIVERY BOULEVARD;

THENCE, LEAVING SAID NORTHEAST LINE, WITH THE COMMON LINE OF HEREIN DESCRIBED 3.066 ACRE TRACT AND SAID PROPOSED RIGHT-OF-WAY LINE, ALONG THE ARC OF A CURVE TO THE RIGHT THROUGH SAID 3.086 ACRE TRACT, HAVING A RADIUS OF 454.07 FEET, AN ARC LENGTH OF 41.64 FEET, AND CHORD BEARING AND DISTANCE OF S 47'17'20" W, 41.62 FEET TO AN ALUMINUM CAP FOUND FOR THE MOST SOUTHERLY CORNER OF HEREIN DESCRIBED 3.066 ACRE TRACT, AND BEING IN THE NORTH LINE OF A CALLED 4.02 ACRE TRACT DESCRIBED 3.066 ACRE TRACT, AND BEING IN THE NORTH LINE OF A CALLED 4.02 ACRE TRACT DESCRIBED AS LOT 1, "FTB: COMMERCIAL NUMBER ONE" RECORDED IN CABINET L, SLIDE 224 OF THE PLAT RECORDS OF WILLMASON COUNTY, TEXAS:

THENCE, WITH THE COMMON LINE OF HEREIN DESCRIBED 3.066 ACRE TRACT AND SAID 4.02 ACRE TRACT, N 60'58'00" W, A DISTANCE OF 224.89 FEET TO A 1/2 INCH IRON ROD FOUND IN THE NORTHEAST LINE OF "GABRIEL HEIGHTS" SUBDIVISION, A SUBDIVISION RECORDED IN CABINET B, SLIDE 5, OF THE PLAT RECORDS OF WILLIAMSON COUNTY, TEXAS, FOR THE SOUTHWEST CORNER OF HEREIN DESCRIBED 3.066 ACRE TRACT;

THENCE, WITH THE COMMON LINE OF HEREIN DESCRIBED 3.066 ACRE TRACT AND SAID "GABRIEL HEIGHTS" SUBDIVISION, THE FOLLOWING TWO (2) COURSES AND DISTANCES, FOR THE SOUTHWEST LINE OF THE HEREIN DESCRIBED TRACT;

1. N 36'07'15" W, 285.23 FEET TO A 1/2 INCH IRON ROD FOUND FOR AN ANGLE POINT;

2. N 36'18'47" W, 145.51 FEET TO AN IRON PIPE FOUND FOR THE SOUTH CORNER OF A CALLED 0.74 ACRE TRACT DESCRIBED IN A DEED TO MELISSA W. THOMPSON RECORDED IN DOCUMENT NO. 2003053385, (O.P.R.W.C.), FOR AN ANGLE POINT IN THE SOUTHWEST LINE OF HEREIN DESCRIBED 3.066 ACRE TRACT;

Ordinance Exhibit B

EXHIBIT 'A'

FIELD NOTE DESCRIPTION FOR A 3.066 ACRE TRACT OF LAND OUT OF THE NICHOLAS PORTER SURVEY, ABSTRACT NUMBER 497 STRATED IN WILLIAMSON COUNTY, TEXAS.

THENCE, WITH THE COMMON LINE OF HEREIN DESCRIBED 3.066 ACRE TRACT AND SAID 0.74 ACRE TRACT, THE FOLLOWING THREE (3) COURSES AND DISTANCES, FOR THE WEST LINE OF HEREIN DESCRIBED 3.066 ACRE TRACT:

- 1. N 07'26'30" E, 170.69 FEET TO A 1/2 INCH IRON ROD FOUND FOR AN ANGLE POINT:
- 2. N31'32'26" E, 70.37 FEET TO A 1/2 INCH IRON ROD FOUND FOR AN INTERIOR ANGLE POINT;
- 3. N 51"44'32" W, 125.03 FEET TO A 1/2 INCH IRON ROD FOUND FOR THE MOST NORTHERLY CORNER OF SAID 0.74 ACRE TRACT AND THE NORTHWEST CORNER OF HEREIN DESCRIBED 3.066 ACRE TRACT, AND BEING IN SAID SOUTHEAST RIGHT-OF-WAY LINE OF JANIS DRIVE;

THENCE, WITH THE NORTHWEST LINE OF HEREIN DESCRIBED 3.066 ACRE TRACT AND SAID SOUTHEAST RIGHT-OF-WAY LINE OF JANIS DRIVE, THE FOLLOWING TWO (2) COURSES AND DISTANCES:

- 1. N 38'26'35" E, 1.73 FEET TO A 1/2 INCH IRON ROD FOUND FOR AN ANGLE POINT;
- 2. N 34'22'53" E, 48.55 FEET TO THE POINT OF BEGINNING, AND CONTAINING 3.066 ACRES, MORE OR LESS.

BEARING BASIS OF THE SURVEY DESCRIBED HEREIN IS PROVIDED BY CITY OF GEORGETOWN MONUMENT 96-013 GPS SUB-HARN DATA AND IS REFERENCED TO THE NAD 83 CONTROL DATUM, TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE, AND NAVD 88 VERTICAL CONTROL DATUM. ALL COORDINATES AND DISTANCES SHOWNLISTED ARE RELATIVE TO TEXAS CENTRAL ZONE GRID.

THE UNDERSIGNED, DOES HEREBY CERTIFY THAT TO, INDEPENDENCE TITLE COMPANY AND 180 HOLLY STREET INC., THAT THE PROPERTY DESCRIBED HEREIN WAS DETERMINED BY A SURVEY MADE ON THE GROUND UNDER MY SUPERVISION AND THAT ALL CORNERS ARE MARKED AS DESCRIBED. THIS SURVEY SUBSTANTIALLY COMFLIES WITH THE CURRENT TEXAS SOCIETY OF PROFESSIONAL SURVEYORS STANDARDS AND SPECIFICATIONS FOR A CATEGORY 1A SURVEY.

TIMOTHY HAYNIE, REFISTERED, PROFESSIONAL LAND SURVEYOR No. 2380 - STATE OF TEXAS HAYNIE CONSULTING INC. 1010 PROVIDENT LANE RCUND ROCK, TEXAS, 78664 TBPLS FIRM #100250-00

07-29-16



Ordinance Exhibit B

> Georgetown, Williamson County, Texas 752-17-02

EXHIBIT P

METES AND BOUNDS DESCRIPTION

FOR A 0.295 ACRE TRACT OF LAND OUT OF THE NICHOLAS PORTER. SURVEY, ABSTRACT NO. 497, SITUATED IN WILLIAMSON COUNTY, TEXAS, AND SAME TRACT OF LAND BEING A REMAINING PORTION OF THAT CERTAIN LOT 1, IN THE F. T. B. COMMERCIAL NUMBER ONE SUBDIVISION AS RECORDED IN CABINET L, SLIDE 224 IN THE PLAT RECORDS OF WILLIAMSON COUNTY, TEXAS (P.R.W.C.); SAID LOT 1 BEING A CALLED 4.02 ACRES OF LAND CONVEYED TO RALPH STUART, INC. IN DOCUMENT NO. 2016058332, OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS (O.P.R.W.C.); SAID 0.295 ACRES OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS;

BEGINNING at a 1/2 Inch iron rod found in the most westerly corner of aforementioned Lot 1, being the southwest corner of a called 3.064 acre tract conveyed to 180 Hollity Street, Inc. In Document Number 2018057920, O.P.R.W.C., and being a point in the northeast rear line of Lot 8 In the Gabriel Heights Subdivision as recorded in Cabinet 'B', Silde 5, P.R.W.C., said point also being the west corner of herein described tract and POINT OF BEGINNING (from which a 1/2 inch iron rod found in the southwesterly line of said called 3.064 acre tract bears N 36°07'15" W, a distance of 286.23 feet);

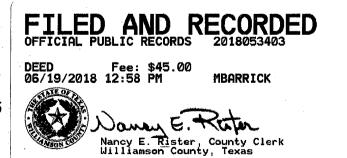
THENCE, along the southwesterily line of said called 3.064 acre tract, being the north line of herein described tract, 5 80°56'00" E, a distance of 224.89 feet to a 1/2 inch iron rod found for the most easterly corner of herein described tract, said point also being the most southers southers corner of said called 3.064 acre tract and a point in a curve in the northwest right-of-way of Rivery Bivd. Extension as recorded in Document Number 2017059975, O.P.R.W.C.;

THENCE, along said right-of-way curve to the right, having a radius of 454.07 feet, an arc length of 25.66 feet, and a chord bearing of S 51°42'49" W, a chord distance of 25.65 feet to a 1/2 inch iron rod set at the end of said curve, and being in the southeasterly line of herein described tract;

THENCE, S 53°19'56" W, a distance of 132.97 feet to a 1/2 inch iron rod set in said right-of-way for the most southenly point of herein described tract, and being a point in the rear northeasterly line of Lot 9 in said Gabriel Heights Subdivision;

THENCE, along the northeasterly line of said Gabriel Heights Subdivision, also being the southwesterly line of herein described tract, N 36°07'15" W, a distance of 161.69 feet to the POINT OF BEGINNING, and containing 0.295 acres, more or less.

After recording, return to: Merlin Lester 213-A West 8th Street Georgetown, Texas 78626



City of Georgetown, Texas City Council Regular Meeting February 12, 2019

SUBJECT:

Consideration and possible action to approve a **\$20,000.00 grant** to **Georgetown Sertoma Club** for participation in the **July 4th event** -- Mayor Dale Ross and David Morgan, City Manager

ITEM SUMMARY:

The Georgetown Sertoma Club has held the 4th of July Celebration and Fireworks Display annually in San Gabriel Park since 1983. The 4th of July Celebration has been open to the public and free of charge since its inception. The event hosts approximately 30,000 spectators and fair goers.

This event is a City-Sponsored event and the City provides in-kind utilities, waives special event fees, rental fees, and provides public safety personnel at this event.

The cost of the fireworks has incrementally increased over the years. The cost last year was \$17,000, and the estimated cost of purchasing them for the 2019 Fireworks Display is \$20,000.

Sertoma uses proceeds received from the 4th of July event to provide hearing aids and other devices to residents in need and also provides scholarships to deserving students attending one of Georgetown's three high schools. Unfortunately last year's 4th of July event ended up with a net loss, which has negatively impacted the Sertoma Club's ability to provide these programs as it has in years past.

The Georgetown Sertoma Club is respectfully requesting that the City of Georgetown to consider financially supporting to help defray the expenses for the 2019 4th of July Fireworks Display and to also consider financially supporting future 4th of July Firework Displays as well. We propose a support level of \$20,000.

Should the Council approve funding for the 2019 Fireworks Display, funds are available in the City Council Contingency account for FY 2019. Funding for future fireworks displays can be addressed during the FY 2020 budget planning process.

FINANCIAL IMPACT:

It is requested that the City council approve \$20,000 from the Council Contingency fund for FY 2019.

SUBMITTED BY:

Shirley J. Rinn on behalf of Mayor Dale Ross

ATTACHMENTS:

4th of July Celebration Fireworks Display

Shirley Rinn

From:	Billy George <george0343@sbcglobal.net></george0343@sbcglobal.net>
Sent:	Tuesday, December 18, 2018 9:14 AM
То:	Mayor; David Morgan
Cc:	jimwilsongtn@suddenlink.net
Subject:	Sertoma's 4th of July Celebration
Attachments:	Sertoma request.docx

Mayor Ross and David Morgan;

The Sertoma Club of Georgetown would truly appreciate your support in providing funding for the 4th of July Celebration. I am attaching a letter to define our need to continue this wonderful event to show case the City of Georgetown.

Thank you,

Bill George, President Sertoma Club of Georgetown

Caution: This email originated from outside the City of Georgetown. Do not click links or open attachments unless you recognize the sender and know the content is safe.

- COG Helpdesk

Bill George, President Georgetown Sertoma Club P.O. Box 853 Georgetown, Texas 78627

December 17, 2018

The Honorable Mayor Dale Ross Georgetown City Manager David Morgan 113 East 8th St. Georgetown, Texas 78626

Holiday Greetings,

Best wishes to you and your families this Holiday Season. The City of Georgetown with its wonderful lights around the square and on the court house reminds us of how great our city has become over the past several years with great people and amazing leadership in all city departments. Thank you for all you do.

The Sertoma Club of Georgetown takes pride in providing speech and hearing assistance to the residence of not only Georgetown but Williamson County. Let me provide you with some history of the Sertoma Club of Georgetown and the various activities the club promotes.

The Sertoma Club of Georgetown was charter in 1979 and in 1983 Sertoma kick off its first 4th of July celebration and fireworks at a cost of \$5,000. The club size that year was approximately 100 members. This year (2018) the fireworks cost was \$17,000, in the coming year the estimate for fire works is \$20,000. The international tariffs on imports from China have impacted us in a big way. Club membership is now under 35 hard working members.

The financial numbers for 2018 were disappointing with a total net income of \$20,829, total expenses of \$21,479 with a net loss of \$650. Our members work tirelessly for many months getting art/craft, food and ride vendors, plus corporate sponsors, HEB, Walmart, etc. leading up to this celebration. We are extremely proud and thankful for the City of Georgetown who provides police, fire, EMS and park department support. But, now with the impending price increase in fireworks we desperately need your financial support.

The county-wide 4th of July celebration is open to the public at no charge and has grown to over the past 34 years to host upwards of 30,000 spectators and fair goers. The Hometown parade has now seen generation of kids and parents who participate yearly in this wonderful and spectacular parade. The event also includes classic car show, kid's games and rides, no charge for nonprofit organizations, a variety of new kids rides and petting zoo with many activities.

The Georgetown Sertoma is not only known for the 4th of July celebration but also our outreach to residence in need of hearing aids and other devises for a more productive life style. The organization also provides scholarship money each year to deserving students from our three high schools. In the past years we have given an average of 10 per year. Part of these funds are raised not only by the 4th of July activities but also over the past 14 years to host and support the Red Poppy Bike Ride held each April in conjunction with the Red Poppy Festival.

Our members and the citizens of Georgetown do not want to see the 4th of July Celebration to end. With the cities help we can continue this incredible and worthwhile event to be part of our heritage for years to come.

Thank you again for your continued leadership and your support. We appreciate your consideration for financial support and look forward to hearing from you.

Sincerely,

Bill George, President Georgetown Sertoma Club

City of Georgetown, Texas City Council Regular Meeting February 12, 2019

SUBJECT:

Request for a **future workshop item** to discuss **waiving signage fees** for **non-profit organizations** -- Steve Fought, Councilmember District 4

ITEM SUMMARY:

Prior to 2018, the City had a practice of excusing the signage fees for non-profit organizations. It was a practice, not a Council approved policy. The City discontinued that practice in 2018. Since then I have received several requests for signage fee waivers — the most recent from Ann Wilkes, the Georgetown National Day of Prayer Coordinator.

In my opinion, some sort of fee adjustment, perhaps a total waiver, is reasonable as long as: (1) the non-profit organization is aware of, and follows, the City's signage regulations; (2) the City's costs are covered; (3) the event for which the signage is requested benefits a substantial part of the City's population and is open to all residents; and (4) the non-profit does not make excessive use of the waivers.

I would like us to discuss this and offer guidance to the City Staff who would come back with a specific policy.

FINANCIAL IMPACT: n/a

SUBMITTED BY: RLD for Fought Dist 4

City of Georgetown, Texas City Council Regular Meeting February 12, 2019

SUBJECT:

Project updates and status reports regarding current and future transportation and traffic project; street, sidewalk, and other infrastructure projects; police, fire and other public safety projects; economic development projects; parks & recreation projects; city facility projects; city technology projects; employee recognition, and downtown projects including parking enhancements, city lease agreements, sanitation services, and possible direction to city staff -- David Morgan, City Manager

ITEM SUMMARY:

The City Council has requested regular updates regarding the status of projects, as well as the ability to discuss these projects as a collective.

FINANCIAL IMPACT: This is a Council Update Item.

SUBMITTED BY: Shirley J. Rinn on behalf of David Morgan, City Manager

ATTACHMENTS:

GTAB Coversheet and Project Update Report GTEC Coversheet and Project Update Report GEDCO Project Update

February 2019 GTAB Updates Cover Sheet

FM 971 - Realignment at Austin Avenue:

Engineer's plans submitted to City for the 60% design, received the fully executed AFA 10-20-17 plans submitted to TxDOT for review. TxDOT review from district office met 4-17 Klotz to move on to 100 % submittals.

Scheduled TxDOT bidding late 2019

Northwest Blvd:

Engineering underway: 100% plans submitted for bridge, received the fully executed AFA 10-20-17. Engineering completion scheduled 5-18, Environmental Complete

Project to advertise January/February 2019

Award scheduled for March 2019

Tentatively scheduled to begin mid-FY 2019.

Rivery Blvd Extension:

- Base course installation underway
- Utility installation underway Outfall drainage 95%

Rivery Blvd TIA improvements:

All turn lanes are open. Contractor finishing up on pedestrian items. Walk-through to be scheduled.

EB Williams @ Rivery turn lane is in design. Surveying for ROW/easements are complete, working to obtain easement and ROW needed.

Southwest Bypass (RM 2243 to IH 35) Phase 1:

Topsoil and vegetation last task

Southwest Bypass (RM 2243 to IH 35) Phase 2:

ROW 90% to subgrade Bridge pier drilling complete Blasting complete

Rock Water Quality Pond Improvements:

Finalizing design. WPAP modifications defined and to be submitted to TCEQ. GA being updated for WPAP modifications. Task order executed for the bidding and construction for this project.

Old Town "Northeast" Sidewalk:

Finalizing design, received TCEQ WPAP approval. 1 easement obtained, 2 awaiting signatures, 4 easement being finalized.

High performance pavement seal Package #1:

Contractor has applied pavement sealer to all of Quail Valley and Summercrest. Notification has been sent out that the remaining streets in Sun City will be postponed, estimated to start back up in March 2019.

High performance pavement seal Package #2:

Contractor has applied HA5 pavement sealer to all of River Chase and Oak Crest Estates Subdivisions. Contractor to complete punch list items

Austin Ave Sidewalks – Hwy 29 to Leander Rd.:

Bid Opening held on 10-30-18. GTAB approved on 11-9-18, City Council approved on 11-27-18. Contracts being executed by contractor. Pre-con to be scheduled in January 2019. Contractor expects to start 1st week of February 2019.

10th & 11th @ Austin Ave Improvements:

Bid opening was held on 10-23-18. GTAB approved on 11-9-18, City Council approved on 11-27-18. Contracts are executed. Pre-construction meeting held 1/22/19. Projected start date is the week of February 11th 2019.

Shell Sidewalk Improvements:

KPA working on design for sidewalk along Shell Road from Sequoia Spur to Bellaire Dr. 1 easement needed along Shell Road near Sequoia Spur. Design is 95% complete.

FM 971 at Austin Avenue Realignment Intersection Improvements Project No. 1BZ TIP No. AG February 2019

- **Project Description** Design and preparation of final plans, specifications and estimates (PS&E) for the widening and realignment of FM 971 at Austin Avenue, eastward to Gann Street.
- PurposeTo provide a new alignment consistent with the alignment of the proposed
Northwest Boulevard Bridge over IH 35; to allow a feasible, alternate route from
the west side of I 35 to Austin Avenue, to Georgetown High School, to San Gabriel
Park and a more direct route to SH 130.

Project Managers Joel Weaver

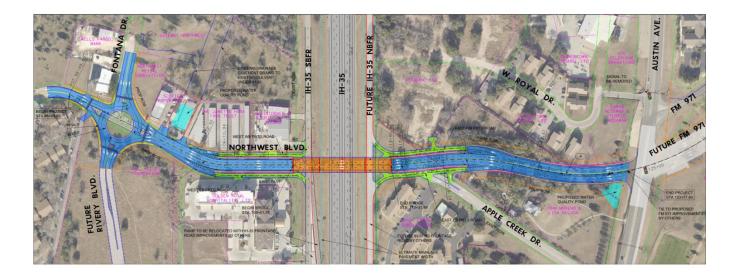
Engineer Klotz Associates, Inc.



Element	Status / Issues
Design	Engineer's plans submitted to City for the 60% design, received the fully executed
	AFA 10-20-17 plans submitted to TxDOT for review. TxDOT review from district
	office met 4-17 Klotz to move on to 100 % submittals.
	Scheduled engineering completion 2018
Environmental/	TBD
Archeological	
Rights of Way	Pursuing two remaining parcels on NE end of project.
Utility Relocations	TBD
Construction	Estimated late fiscal year 18-19
Other Issues	AFA with TxDOT complete.

Northwest Boulevard (Fontana Drive to Austin Avenue) Project No. 5QX TIP No. AF February 2019

Project Description	Construction of overpass and surface roads to connect Northwest Boulevard with
	Austin Avenue and FM 971.
Purpose	This project will relieve congestion at the Austin Avenue/Williams Drive intersection and provide a more direct access from the west side of IH 35 corridor to Georgetown High School and SH 130 via FM 971.
Project Manager	Joel Weaver and Wesley Wright, P.E.
Engineer	Klotz Associates



Element	Status / Issues
Design	Engineering underway: 100% plans submitted for bridge, received the fully executed AFA 10-20-17. Engineering complete, Environmental Clearance 5-18. Ready to Let awaiting final approval from TxDOT.
Environmental/	Complete
Archeological	
Rights of Way	ROW Documents are being finalized. Preliminary outreach to landowners has been made. Offers have been made on 5 parcels. 9 parcels needed, 0 acquired to date, tentative bid late 2018.
Utility Relocations	TBD
Construction	Project to advertise January/February,2019
	Award scheduled for March 2019
	Tentatively scheduled to begin mid-FY 2019.
Other Issues	

Rivery Boulevard Extension (Williams Drive to Northwest Boulevard @ Fontana Drive) Project No. 5RM TIP No. AD February 2019

- ProjectDevelop the Rights-of-Way Map, acquire ROW, address potential environmental issuesDescriptionand complete construction plans specifications and estimate (PS&E) for the extension of
Rivery Boulevard from Williams Drive to Northwest Boulevard at Fontana Drive in
anticipation of future funding availability.
- **Purpose** To provide a route between Williams Drive and Northwest Boulevard serving the Gateway area, providing an alternate route from Williams Drive to the future Northwest Boulevard Bridge over IH 35, to provide a route between the hotels in the Gateway area and the proposed Conference Center near Rivery Boulevard and Wolf Ranch Parkway.

Project Manager Travis Baird, Joel Weaver, and Wesley Wright, P.E.

Engineer Kasberg Patrick and Associates



Element	Status / Issues		
Design	Complete		
Environmental/	Complete		
Archeology			
Rights of Way	Offers have been made on 22 parcels, and 20 have	Total Parcels:	22
	closed. Environmental assessment complete on 11	Appraised:	22
	parcels in preparation for demolition. Condemnation	Offers:	22
	proceedings have been requested on 2 parcels.	Acquired:	20
	Aggressive efforts continue to close all outstanding	Closing pending:	0
	parcels in FY 2017.	Condemnation:	2
Utility Relocations	TBD		
Construction	 Base course installation underway 		
	 Utility installation underway 		
	 Outfall drainage 95% 		
Other Issues			

Rivery Boulevard TIA Improvements Project No. 5RP TIP No. None February 2019

Project Description	Develop the Plans, Specifications and Estimate for roadway improvements necessitated by the development for the Summit at Rivery.
Purpose	To provide improved traffic flow into the Summit at Rivery hotel and conference center from Rivery Boulevard.
Project Manager	Joel Weaver, Chris Pousson and Wesley Wright, P.E.
Engineer	M&S Engineering, LLC



Element	Status / Issues		
Design	Engineering 100% complete for Hintz, Williams and W	olf Ranch Pkwy tur	n lanes
	and are in construction		
	EB Williams @ Rivery turn lane is in design.		
Environmental	TBD		
/Archeology			
Rights of Way	All easements acquired.	Total Parcels:	5
	Additional easements are needed for EB Williams @	Appraised:	0
	Rivery turn lane.	Offers:	0
		Acquired:	2
		Closing pending:	0
		Condemnation:	0
Utility Relocations	Suddenlink working to lower a fiber crossing at Wolf Ra	nch & Rivery, this h	as been
	delayed due to the weather.		
Bid Phase	GTAB approved on 2-21-18, Council approved on 2-27-18	. Pre-Con held on 3-2	20-18.
Construction	All turn lanes are open. TDLR inspection complete.	Final Walk-through	to be
	scheduled the week of January 28th 2019	-	
Other Issues	TBD		

Southwest Bypass Project (RM 2243 to IH 35) Project No. 1CA Project No. BK February 2019

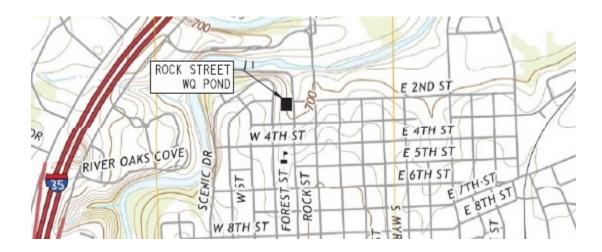
Project Description	Develop PS&E for Southwest Bypass from Leander Road (RM 2243) to IH 35 in the ultimate configuration for construction of approximately 1.5 miles of interim 2-lane roadway from Leander Road (RM 2243) to its intersection with the existing Inner Loop underpass at IH 35.
Purpose	To extend an interim portion of the SH 29 Bypass, filling in between Leander Road (RM 2243) to IH 35 Southbound Frontage Road.
Project Manager	Williamson County
	City Contact: Ed Polasek, AICP
Engineer	HDR, Inc.



Element	Status / Issues
Williamson County	(Southwest Bypass (RM 2243 to IH 35) Phase 1 – WPAP for phase 1 approved.
Project Status	On site tasks: Phase 1
	 Topsoil and vegitation Southwest Bypass (RM 2243 to IH 35) Phase 2 –
	ROW 90% to subgrade
	Bridge pier drilling complete
	Blasting complete
Rights of Way	Complete for the parcels east of the Texas Crushed Stone properties.
Other Issues	City and WilCo coordinating the design and funding details of the Project.

Rock Water Quality Pond Improvements Project No. 1EC TIP No. None February 2019

Project Description	Design and preparation of final plans, specifications and estimates (PS&E) and construction administration for WPAP modifications and rehabilitation of the Rock Water Quality Pond.
Purpose	To improve the water quality treatment and capacity for the downtown overlay district.
Project Managers	Michael Hallmark, Chris Pousson
Engineer	Steger & Bizzell



Element	Status / Issues
Design	Finalizing design. WPAP modifications defined and to be submitted to TCEQ. Executed task order for GA, bidding and construction services.
Environmental/	GA being updated to finalize WPAP modifications.
Archeological	
Rights of Way	N/A
Utility Relocations	none
Bid Phase	TBD
Construction	TBD
Other Issues	

Citywide Sidewalk Improvements Project Old Town Northeast Sidewalks Project No. 1EF TIP No. None Unchanged - February 2019

- **Project Description** The proposed project consists of the rehabilitation and installation of pedestrian facilities along several streets in northeast "Old Town". Various methods of rehabilitating existing non-compliant sidewalks will be considered. This project requires coordination with TCEQ and TDLR and all proposed pedestrian elements will be ADA compliant with the Texas Accessibility Standards (TAS).
- Purpose
 To provide ADA/TDLR compliant sidewalks and ramps identified in the 2015

 Sidewalk Master Plan.

Project Managers Nat Waggoner, AICP, PMP[®], Chris Pousson

Engineer

Steger Bizzell



Element	Status / Issues
Design	Finalizing design, received TCEQ WPAP approval. Working to close on easements
	needed.
Environmental/	TBD
Archeological	
Rights of Way /	1 easement has been obtained, 2 easements are getting scheduled to be signed, the
Easements	remaining 4 easements are being finalized.
Utility Relocations	Relocate Frontier, Sudden link and COG Electric overhead.
Construction	TBD
Other Issues	

Transportation Services Operations CIP Maintenance February 2019

Unchanged

Project Description	2018 CIP Maintenance project consist of furnishing and installing approximately 138,000 square yards of two course surface treatment with fog seal, approximately 56,000 square yards of high performance surface treatment and approximately 380,000 square yards of high performance pavement seal applications.
Purpose	To provide protection and maintain an overall pavement condition index of 85%.
Project Manager	Chris Pousson
Engineer/Engineers	KPA, LP

Task	Status / Issues	
Two Course	All two course surface treatment with fog seal is complete. All striping,	
treatment with fog	handwork and buttons are complete. Punch list is completed.	
seal	Streets Included	
	Lakeway (Airport to Northwest)	
	• Inner Loop (FM 971 to Hwy 29)	
	Sam Houston (Maple to Rock Ride)	
	Patriot Way (Sam Houston to Ronald Rd)	
High performance	Contractor has applied pavement sealer to all of Quail Valley and	
pavement seal	Summercrest. Notification has been sent out that the remaining streets in Sun	
Package #1	City will be postponed, estimated to start back up in March 2019.	
High performance	Contractor has applied HA5 pavement sealer to all of River Chase and Oak	
pavement seal	Crest Estates Subdivisions. Contractor to complete punch list items	
Package #2 (HA5)		



Citywide Sidewalk Improvements Austin Ave Sidewalk Improvements Project No. 1CJ TIP No. None February 2019

- **Project Description** The proposed project consists of the rehabilitation and installation of pedestrian facilities along Austin Ave from Hwy 29 to Leander Rd. Various methods of rehabilitating existing non-compliant sidewalks will be considered. This project requires coordination with TCEQ and TDLR and all proposed pedestrian elements will be ADA compliant with the Texas Accessibility Standards (TAS).
- Purpose
 To provide ADA/TDLR compliant sidewalks and ramps identified in the 2015

 Sidewalk Master Plan.

Project Managers Chris Pousson

Engineer

KPA



Element	Status / Issues
Design	Bid Opening held on 10-30-18. GTAB approved on 11-9-18, City Council approved on 11-27-
	18.
Environmental/	TBD
Archeological	
Rights of Way /	none
Easements	
Utility Relocations	Hydrant
Construction	Contracts are being routed internally for signatures. Pre-con to be set the week of
	January 28 th 2019.
Other Issues	TBD

10th & 11th @ Austin Ave Improvements Project No. 1DT & 1DW TIP No. None February 2019

- **Project Description** The proposed project consists of the rehabilitation and installation of pedestrian facilities at 10th & 11th streets at Austin Ave. This project also includes water line replacement along 11th from Rock to Main and storm water drainage improvements at the intersection of 11th and Austin Ave.
- PurposeTo provide ADA/TDLR compliant sidewalks and ramps, rehab existing water line
and improve drainage at 11th and Austin Ave.
- Project Managers Chris Pousson

Engineer



Element	Status / Issues
Design	Bid opening was held on 10-23-18. GTAB approved on 11-9-18, City Council approved on
	11-27-18.
Environmental/	TBD
Archeological	
Rights of Way /	none
Easements	
Utility Relocations	1 street light
Construction	Contracts are executed. Pre-construction meeting held 1/22/19. Projected start date
	is the week of February 11 th 2019
Other Issues	TBD

Shell Road Sidewalk Improvements Project No. TIP No. None February 2019

Project Description	The proposed project consists of the installation of pedestrian facilities along Shell Road from Sequoia Spur to Bellaire Dr. This project requires coordination with TCEQ and TDLR and all proposed pedestrian elements will be ADA compliant with the Texas Accessibility Standards (TAS).
Purpose	To provide ADA/TDLR compliant sidewalks and ramps to eliminate sidewalk gaps for pedestrian mobility.
Project Managers	Chris Pousson
Engineer	KPA

Element	Status / Issues
Design	Task Order executed in September 2018. Design is 95% complete.
Environmental/	TBD
Archeological	
Rights of Way /	1 easement needed at Shell Road and Sequoia Spur.
Easements	
Utility Relocations	TBD
Construction	TBD
Other Issues	TBD

FM 1460 (Quail Valley Drive to University Drive) Project No. 5RB TIP No. BO & CD Rights-of-Way Acquisition and Utility Relocation January 2019

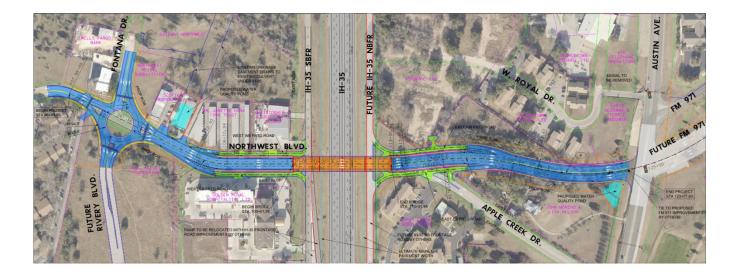
Project Description	Acquisition of ROW and relocation of utilities for the FM 1460 Project (Quail Valley Drive to University Drive).
Purpose	To have all ROWs cleared and utilities prior to TxDOT letting the project for construction.
Project Managers	Ed Polasek, AICP, and Michael Hallmark
Engineer	Brown and Gay Engineers, Inc.



Element	Status / Issues			
Design	Complete			
Environmental/	Complete			
Archeological				
Rights of Way	Right of way acquisition complete.	Section:	North	South
		Acquired:	36	8
		Pending:	0	-
		Condemnation:	0	-
		Total:	36	8
Utility Relocations	Complete			
Construction	Project is complete and open to traffic			
Other Issues	Engineer preparing Change Orders for construction quantity overruns and scope			
	changes.			

Northwest Boulevard (Fontana Drive to Austin Avenue) Project No. 5QX TIP No. AF January 2019

Project Description	Construction of overpass and surface roads to connect Northwest Boulevard with
	Austin Avenue and FM 971.
Purpose	This project will relieve congestion at the Austin Avenue/Williams Drive intersection and provide a more direct access from the west side of IH 35 corridor to Georgetown High School and SH 130 via FM 971.
Project Manager	Joel Weaver and Wesley Wright, P.E.
Engineer	Klotz Associates



Element	Status / Issues			
Design	Design is complete.			
Environmental/	Concurrent with preliminary engineering and schematic design.			
Archeological				
Rights of Way	Possession of all but 1 ROW parcel have been obtained. Financial resolution of multiple parcels remain.			
Utility Relocations	Included as part of the design/bid			
Construction	Tentatively scheduled to begin mid-FY 2019.			
Other Issues	Project expected to bid January/February 2019			

Rabbit Hill Road Improvements Project (Westinghouse Road to S. Clearview Drive) Project No. 5RQ TIP No. BZ January 2019

Unchanged

Project Description Reconstruct Rabbit Hill Road from Westinghouse Road northward to S. Clearview Dr. Widening along Westinghouse Road will also be included in the schematic for additional turning lanes to/from Westinghouse Road. The project length along the anticipated alignment is approximately 0.75 miles

Project Managers Ken Taylor and Wesley Wright, P.E.

CP&Y, Inc.

Engineer



Element	Status / Issues				
Design	Final Design Tentatively complete.				
Environmental/	Efforts underway and any issues are expected to be identified in the coming				
Archeological	month.				
Rights of Way	ROW to be acquired late 2018, two properties acquired as	ired as Total Parcels:			
	part of Mays St. Extension.	Possession: 2			
		Pending:	0		
Utility Relocations	Will be initiated as ROW/easements are acquired and as part of the bidding				
	process. Multiple relocations expected – Round Rock water and Georgetown				
	Electric.				
Construction	ROW procurement ongoing				
Other Issues	None.				

Rivery Boulevard TIA Improvements Project No. 5RP TIP No. None January 2019

Project Description	Develop the Plans, Specifications and Estimate for roadway improvements necessitated by the development for the Summit at Rivery.
Purpose	To provide improved traffic flow into the Summit at Rivery hotel and conference center from Rivery Boulevard.
Project Manager	Joel Weaver, Chris Pousson and Wesley Wright, P.E.
Engineer	M&S Engineering, LLC



Element	Status / Issues				
Design	Rivery turn lanes complete.				
	EB Williams @ Rivery turn lane design is complete.				
Environmental	Clear				
/Archeology					
Rights of Way	Right of way needed for EB Williams @ Rivery turn	Total Parcels:	5		
	lane.	Appraised:	0		
		Offers:	0		
		Acquired:	2		
		Closing pending:	0		
		Condemnation:	0		
Utility Relocations	Complete for Rivery				
	Pending ROW/construction for EB Williams Drive				
Bid Phase	Pending ROW acquisition before pricing out EB Williams turn lane.				
Construction	Complete and open to the public				
Other Issues	Once ROW is obtained, Williams Drive RT onto Rivery w	ill be bid and constru	ucted.		

Rivery Boulevard Extension (Williams Drive to Northwest Boulevard @ Fontana Drive) Project No. 5RM TIP No. AD January 2019

- ProjectDevelop the Rights-of-Way Map, acquire ROW, address potential environmental issuesDescriptionand complete construction plans specifications and estimate (PS&E) for the extension of
Rivery Boulevard from Williams Drive to Northwest Boulevard at Fontana Drive in
anticipation of future funding availability.
- **Purpose** To provide a route between Williams Drive and Northwest Boulevard serving the Gateway area, providing an alternate route from Williams Drive to the future Northwest Boulevard Bridge over IH 35, to provide a route between the hotels in the Gateway area and the proposed Conference Center near Rivery Boulevard and Wolf Ranch Parkway.

Project Manager Travis Baird, Joel Weaver, and Wesley Wright, P.E.

Engineer Kasberg Patrick and Associates



Element	Status / Issues				
Design	Plans at 100%. WPAP approved. Demolition of existing houses complete one commercial building remains.				
Environmental/ Archeology	Complete				
Rights of Way	Offers have been made on 22 parcels, and 20 have	Total Parcels:	22		
	closed. Environmental assessment complete on 11	Appraised:	22		
	parcels in preparation for demolition. Condemnation	Offers:	22		
	proceedings have been requested on 2 parcels.	Acquired:	20		
	Aggressive efforts continue to close all outstanding	Closing pending:	0		
	parcels ASAP.	Condemnation:	2		
Utility Relocations	Underway				
Construction	• Base course installation underway				
	 Utility installation underway 				
	 Drainage 95% complete 				
Other Issues	N/A				

GEDCO - ACTIVE PERFORMANCE AGREEMENTS STATUS REPORT							
January 28, 2019							
Name	Description	Start Date (Council Approved)	End Date	\$ EI	ncumbered		\$ Expended
DisperSol	Grant for job creation related to expansion of manufacturing facilities.	10/16/2014	2/15/2019	\$	250,000	\$	80,000
Radiation Detection Corporation	Grant for Qualified Expenditures and job creation related to the relocation of the corporate offices to Georgetown.	7/23/2013	12/31/2021	\$	320,000	\$	320,000
KJ Scientific (KJS)	Provide a grant of the equipment obtained in the TLCC brand acquisition to KJ Scientific (KJS) to retain the business in Georgetown.The retention equipment grant is for five years with KJS obligated to pay a pro-rated amount of \$10,000 per year should they relocate outside of the City.	2/27/2018	12/31/2022	\$	50,000.00	\$	50,000.00
Holt Caterpillar	GEDCO to provide up to \$185,000 infrastructure grant for the cost of connecting to a new wastewater line run to the property by the City. Approved by Council on 1/24/17.	1/24/2017		\$	185,000.00		
Radiation Detection Corporation 2	Grant for job creation and reimbursement of Qualified Expenditures related to the expansion of the existing HQ corporate offices located in Georgetown. POSTPONED	6/13/2018	6/1/2019	\$	150,000	\$	-
Georgetown Development I, LLC	Infrastructure reimbursement grant of \$500,000 for qualified expenditures related to the development of 90,000 SF of speculative business park space in Georgetown at the Westinghouse Business Center.	10/9/2018	6/1/2021		500000		

City of Georgetown, Texas City Council Regular Meeting February 12, 2019

SUBJECT:

- Christine Attoun would like to speak to the Council about the Williams Dr. Study

- Ingrid Kent would like to speak to the Council about the Williams Dr. Study

- Stacey Kent would like to speak to the Council about the Williams Dr. Study

- Scott Allen would like to speak to the Council about the Williams Dr. Study

- David Barrera would like to speak to the Council about a proposed car wash on Williams Dr. next to Deer Haven Subdivision

- Franklin Attoun would like to speak to the Council about a proposed car wash on Williams Dr. next to Deer Haven Subdivision

ITEM SUMMARY:

FINANCIAL IMPACT: NA

SUBMITTED BY: Robyn Densmore, City Secretary

City of Georgetown, Texas City Council Regular Meeting February 12, 2019

SUBJECT:

Sec. 551.071: Consultation with Attorney

Advice from attorney about pending or contemplated litigation and other matters on which the attorney has a duty to advise the City Council, including agenda items

- Legal advice regarding purchase power agreements

Sec. 551.072: Deliberations about Real Property

- Property Located at Inner Loop and I-35

- Rivery TIA/Rivery Turn Lanes, Parcels 5-7, acquisition of real property -- Jim Kachelmeyer, Real Estate Services Coordinator and Travis Baird, Real Estate Services Manager

- Sale of Property-113 E. 8th Street -- Travis Baird, Real Estate Services Manager

- Texas Crushed Stone

Sec. 551.086: Certain Public Power Utilities: Competitive Matters

- Purchase Power Update -- Jim Briggs, General Manager of Utilities

Sec. 551.087: Deliberation Regarding Economic Development Negotiations

- Project Deliver

- Project Big C

- Project Access

Sec. 551:074: Personnel Matters

City Manager, City Attorney, City Secretary and Municipal Judge: Consideration of the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal

- City Secretary

ITEM SUMMARY:

FINANCIAL IMPACT: NA

SUBMITTED BY: Shelley Nowling, City Secretary