



Travis County Commissioners Court Agenda Request

Meeting Date: May 15, 2012

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

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

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

Sponsoring Court Member: Commissioner Davis, Precinct One

AGENDA LANGUAGE: Consider and take appropriate action to approve the Assignment of Agreement related to Parmer Lane Participation Agreement.

BACKGROUND/SUMMARY OF REQUEST:

Travis County entered into the Parmer Lane Participation Agreement with the Developer - Heart of Manor, LP and Texas WH200, LP, dated effective as of March 13, 2012, for the design and construction of Parmer Lane Extension Phase IIB. Sections 9(j) and 15(k) of the Agreement provides that the obligations and liabilities of the Developer may be assigned to a separate entity controlled by or affiliated with the Developer. The Developer requests approval of the Assignment of Agreement to HOM Titan Development, LLC.

STAFF RECOMMENDATIONS:

TNR recommends approval of the Assignment of Agreement. County Attorney's Office has reviewed the form of the Assignment and finds it acceptable.

ISSUES AND OPPORTUNITIES:

Approval of this Assignment of Agreement will allow the continuous development of the project as originally planned.

FISCAL IMPACT AND SOURCE OF FUNDING:

No fiscal impact generated by this Assignment of Agreement.

ATTACHMENTS/EXHIBITS:

Assignment of Agreement
Secretary of State Document

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	854-4660
Tony Valdez		TNR	854-7567
Donna Williams-Jones		TNR	854-7677

: :
0101 - Administrative -

ASSIGNMENT OF AGREEMENT

This Assignment Of Agreement ("*Assignment*") is made and entered into as of the date set forth below by **HEART OF MANOR, LP.**, a Texas limited partnership and **TEXAS WH200, LP**, a Delaware limited partnership (collectively, "*Assignor*") to and for the benefit of **TITAN TEXAS DEVELOPMENT, LLC**, a Delaware limited liability company doing business in Texas as **HOM TITAN DEVELOPMENT, LLC** ("*Assignee*"), and is as follows:

RECITALS:

A. Assignor, as "*Developer*," and **TRAVIS COUNTY, TEXAS** as "*County*", entered into that certain Parmer Lane Participation Agreement, dated effective as of March 13, 2012, (the "*Agreement*"), for the design and construction of Phase 2B of the Parmer Lane extension from the Phase 2A terminus to the eastern right-of-way of State Highway 130 including the reimbursement of related costs. A copy of the Agreement is attached as Exhibit "A".

B. Sections 9(j) and 15(k) of the Agreement provides that the obligations and liabilities of the Developer may be assigned to a separate entity controlled by or affiliated with the Developer.

C. Assignor desires to assign Assignor's interest in the Agreement as it relates to all of the obligations and liabilities of the Developer in the Agreement to Assignee.

NOW, THEREFORE, for and in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor has BARGAINED, GRANTED, SOLD, ASSIGNED, TRANSFERRED, CONVEYED and DELIVERED, and by these presents does BARGAIN, GRANT, SELL, ASSIGN, TRANSFER, CONVEY and DELIVER unto Assignee all of Developer's obligations and liabilities in and to the Agreement.

Assignee hereby accepts the obligations and liabilities of Developer, and expressly assumes and agrees to perform and fulfill all of the terms, conditions, and obligations of Developer under the Agreement.

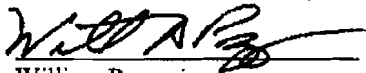
EXECUTED this 27th day of April, 2012.

ASSIGNOR:

HEART OF MANOR, LP,
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 Peruzzi
Title: Manager

TEXAS WH200, LP,
a Delaware limited partnership

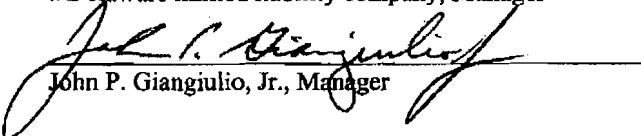
By: Texas WH200 GP, LLC
a Delaware limited liability company,
its General Partner

By: 
Name: William Peruzzi
Title: Manager

ASSIGNEE:

TITAN TEXAS DEVELOPMENT, LLC,
a Delaware limited liability company
doing business in Texas as
HOM TITAN DEVELOPMENT, LLC

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

By: 
John P. Giangulio, Jr., Manager

ACCEPTED BY:

TRAVIS COUNTY:

By: _____
Name: Sam Biscoe, County Judge
Date: _____

EXHIBIT "A"

AGREEMENT

ORIGINAL

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3/12/12

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;

WHEREAS, Owner is the owner of that certain tract of land containing approximately 884.958 acres shown as on Exhibit A; (The property is collectively referred to herein as the "Owner's Land,");

WHEREAS, the Initial Agreement has been terminated;

WHEREAS, Owner's Land is adjacent to a portion of the proposed extension of Parmer Lane, which in this area is specified in the CAMPO 2030 Plan to be a 4-lane divided arterial (CAMPO ID# 734-14);

WHEREAS, the Parties are meeting their obligations under County's 2005 bond order for a four-lane divided arterial road; and

WHEREAS, upon completion and County acceptance of the Parmer Lane extension, it will be a County road, and County desires that it be constructed with capacity to handle not only Developer's present development but future traffic loads as well;

NOW, THEREFORE, in consideration of the mutual promises, covenants, obligations, and benefits set forth in this Agreement, the Parties agree as follows:

Section 1. The Project.

- (a) The Project shall include and be designed and constructed with the following features ("**Project Design Features**") as shown on Exhibit B:
 - (i) New four (4) lane divided road from the Phase 2A Terminus to the Phase 2B Terminus with:
 - (A) Right-of-way width depending on design requirements, but no less than one hundred fourteen (114) feet, plus slope and drainage easements;
 - (B) Road consisting of two (2) asphalt pavement sections twenty-nine (29) feet wide, each pavement including:
 - (1) Two (2) twelve (12) feet wide travel lanes; and
 - (2) A five (5) feet wide bicycle lane along the outside edge of each section;
 - (C) Two (2) feet wide concrete curb and gutter on both sides of each asphalt pavement section;
 - (D) Number and locations of median breaks as shown on Exhibit B.

- (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

installation of conduit for a future traffic signal. Except as provided in the preceding sentence, the Owner shall not have any design or construction responsibility respecting such connector road arising out of this Agreement.

- (xiv) Developer, at its option, may elect to incorporate sustainability standards into the design which may eliminate or reduce the need for water quality and detention ponds by using the stormwater on site for irrigation purposes. The sustainability design is subject to approval by County and the City of Austin and shall not cause the original estimated construction budget of Six Million Dollars (\$6,000,000) to increase by more than five percent (5%). If approved by County and the City of Austin, the sustainability design shall be deemed to be part of the Project for the purpose of this Agreement. The Parties acknowledge that the sustainability standards may require a modification to the Project Design Features referenced above.
- (b) The Project will be constructed as generally depicted on **Exhibit B**.
- (c) If the permanent stormwater management controls described in Section 1(a)(viii) will be used to manage any stormwater from any portion of the Owner's Land in addition to the stormwater from the Project, the Owner shall maintain the permanent stormwater management controls for the land benefited by such stormwater controls described in Section 1(a)(viii) pursuant to the agreement attached as **Exhibit C**, which shall be executed and recorded in the Travis County real property records before construction of the Project begins. County will maintain permanent controls that serve only the roadway. The maintenance of temporary stormwater controls during the construction shall be the responsibility of the Developer whose contractor performs the construction.
- (d) Except as expressly provided otherwise in this Agreement, each Party shall bear one hundred percent (100%) of the costs of performing its obligations under this Agreement, including overhead, contract procurement or review, reviewing Engineering Services and Deliverables, and any other costs incurred by that party under this Agreement.
- (e) Unless otherwise provided in the Parmer Lane Extension Interlocal Agreement between the City of Austin ("City") and County and its subsequent amendments (the "Interlocal Agreement"), the Project shall comply with and be designed and constructed according to the City's requirements for design standards, permit reviews, review time periods, and permitting fee requirements, and Developer acknowledges that County approval of Engineering Services and Deliverables may be delayed if necessary due to pending City reviews. The Developer acknowledges that the City is a funding partner and as such it will have

the option of inspecting the construction jointly with County. County shall use reasonable efforts to coordinate with the City to prevent or minimize delays between the two entities.

Section 2. Contributions.

- (a) Subject to the terms of this Agreement, Developer shall:
- (1) cause the Project Engineer, as defined below, to provide and deliver to the Developer and the County all Engineering Services and Deliverables, as defined below, that are necessary to design the Project as required by this Agreement; and
 - (2) cause the Construction Contractor, as defined below, to construct the Project as required by this Agreement.
- (b) In consideration of Developer's performance under Subsection (a), the County will participate in the cost of the Project as follows.
- (1) The County will pay to Developer fifty percent (50%) of actual costs incurred for all Eligible Preconstruction Costs, as defined below, that are determined by the County to be necessary to design the Project as required by this Agreement.
 - (2) The County will pay to Developer sixty-six and two-third percent of for all Eligible Construction Costs, as defined below. The Parties acknowledge that the County's sixty-six and two-third percent contribution for Eligible Construction Costs includes a thirty-three and one-third percent contribution from the City pursuant to the Interlocal Agreement.
 - (3) For Project Construction Manager Services, as defined below, the Developer shall pay the Project Construction Manager no more than four percent (4%) of the Developer's actual costs incurred under the Construction Contract and approved by the County ("Eligible Project Construction Management Fee"), and the County will pay to Developer fifty percent (50%) of the Eligible Project Construction Management Fee.
- (c) "Eligible Project Costs" are those costs determined by the County to be reasonably necessary to survey, design, permit, investigate, and construct the Project as described in Section 1. Eligible Project Costs consist of Eligible Preconstruction Costs, Eligible Construction Costs, and the Eligible Project Construction Management Fee.
- (1) Eligible Preconstruction Costs are those costs that are determined by the County to be reasonably necessary to survey, design, permit, investigate and construct the Project as described in

Section 1 and are incurred prior to award of a construction contract including, but not limited to, planning; engineering; estimating; preparing specifications; preparing schedules; soil investigations; site assessments; alternatives analyses; land surveying; coordination of utility location, relocation, or protection; obtaining environmental clearances and permits; regulatory agency reviews and approvals; and bidding and awarding. Preliminary engineering work which is incorporated into the final design of the Project shall be included as Eligible Preconstruction Costs.

- (2) Eligible Construction Costs are those costs that are determined by the County to be reasonably necessary to survey, design, permit, investigate and construct the Project as described in Section 1 and are incurred after award of a construction contract, including but not limited to, inspection; testing; construction surveying; submittal reviews; change order and claim investigations and resolutions; and warranty period monitoring and reporting of deficiencies.
- (d) Notwithstanding any provision to the contrary, Developer must pay:
 - (1) fifty percent (50%) of all Eligible Preconstruction Costs,
 - (2) thirty-three percent and one-third percent of all Eligible Construction Costs,
 - (3) fifty percent (50%) of the Eligible Project Construction Management Fee; and
 - (4) one hundred percent (100%) of all costs that are not reasonably considered Eligible Project Costs.
 - (e) Developer will take responsibility for the design and construction of the Project. County shall pay to Developer fifty percent (50%) of all Eligible Preconstruction Costs, sixty-six and two-third percent of all Eligible Construction Costs, and fifty percent (50%) of the Eligible Project Construction Management Fee. Developer shall bear responsibility for one hundred percent (100%) of all costs that are not Eligible Project Costs. Developer must submit invoices for Eligible Preconstruction Costs, Eligible Construction Costs, and Eligible Project Construction Management Fees as provided in Section 9(g), and the County will pay to Developer as provided in Section 9(h).
 - (f) Developer will convey the Real Property Interests (hereinafter defined) to County in accordance with Section 6.
 - (g) Developer will deposit into an interest-bearing escrow account with the County thirty-three and one-third percent of the estimated construction costs that are Eligible Construction Costs when the plans and specifications for the Project are sixty percent (60%) complete (the "Developer's Pre-Bid Road Construction Contribution"). If thirty-three and one-third percent of the amount of the lowest responsible and responsive

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.

- (2) After the County approves the proposed contract with the Project Construction Manager but before the Developer executes the contract, Developer must deposit into an interest bearing account with the County fifty percent (50%) of the Eligible Project Construction Management Fee. 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 Construction Management Fee.
- (3) In its contract with the Developer, the Project Construction Manager 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 Construction Manager for the Project Construction Manager Services, as defined below, rendered in association with this Agreement. The Developer shall ensure that its contract with the Project Construction Manager contains a provision that the Project Construction Manager will look solely to the Developer for all sums coming due thereunder and that the County will have no obligation to the Project Construction Manager, but will only be obligated to pay the Developer in the time and manner required under this Agreement.
- (4) Within five (5) business days after executing a contract with the Project Construction Manager, Developer shall:
- (A) provide a copy of the executed contract to the County, and
 - (B) obtain from the Project Construction Manager and provide to the County a collateral assignment of the Developer's rights under the contract with the Project Construction Manager in the form attached as **Exhibit D**, which authorizes the County to utilize the services of the Project Construction Manager to complete the Project if the Developer fails to do so as provided in this Agreement.
- (b) The Project Construction Manager, in coordination with the Project Engineer, will ensure timely and satisfactory completion of the Project, including performing construction administration services listed in **Exhibit E**; assuring the project scope is accurately defined and adhered to; identifying and planning for all obstacles to the completion of the Project; planning and conducting design and preconstruction conferences; monitoring and reporting on the design and construction schedules and budgets; monitoring and reporting on the design and construction quality; reviewing contractor's pay requests; providing the County with prior notice of major items of work during construction; otherwise coordinating among the Parties and other persons and entities involved in the Project on an ongoing basis; and generally ensuring that the Project is satisfactorily

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

Developer in the time and manner required under this Agreement. The County may require the Developer to replace the Project Engineer if, in the County's opinion, the Project Engineer is not satisfactorily performing any and all responsibilities related to the Project. The design of the Project will be subject to approval by the County and all other governmental agencies with jurisdiction.

- (b) Within five (5) business days after executing a contract with the Project Engineer, the Developer shall
- (1) provide a copy of the executed contract to the County, and
 - (2) obtain from the Project Engineer and provide to the County a collateral assignment of the Developer's rights under the contract with the Project Engineer in the form attached as **Exhibit D** which authorizes the County to utilize the services of the Project Engineer to complete the Project if the Developer fails to do so as provided in this Agreement.
- (c) The Developer shall cause the Project Engineer to produce and provide to Developer and the County all engineering services and deliverables to the extent necessary to complete the Project with the required Project Design Features, including:
- (1) completed specific work product/plan stage documents for review;
 - (2) final bid-ready plan sets and project manual with specifications ("**Final Plans and Specifications**");
 - (3) geotechnical report;
 - (4) engineer's opinion of construction costs, project schedule, and critical path method, updated and submitted with each submittal;
 - (5) record drawings (as-builts) for the final project within thirty (30) working days after completion of the construction of the Project or the Project Engineer's contract;
 - (6) all required permits to start and complete the Project;
 - (7) required tracts' schematic, and parcel drawings and right-of-way strip map for right of way and easement acquisitions;
 - (8) survey services with electronic copy of survey on NAD 83 or as determined by the County;
 - (9) environmental report(s), and copies of all such reports used in the design of the Project shall be submitted to the County;
 - (10) engineering and drainage study report;
 - (11) design calculations;
 - (12) electronic copy of above deliverables, where applicable (all drawings and e-files must be in a format compatible with County CADD applications, and text documents must be in Microsoft Word format);
 - (13) complete project file within thirty (30) working days after completion

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

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 the County and its successors shall otherwise look solely to the Project Engineer and/or the errors and omissions liability insurance for any such costs, damages, or losses excluded from Developer's responsibility hereby:

Developer Liability Percentage for the purposes of this Section 4(e): collectively, thirty-three and one-third percent.

- (f) The Developer must submit invoices for Engineering Services and Deliverables as provided in Section 9(g) and the County will reimburse the Developer as provided in Section 9(h). If the Developer elects to commence engineering work before the County has received bond proceeds for the Project sufficient to fund its obligation to reimburse the Developer as provided in Section 9(h), the County's obligation to make payments as specified in Section 9(h) is suspended until the County has received bond proceeds for the Project. When the County receives bond proceeds for the Project, the Developer must submit an invoice for and the County must pay all suspended payments to the maximum extent of such bond proceeds. For the purposes of this Agreement, County represents that it has received adequate bond proceeds for the funding of the Project.
- (g) Developer shall start preliminary Engineering Services within thirty (30) days after execution of the Agreement. Within sixty (60) days of execution of the Agreement, Developer shall submit a preliminary plan (schematic) for the design of the Project to the County for review and approval. Within sixty (60) days after final comments from the City and County, the Developer shall submit to the County for approval three copies of the Final Plans and Specifications for the Project and a detailed summary of the work completed and sums paid by the Developer for the Engineering Services and Deliverables. Upon review and approval of the Engineering Services and Deliverables performed to date and the invoices and detailed summary, the County will reimburse Developer the amount provided in Section 2(b)(1) incurred to such date pursuant to the procedure set forth in Section 9(h). 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 4(g), 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 4(g), 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 interest, less any amounts owed by the Developer to the County under this Agreement.

- (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 Ambrust
Ambrust & 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.

Section 6. Real Property Interests.

- (a) The Project shall be constructed in public rights-of-way and/or easements ("**Real Property Interests**") conveyed to County, or to another public entity acceptable to County with a right of entry or license to allow construction of the Project. The Real Property Interests include the stormwater management agreement required under Section 1(c). Developer must cause the Real Property Interests to be conveyed to the County as soon as reasonably practicable after the parties sign this Agreement, but no later than fourteen (14) days after Developer has received an acceptable bid for the Construction Contract, as defined herein. If there is an existing easement that traverses the area within the roadway right of way limits and the owner of the easement refuses to make its easement subservient to the Project right-of-way, Developer must, at least sixty (60) days prior to commencement of construction, provide written notice to County of the easement and provide the owner of the easement a Joint Use Acknowledgement Agreement in substantially the form attached as **Exhibit J**.
- (b) Owner shall cause the Real Property interests to be conveyed free of all liens, encumbrances, and title defects unacceptable to County in its reasonable discretion and at no cost to County. All Real Property Interests shall be conveyed by deeds or other instruments acceptable to County in its reasonable discretion and with title insurance issued by a title company selected by Developer and acceptable to County in its reasonable discretion. Any title insurance policy shall list County as insured party and shall be for an amount based upon the fair market value of the Interests conveyed as reasonably determined by the County. All title insurance premium fees, costs to cure title defects, closing costs, and other acquisition costs shall be borne solely by Developer.
- (c) In exchange for conveyance of the Real Property Interests, upon such other requirements as may be required by County and subject to fulfillment of all requirements of Chapter 251, Transportation Code, for right-of-way vacations and Chapters 263 and/or 272, Local Government Code, for right-of-way conveyances, County will, with respect to any segments of right-of-way for Blue Bluff Road or other County roads located within Owner's Land ("**Old R-O-W**") abandoned as a result of the Project (1) convey to Developer and/or the adjacent parcel owner, as applicable, County's fee simple title, or (2) vacate its easement interests. Developer and/or applicable adjacent Owner shall pay all costs of vacation and sale, including the cost of surveys and appraisals of the Old R-O-W by qualified professionals approved by County. Developer's conveyance of the Real Property Interests shall be the only consideration required for County's conveyance of fee simple title in the Old R-O-W unless the

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.

- (2) The modified Final Plans and Specifications shall be subject to approval by County and the City, which approval shall not be unreasonably denied, delayed, or conditioned. Based on the modified Final Plans and Specifications, the Developer shall repeat the bid solicitation in an effort to secure a lower acceptable bid.
 - (3) If the second bid solicitation fails to produce an acceptable bid not exceeding the then estimated cost of construction, the Parties may either mutually agree to repeat the bid solicitation and value engineering process until an acceptable bid is received, or Developer may choose to pay one hundred percent (100%) of the amount by which the lowest responsive and responsible bid exceeds the then estimated cost of construction without reimbursement by the County by giving written notice thereof to the County.
 - (4) If Developer does not give the notice described in Section 7(b)(3) within twenty (20) days after receipt of bids exceeding the then estimated cost of construction, and the Parties have not mutually agreed to re-bid after value engineering, any of the Parties may elect to terminate this Agreement without further recourse, and the County will promptly return **Developer's Pre-Bid Construction Contribution**, with interest, to the Developer, less any amounts owed by Developer to the County.
 - (5) Any deadline in this Agreement affected by a value engineering and rebidding process shall be extended by the amount of time required for that process. Payment to the Project Engineer, if any, for value engineering and resulting changes to the construction documents, shall be subject to approval by the County and the Developer, which approval shall not be unreasonably denied, delayed, or conditioned.
- (c) Developer shall cause the Construction Contract to be awarded to the bidder submitting the lowest responsive and responsible bid for the Project that is within the construction budget, including up to five (5%) of the low bid amount for construction contingencies ("Contingency Amount"). Before executing the Construction Contract, the Developer must submit a copy of the proposed contract to the County for approval. The County shall have ten (10) business days after such submission within which to make any written comments on the 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 contract, and it shall be referred to herein as the "**Construction Contract**." The contractor under the Construction Contract shall be referred to herein as the "**Construction Contractor**." Developer shall thereafter cause the Project Construction Manager to proceed with all reasonable diligence to ensure the completion of

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

provisions of Section 151.311, Texas Tax Code. The County will provide its employer identification number and any other information reasonably required to obtain an exemption of sales tax for the Project and the labor and materials incorporated into the Project upon the Developer's request.

- (f) The Developer acknowledges that the County is a political subdivision of the State of Texas and is subject to the provisions of Chapter 2258, Subchapter B, Texas Government Code, pertaining to prevailing wage rates. The Developer will ensure that the Construction Contractor pays not less than the prevailing wage rates established by the County to workers employed on the Project and complies with all applicable provisions of Chapter 2258, Subchapter B, Texas Government Code, including the recordkeeping required therein.
- (g) The Developer will ensure that the Construction Contractor provides worker's compensation insurance coverage for workers employed on the Project and obtains a certificate from each subcontractor, relating to the coverage of the subcontractor's employees, in accordance with Section 406.096, Texas Labor Code. The Developer will ensure that the Construction Contractor maintains a comprehensive general liability and automobile liability insurance policy naming the County and the City as additional insureds, with a waiver of subrogation in favor of the County and the City, and with minimum limits of One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the aggregate. The Developer shall cause the Construction Contractor to provide the County with written certificates of compliance with the foregoing requirements.
- (h) The Construction Contractor will be required to implement and maintain all applicable or customary safety precautions and programs in connection with the construction of the Project.
- (i) Developer must require the Construction Contractor to immediately take any appropriate remedial action to correct any deficiencies identified by the City or the County during construction or during any applicable warranty period.

Section 9. Construction of Project.

- (a) Before the applicable date in Subsection (d) for beginning construction of the Project, unless an earlier deadline is specified elsewhere in this Agreement, the Developer must:
 - (1) cause to be conveyed or dedicated all the Real Property Interests, including, if necessary, the stormwater management agreement under Section 1(c);

- (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

interest, less any amounts owed by the Developer to the County under this Agreement.

- (e) Subject to its rights to be paid as provided in this Agreement, the Developer will:
- (1) require its Construction Contractor and subcontractors to diligently pursue construction of, the Project in a good and workmanlike manner and, in all material respects, in accordance with this Agreement and the approved Final Plans and Specifications and all applicable laws, regulations, and ordinances; and
 - (2) promptly pay all costs of the Project as they become due, including all costs of design, engineering, materials, labor, construction, Project Construction Management Services, and inspection arising in connection with the Project, and all payments arising under any contracts entered into for the construction of the Project, subject to any applicable retainage requirements and amounts withheld due to improper work or punch list items.
- (f) The Developer assumes the risk for design and construction of the Project in a good and workmanlike manner for the amount of the Construction Contract and all work and material used in the construction must be free from defects and fit for its intended purpose. Any modifications that would materially change the Final Plans and Specifications or the amount of the Construction Contract will be subject to the Developer's and County's approval within ten (10) business days after receipt of notice of the proposed changes, which approval will not be unreasonably denied, delayed, or conditioned. If the County and Developer determine that, through no fault of the Developer and based on cost effectiveness, sound engineering principles and practices, or applicable legal requirements, it is not possible to complete the Project as described in Section 1, without modifications to the approved Final Plans and Specifications or the amount of the Construction Contract, the Developer will, in coordination with the County, cause to be prepared any required changes to the Final Plans and Specifications and any required change orders to the Construction Contract, and the County will reimburse the Developer for the Developer's actual cost of any required Engineering Services and Deliverables and actual costs of any required change orders to the Construction Contract as provided in Section 2(b).
- (g) The Developer will submit an invoice to the County each month, accompanied by a "Travis County – Transportation and Natural Resources Participation Agreement Summary Invoice" which details the sums paid by the Developer and due to be paid by the County to Developer for engineering, construction, and other services and work performed during the previous calendar month, including:

- (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).

Section 10. County and City Inspection.

The County and the City may observe or inspect all work done and materials furnished at times and places and using procedures determined by the County. The County will notify the Developer and Project Construction Manager if any observation reveals that any part of the Project is not constructed or completed in accordance with the final approved Final Plans and Specifications or this Agreement or is otherwise materially defective. This notice will specifically detail any deficiencies. If such notice indicates that work or material may not comply with the final approved Final Plans and Specifications or the requirements of this Agreement, the County may require the Developer to cause the Construction Contractor to suspend work until the County is satisfied any defect is or will be remedied, which suspension and remedial work will be without delay damages, remobilization costs, or other additional costs to the Developer, the County, or the City.

Section 11. Completion of Project.

- (a) The Project Construction Manager will prepare a written notice of substantial completion and certify that the Project has been constructed in accordance with the approved construction documents and forward the notice to the Developer and County. The County will conduct a final inspection of the Project within ten (10) business days after receiving the written notice of substantial completion. If completed in accordance with the terms of the final approved Final Plans and Specifications and this Agreement in all material respects, the County will certify the Project as being in compliance and issue a notice of final acceptance to the Developer.
- (b) Upon final acceptance of the Project by the County, all warranties for the Project will be transferred to the County and the Developer will execute any documents reasonably required to evidence such assignment. The Construction Contractor will be responsible for any defects in workmanship or materials (ordinary wear and tear excepted) in the Project for one year following acceptance by the County. The Developer must cause the Construction Contractor to provide the County with a one (1) year Construction Contractor's warranty and maintenance bond as a condition to final acceptance of the Project, which will be in a form approved by the County, such approval not to be unreasonably denied, delayed, or conditioned.
- (c) Within thirty (30) days of final acceptance of the Project by the County, the Developer and the Project Construction Manager will deliver to the County all plans, including as-built plans, specifications, and files pertaining to the Project, which materials will be the property of the County, and the

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.

Conveyance of the Project to the County will not relieve the Developer of liability for satisfaction of any unpaid claim for materials or labor. The County will be under no obligation to challenge any claim for unpaid labor or materials; however, if the Developer fails to promptly resolve any claim, the County may elect to do so and, in this event, will have full rights of subrogation.

Section 14. County Completion of Project.

- (a) If the Developer begins, but does not diligently pursue, timely completion of construction of the Project materially in accordance with this Agreement for any reason, the County has the right, but not the obligation, to draw on the Fiscal Security and complete the construction of the Project either pursuant to the Construction Contract and the collateral assignments or otherwise. Before exercising this right, the County will send the Developer written notice specifying the deficiency in the Developer's performance and the actions required to cure the deficiency. If the Developer does not cure the deficiency within ten (10) business days (or such time as the County determines may reasonably be required to cure the deficiency provided the Developer promptly begins, and diligently pursues, such cure), the County may proceed with construction of the Project.
- (b) If the County elects to complete the Project, all plans, designs, rights-of-way, easements, real and personal property conveyed, produced, or installed within the public right-of-way prior to the take-over of construction of the Project by the County will become the property of the County to the reasonable extent necessary to allow the County to complete and maintain the Project.
- (c) The Developer hereby grants to the County a nonexclusive right and easement to enter the property of the Developer to the reasonable extent necessary for construction of the Project under this Agreement in accordance with its terms and provisions and in accordance with the notice and cure periods contained in this Agreement.

Section 15. Miscellaneous.

- (a) Any notice given hereunder by any Party to another must be in writing and may be effected by personal delivery or by certified mail, return receipt requested, when mailed to the appropriate Party's Designated Representative, at the addresses specified, with copies as noted below:

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.

- (d) No official, representative, agent, or employee of County has any authority to modify this Agreement, except pursuant to such express authority as may be granted by the governing body of County.
- (e) The Parties agree to execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the purposes of this Agreement.
- (f) If performance by any Party of any obligation under this Agreement is interrupted or delayed by reason of an unforeseeable event beyond its control, whether such event is an act of God or the common enemy, or the result of war, riot, civil commotion, sovereign conduct other than acts of County or City under this Agreement, or the act or conduct of any person or persons not a party or privy hereto, then such Party will be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof. This section is intended by the Parties to be interpreted to include any actions, activities or delays which are reasonably unforeseeable or reasonably beyond the control of either Party. Such interruptions or delays are not necessarily limited to acts of God but may by way of example but not limitation, include materials shortages, transportation delays, labor shortages, equipment breakdowns, unusual soil conditions and the like.
- (g) To the extent allowed by law, each Party will be responsible for, and will indemnify and hold harmless the other Parties, their officers, agents, and employees, from any and all claims, losses, damages, causes of action, lawsuits or liability resulting from, the indemnifying Party's acts or omissions of negligence or misconduct or in breach of this Agreement, including but not limited to claims for liquidated damages, delay damages, demobilization or remobilization costs, or claims arising from inadequacies, insufficiencies, or mistakes in the Final Plans and Specifications and other work products or any other materials or services a Party provides under this Agreement. Each Party will promptly notify the others of any claim asserted by or against it for damages or other relief in connection with this Agreement.
- (h) If Developer defaults in the performance of any terms or conditions of this Agreement, Developer shall have thirty (30) days after receipt of written notice of the default within which to cure the default. If the default is not cured within the thirty (30) day cure period, then the County shall have the right without further notice to terminate this Agreement. The Parties acknowledge that in the event of default on any obligation under this Agreement, remedies at law will be inadequate and that, in addition to any other remedy at law or in equity, each Party will be entitled to seek specific performance of this Agreement.

- (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.

- (n) As required by Chapter 32, Travis County Code, simultaneously with execution of this Agreement Developer shall execute the ethics affidavit attached hereto as **Exhibit H**. In addition, Developer hereby certifies that Developer is not in violation of Section 176.006, Local Government Code.
- (o) **DISBURSEMENTS TO PERSONS WITH OUTSTANDING DEBTS PROHIBITED.**
 - (1) In accordance with Section 154.045 of the Local Government Code, if notice of indebtedness has been filed with the County Auditor or County Treasurer evidencing the indebtedness of Developer to the State, the County, or a salary fund, a warrant may not be drawn on a County fund in favor of Developer, or an agent or assignee of Developer until:
 - (A) the County Treasurer notifies Developer in writing that the debt is outstanding; and
 - (B) the debt is paid.
 - (2) "Debt" includes delinquent taxes, fines, fees, and indebtedness arising from written agreements with the COUNTY.
 - (3) County may apply any funds County owes Developer to the outstanding balance of debt for which notice is made under Section 15(o)(1) above, if the notice includes a statement that the amount owed by the County to Developer may be applied to reduce the outstanding debt.
- (p) For the purposes of this Agreement, "business day" means any 8:00 A.M. to 5:00 P.M., Monday through Friday, excluding any day that is designated as a holiday by the Travis County Commissioners Court.
- (q) The following exhibits are attached to and incorporated into this Agreement for all purposes:

Exhibit A:	The Property
Exhibit B:	The Project
Exhibit C:	Stormwater Management Agreement
Exhibit D:	Collateral Assignment
Exhibit E:	Construction Administration Services
Exhibits F and G:	Engineering Services and Deliverables
Exhibit H:	Ethics Affidavit
Exhibit I:	Milestone Schedule

Exhibit J:

Joint Use Acknowledgement
Agreement

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

COUNTY:

Samuel T. Biscoe
Sam Biscoe, County Judge

Date: 3-13-12

OWNER / DEVELOPER:

HEART OF MANOR, L.P.

a Texas limited partnership

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

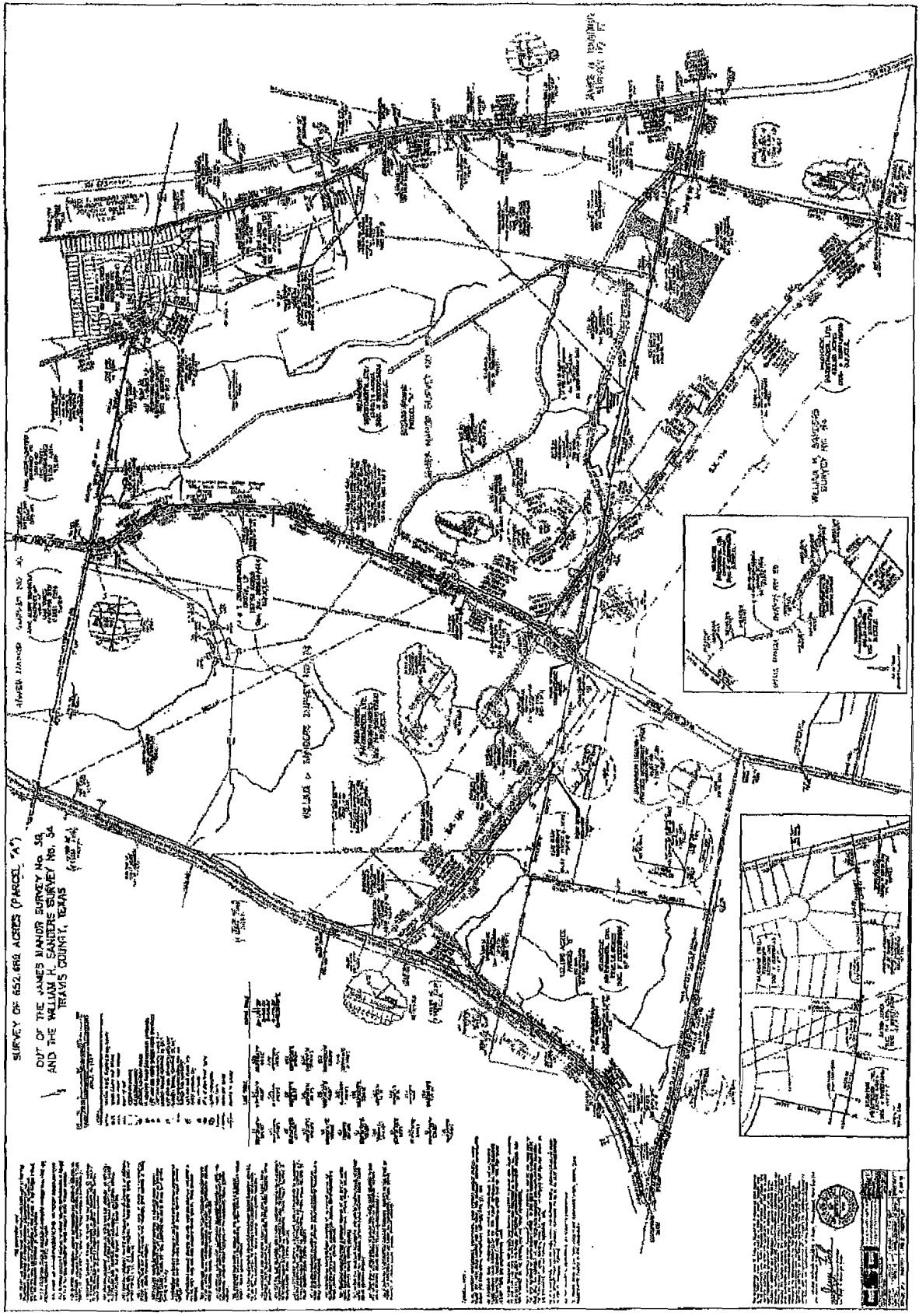
By: TITAN CAPITAL INVESTMENT GROUP, LLC,
a Delaware limited liability company, as Manager

By: W.A. Peruzzi
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

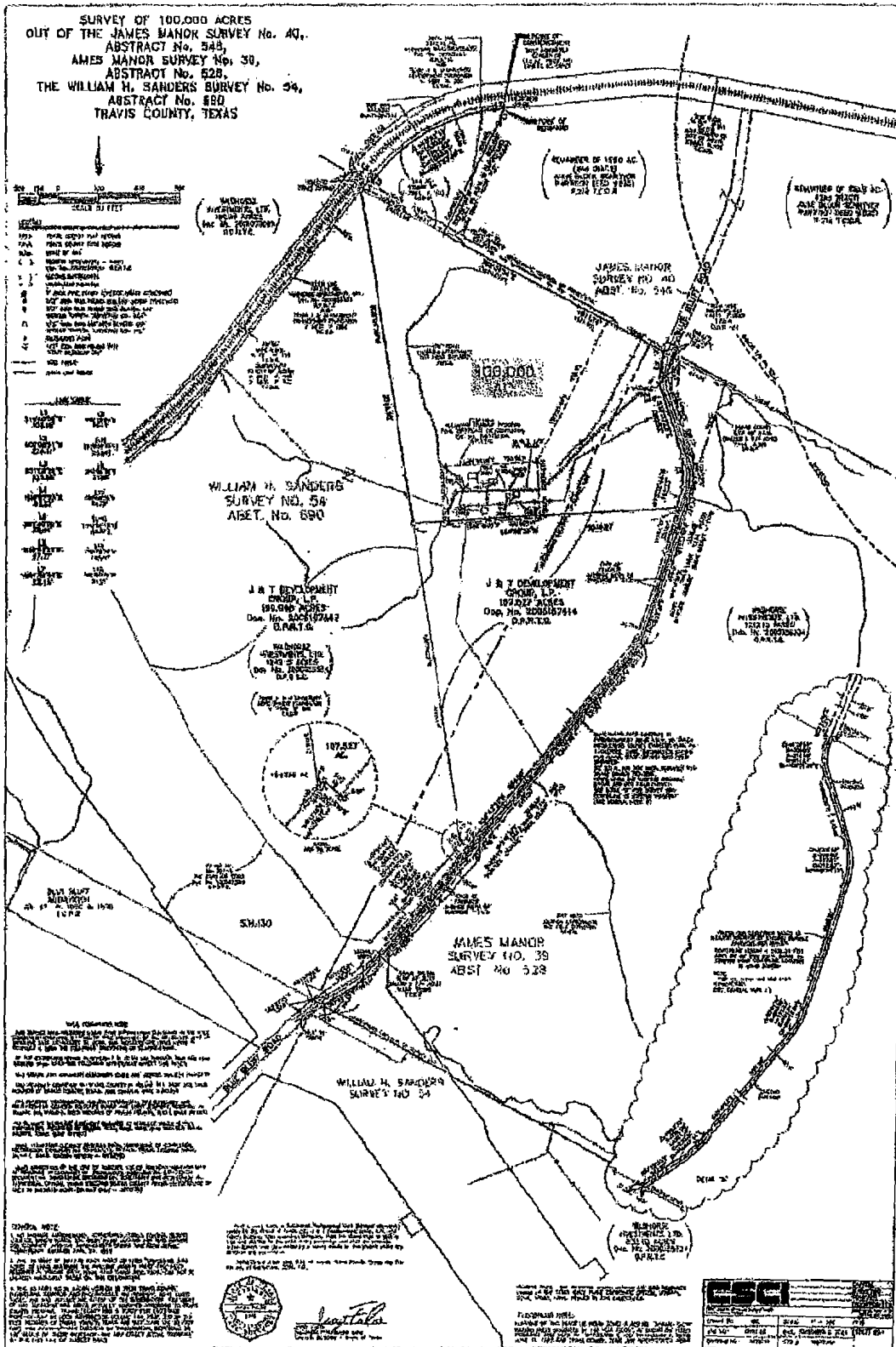
By: W.A. Peruzzi
Printed Name: William Peruzzi
Title: MANAGER



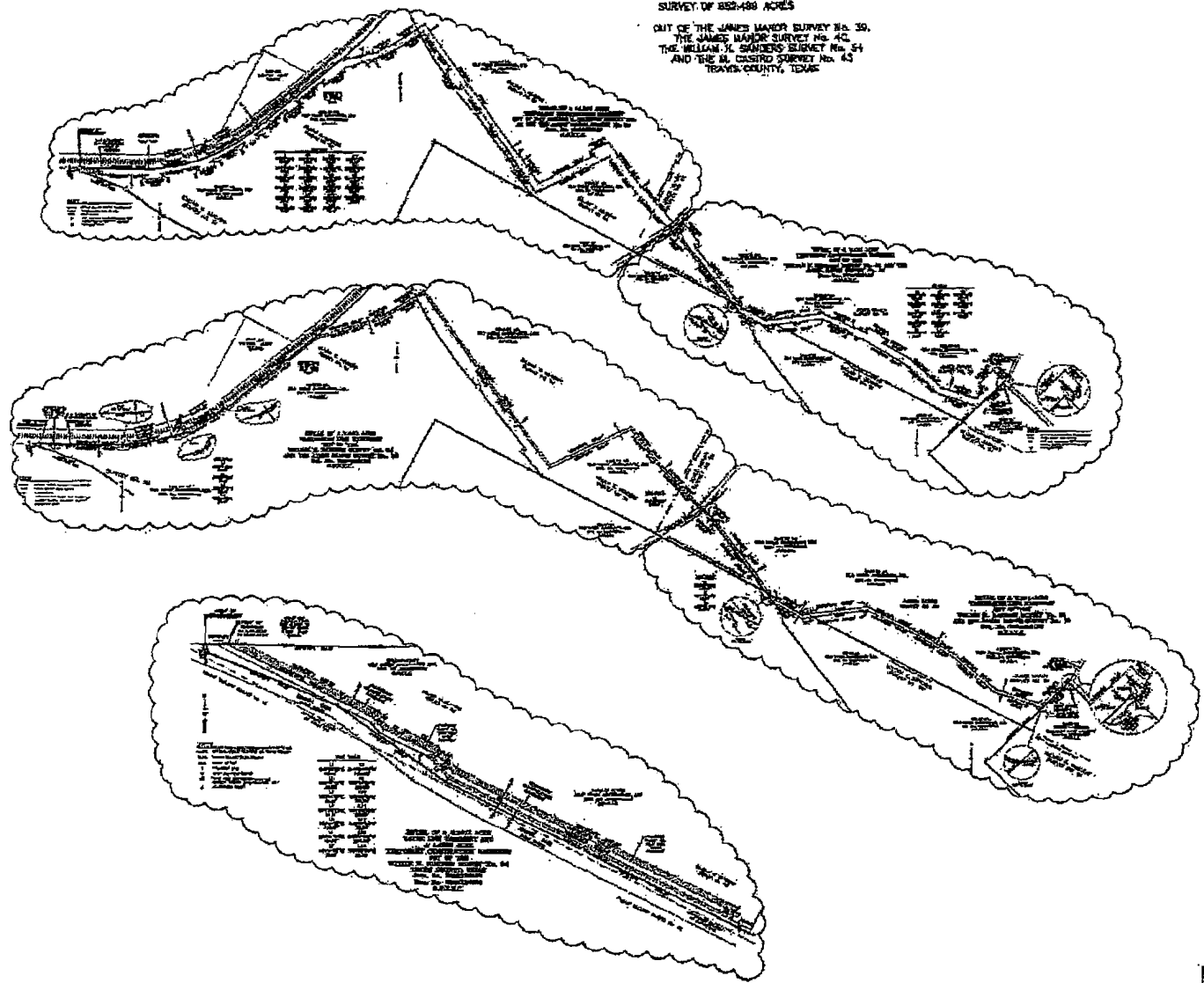
SURVEY OF 652.666 ACRES (PARCEL "A")
 OUT OF THE JAMES MANOR SURVEY NO. 58
 AND THE WELLS & SANDERS SURVEY NO. 34
 TRAVIS COUNTY, TEXAS

THIS SURVEY WAS MADE BY ME AND ASSISTANTS ON THE 15TH DAY OF MARCH 1904. THE AREA SURVEYED WAS 652.666 ACRES. THE SURVEY WAS MADE IN ACCORDANCE WITH THE ACTS OF THE LEGISLATURE OF THE STATE OF TEXAS, PASSED MARCH 29, 1856, AND MARCH 29, 1857, AND THE ACTS OF THE LEGISLATURE OF THE STATE OF TEXAS, PASSED MARCH 29, 1856, AND MARCH 29, 1857, AND THE ACTS OF THE LEGISLATURE OF THE STATE OF TEXAS, PASSED MARCH 29, 1856, AND MARCH 29, 1857.

WELLS & SANDERS SURVEY NO. 34
 WELLS & SANDERS SURVEY NO. 35
 WELLS & SANDERS SURVEY NO. 36
 WELLS & SANDERS SURVEY NO. 37

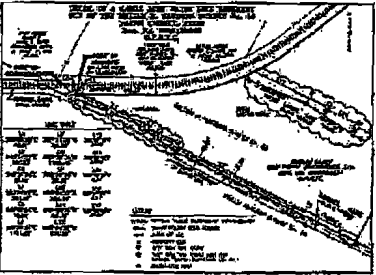
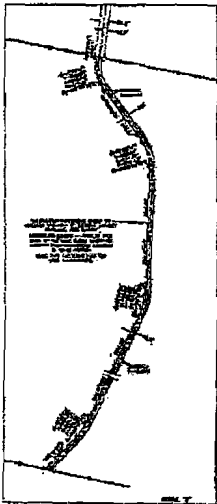
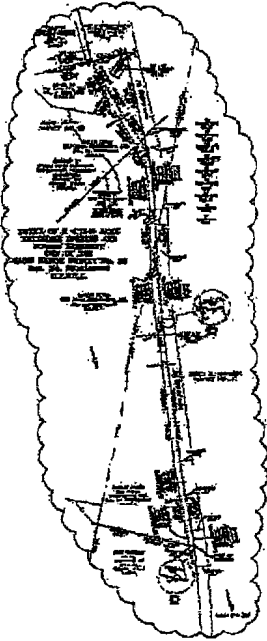
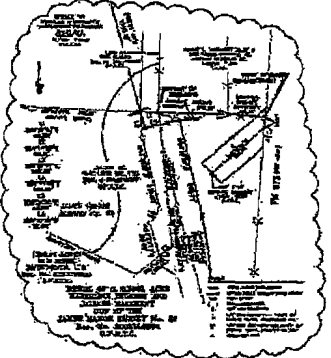
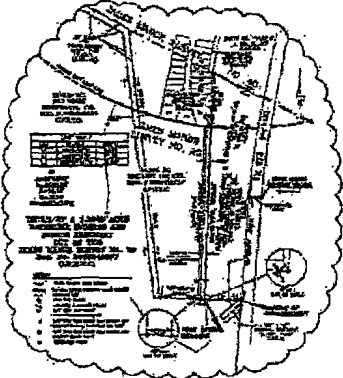
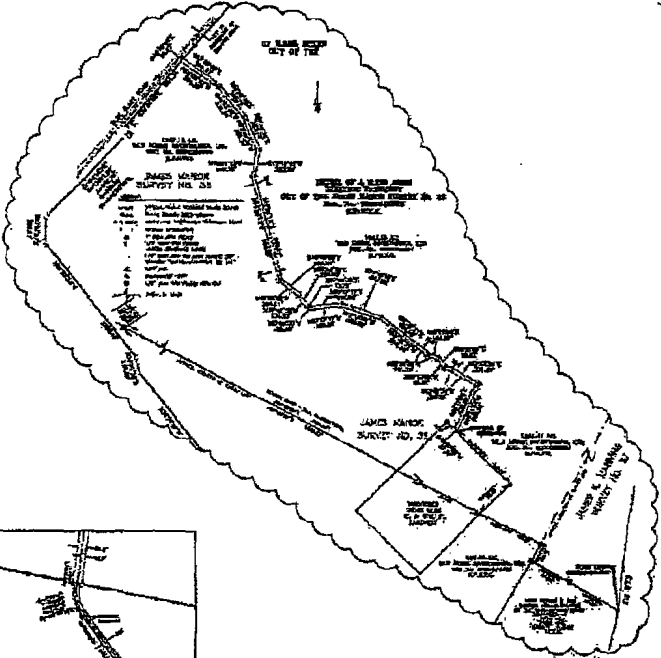


SURVEY OF 882-488 ACRES
OUT OF THE JAMES HAYES SURVEY No. 39,
THE JAMES HAYES SURVEY No. 40,
THE WILLIAM K. SHIVERS SURVEY No. 54
AND THE S. L. CASPER SURVEY No. 63
TRANS. COUNTY, TEXAS



Scale	1" = 40'
North Arrow	
Surveyor	
Date	
Sheet	

SURVEY OF 852,488 ACRES
 OUT OF THE JAMES MANKIN SURVEY No. 33,
 THE JAMES MANKIN SURVEY No. 34,
 THE MILITARY SANGERS SURVEY No. 54
 AND THE EL CASTRO SURVEY No. 47
 TRAVIS COUNTY, TEXAS



Scale	1" = 40'
North Arrow	
Legend	
Survey No.	
Date	
Surveyor	

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James Manor Survey No. 39
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James H. Manning Survey No. 37
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06527.10

STATE OF TEXAS

COUNTY OF TRAVIS

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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;

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- 5) S09°07'43"W, a distance of 1237.40 feet to a highway right-of-way marker found for the point of curvature of a curve to the left;
- 6) Southwesterly with said curve to the left, having a radius of 5779.50 feet and a central angle of 03°02'00" (chord bears S07°36'43"W, 305.94 feet) for an arc distance of 305.98 feet to a highway right-of-way marker found for a point of tangency;
- 7) S06°05'43"W, a distance of 323.88 feet to a highway right-of-way marker found for the point of curvature of a curve to the right;
- 8) Southwesterly with said curve to the right, having a radius of 2814.50 and a central angle of 02°50'11" (chord bears S07°30'49"W, 139.31 feet) for an arc distance of 139.32 feet to a ½" iron rod found for the southeast corner of said 1242.15 acre tract;

THENCE, leaving the westerly right-of-way line of FM 973 with the southerly line of said 1242.15 acre tract, same being the northerly line of that 191.4 acre tract described in Volume 1779, Page 183 of the Deed Records of Travis County, Texas for the following two (2) courses:

- 1) N60°02'17"W, a distance of 474.76 feet to an iron pipe found for an angle point;
- 2) N60°25'08"W, a distance of 368.59 feet to an iron pipe found for the northwest corner of said 191.4 acre tract, and being on the easterly line of the aforesaid 633.40 acre tract from which an iron pipe found for the northeast corner of the 633.40 acre tract, same being an "ell" corner in the southerly line of the 1242.15 acre tract, bears N28°17'59"E, 169.36 feet;

THENCE with the common easterly line of said 633.40 acre tract and westerly line of said 191.4 acre tract the following two (2) courses:

- 1) S30°24'54"W, a distance of 1014.06 feet to a ½" iron rod with Capital Surveying Company, Inc. plastic cap found for an angle point;
- 2) S27°34'00"W, generally along a fence, a distance of 1194.86 feet to the calculated point of intersection of this common line with the north right-of-way line of State Highway No. 130 being a 122.026 acre tract described in that "Possession and Use Agreement" between the State of Texas and Wildhorse Investments, LTD., recorded in Document No. 2005072028 of the above said Official Public Records, said intersection point bears S20°19'44"E, 0.07 feet from a ½" iron rod found with an aluminum "TXDOT" Cap and bears N27°34'00"E, 0.19 feet from an axle found for the southwest corner of said 191.4 acre tract and being an angle point in the easterly line of the 633.40 acre tract and also being an angle point in the northerly line of

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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 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;

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- 14) With a curve to the left, having a central angle of $03^{\circ}14'30''$, a radius of 17,017.07 feet, a long chord of 962.79 feet (chord bears $N42^{\circ}50'49''E$) for an arc distance of 962.79 feet to a $\frac{1}{2}$ " iron rod found with an aluminum "TxDOT" cap
- 15) $N40^{\circ}02'41''E$, 85.70 feet to a $\frac{1}{2}$ " iron rod found with an aluminum "TxDOT" cap;
- 16) $N49^{\circ}46'32''W$, at a distance of 43.73 feet pass a $\frac{1}{2}$ " iron rod found with an aluminum "TxDOT" cap, continuing for a total distance of 48.61 feet to the calculated point of intersection of this line with the East line of Blue Bluff Road (said east line is that line shown on the Travis County Engineer Plan No. 1-045, dated December 1970, with an 80.00 feet wide right-of-way)

THENCE along the above said east line of Blue Bluff Road with the following eight (8) courses;

- 1) $N39^{\circ}42'08''E$, 891.34 feet to a $\frac{1}{2}$ " iron rod found with a plastic cap stamped "Capital Surveying Company, Inc.";
- 2) $N39^{\circ}26'38''E$, 631.61 feet to an $\frac{1}{2}$ " iron rod found with a plastic cap stamped "Capital Surveying Company, Inc.";
- 3) $N39^{\circ}46'33''E$, 519.16 feet to a $\frac{1}{2}$ " iron rod found with a plastic cap stamped "Capital Surveying Company, Inc.";
- 4) $N18^{\circ}31'21''E$, 698.13 feet to a $\frac{1}{2}$ " iron rod found with a plastic cap stamped with "Capital Surveying Company, Inc.";
- 5) $N15^{\circ}22'41''E$, 511.42 feet to a $\frac{1}{2}$ " iron rod found with a plastic cap stamped with "Capital Surveying Company, Inc.";
- 6) $N01^{\circ}08'13''W$, 246.78 feet to a $\frac{1}{2}$ " iron rod found with a plastic cap stamped "Capital Surveying Company, Inc.";
- 7) $N17^{\circ}37'28''W$ 558.01 feet to a $\frac{1}{2}$ " iron rod found with a plastic cap stamped with "Capital Surveying Company, Inc.";
- 8) $N04^{\circ}33'37''E$, 204.52 feet to a $\frac{1}{2}$ " iron rod found in the north line of the above said 1242.15 acre tract.

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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°03'12"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;

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THENCE, S02°01'40"W, with the easterly line of said 1.999 acre tract, a distance of 1500.29 feet to a ½" iron rod with Capital Surveying Company, Inc. cap found on the easterly line of the aforesaid 1242.15 acre tract, being the southeast corner of the 1.999 acre tract;

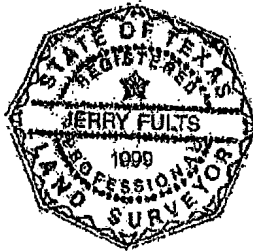
THENCE, S88°07'41"E, with the easterly line of said 1242.15 acre tract, a distance of 197.26 feet to a ½" iron pipe found for an angle point;

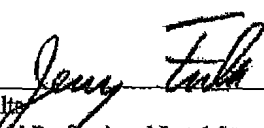
THENCE, S86°44'07"E, continuing with the easterly line of said 1242.15 acre tract, a distance of 103.99 feet to the POINT OF BEGINNING, CONTAINING within these metes and bounds 652.489 acres of land area.

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 19th day of December, 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

August 24, 2006

06527.10

Wildhorse Ranch.

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STATE OF TEXAS §

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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;

199.996 Acres

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James Manor Survey No. 39, Abstract No. 568
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THENCE, N61°40'00"E, continuing across the 1242.15 acre tract and the 11.2 acre tract, with the southeast railroad right-of-way line, for a distance of 25.44 feet to a ½" iron rod set, with a cap marked "Capital Surveying Company, Inc.", at the point of intersection of this northeast line with the southeast line of the aforesaid railroad right-of-way (150.00 feet wide);

THENCE, S38°57'25"W, continuing across the said 1242.15 acre tract, the 11.2 acre tract and the 891.38 acre tract, described as Exhibit "A", mentioned above in the deed to Texas A&M University Development Foundation recorded in Volume 7896, Page 302 of the said Deed Records, being along the southeast railroad right-of-way line, a distance of 97.33 feet to the most northerly corner and POINT OF BEGINNING of the herein described tract;

THENCE, S09°04'22"E, leaving the southeast railroad right-of-way line and continuing across the said 1242.15 acre tract, a distance of 4942.10 feet to a ½" iron rod set, with a cap marked "Capital Surveying Company, Inc.", on a northeast line of that 79,920 acre tract of land conveyed to the State of Texas for right-of-way and described as parcel 301-A in the deed recorded in Document No. 2005072028 of the said Official Public Records, said ½" iron rod set bears S40°08'26"E, 21.60 feet from a ½" iron rod found with an aluminum cap marked "TxDOT";

THENCE, continuing across the 1242.15 acre tract, along the northeasterly line of the said 79,920 acre tract, with the following nine (9) courses:

- 1.) S40°08'26"W, 64.25 feet to a ½" iron rod found with an aluminum cap marked "TxDOT" for the point of curvature of a curve to the right;
- 2.) With the said curve to the right, having a central angle of 07°11'40", a radius of 7554.44 feet, a long chord of 947.96 feet (chord bears S43°43'15"W), for an arc distance of 948.58 feet to a ½" iron rod found with an aluminum cap marked "TxDOT";
- 3.) N80°25'48"W, 224.58 feet to a ½" iron rod found with an aluminum cap marked "TxDOT";
- 4.) N36°52'43"W, 703.99 feet to a ½" iron rod found with an aluminum cap marked "TxDOT";
- 5.) N54°11'07"W, 104.74 feet to a ½" iron rod found with an aluminum cap marked "TxDOT";
- 6.) N36°53'36"W, 1126.99 feet to a ½" iron rod found with an aluminum cap marked "TxDOT", for the point of curvature of a non-tangent curve to the left;
- 7.) With the said curve to the left, having a central angle of 25°54'39", a radius of 1236.00 feet, a long chord of 554.20 feet (chord bears N31°12'05"W), for an arc distance of 558.95 feet to a ½" iron rod found at the point of curvature of a non-tangent reverse curve to the right;
- 8.) With the said curve to the right, having a central angle of 04°23'25", a radius of 5312.58 feet, a long chord of 406.98 feet (chord bears N26°34'24"W), for an arc distance of 407.08 feet to a ½" iron rod found with an aluminum cap marked "TxDOT";

199.996 Acres

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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;

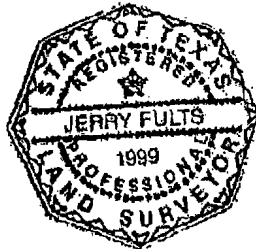
THENCE, continuing across the said 1242.15 acre tract and the 891.38 acre tract, along the southeast right-of-way line of the said old Southern Pacific Railroad (150.00 foot wide), with the following five (5) courses:

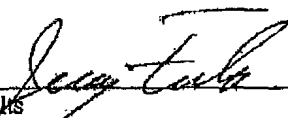
- 1.) N36°26'50"E, 107.72 feet to a ½" iron rod set with a cap, marked "Capital Surveying Company, Inc.", at the point of curvature of a curve to the right;
- 2.) With the said curve to the right, having a central angle of 13°08'36", a radius of 1835.00 feet, a long chord of 420.01 feet (chord bears 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

100.00 Acres

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

Wildhorse Ranch
Page 1 of 3

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

FIELDNOTE DESCRIPTION of a tract or parcel of land containing 100.00 acres situated in the James Manor Survey No. 40, abstract No. 546, the James Manor Survey No. 39 Abstract No. 528, and the William H. Sanders Survey No. 54, Abstract No. 690, Travis County, Texas and being a portion of that 167.527 acre tract conveyed to J&T Development Group LTD. by the deed recorded in Document No. 2006167444 of the Official Public Records of Travis County, Texas, said 167.527 acres 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 Records; said 100.00 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 "P" of the aforesaid deed 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 south right-of-way line of the old Southern Pacific Railroad right-of-way (200' wide and quitclaimed to the City of Austin in Volume 9837, Page 414 and Volume 9837, Page 422 of the said Deed Records) for the most northerly corner of said 167.527 acre tract and POINT OF BEGINNING of the herein described 100.00 acre tract;

THENCE, S14°20'00"W, continuing with an east line of the 167.527 acre tract and the 1242.15 acre tract and the easterly line of the said 11.2 acre tract, a distance of 103.98 feet to a ½" iron rod found, marked "Capital Surveying Company, Inc", for an angle point at a fence post;

THENCE, S27°50'00"W, continuing with said east line of the 167.527 acre tract and the 1242.15 acre tract and the 11.2 acre tract, a distance of 925.00 feet to a ½" iron rod found for the southeast corner of the said 11.2 acre tract and an oil corner of the aforesaid 167.527 acre tract and the 1242.15 acre tract, being on the northerly line of that 891.38 acre tract, described as Exhibit "A", to Texas A&M University Development Foundation mentioned above in the deed recorded in Volume 7896, Page 302 of the said Deed Records;

THENCE, S62°34'51"E, with the northerly line of the 167.527 acre tract, the 891.38 acre tract and the 1242.15 acre tract, 1911.74 feet to an iron rod found for the southwest corner of a 3.537

100.00 Acres

Wildhorse Ranch
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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
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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;

100.00 Acres

Wildhorse Ranch
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James Manor Survey No. 40, Abstract No. 546
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06527.11

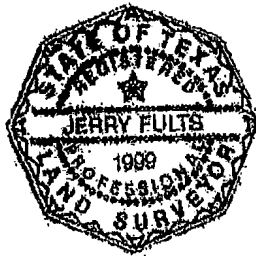
THENCE, continuing with the northwest line of the 167.527 acre tract and crossing the 1242.15 acre tract and the 11.2 acre tract, along the said railroad right-of-way line, with said curve to the right, having a central angle of $45^{\circ}52'19''$, a radius of 1330.00 feet, a long chord of 1036.61 feet (chord bears $N61^{\circ}53'35''E$), for an arc distance of 1064.82 feet to a $\frac{1}{2}$ " iron rod found with a cap marked "Capital Surveying Company, Inc.":

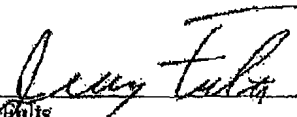
THENCE, $N84^{\circ}49'44''E$, continuing with the northwest line of the 167.527 acre tract along the said railroad right-of-way line, 62.18 feet to the POINT OF BEGINNING, CONTAINING within these metes and bounds 100.00 acres of land area.

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 7th day of September, 2006.





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

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

Community Identity

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

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 watering 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. 8' 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.

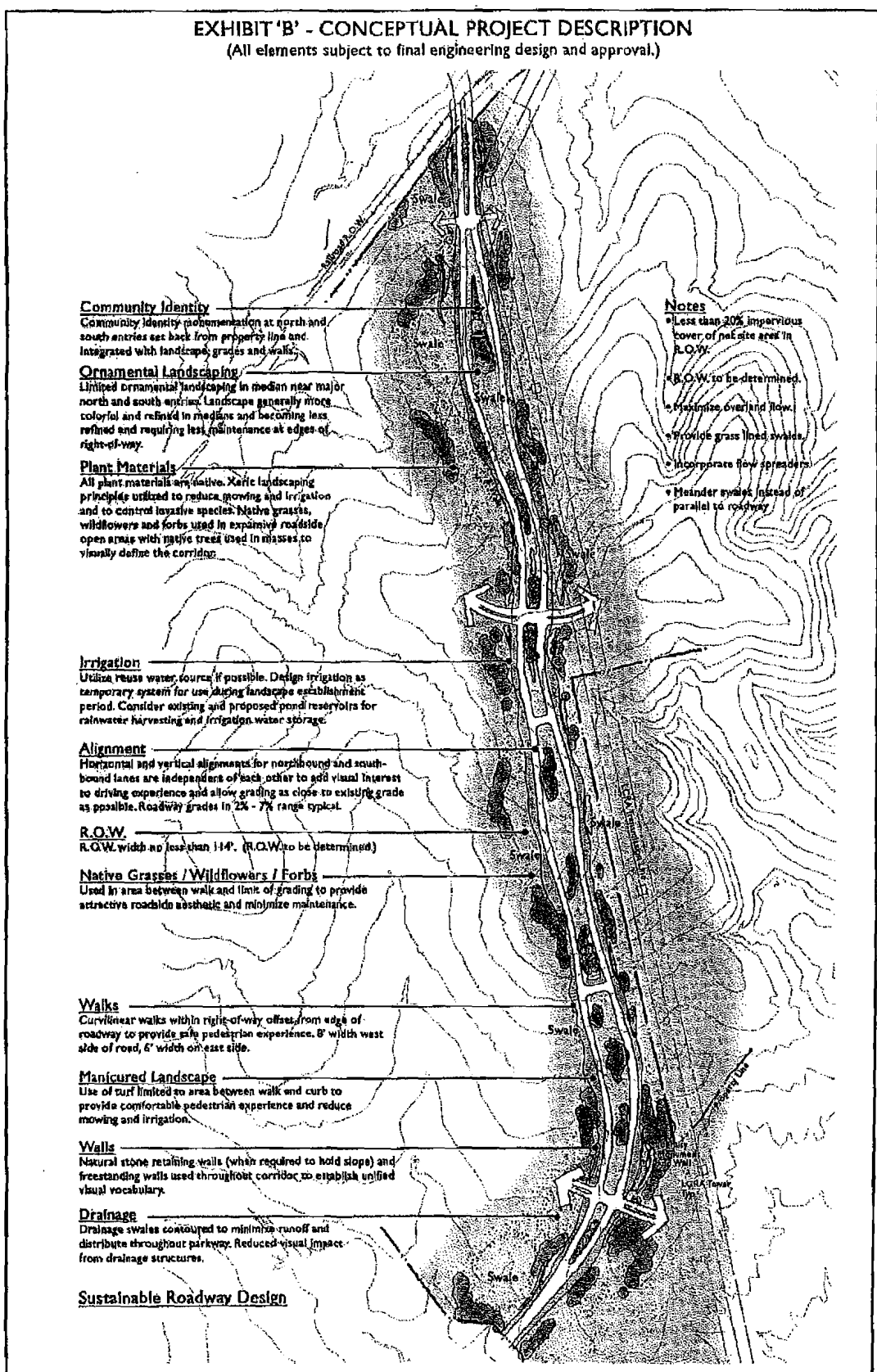
Drainage

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

Sustainable Roadway Design

Notes

- Less than 30% impervious cover of total site area in R.O.W.
- R.O.W. to be determined.
- Minimize overhead flow.
- Provide grass lined swales.
- Incorporate flow spreaders.
- Meander swales instead of parallel to roadway.



PARMER LANE PHASE 2B CONCEPT

SCALE: 1" = 100'
 DATE: 01-23-2012



718 Central Avenue, Suite 200
 Austin, TX 78704
 Tel: (512) 426-0334 or (512) 467-7119
 www.fvl.com

FVL

All information furnished herein is for informational purposes only. It is not intended to constitute an offer of any financial product or service. The information is not intended to be used as a basis for any investment decision. The information is not intended to be used as a basis for any investment decision. The information is not intended to be used as a basis for any investment decision.

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 accept 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

County (the "City and/or County"), including standards specified in the regulations of the City and/or County, as amended from time to time. The portion of the Property on which the Facilities are located may not be used for any purpose inconsistent with or detrimental to the proper operation of the Facilities. Each Owner shall be jointly and severally liable for the maintenance of the Facilities.

3. Easement to the Owners. Each individual Declarant hereby grants and conveys and by these presents does GRANT AND CONVEY unto the other individual Declarant and all Owners, a non-exclusive easement for the inspection, monitoring, operation, maintenance, replacement, upgrade, and repair, as applicable, of the Facilities in, upon and across portions of the Property as more particularly described in EXHIBIT B attached hereto and incorporated by reference (the "Easement Tract").

TO HAVE AND TO HOLD the same perpetually to the Owners and its successors and assigns, together with the privilege at any and all times to enter the Easement Tract for the purpose of operating, inspecting, monitoring, maintaining, replacing, upgrading and repairing, as applicable, the Facilities. This easement is made and accepted subject to all easements, covenants, restrictions, liens, and other encumbrances of record in Travis County, Texas affecting the Easement Tract.

4. Easement to Travis County. Declarant hereby grants and conveys and by these presents does GRANT AND CONVEY unto Travis County, whose address is P.O. Box 1748, Austin Texas 78767, Attn: Transportation and Natural Resources Department, a non-exclusive easement for the inspection, monitoring, operation, maintenance, replacement, upgrade and repair, as applicable, of the Facilities in, upon and across the Easement Tract.

TO HAVE AND TO HOLD the same perpetually to Travis County and its successors and assigns, together with the privilege at any and all times to enter the Easement Tract for the purpose of operating, inspecting, monitoring, maintaining, replacing, upgrading and repairing, as applicable, the Facilities. This easement is made and accepted subject to all easements, covenants, restrictions, liens, and other encumbrances of record in Travis County, Texas affecting the Easement Tract.

5. Notice. The City and/or County shall give the Owners thirty (30) days' prior written notice of the City and/or County's intent to enter any of the above described easement areas for the purpose of operating, maintaining, replacing, upgrading or repairing, as applicable, the Facilities; provided, however, that in the event of an emergency, the City and/or County shall be required to give prior notice within a reasonable period of time. Reasonableness shall be determined in accordance with the nature of circumstances of the emergency. The City and/or County shall have the right to enter any of the above described easement areas without prior written notification for the purposes of monitoring and inspection only.

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 Farmer 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

parties to this Declaration with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded in total by this Declaration and the exhibits attached hereto. The provisions of this Declaration shall be construed as a whole according to their common meaning and not strictly for or against any Owner.

- F. Captions. The captions preceding the text of each section and subsection hereof are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Declaration.
- G. Governing Law; Place of Performance. This Declaration and all rights and obligations created hereby shall be governed by the laws of the State of Texas. This Declaration is performable only in the county in Texas where the Property is located.
- H. Notices. Any Notice to the Owners or the City and/or County shall be in writing and given by delivering the same to such party in person, by expedited, private carrier services (such as Federal Express) or by sending the same by registered or certified mail, return receipt requested, with postage prepaid to the intended recipient's last known mailing address. All notices under this Declaration shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.
- I. Negation of Partnership. None of the terms or provisions of this Declaration shall be deemed to create a partnership between or among the Declarant, any Owner, or the City and/or County in their respective businesses or otherwise; nor shall it cause them to be considered joint ventures or members of any joint enterprise.
- J. Enforcement. If any person, persons, corporation, or entity of any other character violates or attempts to violate this Declaration, it shall be lawful for the City and/or County, its successors and assigns, to prosecute proceedings at law, or in equity, against said person, or entity violating or attempting to violate such covenant and prevent said person or entity from violating or attempting to violate such covenant. The failure at any time to enforce this Declaration by the City and/or County, its successors and assigns, whether any violations hereof are known or not, shall not constitute a waiver or estoppel of the right to do so.
- K. Modification and Amendment. This Declaration may only be modified, amended, or terminated upon the filing of such modification, amendment, or termination in the Official Public Records of Travis County, Texas, executed, acknowledged, and approved by the Executive Manager of the Travis County Transportation and Natural Resources Department and the Owners of the Property.

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

**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

terminate the License in its own name or in the name of Assignor, to exercise and enjoy all of Assignor's rights and benefits under the Contracts.

4. **Assumption Date.** Upon the occurrence of an Event of Default, as defined below, Secured Party may, at its option, assume Assignor's rights under the Contracts, subject to the terms and conditions of this Assignment, as of the date of such default or at any time thereafter while such default continues (the "Assumption Date").
 - (a) After the Assumption Date, all of Assignor's rights and benefits under the Contracts will terminate without notice of any kind to Assignor, and Beneficiary will succeed to all of Assignor's rights, benefits, duties and obligations under the Contracts.
 - (b) The other parties to the Contracts will recognize and attorn to Beneficiary as if Beneficiary had originally been a party to such Contracts. In the event of a conflict between the terms of the Contracts and the terms of the Participation Agreement, the terms of the Participation Agreement will control.

5. **Assignor's Representations and Warranties and Related Covenants.** Assignor represents and warrants to Beneficiary as follows:
 - (a) Assignor's execution, delivery and performance of this Assignment does not require the consent or approval of any governmental body or other regulatory authority and are not in contravention of, or in conflict with, any law or regulation or any term or provision of the Contracts. This Assignment is a valid, binding and legally enforceable obligation of Assignor in accordance with its terms, except to the extent, if any, that enforceability may be affected or limited by creditors' rights, legislation and court decisions of general application.
 - (b) The execution and delivery of this Assignment is not, and the performance of this Assignment will not be, in contravention of, or in conflict with, any agreement, indenture or undertaking to which Assignor is a party or by which Assignor or any of its property is or may be bound or affected, and do not and will not cause any security interest, lien or other encumbrance to be created or imposed or accelerated upon or in connection with any such property.
 - (c) To the Assignor's current actual knowledge, there is no litigation or other proceeding pending against or affecting Assignor or its properties which, if determined adversely to Assignor, would have a materially adverse effect on Assignor's financial condition, properties or operations. Assignor is not in default in any materially adverse manner with respect to any law, restriction, order, writ, injunction, decree or demand of any court or other governmental or regulatory authority or with respect to any

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.

- (c) Material breach of, noncompliance with, or default under any of the terms and provisions of the Contracts which is not cured within any applicable grace or notice and opportunity to cure period.

8. **Beneficiary's Rights and Remedies.**

- (a) Assignor hereby irrevocably appoints Beneficiary as Assignor's true and lawful agent and attorney-in-fact, with full power of substitution, in Beneficiary's own name or in the name of Assignor, for Beneficiary's sole use and benefit, but at Assignor's cost and expense, to exercise, upon the occurrence of an Event of Default, all or any of the following powers and rights with respect to the Contracts (without any obligation on the part of Beneficiary to exercise any of the following powers and rights): (1) to demand, receive, collect, sue and give acquittance for, settle, compromise, compound, prosecute or defend any action or proceeding with respect to the Contracts; (2) to exercise, enforce, enjoy, carry out, receive, and/or perform any and all rights, powers, duties, benefits, obligations and remedies of Assignor with respect to and arising under the Contracts; provided, however, Beneficiary's exercise of or Beneficiary's failure to exercise any such authority will in no manner affect Assignor's liability hereunder or under the Participation Agreement, and provided, further, that Beneficiary will be under no obligation or duty to exercise any of the powers hereby conferred upon it and will be without liability for any act or failure to act in connection with the preservation of any rights under, any of the Contracts. The agency and authority hereby granted and created is an agency coupled with an interest.
- (b) Upon the occurrence of an Event of Default and at any time thereafter, Beneficiary will have the rights and remedies provided by law.
- (c) All recitals in any instrument of assignment or any other instrument executed by Beneficiary incident to the Contracts or any part thereof will be full proof of the matters stated therein and no other proof will be requisite to establish full legal propriety of the action taken by Beneficiary or of any fact, condition or thing incident thereto, and all prerequisites of such action will be presumed conclusively to have been performed or to have occurred.
- (d) Assignor waives demand, notice, protest, and all demands and notices of any action taken by Beneficiary under this Assignment.

10. **General.** Assignor and Beneficiary agree as follows:

- (a) Upon the full performance of Assignor's obligations under the Participation Agreement, this Assignment and the interests created hereby will terminate. Upon termination of this Assignment, Beneficiary will, at Assignor's

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.

EXECUTED this ____ day of _____, 20__.

BENEFICIARY:
TRAVIS COUNTY, TEXAS
By: _____
Samuel T. Biscoe, County Judge
Date: _____

ASSIGNOR:

CONSENTED TO BY:

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

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

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;

- (vi) clarifications drawings;
 - (vii) daily progress reports; and
 - (viii) processed pay requests
- (g) The daily log, as a minimum, shall contain information regarding weather conditions, ambient temperatures, Construction Contractor manpower levels, sub-Construction Contractors manpower levels, daily hours of inspection, travel time, conversations, work items being performed, material delivery information and other observations.
- (h) Daily logs must be completed and include a statement as to whether or not the Construction Contractor is behind schedule or delaying the progress of the work and, if so, the steps the Construction Contractor should take to get back on schedule. Copies of daily logs shall be made available to the County upon request.
- (i) Maintain complete files of all Project-related documents at the Project site.
- (j) Upon the completion of each calendar month, furnish the County and the Developer with a typed statement summarizing the status of the work. In the event the work is behind schedule, the statement shall also delineate what efforts the Construction Contractor must take to get back on schedule. A copy of this statement shall also be delivered to the Construction Contractor.
- (k) After the Project has been completed, submit the Project files, along with the original daily logs to TNR.

3. Construction Phase Services

(a) Submittals

Process submittals, including receipt, review of, and appropriate action on shop drawings, samples and other submittals. Provide recommendations for the County and Developer approvals of "or equal" substitutions along with any recommended cost adjustments.

(b) Contract Modifications

For modifications required by the County and/or the Developer to resolve design errors or omissions, the Project Construction Manager shall coordinate with the Project Engineer to provide the following services: Provide recommendations to the County and/or the Developer concerning potential changes and modifications to the project, which are encountered during construction. Identify and investigate feasible alternatives, to the extent practical, and prepare necessary plans, details, etc. required to obtain firm cost and schedule impact statements from the Construction Contractor. Evaluate the Construction Contractor's impact statements and in conjunction with the Developer and the County negotiate costs for any contemplated changes with the Construction Contractor. The Project

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

compression strength tests, gradation analysis, miscellaneous shop inspection, and other testing required by the construction contract documents, or as specifically requested by the County and the Developer. A copy of the proposed testing program shall be prepared for review by the County and the Developer prior to beginning work.

- (ii) Review all laboratory and field-testing results to determine whether results are in compliance with the construction contract documents and provide recommendations for correction of substandard materials and workmanship revealed during testing.

(g) Claims

Assist TNR and the Developer with claim reviews and negotiations upon request and with the preparation of related correspondence and documentation.

(h) Contract Enforcement

Examine Construction Contractor workmanship, materials, progress, and overall compliance with requirements of the contract documents and immediately report any observed deficiencies to the Construction Contractor, the County, and the Developer. Communicate to the Construction Contractor, the County, and the Developer what may be necessary to effect corrective action. Document deficiencies and actions taken by Construction Contractor to correct them. Assist the County and the Developer with evaluating impacts of potential contract termination upon project costs and schedule.

(i) Contract Termination

Upon request, assist the County and the Developer with completion of an assessment of the status of the Construction Contractor's contract, the development of an agreement with the Construction Contractor's Surety to complete the work, and preparing and holding a pre-construction meeting with the replacement Construction Contractor. Unless otherwise specified in the contract, these services shall be considered additional scope of work for which the scope, methodology, and fee must be negotiated with the County and the Developer before proceeding.

(j) Project Acceptance and Close-out

- (i) Jointly perform with the County the Developer, and the Construction Contractor substantial completion and final inspections and compile and distribute related punch requiring correction. When properly completed, submit O&M manuals to lists.
- (ii) Compile and review for completeness all Operation and Maintenance Manuals to be submitted by the Construction Contractor and inform Construction Contractor of any deficiencies.
- (iii) Review and comment on final pay request and supporting close-out

- 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.

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

a separate "Notice to Proceed" under the same contract. Authorization to proceed to the next work product or phase must be in writing in the form of a "Notice to Proceed". The required work products include Work Product 1, 30% complete design documents; Work Product 2, 60% complete design documents; Work Product 3, 90% complete construction documents; Work Product 4, the 100% bid-ready set of construction documents; Work Product 5, Construction bidding and award services; and Work Product 6: Construction Administration Services. Work Product 6 shall be optional and included at the discretion of the Developer and the County. Work Products 1 through 4 shall be submitted for review and written notice-to-proceed must be issued before proceeding to the next Work Product. The review process shall consist of submitting two sets of the plans 22" by 34", specifications, and estimates of probable construction costs to the Developer and TNR when the design and construction documents are 30%, 60%, 90% and 100% completed. Allow two weeks for the Developer and TNR to review and provide written comments and/or approval for each submittal. Submit two sets final check sets and allow one week for the Developer and TNR to review and provide written comments and/or approval.

- (i) Work Product 1: 30% complete design documents.
The 30% submittal should be presented in two phases if alternative analyses are included in the scope of work. The first phase will be the results of the analyses and the Project Engineer's recommendations. The second phase will be the 30% complete design documents for the selected alternative. Public meetings may be required in the development of Work Product 1. The 30% design submittal is to include preliminary engineering for the design elements required to fully address the project scope. The requirements for the 30% design submittals shall as a minimum include the following:
 - A. Cover sheet indicating project name and #; site location; design speed; project limits with beginning and ending stations; names and signature blocks for the project owners/partners; symbology legend; and the proposed index of drawings to be included in the plan set.
 - B. Site layout drawing;
 - C. Typical sections showing proposed and existing conditions.
 - D. Plan and profile sheets showing existing conditions and how design speed, site distance, drainage, and environmental requirements are planned to be met as well as the proposed type and location of any significant structures to be included;
 - E. Cross-sections for roadways showing existing ground conditions and depicting proposed conditions based upon preliminary alignments and typical sections;
 - F. Identification of limits of construction and properties that could be affected by the proposed construction;
 - G. Identification of existing easements and utilities that could be affected by the proposed construction;

- 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:

Provide construction documents that are virtually "ready to bid" with minor revisions, no outstanding design issues, all work coordinated and illustrated on the drawing. A public meeting may be required. The requirements for the 90% design submittals shall as a minimum include the following:

- A. Complete set of construction drawings with all details, cross-sections, profiles, quantities, and title sheet
- B. Full set of detailed specifications and index in bid-ready format (Microsoft Word format)
- C. Detailed breakdown cost estimate and associated bid schedule in County format
- D. Calculations for unit price quantities and final engineering design calculations
- E. List of permits secured and any permits/approvals pending.
- F. Final utility company costs and documentation from each utility contacted
- G. Final construction schedule/sequence of work.

Total projected time for completion of Work Product 3 is thirty (30) calendar days.

- (iv) **Work Product 4: 100% complete construction documents:**
Provide final plans, specifications, estimates, quantities, bid schedule, permits, and verification of property acquisitions and/or right-of-entries for the construction contract, and a list of any outstanding issues to be resolved before or during project bidding process (total projected time is 165 calendar day after notice to proceed date)

Total projected time for completion of Work Product 4 is fifteen (15) calendar days.

- (v) **Work Product 5: Construction Contract bidding and award services:**
Provide assistance with responding to bidder questions, preparing addenda, tabulating and evaluating bids, and providing recommendation for award.

Total projected time for completion of Work Product 5 is to be determined at the time the project is approved for bidding.

- (vi) **Work Product 6: Construction Phase Services:**
Construction phase services are to be provided in accordance with **Exhibit E** throughout the period of construction to provide technical interpretations and clarifications of the contract documents; to provide technical reviews and approvals of construction submittals; to observe that the work is proceeding in accordance with the contract documents and to document the progress and effort; to prepare, reproduce, and distribute

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.

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

- conflicts between utilities and the proposed improvements, and record and distribute minutes of such meetings
- iv) prepare draft of elements to be included in any utility agreements or memorandum of understandings to be developed between the County and utility service providers. Include responsibilities for relocation, upgrading, or protection; specifics related to costs, scheduling, sizes and types, vertical and horizontal locations; and, any special construction and/or protection requirements.
- v) provide documentation of correspondence and coordination effort to the County upon completion of assignment

5. Additional Services, if approved by the County:

- a) field check locations of above ground utilities and visible components of below ground utilities and mark locations relative to existing topographic features on mapping to be provided by the County.
- c) provide, or contract with companies that can provide, underground utility locating services.
- d) hand excavate to verify location of utilities
- e) represent the County at Austin Area Utility Coordinating Committee meetings
- f) attend pre-construction and construction meetings
- g) provide documentation and testimony as needed to help resolve claims related to utility work or property condemnation cases.

**EXHIBIT H
ETHICS AFFIDAVIT**

Date: 3/23/12

Name of Affiant: William A. Peruzzi

Title of Affiant: Manager

Business Name of Contractor: Heart of Manor, LP

County of Contractor: Montgomery County, PA

Affiant on oath swears that the following statements are true:

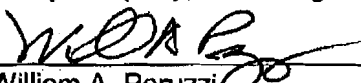
1. Affiant is authorized by Contractor to make this affidavit for Contractor.
2. Affiant is fully aware of the facts stated in this affidavit.
3. Affiant can read the English language.
4. Contractor has received the list of key contracting persons associated with this invitation for bids which is attached 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.

Heart of Manor, LP,
a Texas limited partnership

By: MANOR GP, LLC,

a Texas limited liability company, its General Partner

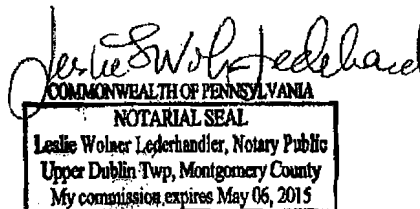
By: Titan Capital Investment Group, LLC,
A Delaware limited liability company, as Manager

Signature of Affiant: 
Printed Name: William A. Peruzzi
Title: Manager
1300 Virginia Drive, Suite 225
Fort Washington, PA 19034

SUBSCRIBED AND SWORN TO before me by William A. Peruzzi, Manager, on
March 23, 2012.

Notary Public, Commonwealth of Pennsylvania

Leslie Wolner Lederhandler
Typed or printed name of notary



**EXHIBIT H
ETHICS AFFIDAVIT**

Date: 3/23/12

Name of Affiant: William A. Peruzzi

Title of Affiant: Manager

Business Name of Contractor: Texas WH200, LP

County of Contractor: Montgomery County, PA

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.

Texas WH200, LP,
a Delaware limited partnership

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

Signature of Affiant: W.A.P.

Printed Name: William A. Peruzzi

Title: Manager

1300 Virginia Drive, Suite 225
Fort Washington, PA 19034

SUBSCRIBED AND SWORN TO before me by William A. Peruzzi, Manager, on
March 23, 2012.

Notary Public, Commonwealth of Pennsylvania

Leslie Wolner Lederhandler.

Typed or printed name of notary.

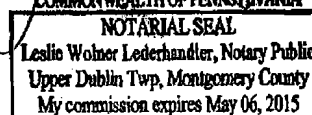


EXHIBIT H
ETHICS AFFIDAVIT

Date: March 22, 2012
Name of Affiant: Peter A. Dwyer
Title of Affiant: President
Business Name of Contractor: Dwyer Realty Companies
County of Contractor: Tarrant County, Texas

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.

Peter A. Dwyer 3/22/2012
Dwyer Realty Companies Signature of Affiant
9900 Hwy 290 East, Manor, TX 78653
Address

SUBSCRIBED AND SWORN TO before me by Peter A. Dwyer on March 22, 2012.

Notary Public, State of Texas

Diana Barton
Typed or printed name of notary

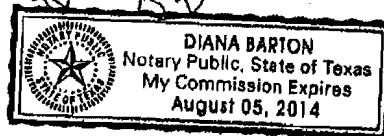


EXHIBIT A
To Ethics Affidavit

LIST OF KEY CONTRACTING PERSONS
January 18, 2011

CURRENT

<u>Position Held</u>	<u>Name of Individual Holding Office/Position</u>	<u>Name of Business Individual is Associated</u>
County Judge	Samuel T. Biscoe	
County Judge (Spouse)	Donalyn Thompson-Biscoe	MHMR
Executive Assistant	Cheryl Brown	
Executive Assistant	Melissa Velasquez	
Executive Assistant	Josie Z. Zavala	
Executive Assistant	Cheryl Aker*	
Commissioner, Precinct 1	Ron Davis	
Commissioner, Precinct 1 (Spouse)	Annie Davis	Seton Hospital
Executive Assistant	Deone Wilhite*	
Executive Assistant	Felicitas Chavez	
Commissioner, Precinct 2	Sarah Eckhardt	
Commissioner, Precinct 2 (Spouse)	Kurt Sauer	Daffer McDaniel, LLP
Executive Assistant	Loretta Farb	
Executive Assistant	Joe Hon	
Executive Assistant	Peter Einhorn	
Commissioner, Precinct 3	Karen Huber	
Commissioner, Precinct 3 (Spouse)	Leonard Huber	Retired
Executive Assistant	Garry Brown	
Executive Assistant	Lori Duarte	
Executive Assistant	Michael Nalick	
Commissioner, Precinct 4	Margaret Gomez	
Executive Assistant	Edith Moreida	
Executive Assistant	Norma Guerra	
County Treasurer	Dolores Ortega-Carter	
County Auditor	Susan Spataro, CPA	
Executive Manager, Administrative	Vacant	
Executive Manager, Budget & Planning	Rodney Rhoades	
Executive Manager, Emergency Services	Danny Hobby	
Executive Manager, Health/Human Services	Sherri E. Fleming	
Executive Manager, TNR	Steven M. Manilla, P.E.*	
Executive Manager, Criminal Justice Planning	Roger Jefferies	
Director, Facilities Management	Roger El Khoury, M.S., P.E.	
Chief Information Officer	Joe Harlow	
Director, Records Mgmt. and Communications	Steven Broberg	
Travis County Attorney	David Escamilla	
First Assistant County Attorney	Steve Capelle	
Executive Assistant, Civil Division	Jim Collins	
Director, Land Use Division	Tom Nuckols*	
Attorney, Land Use Division	Julie Joe	
Attorney, Land Use Division	Christopher Gilmore	
Director, Transactions Division	John Hille	

Attorney, Transactions Division
 Attorney, Transactions Division
 Attorney, Transactions Division
 Attorney, Transactions Division
 Attorney, Transactions Division
 Attorney, Transactions Division
 Director, Health Services Division
 Attorney, Health Services Division
 Purchasing Agent
 Assistant Purchasing Agent
 Assistant Purchasing Agent
 Purchasing Agent Assistant IV
 Purchasing Agent Assistant IV
 Purchasing Agent Assistant IV
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 Purchasing Agent Assistant III
 Purchasing Agent Assistant III
 Purchasing Agent Assistant II
 Purchasing Agent Assistant III
 HUB Coordinator
 HUB Specialist
 HUB Specialist
 Purchasing Business Analyst
 Purchasing Business Analyst

Tamara Armstrong
 Daniel Bradford
 Mary Etta Gerhardt
 Barbara Wilson
 Jim Connolly
 Tenley Aldredge
 Beth Devery
 Prema Gregerson*
 Cyd Grimes, C.P.M.
 Marvin Brice, CPPB
 Bonnie Floyd, CPPO, CPPB, CTPM
 Diana Gonzalez
 Lee Perry
 Jason Walker
 Richard Villareal
 Oralia Jones, CPPB
 Lori Clyde, CPPO, CPP B
 Scott Wilson, CPPB
 Jorge Talavera, CPPO, CPPB
 George R. Monnat, C.P.M., A.P.P.
 John E. Pena, CTPM*
 Vacant
 David Walch
 Michael Long, CPPB
 Elizabeth Corey, C.P.M.*
 Rosalinda Garcia
 Loren Breland, CPPB
 C.W. Bruner, CTP*
 Nancy Barchus, CPPB
 Sylvia Lopez
 Betty Chapa
 Jerome Guerrero
 Scott Worthington
 Jennifer Francis*

FORMER EMPLOYEES

Position Held	Name of Individual	Holding Office/Position	Date of Expiration
Purchasing Agent Assistant III		Vania Ramaekers, CPPB, CPPO	04/26/11
Attorney, Transactions Division		Sarah Churchill	04/30/11
Executive Assistant		Chris Fanuel	04/30/11
Purchasing Agent Assistant II		Donald E. Rollack	05/31/11
Special Assistant to Comm. Court		Christian Smith	05/31/11
Executive Manager, TNR	Joseph Gieselman		01/31/12

* Identifies employees who have been in a position for less than one year.



*Start date to commence on Monday after Commission/Courts approval.

**EXHIBIT I - MILESTONE SCHEDULE
PARMER LANE EXTENSION**

ID	Task Name	Duration	Start	Finish
1	Notice to Proceed	0 days	Mon 3/19/12	Mon 3/19/12
2	PROJECT DESIGN	258 days	Mon 3/19/12	Wed 3/13/13
3	Work Product 1 - 30% Design	29 days	Mon 3/19/12	Thu 4/26/12
4	Kick Off Meeting	0 days	Mon 3/19/12	Mon 3/19/12
5	Coordination Meeting	0 days	Mon 3/19/12	Mon 3/19/12
6	Survey (Capital Surveying)	15 days	Mon 3/19/12	Fri 4/6/12
7	Environmental (Horizon)	10 days	Mon 3/19/12	Fri 3/30/12
8	MEC 30% Design Plans	15 days	Mon 3/26/12	Fri 4/13/12
9	Geotechnical Design (Rebs-Kistner)	15 days	Mon 3/26/12	Fri 4/13/12
10	30% County Review	5 days	Mon 4/16/12	Fri 4/20/12
11	30% Comment Review Meeting	0 days	Fri 4/20/12	Fri 4/20/12
12	Response to County Comments	4 days	Mon 4/23/12	Thu 4/26/12
13	Work Product 2 - 60% Design	24 days	Thu 4/26/12	Wed 5/30/12
14	Notice to Proceed	0 days	Thu 4/26/12	Thu 4/26/12
15	Coordination Meeting	0 days	Thu 4/26/12	Thu 4/26/12
16	Survey (Capital Surveying)	10 days	Fri 4/27/12	Thu 5/10/12
17	MEC 60% Design Plans	15 days	Fri 4/27/12	Thu 5/17/12
18	60% County Review	5 days	Fri 5/18/12	Thu 5/24/12
19	60% Comment Review Meeting	0 days	Thu 5/24/12	Thu 5/24/12
20	Response to County Comments	4 days	Fri 5/25/12	Wed 5/30/12
21	Work Product 3 - 90% Design	23 days	Wed 5/30/12	Mon 7/2/12
22	Notice to Proceed	0 days	Wed 5/30/12	Wed 5/30/12
23	Coordination Meeting	0 days	Wed 5/30/12	Wed 5/30/12
24	Specifications and Contract Document (Draft)	15 days	Thu 5/31/12	Wed 6/20/12
25	MEC 90% Design Plans	15 days	Thu 5/31/12	Wed 6/20/12
26	90% County Review	5 days	Thu 6/21/12	Wed 6/27/12
27	90% County Review Meeting	0 days	Wed 6/27/12	Wed 6/27/12
28	Response to County Comments	3 days	Thu 6/28/12	Mon 7/2/12
29	Work Product 4 - 100% Complete	15 days	Mon 7/2/12	Mon 7/23/12
30	Notice to Proceed	0 days	Mon 7/2/12	Mon 7/2/12
31	Coordination Meeting	0 days	Mon 7/2/12	Mon 7/2/12
32	Mec 100% Design Plans	15 days	Tue 7/3/12	Mon 7/23/12
33	Specifications and Contract Document (Final)	15 days	Tue 7/3/12	Mon 7/23/12
34	100% Bid Ready Documents	0 days	Mon 7/23/12	Mon 7/23/12
35	Work Product 5	27 days	Mon 7/23/12	Wed 8/29/12
36	Notice to Proceed	0 days	Mon 7/23/12	Mon 7/23/12
37	Bid Notification	15 days	Tue 7/24/12	Mon 8/13/12
38	Bid Opening	5 days	Tue 8/14/12	Mon 8/20/12
39	Contract Award	7 days	Tue 8/21/12	Wed 8/29/12
40	Work Product 6 Construction Phase Services	140 days	Thu 8/30/12	Wed 3/13/13
41	Construction	140 days	Thu 8/30/12	Wed 3/13/13
42	"CONSTRUCTION ADMINISTRATION SERVICES" (MEC)	140 days	Thu 8/30/12	Wed 3/13/13
43	UTILITY RELOCATION SERVICES (MEC)	20 days	Fri 4/27/12	Thu 5/24/12

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.

The **Utility** and the **County**, by execution of this Acknowledgement, do not waive or relinquish any right that they may have under the law.

NO OFFICIAL, EMPLOYEE, AGENT, OR REPRESENTATIVE OF THE COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND THIS CONTRACT, EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE COMMISSIONERS COURT OF THE COUNTY.

When mediation is acceptable to both parties in resolving a dispute arising under this agreement, the parties agree to use the Dispute Resolution Center of Austin, Texas as the provider of mediators for mediation as described in Section 154.023 of the Texas Civil Practice and Remedies Code. Unless both parties are satisfied with the results of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation shall remain confidential as described in §154.073 of the Texas Civil Practice and Remedies Code, unless both Parties agree, in writing, to waive the confidentiality.

The signatories to this Acknowledgement warrant that each has the authority to enter into this Acknowledgement on behalf of the party represented.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures.

UTILITY

COUNTY

Travis County

By: _____

Printed Name: _____

Title: _____

Date: _____

Samuel T. Biscoe
Travis County Judge

Date: _____

Form 304

Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
FAX: 512/463-5709

Filing Fee: \$750



**Application for
Registration of
a Foreign Limited Liability
Company**

Filed in the Office of the
Secretary of State of Texas
Filing #: 801587920 04/26/2012
Document #: 419112710002
Image Generated Electronically
for Web Filing

1. The entity is a foreign limited liability company. The name of the entity is :

Titan Texas Development, LLC

2A. The name of the entity in its jurisdiction of formation does not contain the word "limited liability company" or "limited company" (or an abbreviation thereof). The name of the entity with the word or abbreviation which it elects to add for use in Texas is:

2B. The entity name is not available in Texas. The assumed name under which the entity will qualify and transact business in Texas is:

HOM Titan Development, LLC

3. Its federal employer identification number is: **455141209**

Federal employer identification number information is not available at this time.

4. It is organized under the laws of: **DELAWARE, USA**
and the date of its formation in that jurisdiction is: **4/24/2012**

5. As of the date of filing, the undersigned certifies that the foreign limited liability company currently exists as a valid limited liability company under the laws of the jurisdiction of its formation.

6. The purpose or purposes of the limited liability company that it proposes to pursue in the transaction of business in Texas are set forth below. The entity also certifies that it is authorized to pursue such stated purpose or purposes in the state or country under which it is organized.

**any lawful business or activity under the laws of the State of Texas. The
entity also certifies that it is authorized to pursue such stated purpose or
purposes in the state or country under which it is organized.**

7. The date on which the foreign entity intends to transact business in Texas, or the date on which the foreign entity first transacted business in Texas is: **04/26/2012**

8. The principal office address of the limited liability company is:
1300 Virginia Drive, Suite 135, Fort Washington, PA, USA 19034

9A. The initial registered agent is an organization by the name of:

9B. The initial registered agent is an individual resident of the state whose name is:

Wayne S. Hollingsworth

9C. The business address of the registered agent and the registered office address is:
100 Congress Avenue, Suite 1300 Austin TX 78701-2744

Consent of Registered Agent

- A. A copy of the consent of Registered Agent is attached.
- OR**
- B. The consent of the registered agent is maintained by the entity.

10. The entity hereby appoints the Secretary of State of Texas as its agent for service of process under the circumstances set forth in section 5.251 of the Texas Business Organizations Code.

11. The name and address of each governing person is:

NAME OF GOVERNING PERSON (Enter the name of either an individual or an organization, but not both):
IF INDIVIDUAL

OR
IF ORGANIZATION

Titan Capital Investment Group, LLC
ADDRESS OF GOVERNING PERSON:
1300 Virginia Drive, Suite 135 Fort Washington PA, USA 19034

Supplemental Provisions / Information

[The attached addendum, if any, is incorporated herein by reference.]

Effectiveness of Filing

- A. This document becomes effective when the document is filed by the secretary of state.
- OR**
- B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of its signing. The delayed effective date is:

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: **April 26, 2012** **Titan Capital Investment Group, LLC, its Manager, By: John P. Giangiullo, Jr., Manager**
Signature and title of authorized person on behalf of the foreign entity

FILING OFFICE COPY

TEXAS SECRETARY of STATE **HOPE ANDRADE**

[UCC](#) | [Business Organizations](#) | [Trademarks](#) | [Notary](#) | [Account](#) | [Help/Fees](#) | [Briefcase](#) | [Logout](#)

BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Filing Number: 801587920 **Entity Type:** Foreign Limited Liability Company (LLC)
Original Date of Filing: April 26, 2012 **Entity Status:** In existence
Formation Date: N/A
Tax ID: **FEIN:** 455141209

Name: Titan Texas Development, LLC
Address: 1300 Virginia Drive, Suite 135
Fort Washington, PA 19034 USA

Fictitious Name: HOM Titan Development, LLC
Jurisdiction: DE, USA
Foreign Formation Date: April 24, 2012

<u>REGISTERED AGENT</u>	<u>FILING HISTORY</u>	<u>NAMES</u>	<u>MANAGEMENT</u>	<u>ASSUMED NAMES</u>	<u>ASSOCIATED ENTITIES</u>
Name		Address			Inactive Date
Wayne S. Hollingsworth		100 Congress Avenue, Suite 1300 Austin, TX 78701-2744 USA			

[Order](#) [Return to Search](#)

Instructions:

- To place an order for additional information about a filing press the 'Order' button.



Taxable Entity Search Results

Franchise Tax Certification of Account Status

This Certification Not Sufficient for Filings with Secretary of State

Obtain a certification sufficient for filings with the Secretary of State.

Certification of Account Status	Officers And Directors Information
Entity Information:	TITAN TEXAS DEVELOPMENT, LLC DBA HOM TITAN DEVELOPMENT, LLC 100 CONGRESS AVE STE 1300 AUSTIN, TX 78701-2744
Status:	IN GOOD STANDING NOT FOR DISSOLUTION OR WITHDRAWAL through May 15, 2013
Registered Agent:	WAYNE S. HOLLINGSWORTH 100 CONGRESS AVENUE, SUITE 1300 AUSTIN, TX 78701
Registered Agent Resignation Date:	
State of Formation:	DE
File Number:	0801587920
SOS Registration Date:	April 26, 2012
Taxpayer Number:	32047784395

[texas.gov](#) [Statewide Search from the Texas State Library](#) [State Link Policy](#) [Texas Homeland Security](#)

Susan Combs, Texas Comptroller • [Window on State Government](#) • [Contact Us](#)
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with Texans



TEXAS COMPTROLLER OF PUBLIC ACCOUNTS
SUSAN COMBS • COMPTROLLER • AUSTIN, TEXAS 78774

May 2, 2012

CERTIFICATE OF ACCOUNT STATUS

THE STATE OF TEXAS
COUNTY OF TRAVIS

I, Susan Combs, Comptroller of Public Accounts of the State of Texas, DO
HEREBY CERTIFY that according to the records of this office

TITAN TEXAS DEVELOPMENT, LLC
DBA
HOM TITAN DEVELOPMENT, LLC

is, as of this date, in good standing with this office having no franchise
tax reports or payments due at this time. This certificate is valid through
the date that the next franchise tax report will be due May 15, 2013.

This certificate does not make a representation as to the status of the
entity's registration, if any, with the Texas Secretary of State.

This certificate is valid for the purpose of conversion when the converted
entity is subject to franchise tax as required by law. This certificate is
not valid for any other filing with the Texas Secretary of State.

GIVEN UNDER MY HAND AND
SEAL OF OFFICE in the City of
Austin, this 2nd day of
May 2012 A.D.

Susan Combs
Texas Comptroller

Taxpayer number: 32047784395
File number: 0801587920

Form 05-304 (Rev. 12-07/17)



Certification of Franchise Tax Account Status

Officer/Director Information Not on File for:

TITAN TEXAS DEVELOPMENT, LLC

Information about corporate officers and directors is specifically designated as public information by Texas Tax Code 171.203. There is no comparable provision making public the information about the principals of other entity types. It is our interpretation of Texas Tax Code 171.206 that ownership information reported by other entity types (associations, partnerships, trusts) as part of their franchise tax filing is confidential and not subject to public disclosure. Accordingly, that information is not available on this site.

Corporate officer and director information is provided from the Secretary of State. If you receive a message that officer and director information for a corporation or limited liability company is not available, you may order a copy of a Public Information Report from open.records@cpa.state.tx.us or by mail at Comptroller of Public Accounts, Open Government Division, PO Box 13528, Austin, Texas 78711. Copies of Ownership Information Reports are not subject to public disclosure.

Call our Business Information Line at (800) 252-1386 if you need assistance.

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