



## Travis County Commissioners Court Agenda Request

**Meeting Date:** January 14, 2014

**Prepared By:** Michael Hettenhausen, Planner

**Phone #:** (512) 854-7563

**Division Director/Manager:** Anna Bowlin, Division Director, Development Services and Long Range Planning

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

**Sponsoring Court Member:** Commissioner Davis, Precinct One

### **AGENDA LANGUAGE:**

Consider and take appropriate action on the following requests in Precinct One:

- A) A plat for recording: Sorento Phase One Final Plat (Long Form Final Plat - 102 total lots - Weiss Lane - City of Pflugerville ETJ); and
- B) A Travis County Subdivision Construction Agreement between Travis County and Sorento Holdings 2012, LLC.

### **BACKGROUND/SUMMARY OF REQUEST:**

A) This final plat consists of 102 total lots (99 single family residential lots, 1 public parkland lot, 1 public parkland and drainage lot, and 1 private parkland and drainage lot) on 30.459 acres. There are 5,188 linear feet of public streets proposed with this final plat. Water and wastewater service will be provided by the City of Pflugerville. Parkland fees in lieu of dedication have been satisfied through a development agreement with the City of Pflugerville.

The applicant is currently utilizing Travis County Alternative Fiscal Agreement and the plat is being held in abeyance until the remaining fiscal has been posted. The balance of the fiscal surety was recently posted with Travis County, and the plat may be approved and recorded.

B) The applicant, Sorento Holdings 2012, LLC, wishes to enter into a Standard Subdivision Construction Agreement with Travis County.

### **STAFF RECOMMENDATIONS:**

As the Commissioners Court approved the utilization of the county's alternative fiscal agreement on July 30, 2013, and the final plat has been approved by the City of Pflugerville, staff recommends approval of the final plat and the subdivision construction agreement.

**ISSUES AND OPPORTUNITIES:**

TNR has not been contacted by anyone via e-mail, telephone, or by letter on this development, and TNR has not registered any interested parties nor received any other inquiries for this project.

**FISCAL IMPACT AND SOURCE OF FUNDING:**

N/A

**EXHIBITS/ATTACHMENTS:**

- Location map
- Precinct map
- Proposed final plat
- Subdivision Construction Agreements

**REQUIRED AUTHORIZATIONS:**

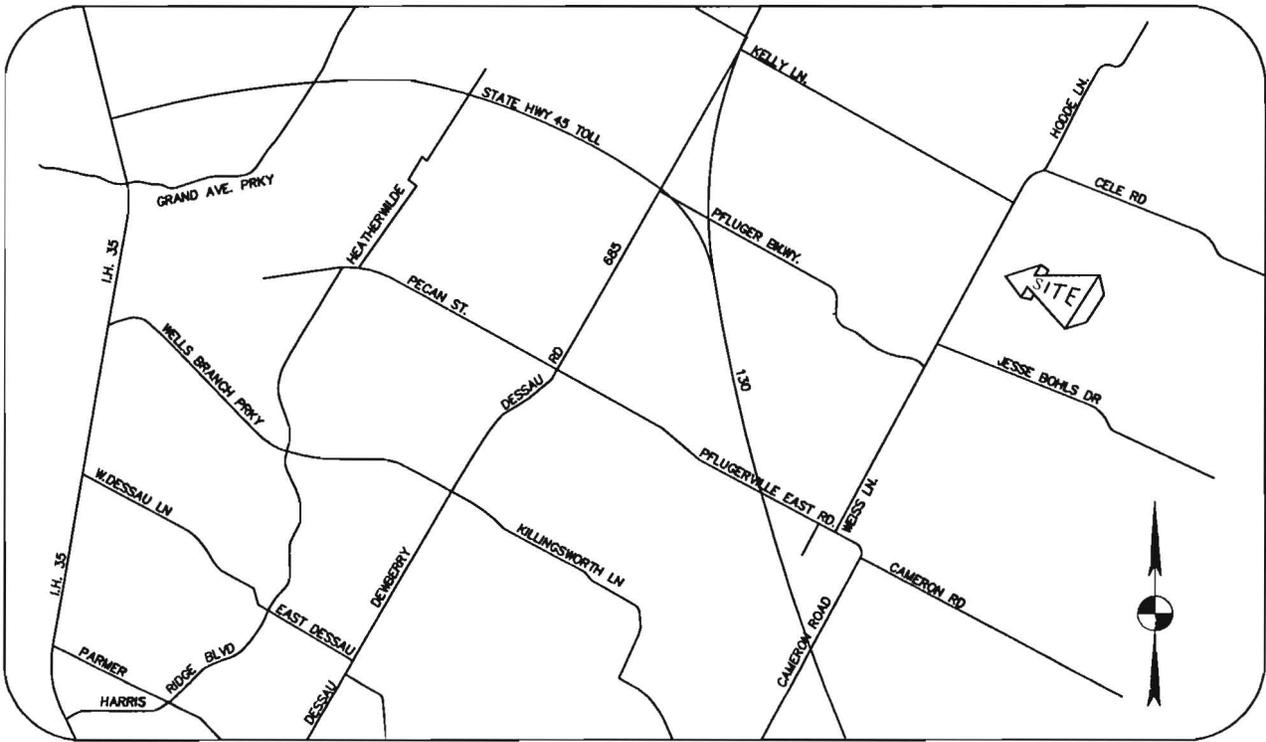
Cynthia McDonald	Financial Manager	TNR	(512) 854-4239
Steven M. Manilla	County Executive	TNR	(512) 854-9429

**CC:**


**SM:AB:mh**

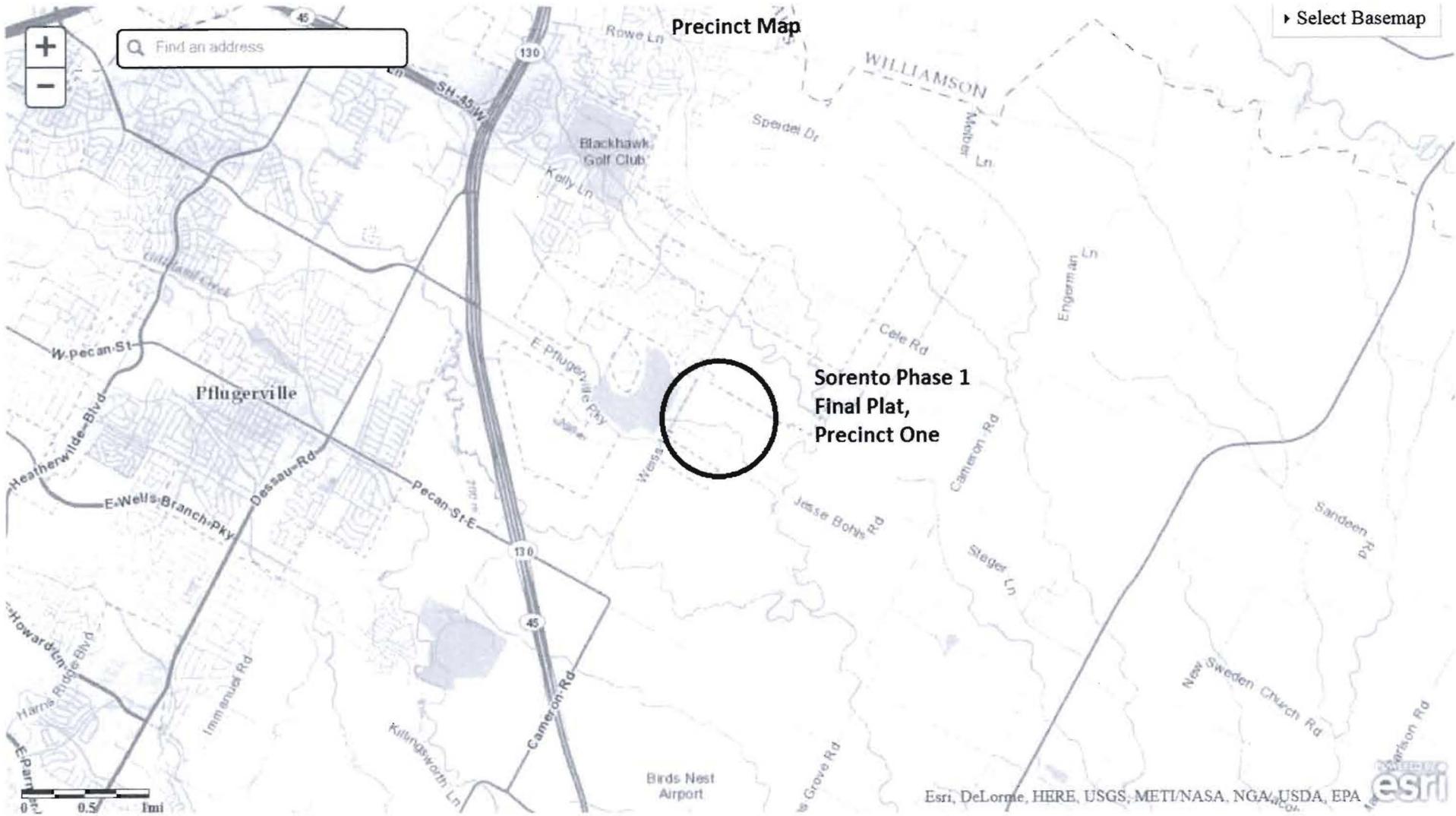
**1101 - Development Services Long Range Planning- Sorento Phase One Final Plat**

# PFLUGERVILLE



## VICINITY MAP

NOT TO SCALE



## EXHIBIT 82.401 (E) SUBDIVISION CONSTRUCTION AGREEMENT

STATE OF TEXAS  
COUNTY OF TRAVIS

This Agreement is made and entered into by and between Sorento Holdings 2012 LLC, (the "Subdivider") and Travis County, Texas, (the "County"), hereinafter collectively referred to as the "Parties".

WHEREAS, the Subdivider owns the tract of real property described in Exhibit "A", which is attached hereto and made a part hereof, (the "Property"); and

WHEREAS, the Subdivider desires to subdivide the Property, pursuant to the proposed final plat of "Sorento Phase 1" (the "Subdivision"); and

WHEREAS, the County desires to set forth the Subdivider's responsibility for the construction of the Subdivision's roads and drainage facilities (the "Improvements"); and

WHEREAS, the Subdivider desires to set forth the County's responsibility to accept the constructed Improvements for maintenance;

NOW, THEREFORE, the Parties agree as follows:

### I. Subdivider's Obligations

A. Improvements. The Subdivider shall construct the Improvements required to comply with the County's Standards for the Construction of Streets and Drainage in Subdivisions (the "Standards"). The Improvements will conform to the construction plans, permits, and specifications approved by the County prior to commencement of construction.

B. Security. To secure the Subdivider's obligations, the Subdivider will provide a financial guarantee of performance in the amount of the estimated cost of constructing the Improvements (the "Security"), which has been determined by a professional engineer and approved by the County's Transportation and Natural Resources Department ("TNR"). The Security must be in a form approved for use in the Standards or otherwise approved by the County Attorney's Office.

C. Alternative Fiscal. Notwithstanding any other provisions of this Agreement, the Subdivider may request the Commissioners Court to hold the administratively approved plat in abeyance until all streets, alleys, sidewalks, and drainage improvements in the Subdivision. The Subdivider must post fiscal security to secure restoration of disturbed areas should construction not be completed. Upon satisfactory completion, the submitted plat shall be forwarded to the Commissioners Court for approval and recording, provided adequate fiscal security has been posted to secure the one year Construction Performance Period described below.

D. Completion. The Improvements must be constructed no later than three (3) years after the effective date of this Agreement. This period may be extended by the delivery to the County at least forty five (45) days prior to the expiration of the Security of an extension of the Security in a form approved by the County. Upon completion of the Improvements, the Subdivider will provide the County with a complete set of construction plans for the Improvements, certified "as built" by the engineer responsible for preparing the approved construction plans and specifications.

E. Warranty. The Subdivider warrants the public Improvements will be free from defects for a period of one (1) year from the date the County accepts the construction of the public Improvements (the "Performance Period"). The Subdivider shall correct and repair any defects in materials or workmanship, including design inadequacies and damage to or deterioration of the public Improvements that occur before and during this Performance Period due to any cause. As a condition of the County's acceptance of dedication of any of the public Improvements, the Subdivider must post fiscal security in the form of cash, a performance bond, or other approved form and in the amount of ten percent (10%) of the cost of constructing the public Improvements, to secure the warranty established by this Agreement. It is expressly acknowledged that the public Improvements must meet County Standards at the end of the one year Construction Performance Period in order for the County to release the construction performance fiscal security.

F. Increase in Security. If the County determines the cost of constructing the Improvements exceeds the posted Security, within thirty (30) days after notice and demand, the Subdivider shall provide additional Security in an amount equal to the additional estimated cost.

G. Reduction in Security. During the construction of the Improvements, the Security may be reduced in accordance with the percentage of completion of the construction. The County Executive of TNR will execute Statements of Partial Reductions in the Amount of Security, when provided with the following documentation:

- 1) a professional engineer's certification of quantities of work completed;
- 2) a contractor's invoice for work completed; and
- 3) a TNR inspection report, indicating the completion of the portion of the work represented by the contractor's invoice.

After the approval and acceptance of the construction of the Improvements, the Security for the public Improvements may be reduced by ninety percent (90%) of the cost of the approved construction and held for the one-year Performance Period. After the approval of the construction of the private Improvements, the Security posted for the private Improvements will be fully released. In addition, the County agrees to release or reduce, as appropriate, the Security provided by the Subdivider, if the County accepts a substitute Security for all or any portion of the Improvements.

H. Covenant, Restriction, and Condition. In the event that the Improvements are not constructed to County Standards and the required Security has expired, the Subdivider shall not sell, transfer, or convey any of the lots in the Subdivision until sufficient Security has been posted with the County for the completion of the construction.

## II. County's Obligations

A. Inspection and Approval. The County will inspect the Improvements during and at the completion of construction. If the Improvements are completed in accordance with the Standards, the County will approve the Improvements and accept the public Improvements.

B. Notice of Defect. The County will notify the Subdivider, if an inspection reveals that any portion of the Improvements is not constructed in accordance with the Standards or is otherwise defective. However, the County is not responsible for the construction of the Improvements, the quality of the material, or the construction methods utilized. In addition, the County is not responsible for making continuous on-site inspections of the construction work and the County has no privity with or responsibility for the construction contractor or any subcontractors. The Subdivider will have thirty (30) days from such notice to cure the defect. It is an event of default under this Agreement, if the defect is not cured prior to the expiration of the time to cure.

C. Performance Period Security Release. Upon the expiration of the one-year Performance Period with no damages or defects which the County Executive notifies the Subdivider must be corrected, the County Executive will release the Performance Period Security.

D. Conditions to Draw on Security. The County may draw upon any Security posted under this Agreement upon the occurrence of one or more of the following events:

- a. The failure of the Subdivider to construct the Improvements to the applicable County Standards;
- b. The Subdivider's failure to renew or replace the Security at least forty-five (45) days prior to its expiration;
- c. The acquisition of the Property or a portion of the Property by the issuer of the Security or other creditor through foreclosure or an assignment or conveyance in lieu of foreclosure;
- d. The arrangement by the Commissioners Court for the completion of one or more of the Improvements; or
- e. The determination by the Commissioners Court that the completion of one or more of the public Improvements is in the public Interest.

E. Notice of Intent to Draw. The County shall provide ten (10) days written notice of the occurrence of such an event to the Subdivider with a copy provided to any fiscal surety, lender, or escrow agent. The notice will include a statement that the County intends to provide for the performance of some or all of Subdivider's obligations hereunder for the construction of the Improvements, if the failure is not cured. The County shall be entitled to draw the amount it considers necessary to perform the Subdivider's obligations under this Agreement up to the total amount allocated for the Improvements. In lieu of a drawing based on an event described in subparagraphs (b) or (c), above, the County may accept a substitute Security.

F. Use of Proceeds.

1) The County must utilize the proceeds of any posted security solely for the purpose of completing the Improvements to the County's Standards or to correct defects in or failures of the Improvements.

2) The County may in its sole discretion complete some or all of the unfinished Improvements at the time of default, regardless of the extent to which development has taken place in the Subdivision or whether development ever commenced, without incurring any obligation to complete any of the unfinished Improvements. If the County uses the proceeds to complete, repair, or reconstruct the Improvements, it will do so as a public trustee of the development process in order to protect purchasers and taxpayers from the adverse consequences of a subdivider default or to protect the public interest by completing the Improvements.

3) The County is not a private subdivision developer and its draft on the Security and utilization of the proceeds to complete, repair, or reconstruct the Improvements is not an acceptance of the dedication of the Improvements. The acceptance of the Improvements is specifically contingent upon the delivery to the County of Improvements, which have been constructed to County Standards or the express order of acceptance by the County's Commissioners Court.

4) The Subdivider has no claim or rights under this Agreement to funds drawn under the Security or any accrued interest earned on the funds to the extent the same are used by the County hereunder.

5) All funds obtained by the County pursuant to one or more draws under the Security shall be maintained by the County in an interest bearing account or accounts until such funds, together with accrued interest thereon (the "Escrowed Funds"), are disbursed by the County.

6) The County shall disperse all or portions of the Escrowed Funds as Improvements are completed by the County, or in accordance with the terms of a written construction contract between the County and a third party for the construction of the Improvements.

7) Escrowed Funds not used or held by the County for the purpose of completing an Improvement or correcting defects in or failures of an Improvement, together with any interest accrued thereon, shall be paid by the County to the Issuer of the Security or, if the Security was originally in the form of cash, to the Subdivider, no later than sixty (60) days following the County's acceptance of the Improvement or its decision not to complete the Improvements using Escrowed Funds, whichever date is earlier.

G. Releases. The County Executive will, subject to the performance of the Subdivider of its obligations under this agreement and the Travis County Standards for Construction of Streets & Drainage in Subdivisions, execute such releases of this Agreement as are necessary and reasonable upon the request of the Subdivider or a purchaser of a portion of the Property.

### III. MISCELLANEOUS

A. Covenants, Restrictions, and Conditions. These Covenants, Restrictions, and Conditions will operate as covenants running with the land and will be binding upon the Subdivider and the Subdivider's legal representatives, successors and assigns.

B. Measure of Damages. The measure of damages for breach of this Agreement by the Subdivider is the actual cost of completing the Improvements in conformance with the County's Standards, including without limitation its associated administrative expenses.

C. Remedies. The remedies available to the County and the Subdivider under this Agreement and the laws of Texas are cumulative in nature.

D. Third Party Rights. No non-party shall have any right of action under this Agreement, nor shall any such non-party, including without limitation a trustee in bankruptcy, have any interest in or claim to funds drawn on the posted Security and held in escrow by the County in accordance with this Agreement.

E. Indemnification. The Subdivider shall indemnify and hold the County harmless from and against all claims, demands, costs, and liability of every kind and nature, including reasonable attorney's fees, for the defense of such claims and demands, arising from any breach on the part of Subdivider of any provision in this Agreement, or from any act or negligence of Subdivider or Subdivider's agents, contractors, employees, tenants, or licensees in the construction of the Improvements. The Subdivider further agrees to aid and defend the County, if the County is named as a defendant in an action arising from any breach on the part of Subdivider of any provision in this Agreement or from any act or negligence of Subdivider or Subdivider's agents, contractors, employees, tenants, or licensees in the construction of the Improvements.

F. No Waiver. The waiver of any provision of this Agreement will not constitute a waiver of any other provision, nor will it constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement. The County's failure to enforce any provision will not constitute a waiver or estoppel of the right to do so.

G. Attorney's Fees. The prevailing party in any litigation hereunder is entitled to recover its costs, including reasonable attorney's fees, court costs, and expert witness fees, from the other party. If the court awards relief to both parties, each will bear its own costs.

H. Successors and Assigns. This Agreement is binding on the Subdivider and the heirs, successors, and assigns of the Subdivider and on any person acquiring an ownership interest in the Property through the Subdivider. The Subdivider's obligations under this Agreement may not be assigned without the written approval of the County; provided the County's approval shall not be unreasonably withheld if the Subdivider's assignee expressly assumes all obligations of the Subdivider under this Agreement. An assignment shall not be construed as releasing the Subdivider from Subdivider's obligations under this Agreement and Subdivider's obligations hereunder shall continue notwithstanding any assignment approved pursuant to this Paragraph unless and until the County executes and delivers to the Subdivider a written release. The County agrees to release the Subdivider, if the Subdivider's assignee expressly assumes the Subdivider's obligations under this Agreement and has posted the Security required by this Agreement. The County in its sole discretion may assign some or all of its rights under this Agreement and any such assignment shall be effective upon notice to the Subdivider.

I. Expiration. This Agreement will terminate upon the vacation of the Subdivision by the Subdivider or the completion of the Subdivider's obligations under this Agreement, whichever occurs first.

J. Notice. Any notice under this Agreement must be in writing and will be effective when personally delivered or three (3) days after deposit in the U.S. Mail, postage prepaid, certified with return receipt requested, and addressed as follows:

Subdivider: Sorento Holdings 2012, LLC  
4910 Campus Drive  
Newport Beach, California 92660

County: Transportation & Natural Resources Department  
P.O. Box 1748  
Austin, Texas 78767  
Attn: County Executive

Copy to: Travis County Attorney's Office  
P.O. Box 1748  
Austin, Texas 78767

The parties may change their respective addresses for notice to any other location in the United States in accordance with the provisions of this Paragraph.

K. Severability. If any provision of this Agreement is held by a court to be illegal, invalid, or otherwise unenforceable, such illegality, invalidity, or unenforceability shall not affect the validity of any other provision and the rights of the parties will be construed as if such provision was never part of this Agreement.

L. Jurisdiction and Venue. This Agreement concerns real property located in Travis County, Texas, and shall be governed and construed under Texas law. Venue for any action arising under this Agreement shall be exclusively in Travis County, Texas.

M. Captions Immaterial. The captions or headings of the paragraphs of this Agreement are for convenience only and shall not be considered in construing this Agreement.

N. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof. Any oral representations or modifications concerning this Agreement shall be of no force or effect, except a subsequent written modification executed by both parties. NO OFFICIAL, EMPLOYEE, OR AGENT OF THE COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND, MODIFY, OR OTHERWISE CHANGE THIS AGREEMENT, EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE COMMISSIONERS COURT.

This Agreement is executed as of the dates set forth below and is effective upon approval by the County of the final plat for the Subdivision or upon approval of Alternative Fiscal in accordance with County regulations.

TRAVIS COUNTY, TEXAS

SUBDIVIDER:  
Sorento Holdings 2012, LLC

\_\_\_\_\_  
County Judge

Date:

  
By:  
Name: THOMAS J. RIELBY  
Title: PRESIDENT  
Authorized Representative  
Date: 12/31/13

ACKNOWLEDGEMENT

STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, by  
\_\_\_\_\_, in the capacity stated herein.

*see  
attached*

Signature of Notary

After Recording Return to:

County Executive, Transportation and Natural Resources  
P.O. Box 1748  
Austin, Texas 78767

# CALIFORNIA JURAT WITH AFFIANT STATEMENT

- See Attached Document (Notary to cross out lines 1-6 below)  
 See Statement Below (Lines 1-5 to be completed only by document signer[s], *not* Notary)

1  
2  
3  
4  
5  
6

Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

State of California

County of ORANGE

Subscribed and sworn to (or affirmed) before me on this

31<sup>ST</sup> day of DECEMBER, 2013, by  
Date Month Year

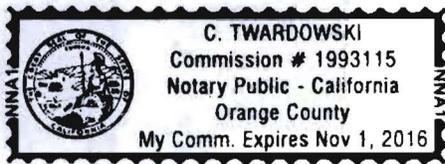
(1) THOMAS W. RIENY  
Name of Signer

proved to me on the basis of satisfactory evidence to be the person who appeared before me (.) (,)

(and  
(2) N/A  
Name of Signer

proved to me on the basis of satisfactory evidence to be the person who appeared before me.)

Signature C. Twardowski  
Signature of Notary Public



Place Notary Seal Above

## OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

### Further Description of Any Attached Document

Title or Type of Document: EXHIBIT 82.401 (E) SUBDIVISION CONSTRUCTION AGREEMENT

Document Date: NONE Number of Pages: 9

Signer(s) Other Than Named Above: NONE

RIGHT THUMBPRINT  
OF SIGNER #1  
Top of thumb here

RIGHT THUMBPRINT  
OF SIGNER #2  
Top of thumb here

EXHIBIT A: METES AND BOUNDS DESCRIPTION OF PROPERTY



LAND DEVELOPMENT ENVIRONMENTAL TRANSPORTATION WATER RESOURCES SURVEYING

FIELD NOTES

FOR

A 29.103 acre, or 1,267,705 square feet more or less, tract of land, out of a called 119.023 acre tract recorded in Document No. 2012164042, of the Official Public Records of Travis County, Texas, out of the John C. Bray, Survey No. 10, Abstract 73, in the City of Pflugerville, Travis, County, Texas. Said 29.103 acre tract being more fully described as follows, with the bearings based on the North American Datum of 1983 (CORS 1996), from the Texas Coordinate System established for the Central Zone:

**BEGINNING:** From a found ½" iron rod with yellow cap marked "Pape-Dawson", a point in the east right of way line of said Weiss Lane, a variable width right-of-way, the northwest corner of said called 119.023 acre tract and in the south line of a right-of-way dedication shown on the Final Plat of Pflugerville Industrial Park recorded in Document No. 200800320 of the Official Public Records of Travis County, Texas;

**THENCE:** S 67°15'22" E, departing the east right of way line of said Weiss Lane, along and with the north line of said called 119.023 acre tract and the south line of said right-of-way dedication, at a distance of 530.02 feet passing the intersection of the south line of said right-of-way dedication and the south line of Lot 4 of said Final Plat of Pflugerville Industrial Park, continuing along and with the north line of said called 119.023 acre tract and the south line of said Lot 4, at a distance of 1045.43 feet passing the southeast corner of said Lot 4 and the southwest corner of a called 158.1 acre tract recorded in Volume 11080, Page 27 of the Official Public Records of Travis County, Texas, continuing along and with the north line of said called 119.023 acre tract and the south line of said called 158.1 acre tract for a total distance of 1982.83 feet to a set ½" iron rod with yellow cap marked "Pape-Dawson";

**THENCE:** Departing the south line of said called 158.1 acre tract, over and across said called 119.023 acre tract, the following bearings and distances:

S 27°25'40" W, a distance of 337.50 feet to a set ½" iron rod with yellow cap marked "Pape-Dawson";

S 62°34'20" E, a distance of 25.88 feet to a set ½" iron rod with yellow cap marked "Pape-Dawson";

Southeasterly, along a non-tangent curve to the right, having a radial bearing of S 32°24'58" W, a radius of 500.00 feet, a central angle of 04°59'18", a chord bearing and distance of S 60°04'41" E, 43.52 feet, an arc length of 43.53 feet to a set ½" iron rod with yellow cap marked "Pape-Dawson";

S 27°25'40" W, a distance of 343.11 feet to a set ½" iron rod with yellow cap marked "Pape-Dawson";

N 62°34'20" W, a distance of 125.00 feet to a set ½" iron rod with yellow cap marked "Pape-Dawson";

S 27°25'40" W, a distance of 80.00 feet to a set ½" iron rod with yellow cap marked "Pape-Dawson";

N 62°34'20" W, a distance of 889.35 feet to a set ½" iron rod with yellow cap marked "Pape-Dawson";

N 27°25'40" E, a distance of 90.00 feet to a set ½" iron rod with yellow cap marked "Pape-Dawson";

N 62°34'20" W, a distance of 250.00 feet to a set ½" iron rod with yellow cap marked "Pape-Dawson";

S 27°25'40" W, a distance of 18.51 feet to a set ½" iron rod with yellow cap marked "Pape-Dawson";

N 62°34'20" W, a distance of 343.00 feet to a set ½" iron rod with yellow cap marked "Pape-Dawson";

N 48°00'33" W, a distance of 246.27 feet to a set ½" iron rod with yellow cap marked "Pape-Dawson";

N 62°33'35" W, a distance of 197.66 feet to a set ½" iron rod with yellow cap marked "Pape-Dawson" in the east right-of-way line of said Weiss Lane;

THENCE: N 27°09'33" E, along and with the west line of said called 119.023 acre tract and the east right of way line of said Weiss Lane, a distance of 467.14 feet to the POINT OF BEGINNING and containing 29.103 acres in the City of Pflugerville, Travis County, Texas. Said tract being described in accordance with a survey made on the ground and a survey description and map prepared under Job No. 50703-51 by Pape Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.  
DATE: February 10, 2013  
REVISED: January 2, 2014  
JOB No.: 50703-50  
DOC.ID.: H:\AUSTIN SURVEY\CIVIL\50703-51\WORD\Phase 1 Field Notes Rev 01/2013.docx  
TBPE Firm Registration #470  
TBPLS Firm Registration #100288-00

