



Travis County Commissioners Court Agenda Request

Meeting Date: March 13, 2012

Prepared By: Steve Sun **Phone #:** 854-4660

Division Director/Manager: Steve Sun, P.E., Engineering Division Manager

Department Head/Title: Steven M. Manilla, P.E., County Executive-TNR

Sponsoring Court Member: Commissioner Davis, Precinct One

AGENDA LANGUAGE:

Consider and take appropriate action on the following requests:

- A) To terminate an old Participation Agreement between Travis County and developers for construction of Parmer Lane Extension in Precinct One; and
- B) To approve a new Participation Agreement between Travis County and developers for construction of Parmer Lane Extension Phase 2B, in Precinct One.

BACKGROUND/SUMMARY OF REQUEST:

The Parmer Lane extension project is a Tier 1 public-private partnership project approved in the 2005 Bond referendum. A participation agreement was entered into between the County and developers (J&T Development Group, LP and Wild Horse Addition, Ltd.) in 2006 and an inter-local agreement was entered into between the County and City of Austin in 2007 for construction of this project. Under these two agreements, Phase 1 and Phase 2A of this project were completed and Parmer Lane has been extended from US 290E to the southern right-of-way of Cap Metro's rail line (Austin and Southwestern Railroad). Due to the subsequent economic downturn and the challenge in obtaining financing, J&T Development Group, LP defaulted on the participation agreement, and Phase 2B of the project, to extend Parmer Lane from the southern right-of-way of Cap Metro's rail line to the eastern right-of-way of State Highway 130, has not been completed. Notice of Default was sent in April 2011. TNR and the County Attorney's Office have since been working with new developers Heart of Manor, LP and Texas WH200, LP, successors in interest to J&T Development Group, LP and Wild Horse Addition, Ltd., to develop a new participation agreement to complete Phase 2B of this project.

The new participation agreement will continue to require the developers to donate necessary right-of-way for construction of project design features, share the preconstruction costs and construction management fee with the County at 50% each, and share the construction costs with the County and City of Austin at 1/3 each. Under an existing interlocal agreement with the City of Austin, the City has agreed to share the construction cost with the County and the developers equally. The County Attorney's Office has reviewed the interlocal agreement and determined

that the County can enter into a new participation agreement without having to amend the interlocal agreement. The new participation agreement includes new safeguards such as a specific project schedule and fiscal security requirements, which are discussed in further details under Issues and Opportunities, to increase the chance of successful project implementation.

STAFF RECOMMENDATIONS:

Staff recommends termination of the old participation agreement and approval of the new participation agreement.

ISSUES AND OPPORTUNITIES:

Since the original developers' inability to obtain financing was the main cause of the default, the new participation agreement includes specific fiscal security requirements to increase the chance of successful completion of project design and construction once started. At the beginning of design, the developers are required to deposit in an escrow account with the County all of the developers' share of the necessary preconstruction costs including planning, survey, engineering, design, permit, bid, award, etc. The developers will manage the project design and the County will reimburse the developers all incurred eligible preconstruction costs upon the developers' submittal of satisfactory progress and payment documents. At the 60% completion of the design, the developers will be required to deposit in County's escrow account the estimated construction costs. The developers will continue to manage the project design, bid/award, and construction while the County continues to reimburse the developer all incurred eligible preconstruction and construction costs. In the event that the developers default on the agreement, County can either terminate the agreement or take over the project and draw on the developers' fiscal security deposits to complete the design and, if the developers have deposited their share of construction funds after 60% design completion, to complete the construction.

The developers will share the construction management fee equally with the County. The developers will be required to deposit 50% of the construction management fee into an escrow account with the County once the construction management contract is approved by the County but before the execution of the contract. The County will reimburse eligible construction management costs to the developers.

The new participation agreement includes specific project schedules for reaching certain design milestones and construction completion. If the developers fail to meet the required schedule, County can either terminate the agreement or draw on the fiscal security deposit to continue the project implementation.

County will withhold certain retainages on reimbursements for construction payments (5%) and construction manager's fee (15%) until the completion of final

project accounting, resolution of pending claim or contingent liabilities, and delivery to the County of the final construction as-built, warranty document, and affidavit of bills paid and waiver of lines. This shall help to ensure the developers fulfill their obligations under the new participation agreement.

The new agreement allows the developers to implement sustainable roadway practices to the project if the design features are accepted by City and County. The developers desire to keep the impervious cover less than 20% of the total right-of-way area so to minimize the stormwater runoff impacts and utilize natural vegetative filtration functions to reduce/eliminate the need of water quality ponds. The developers will maintain stormwater management ponds if the ponds serve developers' lands other than the Parmer Lane extension right-of-way.

FISCAL IMPACT AND SOURCE OF FUNDING:

The preliminary total project cost estimate is \$5,950,000 which includes \$700,000 for preconstruction costs, \$200,000 for construction management fee, and \$5,050,000 for construction costs. Per the participation agreement and the inter-local agreement, the County will pay 50% of the preconstruction cost and construction management fee, and 33&1/3% of the construction costs. Therefore, County's share of the total project costs is \$2,133,333. Funding for this project will be from the 2005 Bond funds. There is a balance of \$2,536,000 available under this project account that can be used for this project.

EXHIBITS/ATTACHMENTS:

- Phase 2B Location Map
- Default Notification
- ROW Letter
- New Participation Agreement

REQUIRED AUTHORIZATIONS:

Cynthia McDonald	Financial Manager	TNR	854-4239
Steve Manilla	County Executive	TNR	854-9429
Tom Nuckols		County Attorney's Office	854-9513

CC:

Steve Sun		TNR	
Tony Valdez		TNR	
Donna Williams-Jones		TNR	



PARMER LANE EXTENSION
TRAVIS COUNTY, TEXAS

EXHIBIT A

JC JONES & CARTER, INC.
ENGINEERS • PLANNERS • SURVEYORS

805 Las Cimas Parkway, Suite 230 Austin, Texas 78746-5493 (512) 441-9493

Exhibit: A

Job No. A155-003

Date: 08-01-06



TRANSPORTATION AND NATURAL RESOURCES DEPARTMENT

STEVEN M. MANILLA, P.E., COUNTY EXECUTIVE

411 W. 13th St.
Eleventh Floor
P.O. Box 1748
Austin, Texas 78767
(512) 854-9383
FAX (512) 854-4626

CERTIFIED MAIL

NOTICE OF DEFAULT OF PARMER LANE PARTICIPATION AGREEMENT

April 21, 2011

Via Certified Mail Return Receipt No. (#7004-1160-0006-9506-7640)

Wild Horse Addition, Ltd.
c/o Mark Drinkard
910 Heritage Center Circle, Suite A
Round Rock, Texas 78664

Via Certified Mail Return Receipt No. (#7004-1160-0006-9506-7596)

Drenner & Golden Stuart Wolff
301 Congress, Suite 1200
Austin, Texas 78701
Attn: Steve Metcalfe

Via Certified Mail Return Receipt No. (#7004-1160-0006-9506-7602)

Steve Metcalfe
Metcalfe Williams, LLP
301 Congress Ave, Suite 1075
Austin, Texas 78701

Via Certified Mail Return Receipt No. (#7004-1160-0006-9506-7619)

J&T
c/o Jeff Turner
Blue Bluff Ventures, LLC
410 North Burnet Street
Manor, Texas 78653

Via Certified Mail Return Receipt No. (#7004-1160-0006-9506-7626)

Vitaly Zaretsky
14515 Bois D'Arc Lane
Manor, Texas 78653

Via Certified Mail Return Receipt No. (#7004-1160-0006-9506-7633)

Kasling, O'Toole, Hemphill & Dolezal, LLP
700 Lavaca Street, Suite 1000
Austin, Texas 78701
Attn: Bill Hemphill



TRANSPORTATION AND NATURAL RESOURCES DEPARTMENT

STEVEN M. MANILLA, P.E., COUNTY EXECUTIVE – TNR/FMD

411 W. 13th St.
Eleventh Floor
P.O. Box 1748
Austin, Texas 78767
(512) 854-9383
FAX (512) 854-4626

Via First Class Mail

February 27, 2012

Heart of Manor, LP
1300 Virginia Drive, Suite 225
Fort Washington, PA 19034

Attn: William Peruzzi

Re: Right-Of-Way (“ROW”) for Phase 2B of Parmer Lane

Dear Mr. Peruzzi:

This letter is in response to the February 9th meeting attended by your representatives and Travis County concerning the pending Parmer Lane Participation Agreement (“Agreement”) between Travis County, Heart of Manor, LP and Texas WH200, LP (“Developer”).

The meeting focused on the dedication, development and maintenance of the right-of-way (“ROW”) area along the future extension of Parmer Lane. The following summarizes Travis County staff’s position:

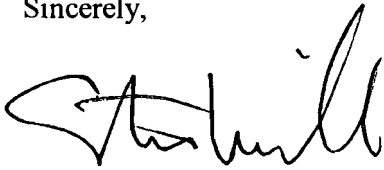
- Travis County and the Developer agree that irrigation, utility crossings, and signage and related monumentation will be permitted in the ROW in accordance with existing Travis County rules, regulations, and practice for standard ROW license agreements.
- The Developer desires to use the ROW identified in Exhibit A as “Outparcel ROW” for stormwater controls for adjacent property currently owned by the Developer. Travis County and the Developer agree the Developer will be responsible for maintaining those controls.
- Travis County and the Developer desire to keep the impervious cover for the Parmer Lane extension below 20% by including the area of the Outparcel ROW in impervious cover calculations. However, Travis County prefers not to own fee simple title to the Outparcel ROW because that creates risks and management responsibilities for which Travis County taxpayers are liable. Travis

County prefers for the Developer to retain fee simple title to the Outparcel ROW and to achieve 20% impervious cover for the Parmer Lane extension by transferring impervious cover allowances from the Outparcel ROW to the ROW identified in Exhibit A as "Core ROW." Travis County and the Developer will meet with City of Austin officials and use best efforts to achieve that goal.

- If the only feasible option to keep impervious cover under 20% for the Parmer Lane extension is for Travis County to take fee simple to the Outparcel ROW, the Developer will execute a ROW license agreement that includes provisions that mitigate potential cost to taxpayers resulting from management expenses or other liabilities.

We look forward to executing the Agreement and working with you and your representatives on the Parmer Lane extension.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Manilla". The signature is fluid and cursive, with a large initial "S" and a long, sweeping tail.

Steve Manilla, P.E.
County Executive-TNR/FMD

cc: David Armbrust
Pete Dwyer
Chris Gilmore
Tom Nuckols
Tony Valdez

COPY

PARMER LANE PARTICIPATION AGREEMENT

This Parmer Lane Participation Agreement ("**Agreement**") is entered into between Travis County, Texas (the "**County**"), Heart of Manor, LP, a Texas limited partnership and Texas WH200, LP, a Delaware limited partnership (collectively, the "**Owner**"). (The Owner is sometimes referred to as "**Developer**"). County, Developer, and Owner are sometimes hereinafter individually referred to as a "**Party**" and collectively referred to as the "**Parties**." Each of the Parties confirms that it has the authority and ability to enter into this Agreement, with the consent attached hereto from any applicable third party lenders, and to perform its obligations under this Agreement, without the further approval or consent of any other person or entity.

Recitals

WHEREAS, County has heretofore entered into that certain Parmer Lane Participation Agreement on October 31, 2006, and First Amendment to Parmer Lane Participation on February 2, 2007 (collectively referred to herein as the "**Initial Agreement**"), executed, by and between County and Developer's predecessors-in-title, namely, J & T Development Group, LP, a Texas limited partnership, and Wild Horse Addition, Ltd, a Texas limited partnership;

WHEREAS, Phases 1A, 1B, and 2A of the Project, as set forth in the Initial Agreement and generally consisting of the extension of Parmer Lane from the southern right-of-way of U.S. Highway 290 to the southern right-of-way of the Capital Metropolitan Transportation Authority (Austin and Southwestern Railroad) rail line (the "**Phase 2A Terminus**"), have been completed;

WHEREAS, as a condition of County approval of development in the Austin Limited Purpose Annexation Area, Developer is generally obligated under Chapter 30, Austin/Travis County Subdivision Regulations, to mitigate the traffic impacts of the development by contributing proportionally to the construction of the roadway improvements in the Capital Area Metropolitan Planning Organization ("**CAMPO**") 2030 Plan;

WHEREAS, Section 232.105 of the Texas Local Government Code provides that a commissioners court may contract with a developer of land in the unincorporated area to construct public improvements, and this Agreement is being entered into pursuant to, and is in compliance with, Section 232.105 in that County's costs are attributable to the oversizing of the road and do not exceed more than thirty percent (30%) of any component of the Project that is not attributable to oversizing;

WHEREAS, County and Developer wish to provide a mutually satisfactory basis for addressing Phase 2B of the Project as set forth in the Initial Agreement, and generally consisting of the extension of Parmer Lane from the Phase 2A Terminus to the eastern right-of-way of State Highway 130 (the "**Phase 2B Terminus**"), including, but not limited to, the remaining design and construction of Parmer Lane (the "**Project**"), and the reimbursement of related costs;

- (ii) Pavement structure with a design life of twenty (20) years based on geotechnical engineering produced by the Project Engineer.
- (iii) Design speed of forty-five (45) miles per hour.
- (iv) Any bridges are to be designed according to minimum applicable Texas Department of Transportation (TxDOT) standards.
- (v) Twenty (20) feet wide grass medians (back of curb to back of curb), or as otherwise agreed upon between Developer and County.
- (vi) Six (6) foot wide sidewalk on the west side of the road and an eight (8) foot wide sidewalk or stabilized decomposed granite path on the east side of the road, all certified to meet all applicable accessibility standards.
- (vii) Mitigation for environmental impacts as, and to the extent, required by applicable law based on the environmental, archeological, and endangered species studies by the Project Engineer. Developer must require the Project Engineer to provide the County two signed originals and a .pdf file of any mitigation plans.
- (viii) Erosion/sedimentation/water quality controls, revegetation, stormwater management during construction, and permanent stormwater management and water quality controls as required by Chapter 30, Austin/Travis County Subdivision Regulations.
- (ix) Guardrails and traffic control devices and markings, both during construction and permanent, as required by TxDOT's Manual of Uniform Traffic Control Devices and sound engineering principles and practices.
- (x) All necessary relocations or adjustments of utilities or other infrastructure, subject to payment or reimbursement by any person legally obligated to bear the cost of such relocations or adjustments.
- (xi) Compliance with any applicable County policies, procedures, and requirements for acceptance of the Project for maintenance.
- (xii) Realignment of Blue Bluff Road at its intersection with the Project.
- (xiii) To the extent practicable, if County identifies the locus of Parmer Lane's intersection with the connector road to the proposed FM 973 extension prior to the issuance of construction permits for the Project, the Project design will include such intersection, and Project construction will make reasonable accommodation for the tie-in of such connector road to Parmer Lane, including the

bid for the Project exceeds Developer's Pre-Bid Road Construction Contribution, Developer must, within twenty (20) business days after being notified by County, deposit the difference with County, or Developer, upon written notice to County, may elect to terminate this Agreement, in which event Developer's Pre-Bid Road Construction Contribution, with interest, will be promptly returned to Developer. If Developer elects to terminate the Agreement the County and City funds may be reallocated to other projects at the sole discretion of the County and City. Termination of this Agreement does not release Developer from platting and/or site development requirements in effect at the time a plat or site plan is submitted to the appropriate authority for approval. Upon satisfying the conditions set forth in Section 12(d), the County will return, with interest, Developer's deposit of its share of the Eligible Construction Costs.

- (h) Travis County shall act as Escrow Agent for the management of funds deposited into escrow by Developer pursuant to this Agreement, and the funds will be deposited in an interest-bearing account. Travis County shall invest the funds in accordance with the Public Funds Investment Act, Chapter 2256 of the Texas Government Code, and other applicable laws or bond covenants. The interest which accrues on the escrowed funds shall be credited to Developer's account(s) and may be used to pay any of the obligations of Developer hereunder, including the payment of approved change orders. Any funds remaining in Developer's escrow account(s) upon the completion of the construction and County and City's acceptance of the Project shall be returned to Developer. Travis County shall provide Developer, at least monthly, with an accounting of the deposits to and disbursements from Developer's escrow account(s).

Section 3. Project Construction Management.

- (a) The Developer shall be responsible for managing development of the Project. The Developer may contract with the Project Engineer or another person, including a person affiliated with Developer, to serve as Developer's agent for providing Project Construction Management services ("**Project Construction Manager**").
 - (1) Before executing a contract with the Project Construction Manager, the Developer must submit a copy of the proposed contract with the Project Construction Manager to the County for approval of the contract and fees. The County shall have ten (10) business days after such submission within which to make any comments to the proposed contract, and if no such comments are received by Developer within said ten (10) day period, the County shall be deemed to have approved the form of contract. The fee for the services of the Project Construction Manager must not exceed four percent (4%) of Developer's actual costs incurred under the Construction Contract.

completed in accordance with approved plans and specifications on time and within budget (collectively, "**Project Construction Manager Services**"). The Project Construction Manager shall provide all files for the Project to the County within thirty (30) days after completion of the construction of the Project, including all addenda and change orders, record drawings, pay requests, and payment records. The County may require the Developer to replace the Project Construction Manager if, in the County's opinion, the Project Construction Manager is not satisfactorily performing its responsibilities related to the Project.

Section 4. Project Engineering Services.

- (a) The Developer shall contract with a professional engineering firm acceptable to the County to assist and serve as Developer's agent in performing all necessary engineering, including design, surveying, geotechnical and traffic analysis services, utility relocation coordination, project manager services during the design phase, and other engineering services for the Project (the "**Project Engineer**"), as required by this section and **Exhibits F and G**. The Developer must not use competitive bidding to obtain services of the Project Engineer.
- (1) Before executing a contract with the Project Engineer, the Developer must submit a copy of the proposed contract with the Project Engineer to the County for approval of the contract and fees. The County shall have ten (10) business days after such submission within which to make any comments to the proposed contract, and if no such comments are received by Developer within said ten (10) day period, the County shall be deemed to have approved the form of contract.
 - (2) After the County approves the proposed contract with the Project Engineer but before Developer executes the contract, Developer must deposit into an interest bearing account with the County fifty percent (50%) of all Eligible Preconstruction Costs. Upon satisfying the conditions set forth in Section 12(d), the County will return, with interest, Developer's deposit of its share of the Project Preconstruction Costs.
 - (3) In its contract with the Developer, the Project Engineer must acknowledge that the Project is a public works project on public property. Developer shall in a timely manner pay all amounts due to the Project Engineer for the engineering services rendered in association with this Agreement. The Developer shall ensure that its contract with the Project Engineer contains a provision that the Project Engineer will look solely to the Developer for all sums coming due thereunder and that the County will have no obligation to the Project Engineer, but will only be obligated to pay the

- of the construction of the Project or the Project Engineer's contract;
and
- (14) any other service or producing any other deliverable necessary to complete the Project with the required Project Design Features, taking into consideration the customary requirements for projects of a similar nature as the Project or special requirements based on any unique aspects of the Project (collectively, "**Engineering Services and Deliverables**").
- (d) All Engineering Services and Deliverables shall meet customary professional standards applicable to the service or deliverable or the Project, based on the Project's nature and location and participants, and are subject to approval by the County based on compliance with this Agreement, cost effectiveness, sound engineering principles and practices, and applicable legal requirements, which approval shall not be unreasonably denied, delayed, or conditioned. The County shall use reasonable efforts to respond to a request for approval within ten (10) working days after any Engineering Services and Deliverables are submitted and shall notify the other Parties in writing if an Engineering Service and Deliverable is not satisfactory. All Engineering Services and Deliverables shall become the property of the County.
- (e) Developer shall cause the Project Engineer and any subcontractor of the Project Engineer performing work on the Project to purchase professional errors and omissions liability insurance (contractual liability included) with a limit of at least One Million Dollars (\$1,000,000) including the cost of claims and that covers claims arising from errors and omissions in the design and engineering of the Project for claims asserted within a period of five (5) years of the completion of the Project. Developer shall provide a copy of the insurance policy upon Developer's execution of this Agreement. Pursuant to the Interlocal Agreement, each general liability and automobile liability policy must name County and the City as additional insureds. Except for (i) Developer's obligation to provide the errors and omissions liability insurance required by this Section 4(e), and (ii) Developer's liability [in the event and to the extent that the cost of damage or loss is not covered by liability insurance otherwise required by this Section 4(e)] for the below specified percentage ("**Developer's Liability Percentage**") for the costs, damages, or losses (a) that are caused by the Project Engineer with respect to Engineering Services and Deliverables including, but not limited to, surveying and/or the Final Plans and Specifications including, but not limited to, the negligence of the Project Engineer and/or surveyors retained by the Project Engineer and (b) that are the result of deficiencies, errors and/or omissions and/or negligence of the Project Engineer and/or surveyors retained by the Project Engineer discovered within one (1) year of the acceptance of the Project by the County, Developer will have no liability to the County and/or its successors for costs, damages, or losses caused by the Project

- (h) The County shall issue any required permits within ten days of the Developer's submittal of Final Plans and Specifications meeting all applicable County standards.
- (i) The County hereby waives all review, permit, and inspection fees in connection with the Project.

Section 5. Designated Representatives.

- (a) County and Developer each designate the individual specified below ("**Designated Representative**") to represent them and to act on their behalf with respect to the subject matter of this Agreement. Each Designated Representative will have authority to determine and interpret the policies and exercise the discretion of the Party it represents, and a Party may rely on the decisions and representations made by the other Party's Designated Representative with respect to the subject matter of this Agreement, except as provided by Section 15(d), below. Each Designated Representative may further designate other representatives to transmit instructions and receive information on the Designated Representative's behalf.

County: Steven M. Manilla, P.E. (or successor), County Executive, Transportation and Natural Resources Department
411 West 13th Street, 11th Floor
Austin, Texas 78701

Developer: David Armbrust
Armbrust & Brown, PLLC
100 Congress, Suite 1300
Austin, TX 78701

- (b) Developer will require its agents to report regularly to and to cooperate and coordinate with County's Designated Representatives. Each Party will require its Designated Representative and agents to cooperate and coordinate with one another, including but not limited to meeting with or reporting information to one another regarding any aspect of the Project, either at regular intervals or at other times determined by County, and reviewing and commenting in a timely manner on work products associated with the Project.

appraised value of the Old R-O-W is more than the value of the Real Property Interests, in which case Developer shall pay County the difference in cash within thirty (30) days before commencing construction on the Project.

Section 7. Construction Contract Procurement.

- (a) Upon the Parties' approval of the Final Plans and Specifications, Developer shall incorporate the Final Plans and Specifications into an invitation for bids and solicit bids for one or more contracts for construction of the Project ("Construction Contract"). The invitation for bids shall include written notice of the requirements of Section 8. The Developer shall submit the invitation for bid and a list of proposed bidders to the County for approval in advance. The invitation for bids must be solicited within thirty (30) days of County approval of the Final Plans and Specifications except that if satisfactory contractual arrangements for the cost of relocations or adjustment of utilities or other infrastructure have not been made with the owner or operator of the utility, Developer may delay solicitation of bids until such arrangements are in place. The Parties shall use reasonable efforts to meet the design, construction and delivery milestones outlined in Exhibit I. The Developer shall provide the County with all responses to the bid solicitation. Despite the foregoing, if the Developer does not solicit bids within sixty (60) days after final approval of the Plans and Specifications, the County may terminate the Agreement and reallocate any bond funding for the Project to other County projects. If the County terminates this Agreement pursuant to this Section 7(a), the County will have no obligation to pay any further amount under this Agreement; however, if the County chooses not to complete the Project, it will promptly return to Developer any funds deposited by Developer in an escrow account with respect to this Agreement, with interest, less any amounts owed by the Developer to the County under this Agreement.
- (b) Developer shall notify the County of the amounts of the bids received for the Project.
 - (1) If the bid determined by Developer, the City, and the County to be acceptable as the lowest responsive and responsible bid for the Construction Contract exceeds the then estimated cost of construction by more than twenty percent (20%), Developer may, or if requested by the County, the Developer must, reject all bids as excessive and require the Project Engineer to perform value engineering in a manner designed to secure a lower bid, while still meeting applicable standards without impairing the functionality of the Project or violating sound engineering principles or practices or applicable legal requirements, to reduce costs, and solicit bids again until a bid acceptable to County and Developer is received.

EXHIBIT J
JOINT USE ACKNOWLEDGEMENT AGREEMENT

WHEREAS, Travis County (the "County"), a political subdivision of the State of Texas, proposes to make certain roadway improvements to Parmer Lane in the area indicated on the attached map (the "Project"); and

WHEREAS, _____ ("Utility") proposes to adjust or relocate certain of its facilities, if applicable, and retain title to any property rights it may have on, along or across, and within or over such limits of the right of way as indicated by the location map attached hereto.

NOW, THEREFORE, in consideration of the covenants and acknowledgements herein contained, the parties mutually agree as follows:

It is agreed that joint usage for both roadway and utility purposes will be made of the area within the roadway right of way limits as such area is defined and to the extent indicated on the aforementioned plans or sketches. Nothing in this Acknowledgement shall serve to modify or extinguish any compensable property interest that may be vested in the **Utility** within the above-described area. If the facilities shown in the aforementioned plans need to be altered or modified or new facilities constructed to either accommodate the proposed roadway improvements or as part of **Utility's** future proposed changes to its own facilities, **Utility** agrees to notify **County** at least 30 days prior thereto, and to furnish necessary plans showing location and type of construction, unless an emergency situation occurs and immediate action is required. If an emergency situation occurs and immediate action is required, **Utility** agrees to notify **County** promptly.

Participation in actual costs incurred by the **Utility** for any future adjustment, removal or regulation of utility facilities required by roadway construction shall be in accordance with applicable laws of the State of Texas.

Utility will, by written notice, advise **County** of the beginning and completion dates of the adjustment, removal, or relocation, and, thereafter, agrees to perform such work diligently, and to conclude said adjustment, removal, or relocation by the stated completion date. The completion date shall be extended for delays caused by events outside **Utility's** control, including an event of Force Majeure, which shall include a strike, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, act of public enemy, accident, fire, flood, or other act of God, sabotage, or other events, interference by the **County** or any other party with **Utility's** ability to proceed with the relocation, or any other event in which **Utility** has exercised all due care in the prevention thereof so that the causes or other events are beyond the control and without the fault or negligence of **Utility**.

It is expressly understood that **Utility** conducts the new installation, adjustment, removal, and/or relocation at its own risk, and that **County** makes no warranties or representations regarding the existence or location of utilities currently within its right of way.

**EXHIBIT H
ETHICS AFFIDAVIT**

Date: _____
Name of Affiant: _____
Title of Affiant: _____
Business Name of Contractor: _____
County of Contractor: _____

Affiant on oath swears that the following statements are true:

1. *Affiant is authorized by Contractor to make this affidavit for Contractor.*
2. *Affiant is fully aware of the facts stated in this affidavit.*
3. *Affiant can read the English language.*
4. *Contractor has received the list of key contracting persons associated with this invitation for bids which is attached to this affidavit as Exhibit "A".*
5. *Affiant has personally read Exhibit "A" to this Affidavit.*
6. *Affiant has no knowledge of any key contracting person on Exhibit "A" with whom Contractor is doing business or has done business during the 365 day period immediately before the date of this affidavit whose name is not disclosed in the Invitation for Bids.*

Signature of Affiant

Address

SUBSCRIBED AND SWORN TO before me by _____ on _____, 20__.

Notary Public, State of Texas

Typed or printed name of notary

EXHIBIT G

ENGINEERING SERVICES & DELIVERABLES: UTILITY RELOCATION SERVICES

1. Research records of properties within project limits of construction
 - a) identify all utility companies that serve the properties
 - b) identify easements on the property and obtain descriptions and copies of any dedication instruments and plats
 - c) identify owners of utilities and contact information
2. Obtain existing condition and proposed improvement information from utility companies
 - a) determine type, size, and approximate location of existing utilities.
 - (i) interview appropriate utility company representatives
 - (ii) obtain as-built drawings if available
 - b) determine future plans for utility work within the limits of construction
 - (i) interview appropriate utility company representatives
 - (ii) if available, obtain preliminary utility engineering plans and schedule for future improvements
 - (iii) If no engineering plans are available, obtain description of proposed improvements including design criteria that will be used including but not limited to:
 - A) utility assignment
 - B) depth requirements
 - C) design requirements for separation from other utilities, structures, or activities
3. Review project design information for existing and potential conflicts
 - a) plan sheets showing existing and proposed conditions for roadways, bridges, buildings, utilities, topography, fences, walls, storm sewer systems, etc.
 - b) profile sheets showing existing and proposed conditions
 - c) detail sheets for foundations showing size and depth requirements
 - d) cross sections showing existing ground and proposed improvement including excavations, embankments, drainage channels, etc
4. Coordinate the relocation, protection, upgrading or abandonment of utilities
 - a) Identify with the County's Project Construction Managers apparent conflicts between existing or proposed utilities and the project improvements shown in the design documents.
 - b) Provide copies of design documents to all utility service providers along with list of conflicts identified.
 - i) maintain database of utility companies provided with design information, contact persons and numbers, information transmittals, written and verbal communications, and any other pertinent information showing who was involved in the coordination, the decisions made, and the time taken to complete the process
 - ii) meet with utility company representatives to determine their proposed method for reconciling conflicts and communicate the information to the County
 - iii) meet with the County and County Attorneys and/or the utility company representatives and other public entities as needed to assist with reconciling

supplemental drawings and specifications in response to requests for information by the Construction Contractor; to inform the Construction Contractor, the County and the Developer immediately upon identifying unacceptable deviations from the contract documents and document such deviations; to resolve problems which arise during performance of the work by the Construction Contractor; and, to perform all other duties that are included in the contract. Construction phase services shall extend through the Construction Contractor's warranty of construction, starting after the County and the Developer issue the project Completion Certificate or from the date of the notice of Substantial Completion. The warranty period during which the Project Engineer's services shall be provided shall not exceed one year unless otherwise specified herein.

- H. Engineer's estimate of costs along with an explanation of the method used and any assumptions that were made. Recommended changes for the parties to consider if a problem has been identified that could adversely affect the project schedule or budget
- I. Preliminary list of required regulatory approvals and right-of-way takings
- J. Updated project schedule with status tracking

Total projected time for completion of Work Product 1 is sixty (60) calendar days.

(ii) Work Product 2: 60% complete design documents:

The 60% complete documents should address *all* major design issues and set direction for completion of the construction documents. A public meeting may be required. The requirements for the 60% design submittals shall as a minimum include the following:

- A. Completed site layout drawings
- B. Drawings that represent all items of work in the scope of services for the project including coordinates for proposed alignment (no blank pages or missing pages). Revised typical sections and cross sections to reflect more complete design
- C. Draft specifications;
- D. Proposed construction schedule and sequence of work
- E. List of permits required and schedule for obtaining all permits/approvals/utility coordination required prior to bidding
- F. Engineering calculations, studies, and reports used in design (drainage report, geotechnical report, environmental studies & reports, slope stability analysis, preliminary quantities, structural design, etc.)
- G. Drawings should demonstrate coordination between prime consultant and sub-consultants (no missing design components to be provided by sub-consultants)
- H. Engineer's estimate of costs along with an explanation of the method used and any assumptions that were made. Recommended changes for the parties to consider if a problem has been identified that could adversely affect the project schedule or budget
- I. Draft ROW strip maps, sketches, & field notes. Final ROW documents to be submitted within 30 days of receiving review comments from Travis County, if required.
- J. Updated project schedule with status tracking.

Total projected time for completion of Work Product 2 is sixty (60) calendar days.

(iii) Work Product 3: 90% complete construction documents:

EXHIBIT F

ENGINEERING SERVICES & DELIVERABLES:

PROJECT DESIGN

1. The Project Engineer shall provide professional services to produce both Preliminary Plan Documents and final plans, specifications and estimates for construction documents for the Project. These services generally will include, but are not limited to the following; storm water drainage system analysis and design (may include water quality and detention); preparing schematic and final right-of-way and easement parcel exhibits; preparing construction documents; completing land surveys, geotechnical investigations and reports with analysis needed for pavement design, structure foundation design, and evaluating slope stability; completing alignment and intersection plans and analysis; developing roadway signage and pavement marking plans, traffic control plans, and plans for utility relocation and landscaping; completing environmental assessments and mitigation plans; monitoring project cost and applying cost recovery methodologies such as value engineering; attending and leading public meetings; and, acquiring all appropriate regulatory permits and clearances.
 - (a) The Project Engineer will perform the following services:
 - (i) Develop all Plans, Specifications, and Estimates (PS&E documents) within the project's allotted budget, to standards stipulated by Travis County.
 - (ii) Develop and submit a construction cost estimate at each phase of the design project.
 - (iii) Use generally recognized engineering methodology and standards of care
 - (iv) For each required permit, either obtain the permit or identify the permit for the Construction Contractor and direct the Construction Contractor to obtain it.
 - (v) Conduct and provide reports for all applicable environmental studies, evaluations, assessments, and calculation/negotiations for mitigation.
 - (vi) Establish and provide a detailed project design task completion. Monitor and provide task completion report to the Developer and the County.
 - (vii) Produce a utility relocation plan and coordinate ALL utility relocation efforts with the appropriate utility company.
 - (viii) Provide on call or total technical assistance during the bidding and construction periods.
 - (ix) Prepare appropriate displays and attend meetings with Travis County staff, regulatory agencies, and public groups, both as a technical advisor and as a project presenter.
 - (x) Provide all geotechnical reports and analysis
 - (xi) Provide required services, as determined by the County and the Developer, for construction administration.
 - (b) The Project Engineer will provide six specific work products with each requiring

documents, and provide recommendation for approval or rejection to the County and the Developer

- (iv) Upon Project completion, obtain the original drawings from the Project Engineer, incorporate all as-built conditions on the original drawings and provide copies to the County and the Developer at project close-out.

4. Post Construction Services

(a) Warranty Period Services

- (i) Meet with County and the Developer upon request during the warranty period to investigate problems with material, equipment, and/or workmanship that may arise. Determine whether or not such problems are warranty issues or design issues and recommend solutions.
- (ii) Coordinate and attend with the County and the Developer a final warranty inspection no less than sixty days prior to expiration of Construction Contractor warranty period. Develop list of deficiencies, if any, and determine if deficiencies are caused by inferior workmanship, equipment, and/or materials or caused by other reasons. Provide recommendations for resolving each deficiency. Complete a follow-up inspection with the County to determine whether deficiencies have been corrected by the Construction Contractor prior to expiration of the warranty period.

Construction Manager shall prepare and distribute change orders and jointly sign all Change Orders with the County and the Developer

(c) Construction Contractor Pay Requests

Upon receipt of a pay request from a Construction Contractor, jointly review each line item with the Construction Contractor and advise the Construction Contractor's representative of any discrepancies or conflicts in the pay requests. Verify the accuracy of quantities of installed, delivered, and stored materials. Advise the County and the Developer of any issues that may warrant withholding, reducing, or delaying payment to the Construction Contractor and provide supporting documentation.

(d) Interpretation of the Contract Documents

Upon request, provide interpretation or clarification of the construction documents to the County, the Developer, or the Construction Contractor. Determine an acceptable method for communicating interpretations and clarifications directly to the Construction Contractor beforehand.

(e) Observation

Site visits are to be performed to the extent necessary to:

- (i) Observe, document, and report to the County, the Developer, and the Construction Contractor whether the project is being constructed in accordance with the contract documents.
- (ii) Observe, document, and report to the County, the Developer, and the Construction Contractor whether the proper measure of unit price bid quantities is being implemented, and confirm percentage completion of lump sum items.
- (iii) Observe, document, and report to the County and the Developer the progress of the Construction Contractor and resources committed to the project by the Construction Contractor.

(f) Materials Testing and Inspections

- (i) Establish and administer a materials sampling and testing program to provide quality control and compliance with the construction plans and specifications. Utilizing the list of required testing developed from the construction documents, jointly develop with the Project Engineer and the Construction Contractor a testing program for the project. The testing program must designate what services are to be provided by the Project Engineer and the Construction Contractor. Compensation for testing services provided by the Project Engineer is to be included in the Project Engineer's fees for Construction Administration services. Services shall include, but not be limited to soils compaction testing, concrete cylinder

EXHIBIT E

CONSTRUCTION ADMINISTRATION SERVICES

1. Coordination and Pre-Construction Meeting Services

- (a) **Technical Submittals and Samples**
Prepares for the coordination meeting with the County and the Developer a list of all technical submittals required by the Construction Contractor. This list shall be distributed at the pre-construction meeting.
- (b) **Permits**
Prepares for the coordination meeting, a list of all permits to be obtained by the Construction Contractor. This list shall be distributed at the pre-construction meeting.
- (c) **Material Testing and Inspections**
Prepares for the coordination meeting recommendations for the project construction and material testing protocols.
- (d) **Pre-construction Submittals**
Provides review comments on Construction Contractor's pre-construction submittals to the Construction Contractor at the pre-construction meeting. Pre-construction submittals include the Construction Contractor's construction schedule, division of contract, subcontractor list, material supplier list, or any special submittals requested of the Construction Contractor prior to the pre-construction meeting.

2. Administrative Tasks

- (a) Prepares draft agenda for pre-construction meeting;
- (b) Determines the project communication, reporting, submittal approval/rejection protocol, and documentation requirements;
- (c) Conducts weekly job site meetings; determines the format for scheduling and conducting, and recording construction meeting minutes;
- (d) Reviews and becomes knowledgeable of any required Developer or County construction administration processes;
- (e) Records meeting minutes;
- (f) Maintains Project construction records consisting of all correspondence related to the construction of the project including but not limited to:
 - (i) all approved technical submittals and a technical submittal checklist;
 - (ii) all approved field orders and change orders;
 - (iii) contract specifications and drawings;
 - (iv) daily log;
 - (v) job meeting minutes;

sole cost and expense, execute and deliver to Assignor such documents as Assignor will reasonably request to evidence such termination.

- (b) Beneficiary is not, by entering into this Assignment or accepting the assignment of and security interest in the Contracts, assuming or agreeing to assume any obligation or liabilities on the part of Assignor under the Contracts.
- (c) Beneficiary's remedies hereunder are cumulative, and the exercise of any one or more of the remedies provided for herein will not be construed as a waiver of any of Beneficiary's other remedies.
- (d) Notice mailed to Assignor's address as reflected above, or to Assignor's most recent changed address on file with Beneficiary, at least ten (10) days prior to the related action, will be deemed reasonable.
- (e) THIS ASSIGNMENT HAS BEEN MADE IN, AND THE INTEREST GRANTED HEREBY IS GRANTED IN, AND BOTH WILL BE GOVERNED BY, THE LAWS OF THE STATE OF TEXAS IN ALL RESPECTS, INCLUDING WITHOUT LIMITATION MATTERS OF CONSTRUCTION, VALIDITY, ENFORCEMENT, AND PERFORMANCE. This Assignment may not be modified, altered or amended except in writing duly signed by an authorized representative of Beneficiary and by Assignor. If any provision of this Assignment is rendered or declared illegal or unenforceable by reason of any existing or subsequently enacted statute, rule or regulation, or by order of or judgment of a court, any and all other terms and provisions of this Assignment will remain in full force and effect as stated and set forth herein.
- (l) All notices, demands, requests and other communications required or permitted hereunder will be in writing and may be personally served or sent by mail, and if given by personal service, it will be deemed to have been given upon receipt, and if sent by mail, it will be deemed to have been given upon its deposit in the mail, postage prepaid, registered or certified, return receipt requested, addressed to Assignor or Beneficiary, as the case may be. The addresses of the parties to this Assignment are set forth on page I of this Assignment. Any of the parties to this Assignment will have the right to change their respective addresses by designating a new address in a written notice to the other parties as herein required.
- (m) This Assignment may be executed in multiple original counterparts.

agreement, indenture or undertaking to which it or any of its property is bound or affected.

- (d) Except for this Assignment (which Assignor has authority to grant): Assignor has not previously assigned, transferred, conveyed, sold, pledged or hypothecated any of the Contracts.

6. **Assignor's Agreements.** Assignor agrees as follows:

- (a) To perform all of its obligations under the Participation Agreement.
- (b) To perform or cause to be performed each and every obligation and duty imposed upon Assignor by the Contracts and to not do any act or not omit to do any act which would constitute a breach of, default under or noncompliance with the Contracts.
- (j) Not to execute any amendment or modification of the Contracts or otherwise change or alter any of the terms and provisions of the Contracts without Beneficiary's prior written consent.
- (l) To promptly notify Beneficiary of the occurrence of any event which constitutes a breach of, default under, or noncompliance with, or which with the passage of time, notice, or both, will constitute a breach of, default under, or noncompliance with any of the terms and provisions of the Contracts.
- (m) To send, with reasonable promptness, to Beneficiary copies of any and all notices of default, breach or material alteration sent or received by Assignor under the Contracts or in connection with Assignor's interest in the Contracts.

7. **Events of Default.** Assignor will be in default under this Assignment upon the happening of any one or more of the following events or conditions (an "Event of Default"):

- (a) Any event of default which occurs under the Participation Agreement which is not cured within any applicable grace or notice and opportunity to cure period.
- (b) Breach of, noncompliance with, or default by Assignor in any of its agreements under this Assignment which is not cured within 15 business days after notice of such breach, noncompliance or default, provided that such 15-day cure period will be extended if such breach, noncompliance or default cannot be reasonably cured within 15 business days, provided that Assignor commences to cure such breach, noncompliance or default within the 15-day period and thereafter diligently pursue such cure.

**EXHIBIT D
COLLATERAL ASSIGNMENT**

COLLATERAL ASSIGNMENT OF CONTRACT AND CONTRACT RIGHTS

DATE: _____, 20__

ASSIGNOR:

ASSIGNOR'S ADDRESS:

BENEFICIARY: Travis County, Texas

BENEFICIARY'S ADDRESS: P.O. Box 1748, 411 West 13th Street, Austin, Texas 78767

PARTICIPATION AGREEMENT: The ___ Participation Agreement between Assignor and Assignee dated _____, 20__.

CONTRACT: All of Assignor's right, title, and interest (but not Assignor's duties or obligations) in and to the following described contracts (collectively, the "Contracts"):

- (a) The Construction Contract between _____ and Assignor dated as of _____, 20__, a copy of which is attached hereto as Exhibit "A";
- (b) The Engineering Contract between _____ and Assignor dated as of _____, 20__, a copy of which is attached as Exhibit "B"; and
- (c) The Project Construction Management Contract between _____ and Assignor dated as of _____, 20__, a copy of which is attached as Exhibit "C";

1. **Agreement.** Subject to the terms and conditions of this Collateral Assignment of Contract and Contract Rights (this "Assignment"), in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which Assignor acknowledges, Assignor hereby grants, assigns, transfers, and conveys to Beneficiary the Contracts, and all powers, benefits, right, title, and interest accruing and to accrue to Assignor and to which Assignor is or may hereafter become entitled to by virtue of the Contracts.
2. **Secured Obligations.** This assignment is made to Beneficiary to secure the performance by Assignor of all of Assignor's duties and obligations under the Participation Agreement.
3. **License.** Beneficiary hereby grants to Assignor a limited license (the "License") to exercise and enjoy all of Assignor's rights and benefits under the Contracts. Upon the occurrence of an Event of Default (as defined below), Beneficiary will have the complete right, power and authority hereunder, then or thereafter, to

Executed to be effective this _____ day of _____ 2012.

DECLARANT:

By: _____
Printed Name: _____
Title: _____
Date: _____

STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me on this, the _____ day of _____, 2012, by _____, in his capacity as _____ of _____ and on behalf of same.

Notary Signature

STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me on this, the _____ day of _____, 2012, by _____, in his capacity as _____ of _____ and on behalf of same.

Notary Signature

6. Breach Shall Not Permit Termination. Notwithstanding anything to the contrary contained herein, no breach of this Declaration shall entitle the Owners to cancel, rescind or otherwise terminate this Declaration, but such limitations shall not affect in any manner any other rights or remedies which the Owners may have hereunder by reason of any breach of this Declaration.
7. Excusable Delays. Whenever performance is required of the Owners, the Owners shall use all due diligence to perform and take all reasonable and necessary measures in good faith to perform; provided, however, that if completion of performance is delayed at any time by reasons of acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, unavailability of labor or material, damage to, work in progress by reason of fire or other casualty, or any other cause beyond the reasonable control of the Owner (except for financial inability, imprudent management or negligence), then the time for performance as herein specified will be extended by the amount of delay actually so caused.
8. Existing Encumbrances. The easement and other rights granted or created by this Declaration are subject to any and all matters of record affecting the Property.
9. General Provisions.
 - A. Inurement. This Declaration and the restrictions created hereby shall inure to the benefit of and be binding upon the Owners, and their successors and assigns. If the Declarant conveys all or any portion of the Property, the Declarant shall thereupon be released and discharged from any and all further obligations, if any, under this Declaration that it had in connection with the property conveyed by it from and after the date of recording of such conveyance, but no such sale shall release the Declarant from any liabilities, if any, actual or contingent, existing as of the time of such conveyance.
 - B. Duration. This Declaration takes effect upon County acceptance of the part of Parmer Lane within the Property. Unless terminated in accordance with Paragraph 9(K) below; this Declaration shall remain in effect in perpetuity.
 - C. Non-Merger. This Declaration shall 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.
 - D. Severability. The provisions of this Declaration shall be deemed independent and severable and the invalidity or partial invalidity of any provision or portion hereof shall not affect the validity or enforceability of any other provision.
 - E. Entire Agreement. This Declaration and the exhibits attached hereto contain all the representations and the entire agreement between the

EXHIBIT C

STORMWATER MANAGEMENT AGREEMENT

**DECLARATION OF EASEMENTS AND RESTRICTIVE COVENANTS
REGARDING THE MAINTENANCE OF DRAINAGE FACILITIES**

This Declaration of Easements and Restrictive Covenants Regarding the Maintenance of Drainage Facilities (the "**Declaration**"), is executed this _____ day of _____ 20__, by _____ ("**Declarant**").

GENERAL RECITALS:

- A. Declarant is the owner of land (the "**Property**") in Travis County, Texas, described in **EXHIBIT A** attached and incorporated by reference.
- B. Definitions.
 - 1. Owners. The term "**Owner**" means, individually, and the term "**Owners**" means, collectively, Declarant and all future owners of the fee interest of any portion of the Property (whether such fee interest is obtained through a purchase from Declarant 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.
 - 2. Facilities. The term "Facilities" means those drainage facilities that convey and receive stormwater runoff from the Property and Parmer Lane and that are more particularly described in **EXHIBIT A** attached and incorporated by reference.
- C. Declarant has agreed to impose upon the Property these covenants and conditions for the benefit of the Property and Parmer Lane and has agreed to accent the responsibility for maintenance of the Facilities in accordance with the terms hereof.

NOW, THEREFORE, it is hereby declared that the Property be subject to the following covenants, conditions and restrictions which shall run with the Property and shall be binding upon all parties having right, title, or interest in or to such portion of the Property or any part, their heirs, successors, and assigns and shall inure to the benefit of each owner. Each contract, deed, or conveyance of any kind conveying those portions of such Property shall conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not the same are set out in full or by reference in said contract, deed or conveyance,

SPECIFIC AGREEMENTS AND RESTRICTIONS:

- 1. Recitals Incorporated. The above Recitals and all terms defined therein are incorporated into this Declaration for all purposes.
- 2. Maintenance. The Owners shall maintain the Facilities in a good and functioning condition in accordance with the requirements of the City of Austin and/or Travis

EXHIBIT 'B' - CONCEPTUAL PROJECT DESCRIPTION
 (All elements subject to final engineering design and approval.)

Community Identity

Community Identity monumentation at north and south entries set back from property line and integrated with landscape, grades and walls.

Ornamental Landscaping

Limited ornamental landscaping in median near major north and south entries. Landscape generally more colorful and refined in medians and becoming less refined and requiring less maintenance at edges of right-of-way.

Plant Materials

All plant materials are native. Xeric landscaping principles utilized to reduce mowing and irrigation and to control invasive species. Native grasses, wildflowers and forbs used in expansive roadside open areas with native trees used in masses to visually define the corridor.

Irrigation

Utilize reuse water source if possible. Design irrigation as temporary system for use during landscape establishment period. Consider existing and proposed pond/reservoirs for rainwater harvesting and irrigation water storage.

Alignment

Horizontal and vertical alignments for northbound and southbound lanes are independent of each other to add visual interest to driving experience and allow grading as close to existing grade as possible. Roadway grades in 2% - 7% range typical.

R.O.W.

R.O.W. width no less than 114'. (R.O.W. to be determined.)

Native Grasses / Wildflowers / Forbs

Used in area between walk and limit of grading to provide attractive roadside aesthetic and minimize maintenance.

Walks

Curvilinear walks within right-of-way offset from edge of roadway to provide safe pedestrian experience. 6' width west side of road, 6' width on east side.

Manicured Landscape

Use of turf limited to area between walk and curb to provide comfortable pedestrian experience and reduce mowing and irrigation.

Walls

Natural stone retaining walls (when required to hold slope) and freestanding walls used throughout corridor to establish unified visual vocabulary.

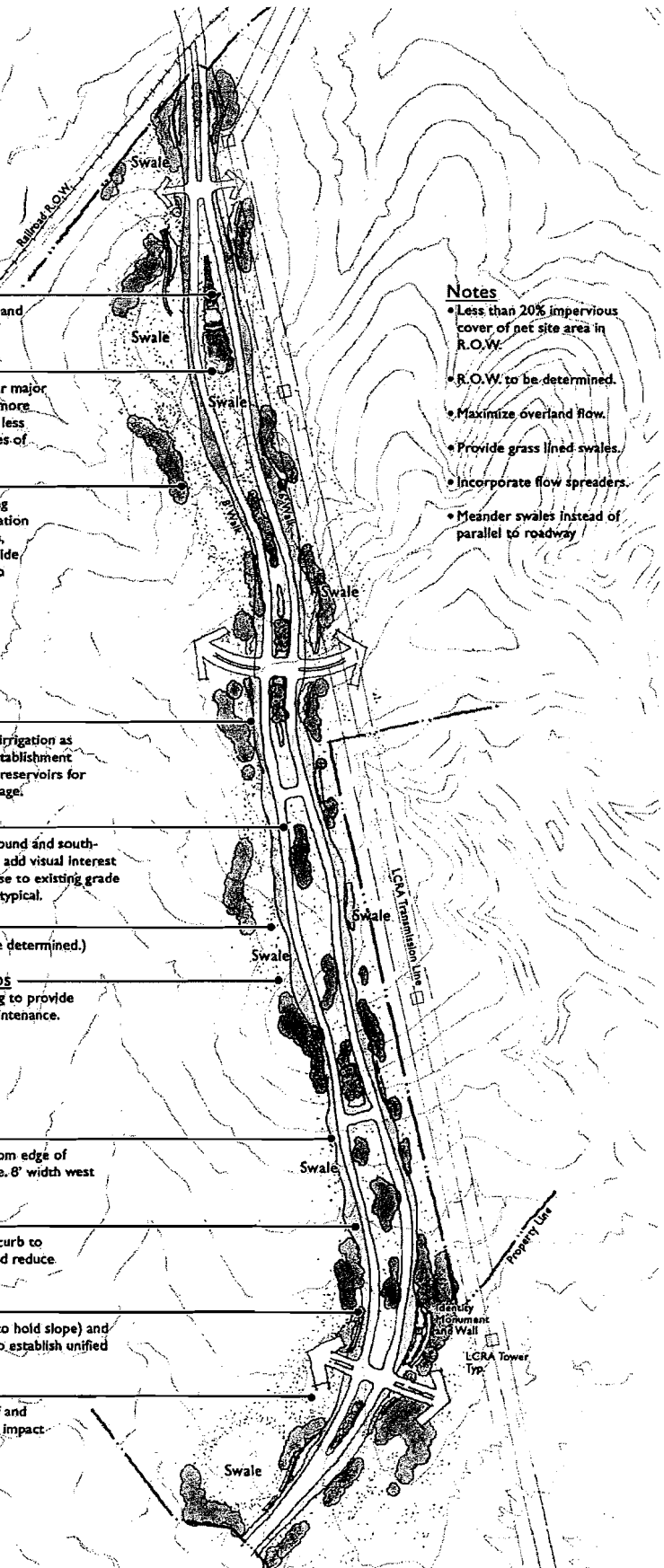
Drainage

Drainage swales contoured to minimize runoff and distribute throughout parkway. Reduced visual impact from drainage structures.

Sustainable Roadway Design

Notes

- Less than 20% impervious cover of net site area in R.O.W.
- R.O.W. to be determined.
- Maximize overland flow.
- Provide grass lined swales.
- Incorporate flow spreaders.
- Meander swales instead of parallel to roadway.



PARMER LANE PHASE 2B CONCEPT

SCALE: 1" = 200'
 0 REFERENCE TO PARMER LANE PHASE 2B
 DATE: 01-23-2012



712 Congress Avenue, Suite 200
 Austin, TX 78701
 Tel: (512) 452-2012 Fax: (512) 487-0177
 www.rpv.com



All information furnished regarding this project is based on information provided by the client. RPV is not responsible for independent verification of any data or information. The client shall be responsible for the accuracy of all data and information. The client shall be responsible for the accuracy of all data and information. The client shall be responsible for the accuracy of all data and information.

The City of Austin, Texas, is the owner of this document. All rights reserved.

100.00 Acres

Wildhorse Ranch
Page 2 of 3

James Manor Survey No. 40, Abstract No. 546
James Manor Survey No. 39, Abstract No. 568
William H. Sanders Survey No. 54, Abstract No. 690
September 7, 2006
06527.11

acre tract of land conveyed to Travis County, Texas, for right-of-way of Blue Bluff Road (80.00' wide) in Volume 4871, Page 1883 of the said Deed Records;

THENCE, leaving the said northerly line of and crossing through the 1242.15 acre tract, along the east line of the 167.527 acre tract, being the west line of Blue Bluff Road (said west line is that line shown on Travis County Engineer Plan No. 1-045, dated Dec. 1970, for an 80.00 feet wide right-of-way, said right-of-way was not conveyed to the county), with the following four (4) courses:

- 1.) S09°08'51"W, 224.11 feet to a ½" iron rod set with a cap marked "Capital Surveying Company, Inc.";
- 2.) S17°37'27"E, 592.53 feet to a ½" iron rod set with a cap marked "Capital Surveying Company, Inc.";
- 3.) S01°08'19"E, 223.56 feet to a ½" iron rod set with a cap marked "Capital Surveying Company, Inc.";
- 4.) S15°22'44"W, 165.33 feet to a ½" iron rod set with a cap marked "Capital Surveying Company, Inc." for the southeast corner of the herein described tract;

THENCE, S86°52'26"W, leaving the said west line of Blue Bluff Road, continuing across the 1242.15 acre tract and the 167.527 acre tract, 2039.92 feet to a ½" iron rod set with a cap marked "Capital Surveying Company, Inc." in the west line of the said 167.527 acre tract being the east line of that 100.00 acre tract conveyed to J&T Development Group L.P. by the deed recorded in Document No. 2006167447 of the said Official Public Records for the southwest corner of the herein described tract;

THENCE, N09°04'22"W, continuing across the 1242.15 acre tract with the common line of the 167.527 acre tract and the 100.00 acre tract 2515.98 feet to a ½" iron rod set in the south right-of-way line of the above said Southern Pacific Railroad (150.00 feet wide);

THENCE, N38°57'25"E, continuing across the said 1242.15 acre tract, along the northwest line of the 167.527 acre tract and the southeast right-of-way line of the said old Southern Pacific Railroad (150.00 foot wide), passing the point of intersection of this railroad right-of-way line with the north line of the said 1242.15 acre tract, being the north line of the 891.38 acre tract and the south line of the aforesaid 11.2 acre tract, for a distance of 97.33 feet a ½" iron rod set, with a cap marked "Capital Surveying Company, Inc.";

THENCE, S61°40'00"E, continuing with the northwest line of the 167.527 acre tract, a distance of 25.44 feet to a ½" iron rod set, with a cap marked "Capital Surveying Company, Inc.", in the south right-of-way line of the said old Southern Pacific Railroad (200.00 feet wide);

THENCE, N38°57'25"E continuing with the northwest line of the 167.527 acre tract, crossing the said 11.2 acre tract and the 1242.15 acre tract, 47.77 feet to a ½" iron rod found, with a cap marked "Capital Surveying Company, Inc."; at the point of curvature of a curve to the right;

- 9.) N26°34'13"W, 851.78 feet to the calculated point of intersection of this northeast line with the southeast line of the above said railroad right-of-way (150.00 feet wide), from which a ½" iron rod found with an aluminum cap marked "TxDOT" bears N26°34'13"W, 0.41 feet;

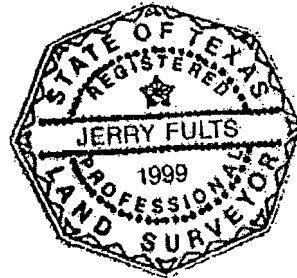
THENCE, continuing across the said 1242.15 acre tract and the 891.38 acre tract, along the southeast right-of-way line of the said old Southern Pacific Railroad (150.00 foot wide), with the following five (5) courses:

- 1.) N36°26'50"E, 107.72 feet to a ½" iron rod set with a cap, marked "Capital Surveying Company, Inc.", at the point of curvature of a curve to the right;
- 2.) With the said curve to the right, having a central angle of 13°08'36", a radius of 1835.00 feet, a long chord of 420.01 feet (chord bears N43°01'08"E), for an arc distance of 420.93 feet to a ½" iron rod set with a cap marked "Capital Surveying Company, Inc.";
- 3.) N49°35'25"E, 176.19 feet to a ½" iron rod set with a cap, marked "Capital Surveying Company, Inc.", at the point of curvature of a curve to the left;
- 4.) With the said curve to the left, having a central angle of 10°38'00", a radius of 5283.00 feet, a long chord of 979.05 feet (chord bears N44°16'25"E), for an arc distance of 980.45 feet to a ½" iron rod set with a cap marked "Capital Surveying Company, Inc.";
- 5.) N37°57'25"E, for a distance of 1597.99 feet to the POINT OF BEGINNING, CONTAINING within these metes and bounds 199.996 acres of land area.

Basis of Bearing is the Texas State Plane Coordinate System, Central Zone, NAD83 (HARN), derived by GPS observation.

That I, Jerry Fults, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge 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 Austin, Travis County, Texas, this the 24th day of August, 2006.





Jerry Fults
Registered Professional Land Surveyor
No. 1999 - State of Texas

199.996 Acres

James Manor Survey No. 40, Abstract No. 546

James Manor Survey No. 39, Abstract No. 568

Wildhorse Ranch.

August 24, 2006

Page 1 of 3

06527.10

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

FIELDNOTE DESCRIPTION of a tract or parcel of land containing 199.996 acres situated in the James Manor Survey No. 39 Abstract No. 528, and the William H. Sanders Survey No. 54, Abstract No. 690, Travis County, Texas, being a portion of that 1242.15 acre tract conveyed to Wildhorse Investments, Ltd. by the deed recorded in Document No. 2000056534 of the Official Public Records of Travis County, Texas; said 1242.15 acre tract being all of those eight tracts of land conveyed to Texas A&M University Development Foundation, and described as Exhibits "A" through "H" by deed recorded in Volume 7896, Page 302 of the said Deed Records of Travis County, Texas and also being all of Lots 1-10, Block 8 and Lots 1-10, Block 9 of the City of Manor as shown in Volume V, Page 796 of the said Deed Records said Lots having been conveyed to Texas A&M University Development Foundation by the aforesaid deed recorded in Volume 7896, Page 302 of the said Deed; said 199.996 acre tract is more particularly described by metes and bounds as follows:

COMMENCING at a calculated point for the most northerly corner of the 1242.15 acre tract, being the most northerly corner of that 11.2 acre tract described as Exhibit "F" of the aforesaid deed to Texas A&M University Development Foundation recorded in Volume 7896, Page 302 of the said Deed Records;

THENCE, S14°20'00"W, with the east line of the 1242.15 acre tract and the 11.2 acre tract, 15.02 feet to a ½" iron rod found, with a cap marked "Capital Surveying Co., Inc.", at the point of intersection of this east line with the southeast right-of-way line of the old Southern Pacific Railroad right-of-way (200' wide, as quitclaimed to the City of Austin in Volume 9837, Page 414 and Volume 9837, Page 422 of the said Deed Records);

THENCE, S84°49'44"W, across the said 1242.15 acre tract and the 11.2 acre tract, along the said southeast railroad right-of-way line, a distance of 62.18 feet to a ½" iron rod found with cap marked "Capital Surveying Company, Inc.", for the point of curvature of a curve to the left;

THENCE, continuing across the 1242.15 acre tract and the 11.2 acre tract, along the said railroad right-of-way line, with said curve to the left, having a central angle of 45°52'19", a radius of 1330.00 feet, a long chord of 1036.61 feet (chord bears S61°53'35"W), for an arc distance of 1064.82 feet to a ½" iron rod found, with a cap marked "Capital Surveying Company, Inc.", for the point of tangency;

THENCE, S38°57'25"W, continuing across the said 1242.15 acre tract and the 11.2 acre tract, with the southeast railroad right-of-way line (200.00 feet wide), a distance of 47.77 feet to a ½" iron rod found, with a cap marked "Capital Surveying Company, Inc.", for an angle point;

THENCE S62°34'20"E, with the said northerly line of the 1242.15 acre tract, 2171.94 feet to a ½" iron rod set with a plastic cap stamped "Capital Surveying Company Inc." for the northwest corner of a 0.54 acre tract being Lot 1, Block "A" of "Wildhorse Creek Subdivision Playscape" a subdivision of record in Document No. 200600122 of the above said Official Public Records; said set iron rod bears N62°34'20"W, 110.00 feet from a ½" iron rod found on the southwesterly line of "Wildhorse Creek Subdivision Section One" recorded in Document No. 200200143 of the official public records and being the northeast corner of said Lot 1, Block "A";

THENCE S27°25'40"W, leaving the northerly line of and crossing into the said 1242.15 acre tract, with the west line above said Lot 1, Block "A", 150.00 feet to a ½" iron rod set with a plastic cap stamped "Capital Surveying Company, Inc."; for the southwest corner of said Lot 1, Block "A";

THENCE S62°34'20" E, with the south line of above said Lot 1 Block "A", 214.38 feet to a ½" iron rod set with a plastic cap stamped "Capital Surveying Company, Inc."; for the southeast corner of the said Lot 1, Block "A" on the southwesterly line of the Wildhorse Creek Subdivision, Section One described above and being the beginning of a non-tangent curve to the left;

THENCE with westerly and southerly lines of said subdivision, the following four (4) courses:

- 1) Southeasterly with said curve to the left, having a radius of 645.00 feet and a central angle of 13°01'36" (chord bears S22°03'39"E, 146.33 feet) for an arc distance of 146.64 feet to a ½" iron rod with a plastic cap stamped "Capital Surveying Company, Inc." found for a point of compound curvature;
- 2) Southeasterly with a curve to the left, having a radius of 365.00 feet and a central angle of 34°22'12" (chord bears S45°45'42"E, 215.68 feet) for an arc distance of 218.95 feet to a ½" iron rod with "JNS Engineers" plastic cap found for corner;
- 3) S27°03'13"W, with a line non-tangent to the previous curved course, a distance of 332.09 feet to a ½" iron rod with a plastic cap stamped "Capital Surveying Company, Inc.", found for corner at the beginning of a non-tangent curve to the left;
- 4) Southeasterly with said curve to the left, having a radius of 2640.00 feet and a central angle of 22°20'11" (chord bears S72°46'59"E, 1022.68 feet) for an arc distance of 1029.18 feet to a ½" iron rod with Capital Surveying Company, Inc. plastic cap found on the easterly line of the aforesaid 1.999 acre quitclaim tract;

that 69.77 acre tract described in deed recorded in Volume 8088, Page 623 of the Deed Records of Travis County, Texas;

THENCE along the north and east line of the 122.026 acre tract (State Highway No.130) with the following sixteen (16) courses;

- 1) With a curve to the left, having a central angle of $08^{\circ}08'22''$, a radius of 8139.74 feet, a long chord of 1155.36 feet (chord bears $N24^{\circ}22'53''W$) for an arc distance of 1156.33 feet to a $\frac{1}{2}$ " iron rod found with an aluminum "TxDOT" cap;
- 2) $N76^{\circ}33'16''E$, 62.71 feet to a $\frac{1}{2}$ " iron rod found with an aluminum "TxDOT" cap;
- 3) $N28^{\circ}56'25''W$, 134.50 feet to a $\frac{1}{2}$ " iron rod found with a an aluminum "TxDOT" cap;
- 4) $S76^{\circ}53'54''W$, 62.67 feet to a $\frac{1}{2}$ " iron rod found with an aluminum "TxDOT" cap;
- 5) With a curve to the left, having a central angle of $10^{\circ}24'46''$, a radius of 5811.95 feet, a long chord of 1054.79 feet (Chord bears $N33^{\circ}40'26''W$) for an arc distance of 1056.24 feet to an iron rod found with an aluminum "TxDOT" cap;
- 6) $N36^{\circ}53'18'' W$, 551.50 feet to a $\frac{1}{2}$ " iron rod found with an aluminum "TxDOT" cap.
- 7) $N53^{\circ}02' 27'' E$, 141.23 feet to a $\frac{1}{2}$ " iron rod found with an aluminum "TxDOT" cap;
- 8) $N36^{\circ}41'48''W$, 149.41 feet to a $\frac{1}{2}$ " iron rod found with an aluminum "TxDOT" cap;
- 9) $S53^{\circ}16'47''W$, 141.89 feet to a $\frac{1}{2}$ " iron rod found with an aluminum "TxDOT" cap;
- 10) $N36^{\circ}53'30''W$, at a distance of 1089.25 feet pass a $\frac{1}{2}$ " iron rod found with an aluminum "TxDOT" cap 0.09 feet to the northeast, for a total distance of 1196.46 feet to a calculated angle point;
- 11) $N13^{\circ}51'58''W$, 140.60 feet to a $\frac{1}{2}$ " iron rod found with an aluminum "TxDOT" cap;
- 12) $N36^{\circ}53'33'' W$, passing the common line between the 1242.15 acres and the 633.40 acres described above for a distance of 1268.46 feet to a $\frac{1}{2}$ " iron rod found with an aluminum "TxDOT" cap;
- 13) $N03^{\circ}52'51''E$, 222.51 feet to a $\frac{1}{2}$ " iron rod found with an aluminum "TxDOT" cap;

STATE OF TEXAS

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COUNTY OF TRAVIS

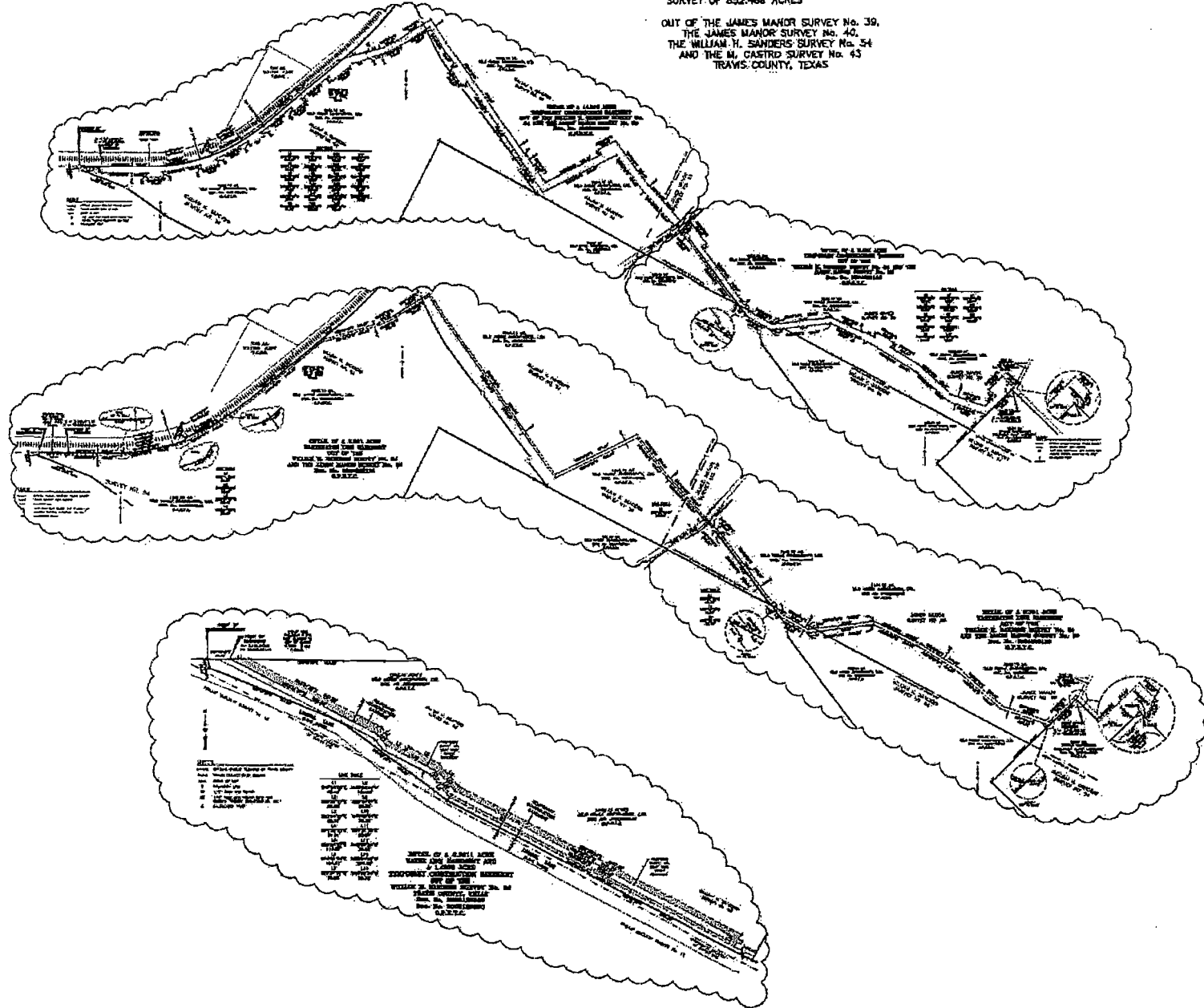
FIELDNOTE DESCRIPTION of a 652.489 acre tract of land situated in the James Manor Survey No. 39, the William H. Sanders Survey No. 54, and the James H. Manning Survey No. 37, all of Travis County, Texas and being a portion of that 1242.15 acre tract of land conveyed to Wild Horse Investments, Ltd. by deed recorded as Document No. 2000056534 of the Official Public Records of Travis County, Texas, a portion of that 633.40 acre tract of land conveyed to Wild Horse Investments, Ltd., by deed recorded as Document No. 2000175724 of the Official Public Records of Travis County, Texas; a part of that 1.999 acre tract quit claimed to Wild Horse Investments, Ltd., in Document No. 2001076959 of the Official Public Records of Travis County, Texas, and all of that 34.259 acre tract conveyed to WHC 116 Lots, Ltd. by deed recorded as Document No. 2002115737 of the Official Public Records of Travis County, said 652.489 acre tract of land is more particularly described by metes and bounds as follows:

BEGINNING at a ½" iron rod found on the westerly right-of-way line of FM 973 (100.0 feet wide right-of-way) and being the most northerly corner of the common line between the aforesaid 1242.15 acre tract and said FM 973 right-of-way;

THENCE, with the common easterly line of said 1242.15 acre tract and westerly right-of-way line of FM 973 the following eight (8) courses:

- 1) S04°16'00"W, a distance of 863.79 feet to a highway right-of-way marker found for the point of curvature of a curve to the right;
- 2) Southwesterly with said curve to the right, having a radius of 2814.60 feet and a central angle of 10°45'45" (chord bears S09°38'53"W, 527.92 feet) for an arc distance of 528.70 feet to a highway right-of-way marker found for a point of tangency;
- 3) S15°01'45"W, 373.86 feet to a highway right-of-way marker found at the beginning of a non-tangent curve to the left, having a radial bearing of S75°00'08"E;
- 4) Southwesterly with said curve to the left, having a radius of 5779.58 feet and a central angle of 05°53'20" (chord bears S12°03'11"W, 593.77 feet) for an arc distance of 594.04 feet to a ½" iron rod found at the end of said curve from which a found highway right-of-way marker bears S28°38'00"E, 2.0 feet;

SURVEY OF 852.486 ACRES
 OUT OF THE JAMES MANOR SURVEY No. 39,
 THE JAMES MANOR SURVEY No. 40,
 THE WILLIAM H. SANDERS SURVEY No. 54
 AND THE M. CASTRO SURVEY No. 43
 TRAVIS COUNTY, TEXAS



DATE	1954
BY	J. H. SANDERS
FOR	WILLIAM H. SANDERS
SCALE	1" = 40' ACROSS
PROJECT NO.	100-100000-100
SHEET NO.	3 OF 3

Exhibit J:

Joint Use Acknowledgement
Agreement

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of equal dignity.

COUNTY:

Sam Biscoe, County Judge

Date:


OWNER / DEVELOPER:

HEART OF MANOR, L.P.

a Texas limited partnership


By: MANOR GP, LLC,
a Texas limited liability company, as General Partner

By: TITAN CAPITAL INVESTMENT GROUP, LLC,
a Delaware limited liability company, as Manager

By: 
Name: WILLIAM A. PERUZZI
Title: MANAGER

Texas WH200, LP,
a Delaware limited partnership

By: Texas WH200 GP, LLC,
a Delaware limited liability company,
Its General Partner

By: 
Printed Name: William Peruzzi
Title: MANAGER

- (i) This Agreement will be construed under the laws of the State of Texas and all obligations of the Parties hereunder are performable in Travis County, Texas. Any suits pursued relating to this Agreement will be filed in a court of Travis County, Texas.
- (j) Any clause, sentence, provision, paragraph, or article of this Agreement held by a court of competent jurisdiction to be invalid, illegal, or ineffective will not impair, invalidate, or nullify the remainder of this Agreement, but the effect thereof will be confined to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or ineffective.
- (k) To the extent expressly designated, accepted, and approved in accordance with the terms hereof, this Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective legal representatives, successors, and assigns and shall be a covenant running with the Owner's Land. Owner may not assign its rights or obligations under this Agreement without the written consent of County, which consent shall not be unreasonably withheld, conditioned or delayed. It is provided further that Developer and/or Owner may grant a security interest in and collaterally assign all sums to be paid to Developer and/or Owner under this Agreement to any lending institution making a loan to Developer and/or Owner for purposes of payment of the costs of the Project, and County expressly consents to any such security interest or collateral assignment. Any Party may record in the Official Public Records of Travis County a memorandum of this Agreement. Upon any Party's assignment of its rights or obligations in accordance with this Section, such assignor Party shall be released from any further liability hereunder except that if Owner assigns its rights or obligations pursuant to this Section 15(k), Owner remains liable for any work completed before the date of the assignment, and the Owner must provide to the County an executed copy of any instrument regarding the assignment within ten days after the date of the assignment.
- (l) Except as otherwise expressly provided herein, nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties hereto, any benefits, rights, or remedies under or by reason of this Agreement.
- (m) This Agreement is effective upon execution by all the Parties. This Agreement may be executed simultaneously in one or several counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument. The terms of this Agreement will become binding upon each Party from and after the time that it executes a copy hereof. In like manner, from and after the time it executes a consent or other document authorized or required by the terms of this Agreement, such consent or other document will be binding upon such Party.

County: Steve M. Manilla, P.E. (or successor)
County Executive, Transportation and Natural
Resources
P.O. Box 1748
Austin, Texas 78767
Attn: Re No. 163.1969

With copy to: David A. Escamilla (or successor)
Travis County Attorney
P.O. Box 1748
Austin, Texas 78767
Attn: Re No. 163.1969

Owner: Heart of Manor, LP
1300 Virginia Drive, Suite 225
Fort Washington, PA 19034
Attn: William Peruzzi

With copy to: Texas WH200, LP
William Peruzzi
1300 Virginia Drive, Suite 225
Fort Washington, PA 19034

With copy to: David B. Armbrust
Armbrust & Brown, PLLC
100 Congress Avenue, Suite 1300
Austin, Texas 78701

The Parties may change their respective addresses for purposes of notice by giving at least five days' written notice of the new address to the other Party. If any date or any period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period will be extended to the next business day.

- (b) As used in this Agreement, whenever the context so indicates, the masculine, feminine, or neuter gender and the singular or plural number will each be deemed to include the others.
- (c) This Agreement contains the complete and entire Agreement between the Parties respecting the Project and supersedes all prior negotiations, agreements, representations, and understandings, if any, between the Parties. This Agreement may not be modified, discharged, or changed except by a further written agreement, duly executed by all of the Parties. However, any consent, waiver, approval, or other authorization will be effective if signed by the Party granting or making such consent, waiver, approval, or authorization.

Developer shall submit to County a final statement of any and all claims for payment or credit the Developer desires to have taken into account in the final accounting under Section 12.

Section 12. Retainage and Final Accounting.

- (a) Until completion of the final accounting under Subsections (b) and (c), the County will withhold five percent (5%) retainage on payments attributable to the Construction Contract and fifteen percent (15%) of the Project Construction Manager's fee. The retained amounts will be released and paid by the County upon completion of the final accounting, resolution of any pending claims or contingent liabilities arising from the Project, and delivery to the County of the warranty documentation, construction files, as built, affidavit of bills paid and final lien waivers, and other documents required to be submitted under this Agreement.
- (b) Within thirty (30) days after the Project is complete or this Agreement is terminated, the Developer shall render a final written accounting of any and all costs to be paid or borne by, or credited or refunded to, any Party under this Agreement, taking into account any amount the County has previously paid as provided herein and subject to adjustment after resolution of any pending claims or contingent liabilities arising from the Project. The Developer shall send a copy of such accounting to the County. The County and the City shall have the right to audit the Developer's records and shall request any such audit, or any adjustments or corrections, within thirty (30) days of receipt of the accounting.
- (c) After the Developer has sent any corrected or adjusted final accounting to the County and City, the County shall pay any amount it owes no later than thirty (30) days after receipt of such final accounting. The Developer shall refund any amounts due the County within twenty (20) days after delivery of the adjusted final accounting.
- (d) Within thirty (30) days after (1) the Project is complete, (2) the Developer has sent any corrected or adjusted final accounting to the County and City, and (3) the Developer has submitted documentation to the County showing that the Developer has fully paid its Project Engineer, Project Construction Manager, Construction Contractor, and any other contractor relating to the Project, the County will return to Developer, with interest, any funds remaining in the Escrow Account.

Section 13. Correction of Defects; Claims.

- (1) copies of all draw requests from contractors included in the invoice, a detailed summary of the work completed and an affidavit of bills paid and partial lien waiver;
 - (2) the cumulative amount of all draw requests to date;
 - (3) the Developer's, County's, and City's respective portions of the current draw requests in accordance with Section 2(b), Section 2(d), and the calculations used to arrive at that allocation;
 - (4) the cumulative amounts paid by the Developer and reimbursed by the County and City under this Agreement through the date of the accounting; and
 - (5) documentation evidencing Developer's payments, if any, to contractors during the previous month, an itemization of what was paid, and any other documentation required by the Travis County Auditor's Office.
- (h) If the services and work described in the invoice were rendered in compliance with this Agreement, the County will make payment to the Developer *within thirty (30) days of receipt of each invoice*, subject to Section 12. In the event changes or corrections are required to any invoice prior to payment, a request for additional information will be made by the County within ten (10) days of receipt of the invoice.
- (i) Developer will also submit a Travis County TNR Cash Fiscal Reduction Request on a monthly basis. If documentation evidencing Developer's payments, if any, to contractors during the previous month has been provided to the County, the County will make payment to the Developer from the *Escrow Account for the Developer's share of the Eligible Project Costs* on the current invoice within thirty (30) days of receipt of the Travis County TNR Cash Fiscal Reduction Request. No payment documentation from the Developer is required in order for the County to process the payment to the Developer for the initial month of the Project.
- (j) Subject to approval by County, which approval shall not be unreasonably denied, delayed, or conditioned, Developer may elect to assign its obligations and liabilities to a separate entity controlled by or affiliated with one or more of the Owners. *Such entity would enter into the contract with the Construction Contractor.* Developer must provide County an executed copy of any instrument regarding the assignment of Developer's obligations with respect to this Agreement within ten days after the date of assignment. The Developer shall remain liable for any work completed before the date of assignment. If Owner transfers its Owner's Land pursuant to this Section 9(j), the agreement shall be a covenant running with the Owner's Land as provided in Section 15(k).

- (2) execute the Construction Contract;
 - (3) submit to the County payment and performance bonds, insurance certificates, collateral assignments, and all other documents required to be submitted under this Agreement;
 - (4) deposit with the County either cash or a letter of credit for the Developer's non-reimbursable costs under Section 2(g) in a form acceptable to the County in an initial amount equal to the County's estimate of the Developer's non-reimbursable share of costs under Section 2(g) ("**Fiscal Security**") to secure completion of the Project as provided in Section 14, provided that the letter of credit may be a reducing letter of credit that provides for reduction of the amount as the Developer incurs and pays such non-reimbursable costs; and
 - (5) issue notice to proceed with construction of the Project to the Construction Contractor.
- (b) Before the applicable date in Subsection (d) for beginning construction of the Project, if the County and the City have executed the Interlocal Agreement, the County will estimate the City's share of costs under the Interlocal Agreement and require the City to deposit with the County cash in that amount ("**City Construction Funds**"). The County shall use the City Construction Funds either to pay to the Developer the City's share of the reimbursement due the Developer under the Interlocal Agreement or to complete construction of the Project under Section 14.
- (c) If the requirements of Subsection (a) are not met, the County may terminate this Agreement and be relieved of any obligation to pay any amount under this Agreement after notice and an opportunity to cure as set forth in Section 15(h).
- (d) Construction must commence within twenty (20) days after the Contractor's notice to proceed. Developer shall cause the Project to be complete and accepted by the County within three hundred sixty-five (365) days following the award of the construction contract. However, Developer may amend the commencement and completion dates set forth in this Section 9(d) if the County Executive agrees in writing to the amendment. Subject to notice and opportunity to cure as set forth in Section 15(h) and notwithstanding anything to the contrary, if the Developer fails to comply with the deadlines set forth in this Section 9(d), the County may terminate this Agreement and reallocate any bond funding for the Project to other County projects. If the County terminates this Agreement pursuant to this Section 9(d), the County will have no obligation to pay any amount under this Agreement; however, if the County chooses not to complete the Project, the County will promptly return to Developer any funds deposited by Developer in an escrow account with respect to this Agreement, with

construction of the Project. In the event that a Change Order approved jointly in writing by the City, County, and Developer exceeds the contingency amount, Developer shall deposit its thirty-three percent and one-third percent share of the additional cost with the County within twenty (20) business days. Each party shall be responsible for funding change orders that it requests for its benefit.

- (d) Within ten (10) days after execution of the Construction Contract, the Developer will provide to the County a copy of the executed Construction Contract and any related documents, including any assignment, certificate, or other documents required under Section 8. The Developer will also provide copies of any subsequent documents amending or otherwise relating to the Construction Contract; however, no amendments or change orders to the Construction Contract as approved by the County may be made without the County's approval.

Section 8. Special Provisions Applicable to Construction Contract.

- (a) The Developer will obtain from the Construction Contractor and provide to the County a collateral assignment of the Developer's rights under the Construction Contract, in the form attached as Exhibit D, which authorizes the County to exercise the Developer's rights under the Construction Contract and to complete the Project if the Developer fails to do so as provided in this Agreement.
- (b) The Parties acknowledge that the Project is a County road project and involves construction of public improvements. Accordingly, the Project will be constructed and all right-of-way, easements, equipment, materials, and supplies will be acquired in the name of or on behalf of the County. However, the Developer shall ensure that all construction contracts and other agreements contain a provision that each contractor, materialman, or supplier will look solely to the Developer for payment of all sums coming due thereunder and that the County will have no obligation to any such party, but will only be obligated to reimburse the Developer in the time and manner required under this Agreement.
- (c) The Developer shall include the County's Historically Underutilized Businesses Program goals with the invitation for bid and Final Plans and Specifications and ensure that they are part of the bids.
- (d) The Developer shall ensure that payment and performance bonds are obtained and kept in place for the Project in compliance with Chapter 2253, Texas Government Code.
- (e) All tangible personal property to be purchased for use in construction of the Project and all taxable services to be performed for the design, management and construction of the Project are subject to the sales tax