



**AGENDA
CITY COUNCIL MEETING
CITY OF LEANDER, TEXAS**

Pat Bryson Municipal Hall
201 North Brushy Street - Leander, Texas
Thursday - July 6, 2023
Briefing Workshop at 6:00 PM
Regular Meeting at 7:00 PM



Mayor – Christine DeLisle
Place 1 – Kathryn Pantalion-Parker
Place 2 – Esme Mattke Longoria, *Mayor Pro Tem*
Place 3 – David McDonald

Place 4 – Na'Cole Thompson
Place 5 – Chris Czernek
Place 6 – Becki Ross
City Manager – Rick Beverlin

The meeting will also be live-streamed at the following link: <https://www.leandertx.gov/video>.

BRIEFING WORKSHOP - CONVENE AT 6:00 PM

1. Open Meeting.
2. Roll Call.
3. Sign Ordinance update.

REGULAR MEETING – CONVENE AT 7:00 PM

4. Open Meeting, Invocation and Pledges of Allegiance.
5. Roll Call.
6. Public comments on items not listed in the agenda.

Public comments on items listed in the agenda will be heard at the time each item is discussed by Council.

[All comments are limited to no more than 3 minutes (6 minutes if translation is needed) per individual.]

7. Recognitions/Proclamations/Visitors.
 - Proclamation Recognizing Leander's Indigenous Roots

CONSENT AGENDA: ACTION

8. Approval of the minutes for meeting held on June 15, 2023.

9. Ratify the approval of road closure of Westbound street parking on Waterfall Avenue between Deercreek Lane and Sunny Brook Drive for Liberty Fest on July 3, 2023.
10. Approval of a Resolution amending authorized representatives to the Texas Local Government Investment Pool (“TexPool/TexPool Prime”), a public funds investment pool.
11. Approval to renew the Employee Health Benefits for Medical/RX, Dental, Vision, Basic and Voluntary Life and Accidental Death & Dismemberment, Short and Long Term Disability, Accident, Cancer, Critical Illness, Hospital Indemnity, Employee Assistance Program, Flexible Spending Account, and Health Savings Account with the current providers for a Short Plan Year, October 2023 – December 2023, to align the Benefit, Calendar and Deductible Year; provide an effective date; and authorize the City Manager to execute any and all necessary documents.
12. Approval of a waiver of Article 8.04, Noise, Section 8.04.001(a) (11) in the hours of construction work to Leander Independent School District (LISD) to provide for concrete pours at Elementary #30, located north of San Gabriel Parkway and west of Frontenac Street in Leander, to perform the larger concrete pours beginning at 1:00 a.m. and the balance of smaller concrete pours, to begin no earlier than 4:00 a.m. from July 7, 2023, through April 30, 2024 (depending on weather conditions), with most of the pours being concentrated July 7, 2023, through January 31, 2024, and requiring LISD to post notifications a minimum of forty-eight (48) hours in advance of the activities.
13. Acceptance of public infrastructure improvements for Travisso Phase 4 Section 6A.
14. Acceptance of public infrastructure improvements for Crystal Village Phase 1A.
15. Acceptance of public infrastructure improvements for Fairways at Crystal Falls Phase 2 Sections 5 and 8.
16. Acceptance of public infrastructure improvements to the Jordan Tract.
17. Acceptance of public infrastructure improvements for Carneros Ranch Section 6.
18. Acceptance of public Infrastructure Improvements for Palmera Bluff Section 2.
19. Acceptance of public infrastructure improvements for Palmera Bluff Section 4.
20. Acceptance of public infrastructure improvements for Horizon Lake Phase 3 Sections 1 and 2.
21. Award of Solicitation S23-013 to Chasco Constructors, for construction services for Raider Way and East Woodview Drive (CIP T.12), in the amount of \$15,164,644.00; and authorize the City Manager to execute any and all necessary documents.
22. Award of Solicitation S23-012 for Professional Auditing Services to Whitley Penn LLP in the amount of \$59,900.00 for the first year engagement with the option to extend up to a maximum of five (5) years; and authorize the City Manager to execute any and all necessary documents and renewals.
23. Approval of the Verena at Leander License to Encroach Agreement, Case LA-23-0017, to allow for the installation and maintenance of signage within portions of the right-of-way of Hero Way West, Leander, Williamson County, Texas.

24. Conduct a Public Hearing on Zoning Case Z-22-0050 to amend the current zoning of Interim SFR-1-B (Single-Family Rural) to adopt the Speaking Rock PUD (Planned Unit Development) with base zoning district of SFE-2-A (Single-Family Estate) on one parcel of land approximately 10.7563 acres ± in size, more particularly described by Travis Central Appraisal District Parcel 513825; and more commonly known as 1601 Speaking Rock, Leander, Travis County, Texas.
- Discuss and consider action regarding Zoning Case Z-22-0050 as described above.
25. Conduct a Public Hearing on Annexation Case A-23-0008 regarding the voluntary annexation of 2.3872 acres ± in size, more particularly described by Williamson Central Appraisal District Parcel R032108; and commonly known as 800 Riva Ridge Road, Leander, Williamson County, Texas.
- Discuss and consider action on Annexation case A-23-0008 as described above.

REGULAR AGENDA

26. Discuss and consider action on an Ordinance amending Article 7.02, Judge, of the Code of Ordinances by adding to the provisions for the appointment and term of the Judge, removing a provision regarding removal of the Judge, and adding qualifications for holding the office of Judge; and providing for related matters.
27. Discuss and consider action on a Resolution of support for the dissolution of the Leander Library Foundation.
28. Council Member Future Agenda Items *[Any deliberation of or decision about the subject of the inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting.]*
29. Council Member Closing Statements.
30. Convene into Executive Session pursuant to:
1. Section 551.072, Texas Government Code, to deliberate the acquisition of property located in Elijah D. Harmon Survey Abstract 6 for the purpose of a utility easement and temporary construction easement for the Reclaim Water Project (CIP WW.46); and
 2. Section 551.071, Texas Government Code, Section 1.05, Texas Disciplinary Rules of Professional Conduct, to deliberate with legal counsel regarding Meet and Confer; and
 3. Section 551.071, Texas Government Code, and Rule 1.05, Texas Disciplinary Rules of Professional Conduct, to consult with legal counsel regarding *Cause No. 20-0217-C425 Daniel Brown, Maria Brown and ZG Properties, LLC vs City of Leander.*
- Reconvene into open session to take action as deemed appropriate in the City Council's discretion regarding:
1. Reclaim Water Project (CIP WW.46); and
 2. Meet and Confer; and
 3. *Cause No. 20-0217-C425 Daniel Brown, Maria Brown and ZG Properties, LLC vs City of Leander.*
31. Adjournment

CERTIFICATION

This meeting will be conducted pursuant to the Texas Government Code Section 55 1.001 et seq. At any time during the meeting the Council reserves the right to adjourn into Executive Session on any of the above posted agenda for which state law authorizes Executive Session to be held, including but not limited to Sections 55 1.071 [litigation and certain Consultation with attorney], 551.072 [acquisition of interest in real property], 55 1.073 [prospective gift to city], 55 1.074 [certain personnel deliberations], 551.076 [deployment/implementation of security personnel or devices], or 551.087 [Deliberations regarding Economic Development Negotiations]. The City of Leander is committed to compliance with the American with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request. Please call the City Secretary at (512) 528-2743 for information. Hearing impaired or speech disabled persons equipped with telecommunication devices for the deaf may call (512) 528-2800. I certify that the above agenda for this meeting of the City Council of the City of Leander, Texas, was posted on the bulletin board at City Hall in Leander, Texas, on the 30th day of June, 2023 by 5:00 p.m. pursuant to Chapter 551 of the Texas Government Code.

A handwritten signature in cursive script that reads "Dara Crabtree". The signature is written in dark ink and is positioned above a horizontal line.

Dara Crabtree, City Secretary, TRMC



EXECUTIVE SUMMARY
07/06/2023

AGENDA SUBJECT:

Approval of the minutes for meeting held on June 15, 2023.

BACKGROUND:

Attached are minutes for meeting held on June 15, 2023.

PRESENTER:

Dara Crabtree, City Secretary

Attachments

1. Draft Minutes



**MINUTES
CITY COUNCIL MEETING
CITY OF LEANDER, TEXAS**

Pat Bryson Municipal Hall
201 North Brushy Street - Leander, Texas
Thursday - June 15, 2023



Mayor – Christine DeLisle
Place 1 – Kathryn Pantalion-Parker
Place 2 – Esme Mattke Longoria, *Mayor Pro Tem*
Place 3 – David McDonald

Place 4 – Na'Cole Thompson
Place 5 – Chris Czernek
Place 6 – Becki Ross
City Manager – Rick Beverlin

The meeting will also be live-streamed at the following link: <https://www.leandertx.gov/video>.

BRIEFING WORKSHOP - CONVENE AT 6:00 PM

1. Opened meeting at 6:00 p.m.
2. Roll Call reflected all present.
3. Workshop with the Historic Preservation Committee and representative of the Leander Chamber of Commerce discussing the proposed concept plans for redevelopment of the six (6) acres of the City's property at the Bryson Farmstead (CIP P.47). Discussion included: Memorandum of Understanding with other entities; preservation and re-purpose plans; two concept plans; support of concept plans; moving forward with zoning; Leander Visitor Center will be a part of this site; structures built must be complimentary to existing historic structures; neighboring site; development timeline; council supportive of concepts to develop PUD; and desire for trails to connectivity.

Briefing workshop adjourned at 6:23 p.m.

REGULAR MEETING – CONVENE AT 7:00 PM

4. Opened meeting at 7:02 p.m., Invocation was provided by Rev. Joanna Fontaine Crawford and Mayor Christine led the Pledges of Allegiance.
5. Roll Call reflected all present.
6. Public comments on items not listed in the agenda.

Public comments on items listed in the agenda will be heard at the time each item is discussed by Council.

[All comments are limited to no more than 3 minutes (6 minutes if translation is needed) per

individual.]

Cindy Ochoa, 1203 Still Meadow Drive - commented on money for new library.

7. Recognitions/Proclamations/Visitors.
 - Leander Public Arts and Culture Commission Juneteenth Planning Committee Certificate of Recognition
 - Juneteenth Proclamation (June 19)
 - Leander Pride Day Proclamation (July 15)

[City Council took a brief recess at 8:22 p.m.; reconvened at 8:33 p.m.]

- Parks and Recreation Month (July)
8. Staff Reports
 - Public Works update included lake levels; LCRA combined lake storage; drought; water flowing into lakes; changing weather patterns; usage; water connection growth; irrigation assessment pilot program; spring conservation program highlights; ordinance update considerations; deep water intake; Phase 1C sedimentary basin - flight chain and construction.
 9. Leander History included: Miller family; Round Mountain School; and Leander Time Capsule first stop Old Town Street Festival.

CONSENT AGENDA: ACTION

Motion by Councilmember Kathryn Pantalion-Parker, Seconded by Mayor Pro Tem Esme Mattke Longoria to approve consent agenda items 10 through 23.

Vote: 7 - 0

10. Approval of the minutes for meeting held on June 1, 2023.
11. Approval of a waiver of Article 8.04, Noise, Section 8.04.001(a) (11) in the hours of construction work to the general contractors for concrete pours to the site located at 541 N. Bagdad Road, from June 16, 2023 through August 31, 2023 (depending on weather conditions) beginning at 3:00 a.m.; and requiring the contractor for the site to post notifications a minimum of forty-eight (48) hours in advance of the activities.
12. Approval of a waiver of Article 8.04, Noise, Section 8.04.001(a) (11) in the hours of construction work to the general contractors for concrete pours to the site located at 13301 Hero Way West, from June 16, 2023 through July 31, 2023 (depending on weather conditions) beginning at 3:00 a.m.; and requiring the contractor for the site to post notifications a minimum of forty-eight (48) hours in advance of the activities.
13. Award of construction contract agreement with DKC Construction Group for the renovation of the existing EMS building behind Pat Bryson Municipal Hall (CIP M.23), to provide office space and conference space for City employees, in the amount of \$577,362.00; and authorize the City Manager to execute any and all necessary documents.

14. Approval of a Resolution accepting the petition for the 800 Riva Ridge Annexation Case A-23-0008 regarding the voluntary annexation of 2.3872 acres ± in size, more particularly described by Williamson Central Appraisal District Parcel R032108; and commonly known as 800 Riva Ridge Road, Leander, Williamson County, Texas.
15. Approval of Development Agreement Case DA-23-0010 regarding Connie's Commercial Development on a portion of a parcel of land approximately 1.096 acres ± in size, more particularly described by Williamson Central Appraisal District Parcel R398642; and generally located to the southwest of the intersection of Crystal Falls Parkway and West Drive, Leander, Williamson County, Texas.
16. Approval of the extension of the application expiration for Subdivision Case PICP-21-0044 Northpoint Church construction plan; more particularly described by Williamson Central Appraisal District Parcel R599180; commonly addressed as 10850 E Crystal Falls Parkway; Leander, Williamson County, Texas.
17. Approval of the Second Reading of an ordinance regarding Shady Brew Garden Special Use Permit Case Z-22-0043 to allow for a Food Truck Park including minor waivers to the Composite Zoning Ordinance on one (1) parcel of land approximately ~~0.9373~~ 1.85 acres ± in size, more particularly described by Williamson Central Appraisal District Parcel ~~R035579~~ R036035; and addressed as 303 W. Broade Street, Leander, Williamson County, Texas.
18. Approval of the Second Reading of an ordinance regarding Ordinance Case OR-23-0004 to amend the Composite Zoning Ordinance to clarify the adoption date and definition of the Transportation Criteria Manual; and to provide for related matters; Williamson and Travis Counties, Texas.
19. Approval of the Wahoo's Fish Tacos License Agreement, Case LA-23-0015, to allow for the installation and maintenance of landscaping and irrigation within portions of the right-of-way of W. Broade Street, Leander, Williamson County, Texas.
20. Approval of Professional Service Agreement for Engineer Single Project, WW49-PSA1-KSA with KSA Engineers, Inc., for design, bid, and construction administration services related to the utility improvements of East Street from Evans Street to South Street, and street improvements of East Street from Evans Street to Broade Street (CIP WW.49) in the amount of \$209,025.00; and authorize the City Manager to execute any and all necessary documents.
21. Approval of a Resolution authorizing participation in a coalition of similarly situated cities in connection with the Statement of Intent to Change Rate CGS (City Gate Service) and Rate PT (Pipeline Transportation) of Atmos Pipeline—Texas, filed on or about May 19, 2023; authorizing participation in related rate proceedings; authorizing the retention of special counsel; requiring the reimbursement of municipal rate case expenses; finding that the meeting complies with the open meetings act; and making other findings and provisions related to the subject.
22. Approval of a Resolution authorizing the City of Leander to apply for the Capital Area Council of Governments (CAPCOG) Solid Waste-Handling Equipment and Community Collection Event Grant.
23. Approval of purchase from Motorola Solutions, Inc. for ten (10) Police Department hand-held radios and ancillary services and equipment in the amount of \$81,300.00 and ten (10) Police Department in-car radios and ancillary services and equipment in the amount of \$69,405.60; rescind prior City Council action taken on April 20, 2023, and authorize the City Manager to execute any and all necessary documents.

REGULAR AGENDA

24. Discuss and consider appointment of Council Director and Citizen Director to the Board of Directors of the Brushy Creek Regional Utility Authority (BCRUA) with terms expiring June 30, 2025.

Motion by Mayor Christine DeLisle, Seconded by Councilmember Kathryn Pantalion-Parker to reappoint Na'Cole Thompson as Council Director and Jason Anderson as Citizen Director to the Board of Directors of the BCRUA with terms expiring June 30, 2025.

Vote: 7 - 0

25. Discuss and consider action on repealing Ordinance No. 20-010-00, which adopted a limited wastewater capacity reservation policy; providing findings of fact; providing a savings, effective date, and open meetings clauses; and providing for related matters.

Motion by Councilmember Becki Ross, Seconded by Mayor Christine DeLisle to repeal Ordinance No. 20-010-00, which adopted a limited wastewater capacity reservation policy; and to extend the existing or remaining 123 LUEs, that they can be assigned within the Nak's Crossing and Monarch PUD with the expiration date of December 31st, 2024 and available transferability within the boundaries of Nak's Crossing; providing findings of fact; providing a savings, effective date, and open meetings clauses; and providing for related matters.

Vote: 7 - 0

26. Council Member Future Agenda Items *[Any deliberation of or decision about the subject of the inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting.]* None.

27. Council Member Closing Statements.

Esme Mattke Longoria - hoped to see everyone at the Juneteenth block party.

Na'Cole Thompson - excited to see everyone on Saturday, June 17 at Juneteenth block party.

Christine DeLisle - stated dinner from Randall's; reminded everyone to shop local; commented on upcoming Juneteenth block party.

28. Convened into Executive Session at 10:02 p.m. pursuant to:
1. Section 551.087, Texas Government Code Deliberate the purchase, exchange, lease, or value of real property and deliberate proposed economic development incentives for one or more business prospects that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body is conducting economic development negotiations along with consideration and possible action on a Chapter 380 Agreement for Project Orange Build; and
 2. Section 551.087, Texas Government Code Deliberate the purchase, exchange, lease, or value of real property and deliberate proposed economic development incentives for one or more business prospects that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body is conducting economic development negotiations related to the following project(s): EDA-23-001; and
 3. Section 551.072, Texas Government Code, to deliberate the acquisition of properties located in

- Elijah D. Harmon Survey Abstract 6 for the purpose of a utility easement and temporary construction easement for the Reclaim Water Project (CIP WW.46); and
4. Section 551.071, Texas Government Code, and Rule 1.05, Texas Disciplinary Rules of Professional Conduct, to consult with legal counsel regarding Construction Contract between Northline Leander Development Company and The City of Leander and DeNucci Constructors - Northline - Phase 1 and related performance and maintenance bonds.

Reconvene into open session at 10:37 p.m. to take action as deemed appropriate in the City Council's discretion regarding:

1. Project Orange Build;and
2. EDA-23-001; and
3. Acquisition of properties for utility easement and temporary construction easement for the Reclaim Water Project (CIP WW.46); and
4. Construction Contract between Northline Leander Development Company and The City of Leander and DeNucci Constructors - Northline - Phase 1 and related performance and maintenance bonds, including approving an engagement letter with The Chapman Firm.

(Item 1) to approve a Chapter 380 agreement by and between Home Depot, USA and the City of Leander; and authorize the City Manager to execute any and all necessary documents.

Vote: 7 - 0

(Item 2) No action.

(Item 3) to authorize the purchase of Parcel 7 and Parcel 10 located in the Elijah D. Harmon Survey Abstract 6 for the purpose of a utility easement and temporary construction easement for the Reclaimed Water Project (CIP WW.46).

Vote: 7 - 0

(Item 4) to approve the engagement letter with The Chapman Firm; and authorize the City Manager to execute any and all necessary documents.

Vote: 7 - 0

29. Adjourned at 10:39 p.m.

APPROVED:

MAYOR

ATTEST:

CITY SECRETARY



EXECUTIVE SUMMARY
07/06/2023

AGENDA SUBJECT:

Ratify the approval of road closure of Westbound street parking on Waterfall Avenue between Deercreek Lane and Sunny Brook Drive for Liberty Fest on July 3, 2023.

BACKGROUND:

Liberty Fest was held on July 3, 2023. The event took place at Devine Lake Park located at 1807 Waterfall Avenue. Parking for the event was located at Glenn High School, Danielson Middle School, Plain Elementary School, and Benbrook Ranch Park. Bagdad Elementary School parking was available to staff, sponsors, band crew members, and VIP. The event site opened at 6:00pm with bus operations beginning at 5:30 p.m. and the event ending at 10:00 p.m.

Due to an oversight in the city secretary's office, this item did not appear on the June 15, 2023, City Council regular agenda; therefore, the City Council is being requested to ratify the street closure permit.

RECOMMENDATION:

Staff respectfully requests Council ratify the approval of the road closure as outlined and reviewed by the Parks, Public Works, Police, and Fire Departments for Liberty Fest 2023.

PRESENTER:

Mariel Guenther, Special Event Coordinator

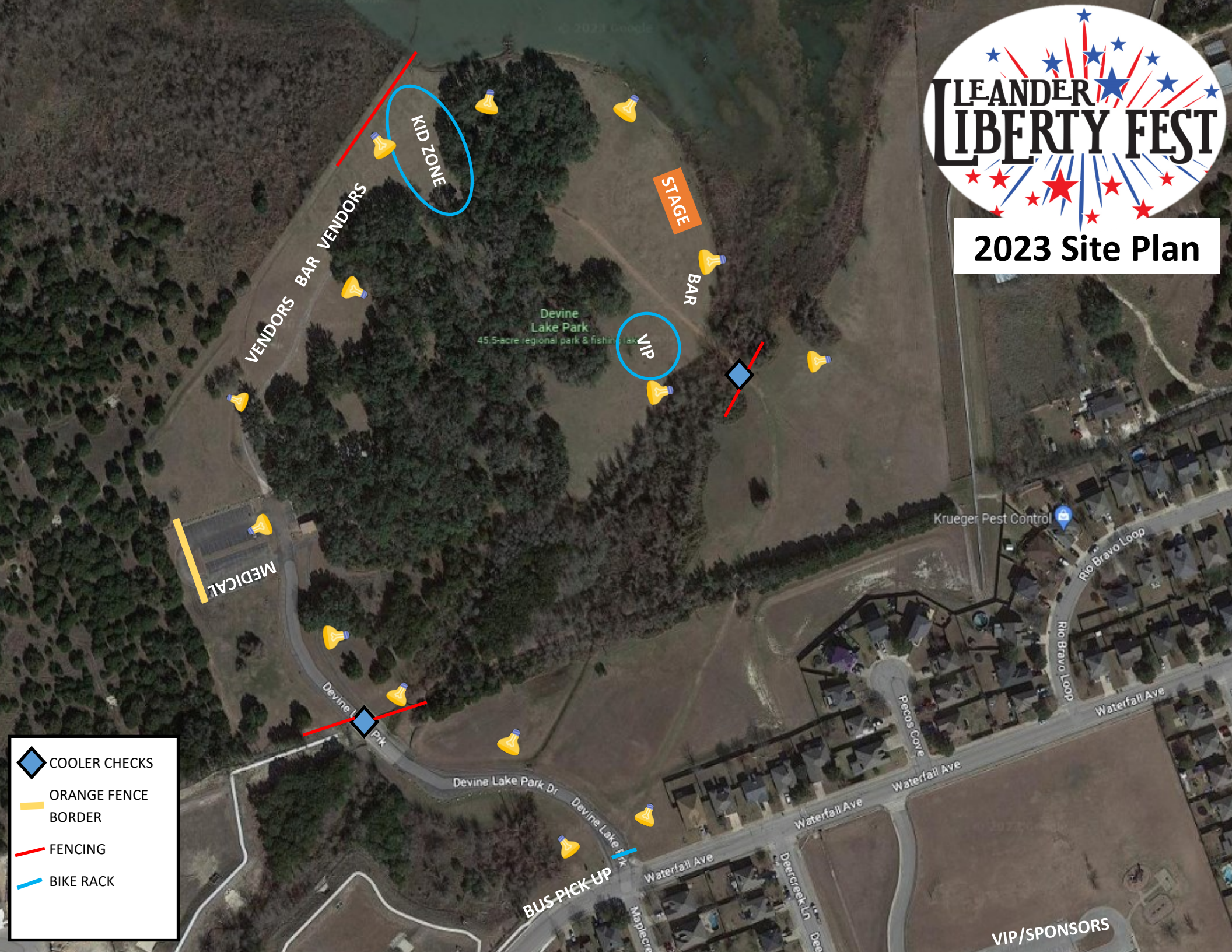
Attachments

1. Site Map
2. Parking

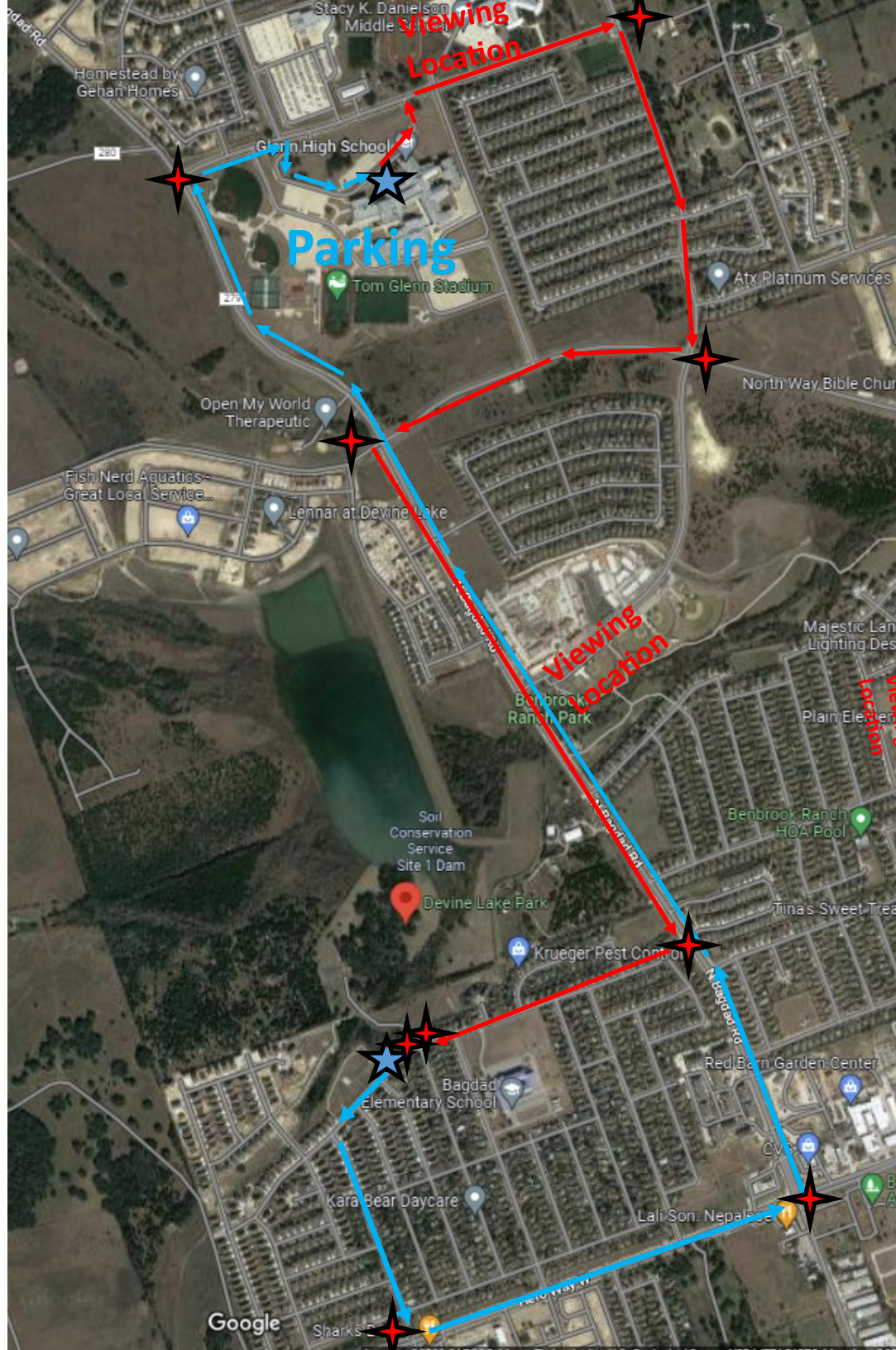


LEANDER LIBERTY FEST

2023 Site Plan



-  COOLER CHECKS
-  ORANGE FENCE BORDER
-  FENCING
-  BIKE RACK



LIBERTY FEST 2023 Bus Pick Up and Drop Off Map

-  Pick Up/Drop Off Location
-  Route to Devine Lake Park
-  Route to Glenn High School
-  Police Stationed

Glenn High School—Parking

- Route to Devine Lake Park
- Route to Glenn High School





Pick Up/Drop Off

Devine Lake Park—Liberty Fest

-  Parking lane closure
-  Route to Devine Lake Park
-  Route to Glenn High School



EXECUTIVE SUMMARY
07/06/2023

AGENDA SUBJECT:

Approval of a Resolution amending authorized representatives to the Texas Local Government Investment Pool (“TexPool/TexPool Prime”), a public funds investment pool.

BACKGROUND:

With the recent departure of the Assistant Finance Director, it is necessary to update the list of authorized representatives for our financial accounts with TexPool. The Texas Local Government Investment Pool (“TexPool/Texpool Prime”), is a public funds investment pool, overseen by the Texas Comptroller's Office and created on behalf of entities whose investment objectives are in accordance with the Texas Public Funds Investment Act. If approved, this resolution would add Pamela Kaby, Accounting Manager, to the list of approved Authorized Representatives able to interact with TexPool. The City Manager and the Executive Finance Director are the remaining two (2) authorized representatives.

The City utilizes various accounts at TexPool as an additional investment vehicle to increase interest earnings above what our bank depository can pay. Funds move back and forth between our TexPool accounts and Frost Bank as necessary.

RECOMMENDATION:

Recommend approval of the resolution.

PRESENTER:

Robert G. Powers, Executive Finance Director

Attachments

1. Resolution



Resolution Amending Authorized Representatives

Please use this form to amend or designate Authorized Representatives.

This document supersedes all prior Authorized Representative forms.

*** Required Fields**

1. Resolution

WHEREAS,

City of Leander, Texas

Participant Name*

78388

Location Number*

("Participant") is a local government of the State of Texas and is empowered to delegate to a public funds investment pool the authority to invest funds and to act as custodian of investments purchased with local investment funds; and

WHEREAS, it is in the best interest of the Participant to invest local funds in investments that provide for the preservation and safety of principal, liquidity, and yield consistent with the Public Funds Investment Act; and

WHEREAS, the Texas Local Government Investment Pool ("TexPool/ Texpool Prime"), a public funds investment pool, were created on behalf of entities whose investment objective in order of priority are preservation and safety of principal, liquidity, and yield consistent with the Public Funds Investment Act.

NOW THEREFORE, be it resolved as follows:

- That the individuals, whose signatures appear in this Resolution, are Authorized Representatives of the Participant and are each hereby authorized to transmit funds for investment in TexPool / TexPool Prime and are each further authorized to withdraw funds from time to time, to issue letters of instruction, and to take all other actions deemed necessary or appropriate for the investment of local funds.
- That an Authorized Representative of the Participant may be deleted by a written instrument signed by two remaining Authorized Representatives provided that the deleted Authorized Representative (1) is assigned job duties that no longer require access to the Participant's TexPool / TexPool Prime account or (2) is no longer employed by the Participant; and
- That the Participant may by Amending Resolution signed by the Participant add an Authorized Representative provided the additional Authorized Representative is an officer, employee, or agent of the Participant;

List the Authorized Representative(s) of the Participant. Any new individuals will be issued personal identification numbers to transact business with TexPool Participant Services.

1. Richard B. Beverlin, III

City Manager

NameTitle

51252827025126902272rbeverlin@leandertx.gov

PhoneFaxEmail

Signature
2. Robert G. Powers

Finance Director

NameTitle

51252827345126902272rpowers@leandertx.gov

PhoneFaxEmail

Signature
3. Pam Kaby

Accounting Manager

NameTitle

51252829415126902272pkaby@leandertx.gov

PhoneFaxEmail

Signature

1. Resolution (continued)

4.

Name	Title
Phone	Fax
Email	
Signature	

List the name of the Authorized Representative listed above that will have primary responsibility for performing transactions and receiving confirmations and monthly statements under the Participation Agreement.

Robert G. Powers

Name

In addition and at the option of the Participant, one additional Authorized Representative can be designated to perform only inquiry of selected information. This limited representative cannot perform transactions. If the Participant desires to designate a representative with inquiry rights only, complete the following information.

Name										Title																			
Phone										Fax										Email									

D. That this Resolution and its authorization shall continue in full force and effect until amended or revoked by the Participant, and until TexPool Participant Services receives a copy of any such amendment or revocation. This Resolution is hereby introduced and adopted by the Participant at its regular/special meeting held on the 06 day of July, 2023.

Note: Document is to be signed by your Board President, Mayor or County Judge and attested by your Board Secretary, City Secretary or County Clerk.

City of Leander, Texas
Name of Participant*

SIGNED

Signature*

Christine DeLisle

Printed Name*

Mayor

Title*

ATTEST

Signature*

Dara Crabtree
Printed Name*

City Secretary

Title*

2. Mailing Instructions

The completed Resolution Amending Authorized Representatives can be faxed to TexPool Participant Services at 1-866-839-3291, and mailed to:

TexPool Participant Services
1001 Texas Avenue, Suite 1150
Houston, TX 77002



EXECUTIVE SUMMARY
07/06/2023

AGENDA SUBJECT:

Approval to renew the Employee Health Benefits for Medical/RX, Dental, Vision, Basic and Voluntary Life and Accidental Death & Dismemberment, Short and Long Term Disability, Accident, Cancer, Critical Illness, Hospital Indemnity, Employee Assistance Program, Flexible Spending Account, and Health Savings Account with the current providers for a Short Plan Year, October 2023 – December 2023, to align the Benefit, Calendar and Deductible Year; provide an effective date; and authorize the City Manager to execute any and all necessary documents.

BACKGROUND:

The City's current benefits plan year has an October 1st effective date with premiums deducted September 1st. A Short Plan Year would give employees the option to make any changes for the remainder of 2023 and align the Benefit, Calendar and Deductible Year for 2024.

Aligning the Benefit, Calendar and Deductible Year effective January 1st would eliminate the request or exception to budget prior to the budget being approved annually. There is no increase to premiums for the Short Plan Year or additional cost to the City.

RECOMMENDATION:

Staff respectfully recommends that the City Council authorize the switch to the Short Plan year.

PRESENTER:

Belinda Medellin, HR Benefits Manager

Attachments

1. 2023 Renewal BPA Short Contract
2. 2023 S125 Plan Short Year



**BlueCross BlueShield
of Texas**

1001 E. Lookout Drive
Richardson, Texas 75082

**BENEFIT PROGRAM APPLICATION (“BPA”)
Blue Cross and Blue Shield of Texas (herein called “BCBSTX”)
LARGE GROUP PLANS**

Account Status: ☐ New ☒ Existing with Changes

Off Cycle Change: ☐ Yes ☒ No

☐ Former BCBSTX ASO converting to fully insured

Account Number (6-digits): *****

Group Number(s): ***** , ***** , *****

Policy Effective Date (month/day/year): 10/1/2023

Policy Anniversary Date (month/day/year): 10/01

Legal Account Name: City of Leander

(Specify the Employer or the employee trust applying for coverage. An employee benefit plan may not be named)

☐ **NO CHANGES**

GROUP INFORMATION

Employer Identification Number (“EIN”): 74-2007646

Standard Industry Code (“SIC”): 9199

Nature of Business: Municipality

Primary (Mailing) Address: 105 N Brushy St

City: Leander

State: TX

Zip: 78641

Administrative Contact:

Belinda Medellin

Phone: 512-528-2706

Fax: 512-690-2018

Title:

Benefits Manager

Email: bmedellin@leandertx.gov

Blue Access for EmployersSM (“BAESM”) Contact:

Christy Davis

Title:

HR Director

The BAE Contact is an Employee of the account who is authorized by the Employer to access and maintain the account in BAE.

Phone: 512-528-2727

Fax: 512-690-2367

Email: cdavis@leandertx.gov

Administrative Contact (if different from Primary):

Same as Primary

Title:

Phone: _____

Fax: _____

Email: _____

Physical Address (if different from Primary - required): _____

City: _____

State: _____

Zip: _____

Contact: _____

Billing Address (if different from Primary): PO Box 319

City: Leander

State: TX

Zip: 78646

Proprietary and Confidential Information of Blue Cross and Blue Shield of Texas. Not for use or disclosure outside Blue Cross and Blue Shield of Texas, Employer, their respective affiliated companies, and third-party representatives, except with written permission of Blue Cross and Blue Shield of Texas.

Medical and Dental benefits are offered by Blue Cross and Blue Shield of Texas, a Division of Health Care Service Corporation, a Mutual Legal Reserve Company, an Independent Licensee of the Blue Cross and Blue Shield Association.

Life, Disability, Specified Disease, Accident and Vision insurance is underwritten by Dearborn Life Insurance Company, 701 E. 22nd St. Suite 300, Lombard, IL 60148. Dearborn Life Insurance Company is an independent Blue Cross and Blue Shield licensee. BLUE CROSS®, BLUE SHIELD® and the Cross and Shield Symbols are registered service marks of the Blue Cross and Blue Shield Association, an association of independent Blue Cross and Blue Shield Plans.

Blue Cross and Blue Shield of Texas, a Division of Health Care Service Corporation,
a Mutual Legal Reserve Company, an Independent Licensee of the Blue Cross and Blue Shield Association

Billing Contact: Allison McGrew

Title: Payroll

Phone: 512-528-2726

Fax: 512-690-2604

Email: amcgrew@leandertx.gov

Do you cover any wholly owned subsidiary or affiliated companies? ☐ Yes ☐ No If yes, please list below:

Subsidiary Companies to be covered (if more than one, list within the Additional Provisions):

Subsidiary Address: _____

City: _____ State: _____ Zip: _____

Contact: _____ Title: _____

Phone: _____ Fax: _____ Email: _____

Affiliated Companies to be covered (if more than one, list within the Additional Provisions):

Location(s): _____

The **Employee Retirement Income Security Act of 1974 (ERISA)** is a federal law that sets minimum standards for employee benefit plans in the private industry. In general, **all** employer groups, insured or ASO, are subject to ERISA provisions except for governmental entities, such as municipalities and public school districts, and "church plans" as defined by the Internal Revenue Code.

ERISA Regulated Group Health* Plan: ☐ Yes ☒ No

If Yes, is your ERISA Plan Year* a period of 12 months beginning on the Anniversary Date specified above? ☐ Yes ☐ No

If no, please specify your ERISA Plan Year (month/day/year): Beginning Date ____/____/____ End Date ____/____/____

ERISA Plan Administrator*: _____

Plan Administrator's Address: _____

If you maintain that ERISA is not applicable to your group health plan, please give legal reason for exemption:

- ☐ Federal Governmental plan (e.g., the government of the United States or agency of the United States)
- ☒ Non-Federal Governmental plan (e.g., the government of the State, an agency of the state, or the government of a political subdivision, such as a county or agency of the State)
- ☐ Church plan (complete and attach a Medical Loss Ratio Assurance form)
- ☐ Other; please specify: _____

Is your Non-ERISA Plan Year a period of 12 months beginning on the Anniversary Date specified above? ☒ Yes ☐ No

If no, please specify your ERISA Plan Year (month/day/year): Beginning Date ____/____/____ End Date ____/____/____

For more information regarding ERISA, contact your Legal Advisor.

*All as defined by ERISA and/or other applicable law/regulations

☐ **NO CHANGES**

PRODUCER OF RECORD INFORMATION

1. *Producer/Agency** name to whom commissions are to be paid: Gallagher Benefit Services

Producer Number of ☒ Producer or ☐ Agency: 000022147

Street Address: 70 NE Loop 410

City: San Antonio

Zip: 78216

Phone: 281-773-8954

Fax: _____

Email: Natalie_haskett@ajg.com

Is Producer/Agency appointed with BCBSTX? ☒ Yes ☐ No Affiliated with General Agent? ☐ Yes ☐ No

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Commissions: \$0 PCPM

2. *Producer/Agency** name to whom commissions are to be paid: _____

Producer Number of ☐ Producer or ☐ Agency: _____

Street Address: _____

City: _____

Zip: _____

Phone: _____

Fax: _____

Email: _____

Is Producer/Agency appointed with BCBSTX? ☐ Yes ☐ No Affiliated with General Agent? ☐ Yes ☐ No

Commissions: \$_____ PCPM

If commission split, designate percentage for each producer/agency **Note:** total commissions paid must equal one hundred percent (100%)

Producer/Agency 1: _____%

Producer/Agency 2: _____%

3. Writing Producer's Name (please print):

Producer Number: _____

Phone: _____

Email: _____

Writing Producer's Signature: _____

Date: _____

*The producer or agency name(s) above to whom commissions are to be paid must exactly match the name(s) on the appointment application(s).

**If commissions are split, please provide the information requested above on both producers/agencies. BOTH must be appointed to do business with BCBSTX.

4. General Agent (GA) Override? ☐ Yes ☐ No

General Agent Name: _____

BCBSTX GA#: _____

Email: _____

Address: _____

City: _____

State: _____

Zip Code: _____

Health Override Amount (if applicable): _____

Dental Override Amount (if applicable): _____

If applicable, effective _____, the named producer(s) or agency(ies) is/are recognized as Employer's Producer of Record (POR), to act as representative in negotiations with and to receive commissions from BCBSTX and/or corporate subsidiaries, as applicable, for procuring fully insured coverage for Employer's employee benefit program(s). This statement rescinds any and all previous POR appointments for Employer. The POR is authorized to perform membership transactions on behalf of Employer. This appointment will remain in effect until withdrawn or superseded in writing by Employer.

General Agent's Signature: _____ Date: _____

☒ **NO CHANGES**

SCHEDULE OF ELIGIBILITY

1. **Standard Eligibility Provisions:** Eligible Employee/Subscriber means an Employee who works on a full-time basis, who usually works at least thirty (30) hours a week, and who otherwise meets the Participation Criteria established by an Employer. The term includes a sole proprietor, a partner, and an independent contractor, if the individual is included as an Employee under a Health Benefit Plan of a large Employer regardless of the number of hours the sole proprietor, partner, or independent contractor works weekly, but only if the plan includes at least two (2) other Eligible Employees who work on a full-time basis and who usually work at least thirty (30) hours a week. Participation Criteria means any criteria or rules established by a large Employer to determine the Employees who are eligible for enrollment or continued enrollment under the terms of a Health Benefit Plan. The Participation Criteria may not be based on Health Status Related Factors.

(HMO only) the Eligible Subscriber must reside, live, or work in the Service Area.

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2. Other Eligibility Provisions (check all that apply):

- ☒ Retiree of the Employer.
☐ Part-time Employee of the Employer.
☐ Other: _____

Are any classes of Employees to be excluded from coverage? ☐ Yes ☐ No

If yes, please identify the classes and describe the exclusion: _____

Domestic Partners covered: ☐ Yes ☐ No

A Domestic Partner means a person with whom the Employee has entered into a domestic partnership in accordance with the Employer's plan guidelines. The Employer is responsible for providing notice of possible tax implications to those covered Employees with Domestic Partners.

Continuation coverage for Domestic Partners: If Employer elects coverage for Domestic Partners, Domestic Partners may be eligible for continuation coverage under Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). Employer shall determine eligibility for COBRA continuation for Domestic Partners, if any. Please indicate your election below:

- ☐ Yes, Employer elects to offer continuation coverage to Domestic Partners, as defined in the Certificate Booklet
☐ No, Employer does not elect to offer continuation coverage to Domestic Partners (Domestic Partners are not eligible for continuation coverage)
☐ Other: _____

3. All current and new Employees must satisfy the substantive eligibility criteria and required Waiting Period in order for coverage to become effective. Covered Dependents do not have to satisfy a Waiting Period to become effective, but in no instance shall a Dependent be covered prior to the Employee's effective date.

If a person is added to the Policy and it is later determined that the Policyholder reported a coverage date earlier than what would apply to the Employee or Dependent, based on the Waiting Period and eligibility conditions the Policyholder provided to the Plan, the Plan reserves the right to retroactively adjust the coverage date for such person.

What is the effective date for a newly eligible person who becomes effective after the Employer's initial enrollment? (No effective date may exceed ninety-one (91) calendar days from the date that an individual becomes eligible for coverage, unless permitted by applicable law.)

- ☒ The date of employment (date of hire).
☒ The 1st day (standard is first (1st) or fifteenth (15th)) of the month following the date of employment.
☐ The _____ day (standard is first (1st) or fifteenth (15th)) of the month following select one days of employment.
☐ The _____ day (standard is first (1st) or fifteenth (15th)) of the month following select one month(s) of employment.

Substantive Eligibility Criteria (Optional): Provide a representation below regarding the terms of any eligibility conditions (other than any applicable Waiting Period already reflected above) imposed before an individual is eligible to become covered under the terms of the plan. If any of these eligibility conditions change, you are required to submit a new BPA to reflect that new information.

Check all that apply:

- ☐ An Orientation Period that:
1. Does not exceed one (1) month (calculated by adding one (1) calendar month and subtracting one (1) calendar day from an Employee's start date); and
 2. If used in conjunction with a Waiting Period, the Waiting Period begins on the first (1st) day after the orientation period.
- ☐ A Cumulative hours of service requirement that does not exceed 1200 hours

- ☐ An hours-of-service per period (or full-time status) requirement for which a measurement period is used to determine the status of variable-hour Employees, where the measurement period:
1. Starts between the Employee's date of hire and the first (1st) day of the following month;
 2. Does not exceed twelve (12) months; and
 3. Taken together with other eligibility conditions does not result in coverage becoming effective later than thirteen (13) months from the Employee's start date plus the number of days between a start date and the first (1st) day of the next calendar month (if start day is not the first (1st) day of the month).
- ☒ Other substantive eligibility criteria not described above; please describe: First Day of employment only applies to full-time employees hired on the 1st day of the month

(HMO only) What is the effective date of coverage for a Newly Eligible Employee who becomes effective after the Employer's initial enrollment date? (No effective date may exceed ninety-one (91) calendar days from the date that an individual becomes eligible for coverage, unless permitted by applicable law.)

- ☐ The first (1st) day of the month following the date of employment (date of hire).
- ☐ The first (1st) day of the month following select one days of employment.
- ☐ The first (1st) day of the month following select one month(s) of employment.

4. Are there multiple new hire Waiting Periods? ☐ Yes ☒ No

If yes, attach eligibility and contribution details for each section.

Is the Waiting Period requirement to be waived on initial group enrollment?

Health ☐ Yes ☒ No ☐ N/A Dental ☐ Yes ☒ No ☐ N/A

5. Annual Open Enrollment: For Health and Dental Plans only, an Eligible Person, who did not enroll under timely enrollment, may apply for individual coverage, family coverage or add Dependents during the Employer's annual Open Enrollment Period. Such person's individual coverage date, family coverage date and/or Dependent's coverage date will be the Policy Anniversary Date following the Open Enrollment Period, provided the application is dated and signed prior to that date.

The Open Enrollment Period will be held during a thirty-one (31) day period prior to the Policy Anniversary Date of the program. Specify start of annual Open Enrollment Period: _____.

6. The minimum standard limiting age for covered Dependent children is twenty-six (26) years. Hereafter, a Dependent Child, Child or Children means a natural child, a stepchild, a medical support order child, an eligible foster child, an adopted child (including a child for whom the Employee or their spouse is a party in a suit in which the adoption of the child is sought) regardless of presence or absence of a child's financial dependency, residency, student status, employment status, marital status, eligibility for other coverage or any combination of those factors. To be eligible for coverage, a child of an Employee's child must also be dependent upon Employee for federal income tax purposes at the time application for coverage is made.

7. Disabled Dependent: Disabled Dependent means a child who is medically certified as disabled and dependent upon the Employee or his/her spouse (or Domestic Partner if Domestic Partner coverage is elected). To administer medical certification of disabled Dependents, you may select option (a) standard rules or (b) custom rules. If (b) is selected there are additional selections regarding certification review, forms, and previous medical certification approvals.

a. ☒ Disabled Dependent Administration will follow **standard rules**.

A disabled Dependent is eligible to add or continue coverage beyond the limiting age of twenty-six (26). Certification Review is administered by BCBSTX; a Disabled Dependent Certification Form must be submitted to BCBSTX.

(HMO only) Proof of incapacity and dependency may be required within thirty-one (31) days of the child's attainment of the limiting age. Subsequent recertification may occur annually, as required.

- b. ☐ Disabled Dependent Administration will follow **custom rules**. Please make the following selections:

Age: A disabled Dependent is eligible to add or continue coverage beyond the limiting age of twenty-six (26).

Certification Review: Please select one (1) option regarding administration of Certification Review.

- ☐ Certification Review is administered by BCBSTX; a Disabled Dependent Certification Form must be submitted to BCBSTX.

(HMO only) Proof of incapacity and dependency may be required within thirty-one (31) days of the child's attainment of the limiting age. Subsequent recertification may occur annually, as required.

- ☐ Certification Review is administered by the Employer; there are no Disabled Dependent Certification Form requirements.

If Certification Review is administered by BCBSTX, please select one (1) option regarding forms:

- ☐ BCBSTX's Disabled Dependent Certification Form will be utilized.
☐ A custom/other Disabled Dependent Certification Form will be utilized.

If Certification Review is administered by BCBSTX, please select allowed or not allowed below:

An approved disabled Dependent medical certification from a prior carrier is ☐ allowed
☐ not allowed.

An approved disabled Dependent medical certification from a prior BCBS policy is
☐ allowed ☐ not allowed.

☒ **NO CHANGES**

CURRENT ELIGIBILITY INFORMATION

Total number of Employees/Subscribers:

1. On payroll _____
2. On COBRA continuation coverage _____
3. With retiree coverage (if applicable) _____
4. Who work part-time _____
5. Serving the new hire Waiting Period _____
6. Declining because of other **group** coverage (e.g., other commercial group coverage, Medicare, Medicaid, TRICARE/Champus) _____
7. Declining coverage (not covered elsewhere) _____

☐ **NO CHANGES**

(HMO only) LEGISLATIVE ELECTIONS

The following mandated benefit offers are made by HMO in compliance with Texas regulations. Please mark your acceptance or declination. Acceptance may result in a rate adjustment.

In Vitro Fertilization Services

- ☐ **Accept** – If accepted, benefits for In Vitro Fertilization Services will be provided to the same extent as benefits provided for other pregnancy related procedures. **(Note: If selected, an additional charge will be added to your rates.)**
- ☐ **Decline** – If declined, no benefits are available.

Speech and Hearing Services

- ☐ **Accept** – Benefits are paid same as any other illness.
- ☐ **Decline** – If declined, medically necessary speech therapy is covered on an outpatient basis only. Hearing aid benefit is limited to one (1) hearing aid per ear every thirty-six (36) months.

Development Delay – Certain therapies for children with developmental delays are already included in the HMO plans.

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☒ **NO CHANGES****(Non-HMO only) LEGISLATIVE ELECTIONS**

The following mandated benefit offers are made in compliance with Texas regulations. Please mark your acceptance or declination.

In Vitro Fertilization Services: Benefits for Medical-Surgical Expense incurred for in vitro fertilization procedures will be the same as for maternity care, provided specific requirements are met.

☐ **Accept** – If accepted, benefits for In Vitro Fertilization Services will be provided to the same extent as benefits provided for other pregnancy related procedures. **(Note: If selected an additional charge will be added to your rates.)**

☒ **Decline** – If declined, no benefits are available for these services.

Speech and Hearing Services: Benefits are available for the services of a physician or other provider to restore loss of or correct an impaired speech or hearing function. This benefit includes coverage for hearing aids.

☐ **Accept** – If accepted, benefits are available for medically necessary services to restore loss of or correct an impaired speech or hearing function, with no benefit maximum on hearing aids.

☒ **Decline** – If declined, benefits are available for medically necessary services to restore loss of or correct an impaired speech or hearing function; however, benefits for hearing aids are limited to one (1) hearing aid per ear every thirty-six (36) months.

Development Delay – Certain therapies for children with developmental delays are already included in the Non-HMO plans.

☐ **NO CHANGES**

LINES OF BUSINESS
(Check all applicable products)

Managed Health Care Coverage:

☐ Single Option: PPO Plan _____

☒ Multiple Plan Option:

Select up to four (4) plans. All plans may be PPO or HSA plans. If an HMO is selected, a PPO must also be selected.

Plan 1 PPO 3000 **PPO**

Plan 2 HSA Emb 3000 **HSA**

Plan 3 _____ **Select Product**

Plan 4 _____ **Select Product**

If an HMO plan is selected, indicate additional election(s) below (if applicable):

Additional Benefit Options:

☒ Prescription Drug Program Prime

☐ Inpatient Mental Health Care (IPMH) Select IPMH

☐ Durable Medical Equipment Select DME

See **HMO Legislative Elections** for In-Vitro Fertilization and Speech and Hearing Services options.

One hundred percent (100%) of Eligible Employees must reside, live, or work in the service area. The HMO service area includes all counties in Texas.

***If an HMO health plan is selected, please complete the HMO Non-Network Plan Certification (item 1) in the OTHER PROVISIONS section of this BPA.**

If HCA is selected, the HCA BPA with HCA Administrative Services Agreement must be completed, signed, and submitted.

If HSA/HDHP is selected, provide name of HSA Administrator or trustee: A+ FCU

(Vendor: **Other**)

FSA purchased: ☐ Yes ☐ No (If yes, select vendor) Vendor: **Select Vendor**

Health Reimbursement Account (HRA) purchased: ☐ Yes ☐ No (If yes, select vendor) Vendor: **Select Vendor**

☐ **Blue DirectionsSM** If selected, the Blue Directions Addendum is attached and made part of the Policy

Health Care Management Services:

☒ Wellbeing Management (WBM)

In-Hospital Indemnity Plan:

☐ IHI

DENTAL BENEFIT PLANS:**Employer-Paid Dental**

- ☐ Plan _____
- ☒ Dual Option: Plan 1 MAC Low Plan 2 MAC

Voluntary Group Dental

Plan _____

BlueMax Advantage:

- ☐ Graduated dental benefit max
- ☐ Enhanced dental benefits

- ☐ **Life, Disability, Specified Disease, Accident or Vision:** If checked, attach separate application for those coverages

COMMENTS: _____

☐ NO CHANGES	ACCOUNT EXPERIENCE – NEW GROUPS ONLY
--	---

Are there any new large claims or more than fifteen percent (15%) change in large claims previous provided?

- ☐ No – Skip the rest of this (Account Experience) section
- ☐ Yes – Please answer the below questions to the best of your knowledge. Note: any changes indicated below may impact rates and will require Underwriter approval. “Participant” means all Eligible Employees, Dependents, retirees, and COBRA Continuant.

1. Has any Participant received more than twenty thousand dollars (\$20,000) in medical benefits during the last twelve (12) months? ☐ Yes ☐ No
2. Is any Participant expected to have claims in excess of twenty thousand dollars (\$20,000) during the next twelve (12) months? ☐ Yes ☐ No
3. Is any Participant mentally or physically handicapped or disabled or not actively at work? ☐ Yes ☐ No
4. Has any Participant been diagnosed as having a high-risk condition? ☐ Yes ☐ No

If any question is answered “yes,” details must be provided below:

Participant Age	Diagnosis or Nature of the Disorder	Dates of Treatment	\$ Amount of Claims	Prognosis/Current Treatment

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STANDARD PREMIUM RATES						
☐ Yes ☐ No						
	<i>For Internal Use Only - Blue StarSM Ben.Agree#:</i>	<i>For Internal Use Only - Blue Star Ben.Agree#:</i>	<i>For Internal Use Only - Blue Star Ben.Agree#:</i>	<i>For Internal Use Only - Blue Star Ben.Agree#:</i>	<i>For Internal Use Only - Blue Star Ben.Agree#:</i>	
	_____	_____	_____	_____	_____	Total
1. Employee only:	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
2. Employee plus one (1) dependent (i.e., Employee plus one (1) spouse or one (1) child):	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
3. Employee plus two (2) or more dependents:	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
4. Employee plus Spouse:	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
5. Employee plus Child(ren) (i.e., Employee plus one (1) or more children):	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
6. Employee plus Family / Family:	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
7. Other: _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Single Tier Rate structure - Complete item 1.						
Two Tier Rate structure - Complete items 1. and 6.						
Three Tier Rate structure - Complete items 1., 2., and 3.						
Four Tier Rate Structure - Complete items 1., 4., 5., and 6.						
Indicate "N/A" in any rate field that does not apply.						
Medicare Eligible Rates (When BCBSTX is Secondary Payer)						
Single Coverage:	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Family Coverage:	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

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HMO PROGRAM☐ Yes ☒ No**Account Status:** ☐ New Group ☐ Existing Group**Choose One:** ☐ Blue PremierSM HMO ☐ Blue Premier AccessSM HMO ☐ Blue EssentialsSM HMO

- a) Physician Service Charges:
 _____% of Claim Payments; \$_____ per enrollee per month for health Claim Payments; **or** ☐ N/A
- b) Service Fees:
 \$_____ per month per single enrollee; \$_____ per month per enrollee with one or more Dependents; **or** ☐ N/A
 Provider Table(s): _____
- c) HMO Managed Care Fee:
 \$_____ per HMO enrollee per month **or** ☐ N/A

☒ **NO CHANGES****FUNDING / CONTRIBUTION****FUNDING ARRANGEMENT:**

- ☒ Premium – Prospective
- ☐ **(Non-HMO only)** Premium – Prospective Retention (Retro Contingent)
- ☐ **(Non-HMO only)** Alternative Funding Minimum Premium Program – Prospective Minimum Premium (Retro Contingent). The standard premium and rate information does not apply to alternative funding programs. All information regarding premiums and the payments thereof for alternative funding programs can be found in the mutually agreed upon alternative funding agreement between the Employer and BCBSTX.

STANDARD PREMIUM INFORMATION

1. Premium Period:
- ☒ The first (1st) day of each calendar month through the last day of each calendar month.
- ☐ The fifteenth (15th) day of each calendar month through the fourteenth (14th) day of the next calendar month.
- ☐ 15/16 Day Rule – premiums will be billed for the entire month for Participants with effective dates on the first (1st) through the fifteenth (15th) day of the month. Premiums will not be billed for the month when the Participant's effective date falls on the sixteenth (16th) day through the end of the month.
2. The contribution of premium to be paid by the Employer is:

PRODUCT	Employee Only	Employee/Child(ren)	Employee/Spouse	Employee/Family
HEALTH				
Plan 1	% or \$	% or \$	% or \$	% or \$
Plan 2	% or \$	% or \$	% or \$	% or \$
Plan 3	% or \$	% or \$	% or \$	% or \$
Plan 4	% or \$	% or \$	% or \$	% or \$
DENTAL				
Plan 1	% or \$	% or \$	% or \$	% or \$
Plan 2	% or \$	% or \$	% or \$	% or \$

3. **(HMO only)** Grace Period: thirty (30) days – standard
4. Prior written notification by BCBSTX to Employer for change of premium rates is sixty (60) days

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5. Additional Information/Comments: _____

☒ **NO CHANGES**

BILLING SPECIFICATIONS

Employees Listed: ☐ alphabetically ☐ by location

If by location, list locations including location numbers if applicable: _____

Sort by: ☐ Unique Identification Number (**standard**)
☐ Social Security Number

Billing format:

(complete only if special billing requirements are needed)

- ☐ Benefit Agreement
☐ Also, Page Break
☐ Categories
☐ Multiple Billing Profiles
Explanation: _____

Premium Delay:

(Underwriter approval required for options other than zero (0) day delay)

- ☒ Zero (0) day delay (**standard**)
☐ Thirty (30) day delay
☐ Sixty (60) day delay
☐ Ninety (90) day delay

☒ **NO CHANGES**

ID CARD DELIVERY

Mail ID Cards to:

- ☐ Account
☒ Member's home (**standard**)

Note: if an HMO plan is selected, HMO ID cards must be mailed to the Member's home

☐ **NO CHANGES**

OTHER PROVISIONS

1. **(HMO only) HMO Non-Network Plan Certification:** The Texas Insurance Code mandates HMOs whose network-based delivery system of coverage is the only health benefit coverage being offered under an Employer's health benefit plan must offer all Eligible Subscribers the opportunity to obtain other health coverage through a non-network plan at the time of enrollment and at least annually.

The non-network coverage required by law may be provided through a point-of-service contract, a preferred provider benefit plan, or any coverage arrangement that allows an Employee to access services outside the HMO's or limited provider network's delivery network. New and renewing groups who refuse to offer or certify that they offered a non-network plan concurrent with the HMO-only will not be allowed to purchase or renew coverage through BCBSTX. To comply with the provisions of this mandate, BCBSTX requests Employer groups certify a non-network plan will be offered to Eligible Subscribers.

Describe Non-Network Product Offered: _____

Authorized Company Official's Initials: _____

2. **EHB Election:** Employer elects EHBs based on the Texas benchmark.
3. This BPA is incorporated into and made a part of the Policy entered into and agreed upon by BCBSTX and the account.
4. Changes in state or federal law or regulations or interpretations thereof may change the terms and conditions of coverage.
5. **Reimbursement:** It is understood and agreed that in the event BCBSTX makes a recovery on a third-party liability claim, BCBSTX will retain twenty-five percent (25%) of any recovered amounts, other than recovery amounts received as a result of, or associated with, any Workers' Compensation Law.

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6. **Third-Party Recovery Vendors and Law Firms Provisions (other than Reimbursement Services):** BCBSTX engages with third-party recovery vendors and law firms on a post-pay basis to identify and/or recover any potential overpayments that may have been made to Providers.
7. ☐ **Medical and Ancillary Package Pricing:** The rates shown in this Agreement reflect a volume-based discount in an amount up to three percent (3%) of the medical premium for the twelve (12) month period beginning on the Policy Effective Date. If any of the qualifying ancillary coverage (BlueCare Dental, Basic Life, Short-Term Disability, Long-Term Disability, Accident, Critical Illness and/or Vision product(s)) lapses during this twelve (12) month period, BCBSTX reserves the right to remove the volume-based discount attributable to the lapsed product on medical premium. In such event, upon sixty (60) days prior written notice to Employer, the premium payment will be adjusted to reflect the removal of the discount attributable to the lapsed product.

ADDITIONAL PROVISIONS:

- A. **Grandfathered Health Plans:** Employer shall provide BCBSTX with written notice prior to renewal (and during the plan year, at least sixty (60) days advance written notice) of any changes in its Contribution Rate Based on Cost of Coverage or Contribution Rate Based on a Formula towards the cost of any tier of coverage for any class of Similarly Situated Individuals as such terms are described in the Affordable Care Act and applicable regulations. Any such changes (or failure to provide timely notice thereof) can result in retroactive and/or prospective changes by BCBSTX to the terms and conditions of coverage. In no event shall BCBSTX be responsible for any legal, tax or other ramifications related to any benefit package of any group health insurance coverage (each hereafter a "plan") qualifying as a "grandfathered health plan" under the Affordable Care Act and applicable regulations or any representation regarding any plan's past, present and future grandfathered status. The grandfathered health plan form ("Form"), if any, shall be incorporated by reference and made part of the BPA and Group Policy, and Employer represents and warrants that such Form is true, complete, and accurate. If Employer fails to timely provide BCBSTX with any requested grandfathered health plan information, BCBSTX may make retroactive and/or prospective changes to the terms and conditions of coverage, including changes for compliance with state or federal laws or regulations or interpretations thereof.
- B. **Retiree Only Plans and/or Excepted Benefits:** If the BPA includes any retiree only plans and/or excepted benefits, then Employer represents and warrants that one (1) or more such plans is not subject to some or all of the provisions of Part A (Individual and Group Market Reforms) of Title XXVII of the Public Health Service Act (and/or related provisions in the Internal Revenue Code and Employee Retirement Income Security Act) (an "exempt plan status"). Any determination that a plan does not have exempt plan status can result in retroactive and/or prospective changes by BCBSTX to the terms and conditions of coverage. In no event shall BCBSTX be responsible for any legal, tax or other ramifications related to any plan's exempt plan status or any representation regarding any plan's past, present and future exempt plan status.
- C. Employer shall indemnify and hold harmless BCBSTX and its directors, officers and employees against any and all loss, liability, damages, fines, penalties, taxes, expenses (including attorneys' fees and costs) or other costs or obligations resulting from or arising out of any claims, lawsuits, demands, governmental inquiries or actions, settlements or judgments brought or asserted against BCBSTX in connection with (a) any plan's grandfathered health plan status, (b) any plan's exempt plan status, (c) any directions, actions and interpretations of the Employer, and/or (d) any provision of inaccurate information, and/or (f) Employer's selection of Essential Health Benefit ("EHB") benchmark for the purpose of ACA. Changes in state or federal law or regulations or interpretations thereof may change the terms and conditions of coverage.

The provisions of paragraphs A-C (directly above) shall be in addition to (and do not take the place of) the other terms and conditions of coverage and/or administrative services between the parties.

Notwithstanding anything in the Policy or Renewal(s) to the contrary, BCBSTX reserves the right to revise our charge for the cost of coverage (premium or other amounts) at any time if any local, state or federal legislation, regulation, rule or guidance (or amendment or clarification thereto) is enacted or becomes effective/implemented, which would require BCBSTX to pay, submit or forward, on its own behalf or on the Policyholder's behalf, any additional tax, surcharge, fee, or other amount (all of which may be estimated, allocated or pro-rated amounts).

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Renewals Only: (For the purposes of this Policy, the term “existing BPA” includes, if applicable, the initial Schedule of Specifications and/or Group Agreement signed by the Employer, and any subsequent Schedules of Specifications and/or Group Agreements and amendments thereto.) If this BPA is blank, it is intentional, and this BPA is an addendum to the existing BPA. In such case, all terms of the existing BPA as amended from time to time shall remain in force and effect. However, beginning with the Employer’s first renewal date on or after September 23, 2010, the provisions of paragraphs A-C (above) shall be part of (and be in addition to) the terms of the existing BPA as amended from time to time.

Summary of Benefits and Coverage (“SBC”): The SBC Addendum is attached and made a part of the Policy. BCBSTX will create the SBC (only for benefits BCBSTX insures under the Policy) and provide the SBC to the Employer in electronic format. If the Employer approves of the content, Employer will then distribute the SBC to participants and beneficiaries (or hire a third party to distribute) as required by law. If the Employer would like changes to the SBC, it will promptly notify BCBSTX. BCBSTX will also distribute the SBC to participants and beneficiaries via regular hardcopy mail or electronically in response to occasional requests received directly from individuals. All other distribution is the responsibility of the Employer.

Group is renewing effective 10.1.23 for a 3 month period (10.1.23 to 12.31.23).

EMPLOYER STATEMENTS:

1. BCBSTX reserves the right to take any or all of the following actions:
 - a) Initial rates for new groups will be finalized for the effective date of the policy based on the enrolled participation and Employer contribution levels;
 - b) After the policy effective date, the group will be required to maintain a minimum Employer contribution of fifty percent (50%), and at least a seventy-five percent (75%) participation of eligible Employees. In the event the Group is unable to maintain the contribution and participation requirements, then the rates will be adjusted accordingly; and/or
 - c) Non-renew or discontinue coverage if the fifty percent (50%) minimum Employer contribution is not met and/or less than seventy-five percent (75%) of Eligible Employees are enrolled for coverage for six (6) consecutive months.

BCBSTX reserves the right to change premium rates when a substantial change occurs in the number or composition of Subscribers covered. A substantial change will be deemed to have occurred when the number of Employees/Subscribers covered changes by ten percent (10%) or more over a thirty (30) day period or twenty-five percent (25%) or more over a ninety (90) day period.

Employer will promptly notify BCBSTX of any change in participation and Employer contribution.

2. Producer Statement (if applicable): I certify that I have reviewed all enrollment materials. I have also advised the Employer that I have no authority to bind these coverages, to alter the terms of the Policy(ies), this BPA or enrollment material in any manner or to adjust any claims for benefits under the Policy(ies).
3. BCBSTX will report the value of all remuneration by BCBSTX to ERISA plans with one hundred (100) or more participants for use in preparation of ERISA Form 5500 schedules. Reporting will also be provided upon request to non-ERISA plans or plans with fewer than one hundred (100) participants. Reporting will include base commissions, bonuses, incentives, or other forms of remuneration for which your agent/consultant is eligible for the sale or renewal of self-funded and/or insured products.
4. The undersigned person represents that he/she is authorized and responsible for purchasing coverage on behalf of the Employer. It is understood that the actual terms and conditions of coverage are those contained in the Policy into which this BPA shall be incorporated at the time of acceptance by BCBSTX. Upon acceptance, BCBSTX shall issue a Policy to the Employer and the Employer shall be referred to as the "Employer or Policyholder" (Non-HMO) and "Group" (HMO) in the Policy.
5. The Employer's Benefit Program Application must pre-date the requested effective date and be received by BCBSTX at its home office no less than thirty (30) days prior to the requested effective date.

Authorized BCBSTX Representative

Signature of Authorized Purchaser

Title

Title

Date

Date

Agent Representative (if applicable)

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PROXY (OPTIONAL)

The undersigned hereby appoints the Board of Directors of Health Care Service Corporation, a Mutual Legal Reserve Company ("HCSC"), or any successor thereof, with full power of substitution, and such persons as the Board of Directors may designate by resolution, as the undersigned's proxy to act on behalf of the undersigned at all meetings of members of HCSC (and at all meetings of members of any successor of HCSC) and any adjournments thereof, with full power to vote on behalf of the undersigned on all matters that may come before any such meeting and any adjournment thereof. The annual meeting of members is scheduled to be held each year in the HCSC corporate headquarters on the last Tuesday of October at 12:30 p.m. Special meetings of members may be called pursuant to notice provided to the member not less than thirty (30) nor more than sixty (60) days prior to such meetings. This proxy shall remain in effect until revoked either in writing by the undersigned at least twenty (20) days prior to any meeting of members or by attending and voting in person at any annual or special meeting of members.

HCSC pays indemnification or advances expenses to its directors, officers, employees, or agents consistent with HCSC's bylaws then in force and as otherwise required by applicable law.

Group No.: _____

By: _____

Print Signer's Name Here



Signature and Title

Group Name: _____

Address: _____

City: _____

State: _____

Zip Code: _____

Dated this _____ day of _____
Month Year

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BlueCross BlueShield of Texas

Consumer Choice Plan

This plan is a consumer choice plan. This plan does not include the same level of benefits that are in Texas health plans known as state-mandated plans. This plan does include all health benefits required by the Affordable Care Act.

This plan is a consumer choice plan. This plan does not include the same level of benefits that are in Texas health plans known as state-mandated plans. This plan does include all health benefits required by the Affordable Care Act.

To see all the details of this plan, go to the plan's "Summary of Benefits and Coverage."

Plan Name	Plan Type	Plan Features
Consumer Choice Plan	As a deductible.	As no deductibles for participating provider care.
Out-of-Pocket Cost	Includes out-of-pocket costs that meet federal requirements but may sometimes be more than in a state-mandated plan.	A copay must be less than 50% of the total cost of the service. Annual out-of-pocket costs must be capped at 200% of your annual premium cost if you alert the plan.
Home Health Services	Includes a limit for home health services.	As no limits on home health services.

You want a plan that all required in it.

We also offer a state-mandated plan that includes all required benefits. This plan is not on healthcare.gov and does not allow you to get help with premiums and out-of-pocket costs. To learn more about this plan, call 1-800-252-3333 or visit <https://www.bcbstx.com/shop-plans-and-products>. For more information, call 1-800-252-3333 or visit <https://www.tdi.texas.gov/consumer/consumerchoice.html>.

- Understand the consumer choice plan you are applying for does not provide the same level of coverage required in other Texas health plans (state-mandated plans).
- Understand you can get more information about consumer choice plans from the Texas Department of Insurance website, <https://www.tdi.texas.gov/consumer/consumerchoice.html>, or by calling the Consumer Help Line at 1-800-252-3333.

On the first day of the month, you can find out more about it.
You can find out more about it on the first day of the month.



BlueCross BlueShield
of Texas

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**BlueCross BlueShield
of Texas**

1001 E. Lookout Drive
Richardson, Texas 75082

**BENEFIT PROGRAM APPLICATION ("BPA")
Blue Cross and Blue Shield of Texas (herein called "BCBSTX")
LARGE GROUP PLANS**

Account Status: ☐ New ☒ Existing with Changes

Off Cycle Change: ☐ Yes ☒ No

☐ Former BCBSTX ASO converting to fully insured

Account Number (6-digits): *****

Group Number(s): ***** , ***** , *****

Policy Effective Date (month/day/year): 10/1/2023

Policy Anniversary Date (month/day/year): 10/01

Legal Account Name: City of Leander

(Specify the Employer or the employee trust applying for coverage. An employee benefit plan may not be named)

☐ **NO CHANGES**

GROUP INFORMATION

Employer Identification Number ("EIN"): 74-2007646

Standard Industry Code ("SIC"): 9199

Nature of Business: Municipality

Primary (Mailing) Address: 105 N Brushy St

City: Leander

State: TX

Zip: 78641

Administrative Contact:

Belinda Medellin

Title:

Benefits Manager

Phone: 512-528-2706

Fax: 512-690-2018

Email: bmedellin@leandertx.gov

Blue Access for EmployersSM ("BAESM") Contact:

Christy Davis

Title:

HR Director

The BAE Contact is an Employee of the account who is authorized by the Employer to access and maintain the account in BAE.

Phone: 512-528-2727

Fax: 512-690-2367

Email: cdavis@leandertx.gov

Administrative Contact (if different from Primary):

Same as Primary

Title:

Phone: _____

Fax: _____

Email: _____

Physical Address (if different from Primary - required): _____

City: _____

State: _____

Zip: _____

Contact: _____

Billing Address (if different from Primary): PO Box 319

City: Leander

State: TX

Zip: 78646

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Life, Disability, Specified Disease, Accident and Vision insurance is underwritten by Dearborn Life Insurance Company, 701 E. 22nd St. Suite 300, Lombard, IL 60148. Dearborn Life Insurance Company is an independent Blue Cross and Blue Shield licensee. BLUE CROSS®, BLUE SHIELD® and the Cross and Shield Symbols are registered service marks of the Blue Cross and Blue Shield Association, an association of independent Blue Cross and Blue Shield Plans.

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Billing Contact: Allison McGrew

Phone: 512-528-2726

Fax: 512-690-2604

Title: Payroll

Email: amcgrew@leandertx.gov

Do you cover any wholly owned subsidiary or affiliated companies? ☐ Yes ☐ No If yes, please list below:

Subsidiary Companies to be covered (if more than one, list within the Additional Provisions):

Subsidiary Address: _____

City: _____ State: _____ Zip: _____

Contact: _____ Title: _____

Phone: _____ Fax: _____ Email: _____

Affiliated Companies to be covered (if more than one, list within the Additional Provisions):

Location(s): _____

The **Employee Retirement Income Security Act of 1974 (ERISA)** is a federal law that sets minimum standards for employee benefit plans in the private industry. In general, **all** employer groups, insured or ASO, are subject to ERISA provisions except for governmental entities, such as municipalities and public school districts, and "church plans" as defined by the Internal Revenue Code.

ERISA Regulated Group Health* Plan: ☐ Yes ☒ No

If Yes, is your ERISA Plan Year* a period of 12 months beginning on the Anniversary Date specified above? ☐ Yes ☐ No

If no, please specify your ERISA Plan Year (month/day/year): Beginning Date ____/____/____ End Date ____/____/____

ERISA Plan Administrator*: _____

Plan Administrator's Address: _____

If you maintain that ERISA is not applicable to your group health plan, please give legal reason for exemption:

- ☐ Federal Governmental plan (e.g., the government of the United States or agency of the United States)
- ☒ Non-Federal Governmental plan (e.g., the government of the State, an agency of the state, or the government of a political subdivision, such as a county or agency of the State)
- ☐ Church plan (complete and attach a Medical Loss Ratio Assurance form)
- ☐ Other; please specify: _____

Is your Non-ERISA Plan Year a period of 12 months beginning on the Anniversary Date specified above? ☒ Yes ☐ No

If no, please specify your ERISA Plan Year (month/day/year): Beginning Date ____/____/____ End Date ____/____/____

For more information regarding ERISA, contact your Legal Advisor.

*All as defined by ERISA and/or other applicable law/regulations

☐ **NO CHANGES**

PRODUCER OF RECORD INFORMATION

1. *Producer/Agency** name to whom commissions are to be paid: Gallagher Benefit Services

Producer Number of ☒ Producer or ☐ Agency: 000022147

Street Address: 70 NE Loop 410

City: San Antonio

Zip: 78216

Phone: 281-773-8954

Fax: _____

Email: Natalie_haskett@ajg.com

Is Producer/Agency appointed with BCBSTX? ☒ Yes ☐ No Affiliated with General Agent? ☐ Yes ☐ No

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Commissions: \$0 PCPM

2. *Producer/Agency** name to whom commissions are to be paid: _____

Producer Number of ☐ Producer or ☐ Agency: _____

Street Address: _____

City: _____

Zip: _____

Phone: _____

Fax: _____

Email: _____

Is Producer/Agency appointed with BCBSTX? ☐ Yes ☐ No Affiliated with General Agent? ☐ Yes ☐ No

Commissions: \$ _____ PCPM

If commission split, designate percentage for each producer/agency **Note:** total commissions paid must equal one hundred percent (100%)

Producer/Agency 1: _____%

Producer/Agency 2: _____%

3. Writing Producer's Name (please print):

Producer Number: _____

Phone: _____

Email: _____

Writing Producer's Signature: _____

Date: _____

*The producer or agency name(s) above to whom commissions are to be paid must exactly match the name(s) on the appointment application(s).

**If commissions are split, please provide the information requested above on both producers/agencies. BOTH must be appointed to do business with BCBSTX.

4. General Agent (GA) Override? ☐ Yes ☐ No

General Agent Name: _____

BCBSTX GA#: _____

Email: _____

Address: _____

City: _____

State: _____

Zip Code: _____

Health Override Amount (if applicable): _____

Dental Override Amount (if applicable): _____

If applicable, effective _____, the named producer(s) or agency(ies) is/are recognized as Employer's Producer of Record (POR), to act as representative in negotiations with and to receive commissions from BCBSTX and/or corporate subsidiaries, as applicable, for procuring fully insured coverage for Employer's employee benefit program(s). This statement rescinds any and all previous POR appointments for Employer. The POR is authorized to perform membership transactions on behalf of Employer. This appointment will remain in effect until withdrawn or superseded in writing by Employer.

General Agent's Signature: _____ Date: _____

☒ **NO CHANGES**

SCHEDULE OF ELIGIBILITY

1. **Standard Eligibility Provisions:** Eligible Employee/Subscriber means an Employee who works on a full-time basis, who usually works at least thirty (30) hours a week, and who otherwise meets the Participation Criteria established by an Employer. The term includes a sole proprietor, a partner, and an independent contractor, if the individual is included as an Employee under a Health Benefit Plan of a large Employer regardless of the number of hours the sole proprietor, partner, or independent contractor works weekly, but only if the plan includes at least two (2) other Eligible Employees who work on a full-time basis and who usually work at least thirty (30) hours a week. Participation Criteria means any criteria or rules established by a large Employer to determine the Employees who are eligible for enrollment or continued enrollment under the terms of a Health Benefit Plan. The Participation Criteria may not be based on Health Status Related Factors.

(HMO only) the Eligible Subscriber must reside, live, or work in the Service Area.

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2. Other Eligibility Provisions (check all that apply):

- ☒ Retiree of the Employer.
☐ Part-time Employee of the Employer.
☐ Other: _____

Are any classes of Employees to be excluded from coverage? ☐ Yes ☐ No

If yes, please identify the classes and describe the exclusion: _____

Domestic Partners covered: ☐ Yes ☐ No

A Domestic Partner means a person with whom the Employee has entered into a domestic partnership in accordance with the Employer's plan guidelines. The Employer is responsible for providing notice of possible tax implications to those covered Employees with Domestic Partners.

Continuation coverage for Domestic Partners: If Employer elects coverage for Domestic Partners, Domestic Partners may be eligible for continuation coverage under Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). Employer shall determine eligibility for COBRA continuation for Domestic Partners, if any. Please indicate your election below:

- ☐ Yes, Employer elects to offer continuation coverage to Domestic Partners, as defined in the Certificate Booklet
☐ No, Employer does not elect to offer continuation coverage to Domestic Partners (Domestic Partners are not eligible for continuation coverage)
☐ Other: _____

3. All current and new Employees must satisfy the substantive eligibility criteria and required Waiting Period in order for coverage to become effective. Covered Dependents do not have to satisfy a Waiting Period to become effective, but in no instance shall a Dependent be covered prior to the Employee's effective date.

If a person is added to the Policy and it is later determined that the Policyholder reported a coverage date earlier than what would apply to the Employee or Dependent, based on the Waiting Period and eligibility conditions the Policyholder provided to the Plan, the Plan reserves the right to retroactively adjust the coverage date for such person.

What is the effective date for a newly eligible person who becomes effective after the Employer's initial enrollment? (No effective date may exceed ninety-one (91) calendar days from the date that an individual becomes eligible for coverage, unless permitted by applicable law.)

- ☒ The date of employment (date of hire).
☒ The 1st day (standard is first (1st) or fifteenth (15th)) of the month following the date of employment.
☐ The _____ day (standard is first (1st) or fifteenth (15th)) of the month following select one days of employment.
☐ The _____ day (standard is first (1st) or fifteenth (15th)) of the month following select one month(s) of employment.

Substantive Eligibility Criteria (Optional): Provide a representation below regarding the terms of any eligibility conditions (other than any applicable Waiting Period already reflected above) imposed before an individual is eligible to become covered under the terms of the plan. If any of these eligibility conditions change, you are required to submit a new BPA to reflect that new information.

Check all that apply:

- ☐ An Orientation Period that:
1. Does not exceed one (1) month (calculated by adding one (1) calendar month and subtracting one (1) calendar day from an Employee's start date); and
 2. If used in conjunction with a Waiting Period, the Waiting Period begins on the first (1st) day after the orientation period.
- ☐ A Cumulative hours of service requirement that does not exceed 1200 hours

- ☐ An hours-of-service per period (or full-time status) requirement for which a measurement period is used to determine the status of variable-hour Employees, where the measurement period:
1. Starts between the Employee's date of hire and the first (1st) day of the following month;
 2. Does not exceed twelve (12) months; and
 3. Taken together with other eligibility conditions does not result in coverage becoming effective later than thirteen (13) months from the Employee's start date plus the number of days between a start date and the first (1st) day of the next calendar month (if start day is not the first (1st) day of the month).
- ☒ Other substantive eligibility criteria not described above; please describe: First Day of employment only applies to full-time employees hired on the 1st day of the month

(HMO only) What is the effective date of coverage for a Newly Eligible Employee who becomes effective after the Employer's initial enrollment date? (No effective date may exceed ninety-one (91) calendar days from the date that an individual becomes eligible for coverage, unless permitted by applicable law.)

- ☐ The first (1st) day of the month following the date of employment (date of hire).
- ☐ The first (1st) day of the month following select one days of employment.
- ☐ The first (1st) day of the month following select one month(s) of employment.

4. Are there multiple new hire Waiting Periods? ☐ Yes ☒ No

If yes, attach eligibility and contribution details for each section.

Is the Waiting Period requirement to be waived on initial group enrollment?

Health ☐ Yes ☒ No ☐ N/A Dental ☐ Yes ☒ No ☐ N/A

5. Annual Open Enrollment: For Health and Dental Plans only, an Eligible Person, who did not enroll under timely enrollment, may apply for individual coverage, family coverage or add Dependents during the Employer's annual Open Enrollment Period. Such person's individual coverage date, family coverage date and/or Dependent's coverage date will be the Policy Anniversary Date following the Open Enrollment Period, provided the application is dated and signed prior to that date.

The Open Enrollment Period will be held during a thirty-one (31) day period prior to the Policy Anniversary Date of the program. Specify start of annual Open Enrollment Period: _____.

6. The minimum standard limiting age for covered Dependent children is twenty-six (26) years. Hereafter, a Dependent Child, Child or Children means a natural child, a stepchild, a medical support order child, an eligible foster child, an adopted child (including a child for whom the Employee or their spouse is a party in a suit in which the adoption of the child is sought) regardless of presence or absence of a child's financial dependency, residency, student status, employment status, marital status, eligibility for other coverage or any combination of those factors. To be eligible for coverage, a child of an Employee's child must also be dependent upon Employee for federal income tax purposes at the time application for coverage is made.

7. Disabled Dependent: Disabled Dependent means a child who is medically certified as disabled and dependent upon the Employee or his/her spouse (or Domestic Partner if Domestic Partner coverage is elected). To administer medical certification of disabled Dependents, you may select option (a) standard rules or (b) custom rules. If (b) is selected there are additional selections regarding certification review, forms, and previous medical certification approvals.

a. ☒ Disabled Dependent Administration will follow **standard rules.**

A disabled Dependent is eligible to add or continue coverage beyond the limiting age of twenty-six (26). Certification Review is administered by BCBSTX; a Disabled Dependent Certification Form must be submitted to BCBSTX.

(HMO only) Proof of incapacity and dependency may be required within thirty-one (31) days of the child's attainment of the limiting age. Subsequent recertification may occur annually, as required.

- b. ☐ Disabled Dependent Administration will follow **custom rules**. Please make the following selections:

Age: A disabled Dependent is eligible to add or continue coverage beyond the limiting age of twenty-six (26).

Certification Review: Please select one (1) option regarding administration of Certification Review.

- ☐ Certification Review is administered by BCBSTX; a Disabled Dependent Certification Form must be submitted to BCBSTX.

(HMO only) Proof of incapacity and dependency may be required within thirty-one (31) days of the child's attainment of the limiting age. Subsequent recertification may occur annually, as required.

- ☐ Certification Review is administered by the Employer; there are no Disabled Dependent Certification Form requirements.

If Certification Review is administered by BCBSTX, please select one (1) option regarding forms:

- ☐ BCBSTX's Disabled Dependent Certification Form will be utilized.
☐ A custom/other Disabled Dependent Certification Form will be utilized.

If Certification Review is administered by BCBSTX, please select allowed or not allowed below:

An approved disabled Dependent medical certification from a prior carrier is ☐ allowed
☐ not allowed.

An approved disabled Dependent medical certification from a prior BCBS policy is
☐ allowed ☐ not allowed.

☒ **NO CHANGES**

CURRENT ELIGIBILITY INFORMATION

Total number of Employees/Subscribers:

1. On payroll _____
2. On COBRA continuation coverage _____
3. With retiree coverage (if applicable) _____
4. Who work part-time _____
5. Serving the new hire Waiting Period _____
6. Declining because of other **group** coverage (e.g., other commercial group coverage, Medicare, Medicaid, TRICARE/Champus) _____
7. Declining coverage (not covered elsewhere) _____

☐ **NO CHANGES**

(HMO only) LEGISLATIVE ELECTIONS

The following mandated benefit offers are made by HMO in compliance with Texas regulations. Please mark your acceptance or declination. Acceptance may result in a rate adjustment.

In Vitro Fertilization Services

- ☐ **Accept** – If accepted, benefits for In Vitro Fertilization Services will be provided to the same extent as benefits provided for other pregnancy related procedures. **(Note: If selected, an additional charge will be added to your rates.)**
- ☐ **Decline** – If declined, no benefits are available.

Speech and Hearing Services

- ☐ **Accept** – Benefits are paid same as any other illness.
- ☐ **Decline** – If declined, medically necessary speech therapy is covered on an outpatient basis only. Hearing aid benefit is limited to one (1) hearing aid per ear every thirty-six (36) months.

Development Delay – Certain therapies for children with developmental delays are already included in the HMO plans.

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☒ **NO CHANGES** (Non-HMO only) **LEGISLATIVE ELECTIONS**

The following mandated benefit offers are made in compliance with Texas regulations. Please mark your acceptance or declination.

In Vitro Fertilization Services: Benefits for Medical-Surgical Expense incurred for in vitro fertilization procedures will be the same as for maternity care, provided specific requirements are met.

☐ **Accept** – If accepted, benefits for In Vitro Fertilization Services will be provided to the same extent as benefits provided for other pregnancy related procedures. **(Note: If selected an additional charge will be added to your rates.)**

☒ **Decline** – If declined, no benefits are available for these services.

Speech and Hearing Services: Benefits are available for the services of a physician or other provider to restore loss of or correct an impaired speech or hearing function. This benefit includes coverage for hearing aids.

☐ **Accept** – If accepted, benefits are available for medically necessary services to restore loss of or correct an impaired speech or hearing function, with no benefit maximum on hearing aids.

☒ **Decline** – If declined, benefits are available for medically necessary services to restore loss of or correct an impaired speech or hearing function; however, benefits for hearing aids are limited to one (1) hearing aid per ear every thirty-six (36) months.

Development Delay – Certain therapies for children with developmental delays are already included in the Non-HMO plans.

☐ **NO CHANGES**

LINES OF BUSINESS
(Check all applicable products)

Managed Health Care Coverage:

☐ Single Option: PPO Plan _____

☒ Multiple Plan Option:

Select up to four (4) plans. All plans may be PPO or HSA plans. If an HMO is selected, a PPO must also be selected.

Plan 1 PPO 3000 **PPO**

Plan 2 HSA Emb 3000 **HSA**

Plan 3 _____ **Select Product**

Plan 4 _____ **Select Product**

If an HMO plan is selected, indicate additional election(s) below (if applicable):

Additional Benefit Options:

☒ Prescription Drug Program Prime

☐ Inpatient Mental Health Care (IPMH) Select IPMH

☐ Durable Medical Equipment Select DME

See **HMO Legislative Elections** for In-Vitro Fertilization and Speech and Hearing Services options.

One hundred percent (100%) of Eligible Employees must reside, live, or work in the service area. The HMO service area includes all counties in Texas.

***If an HMO health plan is selected, please complete the HMO Non-Network Plan Certification (item 1) in the OTHER PROVISIONS section of this BPA.**

If HCA is selected, the HCA BPA with HCA Administrative Services Agreement must be completed, signed, and submitted.

If HSA/HDHP is selected, provide name of HSA Administrator or trustee: A+ FCU
(Vendor: **Other**)

FSA purchased: ☐ Yes ☐ No (If yes, select vendor) Vendor: **Select Vendor**

Health Reimbursement Account (HRA) purchased: ☐ Yes ☐ No (If yes, select vendor) Vendor: **Select Vendor**

☐ **Blue DirectionsSM** If selected, the Blue Directions Addendum is attached and made part of the Policy

Health Care Management Services:

☒ Wellbeing Management (WBM)

In-Hospital Indemnity Plan:

☐ IHI

DENTAL BENEFIT PLANS:**Employer-Paid Dental**☐ Plan _____☒ Dual Option: Plan 1 MAC Low Plan 2 MAC**Voluntary Group Dental**

Plan _____

BlueMax Advantage:☐ Graduated dental benefit max☐ Enhanced dental benefits

☐ **Life, Disability, Specified Disease, Accident or Vision:** If checked, attach separate application for those coverages

COMMENTS: _____☐ **NO CHANGES****ACCOUNT EXPERIENCE – NEW GROUPS ONLY**

Are there any new large claims or more than fifteen percent (15%) change in large claims previous provided?

☐ No – Skip the rest of this (Account Experience) section

☐ Yes – Please answer the below questions to the best of your knowledge. Note: any changes indicated below may impact rates and will require Underwriter approval. "Participant" means all Eligible Employees, Dependents, retirees, and COBRA Continuant.

1. Has any Participant received more than twenty thousand dollars (\$20,000) in medical benefits during the last twelve (12) months? ☐ Yes ☐ No
2. Is any Participant expected to have claims in excess of twenty thousand dollars (\$20,000) during the next twelve (12) months? ☐ Yes ☐ No
3. Is any Participant mentally or physically handicapped or disabled or not actively at work? ☐ Yes ☐ No
4. Has any Participant been diagnosed as having a high-risk condition? ☐ Yes ☐ No

If any question is answered "yes," details must be provided below:

Participant Age	Diagnosis or Nature of the Disorder	Dates of Treatment	\$ Amount of Claims	Prognosis/Current Treatment

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STANDARD PREMIUM RATES

☐ Yes ☐ No

	<i>For Internal Use Only - Blue StarSM Ben.Agree#:</i>	<i>For Internal Use Only - Blue Star Ben.Agree#:</i>	<i>For Internal Use Only - Blue Star Ben.Agree#:</i>	<i>For Internal Use Only - Blue Star Ben.Agree#:</i>	<i>For Internal Use Only - Blue Star Ben.Agree#:</i>	Total
1. Employee only:	\$_____	\$_____	\$_____	\$_____	\$_____	\$_____
2. Employee plus one (1) dependent (i.e., Employee plus one (1) spouse or one (1) child):	\$_____	\$_____	\$_____	\$_____	\$_____	\$_____
3. Employee plus two (2) or more dependents:	\$_____	\$_____	\$_____	\$_____	\$_____	\$_____
4. Employee plus Spouse:	\$_____	\$_____	\$_____	\$_____	\$_____	\$_____
5. Employee plus Child(ren) (i.e., Employee plus one (1) or more children):	\$_____	\$_____	\$_____	\$_____	\$_____	\$_____
6. Employee plus Family / Family:	\$_____	\$_____	\$_____	\$_____	\$_____	\$_____
7. Other: _____	\$_____	\$_____	\$_____	\$_____	\$_____	\$_____
Single Tier Rate structure - Complete item 1.						
Two Tier Rate structure - Complete items 1. and 6.						
Three Tier Rate structure - Complete items 1., 2., and 3.						
Four Tier Rate Structure - Complete items 1., 4., 5., and 6.						
Indicate "N/A" in any rate field that does not apply.						
Medicare Eligible Rates (When BCBSTX is Secondary Payer)						
Single Coverage:	\$_____	\$_____	\$_____	\$_____	\$_____	\$_____
Family Coverage:	\$_____	\$_____	\$_____	\$_____	\$_____	\$_____

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HMO PROGRAM☐ Yes ☒ No**Account Status:** ☐ New Group ☐ Existing Group**Choose One:** ☐ Blue PremierSM HMO ☐ Blue Premier AccessSM HMO ☐ Blue EssentialsSM HMO

- a) Physician Service Charges:
 _____% of Claim Payments; \$_____ per enrollee per month for health Claim Payments; **or** ☐ N/A
- b) Service Fees:
 \$_____ per month per single enrollee; \$_____ per month per enrollee with one or more Dependents; **or** ☐ N/A
 Provider Table(s): _____
- c) HMO Managed Care Fee:
 \$_____ per HMO enrollee per month **or** ☐ N/A

☒ **NO CHANGES****FUNDING / CONTRIBUTION****FUNDING ARRANGEMENT:**

- ☒ Premium – Prospective
- ☐ **(Non-HMO only)** Premium – Prospective Retention (Retro Contingent)
- ☐ **(Non-HMO only)** Alternative Funding Minimum Premium Program – Prospective Minimum Premium (Retro Contingent). The standard premium and rate information does not apply to alternative funding programs. All information regarding premiums and the payments thereof for alternative funding programs can be found in the mutually agreed upon alternative funding agreement between the Employer and BCBSTX.

STANDARD PREMIUM INFORMATION

1. Premium Period:
- ☒ The first (1st) day of each calendar month through the last day of each calendar month.
- ☐ The fifteenth (15th) day of each calendar month through the fourteenth (14th) day of the next calendar month.
- ☐ 15/16 Day Rule – premiums will be billed for the entire month for Participants with effective dates on the first (1st) through the fifteenth (15th) day of the month. Premiums will not be billed for the month when the Participant's effective date falls on the sixteenth (16th) day through the end of the month.
2. The contribution of premium to be paid by the Employer is:

PRODUCT	Employee Only	Employee/Child(ren)	Employee/Spouse	Employee/Family
HEALTH				
Plan 1	% or \$	% or \$	% or \$	% or \$
Plan 2	% or \$	% or \$	% or \$	% or \$
Plan 3	% or \$	% or \$	% or \$	% or \$
Plan 4	% or \$	% or \$	% or \$	% or \$
DENTAL				
Plan 1	% or \$	% or \$	% or \$	% or \$
Plan 2	% or \$	% or \$	% or \$	% or \$

3. **(HMO only)** Grace Period: thirty (30) days – standard
4. Prior written notification by BCBSTX to Employer for change of premium rates is sixty (60) days

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5. Additional Information/Comments: _____

☒ **NO CHANGES**

BILLING SPECIFICATIONS

Employees Listed: ☐ alphabetically ☐ by location

If by location, list locations including location numbers if applicable: _____

Sort by: ☐ Unique Identification Number (**standard**)
☐ Social Security Number

Billing format:

(complete only if special billing requirements are needed)

- ☐ Benefit Agreement
☐ Also, Page Break
☐ Categories
☐ Multiple Billing Profiles
Explanation: _____

Premium Delay:

(Underwriter approval required for options other than zero (0) day delay)

- ☒ Zero (0) day delay (**standard**)
☐ Thirty (30) day delay
☐ Sixty (60) day delay
☐ Ninety (90) day delay

☒ **NO CHANGES**

ID CARD DELIVERY

Mail ID Cards to:

- ☐ Account
☒ Member's home (**standard**)

Note: if an HMO plan is selected, HMO ID cards must be mailed to the Member's home

☐ **NO CHANGES**

OTHER PROVISIONS

1. **(HMO only) HMO Non-Network Plan Certification:** The Texas Insurance Code mandates HMOs whose network-based delivery system of coverage is the only health benefit coverage being offered under an Employer's health benefit plan must offer all Eligible Subscribers the opportunity to obtain other health coverage through a non-network plan at the time of enrollment and at least annually.

The non-network coverage required by law may be provided through a point-of-service contract, a preferred provider benefit plan, or any coverage arrangement that allows an Employee to access services outside the HMO's or limited provider network's delivery network. New and renewing groups who refuse to offer or certify that they offered a non-network plan concurrent with the HMO-only will not be allowed to purchase or renew coverage through BCBSTX. To comply with the provisions of this mandate, BCBSTX requests Employer groups certify a non-network plan will be offered to Eligible Subscribers.

Describe Non-Network Product Offered: _____

Authorized Company Official's Initials: _____

2. **EHB Election:** Employer elects EHBs based on the Texas benchmark.
3. This BPA is incorporated into and made a part of the Policy entered into and agreed upon by BCBSTX and the account.
4. Changes in state or federal law or regulations or interpretations thereof may change the terms and conditions of coverage.
5. **Reimbursement:** It is understood and agreed that in the event BCBSTX makes a recovery on a third-party liability claim, BCBSTX will retain twenty-five percent (25%) of any recovered amounts, other than recovery amounts received as a result of, or associated with, any Workers' Compensation Law.

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6. **Third-Party Recovery Vendors and Law Firms Provisions (other than Reimbursement Services):** BCBSTX engages with third-party recovery vendors and law firms on a post-pay basis to identify and/or recover any potential overpayments that may have been made to Providers.
7. ☐ **Medical and Ancillary Package Pricing:** The rates shown in this Agreement reflect a volume-based discount in an amount up to three percent (3%) of the medical premium for the twelve (12) month period beginning on the Policy Effective Date. If any of the qualifying ancillary coverage (BlueCare Dental, Basic Life, Short-Term Disability, Long-Term Disability, Accident, Critical Illness and/or Vision product(s)) lapses during this twelve (12) month period, BCBSTX reserves the right to remove the volume-based discount attributable to the lapsed product on medical premium. In such event, upon sixty (60) days prior written notice to Employer, the premium payment will be adjusted to reflect the removal of the discount attributable to the lapsed product.

ADDITIONAL PROVISIONS:

- A. **Grandfathered Health Plans:** Employer shall provide BCBSTX with written notice prior to renewal (and during the plan year, at least sixty (60) days advance written notice) of any changes in its Contribution Rate Based on Cost of Coverage or Contribution Rate Based on a Formula towards the cost of any tier of coverage for any class of Similarly Situated Individuals as such terms are described in the Affordable Care Act and applicable regulations. Any such changes (or failure to provide timely notice thereof) can result in retroactive and/or prospective changes by BCBSTX to the terms and conditions of coverage. In no event shall BCBSTX be responsible for any legal, tax or other ramifications related to any benefit package of any group health insurance coverage (each hereafter a "plan") qualifying as a "grandfathered health plan" under the Affordable Care Act and applicable regulations or any representation regarding any plan's past, present and future grandfathered status. The grandfathered health plan form ("Form"), if any, shall be incorporated by reference and made part of the BPA and Group Policy, and Employer represents and warrants that such Form is true, complete, and accurate. If Employer fails to timely provide BCBSTX with any requested grandfathered health plan information, BCBSTX may make retroactive and/or prospective changes to the terms and conditions of coverage, including changes for compliance with state or federal laws or regulations or interpretations thereof.
- B. **Retiree Only Plans and/or Excepted Benefits:** If the BPA includes any retiree only plans and/or excepted benefits, then Employer represents and warrants that one (1) or more such plans is not subject to some or all of the provisions of Part A (Individual and Group Market Reforms) of Title XXVII of the Public Health Service Act (and/or related provisions in the Internal Revenue Code and Employee Retirement Income Security Act) (an "exempt plan status"). Any determination that a plan does not have exempt plan status can result in retroactive and/or prospective changes by BCBSTX to the terms and conditions of coverage. In no event shall BCBSTX be responsible for any legal, tax or other ramifications related to any plan's exempt plan status or any representation regarding any plan's past, present and future exempt plan status.
- C. Employer shall indemnify and hold harmless BCBSTX and its directors, officers and employees against any and all loss, liability, damages, fines, penalties, taxes, expenses (including attorneys' fees and costs) or other costs or obligations resulting from or arising out of any claims, lawsuits, demands, governmental inquiries or actions, settlements or judgments brought or asserted against BCBSTX in connection with (a) any plan's grandfathered health plan status, (b) any plan's exempt plan status, (c) any directions, actions and interpretations of the Employer, and/or (d) any provision of inaccurate information, and/or (f) Employer's selection of Essential Health Benefit ("EHB") benchmark for the purpose of ACA. Changes in state or federal law or regulations or interpretations thereof may change the terms and conditions of coverage.

The provisions of paragraphs A-C (directly above) shall be in addition to (and do not take the place of) the other terms and conditions of coverage and/or administrative services between the parties.

Notwithstanding anything in the Policy or Renewal(s) to the contrary, BCBSTX reserves the right to revise our charge for the cost of coverage (premium or other amounts) at any time if any local, state or federal legislation, regulation, rule or guidance (or amendment or clarification thereto) is enacted or becomes effective/implemented, which would require BCBSTX to pay, submit or forward, on its own behalf or on the Policyholder's behalf, any additional tax, surcharge, fee, or other amount (all of which may be estimated, allocated or pro-rated amounts).

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Renewals Only: (For the purposes of this Policy, the term “existing BPA” includes, if applicable, the initial Schedule of Specifications and/or Group Agreement signed by the Employer, and any subsequent Schedules of Specifications and/or Group Agreements and amendments thereto.) If this BPA is blank, it is intentional, and this BPA is an addendum to the existing BPA. In such case, all terms of the existing BPA as amended from time to time shall remain in force and effect. However, beginning with the Employer’s first renewal date on or after September 23, 2010, the provisions of paragraphs A-C (above) shall be part of (and be in addition to) the terms of the existing BPA as amended from time to time.

Summary of Benefits and Coverage (“SBC”): The SBC Addendum is attached and made a part of the Policy. BCBSTX will create the SBC (only for benefits BCBSTX insures under the Policy) and provide the SBC to the Employer in electronic format. If the Employer approves of the content, Employer will then distribute the SBC to participants and beneficiaries (or hire a third party to distribute) as required by law. If the Employer would like changes to the SBC, it will promptly notify BCBSTX. BCBSTX will also distribute the SBC to participants and beneficiaries via regular hardcopy mail or electronically in response to occasional requests received directly from individuals. All other distribution is the responsibility of the Employer.

Group is renewing effective 10.1.23 for a 3 month period (10.1.23 to 12.31.23).

EMPLOYER STATEMENTS:

1. BCBSTX reserves the right to take any or all of the following actions:
 - a) Initial rates for new groups will be finalized for the effective date of the policy based on the enrolled participation and Employer contribution levels;
 - b) After the policy effective date, the group will be required to maintain a minimum Employer contribution of fifty percent (50%), and at least a seventy-five percent (75%) participation of eligible Employees. In the event the Group is unable to maintain the contribution and participation requirements, then the rates will be adjusted accordingly; and/or
 - c) Non-renew or discontinue coverage if the fifty percent (50%) minimum Employer contribution is not met and/or less than seventy-five percent (75%) of Eligible Employees are enrolled for coverage for six (6) consecutive months.

BCBSTX reserves the right to change premium rates when a substantial change occurs in the number or composition of Subscribers covered. A substantial change will be deemed to have occurred when the number of Employees/Subscribers covered changes by ten percent (10%) or more over a thirty (30) day period or twenty-five percent (25%) or more over a ninety (90) day period.

Employer will promptly notify BCBSTX of any change in participation and Employer contribution.

2. Producer Statement (if applicable): I certify that I have reviewed all enrollment materials. I have also advised the Employer that I have no authority to bind these coverages, to alter the terms of the Policy(ies), this BPA or enrollment material in any manner or to adjust any claims for benefits under the Policy(ies).
3. BCBSTX will report the value of all remuneration by BCBSTX to ERISA plans with one hundred (100) or more participants for use in preparation of ERISA Form 5500 schedules. Reporting will also be provided upon request to non-ERISA plans or plans with fewer than one hundred (100) participants. Reporting will include base commissions, bonuses, incentives, or other forms of remuneration for which your agent/consultant is eligible for the sale or renewal of self-funded and/or insured products.
4. The undersigned person represents that he/she is authorized and responsible for purchasing coverage on behalf of the Employer. It is understood that the actual terms and conditions of coverage are those contained in the Policy into which this BPA shall be incorporated at the time of acceptance by BCBSTX. Upon acceptance, BCBSTX shall issue a Policy to the Employer and the Employer shall be referred to as the "Employer or Policyholder" (Non-HMO) and "Group" (HMO) in the Policy.
5. The Employer's Benefit Program Application must pre-date the requested effective date and be received by BCBSTX at its home office no less than thirty (30) days prior to the requested effective date.

Authorized BCBSTX Representative

Signature of Authorized Purchaser

Title

Title

Date

Date

Agent Representative (if applicable)

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PROXY (OPTIONAL)

The undersigned hereby appoints the Board of Directors of Health Care Service Corporation, a Mutual Legal Reserve Company ("HCSC"), or any successor thereof, with full power of substitution, and such persons as the Board of Directors may designate by resolution, as the undersigned's proxy to act on behalf of the undersigned at all meetings of members of HCSC (and at all meetings of members of any successor of HCSC) and any adjournments thereof, with full power to vote on behalf of the undersigned on all matters that may come before any such meeting and any adjournment thereof. The annual meeting of members is scheduled to be held each year in the HCSC corporate headquarters on the last Tuesday of October at 12:30 p.m. Special meetings of members may be called pursuant to notice provided to the member not less than thirty (30) nor more than sixty (60) days prior to such meetings. This proxy shall remain in effect until revoked either in writing by the undersigned at least twenty (20) days prior to any meeting of members or by attending and voting in person at any annual or special meeting of members.

HCSC pays indemnification or advances expenses to its directors, officers, employees, or agents consistent with HCSC's bylaws then in force and as otherwise required by applicable law.

Group No.: _____

By: _____

Print Signer's Name Here



Signature and Title

Group Name: _____

Address: _____

City: _____

State: _____

Zip Code: _____

Dated this _____ day of _____
Month Year

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**BlueCross BlueShield
of Texas**

CONSUMER CHOICE PLAN DISCLOSURE STATEMENT

**THIS HEALTH PLAN DOES NOT INCLUDE THE SAME LEVEL OF BENEFITS
REQUIRED IN OTHER PLANS.**

This HMO plan is a consumer choice plan. This plan doesn't include the same level of benefits that are in Texas health plans known as state-mandated plans. This plan does include all health benefits required by the Affordable Care Act.

To see all benefits offered by this plan, go to the plan's "Summary of Benefits and Coverage."

Benefit/coverage:	This plan:	A health plan with required benefits (state-mandated plan):
Deductible The amount you pay for care before the plan begins to share the cost.	Has a deductible.	Has no deductibles for participating provider care.
Out-of-Pocket Costs The amount you pay when you receive covered services, up to a calendar year maximum.	Includes out-of-pocket costs that meet federal requirements but may sometimes be more than in a state-mandated plan.	A copay must be less than 50% of the total cost of the service. Annual out-of-pocket costs must be capped at 200% of your annual premium cost if you alert the plan.
Home Health Services	Includes a limit for home health services.	Has no limits on home health services.

If you want a plan with all required benefits:

We also offer a state-mandated plan that includes all required benefits. This plan is not on Healthcare.gov and does not allow you to get help with premiums and out-of-pocket costs. To learn more about this plan, call 1-877-299-2377 or visit <https://www.bcbstx.com/shop-plans-and-products>. **By signing this form, you acknowledge the following:**

- I understand the consumer choice plan I am applying for does not provide the same level of coverage required in other Texas health plans (state-mandated plans).
- I understand I can get more information about consumer choice plans from the Texas Department of Insurance's website, <https://www.tdi.texas.gov/consumer/consumerchoice.html>, or by calling the Consumer Help Line at 1-800-252-3439.

**Don't sign this document if you don't understand it.
No firme este documento si no lo comprende.**



**BlueCross BlueShield
of Texas**

Signature of Applicant

Date

Name of Applicant (print name)

Name of Business, if applicable

Address

City

State

Zip

HMO must give you a copy of this statement upon request.

**AMENDMENT
SECTION 125 FLEXIBLE BENEFIT PLAN
ADOPTION AGREEMENT**

The undersigned Employer hereby adopts the Section 125 Flexible Benefit Plan for those Employees who shall qualify as Participants hereunder. The Employer hereby selects the following Plan specifications:

A. EMPLOYER INFORMATION

Name of Employer:	CITY OF LEANDER
Address:	105 N. BRUSHY STREET LEANDER, TEXAS 78641
Employer Identification Number:	74-2007646
Nature of Business:	CITY GOVERNMENT
Name of Plan:	Flexible Benefit Plan
Plan Number:	501

B. EFFECTIVE DATE

Original effective date of the Plan:	
If Amendment to existing plan, effective date of amendment:	OCTOBER 1, 2023

C. ELIGIBILITY REQUIREMENTS FOR PARTICIPATION

Eligibility requirements for each component plan under this Section 125 document will be applicable and, if different, will be listed in Item F.

Length of Service:	First day of month following employment
---------------------------	--

Retiree Wording:

Minimum Hours:	All employees with 40 hours of service or more each week. An hour of service is each hour for which an employee receives, or is entitled to receive, payment for performance of duties for the Employer.
-----------------------	---

Age:	Minimum age of 18 years.
-------------	---------------------------------

D. PLAN YEAR

The current plan year will begin on **October 1, 2023**, and end on **December 31, 2024**. Each subsequent plan year will begin on **January 1** and end on **December 31**.

E. EMPLOYER CONTRIBUTIONS

Non-Elective Contributions:

The maximum amount available to each Participant for the purchase of elected benefits with non-elective contributions will be:

The Employer may at its sole discretion provide a non-elective contribution to provide benefits for each Participant under the Plan. This amount will be set by the Employer each Plan Year in a uniform and non-discriminatory manner. If this non-elective contribution amount exceeds the cost of benefits elected by the Participant, excess amounts will not be paid to the Participant as taxable cash.

**Elective Contributions
(Salary Reduction):**

The maximum amount available to each Participant for the purchase of elected benefits through salary reduction will be:

\$50,000

Each Participant may authorize the Employer to reduce his or her compensation by the amount needed for the purchase of benefits elected, less the amount of non-elective contributions. An election for salary reduction will be made on the benefit election form.

F. AVAILABLE BENEFITS: Each of the following components should be considered a plan that comprises this Plan.

1. **Group Medical Insurance** -- The terms, conditions, and limitations for the Group Medical Insurance will be as set forth in the insurance policy or policies described below: (See Section V of the Plan Document)

Eligibility Requirements for Participation, if different than Item C.

2. **Disability Income Insurance** -- The terms, conditions, and limitations for the Disability Income Insurance will be as set forth in the insurance policy or policies described below: (See Section VI of the Plan Document)

Eligibility Requirements for Participation, if different than Item C.

3. **Cancer Coverage** -- The terms, conditions, and limitations for the Cancer Coverage will be as set forth in the insurance policy or policies described below: (See Section V of the Plan Document)

Eligibility Requirements for Participation, if different than Item C.

4. **Dental/Vision Insurance** -- The terms, conditions, and limitations for the Dental/Vision Insurance will be as set forth in the insurance policy or policies described below: (See Section V of the Plan Document)

Eligibility Requirements for Participation, if different than Item C.

5. **Group Life Insurance** which will be comprised of Group term life insurance and Individual term life insurance under Section 79 of the Code.

The terms, conditions, and limitations for the Group Life Insurance will be as set forth in the insurance policy or policies described below: (See Section VII of the Plan Document)

Individual life coverage under Section 79 is available as a benefit, and the face amount when combined with the group-term life, if any, may not exceed \$50,000.

Eligibility Requirements for Participation, if different than Item C.

6. **Dependent Care Assistance Plan** -- The terms, conditions, and limitations for the Dependent Care Assistance Plan will be as set forth in Section IX of the Plan Document and described below:

Minimum Contribution - \$ per Plan Year

Maximum Contribution - \$ Annual maximums allowable by the
IRS Code Section 129 or prorated
Amount for Short Plan Year.

Recordkeeper: **First Financial Administrators, Inc.**

Eligibility Requirements for Participation, if different than Item C.

7. **Medical Expense Reimbursement Plan** -- The terms, conditions, and limitations for the Medical Expense Reimbursement Plan will be as set forth in Section VIII of the Plan Document and described below:

Minimum Coverage - **\$300** per Plan Year or a Prorated
Amount for a Short Plan Year.

Maximum Coverage - \$ Annual maximums allowable by the IRS Code Section 125(i) 1 or Prorated Amount for Short Plan Year. In no event can the maximum exceed the limit as indicated by the IRS in accordance with the law.

Recordkeeper: **First Financial Administrators, Inc.**

Restrictions:

Grace Period: The Provisions in Section 8.06 of the Plan to permit a Grace Period with respect to the Medical Expense Reimbursement Plan **IS NOT** elected.

Carryover: The Provisions in Section 8.07 of the Plan to permit a Carryover with respect to the Medical Expense Reimbursement Plan **IS** elected.

HEART Act: The provisions in Section 8.08 of the Plan to permit the Qualified Reservist Distribution of the Heroes Earnings Assistance and Relief Tax Act (HEART) is elected.

Eligibility Requirements for Participation, if different than Item C.

8. **Health Savings Accounts** – The Plan does not permit contributions to be made to a Health Savings Account on a pretax basis in accordance with Section X of the Plan and the following provisions:

HSA Trustee – **N/A**

Maximum Contribution – **As indexed annually by the IRS.**

Limitation on Eligible Medical Expenses – For purposes of the Medical Reimbursement Plan, Eligible Medical Expenses of a Participant that is eligible for and elects to participate in a Health Savings Account shall be limited to expenses for:

Eligibility Requirements for Participation, if different than Item C.

- a. An Employee must complete a Certification of Health Savings Account Eligibility which confirms that the Participant is an eligible individual who is entitled to establish a Health Savings Account in accordance with Code Section 223(c)(1).
- b. Eligibility for the Health Savings Account shall begin on the later of (i) first day of the month coinciding with or next following the Employee's commencement of coverage under the High Deductible Health Plan, or (ii)

the first day following the end of a Grace Period available to the Employee with respect to the Medical Reimbursement Accounts that are not limited to vision and dental expenses (unless the participant has a \$0.00 balance on the last day of the plan year).

- c. An Employee's eligibility for the Health Savings Account shall be determined monthly.

The Plan shall be construed, enforced, administered, and the validity determined in accordance with the applicable provisions of the Employee Retirement Income Security Act of 1974, (as amended) if applicable, the Internal Revenue Code of 1986 (as amended), and the laws of the State of Texas. Should any provision be determined to be void, invalid, or unenforceable by any court of competent jurisdiction, the Plan will continue to operate, and for purposes of the jurisdiction of the court only, will be deemed not to include the provision determined to be void.

This Plan is hereby adopted_____.

CITY OF LEANDER

Signed By:_____

Title:_____

APPENDIX A

Related Employers that have adopted this Plan

Name(s):

THIS DOCUMENT IS NOT COMPLETE WITHOUT SECTIONS I THROUGH XIII

PD – 0423

Document ID #

Effective Date:

6/29/2023 1:01 PM

SECTION 125 FLEXIBLE BENEFIT PLAN

SECTION I

PURPOSE

The Employer is establishing this Flexible Benefit Plan in order to make a broader range of benefits available to its Employees and their Beneficiaries. This Plan allows Employees to choose among different types of benefits and select the combination best suited to their individual goals, desires, and needs. These choices include an option to receive certain benefits in lieu of taxable compensation.

In establishing this Plan, the Employer desires to attract, reward, and retain highly qualified, competent Employees, and believes this Plan will help achieve that goal.

It is the intent of the Employer to establish this Plan in conformity with Section 125 of the Internal Revenue Code of 1986, as amended, and in compliance with applicable rules and regulations issued by the Internal Revenue Service. This Plan will grant to eligible Employees an opportunity to purchase qualified benefits which, when purchased alone by the Employer, would not be taxable.

SECTION II

DEFINITIONS

The following words and phrases appear in this Plan and will have the meaning indicated below unless a different meaning is plainly required by the context:

- 2.01 **Administrator** The Employer unless another has been designated in writing by the Employer as Administrator within the meaning of Section 3(16) of ERISA (if applicable).
- 2.02 **Beneficiary** Any person or persons designated by a participating Employee to receive any benefit payable under the Plan on account of the Employee's death.
- 2.02a **Carryover** The amount equal to the lesser of (a) any unused amounts from the immediately preceding Plan Year or (b) an amount up to \$610, as indexed for inflation, paralleling the indexing applicable to the limit on salary reduction contributions under Code Section 125(i) of the Code, except that in no event may the Carryover be less than five dollars (\$5).
- 2.03 **Code** Internal Revenue Code of 1986, as amended.
- 2.04 **Dependent** Any of the following:
- (a) Tax Dependent: A Dependent includes a Participant's spouse and any other person who is a Participant's dependent within the meaning of Code Section 152, provided that, with respect to any plan that provides benefits that are excluded from an Employee's income under Code Section 105, a Participant's dependent (i) is any person within the meaning of Code Section 152, determined without regard to Subsections (b)(1), (b)(2),

and (d)(1)(B) thereof, and (ii) includes any child of the Participant to whom Code Section 152(e) applies (such child will be treated as a dependent of both divorced parents).

(b) Student on a Medically Necessary Leave of Absence: With respect to any plan that is considered a group health plan under Michelle's Law (and not a HIPAA excepted benefit under Code Sections 9831(b), (c) and 9832(c)) and to the extent the Employer is required by Michelle's Law to provide continuation coverage, a Dependent includes a child who qualifies as a Tax Dependent (defined in Section 2.04(a)) because of his or her full-time student status, is enrolled in a group health plan, and is on a medically necessary leave of absence from school. The child will continue to be a Dependent if the medically necessary leave of absence commences while the child is suffering from a serious illness or injury, is medically necessary, and causes the child to lose student status for purposes of the group health plan's benefits coverage. Written physician certification that the child is suffering from a serious illness or injury and that the leave of absence is medically necessary is required at the Administrator's request. The child will no longer be considered a Dependent as of the earliest date that the child is no longer on a medically necessary leave of absence, the date that is one year after the first day of the medically necessary leave of absence, or the date benefits would otherwise terminate under either the group health plan or this Plan. Terms related to Michelle's Law, and not otherwise defined, will have the meaning provided under the Michelle's Law provisions of Code Section 9813.

(c) Adult Children: With respect to any plan that provides benefits that are excluded from an Employee's income under Code Section 105, a Dependent includes a child of a Participant who as of the end of the calendar year has not attained age 27. A 'child' for purpose of this Section 2.04(c) means an individual who is a son, daughter, stepson, or stepdaughter of the Participant, a legally adopted individual of the Participant, an individual who is lawfully placed with the Participant for legal adoption by the Participant, or an eligible foster child who is placed with the Participant by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction. An adult child described in this Section 2.04(c) is only a Dependent with respect to benefits provided after March 30, 2010 (subject to any other limitations of the Plan).

Dependent for purposes of the Dependent Care Reimbursement Plan is defined in Section 9.04(a).

2.05 **Effective Date** The effective date of this Plan as shown in Item B of the Adoption Agreement.

2.06 **Elective Contribution** The amount the Participant authorizes the Employer to reduce compensation for the purchase of benefits elected.

- 2.07 **Eligible Employee** Employee meeting the eligibility requirements for participation as shown in Item C of the Adoption Agreement.
- 2.08 **Employee** Any person employed by the Employer on or after the Effective Date.
- 2.09 **Employer** The entity shown in Item A of the Adoption Agreement, and any Related Employers authorized to participate in the Plan with the approval of the Employer. Related Employers who participate in this Plan are listed in Appendix A to the Adoption Agreement. For the purposes of Section 11.01 and 11.02, only the Employer as shown in Item A of the Adoption Agreement may amend or terminate the Plan.
- 2.10 **Employer Contributions** Amounts that have not been actually received by the Participant and are available to the Participant for the purpose of selecting benefits under the Plan. This term includes Non-Elective Contributions and Elective Contributions through salary reduction.
- 2.11 **Entry Date** The date that an Employee is eligible to participate in the Plan.
- 2.12 **ERISA** The Employee Retirement Income Security Act of 1974, Public Law 93-406 and all regulations and rulings issued thereunder, as amended (if applicable).
- 2.13 **Fiduciary** The named fiduciary shall mean the Employer, the Administrator and other parties designated as such, but only with respect to any specific duties of each for the Plan as may be set forth in a written agreement.
- 2.14 **Health Savings Account** A "health savings account" as defined in Section 223(d) of the Internal Revenue Code of 1986, as amended established by the Participant with the HSA Trustee.
- 2.15 **HSA Trustee** The Trustee of the Health Savings Account which is designated in Section F.8 of the Adoption Agreement.
- 2.16 **Highly Compensated** Any Employee who at any time during the Plan Year is a "highly compensated employee" as defined in Section 414(q) of the Code.
- 2.17 **High Deductible Health Plan** A health plan that meets the statutory requirements for annual deductibles and out-of-pocket expenses set forth in Code section 223(c)(2).
- 2.18 **HIPAA** The Health Insurance Portability and Accountability Act of 1996, as amended.

- 2.19 **Insurer** Any insurance company that has issued a policy pursuant to the terms of this Plan.
- 2.20 **Key Employee** Any Participant who is a "key employee" as defined in Section 416(i) of the Code.
- 2.21 **Non-Elective Contribution** A contribution amount made available by the Employer for the purchase of benefits elected by the Participant.
- 2.22 **Participant** An Employee who has qualified for Plan participation as provided in Item C of the Adoption Agreement.
- 2.23 **Plan** The Plan referred to in Item A of the Adoption Agreement as may be amended from time to time.
- 2.24 **Plan Year** The Plan Year as specified in Item D of the Adoption Agreement.
- 2.25 **Policy** An insurance policy issued as a part of this Plan.
- 2.26 **Preventative Care** Medical expenses which meet the safe harbor definition of "preventative care" set forth in IRS Notice 2004-23, which includes, but is not limited to, the following: (i) periodic health evaluations, such as annual physicals (and the tests and diagnostic procedures ordered in conjunction with such evaluations); (ii) well-baby and/or well-child care; (iii) immunizations for adults and children; (iv) tobacco cessation and obesity weight-loss programs; and (v) screening devices. However, preventative care does not generally include any service or benefit intended to treat an existing illness, injury or condition.
- 2.27 **Recordkeeper** The person designated by the Employer to perform recordkeeping and other ministerial duties with respect to the Medical Expense Reimbursement Plan and/or the Dependent Care Reimbursement Plan.
- 2.28 **Related Employer** Any employer that is a member of a related group of organizations with the Employer shown in Item A of the Adoption Agreement, and as specified under Code Section 414(b), (c) or (m).

SECTION III

ELIGIBILITY, ENROLLMENT, AND PARTICIPATION

- 3.01 **ELIGIBILITY:** Each Employee of the Employer who has met the eligibility requirements of Item C of the Adoption Agreement will be eligible to participate in the Plan on the Entry Date specified or the Effective Date of the Plan, whichever is later. Dependent eligibility to receive benefits under any of the plans listed in Item F of the Adoption Agreement will be described in the documents governing

those benefit plans. To the extent a Dependent is eligible to receive benefits under a plan listed in Item F, an Eligible Employee may elect coverage under this Plan with respect to such Dependent. Notwithstanding the foregoing, life insurance coverage on the life of a Dependent may not be elected under this Plan.

- 3.02 ENROLLMENT: An eligible Employee may enroll (or re-enroll) in the Plan by submitting to the Employer, during an enrollment period, an Election Form which specifies his or her benefit elections for the Plan Year and which meets such standards for completeness and accuracy as the Employer may establish. A Participant's Election Form shall be completed prior to the beginning of the Plan Year, and shall not be effective prior to the date such form is submitted to the Employer. Any Election Form submitted by a Participant in accordance with this Section shall remain in effect until the earlier of the following dates: the date the Participant terminates participation in the Plan; or, the effective date of a subsequently filed Election Form.

A Participant's right to elect certain benefit coverage shall be limited hereunder to the extent such rights are limited in the Policy. Furthermore, a Participant will not be entitled to revoke an election after a period of coverage has commenced and to make a new election with respect to the remainder of the period of coverage unless both the revocation and the new election are on account of and consistent with a change in status, or other allowable events, as determined by Section 125 of the Internal Revenue Code and the regulations thereunder.

- 3.03 TERMINATION OF PARTICIPATION: A Participant shall continue to participate in the Plan until the earlier of the following dates:

- a. The date the Participant terminates employment by death, disability, retirement or other separation from service; or
- b. The date the Participant ceases to work for the Employer as an eligible Employee; or
- c. The date of termination of the Plan; or
- d. The first date a Participant fails to pay required contributions while on a leave of absence.

- 3.04 SEPARATION FROM SERVICE: The existing elections of an Employee who separates from the employment service of the Employer shall be deemed to be automatically terminated and the Employee will not receive benefits for the remaining portion of the Plan Year.

H.B. No. 973 STATE OF TEXAS SECTION 22.004, EDUCATION CODE: Notwithstanding any other law, an employee of a district participating in the uniform group coverage program or providing group health coverage whose resignation is effective after the last day of an instructional year is entitled to participate or be enrolled in the uniform group coverage plan or the group health coverage through the first anniversary of the date participation in or coverage under the uniform group coverage plan or the group health coverage was first made available to district employees for the last instructional year in which the employee was employed by the district.

If an employee's resignation is effective after the last day of an instructional year, the district and the Teacher Retirement System of Texas may not diminish or eliminate the amount of a contribution available to the employee under Chapter 1579 or 1581, Insurance Code, before the last date on which the employee is entitled to participation or enrollment.

- 3.05 QUALIFYING LEAVE UNDER FAMILY LEAVE ACT: Notwithstanding any provision to the contrary in this Plan, if a Participant goes on a qualifying unpaid leave under the Family and Medical Leave Act of 1993 (FMLA), to the extent required by the FMLA, the Employer will continue to maintain the Participant's existing coverage under the Plan with respect to benefits under Section V and

Section VIII of the Plan on the same terms and conditions as though he were still an active Employee. If the Employee opts to continue his coverage, the Employee may pay his Elective Contribution with after-tax dollars while on leave (or pre-tax dollars to the extent he receives compensation during the leave), or the Employee may be given the option to pre-pay all or a portion of his Elective Contribution for the expected duration of the leave on a pre-tax salary reduction basis out of his pre-leave compensation (including unused sick days or vacation) by making a special election to that effect prior to the date such compensation would normally be made available to him (provided, however, that pre-tax dollars may not be utilized to fund coverage during the next plan year), or via other arrangements agreed upon between the Employee and the Administrator (e.g., the Administrator may fund coverage during the leave and withhold amounts upon the Employee's return). Upon return from such leave, the Employee will be permitted to reenter the Plan on the same basis the Employee was participating in the Plan prior to his leave, or as otherwise required by the FMLA.

SECTION IV

CONTRIBUTIONS

4.01 EMPLOYER CONTRIBUTIONS: The Employer may pay the costs of the benefits elected under the Plan with funds from the sources indicated in Item E of the Adoption Agreement. The Employer Contribution may be made up of Non-Elective Contributions and/or Elective Contributions authorized by each Participant on a salary reduction basis.

4.02 IRREVOCABILITY OF ELECTIONS: A Participant may file a written election form with the Administrator before the end of the current Plan Year revising the rate of his contributions or discontinuing such contributions effective as of the first day of the next following Plan Year. The Participant's Elective Contributions will automatically terminate as of the date his employment terminates. Except as provided in this Section 4.02 and Section 4.03, a Participant's election under the Plan is irrevocable for the duration of the plan year to which it relates. The exceptions to the irrevocability requirement which would permit a mid-year election change in benefits and the salary reduction amount elected are set out in the Treasury regulations promulgated under Code Section 125, which include the following:

(a) Change in Status. A Participant may change or revoke his election under the Plan upon the occurrence of a valid change in status, but only if such change or termination is made on account of, and is consistent with, the change in status in accordance with the Treasury regulations promulgated under Section 125. The Employer, in its sole discretion as Administrator, shall determine whether a requested change is on account of and consistent with a change in status, as follows:

- (1) Change in Employee's legal marital status, including marriage, divorce, death of spouse, legal separation, and annulment;
- (2) Change in number of Dependents, including birth, adoption, placement for adoption, and death;
- (3) Change in employment status, including any employment status change affecting benefit eligibility of the Employee, spouse or Dependent, such as termination or commencement of employment, change in hours, strike or lockout, a commencement or return from an unpaid leave of absence, and a change in work site. If the eligibility for either the cafeteria Plan or any underlying benefit plans of the Employer of the Employee, spouse or Dependent relies on the employment status of that individual, and there is a change in that individual's employment status resulting in gaining or losing eligibility under the Plan, this constitutes a valid change in status. This category only applies if benefit eligibility is lost or gained as a result of the event.

- If an Employee terminates and is rehired within 30 days, the Employee is required to step back into his previous election. If the Employee terminates and is rehired after 30 days, the Employee may either step back into the previous election or make a new election;
- (4) Dependent satisfies, or ceases to satisfy, Dependent eligibility requirements due to attainment of age, gain or loss of student status, marriage or any similar circumstances; and
 - (5) Residence change of Employee, spouse or Dependent, affecting the Employee's eligibility for coverage.
- (b) Special Enrollment Rights. If a Participant or his or her spouse or Dependent is entitled to special enrollment rights under a group health plan (other than an excepted benefit), as required by HIPAA under Code Section 9801(f), then a Participant may revoke a prior election for group health plan coverage and make a new election, provided that the election change corresponds with such HIPAA special enrollment right. As required by HIPAA, a special enrollment right will arise in the following circumstances: (i) a Participant or his or her spouse or Dependent declined to enroll in group health plan coverage because he or she had coverage, and eligibility for such coverage is subsequently lost because the coverage was provided under COBRA and the COBRA coverage was exhausted, or the coverage was non-COBRA coverage and the coverage terminated due to loss of eligibility for coverage or the employer contributions for the coverage were terminated; (ii) a new Dependent is acquired as a result of marriage, birth, adoption, or placement for adoption; (iii) the Participant's or his or her spouse's or Dependent's coverage under a Medicaid plan or under a children's health insurance program (CHIP) is terminated as a result of loss of eligibility for such coverage and the Participant requests coverage under the group health plan not later than 60 days after the date of termination of such coverage; or (iv) the Participant, his or her spouse or Dependent becomes eligible for a state premium assistance subsidy from a Medicaid plan or through a state children's insurance program with respect to coverage under the group health plan and the Participant requests coverage under the group health plan not later than 60 days after the date the Participant, his or her spouse or Dependent is determined to be eligible for such assistance. An election change under (iii) or (iv) of this provision must be requested within 60 days after the termination of Medicaid or state health plan coverage or the determination of eligibility for a state premium assistance subsidy, as applicable. Special enrollment rights under the health insurance plan will be determined by the terms of the health insurance plan.
- (c) Certain Judgments, Decrees or Orders. If a judgment, decree or order resulting from a divorce, legal separation, annulment or change in legal custody (including a qualified medical child support order [QMCSO]) requires accident or health coverage for a Participant's child or for a foster child who is a dependent of the Participant, the Participant may have a mid-year election change to add or drop coverage consistent with the Order.
- (d) Entitlement to Medicare or Medicaid. If a Participant, Participant's spouse or Participant's Dependent who is enrolled in an accident or health plan of the Employer becomes entitled to Medicare or Medicaid (other than coverage consisting solely of benefits under Section 1928 of the Social Security Act providing for pediatric vaccines), the Participant may cancel or reduce health coverage under the Employer's Plan. Loss of Medicare or Medicaid entitlement would allow the Participant to add health coverage under the Employer's Plan.
- (e) Family Medical Leave Act. If an Employee is taking leave under the rules of the Family Medical Leave Act, the Employee may revoke previous elections and re-elect benefits upon return to work.
- (f) COBRA Qualifying Event. If an Employee has a COBRA qualifying event (a reduction in hours of the Employee, or a Dependent ceases eligibility), the Employee may increase his pre-tax contributions for coverage under the Employer's Plan if a COBRA event occurs with respect to the

Employee, the Employee's spouse or Dependent. The COBRA rule does not apply to COBRA coverage under another Employer's Plan.

- (g) Changes in Eligibility for Adult Children. To the extent the Employer amends a plan listed in Item F of the Adoption Agreement that provides benefits that are excluded from an Employee's income under Code Section 105 to provide that Adult Children (as defined in Section 2.04(c)) are eligible to receive benefits under the plan, an Eligible Employee may make or change an election under this Plan to add coverage for the Adult Child and to make any corresponding change to the Eligible Employee's coverage that is consistent with adding coverage for the Adult Child.
- (h) Cancellation due to reduction in hours of service. A Participant may cancel group health plan (as that term is defined in Code Section 9832(a)) coverage, except Health FSA coverage, under the Employer's Plan if both of the following conditions are met:
 - (i) The Participant has been in an employment status under which the Participant was reasonably expected to average at least 30 hours of service per week and there is a change in that Participant's status so that the Participant will reasonably be expected to average less than 30 hours of service per week after the change, even if that reduction does not result in the Participant ceasing to be eligible under the group health plan; and
 - (ii) The cancellation of the election of coverage under the Employer's group health plan coverage corresponds to the intended enrollment of the Participant, and any related individuals who cease coverage due to the cancellation, in another plan that provides minimum essential coverage with the new coverage effective no later than the first day of the second month following the month that includes the date the original coverage is cancelled.
- (i) Cancellation due to enrollment in a Qualified Health Plan. A participant may cancel group health plan (as that term is defined in Code Section 9832(a)) coverage, except Health FSA coverage, under the Employer's Plan if both of the following conditions are met:
 - (i) The Participant is eligible for a Special Enrollment Period (as defined in Code Section 9801(f)) to enroll in a Qualified Health Plan (as described in section 1311 of the Patient Protection and Affordable Care Act (PPACA)) through a competitive marketplace established under section 1311(c) of PPACA (Marketplace), pursuant to guidance issued by the Department of Health and Human Services and any other applicable guidance, or the Participant seeks to enroll in a Qualified Health Plan through a Marketplace during the Marketplace's annual open enrollment period; and
 - (ii) The cancellation of the election of coverage under the Employer's group health plan coverage corresponds to the intended enrollment of the Participant and any related individuals who cease coverage due to the cancellation in a Qualified Health Plan through a Marketplace for new coverage that is effective beginning no later than the day immediately following the last day of the original coverage that is cancelled.
- (j) Cancellation due to related individuals' enrollment in a Qualified Health Plan. For elections effective on or after January 1, 2023, a participant may cancel an election of family coverage under a group health plan (as that term is defined in Code Section 9832(a)), except Health FSA coverage, under the Employer's Plan if both of the following conditions are met:

- (i) One or more related individuals are eligible for a Special Enrollment Period (as defined in Code Section 9801(f)) to enroll in a Qualified Health Plan (as described in section 1311 of the Patient Protection and Affordable Care Act (PPACA)) through a competitive marketplace established under section 1311(c) of PPACA (Marketplace), pursuant to guidance issued by the Department of Health and Human Services and any other applicable guidance, or one or more already-covered related individuals seeks to enroll in a Qualified Health Plan through a Marketplace during the Marketplace's annual open enrollment period; and
- (ii) The cancellation of the election of coverage under the Employer's group health plan coverage corresponds to the intended enrollment of the related individual or related individuals who cease coverage due to the cancellation in a Qualified Health Plan through a Marketplace for new coverage that is effective beginning no later than the day immediately following the last day of the original coverage that is cancelled. If the employee does not enroll in a Qualified Health Plan through an Exchange as set forth in Notice 2014-55, the employee must elect self-only coverage (or family coverage including one or more already-covered related individuals) under the group health plan.

Notwithstanding anything to the contrary in this Section 4.02, the change in election rules in this Section 4.02 do not apply to the Medical Expense Reimbursement Plan, or may not be modified with respect to the Medical Expense Reimbursement Plan if the Plan is being administered by a Recordkeeper other than the Employer, unless the Employer and the Recordkeeper otherwise agree in writing.

4.03 OTHER EXCEPTIONS TO IRREVOCABILITY OF ELECTIONS. Other exceptions to the irrevocability of election requirement permit mid-year election changes and apply to all qualified benefits except for Medical Expense Reimbursement Plans, as follows:

- (a) Change in Cost. If the cost of a benefit package option under the Plan significantly increases during the plan year, Participants may (i) make a corresponding increase in their salary reduction amount, (ii) revoke their elections and make a prospective election under another benefit option offering similar coverage, or (iii) revoke election completely if no similar coverage is available, including in spouse or dependent's plan. If the cost significantly decreases, employees may elect coverage even if they had not previously participated and may drop their previous election for a similar coverage option in order to elect the benefit package option that has decreased in cost during the year. If the increased or decreased cost of a benefit package option under the Plan is insignificant, the participant's salary reduction amount shall be automatically adjusted.
- (b) Significant curtailment of coverage.
 - (i) With no loss of coverage. If the coverage under a benefit package option is significantly curtailed or ceases during the Plan Year, affected Participants may revoke their elections for the curtailed coverage and make a new prospective election for coverage under another benefit package option providing similar coverage.
 - (ii) With loss of coverage. If there is a significant curtailment of coverage with loss of coverage, affected Participants may revoke election for curtailed coverage and make a new prospective

election for coverage under another benefit package option providing similar coverage, or drop coverage if no similar benefit package option is available.

- (c) Addition or Significant Improvement of Benefit Package Option. If during the Plan Year a new benefit package option is added or significantly improved, eligible employees, whether currently participating or not, may revoke their existing election and elect the newly added or newly improved option.
- (d) Change in Coverage of a Spouse or Dependent Under Another Employer's Plan. If there is a change in coverage of a spouse, former spouse, or Dependent under another employer's plan, a Participant may make a prospective election change that is on account of and corresponds with a change made under the plan of the spouse or Dependent. This rule applies if (1) mandatory changes in coverage are initiated by either the insurer of spouse's plan or by the spouse's employer, or (2) optional changes are initiated by the spouse's employer or by the spouse through open enrollment.
- (e) Loss of coverage under other group health coverage. If during the Plan Year coverage is lost under any group health coverage sponsored by a governmental or educational institution, a Participant may prospectively change his or her election to add group health coverage for the affected Participant or his or her spouse or dependent.

- 4.04 CASH BENEFIT: Available amounts not used for the purchase of benefits under this Plan may be considered a cash benefit under the Plan payable to the Participant as taxable income to the extent indicated in Item E of the Adoption Agreement.
- 4.05 PAYMENT FROM EMPLOYER'S GENERAL ASSETS: Payment of benefits under this Plan shall be made by the Employer from Elective Contributions which shall be held as a part of its general assets.
- 4.06 EMPLOYER MAY HOLD ELECTIVE CONTRIBUTIONS: Pending payment of benefits in accordance with the terms of this Plan, Elective Contributions may be retained by the Employer in a separate account or, if elected by the Employer and as permitted or required by regulations of the Internal Revenue Service, Department of Labor or other governmental agency, such amounts of Elective Contributions may be held in a trust pending payment.
- 4.07 MAXIMUM EMPLOYER CONTRIBUTIONS: With respect to each Participant, the maximum amount made available to pay benefits for any Plan Year shall not exceed the Employer's Contribution specified in the Adoption Agreement and as provided in this Plan.

SECTION V

GROUP MEDICAL INSURANCE BENEFIT PLAN

- 5.01 PURPOSE: These benefits provide the group medical insurance benefits to Participants.
- 5.02 ELIGIBILITY: Eligibility will be as required in Items F(1), F(3), and F(4) of the Adoption Agreement.
- 5.03 DESCRIPTION OF BENEFITS: The benefits available under this Plan will be as defined in Items F(1), F(3), and F(4) of the Adoption Agreement.
- 5.04 TERMS, CONDITIONS AND LIMITATIONS: The terms, conditions and limitations of the benefits offered shall be as specifically described in the Policy identified in the Adoption Agreement.
- 5.05 COBRA: To the extent required by Section 4980B of the Code and Sections 601 through 607 of ERISA, Participants and Dependents shall be entitled to continued participation in this Group Medical Insurance Benefit Plan by contributing monthly (from their personal assets previously subject to taxation) 102% of the amount of the premium for the desired benefit during the period that such individual is entitled to elect continuation coverage, provided, however, in the event the continuation period is extended to 29 months due to disability, the premium to be paid for continuation coverage for the 11 month extension period shall be 150% of the applicable premium.
- 5.06 SECTION 105 AND 106 PLAN: It is the intention of the Employer that these benefits shall be eligible for exclusion from the gross income of the Participants covered by this benefit plan, as provided in Code Sections 105 and 106, and all provisions of this benefit plan shall be construed in a manner consistent with that intention. It is also the intention of the Employer to comply with the provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 as outlined in the policies identified in the Adoption Agreement.
- 5.07 CONTRIBUTIONS: Contributions for these benefits will be provided by the Employer on behalf of a Participant as provided for in Item E of the Adoption Agreement.
- 5.08 UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT: Notwithstanding anything to the contrary herein, the Group Medical Insurance Benefit Plan shall comply with the applicable provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 (Public Law 103-353).

SECTION VI

DISABILITY INCOME BENEFIT PLAN

- 6.01 PURPOSE: This benefit provides disability insurance designated to provide income to Participants during periods of absence from employment because of disability.
- 6.02 ELIGIBILITY: Eligibility will be as required in Item F(2) of the Adoption Agreement.
- 6.03 DESCRIPTION OF BENEFITS: The benefits available under this Plan will be as defined in Item F(2) of the Adoption Agreement.

- 6.04 TERMS, CONDITIONS AND LIMITATIONS: The terms, conditions and limitations of the Disability Income Benefits offered shall be as specifically described in the Policy identified in the Adoption Agreement.
- 6.05 SECTION 104 AND 106 PLAN: It is the intention of the Employer that the premiums paid for these benefits shall be eligible for exclusion from the gross income of the Participants covered by this benefit plan, as provided in Code Sections 104 and 106, and all provisions of this benefit plan shall be construed in a manner consistent with that intention.
- 6.06 CONTRIBUTIONS: Contributions for this benefit will be provided by the Employer on behalf of a Participant as provided for in Item E of the Adoption Agreement.

SECTION VII

GROUP AND INDIVIDUAL LIFE INSURANCE PLAN

- 7.01 PURPOSE: This benefit provides group life insurance benefits to Participants and may provide certain individual policies as provided for in Item F(5) of the Adoption Agreement.
- 7.02 ELIGIBILITY: Eligibility will be as required in Item F(5) of the Adoption Agreement.
- 7.03 DESCRIPTION OF BENEFITS: The benefits available under this Plan will be as defined in Item F(5) of the Adoption Agreement.
- 7.04 TERMS, CONDITIONS, AND LIMITATIONS: The terms, conditions, and limitations of the group life insurance are specifically described in the Policy identified in the Adoption Agreement.
- 7.05 SECTION 79 PLAN: It is the intention of the Employer that the premiums paid for the benefits described in Item F(5) of the Adoption Agreement shall be eligible for exclusion from the gross income of the Participants covered by this benefit plan to the extent provided in Code Section 79, and all provisions of this benefit plan shall be construed in a manner consistent with that intention.
- 7.06 CONTRIBUTIONS: Contributions for this benefit will be provided by the Employer on behalf of a Participant as provided for in Item E of the Adoption Agreement. Any individual policies purchased by the Employer for the Participant will be owned by the Participant.

SECTION VIII

MEDICAL EXPENSE REIMBURSEMENT PLAN

- 8.01 PURPOSE: The Medical Expense Reimbursement Plan is designed to provide for reimbursement of Eligible Medical Expenses (as defined in Section 8.04) that are not reimbursed under an insurance plan, through damages, or from any other source. It is the intention of the Employer that amounts allocated for this benefit shall be eligible for exclusion from gross income, as provided in Code Sections 105 and 106, for Participants who elect this benefit and all provisions of this Section VIII shall be construed in a manner consistent with that intention.
- 8.02 ELIGIBILITY: The eligibility provisions are set forth in Item F(7) of the Adoption Agreement.

8.03 TERMS, CONDITIONS, AND LIMITATIONS:

- a. Accounts. The Reimbursement Recordkeeper shall establish a recordkeeping account for each Participant. The Reimbursement Recordkeeper shall maintain a record of each account on an on-going basis, increasing the balances as contributions are credited during the year and decreasing the balances as Eligible Medical Expenses are reimbursed. No interest shall be payable on amounts recorded in any Participant's account.
- b. Maximum benefit. The maximum amount of reimbursement for each Participant shall be limited to the amount of the Participant's Elective Contribution allocated to the program during the Plan Year, not to exceed the maximum amount set forth in Item F(7) of the Adoption Agreement.
- c. Claim Procedure. In order to be reimbursed for any medical expenses incurred during the Plan Year, the Participant shall complete the form(s) provided for such purpose by the Reimbursement Recordkeeper. The Participant shall submit the completed form to the Reimbursement Recordkeeper with an original bill or other proof of the expense acceptable to the Reimbursement Recordkeeper. No reimbursement shall be made on the basis of an incomplete form or inadequate evidence of expense as determined by the Reimbursement Recordkeeper. Forms for reimbursement of Eligible Medical Expenses must be submitted no later than the last day of the third month following the last day of the Plan Year during which the Eligible Medical Expenses were incurred. Reimbursement payments shall only be made to the Participant, or the Participant's legal representative in the event of incapacity or death of the Participant. Forms for reimbursement shall be reviewed in accordance with the claims procedure set forth in Section XII.
- d. Funding. The funding of the Medical Reimbursement Plan shall be through contributions by the Employer from its general assets to the extent of Elective Contributions directed by Participants. Such contributions shall be made by the Employer when benefit payments and account administrative expenses become due and payable under this Medical Expense Reimbursement Plan.
- e. Forfeiture. Subject to Section 8.06 and 8.07, any amounts remaining to the credit of the Participant at the end of the Plan Year and not used for Eligible Medical Expenses incurred during the Participant's participation during the Plan Year shall be forfeited and shall remain assets of the Plan. With respect to a Participant who terminates employment with the Employer and who has not elected to continue coverage under this Plan pursuant to COBRA rights referenced under Section 8.03(f) herein, such Participant shall not be entitled to reimbursement for Eligible Medical Expenses incurred after his termination date regardless if such Participant has any amounts of Employer Contributions remaining to his credit. Upon the death of any Participant who has any amounts of Employer Contributions remaining to his credit, a dependent of the Participant may elect to continue to claim reimbursement for Eligible Medical Expenses in the same manner as the Participant could have for the balance of the Plan Year.
- f. COBRA. To the extent required by Section 4980B of the Code and Sections 601 through 607 of ERISA ("COBRA"), a Participant and a Participant's Dependents shall be entitled to elect continued participation in this Medical Expense Reimbursement Plan only through the end of the plan year in which the qualifying event occurs, by contributing monthly (from their personal assets previously subject to taxation) to the Employer/Administrator, 102% of the amount of desired reimbursement through the end of the Plan Year in which the qualifying event occurs. Specifically, such individuals will be eligible for COBRA continuation coverage only if they

have a positive Medical Expense Reimbursement Account balance on the date of the qualifying event. Participants who have a deficit balance in their Medical Expense Reimbursement Account on the date of their qualifying event shall not be entitled to elect COBRA coverage. In lieu of COBRA, Participants may continue their coverage through the end of the current Plan Year by paying those premiums out of their last paycheck on a pre-tax basis.

- g. Nondiscrimination. Benefits provided under this Medical Expense Reimbursement Plan shall not be provided in a manner that discriminates in favor of Employees or Dependents who are highly compensated individuals, as provided under Section 105(h) of the Code and regulations promulgated thereunder.
- h. Uniform Coverage Rule. Notwithstanding that a Participant has not had withheld and credited to his account all of his contributions elected with respect to a particular Plan Year, the entire aggregate annual amount elected with respect to this Medical Expense Reimbursement Plan (increased by any Carryover to the Plan Year), shall be available at all times during such Plan Year to reimburse the participant for Eligible Medical Expenses with respect to this Medical Expense Reimbursement Plan. To the extent contributions with respect to this Medical Expense Reimbursement Plan are insufficient to pay such Eligible Medical Expenses, it shall be the Employer's obligation to provide adequate funds to cover any short fall for such Eligible Medical Expenses for a Participant; provided subsequent contributions with respect to this Medical Expense Reimbursement Plan by the Participant shall be available to reimburse the Employer for funds advanced to cover a previous short fall.
- i. Uniformed Services Employment and Reemployment Rights Act. Notwithstanding anything to the contrary herein, this Medical Expense Reimbursement Plan shall comply with the applicable provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 (Public Law 103-353).
- j. Proration of Limit. In the event that the Employer has purchased a uniform coverage risk policy from the Recordkeeper, then the Maximum Coverage amount specified in Section F.7 of the Adoption Agreement shall be pro rated with respect to (i) an Employee who becomes a Participant and enters the Plan during the Plan Year, and (ii) short plan years initiated by the Employer. Such Maximum Coverage amount will be pro rated by dividing the annual Maximum Coverage amount by 12, and multiplying the quotient by the number of remaining months in the Plan Year for the new Participant or the number of months in the short Plan Year, as applicable.
- k. Continuation Coverage for Certain Dependent Children. In the event that benefits under the Medical Expense Reimbursement Plan does not qualify for the exception from the portability rules of HIPAA, then, effective for Plan Years beginning on or after October 9, 2009, notwithstanding the foregoing provisions, coverage for a Dependent child who is enrolled in the Medical Expense Reimbursement Plan as a student at a post-secondary educational institution will not terminate due to a medically necessary leave of absence before a date that is the earlier of:
 - the date that is one year after the first day of the medically necessary leave of absence; or
 - the date on which such coverage would otherwise terminate under the terms of the Plan.

For purposes of this paragraph, “medically necessary leave of absence” means a leave of absence of the child from a post-secondary educational institution, or any other change in enrollment of the child at the institution, that: (i) commences while the child is suffering from a

serious illness or injury; (ii) is medically necessary; and (iii) causes the child to lose student status for purposes of coverage under the terms of the Plan. A written certification must be provided by a treating physician of the dependent child to the Plan in order for the continuation coverage requirement to apply. The physician's certification must state that the child is suffering from a serious illness or injury and that the leave of absence (or other change in enrollment) is medically necessary.

8.04 ELIGIBLE MEDICAL EXPENSES:

- a. Eligible Medical Expense in General. The phrase 'Eligible Medical Expense' means any expense incurred by a Participant or any of his Dependents (subject to the restrictions in Sections 8.04(b) and (c)) during a Plan Year that (i) qualifies as an expense incurred by the Participant or Dependents for medical care as defined in Code Section 213(d) and meets the requirements outlined in Code Section 125, (ii) is excluded from gross income of the Participant under Code Section 105(b), and (iii) has not been and will not be paid or reimbursed by any other insurance plan, through damages, or from any other source. Notwithstanding the above, capital expenditures are not Eligible Medical Expenses under this Plan.
- b. Expenses Incurred After Commencement of Participation. Only medical care expenses incurred by a Participant or the Participant's Dependent(s) on or after the date such Participant commenced participation in the Medical Expense Reimbursement Plan shall constitute an Eligible Medical Expense.
- c. Eligible Expenses Incurred by Dependents. For purposes of this Section, Eligible Medical Expenses incurred by Dependents defined in Section 2.04(c) are eligible for reimbursement if incurred after March 30, 2010; Eligible Medical Expenses incurred by Dependents defined in Sections 2.04(a) and (b) are eligible for reimbursement if incurred either before or after March 30, 2010 (subject to the restrictions of Section 8.04(b)).
- d. Health Savings Accounts. If the Employer has elected in Item F.8 of the Adoption Agreement to allow Eligible Employees to contribute to Health Savings Accounts under the Plan, then for a Participant who is eligible for and elects to contribute to a Health Savings Accounts, Eligible Medical Expenses shall be limited as set forth in Item F.8 of the Adoption Agreement.

8.05 USE OF DEBIT CARD: In the event that the Employer elects to allow the use of debit cards ("Debit Cards") for reimbursement of Eligible Medical Expenses under the Medical Expense Reimbursement Plan, the provisions described in this Section shall apply.

- a. Substantiation. The following procedures shall be applied for purposes of substantiating claimed Eligible Medical Expenses after the use of a Debit Card to pay the claimed Eligible Medical Expense:
 - (i) If the dollar amount of the transaction at a health care provider equals the dollar amount of the co-payment for that service under the Employer's major medical plan of the specific employee-cardholder, the charge is fully substantiated without the need for submission of a receipt or further review.
 - (ii) If the merchant, service provider, or other independent third-party (e.g., pharmacy benefit manager), at the time and point of sale, provides information to

verify to the Recordkeeper (including electronically by e-mail, the internet, intranet, or telephone) that the charge is for a medical expense, the charge is fully substantiated without the need for submission of a receipt or further review.

- b. Status of Charges. All charges to a Debit Card, other than co-payments and real-time substantiation as described in Subsection (a) above, are treated as conditional pending confirmation of the charge, and additional third-party information, such as merchant or service provider receipts, describing the service or product, the date of the service or sale, and the amount, must be submitted for review and substantiation.
- c. Correction Procedures for Improper Payments. In the event that a claim has been reimbursed and is subsequently identified as not qualifying for reimbursement, one or all of the following procedures shall apply:
 - (i) First, upon the Recordkeeper's identification of the improper payment, the Eligible Employee will be required to pay back to the Plan an amount equal to the improper payment.
 - (ii) Second, where the Eligible Employee does not pay back to the Plan the amount of the improper payment, the Employer will have the amount of the improper payment withheld from the Eligible Employee's wages or other compensation to the extent consistent with applicable law.
 - (iii) Third, if the improper payment still remains outstanding, the Plan may utilize a claim substitution or offset approach to resolve improper claims payments.
 - (iv) If the above correction efforts prove unsuccessful, or are otherwise unavailable, the Eligible Employee will remain indebted to the Employer for the amount of the improper payment. In that event and consistent with its business practices, the Employer may treat the payment as it would any other business indebtedness.
 - (v) In addition to the above, the Employer and the Plan may take other actions they may deem necessary, in their sole discretion, to ensure that further violations of the terms of the Debit Card do not occur, including, but not limited to, denial of access to the Debit Card until the indebtedness is repaid by the Eligible Employee.
- d. Intent to Comply with Rev. Rul. 2003-43. It is the Employer's intent that any use of Debit Cards to pay Eligible Medical Expenses shall comply with the guidelines for use of such cards set forth in Rev. Rul. 2003-43, and this Section 8.05 shall be construed and interpreted in a manner necessary to comply with such guidelines.

8.06 GRACE PERIOD: If the Employer elects in Section F.7 of the Adoption Agreement to permit a Grace Period with respect to the Medical Reimbursement Plan, the provisions of this Section 8.06 shall apply. Notwithstanding anything to the contrary herein and in accordance with Internal Revenue Service Notice 2005-42, a Participant who has unused contributions relating to the Medical Reimbursement Plan from the immediately preceding Plan Year, and who incurs Eligible Medical Expenses for such qualified benefit during the Grace Period, may be paid or reimbursed for those Eligible Medical Expenses from the unused contributions as if the expenses had been incurred in the immediately preceding Plan Year. For purposes of this Section, 'Grace Period' shall mean the period extending to the 15th day of the third calendar month after the end of the immediately preceding Plan Year to which it relates. Eligible

Medical Expenses incurred during the Grace Period shall be reimbursed first from unused contributions allocated to the Medical Reimbursement Plan for the prior Plan Year, and then from unused contributions for the current Plan Year, if participant is enrolled in current Plan Year.

- 8.07 CARRYOVER: If the Employer elects in Section F.7 of the Adoption Agreement to permit a Carryover with respect to the Medical Reimbursement Plan, the provisions of this Section 8.07 shall apply. Notwithstanding anything to the contrary herein and in accordance with Internal Revenue Service Notice 2013-71, the Carryover for a Participant who has an amount remaining unused as of the end of the run-off period for the Plan Year, may be used to pay or reimburse Eligible Medical Expenses during the following entire Plan Year. The Carryover does not count against or otherwise affect the Maximum benefit set forth in Section 8.03 (b). Eligible Medical Expenses incurred during a Plan Year shall be reimbursed first from unused contributions for the current Plan Year, and then from any Carryover carried over from the preceding Plan Year. Any unused amounts from the prior Plan Year that are used to reimburse a current Plan Year expense (a) reduce the amounts available to pay prior Plan Year expenses during the run-off period, (b) must be counted against any Carryover amount from the prior Plan Year, and (c) cannot exceed the maximum Carryover from the prior Plan Year. If the Employer elects to apply Section 8.06 in Section F.7 of the Adoption Agreement, this Section 8.07 shall not apply.
- 8.08 QUALIFIED RESERVIST DISTRIBUTIONS: Notwithstanding anything in the Plan to the contrary, an individual who, by reason of being a member of a reserve component (as defined in 37 U.S.C. § 101), is ordered or called to active duty for a period in excess of 179 days or for an indefinite period may elect to receive a distribution of all or a portion of the unused Elective Contributions in his or her Account relating to the Medical Expense Reimbursement Plan if the distribution is made during the period beginning on the date of such order or call and ending on the last date that reimbursements could otherwise be made under the Plan for the Plan Year that includes the date of such order or call. If the distribution is for the entire amount of unused Elective Contributions available in the Medical Expense Reimbursement Plan, then no additional reimbursement requests will be processed for the remainder of the Plan Year.

SECTION IX

DEPENDENT CARE REIMBURSEMENT PLAN

- 9.01 PURPOSE: The Dependent Care Reimbursement Plan is designed to provide for reimbursement of certain employment-related dependent care expenses of the Participant. It is the intention of the Employer that amounts allocated for this benefit shall be eligible for exclusion from gross income, as provided in Code Section 129, for Participants who elect this benefit, and all provisions of this Section IX shall be construed in a manner consistent with that intention.
- 9.02 ELIGIBILITY: The eligibility provisions are set forth in Item F(6) of the Adoption Agreement.
- 9.03 TERMS, CONDITIONS, AND LIMITATIONS:
- a. Accounts. The Reimbursement Recordkeeper shall establish a recordkeeping account for each Participant. The Reimbursement Recordkeeper shall maintain a record of each account on an on-going basis, increasing the balances as contributions are credited during the year and decreasing the balances as Eligible Dependent Care Expenses are reimbursed. No interest shall be payable on amounts recorded in any Participant's account.

- b. Maximum Benefit. The maximum amount of reimbursement for each Participant shall be limited to the amount of the Participant's allocation to the program during the Plan Year not to exceed the maximum amount set forth in Item F(6) of the adoption agreement.

For purpose of this Section IX, the phrase "earned income" shall mean wages, salaries, tips and other employee compensation, but only if such amounts are includible in gross income for the taxable year. A Participant's spouse who is physically or mentally incapable of self-care as described in Section 9.04(a)(ii) or a spouse who is a full-time student within the meaning of Code Section 21(e)(7) shall be deemed to have earned income for each month in which such spouse is so disabled (or a full-time student). The amount of such deemed earned income shall be \$250 per month in the case of one Dependent and \$500 per month in the case of two or more Dependents.

- c. Claim Procedure. In order to be reimbursed for any dependent care expenses incurred during the Plan Year, the Participant shall complete the form(s) provided for such purpose by the Reimbursement Recordkeeper. The Participant shall submit the completed form to the Reimbursement Recordkeeper with an original bill or other proof of the expense from an independent third party acceptable to the Reimbursement Recordkeeper. No reimbursement shall be made on the basis of an incomplete form or inadequate evidence of the expense as determined by the Reimbursement Recordkeeper. Claims for reimbursement of Eligible Dependent Care Expenses must be submitted no later than the last day of the third month following the last day of the Plan Year during which the Eligible Dependent Care Expenses were incurred. Reimbursement payments shall only be made to the Participant, or the Participant's legal representative in the event of the incapacity or death of the Participant. Forms for reimbursement shall be reviewed in accordance with the claims procedure set forth in Section XII.
- d. Funding. The funding of the Dependent Care Reimbursement Plan shall be through contributions by the Employer from its general assets to the extent of Elective Contributions directed by Participants. Such contributions shall be made by the Employer when benefit payments and account administration expenses become due and payable under this Dependent Care Expense Reimbursement Plan.
- e. Forfeiture. Any amounts remaining to the credit of the Participant at the end of the Plan Year and not used for Eligible Dependent Care Expenses incurred during the Plan Year shall be forfeited and remain assets of the Plan.
- f. Nondiscrimination. Benefits provided under this Dependent Care Reimbursement Plan shall not be provided in a manner that discriminates in favor of Highly Compensated Employees (as defined in Code Section 414(q)) or their dependents, as provided in Code Section 129. In addition, no more than 25 percent of the aggregate Eligible Dependent Care Expenses shall be reimbursed during a Plan Year to five percent owners, as provided in Code Section 129.

9.04 DEFINITIONS:

- a. "Dependent" (for purposes of this Section IX) means any individual who is:
 - (i) a Participant's qualifying child (as defined in Code Section 152 (c)) who has not attained the age of 13; or

- (ii) a dependent (qualifying child or qualifying relative, as defined in Code Section 152 (c) and (d), respectively) or the spouse of a Participant who is physically or mentally incapable of self-care, and who has the same principal place of abode as the taxpayer for more than half of the taxable year. For purposes of this Dependent Care Reimbursement Plan, an individual shall be considered physically or mentally incapable of self-care if, as a result of a physical or mental defect, the individual is incapable of caring for his or her hygienic or nutritional needs, or requires full-time attention of another person for his or her own safety or the safety of others.
- b. "Dependent Care Center" (for purposes of this Section IX) shall be a facility which:
 - (i) provides care for more than six individuals (other than individuals who reside at the facility);
 - (ii) receives a fee, payment, or grant for providing services for any of the individuals (regardless of whether such facility is operated for profit); and
 - (iii) satisfies all applicable laws and regulations of a state or unit of local government.
- c. "Eligible Dependent Care Expenses" (for purposes of this Section IX) shall mean expenses incurred by a Participant which are:
 - (i) incurred for the care of a Dependent of the Participant or for related household services;
 - (ii) paid or payable to a Dependent Care Service Provider; and
 - (iii) incurred to enable the Participant to be gainfully employed for any period for which there are one or more Dependents with respect to the Participant.

"Eligible Dependent Care Expenses" shall not include expenses incurred for services outside the Participant's household for the care of a Dependent unless such Dependent is (i) a qualifying child (as defined in Code Section 152 (c)) under the age of 13, or (ii) a dependent (qualifying child or qualifying relative, as defined in Code Section 152 (c) and (d), respectively)), who is physically or mentally incapable of self-care, and who has the same principal place of abode as the Participant for more than half of the taxable year, or (iii) the spouse of a Participant who is physically or mentally incapable of self-care, and who has the same principal place of abode as the Participant for more than half of the taxable year. Eligible Dependent Care Expenses shall be deemed to be incurred at the time the services to which the expenses relate are rendered.
- d. "Dependent Care Service Provider" (for purposes of this Section IX) means:
 - (i) a Dependent Care Center, or
 - (ii) a person who provides care or other services described in Section 9.04(b) and who is not a related individual described in Section 129(c) of the Code.

SECTION X

HEALTH SAVINGS ACCOUNTS

- 10.01 PURPOSE: If elected by the Employer in Section F.8 of the Adoption Agreement, the Plan will permit pre-tax contributions to the Health Savings Account, and the provisions of this Article X shall apply.
- 10.02 BENEFITS: A Participant can elect benefits under the Health Savings Accounts portion of this Plan by electing to pay his or her Health Savings Account contributions on a pre-tax salary reduction basis. In

addition, the Employer may make contributions to the Health Savings Account for the benefit of the Participant.

10.03 TERMS, CONDITIONS AND LIMITATION:

- a. Maximum Benefit. The maximum annual contributions that may be made to a Participant's Health Savings Account under this Plan is set forth in Section F.8 of the Adoption Agreement.
- b. Mid-Year Election Changes. Notwithstanding any to the contrary herein, a Participant election with respect to contributions for the Health Savings Account shall be revocable during the duration of the Plan Year to which the election relates. Consequently, a Participant may change his or her election with respect to contributions for the Health Savings Account at any time.

10.04 RESTRICTIONS ON MEDICAL REIMBURSEMENT PLAN: If the Employer has elected in Section F.8 of the Adoption Agreement both Health Savings Accounts under this Plan and the Medical Expense Reimbursement Plan, then the Eligible Medical Expenses that may be reimbursed under the Medical Reimbursement Plan for Participants who are eligible for and elect to participate in Health Savings Accounts shall be limited as set forth in Section F.8 of the Adoption Agreement.

10.05 NO ESTABLISHMENT OF ERISA PLAN: It is the intent of the Employer that the establishment of Health Savings Accounts are completely voluntary on the part of Participants, and that, in accordance with Department of Labor Field Assistance Bulletin 2004-1, the Health Savings Accounts are not "employee welfare benefit plans" for purposes of Title I of ERISA.

SECTION XI

AMENDMENT AND TERMINATION

- 11.01 AMENDMENT: The Employer shall have the right at any time, and from time to time, to amend, in whole or in part, any or all of the provisions of this Plan, provided that no such amendment shall change the terms and conditions of payment of any benefits to which Participants and covered dependents otherwise have become entitled to under the provisions of the Plan, unless such amendment is made to comply with federal or local laws or regulations. The Employer also shall have the right to make any amendment retroactively which is necessary to bring the Plan into conformity with the Code. In addition, the Employer may amend any provisions or any supplements to the Plan and may merge or combine supplements or add additional supplements to the Plan, or separate existing supplements into an additional number of supplements.
- 11.02 TERMINATION: The Employer shall have the right at any time to terminate this Plan, provided that such termination shall not eliminate any obligations of the Employer which therefore have arisen under the Plan.

SECTION XII

ADMINISTRATION

12.01 NAMED FIDUCIARIES: The Administrator shall be the fiduciary of the Plan.

12.02 APPOINTMENT OF RECORDKEEPER: The Employer may appoint a Reimbursement Recordkeeper which shall have the power and responsibility of performing recordkeeping and other ministerial duties arising under the Medical Expense Reimbursement Plan and the Dependent Care Reimbursement Plan provisions of this Plan. The Reimbursement Recordkeeper shall serve at the pleasure of, and may be removed by, the Employer without cause. The Recordkeeper shall receive reasonable compensation for its services as shall be agreed upon from time to time between the Administrator and the Recordkeeper.

12.03 POWERS AND RESPONSIBILITIES OF ADMINISTRATOR:

- a. General. The Administrator shall be vested with all powers and authority necessary in order to amend and administer the Plan, and is authorized to make such rules and regulations as it may deem necessary to carry out the provisions of the Plan. The Administrator shall determine any questions arising in the administration (including all questions of eligibility and determination of amount, time and manner of payments of benefits), construction, interpretation and application of the Plan, and the decision of the Administrator shall be final and binding on all persons.
- b. Recordkeeping. The Administrator shall keep full and complete records of the administration of the Plan. The Administrator shall prepare such reports and such information concerning the Plan and the administration thereof by the Administrator as may be required under the Code or ERISA and the regulations promulgated thereunder.
- c. Inspection of Records. The Administrator shall, during normal business hours, make available to each Participant for examination by the Participant at the principal office of the Administrator a copy of the Plan and such records of the Administrator as may pertain to such Participant. No Participant shall have the right to inquire as to or inspect the accounts or records with respect to other Participants.

12.04 COMPENSATION AND EXPENSES OF ADMINISTRATOR: The Administrator shall serve without compensation for services as such. All expenses of the Administrator shall be paid by the Employer. Such expenses shall include any expense incident to the functioning of the Plan, including, but not limited to, attorneys' fees, accounting and clerical charges, actuary fees and other costs of administering the Plan.

12.05 LIABILITY OF ADMINISTRATOR: Except as prohibited by law, the Administrator shall not be liable personally for any loss or damage or depreciation which may result in connection with the exercise of duties or of discretion hereunder or upon any other act or omission hereunder except when due to willful misconduct. In the event the Administrator is not covered by fiduciary liability insurance or similar insurance arrangements, the Employer shall indemnify and hold harmless the Administrator from any and all claims, losses, damages, expenses (including reasonable counsel fees approved by the Administrator) and liability (including any reasonable amounts paid in settlement with the Employer's approval) arising from any act or omission of the Administrator, except when the same is determined to be due to the willful misconduct of the Administrator by a court of competent jurisdiction.

12.06 DELEGATIONS OF RESPONSIBILITY: The Administrator shall have the authority to delegate, from time to time, all or any part of its responsibilities under the Plan to such person or persons as it may deem advisable and in the same manner to revoke any such delegation of responsibilities which shall have the same force and effect for all purposes hereunder as if such action had been taken by the Administrator. The Administrator shall not be liable for any acts or omissions of any such delegate. The delegate shall report periodically to the Administrator concerning the discharge of the delegated responsibilities.

- 12.07 RIGHT TO RECEIVE AND RELEASE NECESSARY INFORMATION: The Administrator may release or obtain any information necessary for the application, implementation and determination of this Plan or other Plans without consent or notice to any person. This information may be released to or obtained from any insurance company, organization, or person subject to applicable law. Any individual claiming benefits under this Plan shall furnish to the Administrator such information as may be necessary to implement this provision.
- 12.08 CLAIM FOR BENEFITS: To obtain payment of any benefits under the Plan a Participant must comply with the rules and procedures of the particular benefit program elected pursuant to this Plan under which the Participant claims a benefit.
- 12.09 GENERAL CLAIMS REVIEW PROCEDURE: This provision shall apply only to the extent that a claim for benefits is not governed by a similar provision of a benefit program available under this Plan or is not governed by Section 12.10.

- a. Initial Claim for Benefits. Each Participant may submit a claim for benefits to the Administrator as provided in Section 12.08. A Participant shall have no right to seek review of a denial of benefits, or to bring any action in any court to enforce a claim for benefits prior to his filing a claim for benefits and exhausting his rights to review under this section.

When a claim for benefits has been filed properly, such claim for benefits shall be evaluated and the claimant shall be notified of the approval or the denial within (90) days after the receipt of such claim unless special circumstances require an extension of time for processing the claim. If such an extension of time for processing is required, written notice of the extension shall be furnished to the claimant prior to the termination of the initial ninety (90) day period which shall specify the special circumstances requiring an extension and the date by which a final decision will be reached (which date shall not be later than one hundred and eighty (180) days after the date on which the claim was filed.) A claimant shall be given a written notice in which the claimant shall be advised as to whether the claim is granted or denied, in whole or in part. If a claim is denied, in whole or in part, the claimant shall be given written notice which shall contain (a) the specific reasons for the denial, (b) references to pertinent plan provisions upon which the denial is based, (c) a description of any additional material or information necessary to perfect the claim and an explanation of why such material or information is necessary, and (d) the claimant's rights to seek review of the denial.

- b. Review of Claim Denial. If a claim is denied, in whole or in part, the claimant shall have the right to request that the Administrator review the denial, provided that the claimant files a written request for review with the Administrator within sixty (60) days after the date on which the claimant received written notification of the denial. A claimant (or his duly authorized representative) may review pertinent documents and submit issues and comments in writing to the Administrator. Within sixty (60) days after a request is received, the review shall be made and the claimant shall be advised in writing of the decision on review, unless special circumstances require an extension of time for processing the review, in which case the claimant shall be given a written notification within such initial sixty (60) day period specifying the reasons for the extension and when such review shall be completed (provided that such review shall be completed within one hundred and twenty (120) days after the date on which the request for review was filed.) The decision on review shall be forwarded to the claimant in writing and shall include specific reasons for the decision and references to plan provisions upon which the decision is based. A decision on review shall be final and binding on all persons.

- c. Exhaustion of Remedies. If a claimant fails to file a request for review in accordance with the procedures herein outlined, such claimant shall have no rights to review and shall have no right to bring action in any court and the denial of the claim shall become final and binding on all persons for all purposes.

12.10 SPECIAL CLAIMS REVIEW PROCEDURE: The provisions of this Section 12.10 shall be applicable to claims under the Medical Expense Reimbursement Plan and the Group Medical Insurance Plan, effective on the first day of the first Plan Year beginning on or after July 1, 2002, but in no event later than January 1, 2003, provided such plans are subject to ERISA.

- a. Benefit Denials: The Administrator is responsible for evaluating all claims for reimbursement under the Medical Expense Reimbursement Plan and the Group Medical Insurance Plan.

The Administrator will decide a Participant's claim within a reasonable time not longer than 30 days after it is received. This time period may be extended for an additional 15 days for matters beyond the control of the Administrator, including in cases where a claim is incomplete. The Participant will receive written notice of any extension, including the reasons for the extension and information on the date by which a decision by the Administrator is expected to be made. The Participant will be given 45 days in which to complete an incomplete claim. The Administrator may secure independent medical or other advice and require such other evidence as it deems necessary to decide the claim.

If the Administrator denies the claim, in whole or in part, the Participant will be furnished with a written notice of adverse benefit determination setting forth:

1. the specific reason or reasons for the denial;
2. reference to the specific Plan provision on which the denial is issued;
3. a description of any additional material or information necessary for the Participant to complete his claim and an explanation of why such material or information is necessary, and
4. appropriate information as to the steps to be taken if the Participant wishes to appeal the Administrator's determination, including the participant's right to submit written comments and have them considered, his right to review (on request and at no charge) relevant documents and other information, and his right to file suit under ERISA with respect to any adverse determination after appeal of his claim.

- b. Appealing Denied Claims: If the Participant's claim is denied in whole or in part, he may appeal to the Administrator for a review of the denied claim. The appeal must be made in writing within 180 days of the Administrator's initial notice of adverse benefit determination, or else the participant will lose the right to appeal the denial. If the Participant does not appeal on time, he will also lose his right to file suit in court, as he will have failed to exhaust his internal administrative appeal rights, which is generally a prerequisite to bringing suit.

A Participant's written appeal should state the reasons that he feels his claim should not have been denied. It should include any additional facts and/or documents that the Participant feels support his claim. The Participant may also ask additional questions and make written comments, and may review (on request and at no charge) documents and other information

relevant to his appeal. The Administrator will review all written comment the Participant submits with his appeal.

- c. Review of Appeal: The Administrator will review and decide the Participant's appeal within a reasonable time not longer than 60 days after it is submitted and will notify the Participant of its decision in writing. The individual who decides the appeal will not be the same individual who decided the initial claim denial and will not be that individual's subordinate. The Administrator may secure independent medical or other advice and require such other evidence as it deems necessary to decide the appeal, except that any medical expert consulted in connection with the appeal will be different from any expert consulted in connection with the initial claim. (The identity of a medical expert consulted in connection with the Participant's appeal will be provided.) If the decision on appeal affirms the initial denial of the Participant's claim, the Participant will be furnished with a notice of adverse benefit determination on review setting forth:

1. The specific reason(s) for the denial,
2. The specific Plan provision(s) on which the decision is based,
3. A statement of the Participant's right to review (on request and at no charge) relevant documents and other information,
4. If the Administrator relied on an "internal rule, guideline, protocol, or other similar criterion" in making the decision, a description of the specific rule, guideline, protocol, or other similar criterion or a statement that such a rule, guideline, protocol, or other similar criterion was relied on and that a copy of such rule, guideline, protocol, or other criterion will be provided free of charge to the Participant upon request," and
5. A statement of the Participant's right to bring suit under ERISA § 502(a).

12.11 PAYMENT TO REPRESENTATIVE: In the event that a guardian, conservator or other legal representative has been duly appointed for a Participant entitled to any payment under the Plan, any such payment due may be made to the legal representative making claim therefor, and such payment so made shall be in complete discharge of the liabilities of the Plan therefor and the obligations of the Administrator and the Employer.

12.12 PROTECTED HEALTH INFORMATION. The provisions of this Section will apply only to those portions of the Plan that are considered a group health plan for purposes of 45 CFR Parts 160 and 164. The Plan may disclose PHI to employees of the Employer, or to other persons, only to the extent such disclosure is required or permitted pursuant to 45 CFR Parts 160 and 164. The Plan has implemented administrative, physical, and technical safeguards to reasonably and appropriately protect, and restrict access to and use of, electronic PHI, in accordance with Subpart C of 45 CFR Part 164. The applicable claims procedures under the Plan shall be used to resolve any issues of non-compliance by such individuals. The Employer will:

- not use or disclose PHI other than as permitted or required by the plan documents and permitted or required by law;
- reasonably and appropriately safeguard electronic PHI created, received, maintained, or transmitted to or by the it on behalf of the Plan, in accordance with Subpart C of 45 CFR Part 164;

- implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of the Plan;
- ensure that any agents including a subcontractors to whom it provides PHI received from the Plan agree to the same restrictions and conditions that apply to the Employer with respect to such information;
- not use or disclose PHI for employment-related actions and decisions or in connection with any other employee benefit plan of the Employer;
- report to the Plan any use or disclosure of the information that is inconsistent with the permitted uses or disclosures provided for of which it becomes aware;
- make available PHI in accordance with 45 CFR Section 164.524;
- make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 CFR Section 164.526;
- make available the information required to provide an accounting of disclosures in accordance with 45 CFR Section 164.528;
- make its internal practices, books, and records relating to the use and disclosure of PHI received from the Plan available to the Secretary of Health and Human Services or his designee upon request for purposes of determining compliance with 45 CFR Section 164.504(f);
- if feasible, return or destroy all PHI received from the Plan that the Employer still maintains in any form and retain no copies of such information when no longer needed for the purposes for which disclosure was made, except that, if such return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible; and,
- ensure that the adequate separation required in paragraph (f)(2)(iii) of 45 CFR Section 164.504 is established.

For purposes of this Section, “PHI” is “Protected Health Information” as defined in 45 CFR Section 160.103, which means individually identifiable health information, except as provided in paragraph (2) of the definition of “Protected Health Information” in 45 CFR Section 160.103, that is transmitted by electronic media; maintained in electronic media; or transmitted or maintained in any other form or medium by a covered entity, as defined in 45 CFR Section 164.104.

SECTION XIII

MISCELLANEOUS PROVISIONS

- 13.01 INABILITY TO LOCATE PAYEE: If the Plan Administrator is unable to make payment to any Participant or other person to whom a payment is due under the Plan because it cannot ascertain the identity or whereabouts of such Participant or other person after reasonable efforts have been made to identify or locate such person, then such payment and all subsequent payments otherwise due to such Participant or other person shall be forfeited following a reasonable time after the date any such payment first became due.
- 13.02 FORMS AND PROOFS: Each Participant or Participant's Beneficiary eligible to receive any benefit hereunder shall complete such forms and furnish such proofs, receipts, and releases as shall be required by the Administrator.
- 13.03 NO GUARANTEE OF TAX CONSEQUENCES: Neither the Administrator nor the Employer makes any commitment or guarantee that any amounts paid to or for the benefit of a Participant or a Dependent

under the Plan will be excludable from the Participant's or Dependent's gross income for federal or state income tax purposes, or that any other federal or state tax treatment will apply to or be available to any Participant or Dependent.

- 13.04 PLAN NOT CONTRACT OF EMPLOYMENT: The Plan will not be deemed to constitute a contract of employment between the Employer and any Participant nor will the Plan be considered an inducement for the employment of any Participant or employee. Nothing contained in the Plan will be deemed to give any Participant or employee the right to be retained in the service of the Employer nor to interfere with the right of the Employer to discharge any Participant or employee at any time regardless of the effect such discharge may have upon that individual as a Participant in the Plan.
- 13.05 NON-ASSIGNABILITY: No benefit under the Plan shall be liable for any debt, liability, contract, engagement or tort of any Participant or his Beneficiary, nor be subject to charge, anticipation, sale, assignment, transfer, encumbrance, pledge, attachment, garnishment, execution or other voluntary or involuntary alienation or other legal or equitable process, nor transferability by operation of law.
- 13.06 SEVERABILITY: If any provision of the Plan will be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions hereof will continue to be fully effective.
- 13.07 CONSTRUCTION:
- a. Words used herein in the masculine or feminine gender shall be construed as the feminine or masculine gender, respectively where appropriate.
 - b. Words used herein in the singular or plural shall be construed as the plural or singular, respectively, where appropriate.
- 13.08 NONDISCRIMINATION: In accordance with Code Section 125(b)(1), (2), and (3), this Plan is intended not to discriminate in favor of Highly Compensated Participants (as defined in Code Section 125(e)(1)) as to contributions and benefits nor to provide more than 25% of all qualified benefits to Key Employees. If, in the judgment of the Administrator, more than 25% of the total nontaxable benefits are provided to Key Employees, or the Plan discriminates in any other manner (or is at risk of possible discrimination), then, notwithstanding any other provision contained herein to the contrary, and, in accordance with the applicable provisions of the Code, the Administrator shall, after written notification to affected Participants, reduce or adjust such contributions and benefits under the Plan as shall be necessary to insure that, in the judgment of the Administrator, the Plan shall not be discriminatory.
- 13.09 ERISA. The Plan shall be construed, enforced, and administered and the validity determined in accordance with the applicable provisions of the Employee Retirement Income Security Act of 1974 (as amended), the Internal Revenue Code of 1986 (as amended), and the laws of the State indicated in the Adoption Agreement. Notwithstanding anything to the contrary herein, the provisions of ERISA will not apply to this Plan if the Plan is exempt from coverage under ERISA. Should any provisions be determined to be void, invalid, or unenforceable by any court of competent jurisdiction, the Plan will continue to operate, and for purposes of the jurisdiction of the court only will be deemed not to include the provision determined to be void.

SECTION XIV

TEMPORARY COVID RELIEF AMENDMENT

14.01 PURPOSE: In accordance with changes permitted under The Coronavirus Aid, Relief, and Economic Security Act, 2020, IRS Notice 2020-29, The Consolidated Appropriations Act, 2021, and IRS Notice 2021-15, Employer selected modifications to Plan language and procedures consistent with the following Plan options, as applicable. Notwithstanding any provision of the Plan to the contrary, as elected by the Employer in Item F of the Adoption Agreement, the Plan is hereby amended to adopt the following:

- a. Extended Claims Period: For unused amounts remaining in a Medical Expense Reimbursement Plan or a Dependent Care Reimbursement Plan under the Section 125 Plan as of the end of a grace period or plan year ending in 2020, the Participants may apply those unused amounts to pay or reimburse medical care expenses or dependent care expenses, respectively, incurred through December 31, 2020.
- b. Mid-Year Election Changes: Each Participant who is eligible to make salary reduction contributions under the Plan may make prospective election changes (including an initial election) during calendar year 2020 regarding Group Medical Insurance, a Medical Expense Reimbursement Plan, or a Dependent Care Reimbursement Plan, regardless of whether the basis for the election change satisfies the criteria set forth in regular election change rules.
- c. Mid-Year Election Changes for Medical Expense Reimbursement Plan: For plan years ending in 2021, Participants may modify their Medical Expense Reimbursement Plan elections on a prospective basis at any time during the year. No qualifying event is required.
- d. Mid-Year Election Changes for Dependent Care Reimbursement Plan: For plan years ending in 2021, Participants may modify their Dependent Care Reimbursement Plan elections on a prospective basis at any time during the year. No qualifying event is required.
- e. Extended Grace Period: For plan years ending in 2020 and/or 2021, the grace period for Medical Expense Reimbursement Plan and/or Dependent Care Reimbursement Plan is extended to 12 months.
- f. Unlimited Carryover for Medical Expense Reimbursement Plan: All unused funds in the Medical Expense Reimbursement Plan may be carried over to 2021 (from plan year 2020) and/or 2022 (from plan year 2021). There is no carryover maximum.
- g. Dependent Care Reimbursement Plan Age Increase: For Participants enrolled in the Dependent Care Reimbursement Plan for the 2020 Plan Year, the maximum age for children is extended from age 12 to age 13 when paying or reimbursing dependent care expenses incurred during the 2020 Plan Year. Additionally, amounts remaining at the end of the run-out period for the 2020 Plan Year shall be available to pay or reimburse otherwise-eligible dependent care expenses incurred during the 2021 Plan Year for a child who attained age 13 during the 2020 Plan Year (until the child turns age 14) or for another child who turns age 13 during the 2021 Plan Year.
- h. Reimbursement for Non-Active Participants: Participants who cease participation in a Medical Expense Reimbursement Plan during 2020 or 2021 (for example, due to termination of employment) may continue to receive reimbursements from unused balances through the end of the plan year in which such participation ceased (including any grace period).
- i. Dependent Care Reimbursement Plan Maximum Increase: For the 2021 calendar year only, Dependent Care Reimbursement Plan maximums may be increased to \$10,500 per family (\$5,250 for married individuals filing a joint return).

**AMENDMENT
SECTION 125 FLEXIBLE BENEFIT PLAN
ADOPTION AGREEMENT**

The undersigned Employer hereby adopts the Section 125 Flexible Benefit Plan for those Employees who shall qualify as Participants hereunder. The Employer hereby selects the following Plan specifications:

A. EMPLOYER INFORMATION

Name of Employer:	CITY OF LEANDER
Address:	105 N. BRUSHY STREET LEANDER, TEXAS 78641
Employer Identification Number:	74-2007646
Nature of Business:	CITY GOVERNMENT
Name of Plan:	Flexible Benefit Plan
Plan Number:	501

B. EFFECTIVE DATE

Original effective date of the Plan:	
If Amendment to existing plan, effective date of amendment:	OCTOBER 1, 2023

C. ELIGIBILITY REQUIREMENTS FOR PARTICIPATION

Eligibility requirements for each component plan under this Section 125 document will be applicable and, if different, will be listed in Item F.

Length of Service:	First day of month following employment
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Retiree Wording:

Minimum Hours:	All employees with 40 hours of service or more each week. An hour of service is each hour for which an employee receives, or is entitled to receive, payment for performance of duties for the Employer.
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Age:	Minimum age of 18 years.
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D. PLAN YEAR

The current plan year will begin on **October 1, 2023**, and end on **December 31, 2024**. Each subsequent plan year will begin on **January 1** and end on **December 31**.

E. EMPLOYER CONTRIBUTIONS

Non-Elective Contributions:

The maximum amount available to each Participant for the purchase of elected benefits with non-elective contributions will be:

The Employer may at its sole discretion provide a non-elective contribution to provide benefits for each Participant under the Plan. This amount will be set by the Employer each Plan Year in a uniform and non-discriminatory manner. If this non-elective contribution amount exceeds the cost of benefits elected by the Participant, excess amounts will not be paid to the Participant as taxable cash.

**Elective Contributions
(Salary Reduction):**

The maximum amount available to each Participant for the purchase of elected benefits through salary reduction will be:

\$50,000

Each Participant may authorize the Employer to reduce his or her compensation by the amount needed for the purchase of benefits elected, less the amount of non-elective contributions. An election for salary reduction will be made on the benefit election form.

F. AVAILABLE BENEFITS: Each of the following components should be considered a plan that comprises this Plan.

1. **Group Medical Insurance** -- The terms, conditions, and limitations for the Group Medical Insurance will be as set forth in the insurance policy or policies described below: (See Section V of the Plan Document)

Eligibility Requirements for Participation, if different than Item C.

2. **Disability Income Insurance** -- The terms, conditions, and limitations for the Disability Income Insurance will be as set forth in the insurance policy or policies described below: (See Section VI of the Plan Document)

Eligibility Requirements for Participation, if different than Item C.

3. **Cancer Coverage** -- The terms, conditions, and limitations for the Cancer Coverage will be as set forth in the insurance policy or policies described below: (See Section V of the Plan Document)

Eligibility Requirements for Participation, if different than Item C.

4. **Dental/Vision Insurance** -- The terms, conditions, and limitations for the Dental/Vision Insurance will be as set forth in the insurance policy or policies described below: (See Section V of the Plan Document)

Eligibility Requirements for Participation, if different than Item C.

5. **Group Life Insurance** which will be comprised of Group term life insurance and Individual term life insurance under Section 79 of the Code.

The terms, conditions, and limitations for the Group Life Insurance will be as set forth in the insurance policy or policies described below: (See Section VII of the Plan Document)

Individual life coverage under Section 79 is available as a benefit, and the face amount when combined with the group-term life, if any, may not exceed \$50,000.

Eligibility Requirements for Participation, if different than Item C.

6. **Dependent Care Assistance Plan** -- The terms, conditions, and limitations for the Dependent Care Assistance Plan will be as set forth in Section IX of the Plan Document and described below:

Minimum Contribution - \$ per Plan Year

Maximum Contribution - \$ Annual maximums allowable by the
IRS Code Section 129 or prorated
Amount for Short Plan Year.

Recordkeeper: **First Financial Administrators, Inc.**

Eligibility Requirements for Participation, if different than Item C.

7. **Medical Expense Reimbursement Plan** -- The terms, conditions, and limitations for the Medical Expense Reimbursement Plan will be as set forth in Section VIII of the Plan Document and described below:

Minimum Coverage - **\$300** per Plan Year or a Prorated
Amount for a Short Plan Year.

Maximum Coverage - \$ Annual maximums allowable by the IRS Code Section 125(i) 1 or Prorated Amount for Short Plan Year. In no event can the maximum exceed the limit as indicated by the IRS in accordance with the law.

Recordkeeper: **First Financial Administrators, Inc.**

Restrictions:

Grace Period: The Provisions in Section 8.06 of the Plan to permit a Grace Period with respect to the Medical Expense Reimbursement Plan **IS NOT** elected.

Carryover: The Provisions in Section 8.07 of the Plan to permit a Carryover with respect to the Medical Expense Reimbursement Plan **IS** elected.

HEART Act: The provisions in Section 8.08 of the Plan to permit the Qualified Reservist Distribution of the Heroes Earnings Assistance and Relief Tax Act (HEART) is elected.

Eligibility Requirements for Participation, if different than Item C.

8. **Health Savings Accounts** – The Plan does not permit contributions to be made to a Health Savings Account on a pretax basis in accordance with Section X of the Plan and the following provisions:

HSA Trustee – **N/A**

Maximum Contribution – **As indexed annually by the IRS.**

Limitation on Eligible Medical Expenses – For purposes of the Medical Reimbursement Plan, Eligible Medical Expenses of a Participant that is eligible for and elects to participate in a Health Savings Account shall be limited to expenses for:

Eligibility Requirements for Participation, if different than Item C.

- a. An Employee must complete a Certification of Health Savings Account Eligibility which confirms that the Participant is an eligible individual who is entitled to establish a Health Savings Account in accordance with Code Section 223(c)(1).
- b. Eligibility for the Health Savings Account shall begin on the later of (i) first day of the month coinciding with or next following the Employee's commencement of coverage under the High Deductible Health Plan, or (ii)

the first day following the end of a Grace Period available to the Employee with respect to the Medical Reimbursement Accounts that are not limited to vision and dental expenses (unless the participant has a \$0.00 balance on the last day of the plan year).

- c. An Employee's eligibility for the Health Savings Account shall be determined monthly.

The Plan shall be construed, enforced, administered, and the validity determined in accordance with the applicable provisions of the Employee Retirement Income Security Act of 1974, (as amended) if applicable, the Internal Revenue Code of 1986 (as amended), and the laws of the State of Texas. Should any provision be determined to be void, invalid, or unenforceable by any court of competent jurisdiction, the Plan will continue to operate, and for purposes of the jurisdiction of the court only, will be deemed not to include the provision determined to be void.

This Plan is hereby adopted_____.

CITY OF LEANDER

Signed By:_____

Title:_____

APPENDIX A

Related Employers that have adopted this Plan

Name(s):

THIS DOCUMENT IS NOT COMPLETE WITHOUT SECTIONS I THROUGH XIII

PD – 0423

Document ID #

Effective Date:

6/29/2023 1:01 PM

SECTION 125 FLEXIBLE BENEFIT PLAN

SECTION I

PURPOSE

The Employer is establishing this Flexible Benefit Plan in order to make a broader range of benefits available to its Employees and their Beneficiaries. This Plan allows Employees to choose among different types of benefits and select the combination best suited to their individual goals, desires, and needs. These choices include an option to receive certain benefits in lieu of taxable compensation.

In establishing this Plan, the Employer desires to attract, reward, and retain highly qualified, competent Employees, and believes this Plan will help achieve that goal.

It is the intent of the Employer to establish this Plan in conformity with Section 125 of the Internal Revenue Code of 1986, as amended, and in compliance with applicable rules and regulations issued by the Internal Revenue Service. This Plan will grant to eligible Employees an opportunity to purchase qualified benefits which, when purchased alone by the Employer, would not be taxable.

SECTION II

DEFINITIONS

The following words and phrases appear in this Plan and will have the meaning indicated below unless a different meaning is plainly required by the context:

- 2.01 **Administrator** The Employer unless another has been designated in writing by the Employer as Administrator within the meaning of Section 3(16) of ERISA (if applicable).
- 2.02 **Beneficiary** Any person or persons designated by a participating Employee to receive any benefit payable under the Plan on account of the Employee's death.
- 2.02a **Carryover** The amount equal to the lesser of (a) any unused amounts from the immediately preceding Plan Year or (b) an amount up to \$610, as indexed for inflation, paralleling the indexing applicable to the limit on salary reduction contributions under Code Section 125(i) of the Code, except that in no event may the Carryover be less than five dollars (\$5).
- 2.03 **Code** Internal Revenue Code of 1986, as amended.
- 2.04 **Dependent** Any of the following:
- (a) Tax Dependent: A Dependent includes a Participant's spouse and any other person who is a Participant's dependent within the meaning of Code Section 152, provided that, with respect to any plan that provides benefits that are excluded from an Employee's income under Code Section 105, a Participant's dependent (i) is any person within the meaning of Code Section 152, determined without regard to Subsections (b)(1), (b)(2),

and (d)(1)(B) thereof, and (ii) includes any child of the Participant to whom Code Section 152(e) applies (such child will be treated as a dependent of both divorced parents).

(b) Student on a Medically Necessary Leave of Absence: With respect to any plan that is considered a group health plan under Michelle's Law (and not a HIPAA excepted benefit under Code Sections 9831(b), (c) and 9832(c)) and to the extent the Employer is required by Michelle's Law to provide continuation coverage, a Dependent includes a child who qualifies as a Tax Dependent (defined in Section 2.04(a)) because of his or her full-time student status, is enrolled in a group health plan, and is on a medically necessary leave of absence from school. The child will continue to be a Dependent if the medically necessary leave of absence commences while the child is suffering from a serious illness or injury, is medically necessary, and causes the child to lose student status for purposes of the group health plan's benefits coverage. Written physician certification that the child is suffering from a serious illness or injury and that the leave of absence is medically necessary is required at the Administrator's request. The child will no longer be considered a Dependent as of the earliest date that the child is no longer on a medically necessary leave of absence, the date that is one year after the first day of the medically necessary leave of absence, or the date benefits would otherwise terminate under either the group health plan or this Plan. Terms related to Michelle's Law, and not otherwise defined, will have the meaning provided under the Michelle's Law provisions of Code Section 9813.

(c) Adult Children: With respect to any plan that provides benefits that are excluded from an Employee's income under Code Section 105, a Dependent includes a child of a Participant who as of the end of the calendar year has not attained age 27. A 'child' for purpose of this Section 2.04(c) means an individual who is a son, daughter, stepson, or stepdaughter of the Participant, a legally adopted individual of the Participant, an individual who is lawfully placed with the Participant for legal adoption by the Participant, or an eligible foster child who is placed with the Participant by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction. An adult child described in this Section 2.04(c) is only a Dependent with respect to benefits provided after March 30, 2010 (subject to any other limitations of the Plan).

Dependent for purposes of the Dependent Care Reimbursement Plan is defined in Section 9.04(a).

2.05 **Effective Date** The effective date of this Plan as shown in Item B of the Adoption Agreement.

2.06 **Elective Contribution** The amount the Participant authorizes the Employer to reduce compensation for the purchase of benefits elected.

- 2.07 **Eligible Employee** Employee meeting the eligibility requirements for participation as shown in Item C of the Adoption Agreement.
- 2.08 **Employee** Any person employed by the Employer on or after the Effective Date.
- 2.09 **Employer** The entity shown in Item A of the Adoption Agreement, and any Related Employers authorized to participate in the Plan with the approval of the Employer. Related Employers who participate in this Plan are listed in Appendix A to the Adoption Agreement. For the purposes of Section 11.01 and 11.02, only the Employer as shown in Item A of the Adoption Agreement may amend or terminate the Plan.
- 2.10 **Employer Contributions** Amounts that have not been actually received by the Participant and are available to the Participant for the purpose of selecting benefits under the Plan. This term includes Non-Elective Contributions and Elective Contributions through salary reduction.
- 2.11 **Entry Date** The date that an Employee is eligible to participate in the Plan.
- 2.12 **ERISA** The Employee Retirement Income Security Act of 1974, Public Law 93-406 and all regulations and rulings issued thereunder, as amended (if applicable).
- 2.13 **Fiduciary** The named fiduciary shall mean the Employer, the Administrator and other parties designated as such, but only with respect to any specific duties of each for the Plan as may be set forth in a written agreement.
- 2.14 **Health Savings Account** A "health savings account" as defined in Section 223(d) of the Internal Revenue Code of 1986, as amended established by the Participant with the HSA Trustee.
- 2.15 **HSA Trustee** The Trustee of the Health Savings Account which is designated in Section F.8 of the Adoption Agreement.
- 2.16 **Highly Compensated** Any Employee who at any time during the Plan Year is a "highly compensated employee" as defined in Section 414(q) of the Code.
- 2.17 **High Deductible Health Plan** A health plan that meets the statutory requirements for annual deductibles and out-of-pocket expenses set forth in Code section 223(c)(2).
- 2.18 **HIPAA** The Health Insurance Portability and Accountability Act of 1996, as amended.

- 2.19 **Insurer** Any insurance company that has issued a policy pursuant to the terms of this Plan.
- 2.20 **Key Employee** Any Participant who is a "key employee" as defined in Section 416(i) of the Code.
- 2.21 **Non-Elective Contribution** A contribution amount made available by the Employer for the purchase of benefits elected by the Participant.
- 2.22 **Participant** An Employee who has qualified for Plan participation as provided in Item C of the Adoption Agreement.
- 2.23 **Plan** The Plan referred to in Item A of the Adoption Agreement as may be amended from time to time.
- 2.24 **Plan Year** The Plan Year as specified in Item D of the Adoption Agreement.
- 2.25 **Policy** An insurance policy issued as a part of this Plan.
- 2.26 **Preventative Care** Medical expenses which meet the safe harbor definition of "preventative care" set forth in IRS Notice 2004-23, which includes, but is not limited to, the following: (i) periodic health evaluations, such as annual physicals (and the tests and diagnostic procedures ordered in conjunction with such evaluations); (ii) well-baby and/or well-child care; (iii) immunizations for adults and children; (iv) tobacco cessation and obesity weight-loss programs; and (v) screening devices. However, preventative care does not generally include any service or benefit intended to treat an existing illness, injury or condition.
- 2.27 **Recordkeeper** The person designated by the Employer to perform recordkeeping and other ministerial duties with respect to the Medical Expense Reimbursement Plan and/or the Dependent Care Reimbursement Plan.
- 2.28 **Related Employer** Any employer that is a member of a related group of organizations with the Employer shown in Item A of the Adoption Agreement, and as specified under Code Section 414(b), (c) or (m).

SECTION III

ELIGIBILITY, ENROLLMENT, AND PARTICIPATION

- 3.01 **ELIGIBILITY:** Each Employee of the Employer who has met the eligibility requirements of Item C of the Adoption Agreement will be eligible to participate in the Plan on the Entry Date specified or the Effective Date of the Plan, whichever is later. Dependent eligibility to receive benefits under any of the plans listed in Item F of the Adoption Agreement will be described in the documents governing

those benefit plans. To the extent a Dependent is eligible to receive benefits under a plan listed in Item F, an Eligible Employee may elect coverage under this Plan with respect to such Dependent. Notwithstanding the foregoing, life insurance coverage on the life of a Dependent may not be elected under this Plan.

- 3.02 ENROLLMENT: An eligible Employee may enroll (or re-enroll) in the Plan by submitting to the Employer, during an enrollment period, an Election Form which specifies his or her benefit elections for the Plan Year and which meets such standards for completeness and accuracy as the Employer may establish. A Participant's Election Form shall be completed prior to the beginning of the Plan Year, and shall not be effective prior to the date such form is submitted to the Employer. Any Election Form submitted by a Participant in accordance with this Section shall remain in effect until the earlier of the following dates: the date the Participant terminates participation in the Plan; or, the effective date of a subsequently filed Election Form.

A Participant's right to elect certain benefit coverage shall be limited hereunder to the extent such rights are limited in the Policy. Furthermore, a Participant will not be entitled to revoke an election after a period of coverage has commenced and to make a new election with respect to the remainder of the period of coverage unless both the revocation and the new election are on account of and consistent with a change in status, or other allowable events, as determined by Section 125 of the Internal Revenue Code and the regulations thereunder.

- 3.03 TERMINATION OF PARTICIPATION: A Participant shall continue to participate in the Plan until the earlier of the following dates:

- a. The date the Participant terminates employment by death, disability, retirement or other separation from service; or
- b. The date the Participant ceases to work for the Employer as an eligible Employee; or
- c. The date of termination of the Plan; or
- d. The first date a Participant fails to pay required contributions while on a leave of absence.

- 3.04 SEPARATION FROM SERVICE: The existing elections of an Employee who separates from the employment service of the Employer shall be deemed to be automatically terminated and the Employee will not receive benefits for the remaining portion of the Plan Year.

H.B. No. 973 STATE OF TEXAS SECTION 22.004, EDUCATION CODE: Notwithstanding any other law, an employee of a district participating in the uniform group coverage program or providing group health coverage whose resignation is effective after the last day of an instructional year is entitled to participate or be enrolled in the uniform group coverage plan or the group health coverage through the first anniversary of the date participation in or coverage under the uniform group coverage plan or the group health coverage was first made available to district employees for the last instructional year in which the employee was employed by the district.

If an employee's resignation is effective after the last day of an instructional year, the district and the Teacher Retirement System of Texas may not diminish or eliminate the amount of a contribution available to the employee under Chapter 1579 or 1581, Insurance Code, before the last date on which the employee is entitled to participation or enrollment.

- 3.05 QUALIFYING LEAVE UNDER FAMILY LEAVE ACT: Notwithstanding any provision to the contrary in this Plan, if a Participant goes on a qualifying unpaid leave under the Family and Medical Leave Act of 1993 (FMLA), to the extent required by the FMLA, the Employer will continue to maintain the Participant's existing coverage under the Plan with respect to benefits under Section V and

Section VIII of the Plan on the same terms and conditions as though he were still an active Employee. If the Employee opts to continue his coverage, the Employee may pay his Elective Contribution with after-tax dollars while on leave (or pre-tax dollars to the extent he receives compensation during the leave), or the Employee may be given the option to pre-pay all or a portion of his Elective Contribution for the expected duration of the leave on a pre-tax salary reduction basis out of his pre-leave compensation (including unused sick days or vacation) by making a special election to that effect prior to the date such compensation would normally be made available to him (provided, however, that pre-tax dollars may not be utilized to fund coverage during the next plan year), or via other arrangements agreed upon between the Employee and the Administrator (e.g., the Administrator may fund coverage during the leave and withhold amounts upon the Employee's return). Upon return from such leave, the Employee will be permitted to reenter the Plan on the same basis the Employee was participating in the Plan prior to his leave, or as otherwise required by the FMLA.

SECTION IV

CONTRIBUTIONS

4.01 EMPLOYER CONTRIBUTIONS: The Employer may pay the costs of the benefits elected under the Plan with funds from the sources indicated in Item E of the Adoption Agreement. The Employer Contribution may be made up of Non-Elective Contributions and/or Elective Contributions authorized by each Participant on a salary reduction basis.

4.02 IRREVOCABILITY OF ELECTIONS: A Participant may file a written election form with the Administrator before the end of the current Plan Year revising the rate of his contributions or discontinuing such contributions effective as of the first day of the next following Plan Year. The Participant's Elective Contributions will automatically terminate as of the date his employment terminates. Except as provided in this Section 4.02 and Section 4.03, a Participant's election under the Plan is irrevocable for the duration of the plan year to which it relates. The exceptions to the irrevocability requirement which would permit a mid-year election change in benefits and the salary reduction amount elected are set out in the Treasury regulations promulgated under Code Section 125, which include the following:

(a) Change in Status. A Participant may change or revoke his election under the Plan upon the occurrence of a valid change in status, but only if such change or termination is made on account of, and is consistent with, the change in status in accordance with the Treasury regulations promulgated under Section 125. The Employer, in its sole discretion as Administrator, shall determine whether a requested change is on account of and consistent with a change in status, as follows:

- (1) Change in Employee's legal marital status, including marriage, divorce, death of spouse, legal separation, and annulment;
- (2) Change in number of Dependents, including birth, adoption, placement for adoption, and death;
- (3) Change in employment status, including any employment status change affecting benefit eligibility of the Employee, spouse or Dependent, such as termination or commencement of employment, change in hours, strike or lockout, a commencement or return from an unpaid leave of absence, and a change in work site. If the eligibility for either the cafeteria Plan or any underlying benefit plans of the Employer of the Employee, spouse or Dependent relies on the employment status of that individual, and there is a change in that individual's employment status resulting in gaining or losing eligibility under the Plan, this constitutes a valid change in status. This category only applies if benefit eligibility is lost or gained as a result of the event.

If an Employee terminates and is rehired within 30 days, the Employee is required to step back into his previous election. If the Employee terminates and is rehired after 30 days, the Employee may either step back into the previous election or make a new election;

- (4) Dependent satisfies, or ceases to satisfy, Dependent eligibility requirements due to attainment of age, gain or loss of student status, marriage or any similar circumstances; and
 - (5) Residence change of Employee, spouse or Dependent, affecting the Employee's eligibility for coverage.
- (b) Special Enrollment Rights. If a Participant or his or her spouse or Dependent is entitled to special enrollment rights under a group health plan (other than an excepted benefit), as required by HIPAA under Code Section 9801(f), then a Participant may revoke a prior election for group health plan coverage and make a new election, provided that the election change corresponds with such HIPAA special enrollment right. As required by HIPAA, a special enrollment right will arise in the following circumstances: (i) a Participant or his or her spouse or Dependent declined to enroll in group health plan coverage because he or she had coverage, and eligibility for such coverage is subsequently lost because the coverage was provided under COBRA and the COBRA coverage was exhausted, or the coverage was non-COBRA coverage and the coverage terminated due to loss of eligibility for coverage or the employer contributions for the coverage were terminated; (ii) a new Dependent is acquired as a result of marriage, birth, adoption, or placement for adoption; (iii) the Participant's or his or her spouse's or Dependent's coverage under a Medicaid plan or under a children's health insurance program (CHIP) is terminated as a result of loss of eligibility for such coverage and the Participant requests coverage under the group health plan not later than 60 days after the date of termination of such coverage; or (iv) the Participant, his or her spouse or Dependent becomes eligible for a state premium assistance subsidy from a Medicaid plan or through a state children's insurance program with respect to coverage under the group health plan and the Participant requests coverage under the group health plan not later than 60 days after the date the Participant, his or her spouse or Dependent is determined to be eligible for such assistance. An election change under (iii) or (iv) of this provision must be requested within 60 days after the termination of Medicaid or state health plan coverage or the determination of eligibility for a state premium assistance subsidy, as applicable. Special enrollment rights under the health insurance plan will be determined by the terms of the health insurance plan.
- (c) Certain Judgments, Decrees or Orders. If a judgment, decree or order resulting from a divorce, legal separation, annulment or change in legal custody (including a qualified medical child support order [QMCSO]) requires accident or health coverage for a Participant's child or for a foster child who is a dependent of the Participant, the Participant may have a mid-year election change to add or drop coverage consistent with the Order.
- (d) Entitlement to Medicare or Medicaid. If a Participant, Participant's spouse or Participant's Dependent who is enrolled in an accident or health plan of the Employer becomes entitled to Medicare or Medicaid (other than coverage consisting solely of benefits under Section 1928 of the Social Security Act providing for pediatric vaccines), the Participant may cancel or reduce health coverage under the Employer's Plan. Loss of Medicare or Medicaid entitlement would allow the Participant to add health coverage under the Employer's Plan.
- (e) Family Medical Leave Act. If an Employee is taking leave under the rules of the Family Medical Leave Act, the Employee may revoke previous elections and re-elect benefits upon return to work.
- (f) COBRA Qualifying Event. If an Employee has a COBRA qualifying event (a reduction in hours of the Employee, or a Dependent ceases eligibility), the Employee may increase his pre-tax contributions for coverage under the Employer's Plan if a COBRA event occurs with respect to the

Employee, the Employee's spouse or Dependent. The COBRA rule does not apply to COBRA coverage under another Employer's Plan.

- (g) Changes in Eligibility for Adult Children. To the extent the Employer amends a plan listed in Item F of the Adoption Agreement that provides benefits that are excluded from an Employee's income under Code Section 105 to provide that Adult Children (as defined in Section 2.04(c)) are eligible to receive benefits under the plan, an Eligible Employee may make or change an election under this Plan to add coverage for the Adult Child and to make any corresponding change to the Eligible Employee's coverage that is consistent with adding coverage for the Adult Child.
- (h) Cancellation due to reduction in hours of service. A Participant may cancel group health plan (as that term is defined in Code Section 9832(a)) coverage, except Health FSA coverage, under the Employer's Plan if both of the following conditions are met:
 - (i) The Participant has been in an employment status under which the Participant was reasonably expected to average at least 30 hours of service per week and there is a change in that Participant's status so that the Participant will reasonably be expected to average less than 30 hours of service per week after the change, even if that reduction does not result in the Participant ceasing to be eligible under the group health plan; and
 - (ii) The cancellation of the election of coverage under the Employer's group health plan coverage corresponds to the intended enrollment of the Participant, and any related individuals who cease coverage due to the cancellation, in another plan that provides minimum essential coverage with the new coverage effective no later than the first day of the second month following the month that includes the date the original coverage is cancelled.
- (i) Cancellation due to enrollment in a Qualified Health Plan. A participant may cancel group health plan (as that term is defined in Code Section 9832(a)) coverage, except Health FSA coverage, under the Employer's Plan if both of the following conditions are met:
 - (i) The Participant is eligible for a Special Enrollment Period (as defined in Code Section 9801(f)) to enroll in a Qualified Health Plan (as described in section 1311 of the Patient Protection and Affordable Care Act (PPACA)) through a competitive marketplace established under section 1311(c) of PPACA (Marketplace), pursuant to guidance issued by the Department of Health and Human Services and any other applicable guidance, or the Participant seeks to enroll in a Qualified Health Plan through a Marketplace during the Marketplace's annual open enrollment period; and
 - (ii) The cancellation of the election of coverage under the Employer's group health plan coverage corresponds to the intended enrollment of the Participant and any related individuals who cease coverage due to the cancellation in a Qualified Health Plan through a Marketplace for new coverage that is effective beginning no later than the day immediately following the last day of the original coverage that is cancelled.
- (j) Cancellation due to related individuals' enrollment in a Qualified Health Plan. For elections effective on or after January 1, 2023, a participant may cancel an election of family coverage under a group health plan (as that term is defined in Code Section 9832(a)), except Health FSA coverage, under the Employer's Plan if both of the following conditions are met:

- (i) One or more related individuals are eligible for a Special Enrollment Period (as defined in Code Section 9801(f)) to enroll in a Qualified Health Plan (as described in section 1311 of the Patient Protection and Affordable Care Act (PPACA)) through a competitive marketplace established under section 1311(c) of PPACA (Marketplace), pursuant to guidance issued by the Department of Health and Human Services and any other applicable guidance, or one or more already-covered related individuals seeks to enroll in a Qualified Health Plan through a Marketplace during the Marketplace's annual open enrollment period; and
- (ii) The cancellation of the election of coverage under the Employer's group health plan coverage corresponds to the intended enrollment of the related individual or related individuals who cease coverage due to the cancellation in a Qualified Health Plan through a Marketplace for new coverage that is effective beginning no later than the day immediately following the last day of the original coverage that is cancelled. If the employee does not enroll in a Qualified Health Plan through an Exchange as set forth in Notice 2014-55, the employee must elect self-only coverage (or family coverage including one or more already-covered related individuals) under the group health plan.

Notwithstanding anything to the contrary in this Section 4.02, the change in election rules in this Section 4.02 do not apply to the Medical Expense Reimbursement Plan, or may not be modified with respect to the Medical Expense Reimbursement Plan if the Plan is being administered by a Recordkeeper other than the Employer, unless the Employer and the Recordkeeper otherwise agree in writing.

4.03 OTHER EXCEPTIONS TO IRREVOCABILITY OF ELECTIONS. Other exceptions to the irrevocability of election requirement permit mid-year election changes and apply to all qualified benefits except for Medical Expense Reimbursement Plans, as follows:

- (a) Change in Cost. If the cost of a benefit package option under the Plan significantly increases during the plan year, Participants may (i) make a corresponding increase in their salary reduction amount, (ii) revoke their elections and make a prospective election under another benefit option offering similar coverage, or (iii) revoke election completely if no similar coverage is available, including in spouse or dependent's plan. If the cost significantly decreases, employees may elect coverage even if they had not previously participated and may drop their previous election for a similar coverage option in order to elect the benefit package option that has decreased in cost during the year. If the increased or decreased cost of a benefit package option under the Plan is insignificant, the participant's salary reduction amount shall be automatically adjusted.
- (b) Significant curtailment of coverage.
 - (i) With no loss of coverage. If the coverage under a benefit package option is significantly curtailed or ceases during the Plan Year, affected Participants may revoke their elections for the curtailed coverage and make a new prospective election for coverage under another benefit package option providing similar coverage.
 - (ii) With loss of coverage. If there is a significant curtailment of coverage with loss of coverage, affected Participants may revoke election for curtailed coverage and make a new prospective

election for coverage under another benefit package option providing similar coverage, or drop coverage if no similar benefit package option is available.

- (c) Addition or Significant Improvement of Benefit Package Option. If during the Plan Year a new benefit package option is added or significantly improved, eligible employees, whether currently participating or not, may revoke their existing election and elect the newly added or newly improved option.
- (d) Change in Coverage of a Spouse or Dependent Under Another Employer's Plan. If there is a change in coverage of a spouse, former spouse, or Dependent under another employer's plan, a Participant may make a prospective election change that is on account of and corresponds with a change made under the plan of the spouse or Dependent. This rule applies if (1) mandatory changes in coverage are initiated by either the insurer of spouse's plan or by the spouse's employer, or (2) optional changes are initiated by the spouse's employer or by the spouse through open enrollment.
- (e) Loss of coverage under other group health coverage. If during the Plan Year coverage is lost under any group health coverage sponsored by a governmental or educational institution, a Participant may prospectively change his or her election to add group health coverage for the affected Participant or his or her spouse or dependent.

- 4.04 CASH BENEFIT: Available amounts not used for the purchase of benefits under this Plan may be considered a cash benefit under the Plan payable to the Participant as taxable income to the extent indicated in Item E of the Adoption Agreement.
- 4.05 PAYMENT FROM EMPLOYER'S GENERAL ASSETS: Payment of benefits under this Plan shall be made by the Employer from Elective Contributions which shall be held as a part of its general assets.
- 4.06 EMPLOYER MAY HOLD ELECTIVE CONTRIBUTIONS: Pending payment of benefits in accordance with the terms of this Plan, Elective Contributions may be retained by the Employer in a separate account or, if elected by the Employer and as permitted or required by regulations of the Internal Revenue Service, Department of Labor or other governmental agency, such amounts of Elective Contributions may be held in a trust pending payment.
- 4.07 MAXIMUM EMPLOYER CONTRIBUTIONS: With respect to each Participant, the maximum amount made available to pay benefits for any Plan Year shall not exceed the Employer's Contribution specified in the Adoption Agreement and as provided in this Plan.

SECTION V

GROUP MEDICAL INSURANCE BENEFIT PLAN

- 5.01 PURPOSE: These benefits provide the group medical insurance benefits to Participants.
- 5.02 ELIGIBILITY: Eligibility will be as required in Items F(1), F(3), and F(4) of the Adoption Agreement.
- 5.03 DESCRIPTION OF BENEFITS: The benefits available under this Plan will be as defined in Items F(1), F(3), and F(4) of the Adoption Agreement.
- 5.04 TERMS, CONDITIONS AND LIMITATIONS: The terms, conditions and limitations of the benefits offered shall be as specifically described in the Policy identified in the Adoption Agreement.
- 5.05 COBRA: To the extent required by Section 4980B of the Code and Sections 601 through 607 of ERISA, Participants and Dependents shall be entitled to continued participation in this Group Medical Insurance Benefit Plan by contributing monthly (from their personal assets previously subject to taxation) 102% of the amount of the premium for the desired benefit during the period that such individual is entitled to elect continuation coverage, provided, however, in the event the continuation period is extended to 29 months due to disability, the premium to be paid for continuation coverage for the 11 month extension period shall be 150% of the applicable premium.
- 5.06 SECTION 105 AND 106 PLAN: It is the intention of the Employer that these benefits shall be eligible for exclusion from the gross income of the Participants covered by this benefit plan, as provided in Code Sections 105 and 106, and all provisions of this benefit plan shall be construed in a manner consistent with that intention. It is also the intention of the Employer to comply with the provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 as outlined in the policies identified in the Adoption Agreement.
- 5.07 CONTRIBUTIONS: Contributions for these benefits will be provided by the Employer on behalf of a Participant as provided for in Item E of the Adoption Agreement.
- 5.08 UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT: Notwithstanding anything to the contrary herein, the Group Medical Insurance Benefit Plan shall comply with the applicable provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 (Public Law 103-353).

SECTION VI

DISABILITY INCOME BENEFIT PLAN

- 6.01 PURPOSE: This benefit provides disability insurance designated to provide income to Participants during periods of absence from employment because of disability.
- 6.02 ELIGIBILITY: Eligibility will be as required in Item F(2) of the Adoption Agreement.
- 6.03 DESCRIPTION OF BENEFITS: The benefits available under this Plan will be as defined in Item F(2) of the Adoption Agreement.

- 6.04 TERMS, CONDITIONS AND LIMITATIONS: The terms, conditions and limitations of the Disability Income Benefits offered shall be as specifically described in the Policy identified in the Adoption Agreement.
- 6.05 SECTION 104 AND 106 PLAN: It is the intention of the Employer that the premiums paid for these benefits shall be eligible for exclusion from the gross income of the Participants covered by this benefit plan, as provided in Code Sections 104 and 106, and all provisions of this benefit plan shall be construed in a manner consistent with that intention.
- 6.06 CONTRIBUTIONS: Contributions for this benefit will be provided by the Employer on behalf of a Participant as provided for in Item E of the Adoption Agreement.

SECTION VII

GROUP AND INDIVIDUAL LIFE INSURANCE PLAN

- 7.01 PURPOSE: This benefit provides group life insurance benefits to Participants and may provide certain individual policies as provided for in Item F(5) of the Adoption Agreement.
- 7.02 ELIGIBILITY: Eligibility will be as required in Item F(5) of the Adoption Agreement.
- 7.03 DESCRIPTION OF BENEFITS: The benefits available under this Plan will be as defined in Item F(5) of the Adoption Agreement.
- 7.04 TERMS, CONDITIONS, AND LIMITATIONS: The terms, conditions, and limitations of the group life insurance are specifically described in the Policy identified in the Adoption Agreement.
- 7.05 SECTION 79 PLAN: It is the intention of the Employer that the premiums paid for the benefits described in Item F(5) of the Adoption Agreement shall be eligible for exclusion from the gross income of the Participants covered by this benefit plan to the extent provided in Code Section 79, and all provisions of this benefit plan shall be construed in a manner consistent with that intention.
- 7.06 CONTRIBUTIONS: Contributions for this benefit will be provided by the Employer on behalf of a Participant as provided for in Item E of the Adoption Agreement. Any individual policies purchased by the Employer for the Participant will be owned by the Participant.

SECTION VIII

MEDICAL EXPENSE REIMBURSEMENT PLAN

- 8.01 PURPOSE: The Medical Expense Reimbursement Plan is designed to provide for reimbursement of Eligible Medical Expenses (as defined in Section 8.04) that are not reimbursed under an insurance plan, through damages, or from any other source. It is the intention of the Employer that amounts allocated for this benefit shall be eligible for exclusion from gross income, as provided in Code Sections 105 and 106, for Participants who elect this benefit and all provisions of this Section VIII shall be construed in a manner consistent with that intention.
- 8.02 ELIGIBILITY: The eligibility provisions are set forth in Item F(7) of the Adoption Agreement.

8.03 TERMS, CONDITIONS, AND LIMITATIONS:

- a. Accounts. The Reimbursement Recordkeeper shall establish a recordkeeping account for each Participant. The Reimbursement Recordkeeper shall maintain a record of each account on an on-going basis, increasing the balances as contributions are credited during the year and decreasing the balances as Eligible Medical Expenses are reimbursed. No interest shall be payable on amounts recorded in any Participant's account.
- b. Maximum benefit. The maximum amount of reimbursement for each Participant shall be limited to the amount of the Participant's Elective Contribution allocated to the program during the Plan Year, not to exceed the maximum amount set forth in Item F(7) of the Adoption Agreement.
- c. Claim Procedure. In order to be reimbursed for any medical expenses incurred during the Plan Year, the Participant shall complete the form(s) provided for such purpose by the Reimbursement Recordkeeper. The Participant shall submit the completed form to the Reimbursement Recordkeeper with an original bill or other proof of the expense acceptable to the Reimbursement Recordkeeper. No reimbursement shall be made on the basis of an incomplete form or inadequate evidence of expense as determined by the Reimbursement Recordkeeper. Forms for reimbursement of Eligible Medical Expenses must be submitted no later than the last day of the third month following the last day of the Plan Year during which the Eligible Medical Expenses were incurred. Reimbursement payments shall only be made to the Participant, or the Participant's legal representative in the event of incapacity or death of the Participant. Forms for reimbursement shall be reviewed in accordance with the claims procedure set forth in Section XII.
- d. Funding. The funding of the Medical Reimbursement Plan shall be through contributions by the Employer from its general assets to the extent of Elective Contributions directed by Participants. Such contributions shall be made by the Employer when benefit payments and account administrative expenses become due and payable under this Medical Expense Reimbursement Plan.
- e. Forfeiture. Subject to Section 8.06 and 8.07, any amounts remaining to the credit of the Participant at the end of the Plan Year and not used for Eligible Medical Expenses incurred during the Participant's participation during the Plan Year shall be forfeited and shall remain assets of the Plan. With respect to a Participant who terminates employment with the Employer and who has not elected to continue coverage under this Plan pursuant to COBRA rights referenced under Section 8.03(f) herein, such Participant shall not be entitled to reimbursement for Eligible Medical Expenses incurred after his termination date regardless if such Participant has any amounts of Employer Contributions remaining to his credit. Upon the death of any Participant who has any amounts of Employer Contributions remaining to his credit, a dependent of the Participant may elect to continue to claim reimbursement for Eligible Medical Expenses in the same manner as the Participant could have for the balance of the Plan Year.
- f. COBRA. To the extent required by Section 4980B of the Code and Sections 601 through 607 of ERISA ("COBRA"), a Participant and a Participant's Dependents shall be entitled to elect continued participation in this Medical Expense Reimbursement Plan only through the end of the plan year in which the qualifying event occurs, by contributing monthly (from their personal assets previously subject to taxation) to the Employer/Administrator, 102% of the amount of desired reimbursement through the end of the Plan Year in which the qualifying event occurs. Specifically, such individuals will be eligible for COBRA continuation coverage only if they

have a positive Medical Expense Reimbursement Account balance on the date of the qualifying event. Participants who have a deficit balance in their Medical Expense Reimbursement Account on the date of their qualifying event shall not be entitled to elect COBRA coverage. In lieu of COBRA, Participants may continue their coverage through the end of the current Plan Year by paying those premiums out of their last paycheck on a pre-tax basis.

- g. Nondiscrimination. Benefits provided under this Medical Expense Reimbursement Plan shall not be provided in a manner that discriminates in favor of Employees or Dependents who are highly compensated individuals, as provided under Section 105(h) of the Code and regulations promulgated thereunder.
- h. Uniform Coverage Rule. Notwithstanding that a Participant has not had withheld and credited to his account all of his contributions elected with respect to a particular Plan Year, the entire aggregate annual amount elected with respect to this Medical Expense Reimbursement Plan (increased by any Carryover to the Plan Year), shall be available at all times during such Plan Year to reimburse the participant for Eligible Medical Expenses with respect to this Medical Expense Reimbursement Plan. To the extent contributions with respect to this Medical Expense Reimbursement Plan are insufficient to pay such Eligible Medical Expenses, it shall be the Employer's obligation to provide adequate funds to cover any short fall for such Eligible Medical Expenses for a Participant; provided subsequent contributions with respect to this Medical Expense Reimbursement Plan by the Participant shall be available to reimburse the Employer for funds advanced to cover a previous short fall.
- i. Uniformed Services Employment and Reemployment Rights Act. Notwithstanding anything to the contrary herein, this Medical Expense Reimbursement Plan shall comply with the applicable provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 (Public Law 103-353).
- j. Proration of Limit. In the event that the Employer has purchased a uniform coverage risk policy from the Recordkeeper, then the Maximum Coverage amount specified in Section F.7 of the Adoption Agreement shall be pro rated with respect to (i) an Employee who becomes a Participant and enters the Plan during the Plan Year, and (ii) short plan years initiated by the Employer. Such Maximum Coverage amount will be pro rated by dividing the annual Maximum Coverage amount by 12, and multiplying the quotient by the number of remaining months in the Plan Year for the new Participant or the number of months in the short Plan Year, as applicable.
- k. Continuation Coverage for Certain Dependent Children. In the event that benefits under the Medical Expense Reimbursement Plan does not qualify for the exception from the portability rules of HIPAA, then, effective for Plan Years beginning on or after October 9, 2009, notwithstanding the foregoing provisions, coverage for a Dependent child who is enrolled in the Medical Expense Reimbursement Plan as a student at a post-secondary educational institution will not terminate due to a medically necessary leave of absence before a date that is the earlier of:
 - the date that is one year after the first day of the medically necessary leave of absence; or
 - the date on which such coverage would otherwise terminate under the terms of the Plan.

For purposes of this paragraph, “medically necessary leave of absence” means a leave of absence of the child from a post-secondary educational institution, or any other change in enrollment of the child at the institution, that: (i) commences while the child is suffering from a

serious illness or injury; (ii) is medically necessary; and (iii) causes the child to lose student status for purposes of coverage under the terms of the Plan. A written certification must be provided by a treating physician of the dependent child to the Plan in order for the continuation coverage requirement to apply. The physician's certification must state that the child is suffering from a serious illness or injury and that the leave of absence (or other change in enrollment) is medically necessary.

8.04 ELIGIBLE MEDICAL EXPENSES:

- a. Eligible Medical Expense in General. The phrase 'Eligible Medical Expense' means any expense incurred by a Participant or any of his Dependents (subject to the restrictions in Sections 8.04(b) and (c)) during a Plan Year that (i) qualifies as an expense incurred by the Participant or Dependents for medical care as defined in Code Section 213(d) and meets the requirements outlined in Code Section 125, (ii) is excluded from gross income of the Participant under Code Section 105(b), and (iii) has not been and will not be paid or reimbursed by any other insurance plan, through damages, or from any other source. Notwithstanding the above, capital expenditures are not Eligible Medical Expenses under this Plan.
- b. Expenses Incurred After Commencement of Participation. Only medical care expenses incurred by a Participant or the Participant's Dependent(s) on or after the date such Participant commenced participation in the Medical Expense Reimbursement Plan shall constitute an Eligible Medical Expense.
- c. Eligible Expenses Incurred by Dependents. For purposes of this Section, Eligible Medical Expenses incurred by Dependents defined in Section 2.04(c) are eligible for reimbursement if incurred after March 30, 2010; Eligible Medical Expenses incurred by Dependents defined in Sections 2.04(a) and (b) are eligible for reimbursement if incurred either before or after March 30, 2010 (subject to the restrictions of Section 8.04(b)).
- d. Health Savings Accounts. If the Employer has elected in Item F.8 of the Adoption Agreement to allow Eligible Employees to contribute to Health Savings Accounts under the Plan, then for a Participant who is eligible for and elects to contribute to a Health Savings Accounts, Eligible Medical Expenses shall be limited as set forth in Item F.8 of the Adoption Agreement.

8.05 USE OF DEBIT CARD: In the event that the Employer elects to allow the use of debit cards ("Debit Cards") for reimbursement of Eligible Medical Expenses under the Medical Expense Reimbursement Plan, the provisions described in this Section shall apply.

- a. Substantiation. The following procedures shall be applied for purposes of substantiating claimed Eligible Medical Expenses after the use of a Debit Card to pay the claimed Eligible Medical Expense:
 - (i) If the dollar amount of the transaction at a health care provider equals the dollar amount of the co-payment for that service under the Employer's major medical plan of the specific employee-cardholder, the charge is fully substantiated without the need for submission of a receipt or further review.
 - (ii) If the merchant, service provider, or other independent third-party (e.g., pharmacy benefit manager), at the time and point of sale, provides information to

verify to the Recordkeeper (including electronically by e-mail, the internet, intranet, or telephone) that the charge is for a medical expense, the charge is fully substantiated without the need for submission of a receipt or further review.

- b. Status of Charges. All charges to a Debit Card, other than co-payments and real-time substantiation as described in Subsection (a) above, are treated as conditional pending confirmation of the charge, and additional third-party information, such as merchant or service provider receipts, describing the service or product, the date of the service or sale, and the amount, must be submitted for review and substantiation.
- c. Correction Procedures for Improper Payments. In the event that a claim has been reimbursed and is subsequently identified as not qualifying for reimbursement, one or all of the following procedures shall apply:
 - (i) First, upon the Recordkeeper's identification of the improper payment, the Eligible Employee will be required to pay back to the Plan an amount equal to the improper payment.
 - (ii) Second, where the Eligible Employee does not pay back to the Plan the amount of the improper payment, the Employer will have the amount of the improper payment withheld from the Eligible Employee's wages or other compensation to the extent consistent with applicable law.
 - (iii) Third, if the improper payment still remains outstanding, the Plan may utilize a claim substitution or offset approach to resolve improper claims payments.
 - (iv) If the above correction efforts prove unsuccessful, or are otherwise unavailable, the Eligible Employee will remain indebted to the Employer for the amount of the improper payment. In that event and consistent with its business practices, the Employer may treat the payment as it would any other business indebtedness.
 - (v) In addition to the above, the Employer and the Plan may take other actions they may deem necessary, in their sole discretion, to ensure that further violations of the terms of the Debit Card do not occur, including, but not limited to, denial of access to the Debit Card until the indebtedness is repaid by the Eligible Employee.
- d. Intent to Comply with Rev. Rul. 2003-43. It is the Employer's intent that any use of Debit Cards to pay Eligible Medical Expenses shall comply with the guidelines for use of such cards set forth in Rev. Rul. 2003-43, and this Section 8.05 shall be construed and interpreted in a manner necessary to comply with such guidelines.

8.06 GRACE PERIOD: If the Employer elects in Section F.7 of the Adoption Agreement to permit a Grace Period with respect to the Medical Reimbursement Plan, the provisions of this Section 8.06 shall apply. Notwithstanding anything to the contrary herein and in accordance with Internal Revenue Service Notice 2005-42, a Participant who has unused contributions relating to the Medical Reimbursement Plan from the immediately preceding Plan Year, and who incurs Eligible Medical Expenses for such qualified benefit during the Grace Period, may be paid or reimbursed for those Eligible Medical Expenses from the unused contributions as if the expenses had been incurred in the immediately preceding Plan Year. For purposes of this Section, 'Grace Period' shall mean the period extending to the 15th day of the third calendar month after the end of the immediately preceding Plan Year to which it relates. Eligible

Medical Expenses incurred during the Grace Period shall be reimbursed first from unused contributions allocated to the Medical Reimbursement Plan for the prior Plan Year, and then from unused contributions for the current Plan Year, if participant is enrolled in current Plan Year.

- 8.07 CARRYOVER: If the Employer elects in Section F.7 of the Adoption Agreement to permit a Carryover with respect to the Medical Reimbursement Plan, the provisions of this Section 8.07 shall apply. Notwithstanding anything to the contrary herein and in accordance with Internal Revenue Service Notice 2013-71, the Carryover for a Participant who has an amount remaining unused as of the end of the run-off period for the Plan Year, may be used to pay or reimburse Eligible Medical Expenses during the following entire Plan Year. The Carryover does not count against or otherwise affect the Maximum benefit set forth in Section 8.03 (b). Eligible Medical Expenses incurred during a Plan Year shall be reimbursed first from unused contributions for the current Plan Year, and then from any Carryover carried over from the preceding Plan Year. Any unused amounts from the prior Plan Year that are used to reimburse a current Plan Year expense (a) reduce the amounts available to pay prior Plan Year expenses during the run-off period, (b) must be counted against any Carryover amount from the prior Plan Year, and (c) cannot exceed the maximum Carryover from the prior Plan Year. If the Employer elects to apply Section 8.06 in Section F.7 of the Adoption Agreement, this Section 8.07 shall not apply.
- 8.08 QUALIFIED RESERVIST DISTRIBUTIONS: Notwithstanding anything in the Plan to the contrary, an individual who, by reason of being a member of a reserve component (as defined in 37 U.S.C. § 101), is ordered or called to active duty for a period in excess of 179 days or for an indefinite period may elect to receive a distribution of all or a portion of the unused Elective Contributions in his or her Account relating to the Medical Expense Reimbursement Plan if the distribution is made during the period beginning on the date of such order or call and ending on the last date that reimbursements could otherwise be made under the Plan for the Plan Year that includes the date of such order or call. If the distribution is for the entire amount of unused Elective Contributions available in the Medical Expense Reimbursement Plan, then no additional reimbursement requests will be processed for the remainder of the Plan Year.

SECTION IX

DEPENDENT CARE REIMBURSEMENT PLAN

- 9.01 PURPOSE: The Dependent Care Reimbursement Plan is designed to provide for reimbursement of certain employment-related dependent care expenses of the Participant. It is the intention of the Employer that amounts allocated for this benefit shall be eligible for exclusion from gross income, as provided in Code Section 129, for Participants who elect this benefit, and all provisions of this Section IX shall be construed in a manner consistent with that intention.
- 9.02 ELIGIBILITY: The eligibility provisions are set forth in Item F(6) of the Adoption Agreement.
- 9.03 TERMS, CONDITIONS, AND LIMITATIONS:
- a. Accounts. The Reimbursement Recordkeeper shall establish a recordkeeping account for each Participant. The Reimbursement Recordkeeper shall maintain a record of each account on an on-going basis, increasing the balances as contributions are credited during the year and decreasing the balances as Eligible Dependent Care Expenses are reimbursed. No interest shall be payable on amounts recorded in any Participant's account.

- b. Maximum Benefit. The maximum amount of reimbursement for each Participant shall be limited to the amount of the Participant's allocation to the program during the Plan Year not to exceed the maximum amount set forth in Item F(6) of the adoption agreement.

For purpose of this Section IX, the phrase "earned income" shall mean wages, salaries, tips and other employee compensation, but only if such amounts are includible in gross income for the taxable year. A Participant's spouse who is physically or mentally incapable of self-care as described in Section 9.04(a)(ii) or a spouse who is a full-time student within the meaning of Code Section 21(e)(7) shall be deemed to have earned income for each month in which such spouse is so disabled (or a full-time student). The amount of such deemed earned income shall be \$250 per month in the case of one Dependent and \$500 per month in the case of two or more Dependents.

- c. Claim Procedure. In order to be reimbursed for any dependent care expenses incurred during the Plan Year, the Participant shall complete the form(s) provided for such purpose by the Reimbursement Recordkeeper. The Participant shall submit the completed form to the Reimbursement Recordkeeper with an original bill or other proof of the expense from an independent third party acceptable to the Reimbursement Recordkeeper. No reimbursement shall be made on the basis of an incomplete form or inadequate evidence of the expense as determined by the Reimbursement Recordkeeper. Claims for reimbursement of Eligible Dependent Care Expenses must be submitted no later than the last day of the third month following the last day of the Plan Year during which the Eligible Dependent Care Expenses were incurred. Reimbursement payments shall only be made to the Participant, or the Participant's legal representative in the event of the incapacity or death of the Participant. Forms for reimbursement shall be reviewed in accordance with the claims procedure set forth in Section XII.
- d. Funding. The funding of the Dependent Care Reimbursement Plan shall be through contributions by the Employer from its general assets to the extent of Elective Contributions directed by Participants. Such contributions shall be made by the Employer when benefit payments and account administration expenses become due and payable under this Dependent Care Expense Reimbursement Plan.
- e. Forfeiture. Any amounts remaining to the credit of the Participant at the end of the Plan Year and not used for Eligible Dependent Care Expenses incurred during the Plan Year shall be forfeited and remain assets of the Plan.
- f. Nondiscrimination. Benefits provided under this Dependent Care Reimbursement Plan shall not be provided in a manner that discriminates in favor of Highly Compensated Employees (as defined in Code Section 414(q)) or their dependents, as provided in Code Section 129. In addition, no more than 25 percent of the aggregate Eligible Dependent Care Expenses shall be reimbursed during a Plan Year to five percent owners, as provided in Code Section 129.

9.04 DEFINITIONS:

- a. "Dependent" (for purposes of this Section IX) means any individual who is:
 - (i) a Participant's qualifying child (as defined in Code Section 152 (c)) who has not attained the age of 13; or

- (ii) a dependent (qualifying child or qualifying relative, as defined in Code Section 152 (c) and (d), respectively) or the spouse of a Participant who is physically or mentally incapable of self-care, and who has the same principal place of abode as the taxpayer for more than half of the taxable year. For purposes of this Dependent Care Reimbursement Plan, an individual shall be considered physically or mentally incapable of self-care if, as a result of a physical or mental defect, the individual is incapable of caring for his or her hygienic or nutritional needs, or requires full-time attention of another person for his or her own safety or the safety of others.
- b. "Dependent Care Center" (for purposes of this Section IX) shall be a facility which:
 - (i) provides care for more than six individuals (other than individuals who reside at the facility);
 - (ii) receives a fee, payment, or grant for providing services for any of the individuals (regardless of whether such facility is operated for profit); and
 - (iii) satisfies all applicable laws and regulations of a state or unit of local government.
- c. "Eligible Dependent Care Expenses" (for purposes of this Section IX) shall mean expenses incurred by a Participant which are:
 - (i) incurred for the care of a Dependent of the Participant or for related household services;
 - (ii) paid or payable to a Dependent Care Service Provider; and
 - (iii) incurred to enable the Participant to be gainfully employed for any period for which there are one or more Dependents with respect to the Participant.

"Eligible Dependent Care Expenses" shall not include expenses incurred for services outside the Participant's household for the care of a Dependent unless such Dependent is (i) a qualifying child (as defined in Code Section 152 (c)) under the age of 13, or (ii) a dependent (qualifying child or qualifying relative, as defined in Code Section 152 (c) and (d), respectively)), who is physically or mentally incapable of self-care, and who has the same principal place of abode as the Participant for more than half of the taxable year, or (iii) the spouse of a Participant who is physically or mentally incapable of self-care, and who has the same principal place of abode as the Participant for more than half of the taxable year. Eligible Dependent Care Expenses shall be deemed to be incurred at the time the services to which the expenses relate are rendered.
- d. "Dependent Care Service Provider" (for purposes of this Section IX) means:
 - (i) a Dependent Care Center, or
 - (ii) a person who provides care or other services described in Section 9.04(b) and who is not a related individual described in Section 129(c) of the Code.

SECTION X

HEALTH SAVINGS ACCOUNTS

- 10.01 PURPOSE: If elected by the Employer in Section F.8 of the Adoption Agreement, the Plan will permit pre-tax contributions to the Health Savings Account, and the provisions of this Article X shall apply.
- 10.02 BENEFITS: A Participant can elect benefits under the Health Savings Accounts portion of this Plan by electing to pay his or her Health Savings Account contributions on a pre-tax salary reduction basis. In

addition, the Employer may make contributions to the Health Savings Account for the benefit of the Participant.

10.03 TERMS, CONDITIONS AND LIMITATION:

- a. Maximum Benefit. The maximum annual contributions that may be made to a Participant's Health Savings Account under this Plan is set forth in Section F.8 of the Adoption Agreement.
- b. Mid-Year Election Changes. Notwithstanding any to the contrary herein, a Participant election with respect to contributions for the Health Savings Account shall be revocable during the duration of the Plan Year to which the election relates. Consequently, a Participant may change his or her election with respect to contributions for the Health Savings Account at any time.

10.04 RESTRICTIONS ON MEDICAL REIMBURSEMENT PLAN: If the Employer has elected in Section F.8 of the Adoption Agreement both Health Savings Accounts under this Plan and the Medical Expense Reimbursement Plan, then the Eligible Medical Expenses that may be reimbursed under the Medical Reimbursement Plan for Participants who are eligible for and elect to participate in Health Savings Accounts shall be limited as set forth in Section F.8 of the Adoption Agreement.

10.05 NO ESTABLISHMENT OF ERISA PLAN: It is the intent of the Employer that the establishment of Health Savings Accounts are completely voluntary on the part of Participants, and that, in accordance with Department of Labor Field Assistance Bulletin 2004-1, the Health Savings Accounts are not "employee welfare benefit plans" for purposes of Title I of ERISA.

SECTION XI

AMENDMENT AND TERMINATION

- 11.01 AMENDMENT: The Employer shall have the right at any time, and from time to time, to amend, in whole or in part, any or all of the provisions of this Plan, provided that no such amendment shall change the terms and conditions of payment of any benefits to which Participants and covered dependents otherwise have become entitled to under the provisions of the Plan, unless such amendment is made to comply with federal or local laws or regulations. The Employer also shall have the right to make any amendment retroactively which is necessary to bring the Plan into conformity with the Code. In addition, the Employer may amend any provisions or any supplements to the Plan and may merge or combine supplements or add additional supplements to the Plan, or separate existing supplements into an additional number of supplements.
- 11.02 TERMINATION: The Employer shall have the right at any time to terminate this Plan, provided that such termination shall not eliminate any obligations of the Employer which therefore have arisen under the Plan.

SECTION XII

ADMINISTRATION

12.01 NAMED FIDUCIARIES: The Administrator shall be the fiduciary of the Plan.

12.02 APPOINTMENT OF RECORDKEEPER: The Employer may appoint a Reimbursement Recordkeeper which shall have the power and responsibility of performing recordkeeping and other ministerial duties arising under the Medical Expense Reimbursement Plan and the Dependent Care Reimbursement Plan provisions of this Plan. The Reimbursement Recordkeeper shall serve at the pleasure of, and may be removed by, the Employer without cause. The Recordkeeper shall receive reasonable compensation for its services as shall be agreed upon from time to time between the Administrator and the Recordkeeper.

12.03 POWERS AND RESPONSIBILITIES OF ADMINISTRATOR:

- a. General. The Administrator shall be vested with all powers and authority necessary in order to amend and administer the Plan, and is authorized to make such rules and regulations as it may deem necessary to carry out the provisions of the Plan. The Administrator shall determine any questions arising in the administration (including all questions of eligibility and determination of amount, time and manner of payments of benefits), construction, interpretation and application of the Plan, and the decision of the Administrator shall be final and binding on all persons.
- b. Recordkeeping. The Administrator shall keep full and complete records of the administration of the Plan. The Administrator shall prepare such reports and such information concerning the Plan and the administration thereof by the Administrator as may be required under the Code or ERISA and the regulations promulgated thereunder.
- c. Inspection of Records. The Administrator shall, during normal business hours, make available to each Participant for examination by the Participant at the principal office of the Administrator a copy of the Plan and such records of the Administrator as may pertain to such Participant. No Participant shall have the right to inquire as to or inspect the accounts or records with respect to other Participants.

12.04 COMPENSATION AND EXPENSES OF ADMINISTRATOR: The Administrator shall serve without compensation for services as such. All expenses of the Administrator shall be paid by the Employer. Such expenses shall include any expense incident to the functioning of the Plan, including, but not limited to, attorneys' fees, accounting and clerical charges, actuary fees and other costs of administering the Plan.

12.05 LIABILITY OF ADMINISTRATOR: Except as prohibited by law, the Administrator shall not be liable personally for any loss or damage or depreciation which may result in connection with the exercise of duties or of discretion hereunder or upon any other act or omission hereunder except when due to willful misconduct. In the event the Administrator is not covered by fiduciary liability insurance or similar insurance arrangements, the Employer shall indemnify and hold harmless the Administrator from any and all claims, losses, damages, expenses (including reasonable counsel fees approved by the Administrator) and liability (including any reasonable amounts paid in settlement with the Employer's approval) arising from any act or omission of the Administrator, except when the same is determined to be due to the willful misconduct of the Administrator by a court of competent jurisdiction.

12.06 DELEGATIONS OF RESPONSIBILITY: The Administrator shall have the authority to delegate, from time to time, all or any part of its responsibilities under the Plan to such person or persons as it may deem advisable and in the same manner to revoke any such delegation of responsibilities which shall have the same force and effect for all purposes hereunder as if such action had been taken by the Administrator. The Administrator shall not be liable for any acts or omissions of any such delegate. The delegate shall report periodically to the Administrator concerning the discharge of the delegated responsibilities.

- 12.07 RIGHT TO RECEIVE AND RELEASE NECESSARY INFORMATION: The Administrator may release or obtain any information necessary for the application, implementation and determination of this Plan or other Plans without consent or notice to any person. This information may be released to or obtained from any insurance company, organization, or person subject to applicable law. Any individual claiming benefits under this Plan shall furnish to the Administrator such information as may be necessary to implement this provision.
- 12.08 CLAIM FOR BENEFITS: To obtain payment of any benefits under the Plan a Participant must comply with the rules and procedures of the particular benefit program elected pursuant to this Plan under which the Participant claims a benefit.
- 12.09 GENERAL CLAIMS REVIEW PROCEDURE: This provision shall apply only to the extent that a claim for benefits is not governed by a similar provision of a benefit program available under this Plan or is not governed by Section 12.10.

- a. Initial Claim for Benefits. Each Participant may submit a claim for benefits to the Administrator as provided in Section 12.08. A Participant shall have no right to seek review of a denial of benefits, or to bring any action in any court to enforce a claim for benefits prior to his filing a claim for benefits and exhausting his rights to review under this section.

When a claim for benefits has been filed properly, such claim for benefits shall be evaluated and the claimant shall be notified of the approval or the denial within (90) days after the receipt of such claim unless special circumstances require an extension of time for processing the claim. If such an extension of time for processing is required, written notice of the extension shall be furnished to the claimant prior to the termination of the initial ninety (90) day period which shall specify the special circumstances requiring an extension and the date by which a final decision will be reached (which date shall not be later than one hundred and eighty (180) days after the date on which the claim was filed.) A claimant shall be given a written notice in which the claimant shall be advised as to whether the claim is granted or denied, in whole or in part. If a claim is denied, in whole or in part, the claimant shall be given written notice which shall contain (a) the specific reasons for the denial, (b) references to pertinent plan provisions upon which the denial is based, (c) a description of any additional material or information necessary to perfect the claim and an explanation of why such material or information is necessary, and (d) the claimant's rights to seek review of the denial.

- b. Review of Claim Denial. If a claim is denied, in whole or in part, the claimant shall have the right to request that the Administrator review the denial, provided that the claimant files a written request for review with the Administrator within sixty (60) days after the date on which the claimant received written notification of the denial. A claimant (or his duly authorized representative) may review pertinent documents and submit issues and comments in writing to the Administrator. Within sixty (60) days after a request is received, the review shall be made and the claimant shall be advised in writing of the decision on review, unless special circumstances require an extension of time for processing the review, in which case the claimant shall be given a written notification within such initial sixty (60) day period specifying the reasons for the extension and when such review shall be completed (provided that such review shall be completed within one hundred and twenty (120) days after the date on which the request for review was filed.) The decision on review shall be forwarded to the claimant in writing and shall include specific reasons for the decision and references to plan provisions upon which the decision is based. A decision on review shall be final and binding on all persons.

- c. Exhaustion of Remedies. If a claimant fails to file a request for review in accordance with the procedures herein outlined, such claimant shall have no rights to review and shall have no right to bring action in any court and the denial of the claim shall become final and binding on all persons for all purposes.

12.10 SPECIAL CLAIMS REVIEW PROCEDURE: The provisions of this Section 12.10 shall be applicable to claims under the Medical Expense Reimbursement Plan and the Group Medical Insurance Plan, effective on the first day of the first Plan Year beginning on or after July 1, 2002, but in no event later than January 1, 2003, provided such plans are subject to ERISA.

- a. Benefit Denials: The Administrator is responsible for evaluating all claims for reimbursement under the Medical Expense Reimbursement Plan and the Group Medical Insurance Plan.

The Administrator will decide a Participant's claim within a reasonable time not longer than 30 days after it is received. This time period may be extended for an additional 15 days for matters beyond the control of the Administrator, including in cases where a claim is incomplete. The Participant will receive written notice of any extension, including the reasons for the extension and information on the date by which a decision by the Administrator is expected to be made. The Participant will be given 45 days in which to complete an incomplete claim. The Administrator may secure independent medical or other advice and require such other evidence as it deems necessary to decide the claim.

If the Administrator denies the claim, in whole or in part, the Participant will be furnished with a written notice of adverse benefit determination setting forth:

1. the specific reason or reasons for the denial;
 2. reference to the specific Plan provision on which the denial is issued;
 3. a description of any additional material or information necessary for the Participant to complete his claim and an explanation of why such material or information is necessary, and
 4. appropriate information as to the steps to be taken if the Participant wishes to appeal the Administrator's determination, including the participant's right to submit written comments and have them considered, his right to review (on request and at no charge) relevant documents and other information, and his right to file suit under ERISA with respect to any adverse determination after appeal of his claim.
- b. Appealing Denied Claims: If the Participant's claim is denied in whole or in part, he may appeal to the Administrator for a review of the denied claim. The appeal must be made in writing within 180 days of the Administrator's initial notice of adverse benefit determination, or else the participant will lose the right to appeal the denial. If the Participant does not appeal on time, he will also lose his right to file suit in court, as he will have failed to exhaust his internal administrative appeal rights, which is generally a prerequisite to bringing suit.

A Participant's written appeal should state the reasons that he feels his claim should not have been denied. It should include any additional facts and/or documents that the Participant feels support his claim. The Participant may also ask additional questions and make written comments, and may review (on request and at no charge) documents and other information

relevant to his appeal. The Administrator will review all written comment the Participant submits with his appeal.

- c. Review of Appeal: The Administrator will review and decide the Participant's appeal within a reasonable time not longer than 60 days after it is submitted and will notify the Participant of its decision in writing. The individual who decides the appeal will not be the same individual who decided the initial claim denial and will not be that individual's subordinate. The Administrator may secure independent medical or other advice and require such other evidence as it deems necessary to decide the appeal, except that any medical expert consulted in connection with the appeal will be different from any expert consulted in connection with the initial claim. (The identity of a medical expert consulted in connection with the Participant's appeal will be provided.) If the decision on appeal affirms the initial denial of the Participant's claim, the Participant will be furnished with a notice of adverse benefit determination on review setting forth:

1. The specific reason(s) for the denial,
2. The specific Plan provision(s) on which the decision is based,
3. A statement of the Participant's right to review (on request and at no charge) relevant documents and other information,
4. If the Administrator relied on an "internal rule, guideline, protocol, or other similar criterion" in making the decision, a description of the specific rule, guideline, protocol, or other similar criterion or a statement that such a rule, guideline, protocol, or other similar criterion was relied on and that a copy of such rule, guideline, protocol, or other criterion will be provided free of charge to the Participant upon request," and
5. A statement of the Participant's right to bring suit under ERISA § 502(a).

12.11 PAYMENT TO REPRESENTATIVE: In the event that a guardian, conservator or other legal representative has been duly appointed for a Participant entitled to any payment under the Plan, any such payment due may be made to the legal representative making claim therefor, and such payment so made shall be in complete discharge of the liabilities of the Plan therefor and the obligations of the Administrator and the Employer.

12.12 PROTECTED HEALTH INFORMATION. The provisions of this Section will apply only to those portions of the Plan that are considered a group health plan for purposes of 45 CFR Parts 160 and 164. The Plan may disclose PHI to employees of the Employer, or to other persons, only to the extent such disclosure is required or permitted pursuant to 45 CFR Parts 160 and 164. The Plan has implemented administrative, physical, and technical safeguards to reasonably and appropriately protect, and restrict access to and use of, electronic PHI, in accordance with Subpart C of 45 CFR Part 164. The applicable claims procedures under the Plan shall be used to resolve any issues of non-compliance by such individuals. The Employer will:

- not use or disclose PHI other than as permitted or required by the plan documents and permitted or required by law;
- reasonably and appropriately safeguard electronic PHI created, received, maintained, or transmitted to or by the it on behalf of the Plan, in accordance with Subpart C of 45 CFR Part 164;

- implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of the Plan;
- ensure that any agents including a subcontractors to whom it provides PHI received from the Plan agree to the same restrictions and conditions that apply to the Employer with respect to such information;
- not use or disclose PHI for employment-related actions and decisions or in connection with any other employee benefit plan of the Employer;
- report to the Plan any use or disclosure of the information that is inconsistent with the permitted uses or disclosures provided for of which it becomes aware;
- make available PHI in accordance with 45 CFR Section 164.524;
- make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 CFR Section 164.526;
- make available the information required to provide an accounting of disclosures in accordance with 45 CFR Section 164.528;
- make its internal practices, books, and records relating to the use and disclosure of PHI received from the Plan available to the Secretary of Health and Human Services or his designee upon request for purposes of determining compliance with 45 CFR Section 164.504(f);
- if feasible, return or destroy all PHI received from the Plan that the Employer still maintains in any form and retain no copies of such information when no longer needed for the purposes for which disclosure was made, except that, if such return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible; and,
- ensure that the adequate separation required in paragraph (f)(2)(iii) of 45 CFR Section 164.504 is established.

For purposes of this Section, “PHI” is “Protected Health Information” as defined in 45 CFR Section 160.103, which means individually identifiable health information, except as provided in paragraph (2) of the definition of “Protected Health Information” in 45 CFR Section 160.103, that is transmitted by electronic media; maintained in electronic media; or transmitted or maintained in any other form or medium by a covered entity, as defined in 45 CFR Section 164.104.

SECTION XIII

MISCELLANEOUS PROVISIONS

- 13.01 INABILITY TO LOCATE PAYEE: If the Plan Administrator is unable to make payment to any Participant or other person to whom a payment is due under the Plan because it cannot ascertain the identity or whereabouts of such Participant or other person after reasonable efforts have been made to identify or locate such person, then such payment and all subsequent payments otherwise due to such Participant or other person shall be forfeited following a reasonable time after the date any such payment first became due.
- 13.02 FORMS AND PROOFS: Each Participant or Participant's Beneficiary eligible to receive any benefit hereunder shall complete such forms and furnish such proofs, receipts, and releases as shall be required by the Administrator.
- 13.03 NO GUARANTEE OF TAX CONSEQUENCES: Neither the Administrator nor the Employer makes any commitment or guarantee that any amounts paid to or for the benefit of a Participant or a Dependent

under the Plan will be excludable from the Participant's or Dependent's gross income for federal or state income tax purposes, or that any other federal or state tax treatment will apply to or be available to any Participant or Dependent.

- 13.04 PLAN NOT CONTRACT OF EMPLOYMENT: The Plan will not be deemed to constitute a contract of employment between the Employer and any Participant nor will the Plan be considered an inducement for the employment of any Participant or employee. Nothing contained in the Plan will be deemed to give any Participant or employee the right to be retained in the service of the Employer nor to interfere with the right of the Employer to discharge any Participant or employee at any time regardless of the effect such discharge may have upon that individual as a Participant in the Plan.
- 13.05 NON-ASSIGNABILITY: No benefit under the Plan shall be liable for any debt, liability, contract, engagement or tort of any Participant or his Beneficiary, nor be subject to charge, anticipation, sale, assignment, transfer, encumbrance, pledge, attachment, garnishment, execution or other voluntary or involuntary alienation or other legal or equitable process, nor transferability by operation of law.
- 13.06 SEVERABILITY: If any provision of the Plan will be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions hereof will continue to be fully effective.
- 13.07 CONSTRUCTION:
- a. Words used herein in the masculine or feminine gender shall be construed as the feminine or masculine gender, respectively where appropriate.
 - b. Words used herein in the singular or plural shall be construed as the plural or singular, respectively, where appropriate.
- 13.08 NONDISCRIMINATION: In accordance with Code Section 125(b)(1), (2), and (3), this Plan is intended not to discriminate in favor of Highly Compensated Participants (as defined in Code Section 125(e)(1)) as to contributions and benefits nor to provide more than 25% of all qualified benefits to Key Employees. If, in the judgment of the Administrator, more than 25% of the total nontaxable benefits are provided to Key Employees, or the Plan discriminates in any other manner (or is at risk of possible discrimination), then, notwithstanding any other provision contained herein to the contrary, and, in accordance with the applicable provisions of the Code, the Administrator shall, after written notification to affected Participants, reduce or adjust such contributions and benefits under the Plan as shall be necessary to insure that, in the judgment of the Administrator, the Plan shall not be discriminatory.
- 13.09 ERISA. The Plan shall be construed, enforced, and administered and the validity determined in accordance with the applicable provisions of the Employee Retirement Income Security Act of 1974 (as amended), the Internal Revenue Code of 1986 (as amended), and the laws of the State indicated in the Adoption Agreement. Notwithstanding anything to the contrary herein, the provisions of ERISA will not apply to this Plan if the Plan is exempt from coverage under ERISA. Should any provisions be determined to be void, invalid, or unenforceable by any court of competent jurisdiction, the Plan will continue to operate, and for purposes of the jurisdiction of the court only will be deemed not to include the provision determined to be void.

SECTION XIV

TEMPORARY COVID RELIEF AMENDMENT

14.01 PURPOSE: In accordance with changes permitted under The Coronavirus Aid, Relief, and Economic Security Act, 2020, IRS Notice 2020-29, The Consolidated Appropriations Act, 2021, and IRS Notice 2021-15, Employer selected modifications to Plan language and procedures consistent with the following Plan options, as applicable. Notwithstanding any provision of the Plan to the contrary, as elected by the Employer in Item F of the Adoption Agreement, the Plan is hereby amended to adopt the following:

- a. Extended Claims Period: For unused amounts remaining in a Medical Expense Reimbursement Plan or a Dependent Care Reimbursement Plan under the Section 125 Plan as of the end of a grace period or plan year ending in 2020, the Participants may apply those unused amounts to pay or reimburse medical care expenses or dependent care expenses, respectively, incurred through December 31, 2020.
- b. Mid-Year Election Changes: Each Participant who is eligible to make salary reduction contributions under the Plan may make prospective election changes (including an initial election) during calendar year 2020 regarding Group Medical Insurance, a Medical Expense Reimbursement Plan, or a Dependent Care Reimbursement Plan, regardless of whether the basis for the election change satisfies the criteria set forth in regular election change rules.
- c. Mid-Year Election Changes for Medical Expense Reimbursement Plan: For plan years ending in 2021, Participants may modify their Medical Expense Reimbursement Plan elections on a prospective basis at any time during the year. No qualifying event is required.
- d. Mid-Year Election Changes for Dependent Care Reimbursement Plan: For plan years ending in 2021, Participants may modify their Dependent Care Reimbursement Plan elections on a prospective basis at any time during the year. No qualifying event is required.
- e. Extended Grace Period: For plan years ending in 2020 and/or 2021, the grace period for Medical Expense Reimbursement Plan and/or Dependent Care Reimbursement Plan is extended to 12 months.
- f. Unlimited Carryover for Medical Expense Reimbursement Plan: All unused funds in the Medical Expense Reimbursement Plan may be carried over to 2021 (from plan year 2020) and/or 2022 (from plan year 2021). There is no carryover maximum.
- g. Dependent Care Reimbursement Plan Age Increase: For Participants enrolled in the Dependent Care Reimbursement Plan for the 2020 Plan Year, the maximum age for children is extended from age 12 to age 13 when paying or reimbursing dependent care expenses incurred during the 2020 Plan Year. Additionally, amounts remaining at the end of the run-out period for the 2020 Plan Year shall be available to pay or reimburse otherwise-eligible dependent care expenses incurred during the 2021 Plan Year for a child who attained age 13 during the 2020 Plan Year (until the child turns age 14) or for another child who turns age 13 during the 2021 Plan Year.
- h. Reimbursement for Non-Active Participants: Participants who cease participation in a Medical Expense Reimbursement Plan during 2020 or 2021 (for example, due to termination of employment) may continue to receive reimbursements from unused balances through the end of the plan year in which such participation ceased (including any grace period).
- i. Dependent Care Reimbursement Plan Maximum Increase: For the 2021 calendar year only, Dependent Care Reimbursement Plan maximums may be increased to \$10,500 per family (\$5,250 for married individuals filing a joint return).

**AMENDMENT
SECTION 125 FLEXIBLE BENEFIT PLAN
ADOPTION AGREEMENT**

The undersigned Employer hereby adopts the Section 125 Flexible Benefit Plan for those Employees who shall qualify as Participants hereunder. The Employer hereby selects the following Plan specifications:

A. EMPLOYER INFORMATION

Name of Employer:	CITY OF LEANDER
Address:	105 N. BRUSHY STREET LEANDER, TEXAS 78641
Employer Identification Number:	74-2007646
Nature of Business:	CITY GOVERNMENT
Name of Plan:	Flexible Benefit Plan
Plan Number:	501

B. EFFECTIVE DATE

Original effective date of the Plan:	
If Amendment to existing plan, effective date of amendment:	OCTOBER 1, 2023

C. ELIGIBILITY REQUIREMENTS FOR PARTICIPATION

Eligibility requirements for each component plan under this Section 125 document will be applicable and, if different, will be listed in Item F.

Length of Service:	First day of month following employment
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Retiree Wording:

Minimum Hours:	All employees with 40 hours of service or more each week. An hour of service is each hour for which an employee receives, or is entitled to receive, payment for performance of duties for the Employer.
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Age:	Minimum age of 18 years.
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D. PLAN YEAR

The current plan year will begin on **October 1, 2023**, and end on **December 31, 2024**. Each subsequent plan year will begin on **January 1** and end on **December 31**.

E. EMPLOYER CONTRIBUTIONS

Non-Elective Contributions:

The maximum amount available to each Participant for the purchase of elected benefits with non-elective contributions will be:

The Employer may at its sole discretion provide a non-elective contribution to provide benefits for each Participant under the Plan. This amount will be set by the Employer each Plan Year in a uniform and non-discriminatory manner. If this non-elective contribution amount exceeds the cost of benefits elected by the Participant, excess amounts will not be paid to the Participant as taxable cash.

**Elective Contributions
(Salary Reduction):**

The maximum amount available to each Participant for the purchase of elected benefits through salary reduction will be:

\$50,000

Each Participant may authorize the Employer to reduce his or her compensation by the amount needed for the purchase of benefits elected, less the amount of non-elective contributions. An election for salary reduction will be made on the benefit election form.

F. AVAILABLE BENEFITS: Each of the following components should be considered a plan that comprises this Plan.

1. **Group Medical Insurance** -- The terms, conditions, and limitations for the Group Medical Insurance will be as set forth in the insurance policy or policies described below: (See Section V of the Plan Document)

Eligibility Requirements for Participation, if different than Item C.

2. **Disability Income Insurance** -- The terms, conditions, and limitations for the Disability Income Insurance will be as set forth in the insurance policy or policies described below: (See Section VI of the Plan Document)

Eligibility Requirements for Participation, if different than Item C.

3. **Cancer Coverage** -- The terms, conditions, and limitations for the Cancer Coverage will be as set forth in the insurance policy or policies described below: (See Section V of the Plan Document)

Eligibility Requirements for Participation, if different than Item C.

4. **Dental/Vision Insurance** -- The terms, conditions, and limitations for the Dental/Vision Insurance will be as set forth in the insurance policy or policies described below: (See Section V of the Plan Document)

Eligibility Requirements for Participation, if different than Item C.

5. **Group Life Insurance** which will be comprised of Group term life insurance and Individual term life insurance under Section 79 of the Code.

The terms, conditions, and limitations for the Group Life Insurance will be as set forth in the insurance policy or policies described below: (See Section VII of the Plan Document)

Individual life coverage under Section 79 is available as a benefit, and the face amount when combined with the group-term life, if any, may not exceed \$50,000.

Eligibility Requirements for Participation, if different than Item C.

6. **Dependent Care Assistance Plan** -- The terms, conditions, and limitations for the Dependent Care Assistance Plan will be as set forth in Section IX of the Plan Document and described below:

Minimum Contribution - \$ per Plan Year

Maximum Contribution - \$ Annual maximums allowable by the
IRS Code Section 129 or prorated
Amount for Short Plan Year.

Recordkeeper: **First Financial Administrators, Inc.**

Eligibility Requirements for Participation, if different than Item C.

7. **Medical Expense Reimbursement Plan** -- The terms, conditions, and limitations for the Medical Expense Reimbursement Plan will be as set forth in Section VIII of the Plan Document and described below:

Minimum Coverage - **\$300** per Plan Year or a Prorated
Amount for a Short Plan Year.

Maximum Coverage - \$ Annual maximums allowable by the IRS Code Section 125(i) 1 or Prorated Amount for Short Plan Year. In no event can the maximum exceed the limit as indicated by the IRS in accordance with the law.

Recordkeeper: **First Financial Administrators, Inc.**

Restrictions:

Grace Period: The Provisions in Section 8.06 of the Plan to permit a Grace Period with respect to the Medical Expense Reimbursement Plan **IS NOT** elected.

Carryover: The Provisions in Section 8.07 of the Plan to permit a Carryover with respect to the Medical Expense Reimbursement Plan **IS** elected.

HEART Act: The provisions in Section 8.08 of the Plan to permit the Qualified Reservist Distribution of the Heroes Earnings Assistance and Relief Tax Act (HEART) is elected.

Eligibility Requirements for Participation, if different than Item C.

8. **Health Savings Accounts** – The Plan does not permit contributions to be made to a Health Savings Account on a pretax basis in accordance with Section X of the Plan and the following provisions:

HSA Trustee – **N/A**

Maximum Contribution – **As indexed annually by the IRS.**

Limitation on Eligible Medical Expenses – For purposes of the Medical Reimbursement Plan, Eligible Medical Expenses of a Participant that is eligible for and elects to participate in a Health Savings Account shall be limited to expenses for:

Eligibility Requirements for Participation, if different than Item C.

- a. An Employee must complete a Certification of Health Savings Account Eligibility which confirms that the Participant is an eligible individual who is entitled to establish a Health Savings Account in accordance with Code Section 223(c)(1).
- b. Eligibility for the Health Savings Account shall begin on the later of (i) first day of the month coinciding with or next following the Employee's commencement of coverage under the High Deductible Health Plan, or (ii)

the first day following the end of a Grace Period available to the Employee with respect to the Medical Reimbursement Accounts that are not limited to vision and dental expenses (unless the participant has a \$0.00 balance on the last day of the plan year).

- c. An Employee's eligibility for the Health Savings Account shall be determined monthly.

The Plan shall be construed, enforced, administered, and the validity determined in accordance with the applicable provisions of the Employee Retirement Income Security Act of 1974, (as amended) if applicable, the Internal Revenue Code of 1986 (as amended), and the laws of the State of Texas. Should any provision be determined to be void, invalid, or unenforceable by any court of competent jurisdiction, the Plan will continue to operate, and for purposes of the jurisdiction of the court only, will be deemed not to include the provision determined to be void.

This Plan is hereby adopted_____.

CITY OF LEANDER

Signed By:_____

Title:_____

APPENDIX A

Related Employers that have adopted this Plan

Name(s):

THIS DOCUMENT IS NOT COMPLETE WITHOUT SECTIONS I THROUGH XIII

PD – 0423

Document ID #

Effective Date:

6/29/2023 1:01 PM

SECTION 125 FLEXIBLE BENEFIT PLAN

SECTION I

PURPOSE

The Employer is establishing this Flexible Benefit Plan in order to make a broader range of benefits available to its Employees and their Beneficiaries. This Plan allows Employees to choose among different types of benefits and select the combination best suited to their individual goals, desires, and needs. These choices include an option to receive certain benefits in lieu of taxable compensation.

In establishing this Plan, the Employer desires to attract, reward, and retain highly qualified, competent Employees, and believes this Plan will help achieve that goal.

It is the intent of the Employer to establish this Plan in conformity with Section 125 of the Internal Revenue Code of 1986, as amended, and in compliance with applicable rules and regulations issued by the Internal Revenue Service. This Plan will grant to eligible Employees an opportunity to purchase qualified benefits which, when purchased alone by the Employer, would not be taxable.

SECTION II

DEFINITIONS

The following words and phrases appear in this Plan and will have the meaning indicated below unless a different meaning is plainly required by the context:

- 2.01 **Administrator** The Employer unless another has been designated in writing by the Employer as Administrator within the meaning of Section 3(16) of ERISA (if applicable).
- 2.02 **Beneficiary** Any person or persons designated by a participating Employee to receive any benefit payable under the Plan on account of the Employee's death.
- 2.02a **Carryover** The amount equal to the lesser of (a) any unused amounts from the immediately preceding Plan Year or (b) an amount up to \$610, as indexed for inflation, paralleling the indexing applicable to the limit on salary reduction contributions under Code Section 125(i) of the Code, except that in no event may the Carryover be less than five dollars (\$5).
- 2.03 **Code** Internal Revenue Code of 1986, as amended.
- 2.04 **Dependent** Any of the following:
- (a) Tax Dependent: A Dependent includes a Participant's spouse and any other person who is a Participant's dependent within the meaning of Code Section 152, provided that, with respect to any plan that provides benefits that are excluded from an Employee's income under Code Section 105, a Participant's dependent (i) is any person within the meaning of Code Section 152, determined without regard to Subsections (b)(1), (b)(2),

and (d)(1)(B) thereof, and (ii) includes any child of the Participant to whom Code Section 152(e) applies (such child will be treated as a dependent of both divorced parents).

(b) Student on a Medically Necessary Leave of Absence: With respect to any plan that is considered a group health plan under Michelle's Law (and not a HIPAA excepted benefit under Code Sections 9831(b), (c) and 9832(c)) and to the extent the Employer is required by Michelle's Law to provide continuation coverage, a Dependent includes a child who qualifies as a Tax Dependent (defined in Section 2.04(a)) because of his or her full-time student status, is enrolled in a group health plan, and is on a medically necessary leave of absence from school. The child will continue to be a Dependent if the medically necessary leave of absence commences while the child is suffering from a serious illness or injury, is medically necessary, and causes the child to lose student status for purposes of the group health plan's benefits coverage. Written physician certification that the child is suffering from a serious illness or injury and that the leave of absence is medically necessary is required at the Administrator's request. The child will no longer be considered a Dependent as of the earliest date that the child is no longer on a medically necessary leave of absence, the date that is one year after the first day of the medically necessary leave of absence, or the date benefits would otherwise terminate under either the group health plan or this Plan. Terms related to Michelle's Law, and not otherwise defined, will have the meaning provided under the Michelle's Law provisions of Code Section 9813.

(c) Adult Children: With respect to any plan that provides benefits that are excluded from an Employee's income under Code Section 105, a Dependent includes a child of a Participant who as of the end of the calendar year has not attained age 27. A 'child' for purpose of this Section 2.04(c) means an individual who is a son, daughter, stepson, or stepdaughter of the Participant, a legally adopted individual of the Participant, an individual who is lawfully placed with the Participant for legal adoption by the Participant, or an eligible foster child who is placed with the Participant by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction. An adult child described in this Section 2.04(c) is only a Dependent with respect to benefits provided after March 30, 2010 (subject to any other limitations of the Plan).

Dependent for purposes of the Dependent Care Reimbursement Plan is defined in Section 9.04(a).

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|------|------------------------------|---|
| 2.05 | Effective Date | The effective date of this Plan as shown in Item B of the Adoption Agreement. |
| 2.06 | Elective Contribution | The amount the Participant authorizes the Employer to reduce compensation for the purchase of benefits elected. |

- 2.07 **Eligible Employee** Employee meeting the eligibility requirements for participation as shown in Item C of the Adoption Agreement.
- 2.08 **Employee** Any person employed by the Employer on or after the Effective Date.
- 2.09 **Employer** The entity shown in Item A of the Adoption Agreement, and any Related Employers authorized to participate in the Plan with the approval of the Employer. Related Employers who participate in this Plan are listed in Appendix A to the Adoption Agreement. For the purposes of Section 11.01 and 11.02, only the Employer as shown in Item A of the Adoption Agreement may amend or terminate the Plan.
- 2.10 **Employer Contributions** Amounts that have not been actually received by the Participant and are available to the Participant for the purpose of selecting benefits under the Plan. This term includes Non-Elective Contributions and Elective Contributions through salary reduction.
- 2.11 **Entry Date** The date that an Employee is eligible to participate in the Plan.
- 2.12 **ERISA** The Employee Retirement Income Security Act of 1974, Public Law 93-406 and all regulations and rulings issued thereunder, as amended (if applicable).
- 2.13 **Fiduciary** The named fiduciary shall mean the Employer, the Administrator and other parties designated as such, but only with respect to any specific duties of each for the Plan as may be set forth in a written agreement.
- 2.14 **Health Savings Account** A "health savings account" as defined in Section 223(d) of the Internal Revenue Code of 1986, as amended established by the Participant with the HSA Trustee.
- 2.15 **HSA Trustee** The Trustee of the Health Savings Account which is designated in Section F.8 of the Adoption Agreement.
- 2.16 **Highly Compensated** Any Employee who at any time during the Plan Year is a "highly compensated employee" as defined in Section 414(q) of the Code.
- 2.17 **High Deductible Health Plan** A health plan that meets the statutory requirements for annual deductibles and out-of-pocket expenses set forth in Code section 223(c)(2).
- 2.18 **HIPAA** The Health Insurance Portability and Accountability Act of 1996, as amended.

- 2.19 **Insurer** Any insurance company that has issued a policy pursuant to the terms of this Plan.
- 2.20 **Key Employee** Any Participant who is a "key employee" as defined in Section 416(i) of the Code.
- 2.21 **Non-Elective Contribution** A contribution amount made available by the Employer for the purchase of benefits elected by the Participant.
- 2.22 **Participant** An Employee who has qualified for Plan participation as provided in Item C of the Adoption Agreement.
- 2.23 **Plan** The Plan referred to in Item A of the Adoption Agreement as may be amended from time to time.
- 2.24 **Plan Year** The Plan Year as specified in Item D of the Adoption Agreement.
- 2.25 **Policy** An insurance policy issued as a part of this Plan.
- 2.26 **Preventative Care** Medical expenses which meet the safe harbor definition of "preventative care" set forth in IRS Notice 2004-23, which includes, but is not limited to, the following: (i) periodic health evaluations, such as annual physicals (and the tests and diagnostic procedures ordered in conjunction with such evaluations); (ii) well-baby and/or well-child care; (iii) immunizations for adults and children; (iv) tobacco cessation and obesity weight-loss programs; and (v) screening devices. However, preventative care does not generally include any service or benefit intended to treat an existing illness, injury or condition.
- 2.27 **Recordkeeper** The person designated by the Employer to perform recordkeeping and other ministerial duties with respect to the Medical Expense Reimbursement Plan and/or the Dependent Care Reimbursement Plan.
- 2.28 **Related Employer** Any employer that is a member of a related group of organizations with the Employer shown in Item A of the Adoption Agreement, and as specified under Code Section 414(b), (c) or (m).

SECTION III

ELIGIBILITY, ENROLLMENT, AND PARTICIPATION

- 3.01 **ELIGIBILITY:** Each Employee of the Employer who has met the eligibility requirements of Item C of the Adoption Agreement will be eligible to participate in the Plan on the Entry Date specified or the Effective Date of the Plan, whichever is later. Dependent eligibility to receive benefits under any of the plans listed in Item F of the Adoption Agreement will be described in the documents governing

those benefit plans. To the extent a Dependent is eligible to receive benefits under a plan listed in Item F, an Eligible Employee may elect coverage under this Plan with respect to such Dependent. Notwithstanding the foregoing, life insurance coverage on the life of a Dependent may not be elected under this Plan.

- 3.02 ENROLLMENT: An eligible Employee may enroll (or re-enroll) in the Plan by submitting to the Employer, during an enrollment period, an Election Form which specifies his or her benefit elections for the Plan Year and which meets such standards for completeness and accuracy as the Employer may establish. A Participant's Election Form shall be completed prior to the beginning of the Plan Year, and shall not be effective prior to the date such form is submitted to the Employer. Any Election Form submitted by a Participant in accordance with this Section shall remain in effect until the earlier of the following dates: the date the Participant terminates participation in the Plan; or, the effective date of a subsequently filed Election Form.

A Participant's right to elect certain benefit coverage shall be limited hereunder to the extent such rights are limited in the Policy. Furthermore, a Participant will not be entitled to revoke an election after a period of coverage has commenced and to make a new election with respect to the remainder of the period of coverage unless both the revocation and the new election are on account of and consistent with a change in status, or other allowable events, as determined by Section 125 of the Internal Revenue Code and the regulations thereunder.

- 3.03 TERMINATION OF PARTICIPATION: A Participant shall continue to participate in the Plan until the earlier of the following dates:
- a. The date the Participant terminates employment by death, disability, retirement or other separation from service; or
 - b. The date the Participant ceases to work for the Employer as an eligible Employee; or
 - c. The date of termination of the Plan; or
 - d. The first date a Participant fails to pay required contributions while on a leave of absence.

- 3.04 SEPARATION FROM SERVICE: The existing elections of an Employee who separates from the employment service of the Employer shall be deemed to be automatically terminated and the Employee will not receive benefits for the remaining portion of the Plan Year.

H.B. No. 973 STATE OF TEXAS SECTION 22.004, EDUCATION CODE: Notwithstanding any other law, an employee of a district participating in the uniform group coverage program or providing group health coverage whose resignation is effective after the last day of an instructional year is entitled to participate or be enrolled in the uniform group coverage plan or the group health coverage through the first anniversary of the date participation in or coverage under the uniform group coverage plan or the group health coverage was first made available to district employees for the last instructional year in which the employee was employed by the district.

If an employee's resignation is effective after the last day of an instructional year, the district and the Teacher Retirement System of Texas may not diminish or eliminate the amount of a contribution available to the employee under Chapter 1579 or 1581, Insurance Code, before the last date on which the employee is entitled to participation or enrollment.

- 3.05 QUALIFYING LEAVE UNDER FAMILY LEAVE ACT: Notwithstanding any provision to the contrary in this Plan, if a Participant goes on a qualifying unpaid leave under the Family and Medical Leave Act of 1993 (FMLA), to the extent required by the FMLA, the Employer will continue to maintain the Participant's existing coverage under the Plan with respect to benefits under Section V and

Section VIII of the Plan on the same terms and conditions as though he were still an active Employee. If the Employee opts to continue his coverage, the Employee may pay his Elective Contribution with after-tax dollars while on leave (or pre-tax dollars to the extent he receives compensation during the leave), or the Employee may be given the option to pre-pay all or a portion of his Elective Contribution for the expected duration of the leave on a pre-tax salary reduction basis out of his pre-leave compensation (including unused sick days or vacation) by making a special election to that effect prior to the date such compensation would normally be made available to him (provided, however, that pre-tax dollars may not be utilized to fund coverage during the next plan year), or via other arrangements agreed upon between the Employee and the Administrator (e.g., the Administrator may fund coverage during the leave and withhold amounts upon the Employee's return). Upon return from such leave, the Employee will be permitted to reenter the Plan on the same basis the Employee was participating in the Plan prior to his leave, or as otherwise required by the FMLA.

SECTION IV

CONTRIBUTIONS

4.01 EMPLOYER CONTRIBUTIONS: The Employer may pay the costs of the benefits elected under the Plan with funds from the sources indicated in Item E of the Adoption Agreement. The Employer Contribution may be made up of Non-Elective Contributions and/or Elective Contributions authorized by each Participant on a salary reduction basis.

4.02 IRREVOCABILITY OF ELECTIONS: A Participant may file a written election form with the Administrator before the end of the current Plan Year revising the rate of his contributions or discontinuing such contributions effective as of the first day of the next following Plan Year. The Participant's Elective Contributions will automatically terminate as of the date his employment terminates. Except as provided in this Section 4.02 and Section 4.03, a Participant's election under the Plan is irrevocable for the duration of the plan year to which it relates. The exceptions to the irrevocability requirement which would permit a mid-year election change in benefits and the salary reduction amount elected are set out in the Treasury regulations promulgated under Code Section 125, which include the following:

(a) Change in Status. A Participant may change or revoke his election under the Plan upon the occurrence of a valid change in status, but only if such change or termination is made on account of, and is consistent with, the change in status in accordance with the Treasury regulations promulgated under Section 125. The Employer, in its sole discretion as Administrator, shall determine whether a requested change is on account of and consistent with a change in status, as follows:

- (1) Change in Employee's legal marital status, including marriage, divorce, death of spouse, legal separation, and annulment;
- (2) Change in number of Dependents, including birth, adoption, placement for adoption, and death;
- (3) Change in employment status, including any employment status change affecting benefit eligibility of the Employee, spouse or Dependent, such as termination or commencement of employment, change in hours, strike or lockout, a commencement or return from an unpaid leave of absence, and a change in work site. If the eligibility for either the cafeteria Plan or any underlying benefit plans of the Employer of the Employee, spouse or Dependent relies on the employment status of that individual, and there is a change in that individual's employment status resulting in gaining or losing eligibility under the Plan, this constitutes a valid change in status. This category only applies if benefit eligibility is lost or gained as a result of the event.

- If an Employee terminates and is rehired within 30 days, the Employee is required to step back into his previous election. If the Employee terminates and is rehired after 30 days, the Employee may either step back into the previous election or make a new election;
- (4) Dependent satisfies, or ceases to satisfy, Dependent eligibility requirements due to attainment of age, gain or loss of student status, marriage or any similar circumstances; and
 - (5) Residence change of Employee, spouse or Dependent, affecting the Employee's eligibility for coverage.
- (b) Special Enrollment Rights. If a Participant or his or her spouse or Dependent is entitled to special enrollment rights under a group health plan (other than an excepted benefit), as required by HIPAA under Code Section 9801(f), then a Participant may revoke a prior election for group health plan coverage and make a new election, provided that the election change corresponds with such HIPAA special enrollment right. As required by HIPAA, a special enrollment right will arise in the following circumstances: (i) a Participant or his or her spouse or Dependent declined to enroll in group health plan coverage because he or she had coverage, and eligibility for such coverage is subsequently lost because the coverage was provided under COBRA and the COBRA coverage was exhausted, or the coverage was non-COBRA coverage and the coverage terminated due to loss of eligibility for coverage or the employer contributions for the coverage were terminated; (ii) a new Dependent is acquired as a result of marriage, birth, adoption, or placement for adoption; (iii) the Participant's or his or her spouse's or Dependent's coverage under a Medicaid plan or under a children's health insurance program (CHIP) is terminated as a result of loss of eligibility for such coverage and the Participant requests coverage under the group health plan not later than 60 days after the date of termination of such coverage; or (iv) the Participant, his or her spouse or Dependent becomes eligible for a state premium assistance subsidy from a Medicaid plan or through a state children's insurance program with respect to coverage under the group health plan and the Participant requests coverage under the group health plan not later than 60 days after the date the Participant, his or her spouse or Dependent is determined to be eligible for such assistance. An election change under (iii) or (iv) of this provision must be requested within 60 days after the termination of Medicaid or state health plan coverage or the determination of eligibility for a state premium assistance subsidy, as applicable. Special enrollment rights under the health insurance plan will be determined by the terms of the health insurance plan.
- (c) Certain Judgments, Decrees or Orders. If a judgment, decree or order resulting from a divorce, legal separation, annulment or change in legal custody (including a qualified medical child support order [QMCSO]) requires accident or health coverage for a Participant's child or for a foster child who is a dependent of the Participant, the Participant may have a mid-year election change to add or drop coverage consistent with the Order.
- (d) Entitlement to Medicare or Medicaid. If a Participant, Participant's spouse or Participant's Dependent who is enrolled in an accident or health plan of the Employer becomes entitled to Medicare or Medicaid (other than coverage consisting solely of benefits under Section 1928 of the Social Security Act providing for pediatric vaccines), the Participant may cancel or reduce health coverage under the Employer's Plan. Loss of Medicare or Medicaid entitlement would allow the Participant to add health coverage under the Employer's Plan.
- (e) Family Medical Leave Act. If an Employee is taking leave under the rules of the Family Medical Leave Act, the Employee may revoke previous elections and re-elect benefits upon return to work.
- (f) COBRA Qualifying Event. If an Employee has a COBRA qualifying event (a reduction in hours of the Employee, or a Dependent ceases eligibility), the Employee may increase his pre-tax contributions for coverage under the Employer's Plan if a COBRA event occurs with respect to the

Employee, the Employee's spouse or Dependent. The COBRA rule does not apply to COBRA coverage under another Employer's Plan.

- (g) Changes in Eligibility for Adult Children. To the extent the Employer amends a plan listed in Item F of the Adoption Agreement that provides benefits that are excluded from an Employee's income under Code Section 105 to provide that Adult Children (as defined in Section 2.04(c)) are eligible to receive benefits under the plan, an Eligible Employee may make or change an election under this Plan to add coverage for the Adult Child and to make any corresponding change to the Eligible Employee's coverage that is consistent with adding coverage for the Adult Child.
- (h) Cancellation due to reduction in hours of service. A Participant may cancel group health plan (as that term is defined in Code Section 9832(a)) coverage, except Health FSA coverage, under the Employer's Plan if both of the following conditions are met:
 - (i) The Participant has been in an employment status under which the Participant was reasonably expected to average at least 30 hours of service per week and there is a change in that Participant's status so that the Participant will reasonably be expected to average less than 30 hours of service per week after the change, even if that reduction does not result in the Participant ceasing to be eligible under the group health plan; and
 - (ii) The cancellation of the election of coverage under the Employer's group health plan coverage corresponds to the intended enrollment of the Participant, and any related individuals who cease coverage due to the cancellation, in another plan that provides minimum essential coverage with the new coverage effective no later than the first day of the second month following the month that includes the date the original coverage is cancelled.
- (i) Cancellation due to enrollment in a Qualified Health Plan. A participant may cancel group health plan (as that term is defined in Code Section 9832(a)) coverage, except Health FSA coverage, under the Employer's Plan if both of the following conditions are met:
 - (i) The Participant is eligible for a Special Enrollment Period (as defined in Code Section 9801(f)) to enroll in a Qualified Health Plan (as described in section 1311 of the Patient Protection and Affordable Care Act (PPACA)) through a competitive marketplace established under section 1311(c) of PPACA (Marketplace), pursuant to guidance issued by the Department of Health and Human Services and any other applicable guidance, or the Participant seeks to enroll in a Qualified Health Plan through a Marketplace during the Marketplace's annual open enrollment period; and
 - (ii) The cancellation of the election of coverage under the Employer's group health plan coverage corresponds to the intended enrollment of the Participant and any related individuals who cease coverage due to the cancellation in a Qualified Health Plan through a Marketplace for new coverage that is effective beginning no later than the day immediately following the last day of the original coverage that is cancelled.
- (j) Cancellation due to related individuals' enrollment in a Qualified Health Plan. For elections effective on or after January 1, 2023, a participant may cancel an election of family coverage under a group health plan (as that term is defined in Code Section 9832(a)), except Health FSA coverage, under the Employer's Plan if both of the following conditions are met:

- (i) One or more related individuals are eligible for a Special Enrollment Period (as defined in Code Section 9801(f)) to enroll in a Qualified Health Plan (as described in section 1311 of the Patient Protection and Affordable Care Act (PPACA)) through a competitive marketplace established under section 1311(c) of PPACA (Marketplace), pursuant to guidance issued by the Department of Health and Human Services and any other applicable guidance, or one or more already-covered related individuals seeks to enroll in a Qualified Health Plan through a Marketplace during the Marketplace's annual open enrollment period; and
- (ii) The cancellation of the election of coverage under the Employer's group health plan coverage corresponds to the intended enrollment of the related individual or related individuals who cease coverage due to the cancellation in a Qualified Health Plan through a Marketplace for new coverage that is effective beginning no later than the day immediately following the last day of the original coverage that is cancelled. If the employee does not enroll in a Qualified Health Plan through an Exchange as set forth in Notice 2014-55, the employee must elect self-only coverage (or family coverage including one or more already-covered related individuals) under the group health plan.

Notwithstanding anything to the contrary in this Section 4.02, the change in election rules in this Section 4.02 do not apply to the Medical Expense Reimbursement Plan, or may not be modified with respect to the Medical Expense Reimbursement Plan if the Plan is being administered by a Recordkeeper other than the Employer, unless the Employer and the Recordkeeper otherwise agree in writing.

4.03 OTHER EXCEPTIONS TO IRREVOCABILITY OF ELECTIONS. Other exceptions to the irrevocability of election requirement permit mid-year election changes and apply to all qualified benefits except for Medical Expense Reimbursement Plans, as follows:

- (a) Change in Cost. If the cost of a benefit package option under the Plan significantly increases during the plan year, Participants may (i) make a corresponding increase in their salary reduction amount, (ii) revoke their elections and make a prospective election under another benefit option offering similar coverage, or (iii) revoke election completely if no similar coverage is available, including in spouse or dependent's plan. If the cost significantly decreases, employees may elect coverage even if they had not previously participated and may drop their previous election for a similar coverage option in order to elect the benefit package option that has decreased in cost during the year. If the increased or decreased cost of a benefit package option under the Plan is insignificant, the participant's salary reduction amount shall be automatically adjusted.
- (b) Significant curtailment of coverage.
 - (i) With no loss of coverage. If the coverage under a benefit package option is significantly curtailed or ceases during the Plan Year, affected Participants may revoke their elections for the curtailed coverage and make a new prospective election for coverage under another benefit package option providing similar coverage.
 - (ii) With loss of coverage. If there is a significant curtailment of coverage with loss of coverage, affected Participants may revoke election for curtailed coverage and make a new prospective

election for coverage under another benefit package option providing similar coverage, or drop coverage if no similar benefit package option is available.

- (c) Addition or Significant Improvement of Benefit Package Option. If during the Plan Year a new benefit package option is added or significantly improved, eligible employees, whether currently participating or not, may revoke their existing election and elect the newly added or newly improved option.
- (d) Change in Coverage of a Spouse or Dependent Under Another Employer's Plan. If there is a change in coverage of a spouse, former spouse, or Dependent under another employer's plan, a Participant may make a prospective election change that is on account of and corresponds with a change made under the plan of the spouse or Dependent. This rule applies if (1) mandatory changes in coverage are initiated by either the insurer of spouse's plan or by the spouse's employer, or (2) optional changes are initiated by the spouse's employer or by the spouse through open enrollment.
- (e) Loss of coverage under other group health coverage. If during the Plan Year coverage is lost under any group health coverage sponsored by a governmental or educational institution, a Participant may prospectively change his or her election to add group health coverage for the affected Participant or his or her spouse or dependent.

- 4.04 CASH BENEFIT: Available amounts not used for the purchase of benefits under this Plan may be considered a cash benefit under the Plan payable to the Participant as taxable income to the extent indicated in Item E of the Adoption Agreement.
- 4.05 PAYMENT FROM EMPLOYER'S GENERAL ASSETS: Payment of benefits under this Plan shall be made by the Employer from Elective Contributions which shall be held as a part of its general assets.
- 4.06 EMPLOYER MAY HOLD ELECTIVE CONTRIBUTIONS: Pending payment of benefits in accordance with the terms of this Plan, Elective Contributions may be retained by the Employer in a separate account or, if elected by the Employer and as permitted or required by regulations of the Internal Revenue Service, Department of Labor or other governmental agency, such amounts of Elective Contributions may be held in a trust pending payment.
- 4.07 MAXIMUM EMPLOYER CONTRIBUTIONS: With respect to each Participant, the maximum amount made available to pay benefits for any Plan Year shall not exceed the Employer's Contribution specified in the Adoption Agreement and as provided in this Plan.

SECTION V

GROUP MEDICAL INSURANCE BENEFIT PLAN

- 5.01 PURPOSE: These benefits provide the group medical insurance benefits to Participants.
- 5.02 ELIGIBILITY: Eligibility will be as required in Items F(1), F(3), and F(4) of the Adoption Agreement.
- 5.03 DESCRIPTION OF BENEFITS: The benefits available under this Plan will be as defined in Items F(1), F(3), and F(4) of the Adoption Agreement.
- 5.04 TERMS, CONDITIONS AND LIMITATIONS: The terms, conditions and limitations of the benefits offered shall be as specifically described in the Policy identified in the Adoption Agreement.
- 5.05 COBRA: To the extent required by Section 4980B of the Code and Sections 601 through 607 of ERISA, Participants and Dependents shall be entitled to continued participation in this Group Medical Insurance Benefit Plan by contributing monthly (from their personal assets previously subject to taxation) 102% of the amount of the premium for the desired benefit during the period that such individual is entitled to elect continuation coverage, provided, however, in the event the continuation period is extended to 29 months due to disability, the premium to be paid for continuation coverage for the 11 month extension period shall be 150% of the applicable premium.
- 5.06 SECTION 105 AND 106 PLAN: It is the intention of the Employer that these benefits shall be eligible for exclusion from the gross income of the Participants covered by this benefit plan, as provided in Code Sections 105 and 106, and all provisions of this benefit plan shall be construed in a manner consistent with that intention. It is also the intention of the Employer to comply with the provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 as outlined in the policies identified in the Adoption Agreement.
- 5.07 CONTRIBUTIONS: Contributions for these benefits will be provided by the Employer on behalf of a Participant as provided for in Item E of the Adoption Agreement.
- 5.08 UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT: Notwithstanding anything to the contrary herein, the Group Medical Insurance Benefit Plan shall comply with the applicable provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 (Public Law 103-353).

SECTION VI

DISABILITY INCOME BENEFIT PLAN

- 6.01 PURPOSE: This benefit provides disability insurance designated to provide income to Participants during periods of absence from employment because of disability.
- 6.02 ELIGIBILITY: Eligibility will be as required in Item F(2) of the Adoption Agreement.
- 6.03 DESCRIPTION OF BENEFITS: The benefits available under this Plan will be as defined in Item F(2) of the Adoption Agreement.

- 6.04 TERMS, CONDITIONS AND LIMITATIONS: The terms, conditions and limitations of the Disability Income Benefits offered shall be as specifically described in the Policy identified in the Adoption Agreement.
- 6.05 SECTION 104 AND 106 PLAN: It is the intention of the Employer that the premiums paid for these benefits shall be eligible for exclusion from the gross income of the Participants covered by this benefit plan, as provided in Code Sections 104 and 106, and all provisions of this benefit plan shall be construed in a manner consistent with that intention.
- 6.06 CONTRIBUTIONS: Contributions for this benefit will be provided by the Employer on behalf of a Participant as provided for in Item E of the Adoption Agreement.

SECTION VII

GROUP AND INDIVIDUAL LIFE INSURANCE PLAN

- 7.01 PURPOSE: This benefit provides group life insurance benefits to Participants and may provide certain individual policies as provided for in Item F(5) of the Adoption Agreement.
- 7.02 ELIGIBILITY: Eligibility will be as required in Item F(5) of the Adoption Agreement.
- 7.03 DESCRIPTION OF BENEFITS: The benefits available under this Plan will be as defined in Item F(5) of the Adoption Agreement.
- 7.04 TERMS, CONDITIONS, AND LIMITATIONS: The terms, conditions, and limitations of the group life insurance are specifically described in the Policy identified in the Adoption Agreement.
- 7.05 SECTION 79 PLAN: It is the intention of the Employer that the premiums paid for the benefits described in Item F(5) of the Adoption Agreement shall be eligible for exclusion from the gross income of the Participants covered by this benefit plan to the extent provided in Code Section 79, and all provisions of this benefit plan shall be construed in a manner consistent with that intention.
- 7.06 CONTRIBUTIONS: Contributions for this benefit will be provided by the Employer on behalf of a Participant as provided for in Item E of the Adoption Agreement. Any individual policies purchased by the Employer for the Participant will be owned by the Participant.

SECTION VIII

MEDICAL EXPENSE REIMBURSEMENT PLAN

- 8.01 PURPOSE: The Medical Expense Reimbursement Plan is designed to provide for reimbursement of Eligible Medical Expenses (as defined in Section 8.04) that are not reimbursed under an insurance plan, through damages, or from any other source. It is the intention of the Employer that amounts allocated for this benefit shall be eligible for exclusion from gross income, as provided in Code Sections 105 and 106, for Participants who elect this benefit and all provisions of this Section VIII shall be construed in a manner consistent with that intention.
- 8.02 ELIGIBILITY: The eligibility provisions are set forth in Item F(7) of the Adoption Agreement.

8.03 TERMS, CONDITIONS, AND LIMITATIONS:

- a. Accounts. The Reimbursement Recordkeeper shall establish a recordkeeping account for each Participant. The Reimbursement Recordkeeper shall maintain a record of each account on an on-going basis, increasing the balances as contributions are credited during the year and decreasing the balances as Eligible Medical Expenses are reimbursed. No interest shall be payable on amounts recorded in any Participant's account.
- b. Maximum benefit. The maximum amount of reimbursement for each Participant shall be limited to the amount of the Participant's Elective Contribution allocated to the program during the Plan Year, not to exceed the maximum amount set forth in Item F(7) of the Adoption Agreement.
- c. Claim Procedure. In order to be reimbursed for any medical expenses incurred during the Plan Year, the Participant shall complete the form(s) provided for such purpose by the Reimbursement Recordkeeper. The Participant shall submit the completed form to the Reimbursement Recordkeeper with an original bill or other proof of the expense acceptable to the Reimbursement Recordkeeper. No reimbursement shall be made on the basis of an incomplete form or inadequate evidence of expense as determined by the Reimbursement Recordkeeper. Forms for reimbursement of Eligible Medical Expenses must be submitted no later than the last day of the third month following the last day of the Plan Year during which the Eligible Medical Expenses were incurred. Reimbursement payments shall only be made to the Participant, or the Participant's legal representative in the event of incapacity or death of the Participant. Forms for reimbursement shall be reviewed in accordance with the claims procedure set forth in Section XII.
- d. Funding. The funding of the Medical Reimbursement Plan shall be through contributions by the Employer from its general assets to the extent of Elective Contributions directed by Participants. Such contributions shall be made by the Employer when benefit payments and account administrative expenses become due and payable under this Medical Expense Reimbursement Plan.
- e. Forfeiture. Subject to Section 8.06 and 8.07, any amounts remaining to the credit of the Participant at the end of the Plan Year and not used for Eligible Medical Expenses incurred during the Participant's participation during the Plan Year shall be forfeited and shall remain assets of the Plan. With respect to a Participant who terminates employment with the Employer and who has not elected to continue coverage under this Plan pursuant to COBRA rights referenced under Section 8.03(f) herein, such Participant shall not be entitled to reimbursement for Eligible Medical Expenses incurred after his termination date regardless if such Participant has any amounts of Employer Contributions remaining to his credit. Upon the death of any Participant who has any amounts of Employer Contributions remaining to his credit, a dependent of the Participant may elect to continue to claim reimbursement for Eligible Medical Expenses in the same manner as the Participant could have for the balance of the Plan Year.
- f. COBRA. To the extent required by Section 4980B of the Code and Sections 601 through 607 of ERISA ("COBRA"), a Participant and a Participant's Dependents shall be entitled to elect continued participation in this Medical Expense Reimbursement Plan only through the end of the plan year in which the qualifying event occurs, by contributing monthly (from their personal assets previously subject to taxation) to the Employer/Administrator, 102% of the amount of desired reimbursement through the end of the Plan Year in which the qualifying event occurs. Specifically, such individuals will be eligible for COBRA continuation coverage only if they

have a positive Medical Expense Reimbursement Account balance on the date of the qualifying event. Participants who have a deficit balance in their Medical Expense Reimbursement Account on the date of their qualifying event shall not be entitled to elect COBRA coverage. In lieu of COBRA, Participants may continue their coverage through the end of the current Plan Year by paying those premiums out of their last paycheck on a pre-tax basis.

- g. Nondiscrimination. Benefits provided under this Medical Expense Reimbursement Plan shall not be provided in a manner that discriminates in favor of Employees or Dependents who are highly compensated individuals, as provided under Section 105(h) of the Code and regulations promulgated thereunder.
- h. Uniform Coverage Rule. Notwithstanding that a Participant has not had withheld and credited to his account all of his contributions elected with respect to a particular Plan Year, the entire aggregate annual amount elected with respect to this Medical Expense Reimbursement Plan (increased by any Carryover to the Plan Year), shall be available at all times during such Plan Year to reimburse the participant for Eligible Medical Expenses with respect to this Medical Expense Reimbursement Plan. To the extent contributions with respect to this Medical Expense Reimbursement Plan are insufficient to pay such Eligible Medical Expenses, it shall be the Employer's obligation to provide adequate funds to cover any short fall for such Eligible Medical Expenses for a Participant; provided subsequent contributions with respect to this Medical Expense Reimbursement Plan by the Participant shall be available to reimburse the Employer for funds advanced to cover a previous short fall.
- i. Uniformed Services Employment and Reemployment Rights Act. Notwithstanding anything to the contrary herein, this Medical Expense Reimbursement Plan shall comply with the applicable provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 (Public Law 103-353).
- j. Proration of Limit. In the event that the Employer has purchased a uniform coverage risk policy from the Recordkeeper, then the Maximum Coverage amount specified in Section F.7 of the Adoption Agreement shall be pro rated with respect to (i) an Employee who becomes a Participant and enters the Plan during the Plan Year, and (ii) short plan years initiated by the Employer. Such Maximum Coverage amount will be pro rated by dividing the annual Maximum Coverage amount by 12, and multiplying the quotient by the number of remaining months in the Plan Year for the new Participant or the number of months in the short Plan Year, as applicable.
- k. Continuation Coverage for Certain Dependent Children. In the event that benefits under the Medical Expense Reimbursement Plan does not qualify for the exception from the portability rules of HIPAA, then, effective for Plan Years beginning on or after October 9, 2009, notwithstanding the foregoing provisions, coverage for a Dependent child who is enrolled in the Medical Expense Reimbursement Plan as a student at a post-secondary educational institution will not terminate due to a medically necessary leave of absence before a date that is the earlier of:
 - the date that is one year after the first day of the medically necessary leave of absence; or
 - the date on which such coverage would otherwise terminate under the terms of the Plan.

For purposes of this paragraph, “medically necessary leave of absence” means a leave of absence of the child from a post-secondary educational institution, or any other change in enrollment of the child at the institution, that: (i) commences while the child is suffering from a

serious illness or injury; (ii) is medically necessary; and (iii) causes the child to lose student status for purposes of coverage under the terms of the Plan. A written certification must be provided by a treating physician of the dependent child to the Plan in order for the continuation coverage requirement to apply. The physician's certification must state that the child is suffering from a serious illness or injury and that the leave of absence (or other change in enrollment) is medically necessary.

8.04 ELIGIBLE MEDICAL EXPENSES:

- a. Eligible Medical Expense in General. The phrase 'Eligible Medical Expense' means any expense incurred by a Participant or any of his Dependents (subject to the restrictions in Sections 8.04(b) and (c)) during a Plan Year that (i) qualifies as an expense incurred by the Participant or Dependents for medical care as defined in Code Section 213(d) and meets the requirements outlined in Code Section 125, (ii) is excluded from gross income of the Participant under Code Section 105(b), and (iii) has not been and will not be paid or reimbursed by any other insurance plan, through damages, or from any other source. Notwithstanding the above, capital expenditures are not Eligible Medical Expenses under this Plan.
- b. Expenses Incurred After Commencement of Participation. Only medical care expenses incurred by a Participant or the Participant's Dependent(s) on or after the date such Participant commenced participation in the Medical Expense Reimbursement Plan shall constitute an Eligible Medical Expense.
- c. Eligible Expenses Incurred by Dependents. For purposes of this Section, Eligible Medical Expenses incurred by Dependents defined in Section 2.04(c) are eligible for reimbursement if incurred after March 30, 2010; Eligible Medical Expenses incurred by Dependents defined in Sections 2.04(a) and (b) are eligible for reimbursement if incurred either before or after March 30, 2010 (subject to the restrictions of Section 8.04(b)).
- d. Health Savings Accounts. If the Employer has elected in Item F.8 of the Adoption Agreement to allow Eligible Employees to contribute to Health Savings Accounts under the Plan, then for a Participant who is eligible for and elects to contribute to a Health Savings Accounts, Eligible Medical Expenses shall be limited as set forth in Item F.8 of the Adoption Agreement.

8.05 USE OF DEBIT CARD: In the event that the Employer elects to allow the use of debit cards ("Debit Cards") for reimbursement of Eligible Medical Expenses under the Medical Expense Reimbursement Plan, the provisions described in this Section shall apply.

- a. Substantiation. The following procedures shall be applied for purposes of substantiating claimed Eligible Medical Expenses after the use of a Debit Card to pay the claimed Eligible Medical Expense:
 - (i) If the dollar amount of the transaction at a health care provider equals the dollar amount of the co-payment for that service under the Employer's major medical plan of the specific employee-cardholder, the charge is fully substantiated without the need for submission of a receipt or further review.
 - (ii) If the merchant, service provider, or other independent third-party (e.g., pharmacy benefit manager), at the time and point of sale, provides information to

verify to the Recordkeeper (including electronically by e-mail, the internet, intranet, or telephone) that the charge is for a medical expense, the charge is fully substantiated without the need for submission of a receipt or further review.

- b. Status of Charges. All charges to a Debit Card, other than co-payments and real-time substantiation as described in Subsection (a) above, are treated as conditional pending confirmation of the charge, and additional third-party information, such as merchant or service provider receipts, describing the service or product, the date of the service or sale, and the amount, must be submitted for review and substantiation.
- c. Correction Procedures for Improper Payments. In the event that a claim has been reimbursed and is subsequently identified as not qualifying for reimbursement, one or all of the following procedures shall apply:
 - (i) First, upon the Recordkeeper's identification of the improper payment, the Eligible Employee will be required to pay back to the Plan an amount equal to the improper payment.
 - (ii) Second, where the Eligible Employee does not pay back to the Plan the amount of the improper payment, the Employer will have the amount of the improper payment withheld from the Eligible Employee's wages or other compensation to the extent consistent with applicable law.
 - (iii) Third, if the improper payment still remains outstanding, the Plan may utilize a claim substitution or offset approach to resolve improper claims payments.
 - (iv) If the above correction efforts prove unsuccessful, or are otherwise unavailable, the Eligible Employee will remain indebted to the Employer for the amount of the improper payment. In that event and consistent with its business practices, the Employer may treat the payment as it would any other business indebtedness.
 - (v) In addition to the above, the Employer and the Plan may take other actions they may deem necessary, in their sole discretion, to ensure that further violations of the terms of the Debit Card do not occur, including, but not limited to, denial of access to the Debit Card until the indebtedness is repaid by the Eligible Employee.
- d. Intent to Comply with Rev. Rul. 2003-43. It is the Employer's intent that any use of Debit Cards to pay Eligible Medical Expenses shall comply with the guidelines for use of such cards set forth in Rev. Rul. 2003-43, and this Section 8.05 shall be construed and interpreted in a manner necessary to comply with such guidelines.

8.06 GRACE PERIOD: If the Employer elects in Section F.7 of the Adoption Agreement to permit a Grace Period with respect to the Medical Reimbursement Plan, the provisions of this Section 8.06 shall apply. Notwithstanding anything to the contrary herein and in accordance with Internal Revenue Service Notice 2005-42, a Participant who has unused contributions relating to the Medical Reimbursement Plan from the immediately preceding Plan Year, and who incurs Eligible Medical Expenses for such qualified benefit during the Grace Period, may be paid or reimbursed for those Eligible Medical Expenses from the unused contributions as if the expenses had been incurred in the immediately preceding Plan Year. For purposes of this Section, 'Grace Period' shall mean the period extending to the 15th day of the third calendar month after the end of the immediately preceding Plan Year to which it relates. Eligible

Medical Expenses incurred during the Grace Period shall be reimbursed first from unused contributions allocated to the Medical Reimbursement Plan for the prior Plan Year, and then from unused contributions for the current Plan Year, if participant is enrolled in current Plan Year.

- 8.07 CARRYOVER: If the Employer elects in Section F.7 of the Adoption Agreement to permit a Carryover with respect to the Medical Reimbursement Plan, the provisions of this Section 8.07 shall apply. Notwithstanding anything to the contrary herein and in accordance with Internal Revenue Service Notice 2013-71, the Carryover for a Participant who has an amount remaining unused as of the end of the run-off period for the Plan Year, may be used to pay or reimburse Eligible Medical Expenses during the following entire Plan Year. The Carryover does not count against or otherwise affect the Maximum benefit set forth in Section 8.03 (b). Eligible Medical Expenses incurred during a Plan Year shall be reimbursed first from unused contributions for the current Plan Year, and then from any Carryover carried over from the preceding Plan Year. Any unused amounts from the prior Plan Year that are used to reimburse a current Plan Year expense (a) reduce the amounts available to pay prior Plan Year expenses during the run-off period, (b) must be counted against any Carryover amount from the prior Plan Year, and (c) cannot exceed the maximum Carryover from the prior Plan Year. If the Employer elects to apply Section 8.06 in Section F.7 of the Adoption Agreement, this Section 8.07 shall not apply.
- 8.08 QUALIFIED RESERVIST DISTRIBUTIONS: Notwithstanding anything in the Plan to the contrary, an individual who, by reason of being a member of a reserve component (as defined in 37 U.S.C. § 101), is ordered or called to active duty for a period in excess of 179 days or for an indefinite period may elect to receive a distribution of all or a portion of the unused Elective Contributions in his or her Account relating to the Medical Expense Reimbursement Plan if the distribution is made during the period beginning on the date of such order or call and ending on the last date that reimbursements could otherwise be made under the Plan for the Plan Year that includes the date of such order or call. If the distribution is for the entire amount of unused Elective Contributions available in the Medical Expense Reimbursement Plan, then no additional reimbursement requests will be processed for the remainder of the Plan Year.

SECTION IX

DEPENDENT CARE REIMBURSEMENT PLAN

- 9.01 PURPOSE: The Dependent Care Reimbursement Plan is designed to provide for reimbursement of certain employment-related dependent care expenses of the Participant. It is the intention of the Employer that amounts allocated for this benefit shall be eligible for exclusion from gross income, as provided in Code Section 129, for Participants who elect this benefit, and all provisions of this Section IX shall be construed in a manner consistent with that intention.
- 9.02 ELIGIBILITY: The eligibility provisions are set forth in Item F(6) of the Adoption Agreement.
- 9.03 TERMS, CONDITIONS, AND LIMITATIONS:
- a. Accounts. The Reimbursement Recordkeeper shall establish a recordkeeping account for each Participant. The Reimbursement Recordkeeper shall maintain a record of each account on an on-going basis, increasing the balances as contributions are credited during the year and decreasing the balances as Eligible Dependent Care Expenses are reimbursed. No interest shall be payable on amounts recorded in any Participant's account.

- b. Maximum Benefit. The maximum amount of reimbursement for each Participant shall be limited to the amount of the Participant's allocation to the program during the Plan Year not to exceed the maximum amount set forth in Item F(6) of the adoption agreement.

For purpose of this Section IX, the phrase "earned income" shall mean wages, salaries, tips and other employee compensation, but only if such amounts are includible in gross income for the taxable year. A Participant's spouse who is physically or mentally incapable of self-care as described in Section 9.04(a)(ii) or a spouse who is a full-time student within the meaning of Code Section 21(e)(7) shall be deemed to have earned income for each month in which such spouse is so disabled (or a full-time student). The amount of such deemed earned income shall be \$250 per month in the case of one Dependent and \$500 per month in the case of two or more Dependents.

- c. Claim Procedure. In order to be reimbursed for any dependent care expenses incurred during the Plan Year, the Participant shall complete the form(s) provided for such purpose by the Reimbursement Recordkeeper. The Participant shall submit the completed form to the Reimbursement Recordkeeper with an original bill or other proof of the expense from an independent third party acceptable to the Reimbursement Recordkeeper. No reimbursement shall be made on the basis of an incomplete form or inadequate evidence of the expense as determined by the Reimbursement Recordkeeper. Claims for reimbursement of Eligible Dependent Care Expenses must be submitted no later than the last day of the third month following the last day of the Plan Year during which the Eligible Dependent Care Expenses were incurred. Reimbursement payments shall only be made to the Participant, or the Participant's legal representative in the event of the incapacity or death of the Participant. Forms for reimbursement shall be reviewed in accordance with the claims procedure set forth in Section XII.
- d. Funding. The funding of the Dependent Care Reimbursement Plan shall be through contributions by the Employer from its general assets to the extent of Elective Contributions directed by Participants. Such contributions shall be made by the Employer when benefit payments and account administration expenses become due and payable under this Dependent Care Expense Reimbursement Plan.
- e. Forfeiture. Any amounts remaining to the credit of the Participant at the end of the Plan Year and not used for Eligible Dependent Care Expenses incurred during the Plan Year shall be forfeited and remain assets of the Plan.
- f. Nondiscrimination. Benefits provided under this Dependent Care Reimbursement Plan shall not be provided in a manner that discriminates in favor of Highly Compensated Employees (as defined in Code Section 414(q)) or their dependents, as provided in Code Section 129. In addition, no more than 25 percent of the aggregate Eligible Dependent Care Expenses shall be reimbursed during a Plan Year to five percent owners, as provided in Code Section 129.

9.04 DEFINITIONS:

- a. "Dependent" (for purposes of this Section IX) means any individual who is:
 - (i) a Participant's qualifying child (as defined in Code Section 152 (c)) who has not attained the age of 13; or

- (ii) a dependent (qualifying child or qualifying relative, as defined in Code Section 152 (c) and (d), respectively) or the spouse of a Participant who is physically or mentally incapable of self-care, and who has the same principal place of abode as the taxpayer for more than half of the taxable year. For purposes of this Dependent Care Reimbursement Plan, an individual shall be considered physically or mentally incapable of self-care if, as a result of a physical or mental defect, the individual is incapable of caring for his or her hygienic or nutritional needs, or requires full-time attention of another person for his or her own safety or the safety of others.
- b. "Dependent Care Center" (for purposes of this Section IX) shall be a facility which:
 - (i) provides care for more than six individuals (other than individuals who reside at the facility);
 - (ii) receives a fee, payment, or grant for providing services for any of the individuals (regardless of whether such facility is operated for profit); and
 - (iii) satisfies all applicable laws and regulations of a state or unit of local government.
- c. "Eligible Dependent Care Expenses" (for purposes of this Section IX) shall mean expenses incurred by a Participant which are:
 - (i) incurred for the care of a Dependent of the Participant or for related household services;
 - (ii) paid or payable to a Dependent Care Service Provider; and
 - (iii) incurred to enable the Participant to be gainfully employed for any period for which there are one or more Dependents with respect to the Participant.

"Eligible Dependent Care Expenses" shall not include expenses incurred for services outside the Participant's household for the care of a Dependent unless such Dependent is (i) a qualifying child (as defined in Code Section 152 (c)) under the age of 13, or (ii) a dependent (qualifying child or qualifying relative, as defined in Code Section 152 (c) and (d), respectively)), who is physically or mentally incapable of self-care, and who has the same principal place of abode as the Participant for more than half of the taxable year, or (iii) the spouse of a Participant who is physically or mentally incapable of self-care, and who has the same principal place of abode as the Participant for more than half of the taxable year. Eligible Dependent Care Expenses shall be deemed to be incurred at the time the services to which the expenses relate are rendered.
- d. "Dependent Care Service Provider" (for purposes of this Section IX) means:
 - (i) a Dependent Care Center, or
 - (ii) a person who provides care or other services described in Section 9.04(b) and who is not a related individual described in Section 129(c) of the Code.

SECTION X

HEALTH SAVINGS ACCOUNTS

- 10.01 PURPOSE: If elected by the Employer in Section F.8 of the Adoption Agreement, the Plan will permit pre-tax contributions to the Health Savings Account, and the provisions of this Article X shall apply.
- 10.02 BENEFITS: A Participant can elect benefits under the Health Savings Accounts portion of this Plan by electing to pay his or her Health Savings Account contributions on a pre-tax salary reduction basis. In

addition, the Employer may make contributions to the Health Savings Account for the benefit of the Participant.

10.03 TERMS, CONDITIONS AND LIMITATION:

- a. Maximum Benefit. The maximum annual contributions that may be made to a Participant's Health Savings Account under this Plan is set forth in Section F.8 of the Adoption Agreement.
- b. Mid-Year Election Changes. Notwithstanding any to the contrary herein, a Participant election with respect to contributions for the Health Savings Account shall be revocable during the duration of the Plan Year to which the election relates. Consequently, a Participant may change his or her election with respect to contributions for the Health Savings Account at any time.

10.04 RESTRICTIONS ON MEDICAL REIMBURSEMENT PLAN: If the Employer has elected in Section F.8 of the Adoption Agreement both Health Savings Accounts under this Plan and the Medical Expense Reimbursement Plan, then the Eligible Medical Expenses that may be reimbursed under the Medical Reimbursement Plan for Participants who are eligible for and elect to participate in Health Savings Accounts shall be limited as set forth in Section F.8 of the Adoption Agreement.

10.05 NO ESTABLISHMENT OF ERISA PLAN: It is the intent of the Employer that the establishment of Health Savings Accounts are completely voluntary on the part of Participants, and that, in accordance with Department of Labor Field Assistance Bulletin 2004-1, the Health Savings Accounts are not "employee welfare benefit plans" for purposes of Title I of ERISA.

SECTION XI

AMENDMENT AND TERMINATION

- 11.01 AMENDMENT: The Employer shall have the right at any time, and from time to time, to amend, in whole or in part, any or all of the provisions of this Plan, provided that no such amendment shall change the terms and conditions of payment of any benefits to which Participants and covered dependents otherwise have become entitled to under the provisions of the Plan, unless such amendment is made to comply with federal or local laws or regulations. The Employer also shall have the right to make any amendment retroactively which is necessary to bring the Plan into conformity with the Code. In addition, the Employer may amend any provisions or any supplements to the Plan and may merge or combine supplements or add additional supplements to the Plan, or separate existing supplements into an additional number of supplements.
- 11.02 TERMINATION: The Employer shall have the right at any time to terminate this Plan, provided that such termination shall not eliminate any obligations of the Employer which therefore have arisen under the Plan.

SECTION XII

ADMINISTRATION

12.01 NAMED FIDUCIARIES: The Administrator shall be the fiduciary of the Plan.

12.02 APPOINTMENT OF RECORDKEEPER: The Employer may appoint a Reimbursement Recordkeeper which shall have the power and responsibility of performing recordkeeping and other ministerial duties arising under the Medical Expense Reimbursement Plan and the Dependent Care Reimbursement Plan provisions of this Plan. The Reimbursement Recordkeeper shall serve at the pleasure of, and may be removed by, the Employer without cause. The Recordkeeper shall receive reasonable compensation for its services as shall be agreed upon from time to time between the Administrator and the Recordkeeper.

12.03 POWERS AND RESPONSIBILITIES OF ADMINISTRATOR:

- a. General. The Administrator shall be vested with all powers and authority necessary in order to amend and administer the Plan, and is authorized to make such rules and regulations as it may deem necessary to carry out the provisions of the Plan. The Administrator shall determine any questions arising in the administration (including all questions of eligibility and determination of amount, time and manner of payments of benefits), construction, interpretation and application of the Plan, and the decision of the Administrator shall be final and binding on all persons.
- b. Recordkeeping. The Administrator shall keep full and complete records of the administration of the Plan. The Administrator shall prepare such reports and such information concerning the Plan and the administration thereof by the Administrator as may be required under the Code or ERISA and the regulations promulgated thereunder.
- c. Inspection of Records. The Administrator shall, during normal business hours, make available to each Participant for examination by the Participant at the principal office of the Administrator a copy of the Plan and such records of the Administrator as may pertain to such Participant. No Participant shall have the right to inquire as to or inspect the accounts or records with respect to other Participants.

12.04 COMPENSATION AND EXPENSES OF ADMINISTRATOR: The Administrator shall serve without compensation for services as such. All expenses of the Administrator shall be paid by the Employer. Such expenses shall include any expense incident to the functioning of the Plan, including, but not limited to, attorneys' fees, accounting and clerical charges, actuary fees and other costs of administering the Plan.

12.05 LIABILITY OF ADMINISTRATOR: Except as prohibited by law, the Administrator shall not be liable personally for any loss or damage or depreciation which may result in connection with the exercise of duties or of discretion hereunder or upon any other act or omission hereunder except when due to willful misconduct. In the event the Administrator is not covered by fiduciary liability insurance or similar insurance arrangements, the Employer shall indemnify and hold harmless the Administrator from any and all claims, losses, damages, expenses (including reasonable counsel fees approved by the Administrator) and liability (including any reasonable amounts paid in settlement with the Employer's approval) arising from any act or omission of the Administrator, except when the same is determined to be due to the willful misconduct of the Administrator by a court of competent jurisdiction.

12.06 DELEGATIONS OF RESPONSIBILITY: The Administrator shall have the authority to delegate, from time to time, all or any part of its responsibilities under the Plan to such person or persons as it may deem advisable and in the same manner to revoke any such delegation of responsibilities which shall have the same force and effect for all purposes hereunder as if such action had been taken by the Administrator. The Administrator shall not be liable for any acts or omissions of any such delegate. The delegate shall report periodically to the Administrator concerning the discharge of the delegated responsibilities.

- 12.07 RIGHT TO RECEIVE AND RELEASE NECESSARY INFORMATION: The Administrator may release or obtain any information necessary for the application, implementation and determination of this Plan or other Plans without consent or notice to any person. This information may be released to or obtained from any insurance company, organization, or person subject to applicable law. Any individual claiming benefits under this Plan shall furnish to the Administrator such information as may be necessary to implement this provision.
- 12.08 CLAIM FOR BENEFITS: To obtain payment of any benefits under the Plan a Participant must comply with the rules and procedures of the particular benefit program elected pursuant to this Plan under which the Participant claims a benefit.
- 12.09 GENERAL CLAIMS REVIEW PROCEDURE: This provision shall apply only to the extent that a claim for benefits is not governed by a similar provision of a benefit program available under this Plan or is not governed by Section 12.10.

- a. Initial Claim for Benefits. Each Participant may submit a claim for benefits to the Administrator as provided in Section 12.08. A Participant shall have no right to seek review of a denial of benefits, or to bring any action in any court to enforce a claim for benefits prior to his filing a claim for benefits and exhausting his rights to review under this section.

When a claim for benefits has been filed properly, such claim for benefits shall be evaluated and the claimant shall be notified of the approval or the denial within (90) days after the receipt of such claim unless special circumstances require an extension of time for processing the claim. If such an extension of time for processing is required, written notice of the extension shall be furnished to the claimant prior to the termination of the initial ninety (90) day period which shall specify the special circumstances requiring an extension and the date by which a final decision will be reached (which date shall not be later than one hundred and eighty (180) days after the date on which the claim was filed.) A claimant shall be given a written notice in which the claimant shall be advised as to whether the claim is granted or denied, in whole or in part. If a claim is denied, in whole or in part, the claimant shall be given written notice which shall contain (a) the specific reasons for the denial, (b) references to pertinent plan provisions upon which the denial is based, (c) a description of any additional material or information necessary to perfect the claim and an explanation of why such material or information is necessary, and (d) the claimant's rights to seek review of the denial.

- b. Review of Claim Denial. If a claim is denied, in whole or in part, the claimant shall have the right to request that the Administrator review the denial, provided that the claimant files a written request for review with the Administrator within sixty (60) days after the date on which the claimant received written notification of the denial. A claimant (or his duly authorized representative) may review pertinent documents and submit issues and comments in writing to the Administrator. Within sixty (60) days after a request is received, the review shall be made and the claimant shall be advised in writing of the decision on review, unless special circumstances require an extension of time for processing the review, in which case the claimant shall be given a written notification within such initial sixty (60) day period specifying the reasons for the extension and when such review shall be completed (provided that such review shall be completed within one hundred and twenty (120) days after the date on which the request for review was filed.) The decision on review shall be forwarded to the claimant in writing and shall include specific reasons for the decision and references to plan provisions upon which the decision is based. A decision on review shall be final and binding on all persons.

- c. Exhaustion of Remedies. If a claimant fails to file a request for review in accordance with the procedures herein outlined, such claimant shall have no rights to review and shall have no right to bring action in any court and the denial of the claim shall become final and binding on all persons for all purposes.

12.10 SPECIAL CLAIMS REVIEW PROCEDURE: The provisions of this Section 12.10 shall be applicable to claims under the Medical Expense Reimbursement Plan and the Group Medical Insurance Plan, effective on the first day of the first Plan Year beginning on or after July 1, 2002, but in no event later than January 1, 2003, provided such plans are subject to ERISA.

- a. Benefit Denials: The Administrator is responsible for evaluating all claims for reimbursement under the Medical Expense Reimbursement Plan and the Group Medical Insurance Plan.

The Administrator will decide a Participant's claim within a reasonable time not longer than 30 days after it is received. This time period may be extended for an additional 15 days for matters beyond the control of the Administrator, including in cases where a claim is incomplete. The Participant will receive written notice of any extension, including the reasons for the extension and information on the date by which a decision by the Administrator is expected to be made. The Participant will be given 45 days in which to complete an incomplete claim. The Administrator may secure independent medical or other advice and require such other evidence as it deems necessary to decide the claim.

If the Administrator denies the claim, in whole or in part, the Participant will be furnished with a written notice of adverse benefit determination setting forth:

1. the specific reason or reasons for the denial;
2. reference to the specific Plan provision on which the denial is issued;
3. a description of any additional material or information necessary for the Participant to complete his claim and an explanation of why such material or information is necessary, and
4. appropriate information as to the steps to be taken if the Participant wishes to appeal the Administrator's determination, including the participant's right to submit written comments and have them considered, his right to review (on request and at no charge) relevant documents and other information, and his right to file suit under ERISA with respect to any adverse determination after appeal of his claim.

- b. Appealing Denied Claims: If the Participant's claim is denied in whole or in part, he may appeal to the Administrator for a review of the denied claim. The appeal must be made in writing within 180 days of the Administrator's initial notice of adverse benefit determination, or else the participant will lose the right to appeal the denial. If the Participant does not appeal on time, he will also lose his right to file suit in court, as he will have failed to exhaust his internal administrative appeal rights, which is generally a prerequisite to bringing suit.

A Participant's written appeal should state the reasons that he feels his claim should not have been denied. It should include any additional facts and/or documents that the Participant feels support his claim. The Participant may also ask additional questions and make written comments, and may review (on request and at no charge) documents and other information

relevant to his appeal. The Administrator will review all written comment the Participant submits with his appeal.

- c. Review of Appeal: The Administrator will review and decide the Participant's appeal within a reasonable time not longer than 60 days after it is submitted and will notify the Participant of its decision in writing. The individual who decides the appeal will not be the same individual who decided the initial claim denial and will not be that individual's subordinate. The Administrator may secure independent medical or other advice and require such other evidence as it deems necessary to decide the appeal, except that any medical expert consulted in connection with the appeal will be different from any expert consulted in connection with the initial claim. (The identity of a medical expert consulted in connection with the Participant's appeal will be provided.) If the decision on appeal affirms the initial denial of the Participant's claim, the Participant will be furnished with a notice of adverse benefit determination on review setting forth:

1. The specific reason(s) for the denial,
2. The specific Plan provision(s) on which the decision is based,
3. A statement of the Participant's right to review (on request and at no charge) relevant documents and other information,
4. If the Administrator relied on an "internal rule, guideline, protocol, or other similar criterion" in making the decision, a description of the specific rule, guideline, protocol, or other similar criterion or a statement that such a rule, guideline, protocol, or other similar criterion was relied on and that a copy of such rule, guideline, protocol, or other criterion will be provided free of charge to the Participant upon request," and
5. A statement of the Participant's right to bring suit under ERISA § 502(a).

12.11 PAYMENT TO REPRESENTATIVE: In the event that a guardian, conservator or other legal representative has been duly appointed for a Participant entitled to any payment under the Plan, any such payment due may be made to the legal representative making claim therefor, and such payment so made shall be in complete discharge of the liabilities of the Plan therefor and the obligations of the Administrator and the Employer.

12.12 PROTECTED HEALTH INFORMATION. The provisions of this Section will apply only to those portions of the Plan that are considered a group health plan for purposes of 45 CFR Parts 160 and 164. The Plan may disclose PHI to employees of the Employer, or to other persons, only to the extent such disclosure is required or permitted pursuant to 45 CFR Parts 160 and 164. The Plan has implemented administrative, physical, and technical safeguards to reasonably and appropriately protect, and restrict access to and use of, electronic PHI, in accordance with Subpart C of 45 CFR Part 164. The applicable claims procedures under the Plan shall be used to resolve any issues of non-compliance by such individuals. The Employer will:

- not use or disclose PHI other than as permitted or required by the plan documents and permitted or required by law;
- reasonably and appropriately safeguard electronic PHI created, received, maintained, or transmitted to or by the it on behalf of the Plan, in accordance with Subpart C of 45 CFR Part 164;

- implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of the Plan;
- ensure that any agents including a subcontractors to whom it provides PHI received from the Plan agree to the same restrictions and conditions that apply to the Employer with respect to such information;
- not use or disclose PHI for employment-related actions and decisions or in connection with any other employee benefit plan of the Employer;
- report to the Plan any use or disclosure of the information that is inconsistent with the permitted uses or disclosures provided for of which it becomes aware;
- make available PHI in accordance with 45 CFR Section 164.524;
- make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 CFR Section 164.526;
- make available the information required to provide an accounting of disclosures in accordance with 45 CFR Section 164.528;
- make its internal practices, books, and records relating to the use and disclosure of PHI received from the Plan available to the Secretary of Health and Human Services or his designee upon request for purposes of determining compliance with 45 CFR Section 164.504(f);
- if feasible, return or destroy all PHI received from the Plan that the Employer still maintains in any form and retain no copies of such information when no longer needed for the purposes for which disclosure was made, except that, if such return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible; and,
- ensure that the adequate separation required in paragraph (f)(2)(iii) of 45 CFR Section 164.504 is established.

For purposes of this Section, “PHI” is “Protected Health Information” as defined in 45 CFR Section 160.103, which means individually identifiable health information, except as provided in paragraph (2) of the definition of “Protected Health Information” in 45 CFR Section 160.103, that is transmitted by electronic media; maintained in electronic media; or transmitted or maintained in any other form or medium by a covered entity, as defined in 45 CFR Section 164.104.

SECTION XIII

MISCELLANEOUS PROVISIONS

- 13.01 INABILITY TO LOCATE PAYEE: If the Plan Administrator is unable to make payment to any Participant or other person to whom a payment is due under the Plan because it cannot ascertain the identity or whereabouts of such Participant or other person after reasonable efforts have been made to identify or locate such person, then such payment and all subsequent payments otherwise due to such Participant or other person shall be forfeited following a reasonable time after the date any such payment first became due.
- 13.02 FORMS AND PROOFS: Each Participant or Participant's Beneficiary eligible to receive any benefit hereunder shall complete such forms and furnish such proofs, receipts, and releases as shall be required by the Administrator.
- 13.03 NO GUARANTEE OF TAX CONSEQUENCES: Neither the Administrator nor the Employer makes any commitment or guarantee that any amounts paid to or for the benefit of a Participant or a Dependent

under the Plan will be excludable from the Participant's or Dependent's gross income for federal or state income tax purposes, or that any other federal or state tax treatment will apply to or be available to any Participant or Dependent.

- 13.04 PLAN NOT CONTRACT OF EMPLOYMENT: The Plan will not be deemed to constitute a contract of employment between the Employer and any Participant nor will the Plan be considered an inducement for the employment of any Participant or employee. Nothing contained in the Plan will be deemed to give any Participant or employee the right to be retained in the service of the Employer nor to interfere with the right of the Employer to discharge any Participant or employee at any time regardless of the effect such discharge may have upon that individual as a Participant in the Plan.
- 13.05 NON-ASSIGNABILITY: No benefit under the Plan shall be liable for any debt, liability, contract, engagement or tort of any Participant or his Beneficiary, nor be subject to charge, anticipation, sale, assignment, transfer, encumbrance, pledge, attachment, garnishment, execution or other voluntary or involuntary alienation or other legal or equitable process, nor transferability by operation of law.
- 13.06 SEVERABILITY: If any provision of the Plan will be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions hereof will continue to be fully effective.
- 13.07 CONSTRUCTION:
- a. Words used herein in the masculine or feminine gender shall be construed as the feminine or masculine gender, respectively where appropriate.
 - b. Words used herein in the singular or plural shall be construed as the plural or singular, respectively, where appropriate.
- 13.08 NONDISCRIMINATION: In accordance with Code Section 125(b)(1), (2), and (3), this Plan is intended not to discriminate in favor of Highly Compensated Participants (as defined in Code Section 125(e)(1)) as to contributions and benefits nor to provide more than 25% of all qualified benefits to Key Employees. If, in the judgment of the Administrator, more than 25% of the total nontaxable benefits are provided to Key Employees, or the Plan discriminates in any other manner (or is at risk of possible discrimination), then, notwithstanding any other provision contained herein to the contrary, and, in accordance with the applicable provisions of the Code, the Administrator shall, after written notification to affected Participants, reduce or adjust such contributions and benefits under the Plan as shall be necessary to insure that, in the judgment of the Administrator, the Plan shall not be discriminatory.
- 13.09 ERISA. The Plan shall be construed, enforced, and administered and the validity determined in accordance with the applicable provisions of the Employee Retirement Income Security Act of 1974 (as amended), the Internal Revenue Code of 1986 (as amended), and the laws of the State indicated in the Adoption Agreement. Notwithstanding anything to the contrary herein, the provisions of ERISA will not apply to this Plan if the Plan is exempt from coverage under ERISA. Should any provisions be determined to be void, invalid, or unenforceable by any court of competent jurisdiction, the Plan will continue to operate, and for purposes of the jurisdiction of the court only will be deemed not to include the provision determined to be void.

SECTION XIV

TEMPORARY COVID RELIEF AMENDMENT

14.01 PURPOSE: In accordance with changes permitted under The Coronavirus Aid, Relief, and Economic Security Act, 2020, IRS Notice 2020-29, The Consolidated Appropriations Act, 2021, and IRS Notice 2021-15, Employer selected modifications to Plan language and procedures consistent with the following Plan options, as applicable. Notwithstanding any provision of the Plan to the contrary, as elected by the Employer in Item F of the Adoption Agreement, the Plan is hereby amended to adopt the following:

- a. Extended Claims Period: For unused amounts remaining in a Medical Expense Reimbursement Plan or a Dependent Care Reimbursement Plan under the Section 125 Plan as of the end of a grace period or plan year ending in 2020, the Participants may apply those unused amounts to pay or reimburse medical care expenses or dependent care expenses, respectively, incurred through December 31, 2020.
- b. Mid-Year Election Changes: Each Participant who is eligible to make salary reduction contributions under the Plan may make prospective election changes (including an initial election) during calendar year 2020 regarding Group Medical Insurance, a Medical Expense Reimbursement Plan, or a Dependent Care Reimbursement Plan, regardless of whether the basis for the election change satisfies the criteria set forth in regular election change rules.
- c. Mid-Year Election Changes for Medical Expense Reimbursement Plan: For plan years ending in 2021, Participants may modify their Medical Expense Reimbursement Plan elections on a prospective basis at any time during the year. No qualifying event is required.
- d. Mid-Year Election Changes for Dependent Care Reimbursement Plan: For plan years ending in 2021, Participants may modify their Dependent Care Reimbursement Plan elections on a prospective basis at any time during the year. No qualifying event is required.
- e. Extended Grace Period: For plan years ending in 2020 and/or 2021, the grace period for Medical Expense Reimbursement Plan and/or Dependent Care Reimbursement Plan is extended to 12 months.
- f. Unlimited Carryover for Medical Expense Reimbursement Plan: All unused funds in the Medical Expense Reimbursement Plan may be carried over to 2021 (from plan year 2020) and/or 2022 (from plan year 2021). There is no carryover maximum.
- g. Dependent Care Reimbursement Plan Age Increase: For Participants enrolled in the Dependent Care Reimbursement Plan for the 2020 Plan Year, the maximum age for children is extended from age 12 to age 13 when paying or reimbursing dependent care expenses incurred during the 2020 Plan Year. Additionally, amounts remaining at the end of the run-out period for the 2020 Plan Year shall be available to pay or reimburse otherwise-eligible dependent care expenses incurred during the 2021 Plan Year for a child who attained age 13 during the 2020 Plan Year (until the child turns age 14) or for another child who turns age 13 during the 2021 Plan Year.
- h. Reimbursement for Non-Active Participants: Participants who cease participation in a Medical Expense Reimbursement Plan during 2020 or 2021 (for example, due to termination of employment) may continue to receive reimbursements from unused balances through the end of the plan year in which such participation ceased (including any grace period).
- i. Dependent Care Reimbursement Plan Maximum Increase: For the 2021 calendar year only, Dependent Care Reimbursement Plan maximums may be increased to \$10,500 per family (\$5,250 for married individuals filing a joint return).



EXECUTIVE SUMMARY
07/06/2023

AGENDA SUBJECT:

Approval of a waiver of Article 8.04, Noise, Section 8.04.001(a) (11) in the hours of construction work to Leander Independent School District (LISD) to provide for concrete pours at Elementary #30, located north of San Gabriel Parkway and west of Frontenac Street in Leander, to perform the larger concrete pours beginning at 1:00 a.m. and the balance of smaller concrete pours, to begin no earlier than 4:00 a.m. from July 7, 2023, through April 30, 2024 (depending on weather conditions), with most of the pours being concentrated July 7, 2023, through January 31, 2024, and requiring LISD to post notifications a minimum of forty-eight (48) hours in advance of the activities.

BACKGROUND:

Leander Independent School District (LISD) is requesting permission for a variance for construction activities for concrete pours to begin after July 6, 2023, through April 2024 (depending on weather conditions), with most of the pours being concentrated from July 7, 2023, through January 2024, for Elementary School #30 located north of San Gabriel Parkway and West of Frontenac Street in Leander, Texas.

As per the Land Development Agreement between the City of Leander and LISD, they are requesting that LISD be granted a variance to be allowed to perform the larger concrete pours beginning at 1:00 a.m. and the balance of smaller concrete pours, as described in the letter attachment, to begin no earlier than 4:00 a.m. LISD will place temporary signs on their property notifying the citizens in the surrounding area of any planned early morning concrete pours.

APPLICANT/AGENT:

Jimmy Disler, Chief Facilities Officer for LISD

RECOMMENDATION:

City staff recommend approval for a variance of the City's Noise Ordinance for construction activities as described in the attached letter request for the new Elementary School #30 in the City of Leander.

PRESENTER:

Emily Truman, P.E., CFM, PMP, City Engineer

Attachments

1. Letter Request - LISD Elementary School #30
2. Location Map - LISD Elementary School #30



May 10, 2023

Lorraine Eldred
City of Leander
P.O. Box 319
Leander, TX 78646-0319

Dear Ms. Eldred,

Leander Independent School District will be starting construction on our new Elementary #30, in the City of Leander. The location of Elementary #30 is north of San Gabriel Pkwy and west of Frontenac Street.

Part of the construction process is performing concrete pours. Unfortunately, certain phases of each project demand the placement and finishing of large quantities of concrete in continuous pours which often take hours to complete. These large pours need to start in the early morning hours well before the time restricted by city Noise Ordinance Sec. 8.04.001. In some large pour cases, our construction teams will need to start as early as 1:00 a.m. and in other cases, smaller pours will need to begin by 4:00 a.m. These early morning start times are required for several reasons.

The concrete companies (batch plants) have a strong influence on when we can start as they say when we can get the concrete. These companies are very busy, as evidenced by the high number of new homes being built, and with our pours being large pours, they will push it to be earlier so they can take care of the residential concrete pours as well.

Traffic often delays arrival of concrete trucks. Because the concrete must be placed continuously, it is imperative that trucks delivering concrete arrive at defined intervals and without delay. This requires a period in which arrivals and departures from the construction site can transpire during periods of minimum traffic impact to the surrounding roadways. A large pour could need 50 to 75 trucks delivering concrete for that one pour, depending on the size of the pour.

Public safety is another reason to start early. A fully loaded concrete truck can weigh up to 80,000 pounds. They can't stop on a dime, so for everyone's safety we start early to decrease the number of trucks on the road and driving through a neighborhood when people are going to work and when students are walking to bus stops.

An additional factor critical to the success of concrete placement and finishing is environmental. During periods of warm/hot temperatures, the early morning placement

LeanderISD.org

204 W. South Street • P.O. Box 218 • Leander, TX 78646

Phone: 512-570-0000 • Fax: 512-570-0054

of concrete allows the pours to be completed prior to the temperatures getting too high which can cause issues with the finishing, particularly cracking of the concrete. Early placement of concrete also allows the concrete finishing process to be completed prior to evening and late-night hours.

Regarding the new LISD Elementary #30, it is estimated that 30 to 45 concrete pours will be needed, with 22 to 24 being large pours.

We understand the impact construction activities often have on neighboring properties. For this reason, LISD works very closely with our construction managers in developing traffic plans for ingress and egress for early morning concrete pours at our construction sites. The purpose of these plans is to minimize disturbances such as noise from backup beepers and headlights from vehicles shining into neighboring properties. The school district in conjunction with our construction partners also make extra efforts to communicate with properties neighboring our major construction sites. LISD will place temporary signs on our property notifying the citizens in the surrounding area of any planned early morning concrete pours.

As per the Land Development Agreement between the City of Leander and LISD, I am requesting that LISD be granted a variance to be allowed to perform the large concrete pours beginning at 1:00 a.m. and the balance of concrete pours to begin no earlier than 4:00 a.m. for the Elementary #30. These pours would be happening after July 6, 2023 through April 2024, with most of the pours being concentrated to July 7, 2023 through January 2024.

Sincerely,



Jimmy Disler
Chief Facilities Officer

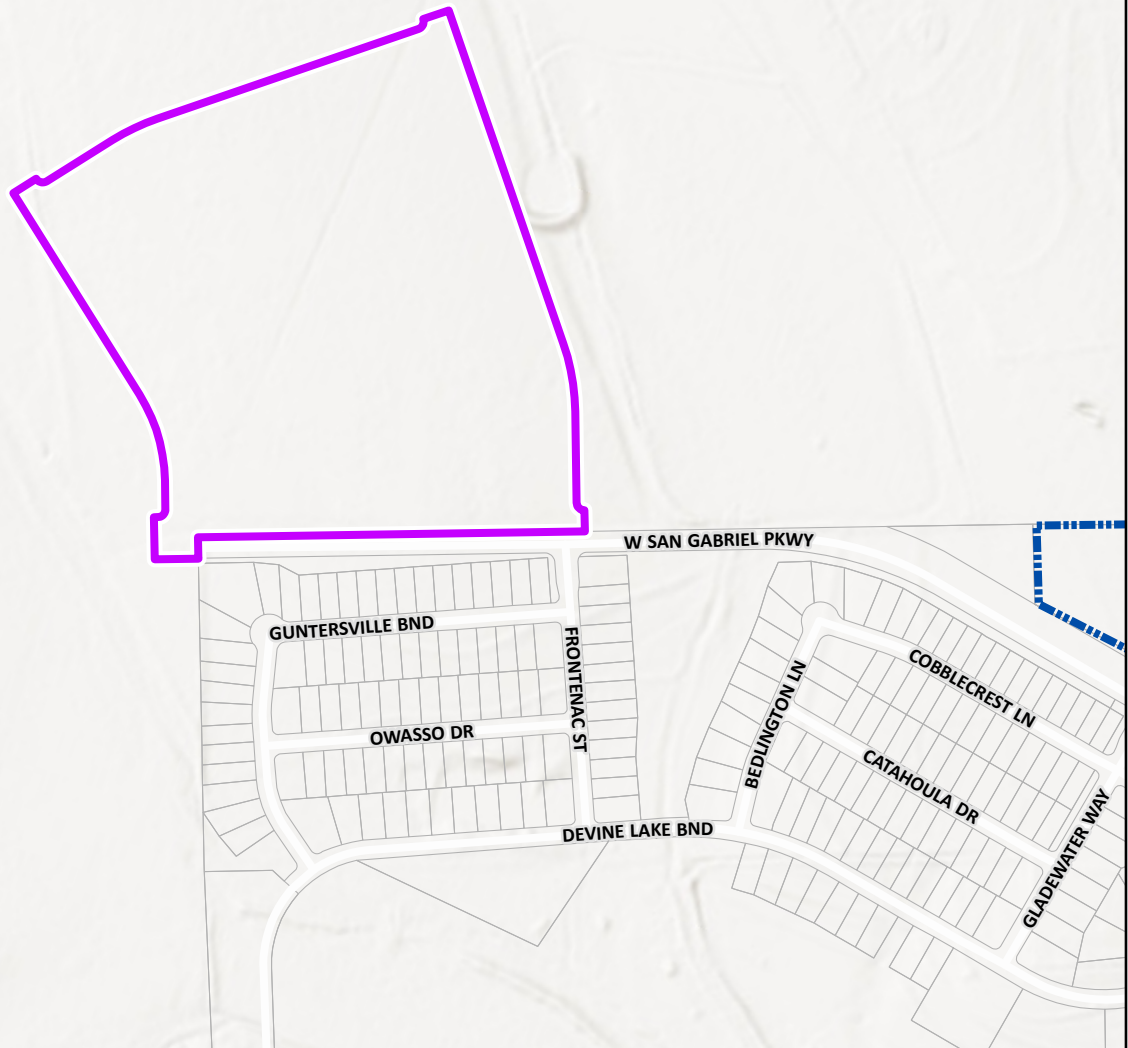
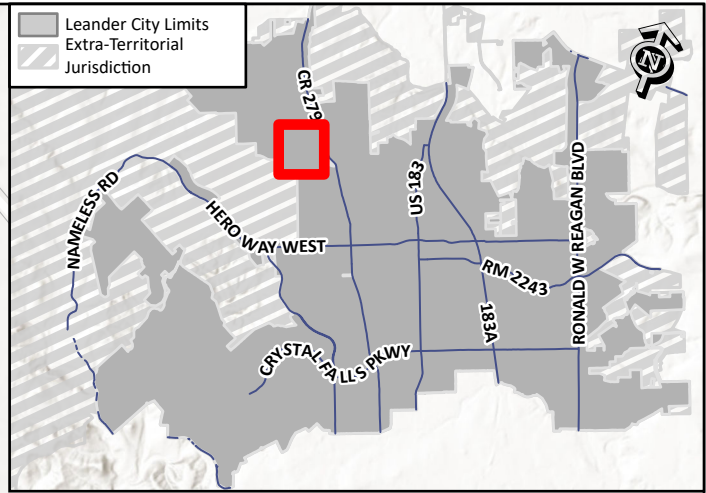
Cc: Bruce Gearing, Ed.D., Superintendent

LeanderISD.org

204 W. South Street • P.O. Box 218 • Leander, TX 78646

Phone: 512-570-0000 • Fax: 512-570-0054

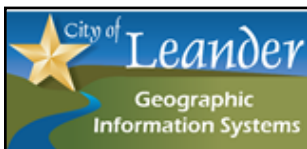
This map has been produced by the City of Leander for informational purposes only. No warranty is made by the City regarding completeness or accuracy, please refer to the appraisal district website for official property data. No responsibility is assumed for damages or other liabilities due to the accuracy, availability, completeness, use or misuse of the information herein provided.



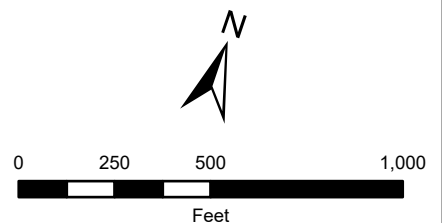
Esri, NASA, NGA, USGS, FEMA,
Esri, CGIAR, USGS

NOISE VARIANCE

LISD #30 - SD-23-0084



-  Subject Property
-  City Limits
-  WCAD Parcels





EXECUTIVE SUMMARY
07/06/2023

AGENDA SUBJECT:

Acceptance of public infrastructure improvements for Travisso Phase 4 Section 6A.

BACKGROUND:

The public infrastructure improvements required for the Travisso Phase 4 Section 6A Subdivision have been installed, inspected, and are satisfactorily completed. All documentation required for acceptance of this subdivision have been received, including record drawings, statement of substantial completion prepared by a professional engineer licensed in the State of Texas, copies of all inspection reports and certified test results, electronic files of the improvements and final plat, affidavit of all bills paid, and a two (2)- year term maintenance bond.

The maintenance bond will commence its two (2)- year term upon City Council acceptance, as anticipated, on July 6, 2023, which will provide warranty and maintenance coverage for the public infrastructure improvements through July 6, 2025. The Engineering Department will perform a formal inspection of the improvements approximately thirty (30) days prior to the expiration of the maintenance bond to assure that any defects in materials, construction, or maintenance are corrected prior to expiration of the bond.

RECOMMENDATION:

Staff recommends City Council's formal acceptance of the public infrastructure improvements for Travisso Phase 4 Section 6A.

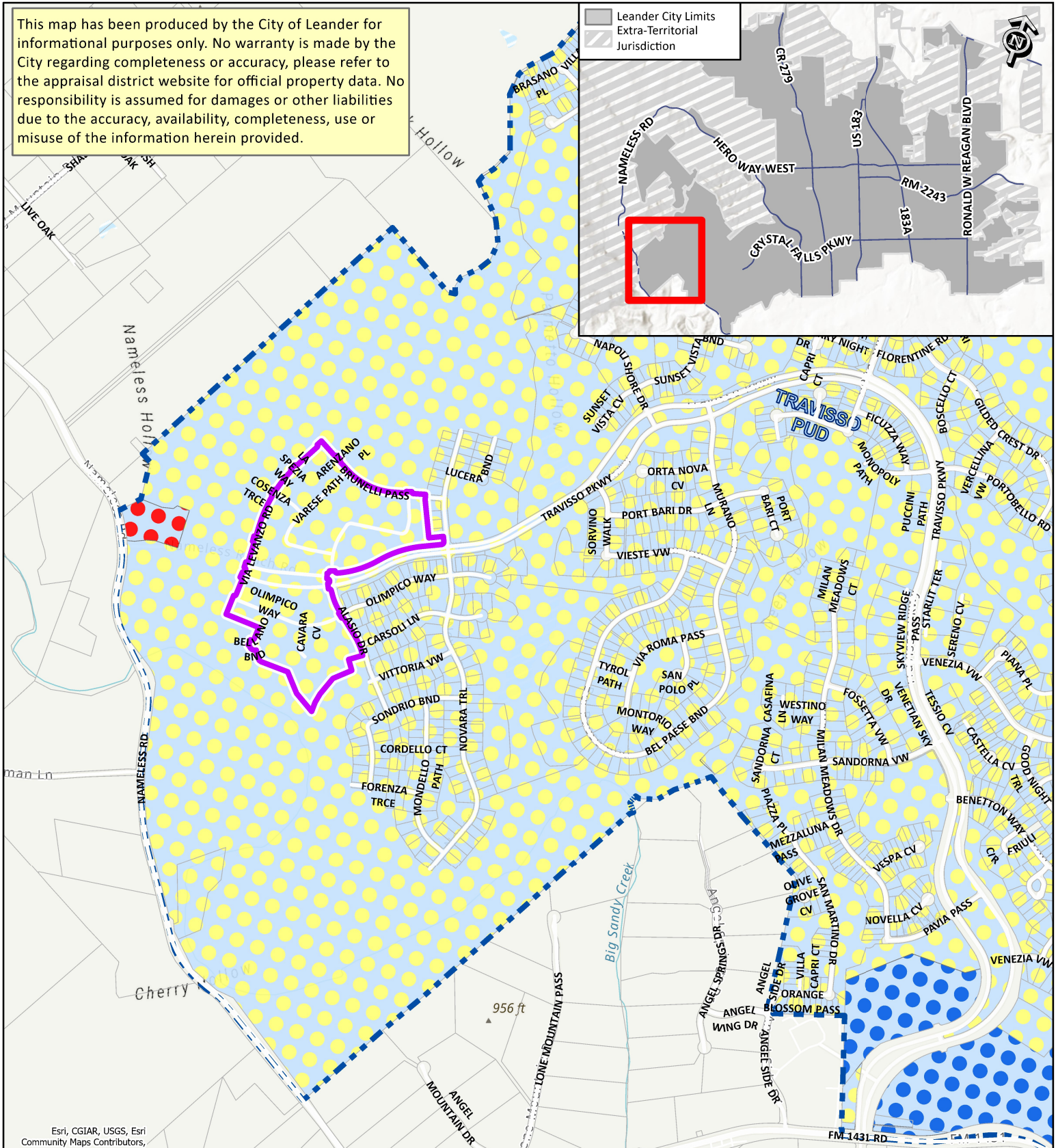
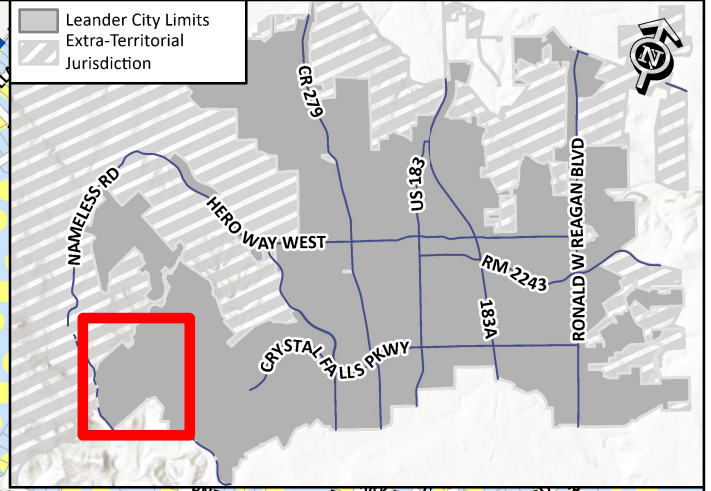
PRESENTER:

Emily Truman, P.E., CFM, PMP, City Engineer

Attachments

1. Acceptance Documents - Travisso Ph 4 Sec 6A

This map has been produced by the City of Leander for informational purposes only. No warranty is made by the City regarding completeness or accuracy, please refer to the appraisal district website for official property data. No responsibility is assumed for damages or other liabilities due to the accuracy, availability, completeness, use or misuse of the information herein provided.

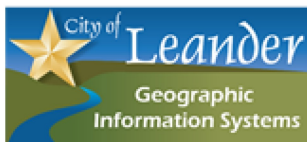


SUBDIVISION ACCEPTANCE

Traviss Ph 4 Sec 6A - 21-PICP-004

City Limits

Accepted Subdivision



RESIDENTIAL

SFR - Single-Family Rural

PUD LAND USE

PUD - Single-Family

PUD - Mixed Use

PUD - General Commercial



0 500 1,000 2,000
Feet



May 31, 2023

Brad Garner
Travisso, Ltd.
9601 Amberglen Blvd., Ste 200
Austin, Texas 78729

TDLR Project No.: TABS2021010152

PROJECT:

Travisso Phase 4, Section 6
Travisso Parkway
Leander, TX 78641

CORRECTIVE MODIFICATIONS – NO VIOLATIONS

Dear Brad:

Your submittal regarding the referenced violations pending report has been reviewed. We are pleased to inform you that all items cited in the inspection report appear to be in substantial compliance with requirements of the Texas Government Code, Chapter 469.

These results will be forwarded to the Texas Department of Licensing and Regulation for issuance of the final approval letter. For newly constructed buildings and facilities, the Department will provide a Notice of Substantial Compliance (Certificate and Decal) to the owner upon receipt of a completed Notice of Substantial Compliance Request Form.

This determination is applicable only to ensuring compliance with Texas Government Code, Chapter 469 and does not address the requirements of the Americans with Disabilities Act (ADA), (P.L. 101-336), or any other federal, state, or local requirement. For information on the ADA, call the ADA Hotline, (800) 949-4232 or the United States Department of Justice at (202) 514-0301.

Please reference the TDLR Project Number in all future correspondence pertaining to this project.

Sincerely,

A handwritten signature in dark ink, reading 'Jesús Lardizábal'.

Jesús Lardizábal, RAS #1051

June 5, 2023

Emily Truman, P.E., CFM
City of Leander City Engineer
P.O. Box 319
Leander, TX 78646

RE: Travisso Phase 4, Section 6A
App. No.: 21-PICP-004
Engineer's Concurrence

Dear Ms. Truman,

This letter is to inform you that I, and/or my designated representative, have made a final visual observation of the above referenced project. I have also visited the site during construction and observed the installation of street, drainage, water, and wastewater improvements. Based on these observations, I hereby certify that these improvements were completed in substantial conformance with the approved plans and specifications.

Please feel free to contact me if you need any additional information or have any further questions.

Sincerely,
Pape-Dawson Engineers, Inc.
Texas Board of Professional Engineers, Firm Registration # 470


Michael Fisher, P.E.
Senior Vice President



H:\Projects\508\92\38\301 Construction Documents\Documents\Plan Processing\City\Closeout\Phase 4, Section 6A\Engineer's Concurrence\TRAVISSE PH 4 SEC
6A - ENGINEERS CONCURRENCE.docx

March 23, 2023

Sarvesh Dhakal, P.E.
Engineer
201 N. Brushy Street
Leander, Texas 78646

RE: Travisso Phase 4, Section 6A
App. No.: 21-PICP-004
Final Cost Certification

Dear Mr. Dhakal:

Following is the information as applicable for items that will be owned and maintained by the City within this project:

Final Plat Legal Name as Recorded: Travisso Phase 4, Section 6A.

Name on Approved Construction Documents: Travisso Phase 4, Section 6.

Name on Bank Bond for Fiscal Posting: Travisso Phase 4, Section 6 Public Improvement Construction Plans (21-PICP-004).

COST SUMMARY

Street Improvements:	\$	1,561,955.80
Water Improvements:	\$	779,119.00
Reclaimed Water Improvements:	\$	90,657.00
Wastewater Improvements:	\$	1,675,333.75
Erosion and Sedimentation Control Improvements:	\$	157,797.05
Drainage Improvements:	\$	2,341,865.40
TOTAL	\$	6,606,728.00

MAINTENANCE BOND

Total Improvements:	\$	6,606,728.00
Maintenance Bond (10%)	\$	660,672.80

INSPECTION FEES

Please note that inspection fees paid at submittal were calculated based on the Travisso Phase 4, Section 6 project, which has since been separated into Travisso Phase 4, Section 6A and Travisso Phase 4, Section 6B. It is proposed that payment of the inspection fees owed for Travisso Phase 4, Section 6A and Travisso Phase 4, Section 6B based on the inspection fees paid at original submittal be differed to the future Travisso Phase 4, Section 6B closeout upon review of final costs of that project.

Total Cost of Travisso Phase 4, Section 6A Improvements	\$	6,606,728.00
3.5% Inspection Fees Owed to City for Travisso Phase 4, Section 6A	\$	231,235.48
Inspection Fees Paid at Submittal for Travisso Phase 4, Section 6A	\$	231,235.48
Inspection Fees Owed to City with Travisso Phase 4, Section 6A Closeout	\$	0.00
Total Cost of Travisso Phase 4, Section 6B Improvements	\$	3,764,423.10
3.5% Inspection Fees Owed to City for Travisso Phase 4, Section 6B with Future Closeout	\$	131,754.81
Inspection Fees Paid at Submittal for Travisso Phase 4, Section 6B	\$	129,017.39
Inspection Fees Owed to City with Travisso Phase 4, Section 6B Closeout	\$	2,737.42

ENGINEER'S CONTACT INFORMATION

Michael Fisher, P.E.
Pape-Dawson Engineers
10801 N. Mopac Expressway. Building 3, Suite 200
Austin, TX 78759
mfisher@pape-dawson.com
(512) 454-8711

Please call if you have any questions.

Sincerely,
Pape-Dawson Engineers, Inc.
Texas Board of Professional Engineers, Firm Registration # 470



Michael Fisher, P.E.
Senior Vice President



**IMPORTANT NOTICE
STATE OF TEXAS
COMPLAINT PROCEDURES**

1. IMPORTANT NOTICE

To obtain information or make a complaint:

2. You may contact your agent.

3. You may call **Westfield Insurance Company, Westfield National Insurance Company, and/or Ohio Farmers Insurance Company's** toll-free telephone number for information or to make a complaint at:

1-800-243-0210

4. You may also write to **Westfield Insurance Company, Westfield National Insurance Company, and/or Ohio Farmers Insurance Company** at:

**Attn: Bond Claims
One Park Circle
P O Box 5001
Westfield Center, OH 44251-5001
Fax #330-887-0840**

5. You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

1-800-252-3439

6. You may write to the Texas Department of Insurance, Consumer Protection Section (MC 111-1A):

P.O. Box 149091
Austin, TX 78714-9091
Fax: (512) 490-1007
Web: www.tdi.texas.gov
E-mail: ConsumerProtection@tdi.texas.gov

7. PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim, you should contact the agent, Westfield Insurance Company, Westfield National Insurance Company, or Ohio Farmers Insurance Company first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

8. ATTACH THIS NOTICE TO YOUR POLICY:

This notice is for information only and does not become a part or condition of the attached document.

AVISO IMPORTANTE

Para obtener informacion o para someter una queja:

Puede comunicarse con su (title) al (telephone number).

Usted puede llamar al numero de telefono gratis de **Westfield Insurance Company, Westfield National Insurance Company, and/or Ohio Farmers Insurance Company's** para informacion o para someter una queja al:

1-800-243-0210

Usted tambien puede escribir a **Westfield Insurance Company, Westfield National Insurance Company, and/or Ohio Farmers Insurance Company:**

**Attn: Bond Claims
One Park Circle
P O Box 5001
Westfield Center, OH 44251-5001
Fax #330-887-0840**

Puede comunicarse con el Departamento de Seguros de Texas para obtener informacion acerca de companies, coberturas, derechos o quejas al:

1-800-252-3439

Puede escribir al Departamento de Seguros de Texas, Consumer Protection Section (MC 111-1A):

P.O. Box 149091
Austin, TX 78714-9091
Fax: (512) 490-1007
Web: www.tdi.texas.gov
E-mail: ConsumerProtection@tdi.texas.gov

DISPUTAS SOBRE PRIMAS O RECLAMOS:

Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con el agente, Westfield Insurance Company, Westfield National Insurance Company, o Ohio Farmers Insurance Company primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI).

UNA ESTE AVISO A SU POLIZA: Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.

MAINTENANCE BOND
Subdivision Improvements

THE STATE OF TEXAS §

COUNTY OF WILLIAMSON §

KNOW ALL BY THESE PRESENTS, that JL Gray Construction, Inc.
as Principal, whose address is 408 Fannin Avenue, Round Rock, TX 78664 and
Westfield Insurance Company a Corporation organized under the
laws of the State of Ohio, and duly authorized to do business in the State of Texas, as
Surety, are held and firmly bound unto the City of Leander, Texas as Obligee, in the penal sum
of Six Hundred Sixty Thousand Six Hundred Seventy Two and 80/100 Dollars
(\$ 660,672.80) to which payment will and truly to be made we do bind ourselves, our
and each of our heirs, executors, administrators, successors and assigns jointly and severally,
firmly by these presents.

WHEREAS, the said Principal has constructed Travisso Phase 4, Section 6A
- Streets, Drainage, Water, Wastewater Improvements (the
“improvements”) pursuant to the ordinances of the Obligee, which ordinances are hereby
expressly made a part hereof as though the same were written and embodied herein;

WHEREAS, said Obligee requires that the Principal furnish a bond conditioned to
guarantee for the period of two (2) years after acceptance by the Obligee, against all defects in
workmanship and materials which may become apparent during said period;

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that, if the
Principal keeps and perform the requirement of the Obligee’s ordinances and this Maintenance
Bond to maintain the improvements and keep the same in good repair and shall indemnify the
Obligee for all loss that the Obligee may sustain by reason of any defective materials or
workmanship which become apparent during the period of two (2) years from and after the date
of acceptance by the Owner, then this obligation shall be void, otherwise to remain in full force
and effect, and Owner shall have and cover from said Principal and Surety damages in the
premises, as provided, and it is further agreed that this obligation shall be a continuing one
against the Principal and Surety hereon, and that successive recoveries may be had thereon for
successive breaches until the full amount shall have been exhausted; and it is further understood
that the obligation herein to maintain said improvements shall continue throughout the
maintenance period, and the same shall not be diminished in any manner from any cause during
said time.

Principal agrees to repair or reconstruct the improvements in whole or in part at any time
within the two year period to such extent as the Obligee deems necessary to properly correct all
defects except for normal wear and tear. If the Principal fails to make the necessary corrections
within ten days after being notified, the Obligee may do so or have done all said corrective work
and shall have recovery hereon for all expenses thereby incurred. Principal will maintain and
keep in good repair the improvements for a period of two years from the date of acceptance; it
being understood that the purpose of this Maintenance Bond is to cover all defective conditions
arising by reason of defective material, work, or labor performed by said Principal or its

subcontractors, and in the case the said Principal shall fail to do so within ten days after being notified, it is agreed that the Obligees may do said work and supply such materials, and charge the same against Principal and Surety on this obligation.

The Surety shall notify the Obligees at least fifteen (15) days prior to the end of the first full calendar year and prior to the lapse of this Maintenance Bond at the end of the second full calendar year.

Surety and Principal agree that whenever a defect or failure of the improvement occurs within the period of coverage under this Bond, the Surety and Principal shall provide a new maintenance bond or other surety instrument in a form acceptable to the Obligees and compliant with the Obligees' ordinances conditioned to guarantee for the period of one (1) year after the Obligees' acceptance of the corrected defect or failure, against all defects in workmanship and materials associated with the corrected defect or failure which may become apparent during said period, which shall be in addition to this Maintenance Bond.

The Surety agrees to pay the Obligees upon demand all loss and expense, including attorneys' fees, incurred by the Obligees by reason of or on account of any breach of this obligation by the Surety. Provided further, that in any legal action be filed upon this bond, venue shall lie in the county where the improvements are constructed.

This Bond is a continuing obligation and shall remain in full force and effect until cancelled as provided for herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the improvements, or the work to be performed thereon, or the plans, specifications or drawings accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the improvements, or the work to be performed thereon.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this 5th day of June, 2023.

JL Gray Construction, Inc.
Principal

By: 
Title: VICE PRESIDENT

Address: 408 Fannin Avenue
Round Rock, TX 78664

Westfield Insurance Company
Surety

By: 
Title: Attorney-in-Fact

Address: 2255 Ridge Road, Suite 333
Rockwall, TX 75087

The name and address of the Resident Agent of Surety is:

Jack Nottingham
2255 Ridge Road, Suite 333, Rockwall, TX 75087

(Seal)

THIS POWER OF ATTORNEY SUPERCEDES ANY PREVIOUS POWER BEARING THIS SAME POWER # AND ISSUED PRIOR TO 05/25/22, FOR ANY PERSON OR PERSONS NAMED BELOW.

POWER NO. 4220012 14

General
Power
of Attorney

Westfield Insurance Co.
Westfield National Insurance Co.
Ohio Farmers Insurance Co.
Westfield Center, Ohio

CERTIFIED COPY

Know All Men by These Presents, That WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, corporations, hereinafter referred to individually as a "Company" and collectively as "Companies," duly organized and existing under the laws of the State of Ohio, and having its principal office in Westfield Center, Medina County, Ohio, do by these presents make, constitute and appoint
TONY FIERRO, JOHNNY MOSS, JAY JORDAN, MISTIE BECK, JEREMY BARNETT, JADE PORTER, ROBERT G. KANUTH, JARRETT WILLSON, JACK NOTTINGHAM, BRADY WILSON, BRENNAN WILLIAMSON, JOINTLY OR SEVERALLY

of **ROCKWALL** and State of **TX** its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings, or other instruments or contracts of suretyship in any penal limit.

LIMITATION: THIS POWER OF ATTORNEY CANNOT BE USED TO EXECUTE NOTE GUARANTEE, MORTGAGE DEFICIENCY, MORTGAGE GUARANTEE, OR BANK DEPOSITORY BONDS.

and to bind any of the Companies thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the applicable Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises. Said appointment is made under and by authority of the following resolution adopted by the Board of Directors of each of the WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY:

"Be It Resolved, that the President, any Senior Executive, any Secretary or any Fidelity & Surety Operations Executive or other Executive shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

The Attorney-in-Fact. may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements of indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed by the President and sealed and attested by the Corporate Secretary."

"Be it Further Resolved, that the signature of any such designated person and the seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signatures or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached." (Each adopted at a meeting held on February 8, 2000).

In Witness Whereof, WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY have caused these presents to be signed by their **National Surety Leader** and **Senior Executive** and their corporate seals to be hereto affixed this 25th day of **MAY** A.D., 2022.

Corporate
Seals
Affixed



WESTFIELD INSURANCE COMPANY
WESTFIELD NATIONAL INSURANCE COMPANY
OHIO FARMERS INSURANCE COMPANY

By:
Gary W. Stumper, National Surety Leader and Senior Executive

State of Ohio
County of Medina ss.:

On this 25th day of **MAY** A.D., 2022, before me personally came **Gary W. Stumper** to me known, who, being by me duly sworn, did depose and say, that he resides in **Medina, OH**; that he is **National Surety Leader and Senior Executive** of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, the companies described in and which executed the above instrument; that he knows the seals of said Companies; that the seals affixed to said instrument are such corporate seals; that they were so affixed by order of the Boards of Directors of said Companies; and that he signed his name thereto by like order.

Notarial
Seal
Affixed



David A. Kotnik, Attorney at Law, Notary Public
My Commission Does Not Expire (Sec. 147.03 Ohio Revised Code)

State of Ohio
County of Medina ss.:

I, **Frank A. Carrino**, Secretary of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Companies, which is still in full force and effect; and furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seals of said Companies at Westfield Center, Ohio, this 5th day of **June** A.D., 2023.



Frank A. Carrino, Secretary

**FINAL BILLS PAID AFFIDAVIT
AND WAIVER OF LIEN**

STATE OF TEXAS
COUNTY OF Williamson

Date: 05/23/23

Developer: Travisso, LTD.

Contractor/Material
Provider ("Affiant"):

Project: Travisso Sec 6A

This is to acknowledge and certify that Affiant has completed the construction of all improvements for the project noted above and that Affiant has been paid in full for all labor and material provided to the above-noted construction project, except for retainage, and acknowledges and certifies that Affiant, and all of his or its agents, employees, successors, assigns, subsidiaries, and legal representatives will and do release and waive all Mechanic's liens, or similar lien rights, which have or might arise as a result of the Affiant's or Affiant's agents' or employees' providing labor and materials to the above-noted project. Affiant understands that a portion or all of the property upon which the project is located has been or will be accepted by the City of Leander, Texas, for ownership, maintenance, and operation. Affiant further agrees that it shall look solely to the Developer for payment of the retainage and shall have no cause of action whatsoever, against the City in the event that the retainage is not paid to the Affiant, and that Affiant shall not file a lien of any kind which has or may arise related to the release of the retainage for the project. Affiant acknowledges and understands that the City is relying on the representations made in this document to accept the phase or portion of the subdivision in which the project is located.

In addition to the foregoing, Affiant acknowledges and certifies that Affiant has paid all laborers, subcontractors, materialmen, and all other persons or parties who have provided labor or materials through, for, or on behalf of the Affiant to the above-noted construction project.

Affiant indemnifies and holds Owner harmless from any liens, debts or obligations which arise as a result of labor or materials provided by or through Affiant to the project through the date set out above. Affiant further indemnifies and holds harmless all real property on which the improvements were constructed and all interests in such property, including leasehold interests, from any liens, debts, or obligations arising from any labor or materials provided by or through Affiant to the project through the date set out above.

SUBSCRIBED AND SWORN TO BY Affiant on this 23 day of May, 2023.

Initialed: JG

Updated 10.20.14

AFFIANT:

Signature: _____

Typed Name: _____

Title: _____

STATE OF TEXAS
COUNTY OF Williamson

BEFORE ME the undersigned authority on this day personally appeared Jason Gray, known to me to be the person noted above, and acknowledged to me the following: that he/she executed the foregoing for the purpose and consideration therein expressed, in the capacity therein stated, and as the duly authorized act and deed of the party releasing and waiving the lien therein; and that every statement therein is within his/her knowledge and is true and correct.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 23 day of May, 2023



[S E A L]

Notary in and for the State of Texas

Name: Justin Sparling

My commission expires: 02-22-27

Initialed: JG



EXECUTIVE SUMMARY
07/06/2023

AGENDA SUBJECT:

Acceptance of public infrastructure improvements for Crystal Village Phase 1A.

BACKGROUND:

The public infrastructure improvements required for the Crystal Village Phase 1A Subdivision have been installed, inspected, and are satisfactorily completed. All documentation required for acceptance of this subdivision have been received, including record drawings, statement of substantial completion prepared by a professional engineer licensed in the State of Texas, copies of all inspection reports and certified test results, electronic files of the improvements and final plat, affidavit of all bills paid, and a two (2)- year term maintenance bond.

The maintenance bond will commence its two (2)- year term upon City Council acceptance, as anticipated, on July 6, 2023, which will provide warranty and maintenance coverage for the public infrastructure improvements through July 6, 2025. The Engineering Department will perform a formal inspection of the improvements approximately thirty (30) days prior to the expiration of the maintenance bond to assure that any defects in materials, construction, or maintenance are corrected prior to expiration of the bond.

RECOMMENDATION:

Staff recommends City Council's formal acceptance of the public infrastructure improvements for Crystal Village Phase 1A.

PRESENTER:

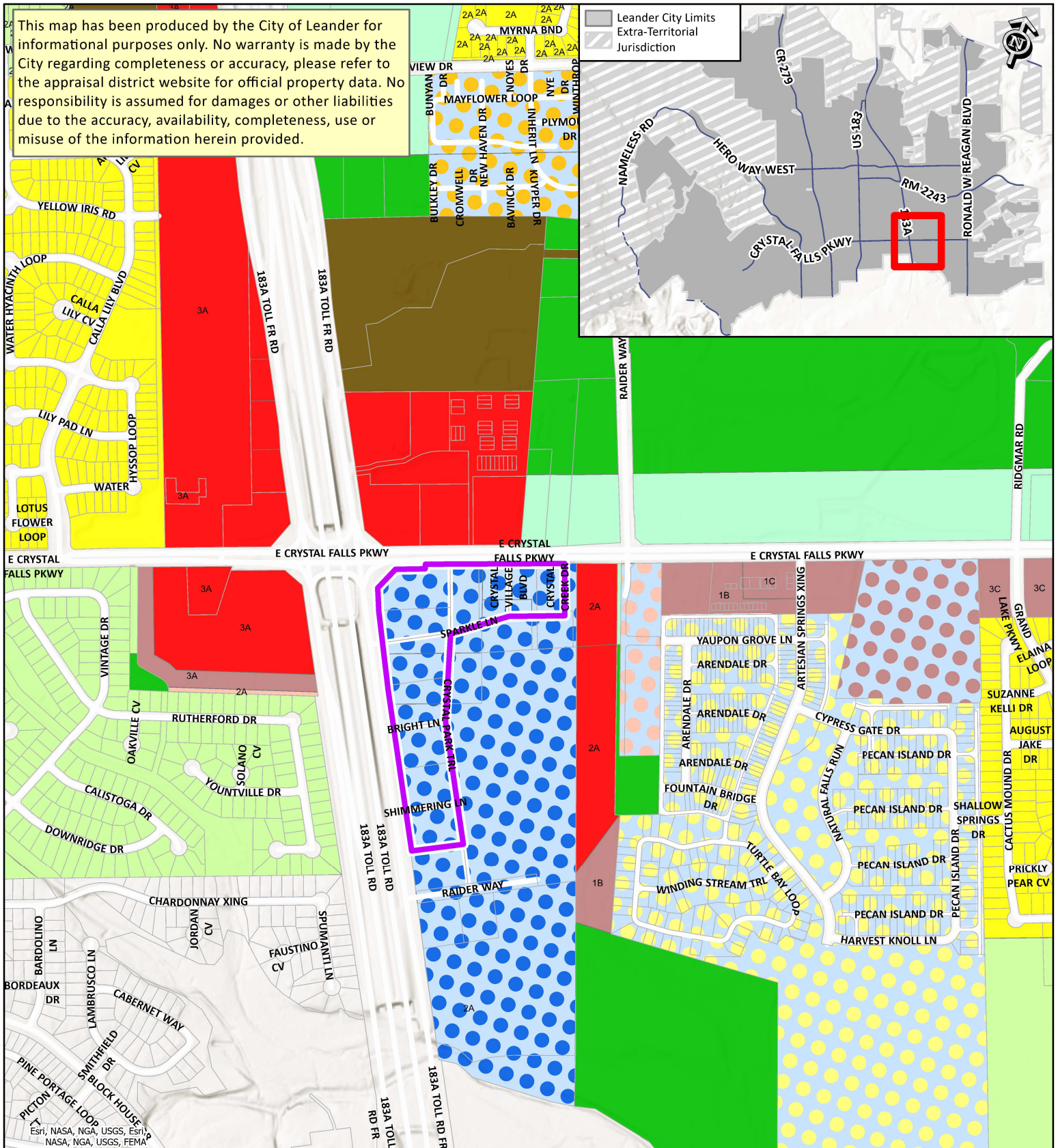
Emily Truman, P.E., CFM, PMP, City Engineer

Attachments

1. Acceptance Documents - Crystal Village Ph 1A

This map has been produced by the City of Leander for informational purposes only. No warranty is made by the City regarding completeness or accuracy, please refer to the appraisal district website for official property data. No responsibility is assumed for damages or other liabilities due to the accuracy, availability, completeness, use or misuse of the information herein provided.

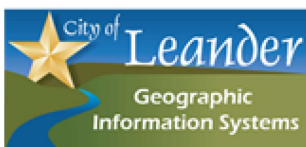
Leander City Limits
Extra-Territorial Jurisdiction



SUBDIVISION ACCEPTANCE

Crystal Village Ph 1A - 11-PICP-002

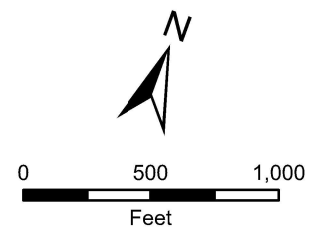
Accepted Subdivision



RESIDENTIAL

- SFR - Single-Family Rural
- SFS - Single-Family Suburban
- SFU - Single-Family Urban
- SFC - Single-Family Compact
- MF - Multi-Family
- RETAIL / COMMERCIAL
- LO - Local Office

- LC - Local Commercial
- GC - General Commercial
- PUD LAND USE
- PUD - Single-Family
- PUD - Townhomes
- PUD - Mixed Use
- PUD - Local Office
- PUD - Local Commercial



Engineer's Concurrence for Project Acceptance

Project: CRYSTAL VILLAGE PHASE 1A Date: 06/09/2023

City of Leander Issued Permit Number: 11-PICP-002

Owner's Name & Address

PREMAS GLOBAL LEANDER I, LLC
3800 CENTERPOINT DR, STE. 501
ANCHORAGE, AK 99503

Consultant Engineer's Name & Address

BRADLEY WILKINS
10814 JOLLYVILLE RD CAMUS IV STE. 200
AUSTIN, TX 78759

On this date, I, the undersigned Professional Engineer in the State of Texas, or my representative, have made a visual inspection of the above referenced project. No discrepancies from the approved construction plans or deficiencies in construction were visible or brought to my attention. I, therefore, certify that all improvements are in substantial compliance with the approved construction plans and all City, State, and Federal requirements, including the City of Leander Subdivision Ordinance and Composite Zoning Ordinance.

If applicable, for closeout of public improvement construction project (PICP) permits, I additionally certify that all project closeout procedures with other governmental entities have been completed and finalized with each entity prior to submittal of my concurrence letter to the City of Leander.

Bradley Wilkins

Signature

BRADLEY WILKINS

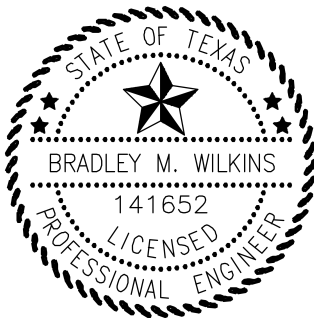
Typed Name

KIMLEY-HORN & ASSOCIATES INC.

Engineering Firm Name

928

Registered Engineering Firm Number



(SEAL)

MAINTENANCE BOND
Subdivision Improvements
Bond Number: 2331928

THE STATE OF TEXAS §

COUNTY OF WILLIAMSON §

KNOW ALL BY THESE PRESENTS, that Liberty Civil Construction, LLC
as Principal, whose address is 2937 Hero Way Leander, TX 78641 and
Swiss Re Corporate Solutions America Insurance Corporation a Corporation organized under the
laws of the State of Missouri, and duly authorized to do business in the State of Texas, as
Surety, are held and firmly bound unto the City of Leander, Texas as Obligee, in the penal sum
of Three Hundred Fifteen Thousand Eight Hundred Twenty-one & 61/100
(\$ 315,821.61) to which payment will and truly to be made we do bind ourselves, our and each
of our heirs, executors, administrators, successors and assigns jointly and severally, firmly by
these presents.

WHEREAS, the said Principal has constructed _____
Construction Plans - Grading, Drainage, and Utilities for Crystal Village - A Leander Community - Phase 1A #11-PICP-002
(the "improvements") pursuant to the ordinances of the Obligee, which ordinances are hereby
expressly made a part hereof as though the same were written and embodied herein;

WHEREAS, said Obligee requires that the Principal furnish a bond conditioned to
guarantee for the period of two (2) years after acceptance by the Obligee, against all defects in
workmanship and materials which may become apparent during said period;

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that, if the
Principal keeps and perform the requirement of the Obligee's ordinances and this Maintenance
Bond to maintain the improvements and keep the same in good repair and shall indemnify the
Obligee for all loss that the Obligee may sustain by reason of any defective materials or
workmanship which become apparent during the period of two (2) years from and after the date
of acceptance by the Owner, then this obligation shall be void, otherwise to remain in full force
and effect, and Owner shall have and cover from said Principal and Surety damages in the
premises, as provided, and it is further agreed that this obligation shall be a continuing one
against the Principal and Surety hereon, and that successive recoveries may be had thereon for
successive breaches until the full amount shall have been exhausted; and it is further understood
that the obligation herein to maintain said improvements shall continue throughout the
maintenance period, and the same shall not be diminished in any manner from any cause during
said time.

Principal agrees to repair or reconstruct the improvements in whole or in part at any time
within the two year period to such extent as the Obligee deems necessary to properly correct all
defects except for normal wear and tear. If the Principal fails to make the necessary corrections
within ten days after being notified, the Obligee may do so or have done all said corrective work
and shall have recovery hereon for all expenses thereby incurred. Principal will maintain and
keep in good repair the improvements for a period of two years from the date of acceptance; it
being understood that the purpose of this Maintenance Bond is to cover all defective conditions
arising by reason of defective material, work, or labor performed by said Principal or its

subcontractors, and in the case the said Principal shall fail to do so within ten days after being notified, it is agreed that the Obligee may do said work and supply such materials, and charge the same against Principal and Surety on this obligation.

The Surety shall notify the Obligee at least fifteen (15) days prior to the end of the first full calendar year and prior to the lapse of this Maintenance Bond at the end of the second full calendar year.

Surety and Principal agree that whenever a defect or failure of the improvement occurs within the period of coverage under this Bond, the Surety and Principal shall provide a new maintenance bond or other surety instrument in a form acceptable to the Obligee and compliant with the Obligee's ordinances conditioned to guarantee for the period of one (1) year after the Obligee's acceptance of the corrected defect or failure, against all defects in workmanship and materials associated with the corrected defect or failure which may become apparent during said period, which shall be in addition to this Maintenance Bond.

The Surety agrees to pay the Obligee upon demand all loss and expense, including attorneys' fees, incurred by the Obligee by reason of or on account of any breach of this obligation by the Surety. Provided further, that in any legal action be filed upon this bond, venue shall lie in the county where the improvements are constructed.

This Bond is a continuing obligation and shall remain in full force and effect until cancelled as provided for herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the improvements, or the work to be performed thereon, or the plans, specifications or drawings accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the improvements, or the work to be performed thereon.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this 6th day of June, 2023.

Liberty Civil Construction, LLC

Principal

By: 

Title: Michael Ehrhardt, President

Address: 2937 Hero Way

Leander, TX 78641

Swiss Re Corporate Solutions America Insurance Corporation
Surety

By: 

Title: Betty J. Reeh, Attorney-in-Fact

Address: 1200 Main St., Suite 800

Kansas City, MO 64105

The name and address of the Resident Agent of Surety is:

Acrisure LLC dba IBTX - Bryan Moore

32335 US Highway 281 S, Suite 1201 Bulverde, TX 78163

(Seal)

SWISS RE CORPORATE SOLUTIONS

SWISS RE CORPORATE SOLUTIONS AMERICA INSURANCE CORPORATION ("SRCSAIC")
SWISS RE CORPORATE SOLUTIONS PREMIER INSURANCE CORPORATION ("SRCSPIC")
WESTPORT INSURANCE CORPORATION ("WIC")

GENERAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, THAT SRCSAIC, a corporation duly organized and existing under laws of the State of Missouri, and having its principal office in the City of Kansas City, Missouri, and SRCSPIC, a corporation organized and existing under the laws of the State of Missouri and having its principal office in the City of Kansas City, Missouri, and WIC, organized under the laws of the State of Missouri, and having its principal office in the City of Kansas City, Missouri, each does hereby make, constitute and appoint:

BETTY J. REEH, CLARK D. FRESHER, BRYAN K. MOORE, ANDREW ADDISON, ELIZABETH ORTIZ,
ANA OWENS, PATRICK COYLE, PATRICIA ANN LYTTLE, AND MICHAEL D. HENDRICKSON

JOINTLY OR SEVERALLY

Its true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver, for and on its behalf and as its act and deed, bonds or other writings obligatory in the nature of a bond on behalf of each of said Companies, as surety, on contracts of suretyship as are or may be required or permitted by law, regulation, contract or otherwise, provided that no bond or undertaking or contract or suretyship executed under this authority shall exceed the amount of:

FIFTY MILLION (\$50,000,000.00) DOLLARS

This Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolutions adopted by the Boards of Directors of both SRCSAIC and SRCSPIC at meetings duly called and held on the 18th of November 2021 and WIC by written consent of its Executive Committee dated July 18, 2011.

"RESOLVED, that any two of the President, any Managing Director, any Senior Vice President, any Vice President, the Secretary or any Assistant Secretary be, and each or any of them hereby is, authorized to execute a Power of Attorney qualifying the attorney named in the given Power of Attorney to execute on behalf of the Corporation bonds, undertakings and all contracts of surety, and that each or any of them hereby is authorized to attest to the execution of any such Power of Attorney and to attach therein the seal of the Corporation; and it is

FURTHER RESOLVED, that the signature of such officers and the seal of the Corporation may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be binding upon the Corporation when so affixed and in the future with regard to any bond, undertaking or contract of surety to which it is attached."



By Erik Janssens
Erik Janssens, Senior Vice President of SRCSAIC & Senior Vice President
of SRCSPIC & Senior Vice President of WIC

By Gerald Jagrowski
Gerald Jagrowski, Vice President of SRCSAIC & Vice President of SRCSPIC
& Vice President of WIC



IN WITNESS WHEREOF, SRCSAIC, SRCSPIC, and WIC have caused their official seals to be hereunto affixed, and these presents to be signed by their authorized officers

this 10 day of NOVEMBER, 20 22

State of Illinois
County of Cook

SS

Swiss Re Corporate Solutions America Insurance Corporation
Swiss Re Corporate Solutions Premier Insurance Corporation
Westport Insurance Corporation

On this 10 day of NOVEMBER, 20 22, before me, a Notary Public personally appeared Erik Janssens, Senior Vice President of SRCSAIC and Senior Vice President of SRCSPIC and Senior Vice President of WIC and Gerald Jagrowski, Vice President of SRCSAIC and Vice President of SRCSPIC and Vice President of WIC, personally known to me, who being by me duly sworn, acknowledged that they signed the above Power of Attorney as officers of and acknowledged said instrument to be the voluntary act and deed of their respective companies.



Christina Manisco
Christina Manisco, Notary

I, Jeffrey Goldberg, the duly elected Senior Vice President and Assistant Secretary of SRCSAIC and SRCSPIC and WIC, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney given by said SRCSAIC and SRCSPIC and WIC, which is still in full force and effect.
IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Companies this 10 day of June, 20 23

Jeffrey Goldberg
Jeffrey Goldberg, Senior Vice President &
Assistant Secretary of SRCSAIC and
SRCSPIC and WIC

IMPORTANT NOTICE

In order to obtain information or make a complaint:

You may contact **Jeffrey Goldberg, Vice President - Claims**, at **1-800-338-0753**.

You may call **Swiss Re Corporate Solutions America Insurance Corporation or Swiss Re Corporate Solutions Premier Insurance Corporation's** toll-free number for information or to make a complaint at:

1-800-338-0753

You may also write to **Swiss Re Corporate Solutions America Insurance Corporation or Swiss Re Corporate Solutions Premier Insurance Corporation** at the following address:

**1200 Main Street, Suite 800
Kansas City, MO 64105**

You may contact the **Texas Department of Insurance** to obtain information on companies, coverages, rights or complaints at:

1- 800-252-3439

You may write the **Texas Department of Insurance**:

**P.O. Box 149104
Austin, TX 78714-9104
Fax: (512) 475-1771
Web: <http://www.tdi.state.tx.us>
E-mail: ConsumerProtection@tdi.state.tx.us**

PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim you should first contact the **Swiss Re Corporate Solutions America Insurance Corporation or Swiss Re Corporate Solutions Premier Insurance Corporation**. If the dispute is not resolved, you may contact the **Texas Department of Insurance**.

ATTACH THIS NOTICE TO YOUR POLICY: This notice is for information only and does not become a part or condition of the attached document.

AVISO IMPORTANTE

Para obtener informacion o para someter un queja:

Puede comunicarse con **Jeffrey Goldberg, Vice President - Claims**, al **1-800-338-0753**.

Usted puede llamar al numero de telefono gratis de **Swiss Re Corporate Solutions America Insurance Corporation o Swiss Re Corporate Solutions Premier Insurance Corporation's** para informacion o para someter una queja al:

1-800-338-0753

Usted tambien puede escribir a **Swiss Re Corporate Solutions America Insurance Corporation o Swiss Re Corporate Solutions Premier Insurance Corporation** al:

**1200 Main Street, Suite 800
Kansas City, MO 64105**

Puede escribir al **Departamento de Seguros de Texas** para obtener informacion acerca de companias, coberturas, derechos o quejas al:

1- 800-252-3439

Puede escribir al **Departamento de Seguros de Texas**:

**P.O. Box 149104
Austin, TX 78714-9104
Fax: (512) 475-1771
Web: <http://www.tdi.state.tx.us>
E-mail: ConsumerProtection@tdi.state.tx.us**

DISPUTAS SOBRE PRIMAS O RECLAMOS:

Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con el **Swiss Re Corporate Solutions America Insurance Corporation o Swiss Re Corporate Solutions Premier Insurance Corporation** primero. Si no se resuelve la disputa, puede entonces comunicarse con el **Departamento de Seguros de Texas**.

UNA ESTE AVISO A SU POLIZA:

Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.



June 5, 2023
City of Leander
201 N. Brushy Street
Leander, Texas 78641

Attn,

The following is the information as applicable to the Final Cost and Quantities, and Inspection Fee Settle Up of the Construction Plans – Grading, Drainage, and Utilities for Crystal Village – A Leander Community – Phase 1A #11-PICP-002 of this “project”.

Name on Approved Construction Documents: Construction Plans – Grading, Drainage, and Utilities for Crystal Village – A Leander Community – Phase 1A

Name on Bank Bond for Fiscal Posting: _____

Final Cost and Quantities:

Costs Categories	Totals
Streets	\$191,801.30
Stormwater/Drainage	\$2,368,445.38
Water	\$371,483.62
Wastewater	\$226,485.77
Streetlights	\$0.00
Landscape Improvements	\$0.00

Total = **\$3,158,216.07**

Total Improvements =	\$3,158,216.07
Maintenance Bond (10%) =	\$315,821.61

*Note that this total differs from the final pay application from the contractor as it excludes bonds and items that were not part of Construction Plans – Grading, Drainage, and Utilities for Crystal Village – A Leander Community – Phase 1A #11-PICP-002. The inspection fee receipt is also included for reference.

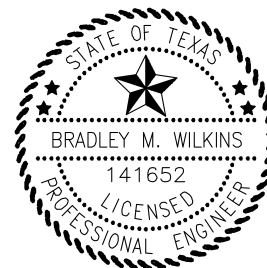
Inspection fee settle up:

Total Improvements =	\$ 3,158,216.07
Currently Paid Inspection Fees =	\$ 20,748.00
Inspection Fees (3.5%) =	\$ 110,537.56
Insp. Fee to be paid by developer =	\$ 89,789.56

If you have any questions or require any additional information, please do not hesitate to contact me at 512-418-4503.

Sincerely,

Bradley M. Wilkins, P.E.
Project Manager
TBPE F-928



Attachments: Final Pay Application for Construction Plans – Grading, Drainage, and Utilities for Crystal Village – A Leander Community – Phase 1A

Crystal Village Phase 1A

Final Costs and Quantities for the City of Leander

5/31/2023

Public Improvements

A	B				C
Item No.	Description of Work	QTY	UNIT	UNIT PRICE	Scheduled Value

	DRAINAGE				
	18" RCP	38	LF	\$ 51.35	\$ 1,951.30
	36" RCP	1,080	LF	\$ 187.81	\$ 202,834.80
	4'X4' Box Culvert	15	LF	\$ 268.76	\$ 4,031.40
	5'X5' Box Culvert	2,628	LF	\$ 373.51	\$ 981,584.28
	6'X6' Box Culvert	1,621	LF	\$ 529.00	\$ 857,509.00
	5' Curb Inlets	2	EA	\$ 4,941.08	\$ 9,882.16
	Grate Inlet Structure	1	EA	\$ 51,489.73	\$ 51,489.73
	18" Headwall	1	EA	\$ 3,232.91	\$ 3,232.91
	6'X6' Box Culvert Headwall	1	EA	\$ 20,107.38	\$ 20,107.38
	5'X5' Box Culvert Headwall	1	EA	\$ 9,837.85	\$ 9,837.85
	8'X8' Junction Boxes	9	EA	\$ 20,084.01	\$ 180,756.09
	7'X7' Junction Boxes	6	EA	\$ 14,649.73	\$ 87,898.38
	6'X6' Junction Boxes	1	EA	\$ 12,575.36	\$ 12,575.36
	Remove Existing Plug and Connect Stub	1	EA	\$ 1,987.49	\$ 1,987.49
	Stockpile Utility Spoils	12,049	CY	\$ (4.75)	\$ (57,232.75)
					\$ 2,368,445.38

	WATER				
	12" PVC DR14	3,347	LF	\$ 74.33	\$ 248,782.51
	8" PVC DR14	160	LF	\$ 93.75	\$ 15,000.00
	12" Gate Valves	16	EA	\$ 3,120.65	\$ 49,930.40
	8" Gate Valves	12	EA	\$ 2,033.56	\$ 24,402.72
	2" Air Release Valves	1	EA	\$ 6,395.12	\$ 6,395.12
	Flush Valve	1	EA	\$ 6,516.79	\$ 6,516.79
	24" Steel Encasement	20	LF	\$ 171.67	\$ 3,433.40
	Remove Existing Fire Hydrant	1	EA	\$ 4,365.81	\$ 4,365.81
	Fire Hydrant Assembly (as required)	1	EA	\$ 5,750.00	\$ 5,750.00
	Connect to Existing Stub	3	EA	\$ 2,302.29	\$ 6,906.87
	SUBTOTAL WATER				\$ 371,483.62

	WASTEWATER				
	12" PVC	2,093	LF	\$ 60.82	\$ 127,296.26
	8' PVC	100	LF	\$ 50.11	\$ 5,011.00
	4' DIA WWMH	9	EA	\$ 4,317.25	\$ 38,855.25
	4' DIA DROP WWMH	4	EA	\$ 6,373.96	\$ 25,495.84
	4' DIA DOGHOUSE WWMH	3	EA	\$ 6,383.64	\$ 19,150.92
	Adjust Existing WWMHs	5	EA	\$ 377.90	\$ 1,889.50
	Raise Wastewater Manholes	1	LS	\$ 8,787.00	\$ 8,787.00
	SUBTOTAL WASTEWATER				\$ 226,485.77

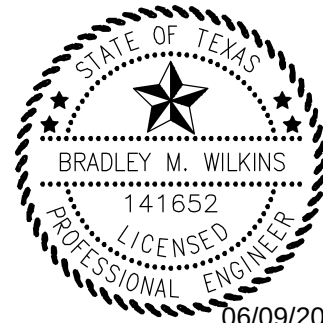
Crystal Village Phase 1A

Final Costs and Quantities for the City of Leander

5/31/2023

Public Improvements

A	B				C
Item No.	Description of Work	QTY	UNIT	UNIT PRICE	Scheduled Value
	STREETS AND CONCRETE				
	Curb and Gutter	343	LF	\$ 27.01	\$ 9,264.43
	6' Sidewalk	1000	SF	\$ 6.67	\$ 6,670.00
	6" Concrete Driveway	2233	SY	\$ 53.03	\$ 118,415.99
	Concrete Wall	40	LF	\$ 280.37	\$ 11,214.80
	Traffic Control/Striping & Signage	1	LS	\$ 11,283.08	\$ 11,283.08
	Handrail	305	LF	\$ 114.60	\$ 34,953.00
	SUBTOTAL STREETS AND CONCRETE				\$ 191,801.30
	CONTRACT TOTAL				\$3,158,216.07



Crystal Village Phase 1A
Final Costs and Quantities for the City of Leander
10/26/2022

A	B				C
Item No.	Description of Work	QTY	UNIT	UNIT PRICE	Scheduled Value
	MOBILIZATION				
	Mobilization	1	LS	\$ 70,076.04	\$ 70,076.04
	SUBTOTAL MOBILIZATION				\$ 70,076.04
	EROSION CONTROL				
	Topsoil	13,591	SY	\$ 2.93	\$ 39,821.63
	SUBTOTAL EROSION CONTROL				\$ 39,821.63

	DEMO				
	Demo Existing Concrete Structures	1	LS	\$ 16,032.99	\$ 16,032.99
	SUBTOTAL DEMO				\$ 16,032.99
	EARTHWORK				
	Stripping Site	1,662	CY	\$ 4.09	\$ 6,797.58
	Excavation	27,869	CY	\$ 6.54	\$ 182,263.26
	Topsoil	1,662	CY	\$ 7.63	\$ 12,681.06
	Haul off Excess	27,168	CY	\$ 10.61	\$ 288,252.48
	SUBTOTAL EARTHWORK				\$ 489,994.38

	DRAINAGE				
	18" RCP	38	LF	\$ 51.35	\$ 1,951.30
	36" RCP	1,080	LF	\$ 187.81	\$ 202,834.80
	4'X4' Box Culvert	15	LF	\$ 268.76	\$ 4,031.40
	5'X5' Box Culvert	2,628	LF	\$ 373.51	\$ 981,584.28
	6'X6' Box Culvert	1,621	LF	\$ 529.00	\$ 857,509.00
	5' Curb Inlets	2	EA	\$ 4,941.08	\$ 9,882.16
	Grate Inlet Structure	1	EA	\$ 51,489.73	\$ 51,489.73
	18" Headwall	1	EA	\$ 3,232.91	\$ 3,232.91
	6'X6' Box Culvert Headwall	1	EA	\$ 20,107.38	\$ 20,107.38
	5'X5' Box Culvert Headwall	1	EA	\$ 9,837.85	\$ 9,837.85
	8'X8' Junction Boxes	9	EA	\$ 20,084.01	\$ 180,756.09
	7'X7' Junction Boxes	6	EA	\$ 14,649.73	\$ 87,898.38
	6'X6' Junction Boxes	1	EA	\$ 12,575.36	\$ 12,575.36
	Remove Existing Plug and Connect Stub	1	EA	\$ 1,987.49	\$ 1,987.49
	Trench Safety Storm	5,382	LF	\$ 1.09	\$ 5,866.38
					\$ 2,431,544.51

	WATER				
	12" PVC DR14	3,347	LF	\$ 74.33	\$ 248,782.51
	8" PVC DR14	160	LF	\$ 93.75	\$ 15,000.00

Crystal Village Phase 1A

Final Costs and Quantities for the City of Leander

10/26/2022

A	B				C
Item No.	Description of Work	QTY	UNIT	UNIT PRICE	Scheduled Value
	12" Gate Valves	16	EA	\$ 3,120.65	\$ 49,930.40
	8" Gate Valves	12	EA	\$ 2,033.56	\$ 24,402.72
	2" Air Release Valves	1	EA	\$ 6,395.12	\$ 6,395.12
	Flush Valve	1	EA	\$ 6,516.79	\$ 6,516.79
	24" Steel Encasement	20	LF	\$ 171.67	\$ 3,433.40
	Remove Existing Fire Hydrant	1	EA	\$ 4,365.81	\$ 4,365.81
	Connect to Existing Stub	3	EA	\$ 2,302.29	\$ 6,906.87
	Trench Safety Water	3,507	LF	\$ 0.55	\$ 1,928.85
	SUBTOTAL WATER				\$ 367,662.47

	WASTEWATER				
	12" PVC	2,059	LF	\$ 60.82	\$ 125,228.38
	8' PVC	100	LF	\$ 50.11	\$ 5,011.00
	4' DIA WWMH	9	EA	\$ 4,317.25	\$ 38,855.25
	4' DIA DROP WWMH	4	EA	\$ 6,373.96	\$ 25,495.84
	4' DIA DOGHOUSE WWMH	1	EA	\$ 6,383.64	\$ 6,383.64
	Adjust Existing WWMHs	5	EA	\$ 377.90	\$ 1,889.50
	Trench Safety Wastewater	2,159	LF	\$ 1.09	\$ 2,353.31
	SUBTOTAL WASTEWATER				\$ 205,216.92

	STREETS AND CONCRETE				
	Curb and Gutter	343	LF	\$ 27.01	\$ 9,264.43
	6' Sidewalk	1000	SF	\$ 6.67	\$ 6,670.00
	6" Concrete Driveway	2233	SY	\$ 53.03	\$ 118,415.99
	Concrete Wall	40	LF	\$ 280.37	\$ 11,214.80
	Traffic Control/Striping & Signage	1	LS	\$ 11,283.08	\$ 11,283.08
	Handrail	305	LF	\$ 114.60	\$ 34,953.00
	Asphalt Repair	18	SY	\$ 168.74	\$ 3,037.32
	SUBTOTAL STREETS AND CONCRETE				\$ 194,838.62

	ALTERNATES				
	Stockpile Utility Spoils	12,049	CY	\$ (4.75)	\$ (57,232.75)
	Stockpile Grading Spoils	27168	CY	\$ (4.75)	\$ (129,048.00)
	Fire Hydrant Assembly (as required)	1	EA	\$ 5,750.00	\$ 5,750.00
	SUBTOTAL ALTERNATES				\$ (180,530.75)
	CHANGE ORDER #1				
	Added Wastewater 12" PVC	34	LF	\$ 60.82	\$ 2,067.88
	Added Wastewater 4' Dia DOGHOUSE	2	EA	\$ 6,383.64	\$ 12,767.28
	Added Trench Safety Wastewater	34	LF	\$ 1.09	\$ 37.06
	Added Tree Clearing	1	LS	\$ 26,280.00	\$ 26,280.00
	Added Fence Removal and Disposal along 183A	1	LS	\$ 7,430.00	\$ 7,430.00

Crystal Village Phase 1A

Final Costs and Quantities for the City of Leander

10/26/2022

A	B				C
Item No.	Description of Work	QTY	UNIT	UNIT PRICE	Scheduled Value
	SUBTOTAL CHANGE ORDER #1				\$ 48,582.22
	CHANGE ORDER #2				
	Raise Wastewater Manholes	1	LS	\$ 8,787.00	\$ 8,787.00
	SUBTOTAL CHANGE ORDER #2				\$ 8,787.00

	CONTRACT TOTAL				\$3,692,026.03
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APPLICATION AND CERTIFICATE FOR PAYMENT

TO OWNER:	PROJECT:	APPLICATION #:	Ten (10) <u>RET</u>	Distribution to:
PREMAS GLOBAL LEANDER 1, LLC.	CRYSTAL VILLAGE PHASE 1	PERIOD TO:	10/31/22	
3800 CENTERPOINT DRIVE, STE. 502		PROJECT #:	21019	☒ Owner
ANCHORAGE, AK 99503		APPLICATION DATE:	10/25/2022	☐ Const. Mgr
		CONTRACT DATE:	08/01/21	☒ Engineer
				☒ Contractor
FROM CONTRACTOR:	VIA ENGINEER:			
LIBERTY CIVIL CONSTRUCTION, LLC	KIMLEY-HORN			
2937 HERO WAY	10814 JOLLYVILLE ROAD, AVALLON IV, STE. 200			
LEANDER, TEXAS 78641	AUSTIN, TEXAS 78759			
CONTRACT FOR:	STREET AND UTILITY IMPROVEMENTS			

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract.

Continuation Sheet is attached.

1. ORIGINAL CONTRACT SUM-----	\$	3,634,656.81
2. Net change by Change Orders-----	\$	57,369.22
3. CONTRACT SUM TO DATE (Line 1 +/- 2)	\$	3,692,026.03
4. TOTAL COMPLETED & STORED TO DATE-	\$	3,692,026.03
(Column G on Continuation Sheet)		
5. RETAINAGE:		
a. 0.0% of Completed Work	\$	0.00
(Columns D+E on Continuation Sheet)		
b. 10.0% of Stored Material	\$	
(Column F on Continuation Sheet)		
Total Retainage (Line 5a + 5b or		
Total in Column 1 of Continuation Sheet-----	\$	0.00
6. TOTAL EARNED LESS RETAINAGE-----	\$	3,692,026.03
(Line 4 less Line 5 Total)		
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT		
(Line 6 from prior Certificate)-----	\$	3,507,424.73
8. CURRENT PAYMENT DUE-----	\$	184,601.30
9. BALANCE TO FINISH, INCLUDING RETAINAGE		
(Line 3 less Line 6)	\$	0.00

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous	\$57,369.22	
Total approved this Month		
TOTALS	\$57,369.22	\$0.00
NET CHANGES by Change Order	\$57,369.22	

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown therein is now due.

CONTRACTOR: LIBERTY CIVIL CONSTRUCTION, LLC

By: [Signature]

Date: 10/25/22

State of: TEXAS

County of: WILLIAMSON

Subscribed and sworn to before

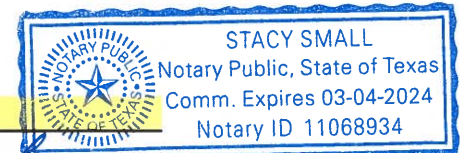
me this 15 day of October, 2022

Notary Public:

Stacy Small

My Commission expires:

03/04/24



CERTIFICATE FOR PAYMENT

In accordance with Contract Documents, based on on-site observations and the data comprising application, the Engineer certifies to the Owner that to the best of the Engineer's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED ----- \$ 184,601.30

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this application and on the Continuation Sheet that are changed to conform to the amount certified.)

Engineer:

By: Brooklyn Wilkin

Date: 6/7/2023

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner of Contractor under this Contract.

CONTINUATION SHEET

ATTACHMENT TO PAY APPLICATION

PROJECT: CRYSTAL VILLAGE PHASE 1

APPLICATION NUMBER:

Ten (10) **RET**

APPLICATION DATE:

10/25/22

PERIOD TO:

31-Oct-22

A Item No.	B Description of Work			UNIT	QTY	UNIT PRICE	C Scheduled Value	D QUANTITY COMPLETED		E TO DATE	F PREVIOUS AMOUNT	AMOUNT THIS PERIOD	G		H Balance To Finish (C - G)	I Retainage
								PREVIOUS	THIS PERIOD				AMOUNT TO DATE	% (G/C)		
	MOBILIZATION															
	Mobilization			LS	1	\$70,076.04	\$70,076.04	1.00		1.00	70,076.04	0.00	70,076.04	100%	0.00	7,007.60
	SUBTOTAL MOBILIZATION						\$70,076.04				\$70,076.04	\$0.00	\$70,076.04	100%	\$ -	\$7,007.60
	EROSION CONTROLS															
	Respread Topsoil			SY	13591	\$2.93	\$39,821.63	13,591.00		13,591.00	39,821.63	0.00	39,821.63	100%	0.00	3,982.16
	SUBTOTAL EROSION CONTROLS						\$39,821.63				\$39,821.63	\$0.00	\$39,821.63	100%	\$0.00	\$3,982.16
	DEMO															
	Demo Existing Concrete Structures			LS	1	\$16,032.99	\$16,032.99	1.00		1.00	16,032.99	0.00	16,032.99	100%	0.00	1,603.30
	SUBTOTAL DEMO						\$16,032.99				\$16,032.99	\$0.00	\$16,032.99	100%	\$0.00	\$1,603.30
	EARTHWORK															
	Stripping Site			CY	1662	\$4.09	\$6,797.58	1,662.00		1,662.00	6,797.58	0.00	6,797.58	100%	0.00	679.76
	Excavation			CY	27869	\$6.54	\$182,263.26	27,869.00		27,869.00	182,263.26	0.00	182,263.26	100%	0.00	18,226.33
	Respread Topsoil			CY	1662	\$7.63	\$12,681.06	1,662.00		1,662.00	12,681.06	0.00	12,681.06	100%	0.00	1,268.11
	Haul off Excess			CY	27168	\$10.61	\$288,252.48	27,168.00		27,168.00	288,252.48	0.00	288,252.48	100%	0.00	28,825.25
	SUBTOTAL EARTHWORK						\$489,994.38				\$489,994.38	\$0.00	\$489,994.38	100%	\$0.00	\$48,999.44
	DRAINAGE PHASE 1															
	18" RCP			LF	38	\$51.35	\$1,951.30	38.00		38.00	1,951.30	0.00	1,951.30	100%	0.00	195.13
	36" RCP			LF	1080	\$187.81	\$202,834.80	1,080.00		1,080.00	202,834.80	0.00	202,834.80	100%	0.00	20,283.48
	4'X4' Box Culvert			LF	15	\$268.76	\$4,031.40	15.00		15.00	4,031.40	0.00	4,031.40	100%	0.00	403.14
	5'X5' Box Culvert			LF	2628	\$373.51	\$981,584.28	2,628.00		2,628.00	981,584.28	0.00	981,584.28	100%	0.00	98,158.43
	6'X6' Box Culvert			LF	1621	\$529.00	\$857,509.00	1,621.00		1,621.00	857,509.00	0.00	857,509.00	100%	0.00	85,750.90
	5' Curb Inlets			EA	2	\$4,941.08	\$9,882.16	2.00		2.00	9,882.16	0.00	9,882.16	100%	0.00	988.22
	Grate Inlet Structure			EA	1	\$51,489.73	\$51,489.73	1.00		1.00	51,489.73	0.00	51,489.73	100%	0.00	5,148.97
	18" Headwall			EA	1	\$3,232.91	\$3,232.91	1.00		1.00	3,232.91	0.00	3,232.91	100%	0.00	323.29
	6'X6' Box Culvert Headwall			EA	1	\$20,107.38	\$20,107.38	1.00		1.00	20,107.38	0.00	20,107.38	100%	0.00	2,010.74
	5'X5' Box Culvert Headwall			EA	1	\$9,837.85	\$9,837.85	1.00		1.00	9,837.85	0.00	9,837.85	100%	0.00	983.79
	8'X8' Junction Boxes			EA	9	\$20,084.01	\$180,756.09	9.00		9.00	180,756.09	0.00	180,756.09	100%	0.00	18,075.61
	7'X7' Junction Boxes			EA	6	\$14,649.73	\$87,898.38	6.00		6.00	87,898.38	0.00	87,898.38	100%	0.00	8,789.84
	6'X6' Junction Boxes			EA	1	\$12,575.36	\$12,575.36	1.00		1.00	12,575.36	0.00	12,575.36	100%	0.00	1,257.54
	Remove Existing Plug and Connect Stub			EA	1	\$1,987.49	\$1,987.49	1.00		1.00	1,987.49	0.00	1,987.49	100%	0.00	198.75
	Trench Safety Storm			LF	5382	\$1.09	\$5,866.38	5,382.00		5,382.00	5,866.38	0.00	5,866.38	100%	0.00	586.64
	SUBTOTAL DRAINAGE PHASE 1						\$2,431,544.51				\$2,431,544.51	\$0.00	\$2,431,544.51	100%	\$0.00	\$243,154.45
	WATER PHASE 1															
	12" PVC DR14			LF	3347	\$74.33	\$248,782.51	3,347.00		3,347.00	248,782.51	0.00	248,782.51	100%	0.00	24,878.25
	8" PVC DR14			LF	160	\$93.75	\$15,000.00	160.00		160.00	15,000.00	0.00	15,000.00	100%	0.00	1,500.00
	12" Gate Valves			EA	16	\$3,120.65	\$49,930.40	16.00		16.00	49,930.40	0.00	49,930.40	100%	0.00	4,993.04
	8" Gate Valves			EA	12	\$2,033.56	\$24,402.72	12.00		12.00	24,402.72	0.00	24,402.72	100%	0.00	2,440.27
	2" Air Release Valves			EA	1	\$6,395.12	\$6,395.12	1.00		1.00	6,395.12	0.00	6,395.12	100%	0.00	639.51
	Flush Valve			EA	1	\$6,516.79	\$6,516.79	1.00		1.00	6,516.79	0.00	6,516.79	100%	0.00	651.68
	24" Steel Encasement			LF	20	\$171.67	\$3,433.40	20.00		20.00	3,433.40	0.00	3,433.40	100%	0.00	343.34
	Remove Existing Fire Hydrant			EA	1	\$4,365.81	\$4,365.81	1.00		1.00	4,365.81	0.00	4,365.81	100%	0.00	436.58
	Connect to Existing Stub			EA	3	\$2,302.29	\$6,906.87	3.00		3.00	6,906.87	0.00	6,906.87	100%	0.00	690.69
	Trench Safety Water			LF	3507	\$0.55	\$1,928.85	3,507.00		3,507.00	1,928.85	0.00	1,928.85	100%	0.00	192.89
	SUBTOTAL WATER PHASE 1						\$367,662.47				\$367,662.47	\$0.00	\$367,662.47	100%	\$0.00	\$36,766.25

CONTINUATION SHEET

ATTACHMENT TO PAY APPLICATION

PROJECT: CRYSTAL VILLAGE PHASE 1

APPLICATION NUMBER:

Ten (10) **RET**

APPLICATION DATE:

10/25/22

PERIOD TO:

31-Oct-22

A Item No.	B			UNIT	QTY	UNIT PRICE	C		D		E		F		G		H		I	
	Description of Work	Scheduled Value	QUANTITY COMPLETED				PREVIOUS AMOUNT	AMOUNT THIS PERIOD	AMOUNT TO DATE	% (G/C)	Balance To Finish (C - G)	Retainage								
			PREVIOUS										THIS PERIOD	TO DATE						
	WASTEWATER PHASE 1																			
	12" PVC	LF	2059	\$60.82	\$125,228.38	2,059.00		2,059.00	125,228.38	0.00	125,228.38	100%	0.00	12,522.84						
	8" PVC	LF	100	\$50.11	\$5,011.00	100.00		100.00	5,011.00	0.00	5,011.00	100%	0.00	501.10						
	4' DIA WWMH	EA	9	\$4,317.25	\$38,855.25	9.00		9.00	38,855.25	0.00	38,855.25	100%	0.00	3,885.53						
	4' DIA DROP WWMH	EA	4	\$6,373.96	\$25,495.84	4.00		4.00	25,495.84	0.00	25,495.84	100%	0.00	2,549.58						
	4' DIA DOGHOUSE WWMH	EA	1	\$6,383.64	\$6,383.64	1.00		1.00	6,383.64	0.00	6,383.64	100%	0.00	638.36						
	Adjust Existing WWMHs	EA	5	\$377.90	\$1,889.50	5.00		5.00	1,889.50	0.00	1,889.50	100%	0.00	188.95						
	Trench Safety Wastewater	LF	2159	\$1.09	\$2,353.31	2,159.00		2,159.00	2,353.31	0.00	2,353.31	100%	0.00	235.33						
	SUBTOTAL WASTEWATER PHASE 1				\$205,216.92				\$205,216.92	\$0.00	\$205,216.92	100%	\$0.00	\$20,521.69						
	STREET AND CONCRETE																			
	Curb and Gutter	LF	343	\$27.01	\$9,264.43	343.00		343.00	9,264.43	0.00	9,264.43	100%	0.00	926.44						
	6' Sidewalk	SF	1000	\$6.67	\$6,670.00	1,000.00		1,000.00	6,670.00	0.00	6,670.00	100%	0.00	667.00						
	6" Concrete Driveway	SY	2233	\$53.03	\$118,415.99	2,233.00		2,233.00	118,415.99	0.00	118,415.99	100%	0.00	11,841.60						
	Concrete Wall	LF	40	\$280.37	\$11,214.80	40.00		40.00	11,214.80	0.00	11,214.80	100%	0.00	1,121.48						
	Traffic Control/Striping & Signage	LS	1	\$11,283.08	\$11,283.08	1.00		1.00	11,283.08	0.00	11,283.08	100%	0.00	1,128.31						
	Handrail	LF	305	\$114.60	\$34,953.00	305.00		305.00	34,953.00	0.00	34,953.00	100%	0.00	3,495.30						
	Asphalt Repair	SY	18	\$168.74	\$3,037.32	18.00		18.00	3,037.32	0.00	3,037.32	100%	0.00	303.73						
	SUBTOTAL STREET AND CONCRETE				\$194,838.62				\$194,838.62	\$0.00	\$194,838.62	100%	\$0.00	\$19,483.86						
	ALTERNATES																			
	Stockpile Utility Spoils	CY	12049	-\$4.75	-\$57,232.75	12,049.00		12,049.00	(57,232.75)	0.00	(57,232.75)	100%	0.00	(5,723.28)						
	Stockpile Grading Spoils	CY	27168	-\$4.75	-\$129,048.00	27,168.00		27,168.00	(129,048.00)	0.00	(129,048.00)	100%	0.00	(12,904.80)						
	Fire Hydrant Assembly (as required)	EA	1	\$5,750.00	\$5,750.00	1.00		1.00	5,750.00	0.00	5,750.00	100%	0.00	575.00						
	SUBTOTAL ALTERNATES				-\$180,530.75				-\$180,530.75	\$0.00	-\$180,530.75	100%	\$0.00	-\$18,053.08						
	SUBTOTAL				\$3,634,656.81				\$3,634,656.81	\$0.00	\$3,634,656.81	100%	\$0.00	\$363,465.68						
	CHANGE ORDER #1																			
	Plan Check Phase 1A																			
	Added Wastewater 12" PVC	LF	34	\$60.82	\$2,067.88	34.00		34.00	2,067.88	0.00	2,067.88	100%	0.00	206.79						
	Added Wastewater 4' Dia DOGHOUSE	EA	2	\$6,383.64	\$12,767.28	2.00		2.00	12,767.28	0.00	12,767.28	100%	0.00	1,276.73						
	Added Trench Safety Wastewater	LF	34	\$1.09	\$37.06	34.00		34.00	37.06	0.00	37.06	100%	0.00	3.71						
	Added Items																			
	Added Tree Clearing	LS	1	\$26,280.00	\$26,280.00	1.00		1.00	26,280.00	0.00	26,280.00	100%	0.00	2,628.00						
	Added Fence Removal and Disposal along 183A	LS	1	\$7,430.00	\$7,430.00	1.00		1.00	7,430.00	0.00	7,430.00	100%	0.00	743.00						
	SUBTOTAL CHANGE ORDER #1				\$48,582.22				\$48,582.22	\$0.00	\$48,582.22	100%	\$0.00	\$4,858.22						
	CHANGE ORDER #2																			
	Raise Wastewater Manholes	LS	1	\$8,787.00	\$8,787.00	1.00		1.00	8,787.00	0.00	8,787.00	100%	0.00	878.70						
	SUBTOTAL CHANGE ORDER #2				\$8,787.00				\$8,787.00	\$0.00	\$8,787.00	100%	\$0.00	\$878.70						
	GRAND TOTAL				\$3,692,026.03				\$3,692,026.03	\$0.00	\$3,692,026.03	100%	\$0.00	\$369,202.60						
Approved:																				

Approved:

PROJECT: CRYSTAL VILLAGE PHASE 1

PERIOD TO: 31-Oct-22

A	B				C	D		E	F		G		H	I
Item No.	Description of Work	UNIT	QTY	UNIT PRICE	Scheduled Value	QUANTITY COMPLETED		PREVIOUS AMOUNT	AMOUNT THIS PERIOD	AMOUNT TO DATE	% (G/C)	Balance To Finish (C - G)	Retainage	
						PREVIOUS	THIS PERIOD							TO DATE

CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

Project Crystal Village Phase 1

Job No. 21019

On receipt by the signer of this document of a check from Premas Global Leander 1, LLC (maker of check) in the sum of \$ 184,601.30 payable to Liberty Civil Construction, LLC (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of Premas Global Leander 1, LLC (owner) located at Leander, TX (location) to the following extent: Street/Utility Improvements (job description).

This release covers the final payment to the signer for all labor, services, equipment, or materials furnished to the property or to Premas Global Leander 1, LLC (person with whom signer contracted).

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

Date 10/25/2022
Liberty Civil Construction, LLC (Company name)
By [Signature] (Signature)
Director of Project Management (Title)

SUBSCRIBED AND SWORN TO BEFORE ME this the 25 day of October, 2022.

[Signature]
NOTARY PUBLIC, in and for the State of Texas
My Commission Expires: 03/04/2024



**FINAL BILLS PAID AFFIDAVIT
AND WAIVER OF LIEN**

STATE OF TEXAS
COUNTY OF WILLIAMSON

Date: January 19, 2023

Developer: Premas Global Leander 1, LLC.

Contractor/Material
Provider ("Affiant"): Liberty Civil Construction, LLC.

Project: **Construction Plans – Grading, Drainage, and Utilities for
Crystal Village – A Leander Community – Phase 1A (11-PICP-
002)**

This is to acknowledge and certify that Affiant has completed the construction of all improvements for the project noted above and that Affiant has been paid in full for all labor and material provided to the above-noted construction project, except for retainage, and acknowledges and certifies that Affiant, and all of his or its agents, employees, successors, assigns, subsidiaries, and legal representatives will and do release and waive all Mechanic's liens, or similar lien rights, which have or might arise as a result of the Affiant's or Affiant's agents' or employees' providing labor and materials to the above-noted project. Affiant understands that a portion or all of the property upon which the project is located has been or will be accepted by the City of Leander, Texas, for ownership, maintenance, and operation. Affiant further agrees that it shall look solely to the Developer for payment of the retainage and shall have no cause of action whatsoever, against the City in the event that the retainage is not paid to the Affiant, and that Affiant shall not file a lien of any kind which has or may arise related to the release of the retainage for the project. Affiant acknowledges and understands that the City is relying on the representations made in this document to accept the phase or portion of the subdivision in which the project is located.

In addition to the foregoing, Affiant acknowledges and certifies that Affiant has paid all laborers, subcontractors, materialmen, and all other persons or parties who have provided labor or materials through, for, or on behalf of the Affiant to the above-noted construction project.

Affiant indemnifies and holds Owner harmless from any liens, debts or obligations which arise as a result of labor or materials provided by or through Affiant to the project through the date set out above. Affiant further indemnifies and holds harmless all real property on which the improvements were constructed and all interests in such property, including leasehold interests, from any liens, debts, or obligations arising from any labor or materials provided by or through Affiant to the project through the date set out above.

Initialed: 

SUBSCRIBED AND SWORN TO BY Affiant on this 19 day of January, 2023.

AFFIANT:

Signature: _____

Typed Name: Michael Ehrhardt

Title: President

STATE OF TEXAS

COUNTY OF WILLIAMSON

BEFORE ME the undersigned authority on this day personally appeared, Michael Ehrhardt, known to me to be the person noted above, and acknowledged to me the following: that he/she executed the foregoing for the purpose and consideration therein expressed, in the capacity therein stated, and as the duly authorized act and deed of the party releasing and waiving the lien therein; and that every statement therein is within his/her knowledge and is true and correct.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 19th day of January, 2023.

[S E A L]



Notary in and for the State of Texas

Name: Stacy Small

My commission expires: 03/04/2024

Initialed: _____



EXECUTIVE SUMMARY
07/06/2023

AGENDA SUBJECT:

Acceptance of public infrastructure improvements for Fairways at Crystal Falls Phase 2 Sections 5 and 8.

BACKGROUND:

The public infrastructure improvements required for the Fairways at Crystal Falls Phase 2 Sections 5 & 8 Subdivision have been installed, inspected, and are satisfactorily completed. All documentation required for acceptance of this subdivision have been received, including record drawings, statement of substantial completion prepared by a professional engineer licensed in the State of Texas, copies of all inspection reports and certified test results, electronic files of the improvements and final plat, affidavit of all bills paid, and a two (2)- year term maintenance bond.

The maintenance bond will commence its two (2)- year term upon City Council acceptance, as anticipated, on July 6, 2023, which will provide warranty and maintenance coverage for the public infrastructure improvements through July 6, 2025. The Engineering Department will perform a formal inspection of the improvements approximately thirty (30) days prior to the expiration of the maintenance bond to assure that any defects in materials, construction, or maintenance are corrected prior to expiration of the bond.

RECOMMENDATION:

Staff recommends City Council's formal acceptance of the public infrastructure improvements for Fairways at Crystal Falls Phase 2 Sections 5 & 8.

PRESENTER:

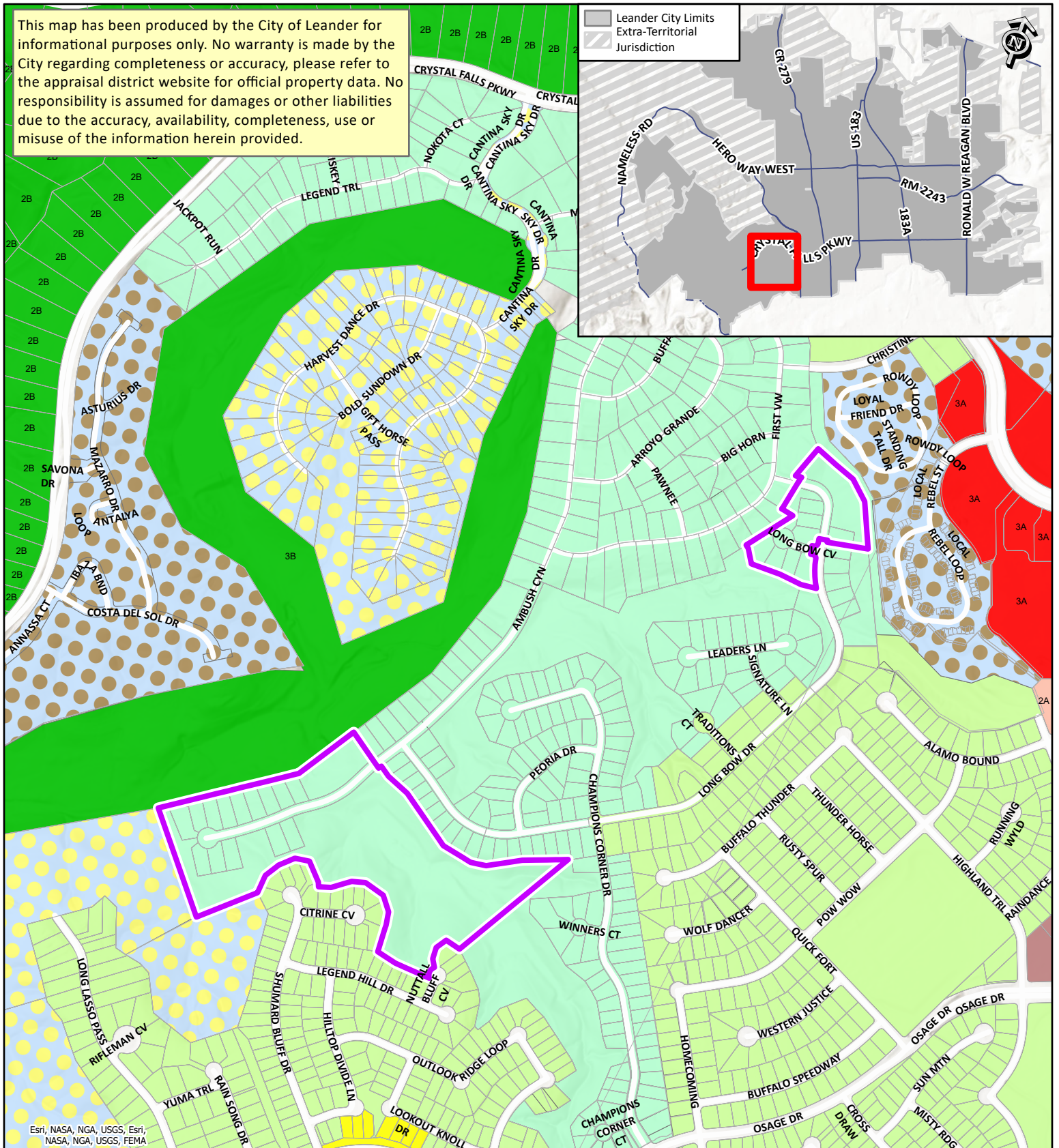
Emily Truman, P.E., CFM, PMP, City Engineer

Attachments

1. Acceptance Documents Fairways at CF Ph 2 Sec 5 & 8

This map has been produced by the City of Leander for informational purposes only. No warranty is made by the City regarding completeness or accuracy, please refer to the appraisal district website for official property data. No responsibility is assumed for damages or other liabilities due to the accuracy, availability, completeness, use or misuse of the information herein provided.

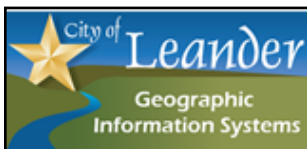
Leander City Limits
Extra-Territorial
Jurisdiction



SUBDIVISION ACCEPTANCE

Fairways at Crystal Falls Section 2 Phase 5 & 8

Accepted Subdivision



RESIDENTIAL

- SFR - Single-Family Rural
- SFS - Single-Family Suburban
- SFU - Single-Family Urban
- SFC - Single-Family Compact

RETAIL / COMMERCIAL

- LO - Local Office
- LC - Local Commercial
- GC - General Commercial

PUD LAND USE

- PUD - Single-Family
- PUD - Multi-Family
- PUD - Local Commercial



0 500 1,000
Feet



Access Design Consultants

Design | Consultation | Plan Review | Inspections

ATTN:

City of Leander
201 N Brushy St
Leander, TX 78641

2/20/23

RE:

Improvements along Long Bow Dr. and
Ambush Canyon
Leander, TX 78641

The Fairways at Crystal
Falls Section 2 - Phase 5
19-PICP-019

Accessibility Concurrence Letter

To whom it may concern,

On Monday, February 20, 2023, I inspected the sidewalks, curb ramps, and other improvements along Long Bow Dr. and Ambush Canyon. All of these improvements were found to be in full compliance with the Texas Accessibility Standards (TAS) and all other applicable accessibility standards. I, Spencer Cook, the undersigned Registered Accessibility Specialist #1524, verify the adequate completion of this work.

If you have any questions, please don't hesitate to contact me.

Sincerely,

Spencer Cook

A handwritten signature in black ink, appearing to read 'Spencer Cook', written in a cursive style.

Registered Accessibility Specialist #1524
spencer@accessdesignconsultants.com
(361) 537-7051

Engineer's Concurrence for Project Acceptance

Project: The Fairways at Crystal Falls Section 2 - Phase 5 **Date:** 5/8/2023

City of Leander Issued Permit Number: 19-PICP-019

Owner's Name & Address

Vogel Builders, LLC
3550 Lakeline Blvd., Suite 170-1304
Leander, TX 78641

Consultant Engineer's Name & Address

Jay Engineering Co., Inc
P.O. Box 1220
Leander, Texas 78646-1220

On this date, I, the undersigned Professional Engineer in the State of Texas, or my representative, have made a visual inspection of the above referenced project. No discrepancies from the approved construction plans or deficiencies in construction were visible or brought to my attention. I, therefore, certify that all improvements are in substantial compliance with the approved construction plans and all City, State, and Federal requirements, including the City of Leander Subdivision Ordinance and Composite Zoning Ordinance.

If applicable, for closeout of public improvement construction project (PICP) permits, I additionally certify that all project closeout procedures with other governmental entities have been completed and finalized with each entity prior to submittal of my concurrence letter to the City of Leander.



Signature

Frank T. Phelan

Typed Name

Jay Engineering, a division of GBA

Engineering Firm Name

4242

Registered Engineering Firm Number

(SEAL)

6/5/23

Ashish Pant, P.E.
City of Leander
201 N. Brushy Street
Leander, Texas 78641

To whom it may concern,

The following is the information as applicable for the Final Cost and Quantity Sheet and inspection fee settle-up of The Fairways at Crystal Falls Section 2 - Phase 5 19-PICP-019

Final Plat Legal Name as Recorded: The Fairways at Crystal Falls Section 2 - Phase 5
Name on Approved Construction Documents: The Fairways at Crystal Falls Section 2 - Phase 5
Name on Bank Bond for Fiscal Posting:

COSTS CATEGORIES	AMOUNT
Erosion Control	\$28,348.00
Clearing and Rough Cut	\$89,277.00
Streets	\$113,947.30
Drainage	\$54,645.00
Water	\$70,650.00
Wastewater	\$38,690.00
Streetlights	\$0.00
Landscape Improvements	\$0.00
TOTAL	\$395,557.30

Total Improvements = \$395,557.30
Maintenance Bond (10% Public Improvements) = \$10,934.00

Total Improvements = \$395,557.30
Currently Paid Inspection Fees = \$13,488.91
Inspection Fees (3.5%) = \$13,844.51
Remaining Insp. Fees to be Paid = \$355.60

Frank T. Phelan, P.E.
fphelan@gbateam.com
737-247-7558
P.O. Box 2029
Leander, Texas 78646-2029



MAINTENANCE BOND
Subdivision Improvements

THE STATE OF TEXAS §

COUNTY OF WILLIAMSON §

KNOW ALL BY THESE PRESENTS, that Ross Construction Company, Inc.
as Principal, whose address is 8700 Manchaca Road, Suite 305, Austin, TX 78748 and
 Berkley Insurance Company a Corporation organized under the
laws of the State of Delaware , and duly authorized to do business in the State of Texas, as
Surety, are held and firmly bound unto the City of Leander, Texas as Obligee, in the penal sum
of Ten Thousand Nine Hundred Thirty Four and 00/100 Dollars
(\$ 10,934.00) to which payment will and truly to be made we do bind ourselves, our
and each of our heirs, executors, administrators, successors and assigns jointly and severally,
firmly by these presents.

WHEREAS, the said Principal has constructed THE FAIRWAYS AT CRYSTAL FALLS
SECTION 2 PHASE 5, PROJECT NUMBER 19-PICP-019 (the
“improvements”) pursuant to the ordinances of the Obligee, which ordinances are hereby
expressly made a part hereof as though the same were written and embodied herein;

WHEREAS, said Obligee requires that the Principal furnish a bond conditioned to
guarantee for the period of two (2) years after acceptance by the Obligee, against all defects in
workmanship and materials which may become apparent during said period;

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that, if the
Principal keeps and perform the requirement of the Obligee’s ordinances and this Maintenance
Bond to maintain the improvements and keep the same in good repair and shall indemnify the
Obligee for all loss that the Obligee may sustain by reason of any defective materials or
workmanship which become apparent during the period of two (2) years from and after the date
of acceptance by the Owner, then this obligation shall be void, otherwise to remain in full force
and effect, and Owner shall have and cover from said Principal and Surety damages in the
premises, as provided, and it is further agreed that this obligation shall be a continuing one
against the Principal and Surety hereon, and that successive recoveries may be had thereon for
successive breaches until the full amount shall have been exhausted; and it is further understood
that the obligation herein to maintain said improvements shall continue throughout the
maintenance period, and the same shall not be diminished in any manner from any cause during
said time.

Principal agrees to repair or reconstruct the improvements in whole or in part at any time
within the two year period to such extent as the Obligee deems necessary to properly correct all
defects except for normal wear and tear. If the Principal fails to make the necessary corrections
within ten days after being notified, the Obligee may do so or have done all said corrective work
and shall have recovery hereon for all expenses thereby incurred. Principal will maintain and
keep in good repair the improvements for a period of two years from the date of acceptance; it
being understood that the purpose of this Maintenance Bond is to cover all defective conditions
arising by reason of defective material, work, or labor performed by said Principal or its

subcontractors, and in the case the said Principal shall fail to do so within ten days after being notified, it is agreed that the Obligee may do said work and supply such materials, and charge the same against Principal and Surety on this obligation.

The Surety shall notify the Obligee at least fifteen (15) days prior to the end of the first full calendar year and prior to the lapse of this Maintenance Bond at the end of the second full calendar year.

Surety and Principal agree that whenever a defect or failure of the improvement occurs within the period of coverage under this Bond, the Surety and Principal shall provide a new maintenance bond or other surety instrument in a form acceptable to the Obligee and compliant with the Obligee's ordinances conditioned to guarantee for the period of one (1) year after the Obligee's acceptance of the corrected defect or failure, against all defects in workmanship and materials associated with the corrected defect or failure which may become apparent during said period, which shall be in addition to this Maintenance Bond.

The Surety agrees to pay the Obligee upon demand all loss and expense, including attorneys' fees, incurred by the Obligee by reason of or on account of any breach of this obligation by the Surety. Provided further, that in any legal action be filed upon this bond, venue shall lie in the county where the improvements are constructed.

This Bond is a continuing obligation and shall remain in full force and effect until cancelled as provided for herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the improvements, or the work to be performed thereon, or the plans, specifications or drawings accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the improvements, or the work to be performed thereon.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this 11th day of August, 2022.

Ross Construction Company, Inc.
Principal

By: [Signature], Ned Ross

Title: President POA

Address: 8700 Manchaca Road, Suite 305,

Austin, TX 78748

Berkley Insurance Company
Surety

By: [Signature], Jeremy Farque

Title: Attorney In Fact

Address: 412 Mount Kemble Ave.

Morristown, NJ 07960

The name and address of the Resident Agent of Surety is:

Whorton Insurance Services 11200 Jollyville Rd. Austin, TX 78759

(Seal)



POWER OF ATTORNEY
BERKLEY INSURANCE COMPANY
WILMINGTON, DELAWARE

NOTICE: The warning found elsewhere in this Power of Attorney affects the validity thereof. Please review carefully.

KNOW ALL MEN BY THESE PRESENTS, that BERKLEY INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Delaware, having its principal office in Greenwich, CT, has made, constituted and appointed, and does by these presents make, constitute and appoint: **Jeremy M. Farque; Tommy Mulanax; Michael C. Whorton; Raquel Martinez; or Rosemarie Lopez of Jim Whorton & Associates, Inc. of Austin, TX** its true and lawful Attorney-in-Fact, to sign its name as surety only as delineated below and to execute, seal, acknowledge and deliver any and all bonds and undertakings, with the exception of Financial Guaranty Insurance, providing that no single obligation shall exceed **Fifty Million and 00/100 U.S. Dollars (U.S.\$50,000,000.00)**, to the same extent as if such bonds had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office in their own proper persons.

This Power of Attorney shall be construed and enforced in accordance with, and governed by, the laws of the State of Delaware, without giving effect to the principles of conflicts of laws thereof. This Power of Attorney is granted pursuant to the following resolutions which were duly and validly adopted at a meeting of the Board of Directors of the Company held on January 25, 2010:

RESOLVED, that, with respect to the Surety business written by Berkley Surety, the Chairman of the Board, Chief Executive Officer, President or any Vice President of the Company, in conjunction with the Secretary or any Assistant Secretary are hereby authorized to execute powers of attorney authorizing and qualifying the attorney-in-fact named therein to execute bonds, undertakings, recognizances, or other suretyship obligations on behalf of the Company, and to affix the corporate seal of the Company to powers of attorney executed pursuant hereto; and said officers may remove any such attorney-in-fact and revoke any power of attorney previously granted; and further

RESOLVED, that such power of attorney limits the acts of those named therein to the bonds, undertakings, recognizances, or other suretyship obligations specifically named therein, and they have no authority to bind the Company except in the manner and to the extent therein stated; and further

RESOLVED, that such power of attorney revokes all previous powers issued on behalf of the attorney-in-fact named; and further

RESOLVED, that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any power of attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligation of the Company; and such signature and seal when so used shall have the same force and effect as though manually affixed. The Company may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Company, notwithstanding the fact that they may have ceased to be such at the time when such instruments shall be issued.

IN WITNESS WHEREOF, the Company has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 30th day of June, 2021.

Attest:

(Seal)

By

Ira S. Lederman
Executive Vice President & Secretary

Berkley Insurance Company

By

Jeffrey M. Hafter
Senior Vice President

STATE OF CONNECTICUT)

) ss:

COUNTY OF FAIRFIELD)

Sworn to before me, a Notary Public in the State of Connecticut, this 30th day of June, 2021, by Ira S. Lederman and Jeffrey M. Hafter who are sworn to me to be the Executive Vice President and Secretary, and the Senior Vice President, respectively, of Berkley Insurance Company.

MARIA C RUNDRAKEN
NOTARY PUBLIC
CONNECTICUT
MY COMMISSION EXPIRES
APRIL 30, 2024

Maria C. Rundraker
Notary Public, State of Connecticut

CERTIFICATE

I, the undersigned, Assistant Secretary of BERKLEY INSURANCE COMPANY, DO HEREBY CERTIFY that the foregoing is a true, correct and complete copy of the original Power of Attorney; that said Power of Attorney has not been revoked or rescinded and that the authority of the Attorney-in-Fact set forth therein, who executed the bond or undertaking to which this Power of Attorney is attached, is in full force and effect as of this date.

Given under my hand and seal of the Company, this 11th day of August, 2022.

(Seal)

Vincent P. Forte

Updated 2/14/22

**FINAL BILLS PAID AFFIDAVIT
AND WAIVER OF LIEN**

STATE OF TEXAS
COUNTY OF

Date: 3/15/23

Developer: BACK FORTY INVESTMENTS, LLC
3550 LAKELINE BLVD. 130-1704
LEANDER, TX 78641

Contractor/Material
Provider ("Affiant"): ROSS CONSTRUCTION, INC.
8700 MANCHACA RD. #305
AUSTIN, TX 78748

Project : THE FAIRWAYS AT CRYSTAL FALLS SECTION 2 PHASE 5
PROJECT #19-PICP-019

This is to acknowledge and certify that Affiant has been paid for construction completed to date for the project noted above to include payment for all labor and material provided to date to the above-noted construction project, except for retainage, and acknowledges and certifies that Affiant, and all of his or its agents, employees, successors, assigns, subsidiaries, and legal representatives will and do release and waive all Mechanic's liens, or similar lien rights, which have or might arise as a result of the Affiant's or Affiant's agents' or employees' providing labor and materials to the above-noted project. Affiant further agrees that it shall look solely to the Developer for payment of the retainage and shall have no cause of action whatsoever, against the City Of Leander in the event that the retainage is not paid to the Affiant, and that Affiant shall not file a lien of any kind which has or may arise related to the release of the retainage for the project.

In addition to the foregoing, Affiant acknowledges and certifies that Affiant has paid all laborers, subcontractors, materialmen, and all other persons or parties who have provided labor or materials through, for, or on behalf of the Affiant to the above-noted construction project.

Affiant indemnifies and holds Owner harmless from any liens, debts or obligations which arise as a result of labor or materials provided by or through Affiant to the project through the date set out above. Affiant further indemnifies and holds harmless all real property on which the improvements were constructed and all interests in such property, including leasehold interests, from any liens, debts, or obligations arising from any labor or materials provided by or through Affiant to the project through the date set out above.

SUBSCRIBED AND SWORN TO BY Affiant on this 15th_ day of ___March___,
_2023___.

Initialed: *NR*

Updated 2/14/22

AFFIANT:

Signature: Ned Ross - [Signature]

Typed Name: NED ROSS

Title: PRESIDENT

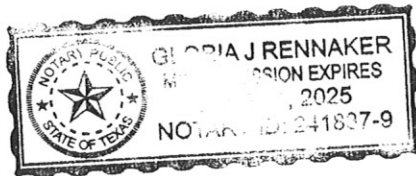
STATE OF TEXAS

COUNTY OF TRAVIS

BEFORE ME the undersigned authority on this day personally appeared NED ROSS, known to me to be the person noted above, and acknowledged to me the following: that he/she executed the foregoing for the purpose and consideration therein expressed, in the capacity therein stated, and as the duly authorized act and deed of the party releasing and waiving the lien therein; and that every statement therein is within his/her knowledge and is true and correct.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 15th day of March, 2023.

[SEAL]



Gloria Rennaker
Notary in and for the State of Texas

Name: _____

My commission expires: _____

Initialed: NR



Access Design Consultants

Design | Consultation | Plan Review | Inspections

ATTN: City of Leander 2/20/23
201 N Brushy St
Leander, TX 78641

RE: Improvements along Long Bow Dr. and The Fairways at Crystal
Ambush Canyon Falls Section 2 - Phase 8
Leander, TX 78641 19-PICP-019

Accessibility Concurrence Letter

To whom it may concern,

On Monday, February 20, 2023, I inspected the sidewalks, curb ramps, and other improvements along Long Bow Dr. and Ambush Canyon. All of these improvements were found to be in full compliance with the Texas Accessibility Standards (TAS) and all other applicable accessibility standards. I, Spencer Cook, the undersigned Registered Accessibility Specialist #1524, verify the adequate completion of this work.

If you have any questions, please don't hesitate to contact me.

Sincerely,

Spencer Cook

A handwritten signature in black ink, appearing to read 'Spencer', written over a horizontal line.

Registered Accessibility Specialist #1524
spencer@accessdesignconsultants.com
(361) 537-7051

Engineer's Concurrence for Project Acceptance

Project: The Fairways at Crystal Falls Section 2 - Phase 8 **Date:** 5/8/2023

City of Leander Issued Permit Number: 19-PICP-019

<u>Owner's Name & Address</u>	<u>Consultant Engineer's Name & Address</u>
Vogel Builders, LLC	Jay Engineering Co., Inc
3550 Lakeline Blvd., Suite 170-1304	P.O. Box 1220
Leander, TX 78641	Leander, Texas 78646-1220

On this date, I, the undersigned Professional Engineer in the State of Texas, or my representative, have made a visual inspection of the above referenced project. No discrepancies from the approved construction plans or deficiencies in construction were visible or brought to my attention. I, therefore, certify that all improvements are in substantial compliance with the approved construction plans and all City, State, and Federal requirements, including the City of Leander Subdivision Ordinance and Composite Zoning Ordinance.

If applicable, for closeout of public improvement construction project (PICP) permits, I additionally certify that all project closeout procedures with other governmental entities have been completed and finalized with each entity prior to submittal of my concurrence letter to the City of Leander.





Signature

Frank T. Phelan

Typed Name

Jay Engineering, a division of GBA

Engineering Firm Name

4242

Registered Engineering Firm Number

(SEAL)

6/5/23

Ashish Pant, P.E.
City of Leander
201 N. Brushy Street
Leander, Texas 78641

To whom it may concern.,

The following is the information as applicable for the Final Cost and Quantity Sheet and inspection fee settle-up of The Fairways at Crystal Falls Section 2 - Phase 8 19-PICP-019

Final Plat Legal Name as Recorded: The Fairways at Crystal Falls Section 2 - Phase 8
Name on Approved Construction Documents: The Fairways at Crystal Falls Section 2 - Phase 8
Name on Bank Bond for Fiscal Posting:

COSTS CATEGORIES	AMOUNT
Erosion Controls	\$54,915.00
Clearing & Rough Cut	\$549,837.00
Streets	\$170,433.80
Drainage	\$42,660.00
Water	\$97,750.00
Wastewater	\$64,800.00
Streetlights	\$0.00
Landscape Improvements	\$0.00
TOTAL	\$980,395.80

Total Improvements =	\$980,395.80
Maintenance Bond (10% Public Improvements) =	\$16,255.00

Total Improvements =	\$980,395.80
Currently Paid Inspection Fees	\$13,488.90
Inspection Fees (3.5%) =	\$34,313.85
Retainage Kept by City =	\$1,714.07
Remaining Insp. Fees to be Paid =	\$19,110.88

Frank T. Phelan, P.E.
fphelan@gbateam.com
737-247-7558
P.O. Box 2029
Leander, Texas 78646-2029



MAINTENANCE BOND
Subdivision Improvements

THE STATE OF TEXAS §

COUNTY OF WILLIAMSON §

KNOW ALL BY THESE PRESENTS, that Ross Construction, Inc.
as Principal, whose address is 8700 Manchaca Rd Suite 305 Austin, TX 78748 and
Berkley Insurance Company a Corporation organized under the
laws of the State of Delaware, and duly authorized to do business in the State of Texas, as
Surety, are held and firmly bound unto the City of Leander, Texas as Obligee, in the penal sum
of Sixteen Thousand Two Hundred Fifty Five and 00/100 Dollars
(\$ 16,255.00) to which payment will and truly to be made we do bind ourselves, our
and each of our heirs, executors, administrators, successors and assigns jointly and severally,
firmly by these presents.

WHEREAS, the said Principal has constructed THE FAIRWAYS AT CRYSTAL FALLS SECTION 2 PHASE 8,
PROJECT NUMBER 19-PICP-019 (the
“improvements”) pursuant to the ordinances of the Obligee, which ordinances are hereby
expressly made a part hereof as though the same were written and embodied herein;

WHEREAS, said Obligee requires that the Principal furnish a bond conditioned to
guarantee for the period of two (2) years after acceptance by the Obligee, against all defects in
workmanship and materials which may become apparent during said period;

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that, if the
Principal keeps and perform the requirement of the Obligee’s ordinances and this Maintenance
Bond to maintain the improvements and keep the same in good repair and shall indemnify the
Obligee for all loss that the Obligee may sustain by reason of any defective materials or
workmanship which become apparent during the period of two (2) years from and after the date
of acceptance by the Owner, then this obligation shall be void, otherwise to remain in full force
and effect, and Owner shall have and cover from said Principal and Surety damages in the
premises, as provided, and it is further agreed that this obligation shall be a continuing one
against the Principal and Surety hereon, and that successive recoveries may be had thereon for
successive breaches until the full amount shall have been exhausted; and it is further understood
that the obligation herein to maintain said improvements shall continue throughout the
maintenance period, and the same shall not be diminished in any manner from any cause during
said time.

Principal agrees to repair or reconstruct the improvements in whole or in part at any time
within the two year period to such extent as the Obligee deems necessary to properly correct all
defects except for normal wear and tear. If the Principal fails to make the necessary corrections
within ten days after being notified, the Obligee may do so or have done all said corrective work
and shall have recovery hereon for all expenses thereby incurred. Principal will maintain and
keep in good repair the improvements for a period of two years from the date of acceptance; it
being understood that the purpose of this Maintenance Bond is to cover all defective conditions
arising by reason of defective material, work, or labor performed by said Principal or its

subcontractors, and in the case the said Principal shall fail to do so within ten days after being notified, it is agreed that the Obligee may do said work and supply such materials, and charge the same against Principal and Surety on this obligation.

The Surety shall notify the Obligee at least fifteen (15) days prior to the end of the first full calendar year and prior to the lapse of this Maintenance Bond at the end of the second full calendar year.

Surety and Principal agree that whenever a defect or failure of the improvement occurs within the period of coverage under this Bond, the Surety and Principal shall provide a new maintenance bond or other surety instrument in a form acceptable to the Obligee and compliant with the Obligee's ordinances conditioned to guarantee for the period of one (1) year after the Obligee's acceptance of the corrected defect or failure, against all defects in workmanship and materials associated with the corrected defect or failure which may become apparent during said period, which shall be in addition to this Maintenance Bond.

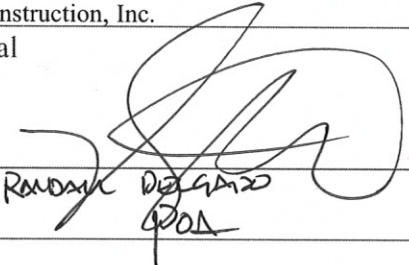
The Surety agrees to pay the Obligee upon demand all loss and expense, including attorneys' fees, incurred by the Obligee by reason of or on account of any breach of this obligation by the Surety. Provided further, that in any legal action be filed upon this bond, venue shall lie in the county where the improvements are constructed.

This Bond is a continuing obligation and shall remain in full force and effect until cancelled as provided for herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the improvements, or the work to be performed thereon, or the plans, specifications or drawings accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the improvements, or the work to be performed thereon.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this 23rd day of December, 2022.

Ross Construction, Inc.
Principal

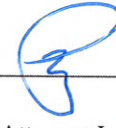
By: 

Title: CEO

Address: 8700 Manchaca Rd Suite 305

Austin, TX 78748

Berkley Insurance Company
Surety

By: , Jeremy Farque

Title: Attorney In Fact

Address: 412 Mt. Kemble Ave., Suite 310N

Morristown, NJ 07960

The name and address of the Resident Agent of Surety is:

Whorton Insurance Services 11200 Jollyville Rd. Austin, TX 78759

(Seal)



POWER OF ATTORNEY
BERKLEY INSURANCE COMPANY
WILMINGTON, DELAWARE

NOTICE: The warning found elsewhere in this Power of Attorney affects the validity thereof. Please review carefully.

KNOW ALL MEN BY THESE PRESENTS, that BERKLEY INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Delaware, having its principal office in Greenwich, CT, has made, constituted and appointed, and does by these presents make, constitute and appoint: **Jeremy M. Farque; Tommy Mulanax; Michael C. Whorton; Raquel Martinez; or Rosemarie Lopez of Jim Whorton & Associates, Inc. of Austin, TX** its true and lawful Attorney-in-Fact, to sign its name as surety only as delineated below and to execute, seal, acknowledge and deliver any and all bonds and undertakings, with the exception of Financial Guaranty Insurance, providing that no single obligation shall exceed **Fifty Million and 00/100 U.S. Dollars (U.S.\$50,000,000.00)**, to the same extent as if such bonds had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office in their own proper persons.

This Power of Attorney shall be construed and enforced in accordance with, and governed by, the laws of the State of Delaware, without giving effect to the principles of conflicts of laws thereof. This Power of Attorney is granted pursuant to the following resolutions which were duly and validly adopted at a meeting of the Board of Directors of the Company held on January 25, 2010:

RESOLVED, that, with respect to the Surety business written by Berkley Surety, the Chairman of the Board, Chief Executive Officer, President or any Vice President of the Company, in conjunction with the Secretary or any Assistant Secretary are hereby authorized to execute powers of attorney authorizing and qualifying the attorney-in-fact named therein to execute bonds, undertakings, recognizances, or other suretyship obligations on behalf of the Company, and to affix the corporate seal of the Company to powers of attorney executed pursuant hereto; and said officers may remove any such attorney-in-fact and revoke any power of attorney previously granted; and further

RESOLVED, that such power of attorney limits the acts of those named therein to the bonds, undertakings, recognizances, or other suretyship obligations specifically named therein, and they have no authority to bind the Company except in the manner and to the extent therein stated; and further

RESOLVED, that such power of attorney revokes all previous powers issued on behalf of the attorney-in-fact named; and further

RESOLVED, that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any power of attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligation of the Company; and such signature and seal when so used shall have the same force and effect as though manually affixed. The Company may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Company, notwithstanding the fact that they may have ceased to be such at the time when such instruments shall be issued.

IN WITNESS WHEREOF, the Company has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 30th day of June, 2021.

Attest:

(Seal)

By

Ira S. Lederman
Executive Vice President & Secretary

Berkley Insurance Company

By

Jeffrey M. Hafter
Senior Vice President

STATE OF CONNECTICUT)

) ss:

COUNTY OF FAIRFIELD)

Sworn to before me, a Notary Public in the State of Connecticut, this 30th day of June, 2021, by Ira S. Lederman and Jeffrey M. Hafter who are sworn to me to be the Executive Vice President and Secretary, and the Senior Vice President, respectively, of Berkley Insurance Company.

MARIA C. RUNDRAKEN
NOTARY PUBLIC
CONNECTICUT
MY COMMISSION EXPIRES
AUGUST 30, 2024

Maria C. Rundraken
Notary Public, State of Connecticut

CERTIFICATE

I, the undersigned, Assistant Secretary of BERKLEY INSURANCE COMPANY, DO HEREBY CERTIFY that the foregoing is a true, correct and complete copy of the original Power of Attorney; that said Power of Attorney has not been revoked or rescinded and that the authority of the Attorney-in-Fact set forth therein, who executed the bond or undertaking to which this Power of Attorney is attached, is in full force and effect as of this date.

Given under my hand and seal of the Company, this 11th day of August, 2022

(Seal)

Vincent P. Forte

Updated 2/14/22

**FINAL BILLS PAID AFFIDAVIT
AND WAIVER OF LIEN**

STATE OF TEXAS
COUNTY OF

Date: 3/15/23

Developer: BACK FORTY INVESTMENTS, LLC
3550 LAKELINE BLVD. 130-1704
LEANDER, TX 78641

Contractor/Material
Provider ("Affiant"): ROSS CONSTRUCTION, INC.
8700 MANCHACA RD. #305
AUSTIN, TX 78748

Project : THE FAIRWAYS AT CRYSTAL FALLS SECTION 2 PHASE 8
PROJECT #19-PICP-019

This is to acknowledge and certify that Affiant has been paid for construction completed to date for the project noted above to include payment for all labor and material provided to date to the above-noted construction project, except for retainage, and acknowledges and certifies that Affiant, and all of his or its agents, employees, successors, assigns, subsidiaries, and legal representatives will and do release and waive all Mechanic's liens, or similar lien rights, which have or might arise as a result of the Affiant's or Affiant's agents' or employees' providing labor and materials to the above-noted project. Affiant further agrees that it shall look solely to the Developer for payment of the retainage and shall have no cause of action whatsoever, against the City Of Leander in the event that the retainage is not paid to the Affiant, and that Affiant shall not file a lien of any kind which has or may arise related to the release of the retainage for the project.

In addition to the foregoing, Affiant acknowledges and certifies that Affiant has paid all laborers, subcontractors, materialmen, and all other persons or parties who have provided labor or materials through, for, or on behalf of the Affiant to the above-noted construction project.

Affiant indemnifies and holds Owner harmless from any liens, debts or obligations which arise as a result of labor or materials provided by or through Affiant to the project through the date set out above. Affiant further indemnifies and holds harmless all real property on which the improvements were constructed and all interests in such property, including leasehold interests, from any liens, debts, or obligations arising from any labor or materials provided by or through Affiant to the project through the date set out above.

SUBSCRIBED AND SWORN TO BY Affiant on this 15th day of ____ March __,
____ 2023 ____.

Initialed: VR

Updated 2/14/22

AFFIANT:

Signature: Ned Ross - [Signature]

Typed Name: NED ROSS

Title: PRESIDENT

STATE OF TEXAS

COUNTY OF TRAVIS

BEFORE ME the undersigned authority on this day personally appeared NED ROSS, known to me to be the person noted above, and acknowledged to me the following: that he/she executed the foregoing for the purpose and consideration therein expressed, in the capacity therein stated, and as the duly authorized act and deed of the party releasing and waiving the lien therein; and that every statement therein is within his/her knowledge and is true and correct.

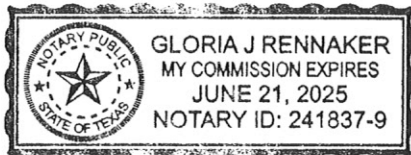
GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 15th day of March, 2023.

[SEAL]

Gloria Renaker
Notary in and for the State of Texas

Name: _____

My commission expires: _____



Initialed: NR



EXECUTIVE SUMMARY
07/06/2023

AGENDA SUBJECT:

Acceptance of public infrastructure improvements to the Jordan Tract.

BACKGROUND:

The public infrastructure improvements required for the Jordan Tract Subdivision have been installed, inspected, and are satisfactorily completed. All documentation required for acceptance of this subdivision have been received, including record drawings, statement of substantial completion prepared by a professional engineer licensed in the State of Texas, copies of all inspection reports and certified test results, electronic files of the improvements and final plat, affidavit of all bills paid, and a two (2)year term maintenance bond.

The maintenance bond will commence its two (2)year term upon City Council acceptance, as anticipated, on July 6, 2023, which will provide warranty and maintenance coverage for the public infrastructure improvements through July 6, 2025. The Engineering Department will perform a formal inspection of the improvements approximately thirty (30) days prior to the expiration of the maintenance bond to assure that any defects in materials, construction, or maintenance are corrected prior to expiration of the bond.

RECOMMENDATION:

Staff recommends City Council's formal acceptance of the public infrastructure improvements for the Jordan Tract.

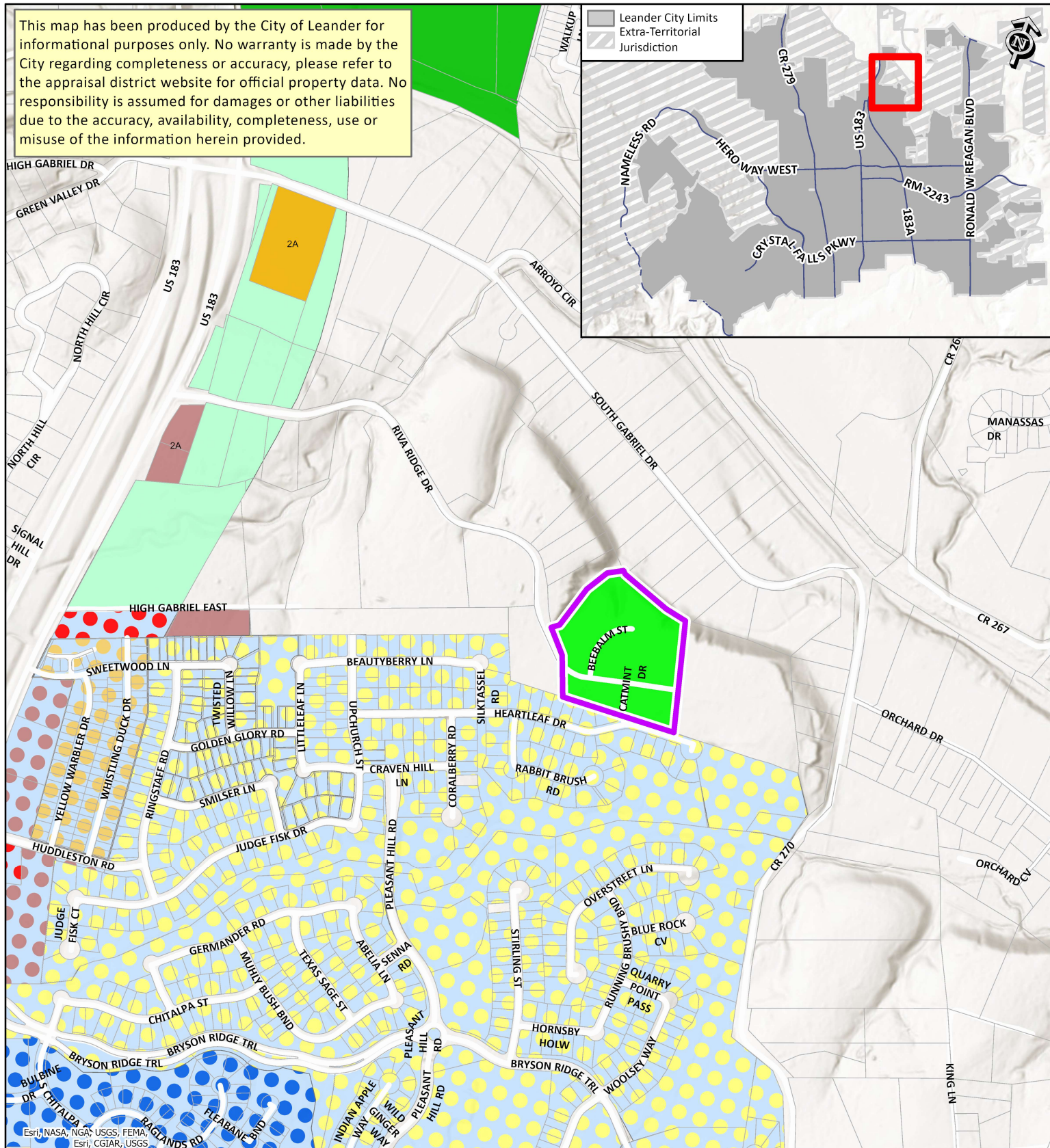
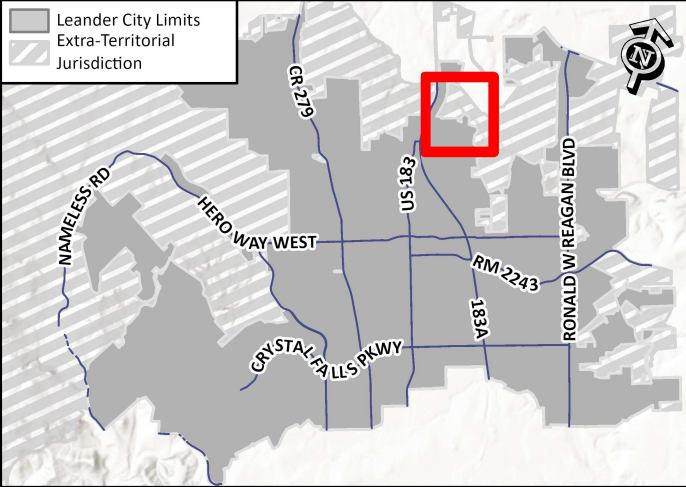
PRESENTER:

Emily Truman, P.E., CFM, PMP, City Engineer

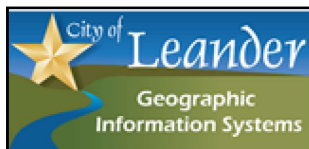
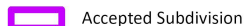
Attachments

1. Acceptance Documents - Jordan Tract

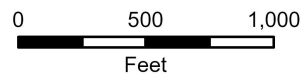
 Leander City Limits
 Extra-Territorial Jurisdiction



Jordan Tract - 22-PICP-002



- | | | | |
|---|-------------------------------|---|--------------------------|
| RESIDENTIAL | |  | PUD - Mixed Use |
|  | SFR - Single-Family Rural |  | PUD - Local Commercial |
|  | SFE - Single-Family Estate |  | PUD - General Commercial |
|  | SFS - Single-Family Suburban | SECTORS | |
|  | SFT - Single-Family Townhouse |  | CD - Conventional Sector |
| RETAIL / COMMERCIAL | | | |
|  | LC - Local Commercial | | |
| PUD LAND USE | | | |
|  | PUD - Single-Family | | |
|  | PUD-CH | | |





May 22, 2023

Aaron Googins
Bryson MPC Holdings, Inc.
5005 Riverway, Suite 500
Houston, Texas 77056

Re: Bryson Phase 15 – Jordan Tract

INSPECTION COMPLETED – NO VIOLATIONS

Dear Aaron:

This report presents the findings of the on-site inspection for the Bryson Phase 15 – Jordan Tract Project for compliance with the Texas Accessibility Standards. This report is limited to inspecting the elements for compliance with the applicable technical standards and not scoping. An inspection of the site was conducted on May 17, 2023.

All of the pedestrian elements were found to be in compliance with the Texas Accessibility Standards. The scope of work is limited to the inspection of the elements and excludes project registration with TDLR and a formal plan review of the design documents.

Feel free to contact me at (512) 410-7059 or at jel@alturalp.com with any questions.

Sincerely,

A handwritten signature in black ink, reading 'Jesús Lardizábal'.

Jesús Lardizábal, RAS #1051
President

cc: CSF Civil Group, LLC - Christine Potts

ENGINEER'S CONCURRENCE
FOR PROJECT ACCEPTANCE

Project: Jordan Tract
City of Leander Issued Permit Number: 22-PICP-002

Date: May 18, 2023

Owner's Name and Address

Consultant Engineer's
Name and Address

Bryson MPC Holdings LLC
5005 Riverway
Houston, TX 77056

CSF Civil Group
3636 Executive Center Drive
Suite 209
Austin, TX 78731

On this date, I, the undersigned Professional Engineer in the State of Texas, or my representative, have made a visual inspection of the above referenced project. No discrepancies from the approved construction plans or deficiencies in construction were visible or brought to my attention. I, therefore, certify that all improvements are in substantial compliance with the approved construction plans and all City, State, and Federal requirements, including the Subdivision Ordinance and Composite Zoning Ordinance.

If applicable, for closeout of public improvement construction projects (PICP), I additionally certify that all project closeout procedures with other governmental entities have been completed and finalized prior to submittal of my concurrence letter to the City of Leander.



Christine A Potts

Christine A. Potts, P.E.

CSF Civil Group, LLC
Engineering Firm Name

F-12377
Registered Firm Number

MAINTENANCE BOND
Subdivision Improvements

Bond No. 022236084

THE STATE OF TEXAS §

COUNTY OF WILLIAMSON §

KNOW ALL BY THESE PRESENTS, that Five Star Civil Construction, LLC as Principal, whose address is 301 Brushy Creek Road, Ste. 108, Cedar Park, TX 78613, and Liberty Mutual Insurance Company, a Corporation organized under the laws of the State of MA, and duly authorized to do business in the State of Texas, as Surety, are held and firmly bound unto the City of Leander, Texas as Obligee, in the penal sum of One Hundred Thirty Four Thousand Seven Hundred Forty Nine And 51/100 Dollars (\$134,749.51) to which payment will and truly to be made we do bind ourselves, our and each of our heirs, executors, administrators, successors and assigns jointly and severally, firmly by these presents.

WHEREAS, the said Principal has constructed Jordan Tract: Drainage, Water, Wastewater, Streets & Streetlights, Project# 22-PICP-002 (the "improvements") pursuant to the ordinances of the Obligee, which ordinances are hereby expressly made a part hereof as though the same were written and embodied herein;

WHEREAS, said Obligee requires that the Principal furnish a bond conditioned to guarantee for the period of two (2) years after acceptance by the Obligee, against all defects in workmanship and materials which may become apparent during said period;

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that, if the Principal keeps and perform the requirement of the Obligee's ordinances and this Maintenance Bond to maintain the improvements and keep the same in good repair and shall indemnify the Obligee for all loss that the Obligee may sustain by reason of any defective materials or workmanship which become apparent during the period of two (2) years from and after the date of acceptance by the Owner, then this obligation shall be void, otherwise to remain in full force and effect, and Owner shall have and cover from said Principal and Surety damages in the premises, as provided, and it is further agreed that this obligation shall be a continuing one against the Principal and Surety hereon, and that successive recoveries may be had thereon for successive breaches until the full amount shall have been exhausted; and it is further understood that the obligation herein to maintain said improvements shall continue throughout the maintenance period, and the same shall not be diminished in any manner from any cause during said time..

Principal agrees to repair or reconstruct the improvements in whole or in part at any time within the two year period to such extent as the Obligee deems necessary to properly correct all defects except for normal wear and tear. If the Principal fails to make the necessary corrections within ten days after being notified, the Obligee may do so or have done all said corrective work and shall have recovery hereon for all expenses thereby incurred. Principal will maintain and keep in good repair the improvements for a period of two years from the date of acceptance; it being understood that the purpose of this Maintenance Bond is to cover all defective conditions arising by reason of defective material, work, or labor performed by said Principal or its subcontractors, and in the case the said Principal shall fail to do so within ten days after being

notified, it is agreed that the Obligee may do said work and supply such materials, and charge the same against Principal and Surety on this obligation.

The Surety shall notify the Obligee at least fifteen (15) days prior to the end of the first full calendar year and prior to the lapse of this Maintenance Bond at the end of the second full calendar year.

Surety and Principal agree that whenever a defect or failure of the improvement occurs within the period of coverage under this Bond, the Surety and Principal shall provide a new maintenance bond or other surety instrument in a form acceptable to the Obligee and compliant with the Obligee's ordinances conditioned to guarantee for the period of one (1) year after the Obligee's acceptance of the corrected defect or failure, against all defects in workmanship and materials associated with the corrected defect or failure which may become apparent during said period, which shall be in addition to this Maintenance Bond.

The Surety agrees to pay the Obligee upon demand all loss and expense, including attorneys' fees, incurred by the Obligee by reason of or on account of any breach of this obligation by the Surety. Provided further, that in any legal action be filed upon this bond, venue shall lie in the county where the improvements are constructed.

This Bond is a continuing obligation and shall remain in full force and effect until cancelled as provided for herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the improvements, or the work to be performed thereon, or the plans, specifications or drawings accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the improvements, or the work to be performed thereon.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this 15th day of May, 2023.

Five Star Civil Construction, LLC
Principal

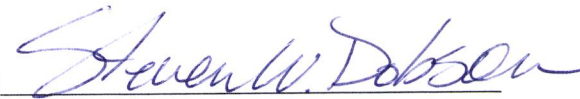
By: 

Title: MANAGING PARTNER

Address: _____

301 Brushy Creek Road, Ste. 108
Cedar Park, TX 78613

Liberty Mutual Insurance Company
Surety

By: 

Title: Steven W. Dobson, Attorney-in-Fact

Address: _____

7900 Windrose Ave
Plano, TX 75024

The name and address of the Resident Agent of Surety is:

Time Insurance Agency, Inc.

1405 E. Riverside Drive, Austin, TX 78741

(Seal)



This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: **8205041 - 969219**

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, John W. Schuler; Patricia Ferguson; Steven W. Dobson

all of the city of Austin state of TX each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 15th day of March, 2021.



Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: [Signature]
David M. Carey, Assistant Secretary

State of PENNSYLVANIA ss
County of MONTGOMERY

On this 15th day of March, 2021 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



Commonwealth of Pennsylvania - Notary Seal
Teresa Pastella, Notary Public
Montgomery County
My commission expires March 28, 2025
Commission number 1126044
Member, Pennsylvania Association of Notaries

By: [Signature]
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 15th day of May, 2023.



By: [Signature]
Renee C. Llewellyn, Assistant Secretary



Plans
Permits
Construction

CSF Civil Group, LLC

Texas Registered Firm No. F-12377
3636 Executive Center Drive, Suite 209
Austin, Texas 78731
(512) 614-4466

May 1, 2023

Brittany Johs-Gori
City of Leander
201 N. Brushy Street
Leander, TX 78641

Re: Bryson Jordan Tract- Cost Summary Letter

Dear Ms. Johs-Gori

Please see Maintenance Bond calculation below. The total is based on the attached Cost and Quantities for Maintenance Bond.

Final Plat Legal Name: Jordan Tract Final Plat

Name on Approved Construction Documents: Jordan Tract

Cost Categories	Amount to Date
Bryson Jordan	
Drainage (including the pond costs)	\$ 610,213.80
Water	\$ 196,666.00
Wastewater	\$ 217,170.00
Streets	\$ 202,000.25
Streetlights	\$ 121,445.04
Total*	\$1,347,495.09

Maintenance Bond Calculation:

Total Improvements = \$1,347,495.09

Maintenance Bond: (10%) = \$134,749.51

Inspection Fee Calculation:

Total Improvements = \$1,347,495.09

Currently Paid Inspection Fees = \$43,291.23

Inspection Fees (3.5%) = \$47,162.33

Remaining Insp. Fees to be Paid = \$3,871.10

* Please note that PEC Electric Costs and Atmos Gas costs are not included in the Total Improvements amount.

May 1, 2023

Page 2 of 2

Sincerely,

Christine A. Potts

Christine A. Potts, P.E.

CSF Civil Group, LLC

512-614-4466 x 104



5/2/23

**FINAL BILLS PAID AFFIDAVIT
AND WAIVER OF LIEN**

STATE OF TEXAS

COUNTY OF WILLAMSONDate: 5-26-2023Developer: BRAYEN MPC HOLDINGS, LLCContractor/Material
Provider ("Affiant"): FIVE STAR CIVIL CONSTRUCTIONProject: JORDAN TRACT

This is to acknowledge and certify that Affiant has completed the construction of all improvements for the project noted above and that Affiant has been paid in full for all labor and material provided to the above-noted construction project, except for retainage, and acknowledges and certifies that Affiant, and all of his or its agents, employees, successors, assigns, subsidiaries, and legal representatives will and do release and waive all Mechanic's liens, or similar lien rights, which have or might arise as a result of the Affiant's or Affiant's agents' or employees' providing labor and materials to the above-noted project. Affiant understands that a portion or all of the property upon which the project is located has been or will be accepted by the City of Leander, Texas, for ownership, maintenance, and operation. Affiant further agrees that it shall look solely to the Developer for payment of the retainage and shall have no cause of action whatsoever, against the City in the event that the retainage is not paid to the Affiant, and that Affiant shall not file a lien of any kind which has or may arise related to the release of the retainage for the project. Affiant acknowledges and understands that the City is relying on the representations made in this document to accept the phase or portion of the subdivision in which the project is located.

In addition to the foregoing, Affiant acknowledges and certifies that Affiant has paid all laborers, subcontractors, materialmen, and all other persons or parties who have provided labor or materials through, for, or on behalf of the Affiant to the above-noted construction project.

Affiant indemnifies and holds Owner harmless from any liens, debts or obligations which arise as a result of labor or materials provided by or through Affiant to the project through the date set out above. Affiant further indemnifies and holds harmless all real property on which the improvements were constructed and all interests in such property, including leasehold interests, from any liens, debts, or obligations arising from any labor or materials provided by or through Affiant to the project through the date set out above.

SUBSCRIBED AND SWORN TO BY Affiant on this 26th day of May, 2023

Initialed: (Signature)

AFFIANT:

Signature: [Signature]

Typed Name: Jared Davis

Title: MANAGING PARTNER

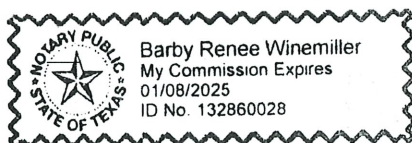
STATE OF TEXAS

COUNTY OF Williamson

BEFORE ME the undersigned authority on this day personally appeared Jared Davis, known to me to be the person noted above, and acknowledged to me the following: that he/she executed the foregoing for the purpose and consideration therein expressed, in the capacity therein stated, and as the duly authorized act and deed of the party releasing and waiving the lien therein; and that every statement therein is within his/her knowledge and is true and correct.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 26TH day of May, 2023.

[S E A L]



[Signature]
Notary in and for the State of Texas

Name: Barby R. Winemiller

My commission expires:

1/8/2025

Initialed: [Signature]



EXECUTIVE SUMMARY
07/06/2023

AGENDA SUBJECT:

Acceptance of public infrastructure improvements for Carneros Ranch Section 6.

BACKGROUND:

The public infrastructure improvements required for the Carneros Ranch Section 6 Subdivision have been installed, inspected, and are satisfactorily completed. All documentation required for acceptance of this subdivision have been received, including record drawings, statement of substantial completion prepared by a professional engineer licensed in the State of Texas, copies of all inspection reports and certified test results, electronic files of the improvements and final plat, affidavit of all bills paid, and a two (2)- year term maintenance bond.

The maintenance bond will commence its two (2)- year term upon City Council acceptance, as anticipated, on July 6, 2023, which will provide warranty and maintenance coverage for the public infrastructure improvements through July 6, 2025. The Engineering Department will perform a formal inspection of the improvements approximately thirty (30) days prior to the expiration of the maintenance bond to assure that any defects in materials, construction, or maintenance are corrected prior to expiration of the bond.

RECOMMENDATION:

Staff recommends City Council's formal acceptance of the public infrastructure improvements for Carneros Ranch Section 6.

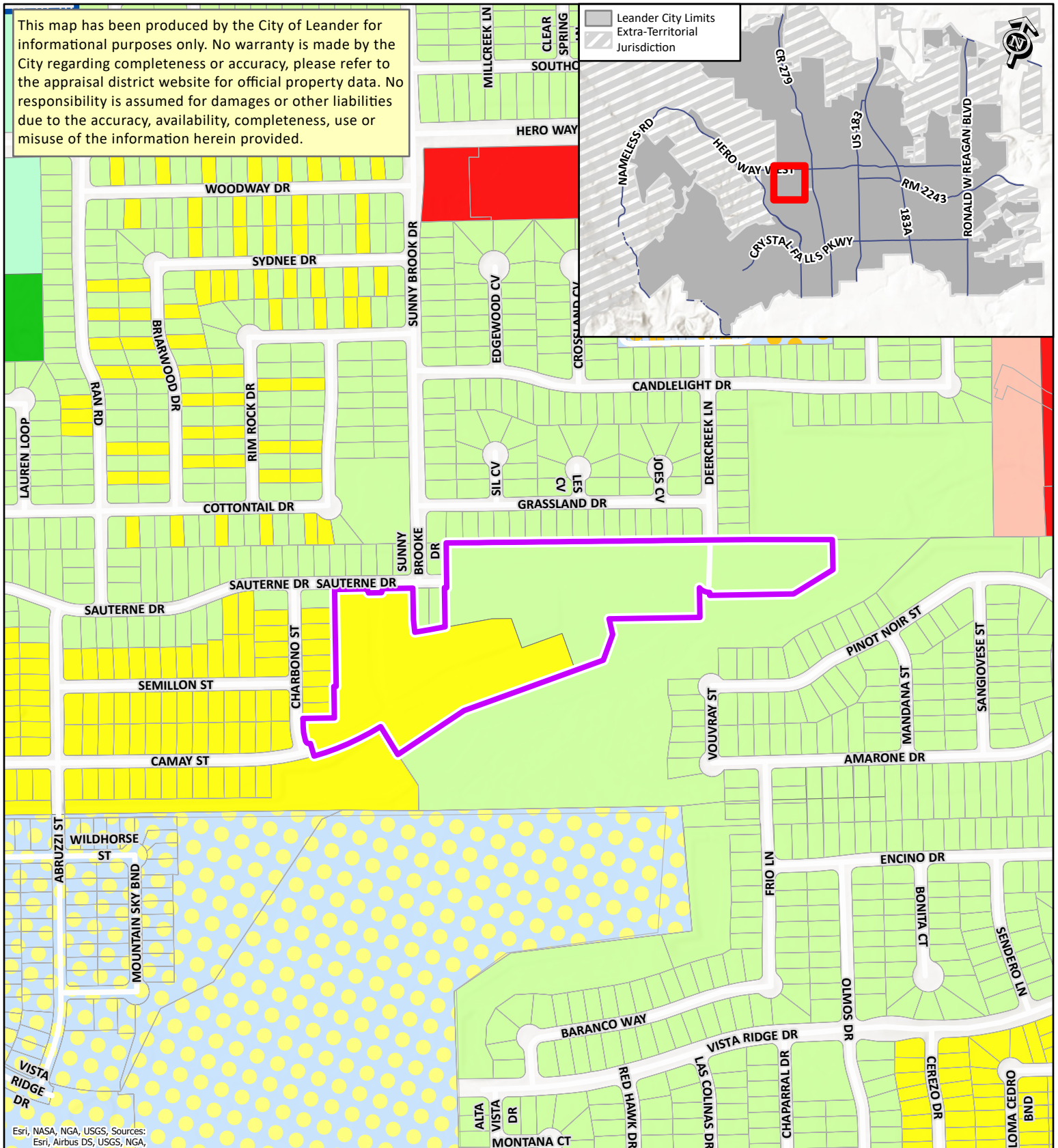
PRESENTER:

Emily Truman, P.E., CFM, PMP, City Engineer

Attachments

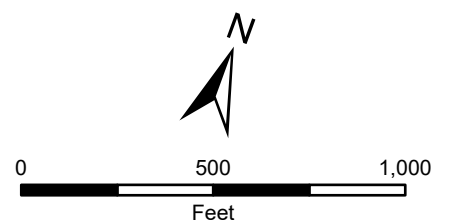
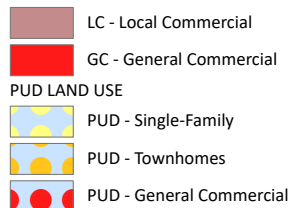
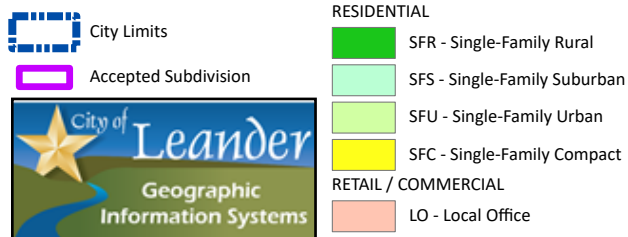
1. Acceptance Documents Carneros Ranch Section 6

This map has been produced by the City of Leander for informational purposes only. No warranty is made by the City regarding completeness or accuracy, please refer to the appraisal district website for official property data. No responsibility is assumed for damages or other liabilities due to the accuracy, availability, completeness, use or misuse of the information herein provided.



SUBDIVISION ACCEPTANCE

Carneros Ranch Sec 6 - 19-PICP-024





September 12, 2022

Randall Nixon
CSF Civil Group, LLC
3636 Executive Center Drive, Suite 209
Austin, Texas 78731

Re: TAS Inspection - Carneros Ranch Section 6

Dear Randall,

This report presents the findings of the on-site inspection for the Carneros Ranch Section 6 Project for compliance with the Texas Accessibility Standards. This report is limited to inspecting the elements for compliance with the applicable technical standards and not scoping. An inspection of the site was conducted on July 25, 2022, which included the review of the pedestrian elements within the subdivision, including but not limited to sidewalks, curb ramps and crosswalks.

All of the pedestrian elements were found to be in compliance with the Texas Accessibility Standards. The scope of work is limited to the inspection of the elements and excludes project registration with TDLR and a formal plan review of the design documents.

Feel free to contact me at (512) 410-7059 or at jel@alturalp.com with any questions.

Sincerely,

A handwritten signature in black ink that reads 'Jesús Lardizábal'.

Jesús Lardizábal, RAS #1051
President

ENGINEER'S CONCURRENCE
FOR PROJECT ACCEPTANCE

PROJECT: Carneros Ranch Section Six Date: September 12, 022

Owner's Name and Address

Consultant Engineer's
Name and Address

C.T. Development Inc.
7676 Woodway Suite 104
Houston, TX 77063

CSF Civil Group
3636 Executive Center Drive
Suite 209
Austin, TX 78731

I, the undersigned Professional Engineer in the State of Texas, or my representative have made a visual inspection of the referenced project. No discrepancies in approved construction plans or deficiencies in construction were visible or brought to my attention by the City of Leander. I, therefore, recommend acceptance of this project by the City of Leander once the following listed items, if any, are corrected to the satisfaction of the City of Leander.



9-12-2022



Randall B. Nixon, P.E.

91097

Texas Registration Number



Plans
Permits
Construction

CSF Civil Group, LLC

Texas Registered Firm No. F-12377
3636 Executive Center Drive, Suite 209
Austin, Texas 78731
(512) 614-4466

September 12, 2022

Mr. Sarvesh Dhakal, P.E.
City of Leander
201 N. Brushy Street
Leander, TX 78641

Re: Carneros Ranch Section 6- Cost Summary Letter

Dear Mr. Dhakal,

Final Plat Legal Name: Carneros Ranch Section Six Final Plat

Name on Approved Construction Documents: Carneros Ranch Subdivision Section Six

Name on Bank Bond for bond posting: Westfield Insurance Company and SureTec Insurance Company

Cost Categories	Amount
Streets	\$463,847.50
Drainage (Including Erosion Controls)	\$312,819.75
Water	\$297,840.00
Wastewater	\$92,580.00
Total (JL Gray)	\$1,167,087.25
Streetlights	\$150,174.43
Total (Denbow Company)	\$150,174.43
Total Improvements	\$1,317,261.68

Maintenance Bond Calculation:

Total Improvements (JL Gray) = \$1,167,087.25

Maintenance Bond (JL Gray): (10%) = \$116,708.72

Total Improvements (Denbow Company) = \$150,174.43

Maintenance Bond (Dry Contractor): (10%) = \$15,017.44

Inspection Fee Calculation:

Total Improvements = \$1,317,261.68

Currently Paid Inspection Fees = \$42,071.00

Inspection Fees (3.5%) = \$46,104.16

Remaining Insp. Fees to be Paid = (\$4,033.16)

September 12, 2022

Page 2 of 2

Sincerely,



Randall B. Nixon, P.E.
CSF Civil Group, LLC
512-614-4466 x 105



9-12-2022

**FINAL BILLS PAID AFFIDAVIT
AND WAIVER OF LIEN**

STATE OF TEXAS
COUNTY OF

Date: 8/25/2022

Developer: CT Development, Inc.

Contractor/Material
Provider: JL Gray Construction

Project: Carneros Ranch Sec 6

This is to acknowledge and certify that Affiant has completed the construction of all improvements for the project noted above and that Affiant has been paid in full for all labor and material provided to the above-noted construction project, except for retainage, and acknowledges and certifies that Affiant, and all of his or its agents, employees, successors, assigns, subsidiaries, and legal representatives will and do release and waive all Mechanic's liens, or similar lien rights, which have or might arise as a result of the Affiant's or Affiant's agents' or employees' providing labor and materials to the above-noted project. Affiant understands that a portion or all of the property upon which the project is located has been or will be accepted by the City of Leander, Texas, for ownership, maintenance, and operation. Affiant further agrees that it shall look solely to the Developer for payment of the retainage and shall have no cause of action whatsoever, against the City in the event that the retainage is not paid to the Affiant, and that Affiant shall not file a lien of any kind which has or may arise related to the release of the retainage for the project. Affiant acknowledges and understands that the City is relying on the representations made in this document to accept the phase or portion of the subdivision in which the project is located.

In addition to the foregoing, Affiant acknowledges and certifies that Affiant has paid all laborers, subcontractors, materialmen, and all other persons or parties who have provided labor or materials through, for, or on behalf of the Affiant to the above-noted construction project.

Affiant indemnifies and holds Owner harmless from any liens, debts or obligations which arise as a result of labor or materials provided by or through Affiant to the project through the date set out above. Affiant further indemnifies and holds harmless all real property on which the improvements were constructed and all interests in such property, including leasehold interests, from any liens, debts, or obligations arising from any labor or materials provided by or through Affiant to the project through the date set out above.

SUBSCRIBED AND SWORN TO BY Affiant on this 25th day of Aug, 2022.

Initialed:



AFFIANT:

Signature: _____

Typed Name: _____

Title: _____

Brian Lemons
BRIAN LEMONS
VICE PRESIDENT

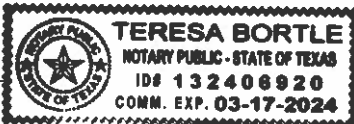
STATE OF TEXAS

COUNTY OF WILLIAMSON

BEFORE ME the undersigned authority on this day personally appeared Brian Lemons, known to me to be the person noted above, and acknowledged to me the following: that he/she executed the foregoing for the purpose and consideration therein expressed, in the capacity therein stated, and as the duly authorized act and deed of the party releasing and waiving the lien therein; and that every statement therein is within his/her knowledge and is true and correct.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 25th day of Aug, 2022.

[S E A L]



Notary in and for the State of Texas

Name: _____

My

Teresa Bortle
03-17-2022
commission expires:

Initialed: _____

BL

NOTICE: This document waives rights unconditionally and states that you have been paid for giving up those rights. It is prohibited for a person to require you to sign this document if you have not been paid the payment amount set forth below. If you have not been paid, use a conditional release form.

UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

Project: Carneros Ranch 6

Job No: 22-1011

The signer of this document has been paid in full \$481,359.79 for all labor, services, equipment, or materials furnished to the property or to CT Development (person with whom signer contracted) on the property of CT Development (owner) located at 7676 Woodway Dr., Suite 104, Houston Tx 77063 (location) to the following extent: Dry Utilities (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

Date: August 30, 2022

Denbow Company Inc.

(Company name)

By

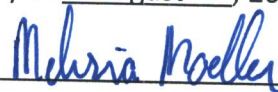


(Signature)

CFO

(Title)

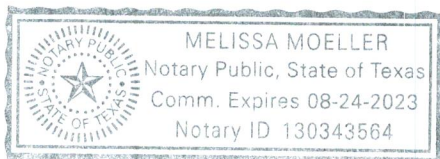
SUBSCRIBED AND SWORN TO BEFORE ME this the 30 day of August, 2022.



NOTARY PUBLIC, in and for the

State of Texas

My Commission Expires: 8/24/2023



MAINTENANCE BOND
Subdivision Improvements

THE STATE OF TEXAS §

Bond #237699R

COUNTY OF WILLIAMSON §

KNOW ALL BY THESE PRESENTS, that JL Gray Construction, Inc.
as Principal, whose address is 408 Fannin Avenue, Round Rock, TX 78664 and
Westfield Insurance Company a Corporation organized under the
laws of the State of Ohio, and duly authorized to do business in the State of Texas, as
Surety, are held and firmly bound unto the City of Leander, Texas as Obligee, in the penal sum
of One Hundred Sixteen Thousand Seven Hundred Eight and 00/100 Dollars
(\$ 116,708.72) to which payment will and truly to be made we do bind ourselves, our
and each of our heirs, executors, administrators, successors and assigns jointly and severally,
firmly by these presents.

WHEREAS, the said Principal has constructed Carneros Ranch Subdivision Section 6 Public
Improvements (19-PICP-024) - Water, Wastewater, Drainage, and Street Improvements (the
"improvements") pursuant to the ordinances of the Obligee, which ordinances are hereby
expressly made a part hereof as though the same were written and embodied herein;

WHEREAS, said Obligee requires that the Principal furnish a bond conditioned to
guarantee for the period of two (2) years after acceptance by the Obligee, against all defects in
workmanship and materials which may become apparent during said period;

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that, if the
Principal keeps and perform the requirement of the Obligee's ordinances and this Maintenance
Bond to maintain the improvements and keep the same in good repair and shall indemnify the
Obligee for all loss that the Obligee may sustain by reason of any defective materials or
workmanship which become apparent during the period of two (2) years from and after the date
of acceptance by the Owner, then this obligation shall be void, otherwise to remain in full force
and effect, and Owner shall have and cover from said Principal and Surety damages in the
premises, as provided, and it is further agreed that this obligation shall be a continuing one
against the Principal and Surety hereon, and that successive recoveries may be had thereon for
successive breaches until the full amount shall have been exhausted; and it is further understood
that the obligation herein to maintain said improvements shall continue throughout the
maintenance period, and the same shall not be diminished in any manner from any cause during
said time.

Principal agrees to repair or reconstruct the improvements in whole or in part at any time
within the two year period to such extent as the Obligee deems necessary to properly correct all
defects except for normal wear and tear. If the Principal fails to make the necessary corrections
within ten days after being notified, the Obligee may do so or have done all said corrective work
and shall have recovery hereon for all expenses thereby incurred. Principal will maintain and
keep in good repair the improvements for a period of two years from the date of acceptance; it
being understood that the purpose of this Maintenance Bond is to cover all defective conditions
arising by reason of defective material, work, or labor performed by said Principal or its

subcontractors, and in the case the said Principal shall fail to do so within ten days after being notified, it is agreed that the Obligee may do said work and supply such materials, and charge the same against Principal and Surety on this obligation.

The Surety shall notify the Obligee at least fifteen (15) days prior to the end of the first full calendar year and prior to the lapse of this Maintenance Bond at the end of the second full calendar year.

Surety and Principal agree that whenever a defect or failure of the improvement occurs within the period of coverage under this Bond, the Surety and Principal shall provide a new maintenance bond or other surety instrument in a form acceptable to the Obligee and compliant with the Obligee's ordinances conditioned to guarantee for the period of one (1) year after the Obligee's acceptance of the corrected defect or failure, against all defects in workmanship and materials associated with the corrected defect or failure which may become apparent during said period, which shall be in addition to this Maintenance Bond.

The Surety agrees to pay the Obligee upon demand all loss and expense, including attorneys' fees, incurred by the Obligee by reason of or on account of any breach of this obligation by the Surety. Provided further, that in any legal action be filed upon this bond, venue shall lie in the county where the improvements are constructed.

This Bond is a continuing obligation and shall remain in full force and effect until cancelled as provided for herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the improvements, or the work to be performed thereon, or the plans, specifications or drawings accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the improvements, or the work to be performed thereon.

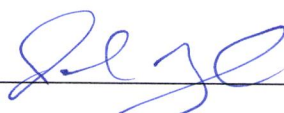
IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this 22nd day of November, 2022.

JL Gray Construction, Inc.
Principal

By: 
Title: President

Address: 408 Fannin Avenue
Round Rock, TX 78664

Westfield Insurance Company
Surety

By: 
Title: Jack Nottingham, Attorney-in-Fact

Address: 2255 Ridge Road, Suite 333
Rockwall, TX 75087

The name and address of the Resident Agent of Surety is:

Jack Nottingham
2255 Ridge Road, Suite 333, Rockwall, TX 75087

(Seal)

THIS POWER OF ATTORNEY SUPERCEDES ANY PREVIOUS POWER BEARING THIS SAME POWER # AND ISSUED PRIOR TO 05/25/22, FOR ANY PERSON OR PERSONS NAMED BELOW.

POWER NO. 4220012 14

General
Power
of Attorney

Westfield Insurance Co.
Westfield National Insurance Co.
Ohio Farmers Insurance Co.
Westfield Center, Ohio

CERTIFIED COPY

Know All Men by These Presents, That WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, corporations, hereinafter referred to individually as a "Company" and collectively as "Companies," duly organized and existing under the laws of the State of Ohio, and having its principal office in Westfield Center, Medina County, Ohio, do by these presents make, constitute and appoint
TONY FIERRO, JOHNNY MOSS, JAY JORDAN, MISTIE BECK, JEREMY BARNETT, JADE PORTER, ROBERT G. KANUTH, JARRETT WILLSON, JACK NOTTINGHAM, BRADY WILSON, BRENNAN WILLIAMSON, JOINTLY OR SEVERALLY

of **ROCKWALL** and State of **TX** its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver **any and all bonds, recognizances, undertakings, or other instruments or contracts of suretyship in any penal limit.**

LIMITATION: THIS POWER OF ATTORNEY CANNOT BE USED TO EXECUTE NOTE GUARANTEE, MORTGAGE DEFICIENCY, MORTGAGE GUARANTEE, OR BANK DEPOSITORY BONDS.

and to bind any of the Companies thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the applicable Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises. Said appointment is made under and by authority of the following resolution adopted by the Board of Directors of each of the WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY:

"Be It Resolved, that the President, any Senior Executive, any Secretary or any Fidelity & Surety Operations Executive or other Executive shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

The Attorney-in-Fact may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements of indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed by the President and sealed and attested by the Corporate Secretary."

"Be It Further Resolved, that the signature of any such designated person and the seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signatures or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached." (Each adopted at a meeting held on February 8, 2000).

In Witness Whereof, WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY have caused these presents to be signed by their **National Surety Leader** and **Senior Executive** and their corporate seals to be hereto affixed this **25th** day of **MAY** A.D., 2022.

Corporate
Seals
Affixed



WESTFIELD INSURANCE COMPANY
WESTFIELD NATIONAL INSURANCE COMPANY
OHIO FARMERS INSURANCE COMPANY

By:
Gary W. Stumper, National Surety Leader and Senior Executive

State of Ohio
County of Medina ss.:

On this **25th** day of **MAY** A.D., 2022, before me personally came **Gary W. Stumper** to me known, who, being by me duly sworn, did depose and say, that he resides in **Medina, OH**; that he is **National Surety Leader** and **Senior Executive** of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, the companies described in and which executed the above instrument; that he knows the seals of said Companies; that the seals affixed to said instrument are such corporate seals; that they were so affixed by order of the Boards of Directors of said Companies; and that he signed his name thereto by like order.

Notarial
Seal
Affixed



State of Ohio
County of Medina ss.:

David A. Kotnik, Attorney at Law, Notary Public
My Commission Does Not Expire (Sec. 147.03 Ohio Revised Code)

I, **Frank A. Carrino**, Secretary of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Companies, which is still in full force and effect; and furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seals of said Companies at Westfield Center, Ohio, this **22nd** day of **November** A.D., 2022.



Frank A. Carrino, Secretary

**IMPORTANT NOTICE
STATE OF TEXAS
COMPLAINT PROCEDURES**

1. IMPORTANT NOTICE

To obtain information or make a complaint:

2. You may contact your agent.

3. You may call **Westfield Insurance Company, Westfield National Insurance Company, and/or Ohio Farmers Insurance Company's** toll-free telephone number for information or to make a complaint at:

1-800-243-0210

4. You may also write to **Westfield Insurance Company, Westfield National Insurance Company, and/or Ohio Farmers Insurance Company** at:

**Attn: Bond Claims
One Park Circle
P O Box 5001
Westfield Center, OH 44251-5001
Fax #330-887-0840**

5. You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

1-800-252-3439

6. You may write to the Texas Department of Insurance, Consumer Protection Section (MC 111-1A):

P.O. Box 149091
Austin, TX 78714-9091
Fax: (512) 490-1007
Web: www.tdi.texas.gov
E-mail: ConsumerProtection@tdi.texas.gov

7. PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim, you should contact the agent, Westfield Insurance Company, Westfield National Insurance Company, or Ohio Farmers Insurance Company first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

8. ATTACH THIS NOTICE TO YOUR POLICY:

This notice is for information only and does not become a part or condition of the attached document.

AVISO IMPORTANTE

Para obtener informacion o para someter una queja:

Puede comunicarse con su (title) al (telephone number).

Usted puede llamar al numero de telefono gratis de **Westfield Insurance Company, Westfield National Insurance Company, and/or Ohio Farmers Insurance Company's** para informacion o para someter una queja al:

1-800-243-0210

Usted tambien puede escribir a **Westfield Insurance Company, Westfield National Insurance Company, and/or Ohio Farmers Insurance Company:**

**Attn: Bond Claims
One Park Circle
P O Box 5001
Westfield Center, OH 44251-5001
Fax #330-887-0840**

Puede comunicarse con el Departamento de Seguros de Texas para obtener informacion acerca de companies, coberturas, derechos o quejas al:

1-800-252-3439

Puede escribir al Departamento de Seguros de Texas, Consumer Protection Section (MC 111-1A):

P.O. Box 149091
Austin, TX 78714-9091
Fax: (512) 490-1007
Web: www.tdi.texas.gov
E-mail: ConsumerProtection@tdi.texas.gov

DISPUTAS SOBRE PRIMAS O RECLAMOS:

Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con el agente, Westfield Insurance Company, Westfield National Insurance Company, o Ohio Farmers Insurance Company primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI).

UNA ESTE AVISO A SU POLIZA: Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.

MAINTENANCE BOND
Subdivision Improvements

THE STATE OF TEXAS §

COUNTY OF WILLIAMSON §

KNOW ALL BY THESE PRESENTS, that Denbow Company, Inc.
as Principal, whose address is 2780 US-290 West, Dripping Springs, TX 78620 and
SureTec Insurance Company a Corporation organized under the
laws of the State of Texas, and duly authorized to do business in the State of Texas, as
Surety, are held and firmly bound unto the City of Leander, Texas as Obligee, in the penal sum
of Fifteen thousand seventeen 44/100 Dollars
(\$15,017.44) to which payment will and truly to be made we do bind ourselves, our
and each of our heirs, executors, administrators, successors and assigns jointly and severally,
firmly by these presents.

WHEREAS, the said Principal has constructed Carneros Ranch Subdivision Section Six
Public Improvements Construction Plans Proj #19-PICP-024 (the
"improvements") pursuant to the ordinances of the Obligee, which ordinances are hereby
expressly made a part hereof as though the same were written and embodied herein;

WHEREAS, said Obligee requires that the Principal furnish a bond conditioned to
guarantee for the period of two (2) years after acceptance by the Obligee, against all defects in
workmanship and materials which may become apparent during said period;

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that, if the
Principal keeps and perform the requirement of the Obligee's ordinances and this Maintenance
Bond to maintain the improvements and keep the same in good repair and shall indemnify the
Obligee for all loss that the Obligee may sustain by reason of any defective materials or
workmanship which become apparent during the period of two (2) years from and after the date
of acceptance by the Owner, then this obligation shall be void, otherwise to remain in full force
and effect, and Owner shall have and cover from said Principal and Surety damages in the
premises, as provided, and it is further agreed that this obligation shall be a continuing one
against the Principal and Surety hereon, and that successive recoveries may be had thereon for
successive breaches until the full amount shall have been exhausted; and it is further understood
that the obligation herein to maintain said improvements shall continue throughout the
maintenance period, and the same shall not be diminished in any manner from any cause during
said time.

Principal agrees to repair or reconstruct the improvements in whole or in part at any time
within the two year period to such extent as the Obligee deems necessary to properly correct all
defects except for normal wear and tear. If the Principal fails to make the necessary corrections
within ten days after being notified, the Obligee may do so or have done all said corrective work
and shall have recovery hereon for all expenses thereby incurred. Principal will maintain and
keep in good repair the improvements for a period of two years from the date of acceptance; it
being understood that the purpose of this Maintenance Bond is to cover all defective conditions
arising by reason of defective material, work, or labor performed by said Principal or its

subcontractors, and in the case the said Principal shall fail to do so within ten days after being notified, it is agreed that the Obligee may do said work and supply such materials, and charge the same against Principal and Surety on this obligation.

The Surety shall notify the Obligee at least fifteen (15) days prior to the end of the first full calendar year and prior to the lapse of this Maintenance Bond at the end of the second full calendar year.

Surety and Principal agree that whenever a defect or failure of the improvement occurs within the period of coverage under this Bond, the Surety and Principal shall provide a new maintenance bond or other surety instrument in a form acceptable to the Obligee and compliant with the Obligee's ordinances conditioned to guarantee for the period of one (1) year after the Obligee's acceptance of the corrected defect or failure, against all defects in workmanship and materials associated with the corrected defect or failure which may become apparent during said period, which shall be in addition to this Maintenance Bond.

The Surety agrees to pay the Obligee upon demand all loss and expense, including attorneys' fees, incurred by the Obligee by reason of or on account of any breach of this obligation by the Surety. Provided further, that in any legal action be filed upon this bond, venue shall lie in the county where the improvements are constructed.

This Bond is a continuing obligation and shall remain in full force and effect until cancelled as provided for herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the improvements, or the work to be performed thereon, or the plans, specifications or drawings accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the improvements, or the work to be performed thereon.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this 1st day of September, 2022.

Denbow Company, Inc.

Principal

By: _____

Title: _____

Address: _____

TIM WILKINSON
C.O.O.
2780 Hwy. 290 W.
Blvd. A
Drinking Springs, TX 78620

SureTec Insurance Company

Surety

By: _____

Title: Jake Bell, Attorney-In-Fact

Address: 2103 Citywest Blvd., Suite 1300

Houston, TX 77042

The name and address of the Resident Agent of Surety is:

(Seal)

SureTec Insurance Company

LIMITED POWER OF ATTORNEY

Know All Men by These Presents, That SURETEC INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Texas, and having its principal office in Houston, Harris County, Texas, does by these presents make, constitute and appoint

Jake Bell

its true and lawful Attorney-in-fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings or other instruments or contracts of suretyship to include waivers to the conditions of contracts and consents of surety for:

Principal: Denbow Company, Inc.

Obligee: City of Leander

Amount: \$ 15,017.44

and to bind the Company thereby as fully and to the same extent as if such bond were signed by the President, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney-in-Fact may do in the premises. Said appointment is made under and by authority of the following resolutions of the Board of Directors of the SureTec Insurance Company:

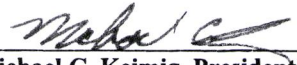
Be it Resolved, that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

Attorney-in-Fact may be given full power and authority for and in the name of and of behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

Be it Resolved, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached. (Adopted at a meeting held on 20th of April, 1999.)

In Witness Whereof, SURETEC INSURANCE COMPANY has caused these presents to be signed by its President, and its corporate seal to be hereto affixed this 27th day of October, A.D. 2020.

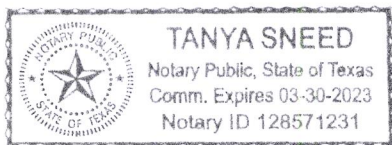
SURETEC INSURANCE COMPANY

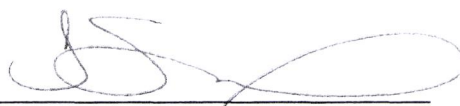
By: 
Michael C. Keimig, President

State of Texas ss:
County of Harris



On this 27th day of October, A.D. 2020 before me personally came Michael C. Keimig, to me known, who, being by me duly sworn, did depose and say, that he resides in Houston, Texas, that he is President of SURETEC INSURANCE COMPANY, the company described in and which executed the above instrument; that he knows the seal of said Company; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Company; and that he signed his name thereto by like order.

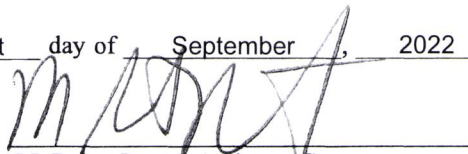




Tanya Sneed, Notary Public
My commission expires March 30, 2023

I, M. Brent Beaty, Assistant Secretary of SURETEC INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Company, which is still in full force and effect; and furthermore, the resolutions of the Board of Directors, set out in the Power of Attorney are in full force and effect.

Given under my hand and the seal of said Company at Houston, Texas this 1st day of September, 2022, A.D.


M. Brent Beaty, Assistant Secretary

Any instrument issued in excess of the penalty stated above is totally void and without any validity.

For verification of the authority of this power you may call (713) 812-0800 any business day between 8:30 am and 5:00 pm CST.

SureTec Insurance Company

IMPORTANT NOTICE

Statutory Complaint Notice/Filing of Claims

To obtain information or make a complaint: You may call the Surety's toll free telephone number for information or to make a complaint or file a claim at: 1-866-732-0099. You may also write to the Surety at:

SureTec Insurance Company
9737 Great Hills Trail, Suite 320
Austin, TX 78759

You may contact the Texas Department of Insurance to obtain information on companies, coverage, rights or complaints at 1-800-252- 3439. You may write the Texas Department of Insurance at:

PO Box 149104
Austin, TX 78714-9104
Fax#: 512-490-1007
Web: <http://www.tdi.texas.gov>
Email: ConsumerProtection@tdi.texas.gov

PREMIUM OR CLAIMS DISPUTES: Should you have a dispute concerning your premium or about a claim, you should contact the Surety first. If the dispute is not resolved, you may contact the Texas Department of Insurance.



EXECUTIVE SUMMARY
07/06/2023

AGENDA SUBJECT:

Acceptance of public Infrastructure Improvements for Palmera Bluff Section 2.

BACKGROUND:

The public infrastructure improvements required for the Palmera Bluff Section 2 Subdivision have been installed, inspected, and are satisfactorily completed. All documentation required for acceptance of this subdivision have been received, including record drawings, statement of substantial completion prepared by a professional engineer licensed in the State of Texas, copies of all inspection reports and certified test results, electronic files of the improvements and final plat, affidavit of all bills paid, and a two (2)- year term maintenance bond.

The maintenance bond will commence its two (2)-year term upon City Council acceptance, as anticipated, on July 6, 2023, which will provide warranty and maintenance coverage for the public infrastructure improvements through July 6, 2025. The Engineering Department will perform a formal inspection of the improvements approximately thirty (30) days prior to the expiration of the maintenance bond to assure that any defects in materials, workmanship, or maintenance are corrected prior to expiration of the bond.

RECOMMENDATION:

Staff recommends City Council's formal acceptance of the public infrastructure improvements for Palmera Bluff Section 2.

PRESENTER:

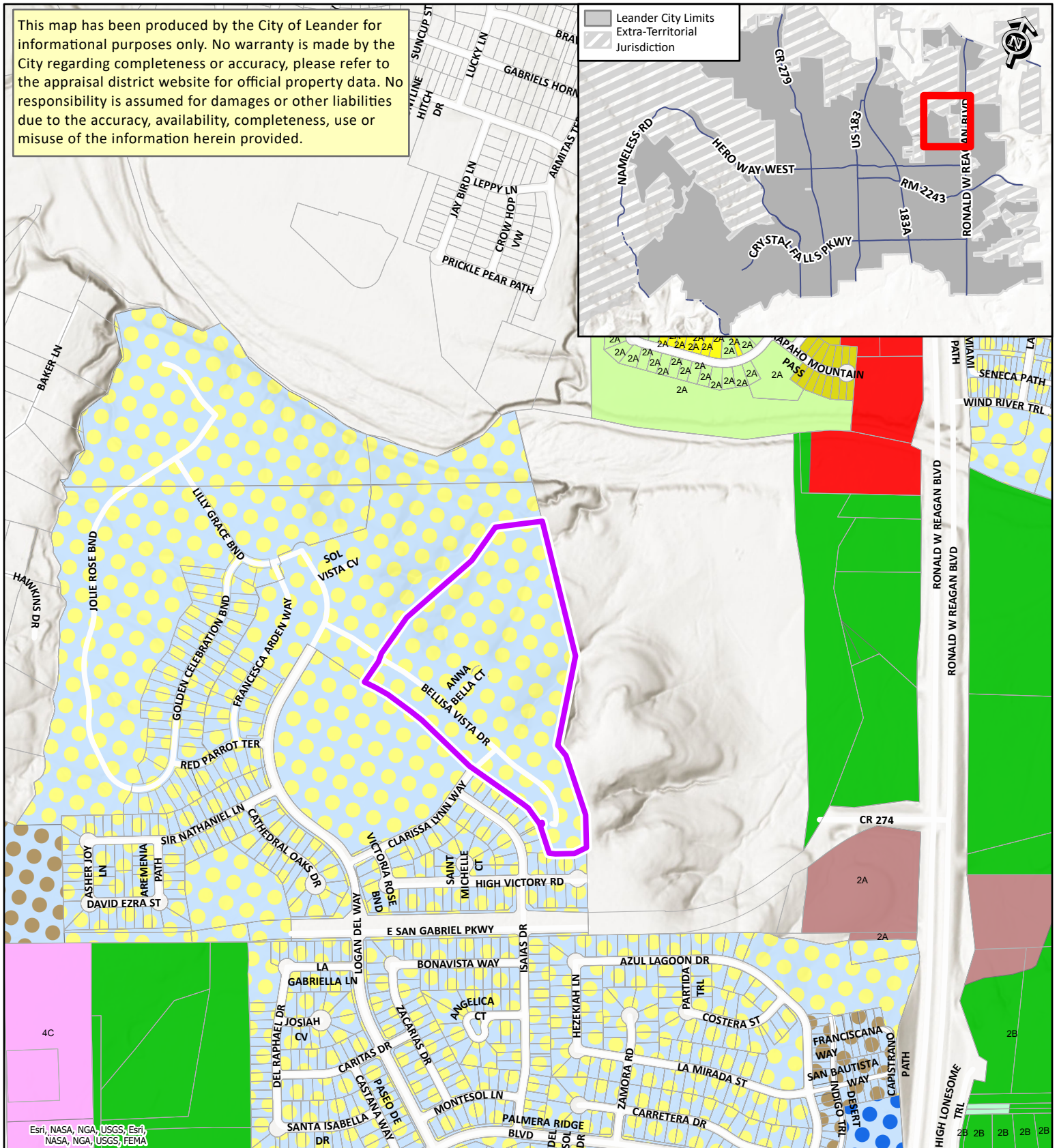
Emily Truman, P.E., CFM, PMP, City Engineer

Attachments

1. Acceptance Documents - Palmera Bluff Section 2

This map has been produced by the City of Leander for informational purposes only. No warranty is made by the City regarding completeness or accuracy, please refer to the appraisal district website for official property data. No responsibility is assumed for damages or other liabilities due to the accuracy, availability, completeness, use or misuse of the information herein provided.

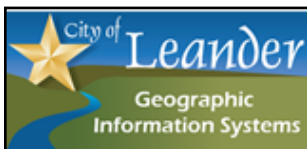
Leander City Limits
Extra-Territorial
Jurisdiction



SUBDIVISION ACCEPTANCE

Palmera Bluff Sec 2 - 20-PICP-034

Accepted Subdivision



RESIDENTIAL

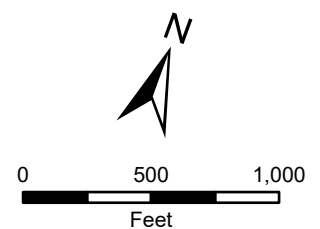
- SFR - Single-Family Rural
- SFS - Single-Family Suburban
- SFU - Single-Family Urban
- SFC - Single-Family Compact
- SFL - Single-Family Limited
- RETAIL / COMMERCIAL
- LC - Local Commercial

GC - General Commercial

HC - Heavy Commercial

PUD LAND USE

- PUD - Single-Family
- PUD - Multi-Family
- PUD - Mixed Use
- PUD - Local Commercial



May 8, 2023

BUILDING OWNER/DESIGNATED AGENT:

Palmera Bluff Development, Inc.
1011 N. Lamar
Austin, TX 78703

PROJECT:

Palmera Bluff Section 2

1445 CR 270, Leander, TX 78641



TDLR Project #: TABS2021015022

Contour Project No: 21-056

Lead Designer: Randall Jones & Associates Engineering, Inc.

REGISTERED ACCESSIBILITY SPECIALIST:

Elaine Andersen, RAS #1284
Co-Founder

PROJECT SCOPE: Construction of subdivision infrastructure to serve 49 total lots including curb ramps & sidewalks not located in front of single family lots.

INSPECTION COMPLETED – NO VIOLATIONS

Dear Owner:

We are pleased to inform you that the referenced facility has been inspected and found to be in substantial compliance with provisions of the Texas Government Code, Chapter 469.

The inspection results will be forwarded to the Texas Department of Licensing and Regulation for issuance of the final approval letter. For newly constructed buildings and facilities, the Department will provide a Notice of Substantial Compliance (Certificate and Decal) to the owner upon receipt of a completed Notice of Substantial Compliance Request Form.

Please note, this determination is applicable only to ensuring compliance with Texas Government Code, Chapter 469 and does not address the requirements of the Americans with Disabilities Act (ADA), (P.L. 101-336), or any other federal, state, or local requirement. For information on the ADA, call the ADA Hotline, (800) 949-4232 or the United States Department of Justice at (202) 514-0301.

If you have any questions or need further assistance, or if you are not the owner of record for this facility, contact Elaine Andersen at Elaine@Contour-Collective.com.


RAS 1284

ENGINEER'S CONCURRENCE FOR FINAL COMPLETION

PROJECT: Palmera Bluff Section 2 – 20-PICP-034

SCOPE OF WORK: W _____ WW _____ S/D _____ ALL xx _____

OWNER/DEVELOPER'S NAME AND ADDRESS

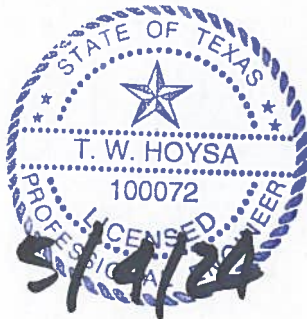
Dustin Einhaus
Palmera Bluff Development, Inc.
1011 N Lamar Boulevard
Austin, Texas 78703

CONSULTANT ENGINEER'S NAME AND ADDRESS

LJA Engineering, Inc.
T. Walter Hoysa, P.E.
2700 La Frontera Boulevard, Suite 150
Round Rock, Texas 78681

On this day, I, the undersigned Professional Engineer, made a visual inspection of the above referenced project. Based on the site visit, all water, wastewater, storm drainage, and roadway improvements for Palmera Bluff Section 2 Public Improvement Construction Plans (20-PICP-034), have been completed in substantial conformance with the approved plans. All improvements appear to be constructed in substantial conformance with the approved plans. No deficiencies in construction were visible or brought to my attention except the below listed items. I, therefore, recommend acceptance of this project by the City of Leander once the following listed items are corrected to the satisfaction of the City of Leander, and the Design Engineer:

Maintain erosion controls until permanent revegetation is established.





Signature

May 4, 2023

Date

100072

Texas Registration Number

ENGINEER'S CONCURRENCE FOR FINAL COMPLETION OF JELLYFISH FILTER

PROJECT: Palmera Bluff Section 2 – 20-PICP-034

SCOPE OF WORK: W _____ WW _____ S/D xx ALL _____

OWNER/DEVELOPER'S NAME AND ADDRESS

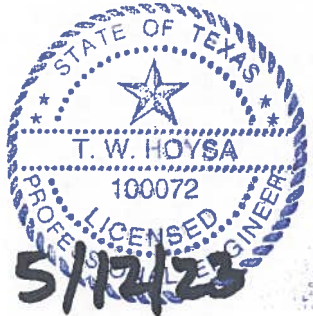
Dustin Einhaus
Palmera Bluff Development, Inc.
1011 N Lamar Boulevard
Austin, Texas 78703

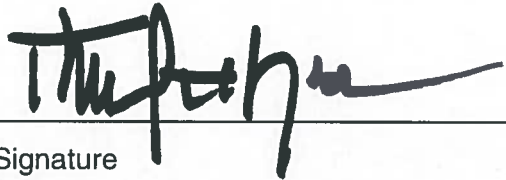
CONSULTANT ENGINEER'S NAME AND ADDRESS

LJA Engineering, Inc.
T. Walter Hoysa, P.E.
2700 La Frontera Boulevard, Suite 150
Round Rock, Texas 78681

On this day, I, the undersigned Professional Engineer, made a visual inspection of the above referenced project. Based on the site visit, the jellyfish structures have been completed and filters have been installed for Palmera Bluff Section 2 Public Improvement Construction Plans (20-PICP-034), in substantial conformance with the approved plans. Named improvements appear to be constructed in substantial conformance with the approved plans. No deficiencies in construction were visible or brought to my attention except the below listed items. I, therefore, recommend acceptance of this project by the City of Leander once the following listed items are corrected to the satisfaction of the City of Leander, and the Design Engineer:

Maintain erosion controls until permanent revegetation is established.





Signature

May 12, 2023

Date

100072

Texas Registration Number

June 9, 2023

Mr. Sarvesh D. Dhakal, PE
Assistant City Engineer
City of Leander
201 N. Brushy Street
Leander, TX 78641

Attn.,

Final Costs and Quantities for
Palmera Bluff Section 2 (20-PICP-034)

Dear Sarvesh:

Please find enclosed the final costs and quantities from the general contractor, Liberty Civil Construction, LLC. The quantities break down to the following sub-totals:

Street, Grading, and Erosion Control Improvements	\$ 530,797.08
Drainage Improvements	\$ 760,327.02
Water Improvements	\$ 244,801.86
Wastewater Improvements	\$ 347,360.21
Street Light Improvements	\$ 55,499.58
Landscape Improvements	\$ 0.00
Total	\$1,938,785.75

Maintenance Bond:

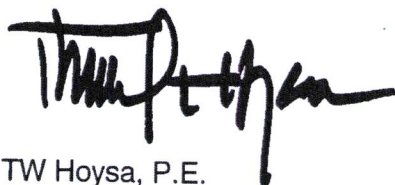
Total Improvements =	\$1,938,785.75
Maintenance Bond (10%) =	\$ 193,878.58

Inspection Fee:

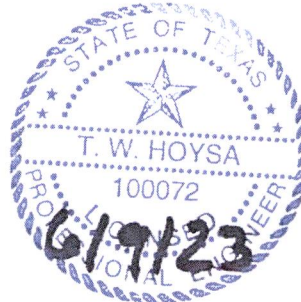
Total Improvements =	\$1,938,785.75
Inspection Fees (3.5%) =	\$ 67,857.50
Currently Paid Inspection Fees =	\$ 45,814.26
Remaining Inspection Fees =	\$ 22,043.24

If we can be of any further assistance, please do not hesitate to call at 512-439-4700.

Very Truly Yours,
LJA ENGINEERING, INC.



TW Hoysa, P.E.
Senior Project Manager



**FINAL BILLS PAID AFFIDAVIT
AND WAIVER OF LIEN**

STATE OF TEXAS
COUNTY OF WILLIAMSON

Date: June 13, 2023

Developer: Palmera Bluff Development, Inc.

Contractor/Material
Provider ("Affiant"): Liberty Civil Construction, LLC.

Project: **Palmera Bluff Section 2 Public Improvements Construction
Plans Project (20-PICP-034)**

This is to acknowledge and certify that Affiant has completed the construction of all improvements for the project noted above and that Affiant has been paid in full for all labor and material provided to the above-noted construction project, except for retainage, and acknowledges and certifies that Affiant, and all of his or its agents, employees, successors, assigns, subsidiaries, and legal representatives will and do release and waive all Mechanic's liens, or similar lien rights, which have or might arise as a result of the Affiant's or Affiant's agents' or employees' providing labor and materials to the above-noted project. Affiant understands that a portion or all of the property upon which the project is located has been or will be accepted by the City of Leander, Texas, for ownership, maintenance, and operation. Affiant further agrees that it shall look solely to the Developer for payment of the retainage and shall have no cause of action whatsoever, against the City in the event that the retainage is not paid to the Affiant, and that Affiant shall not file a lien of any kind which has or may arise related to the release of the retainage for the project. Affiant acknowledges and understands that the City is relying on the representations made in this document to accept the phase or portion of the subdivision in which the project is located.

In addition to the foregoing, Affiant acknowledges and certifies that Affiant has paid all laborers, subcontractors, materialmen, and all other persons or parties who have provided labor or materials through, for, or on behalf of the Affiant to the above-noted construction project.

Affiant indemnifies and holds Owner harmless from any liens, debts or obligations which arise as a result of labor or materials provided by or through Affiant to the project through the date set out above. Affiant further indemnifies and holds harmless all real property on which the improvements were constructed and all interests in such property, including leasehold interests, from any liens, debts, or obligations arising from any labor or materials provided by or through Affiant to the project through the date set out above.

Initialed: 

SUBSCRIBED AND SWORN TO BY Affiant on this 13 day of June, 2023.

AFFIANT:

Signature: _____ 

Typed Name: Steve Louden

Title: Director of Project Management

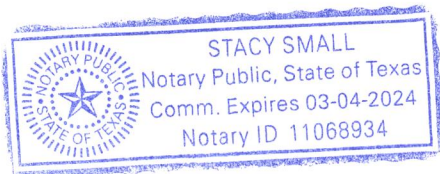
STATE OF TEXAS

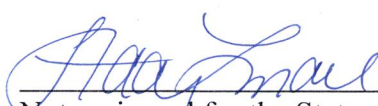
COUNTY OF WILLIAMSON

BEFORE ME the undersigned authority on this day personally appeared, Steve Louden, known to me to be the person noted above, and acknowledged to me the following: that he/she executed the foregoing for the purpose and consideration therein expressed, in the capacity therein stated, and as the duly authorized act and deed of the party releasing and waiving the lien therein; and that every statement therein is within his/her knowledge and is true and correct.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 13th day of June, 2023.

[S E A L]




Notary in and for the State of Texas

Name: Stacy Small

My commission expires: 03/04/2024

Initialed:  _____

MAINTENANCE BOND
Subdivision Improvements
Bond Number: 2331916

THE STATE OF TEXAS §

COUNTY OF WILLIAMSON §

KNOW ALL BY THESE PRESENTS, that Liberty Civil Construction, LLC
as Principal, whose address is 2937 Hero Way Leander, TX 78641 and
Swiss Re Corporate Solutions America Insurance Corporation a Corporation organized under the
laws of the State of Missouri, and duly authorized to do business in the State of Texas, as
Surety, are held and firmly bound unto the City of Leander, Texas as Obligee, in the penal sum
of One Hundred Eighty-eight Thousand Three Hundred Twenty-eight & 62/100
(\$ 188,328.62) to which payment will and truly to be made we do bind ourselves, our and each
of our heirs, executors, administrators, successors and assigns jointly and severally, firmly by
these presents.

WHEREAS, the said Principal has constructed Palmera Bluff Section 2 Public Improvements Construction Plans Project #20-PICP-034
(the "improvements") pursuant to the ordinances of the Obligee, which ordinances are hereby
expressly made a part hereof as though the same were written and embodied herein;

WHEREAS, said Obligee requires that the Principal furnish a bond conditioned to
guarantee for the period of two (2) years after acceptance by the Obligee, against all defects in
workmanship and materials which may become apparent during said period;

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that, if the
Principal keeps and perform the requirement of the Obligee's ordinances and this Maintenance
Bond to maintain the improvements and keep the same in good repair and shall indemnify the
Obligee for all loss that the Obligee may sustain by reason of any defective materials or
workmanship which become apparent during the period of two (2) years from and after the date
of acceptance by the Owner, then this obligation shall be void, otherwise to remain in full force
and effect, and Owner shall have and cover from said Principal and Surety damages in the
premises, as provided, and it is further agreed that this obligation shall be a continuing one
against the Principal and Surety hereon, and that successive recoveries may be had thereon for
successive breaches until the full amount shall have been exhausted; and it is further understood
that the obligation herein to maintain said improvements shall continue throughout the
maintenance period, and the same shall not be diminished in any manner from any cause during
said time.

Principal agrees to repair or reconstruct the improvements in whole or in part at any time
within the two year period to such extent as the Obligee deems necessary to properly correct all
defects except for normal wear and tear. If the Principal fails to make the necessary corrections
within ten days after being notified, the Obligee may do so or have done all said corrective work
and shall have recovery hereon for all expenses thereby incurred. Principal will maintain and
keep in good repair the improvements for a period of two years from the date of acceptance; it
being understood that the purpose of this Maintenance Bond is to cover all defective conditions
arising by reason of defective material, work, or labor performed by said Principal or its

subcontractors, and in the case the said Principal shall fail to do so within ten days after being notified, it is agreed that the Obligee may do said work and supply such materials, and charge the same against Principal and Surety on this obligation.

The Surety shall notify the Obligee at least fifteen (15) days prior to the end of the first full calendar year and prior to the lapse of this Maintenance Bond at the end of the second full calendar year.

Surety and Principal agree that whenever a defect or failure of the improvement occurs within the period of coverage under this Bond, the Surety and Principal shall provide a new maintenance bond or other surety instrument in a form acceptable to the Obligee and compliant with the Obligee's ordinances conditioned to guarantee for the period of one (1) year after the Obligee's acceptance of the corrected defect or failure, against all defects in workmanship and materials associated with the corrected defect or failure which may become apparent during said period, which shall be in addition to this Maintenance Bond.

The Surety agrees to pay the Obligee upon demand all loss and expense, including attorneys' fees, incurred by the Obligee by reason of or on account of any breach of this obligation by the Surety. Provided further, that in any legal action be filed upon this bond, venue shall lie in the county where the improvements are constructed.

This Bond is a continuing obligation and shall remain in full force and effect until cancelled as provided for herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the improvements, or the work to be performed thereon, or the plans, specifications or drawings accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the improvements, or the work to be performed thereon.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this 12th day of June, 2023.

Liberty Civil Construction, LLC

Principal

By: 

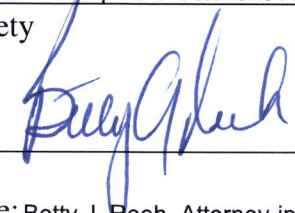
Title: Michael Ehrhardt, President

Address: 2937 Hero Way

Leander, TX 78641

Swiss Re Corporate Solutions America Insurance Corporation

Surety

By: 

Title: Betty J. Beeh, Attorney-in-Fact

Address: 1200 Main St., Suite 800

Kansas City, MO 64105

The name and address of the Resident Agent of Surety is:

Acrisure LLC dba IBTX - Bryan Moore

32335 US Highway 281 S, Suite 1201 Bulverde, TX 78163

(Seal)

SWISS RE CORPORATE SOLUTIONS

SWISS RE CORPORATE SOLUTIONS AMERICA INSURANCE CORPORATION ("SRCSAIC")
SWISS RE CORPORATE SOLUTIONS PREMIER INSURANCE CORPORATION ("SRCSPIC")
WESTPORT INSURANCE CORPORATION ("WIC")

GENERAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, THAT SRCSAIC, a corporation duly organized and existing under laws of the State of Missouri, and having its principal office in the City of Kansas City, Missouri, and SRCSPIC, a corporation organized and existing under the laws of the State of Missouri and having its principal office in the City of Kansas City, Missouri, and WIC, organized under the laws of the State of Missouri, and having its principal office in the City of Kansas City, Missouri, each does hereby make, constitute and appoint:

BETTY J. REEH, CLARK D. FRESHER, BRYAN K. MOORE, ANDREW ADDISON, ELIZABETH ORTIZ,

ANA OWENS, PATRICK COYLE, PATRICIA ANN LYTTLE, AND MICHAEL D. HENDRICKSON

JOINTLY OR SEVERALLY

Its true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver, for and on its behalf and as its act and deed, bonds or other writings obligatory in the nature of a bond on behalf of each of said Companies, as surety, on contracts of suretyship as are or may be required or permitted by law, regulation, contract or otherwise, provided that no bond or undertaking or contract or suretyship executed under this authority shall exceed the amount of:

FIFTY MILLION (\$50,000,000.00) DOLLARS

This Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolutions adopted by the Boards of Directors of both SRCSAIC and SRCSPIC at meetings duly called and held on the 18th of November 2021 and WIC by written consent of its Executive Committee dated July 18, 2011.

"RESOLVED, that any two of the President, any Managing Director, any Senior Vice President, any Vice President, the Secretary or any Assistant Secretary be, and each or any of them hereby is, authorized to execute a Power of Attorney qualifying the attorney named in the given Power of Attorney to execute on behalf of the Corporation bonds, undertakings and all contracts of surety, and that each or any of them hereby is authorized to attest to the execution of any such Power of Attorney and to attach therein the seal of the Corporation; and it is

FURTHER RESOLVED, that the signature of such officers and the seal of the Corporation may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be binding upon the Corporation when so affixed and in the future with regard to any bond, undertaking or contract of surety to which it is attached."



By Erik Janssens
Erik Janssens, Senior Vice President of SRCSAIC & Senior Vice President
of SRCSPIC & Senior Vice President of WIC

By Gerald Jagrowski
Gerald Jagrowski, Vice President of SRCSAIC & Vice President of SRCSPIC
& Vice President of WIC



IN WITNESS WHEREOF, SRCSAIC, SRCSPIC, and WIC have caused their official seals to be hereunto affixed, and these presents to be signed by their authorized officers

this 10 day of NOVEMBER, 20 22

State of Illinois
County of Cook



Swiss Re Corporate Solutions America Insurance Corporation
Swiss Re Corporate Solutions Premier Insurance Corporation
Westport Insurance Corporation

On this 10 day of NOVEMBER, 20 22, before me, a Notary Public personally appeared Erik Janssens, Senior Vice President of SRCSAIC and Senior Vice President of SRCSPIC and Senior Vice President of WIC and Gerald Jagrowski, Vice President of SRCSAIC and Vice President of SRCSPIC and Vice President of WIC, personally known to me, who being by me duly sworn, acknowledged that they signed the above Power of Attorney as officers of and acknowledged said instrument to be the voluntary act and deed of their respective companies.



Christina Manisco
Christina Manisco, Notary

I, Jeffrey Goldberg, the duly elected Senior Vice President and Assistant Secretary of SRCSAIC and SRCSPIC and WIC, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney given by said SRCSAIC and SRCSPIC and WIC, which is still in full force and effect.

IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Companies this 12th day of June, 20 23.

Jeffrey Goldberg
Jeffrey Goldberg, Senior Vice President &
Assistant Secretary of SRCSAIC and
SRCSPIC and WIC

IMPORTANT NOTICE

In order to obtain information or make a complaint:

You may contact **Jeffrey Goldberg, Vice President - Claims**, at **1-800-338-0753**.

You may call **Swiss Re Corporate Solutions America Insurance Corporation or Swiss Re Corporate Solutions Premier Insurance Corporation's** toll-free number for information or to make a complaint at:

1-800-338-0753

You may also write to **Swiss Re Corporate Solutions America Insurance Corporation or Swiss Re Corporate Solutions Premier Insurance Corporation** at the following address:

**1200 Main Street, Suite 800
Kansas City, MO 64105**

You may contact the **Texas Department of Insurance** to obtain information on companies, coverages, rights or complaints at:

1- 800-252-3439

You may write the **Texas Department of Insurance**:

**P.O. Box 149104
Austin, TX 78714-9104
Fax: (512) 475-1771
Web: <http://www.tdi.state.tx.us>
E-mail: ConsumerProtection@tdi.state.tx.us**

PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim you should first contact the **Swiss Re Corporate Solutions America Insurance Corporation or Swiss Re Corporate Solutions Premier Insurance Corporation**. If the dispute is not resolved, you may contact the Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR POLICY: This notice is for information only and does not become a part or condition of the attached document.

AVISO IMPORTANTE

Para obtener informacion o para someter un queja:

Puede comunicarse con **Jeffrey Goldberg, Vice President - Claims**, al **1-800-338-0753**.

Usted puede llamar al numero de telefono gratis de **Swiss Re Corporate Solutions America Insurance Corporation o Swiss Re Corporate Solutions Premier Insurance Corporation's** para informacion o para someter una queja al:

1-800-338-0753

Usted tambien puede escribir a **Swiss Re Corporate Solutions America Insurance Corporation o Swiss Re Corporate Solutions Premier Insurance Corporation** al:

**1200 Main Street, Suite 800
Kansas City, MO 64105**

Puede escribir al **Departamento de Seguros de Texas** para obtener informacion acerca de companias, coberturas, derechos o quejas al:

1- 800-252-3439

Puede escribir al **Departamento de Seguros de Texas**:

**P.O. Box 149104
Austin, TX 78714-9104
Fax: (512) 475-1771
Web: <http://www.tdi.state.tx.us>
E-mail: ConsumerProtection@tdi.state.tx.us**

DISPUTAS SOBRE PRIMAS O RECLAMOS:

Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con el **Swiss Re Corporate Solutions America Insurance Corporation o Swiss Re Corporate Solutions Premier Insurance Corporation** primero. Si no se resuelve la disputa, puede entonces comunicarse con el Departamento de Seguros de Texas.

UNA ESTE AVISO A SU POLIZA:

Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.

MAINTENANCE BOND
Subdivision Improvements

THE STATE OF TEXAS §

COUNTY OF WILLIAMSON §

KNOW ALL BY THESE PRESENTS, that Denbow Company, Inc.
as Principal, whose address is 2780 US-290 West, Dripping Springs, TX 78620 and
SureTec Insurance Company a Corporation organized under the
laws of the State of Texas, and duly authorized to do business in the State of Texas, as
Surety, are held and firmly bound unto the City of Leander, Texas as Obligee, in the penal sum
of Five Thousand Five Hundred Forty Nine and 95/100 Dollars
(\$ 5,549.95) to which payment will and truly to be made we do bind ourselves, our
and each of our heirs, executors, administrators, successors and assigns jointly and severally,
firmly by these presents.

WHEREAS, the said Principal has constructed Palmera Bluff Section 2
Public Improvement Construction Plan - Project No. 20-PICP-034 (the
“improvements”) pursuant to the ordinances of the Obligee, which ordinances are hereby
expressly made a part hereof as though the same were written and embodied herein;

WHEREAS, said Obligee requires that the Principal furnish a bond conditioned to
guarantee for the period of two (2) years after acceptance by the Obligee, against all defects in
workmanship and materials which may become apparent during said period;

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that, if the
Principal keeps and perform the requirement of the Obligee’s ordinances and this Maintenance
Bond to maintain the improvements and keep the same in good repair and shall indemnify the
Obligee for all loss that the Obligee may sustain by reason of any defective materials or
workmanship which become apparent during the period of two (2) years from and after the date
of acceptance by the Owner, then this obligation shall be void, otherwise to remain in full force
and effect, and Owner shall have and cover from said Principal and Surety damages in the
premises, as provided, and it is further agreed that this obligation shall be a continuing one
against the Principal and Surety hereon, and that successive recoveries may be had thereon for
successive breaches until the full amount shall have been exhausted; and it is further understood
that the obligation herein to maintain said improvements shall continue throughout the
maintenance period, and the same shall not be diminished in any manner from any cause during
said time.

Principal agrees to repair or reconstruct the improvements in whole or in part at any time
within the two year period to such extent as the Obligee deems necessary to properly correct all
defects except for normal wear and tear. If the Principal fails to make the necessary corrections
within ten days after being notified, the Obligee may do so or have done all said corrective work
and shall have recovery hereon for all expenses thereby incurred. Principal will maintain and
keep in good repair the improvements for a period of two years from the date of acceptance; it
being understood that the purpose of this Maintenance Bond is to cover all defective conditions
arising by reason of defective material, work, or labor performed by said Principal or its

subcontractors, and in the case the said Principal shall fail to do so within ten days after being notified, it is agreed that the Obligee may do said work and supply such materials, and charge the same against Principal and Surety on this obligation.

The Surety shall notify the Obligee at least fifteen (15) days prior to the end of the first full calendar year and prior to the lapse of this Maintenance Bond at the end of the second full calendar year.

Surety and Principal agree that whenever a defect or failure of the improvement occurs within the period of coverage under this Bond, the Surety and Principal shall provide a new maintenance bond or other surety instrument in a form acceptable to the Obligee and compliant with the Obligee's ordinances conditioned to guarantee for the period of one (1) year after the Obligee's acceptance of the corrected defect or failure, against all defects in workmanship and materials associated with the corrected defect or failure which may become apparent during said period, which shall be in addition to this Maintenance Bond.

The Surety agrees to pay the Obligee upon demand all loss and expense, including attorneys' fees, incurred by the Obligee by reason of or on account of any breach of this obligation by the Surety. Provided further, that in any legal action be filed upon this bond, venue shall lie in the county where the improvements are constructed.

This Bond is a continuing obligation and shall remain in full force and effect until cancelled as provided for herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the improvements, or the work to be performed thereon, or the plans, specifications or drawings accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the improvements, or the work to be performed thereon.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this 5th day of May, 2023.

Denbow Company, Inc.

Principal

By: 

Title: DAVID DENBOW - PRESIDENT

Address: 2780 West
Highway 290, Dripping
Springs, TX 78620

SureTec Insurance Company

Surety

By: 

Title: Jake Bell, Attorney-In-Fact

Address: 2103 CityWest Blvd., Suite 1300,
Houston, TX 77042

The name and address of the Resident Agent of Surety is:

2103 CityWest Blvd., Suite 1300, Houston, TX 77042

(Seal)



SureTec Insurance Company

LIMITED POWER OF ATTORNEY

Know All Men by These Presents, That SURETEC INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Texas, and having its principal office in Houston, Harris County, Texas, does by these presents make, constitute and appoint

Jake Bell

its true and lawful Attorney-in-fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings or other instruments or contracts of suretyship to include waivers to the conditions of contracts and consents of surety for:

Principal: Denbow Company, Inc.

Obligee: City of Leander

Amount: \$ 5,549.95

and to bind the Company thereby as fully and to the same extent as if such bond were signed by the President, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney-in-Fact may do in the premises. Said appointment is made under and by authority of the following resolutions of the Board of Directors of the SureTec Insurance Company:

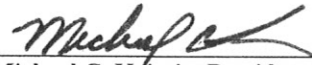
Be it Resolved, that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

Attorney-in-Fact may be given full power and authority for and in the name of and of behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

Be it Resolved, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached. (Adopted at a meeting held on 20th of April, 1999.)

In Witness Whereof, SURETEC INSURANCE COMPANY has caused these presents to be signed by its President, and its corporate seal to be hereto affixed this 3rd day of February, A.D. 2023.

SURETEC INSURANCE COMPANY

By: 
Michael C. Keimig, President

State of Texas ss:
County of Harris



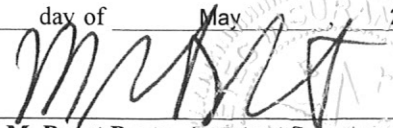
On this 3rd day of February, A.D. 2023 before me personally came Michael C. Keimig, to me known, who, being by me duly sworn, did depose and say, that he resides in Houston, Texas, that he is President of SURETEC INSURANCE COMPANY, the company described in and which executed the above instrument; that he knows the seal of said Company; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Company; and that he signed his name thereto by like order.




Tanya Sneed, Notary Public
My commission expires March 30, 2027

I, M. Brent Beaty, Assistant Secretary of SURETEC INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Company, which is still in full force and effect; and furthermore, the resolutions of the Board of Directors, set out in the Power of Attorney are in full force and effect.

Given under my hand and the seal of said Company at Houston, Texas this 5th day of May, 2023, A.D.


M. Brent Beaty, Assistant Secretary

Any instrument issued in excess of the penalty stated above is totally void and without any validity.
For verification of the authority of this power you may call (713) 812-0800 any business day between 8:30 am and 5:00 pm CST.

SureTec Insurance Company

IMPORTANT NOTICE **Statutory Complaint Notice/Filing of Claims**

To obtain information or make a complaint: You may call the Surety's toll free telephone number for information or to make a complaint or file a claim at: 1-866-732-0099. You may also write to the Surety at:

SureTec Insurance Company
9500 Arboretum Blvd., Suite 400
Austin, TX 78759

You may contact the Texas Department of Insurance to obtain information on companies, coverage, rights or complaints at 1-800-252- 3439. You may write the Texas Department of Insurance at:

PO Box 149104
Austin, TX 78714-9104
Fax#: 512-490-1007
Web: <http://www.tdi.texas.gov>
Email: ConsumerProtection@tdi.texas.gov

PREMIUM OR CLAIMS DISPUTES: Should you have a dispute concerning your premium or about a claim, you should contact the Surety first. If the dispute is not resolved, you may contact the Texas Department of Insurance.



EXECUTIVE SUMMARY
07/06/2023

AGENDA SUBJECT:

Acceptance of public infrastructure improvements for Palmera Bluff Section 4.

BACKGROUND:

The public infrastructure improvements required for the Palmera Bluff Section 4 Subdivision have been installed, inspected, and are satisfactorily completed. All documentation required for acceptance of this subdivision have been received, including record drawings, statement of substantial completion prepared by a professional engineer licensed in the State of Texas, copies of all inspection reports and certified test results, electronic files of the improvements and final plat, affidavit of all bills paid, and a two (2)- year term maintenance bond.

The maintenance bond will commence its two (2)- year term upon City Council acceptance, as anticipated, on July 6, 2023, which will provide warranty and maintenance coverage for the public infrastructure improvements through July 6, 2025. The Engineering Department will perform a formal inspection of the improvements approximately thirty (30) days prior to the expiration of the maintenance bond to assure that any defects in materials, construction, or maintenance are corrected prior to expiration of the bond.

RECOMMENDATION:

Staff recommends City Council's formal acceptance of the public infrastructure improvements for Palmera Bluff Section 4.

PRESENTER:

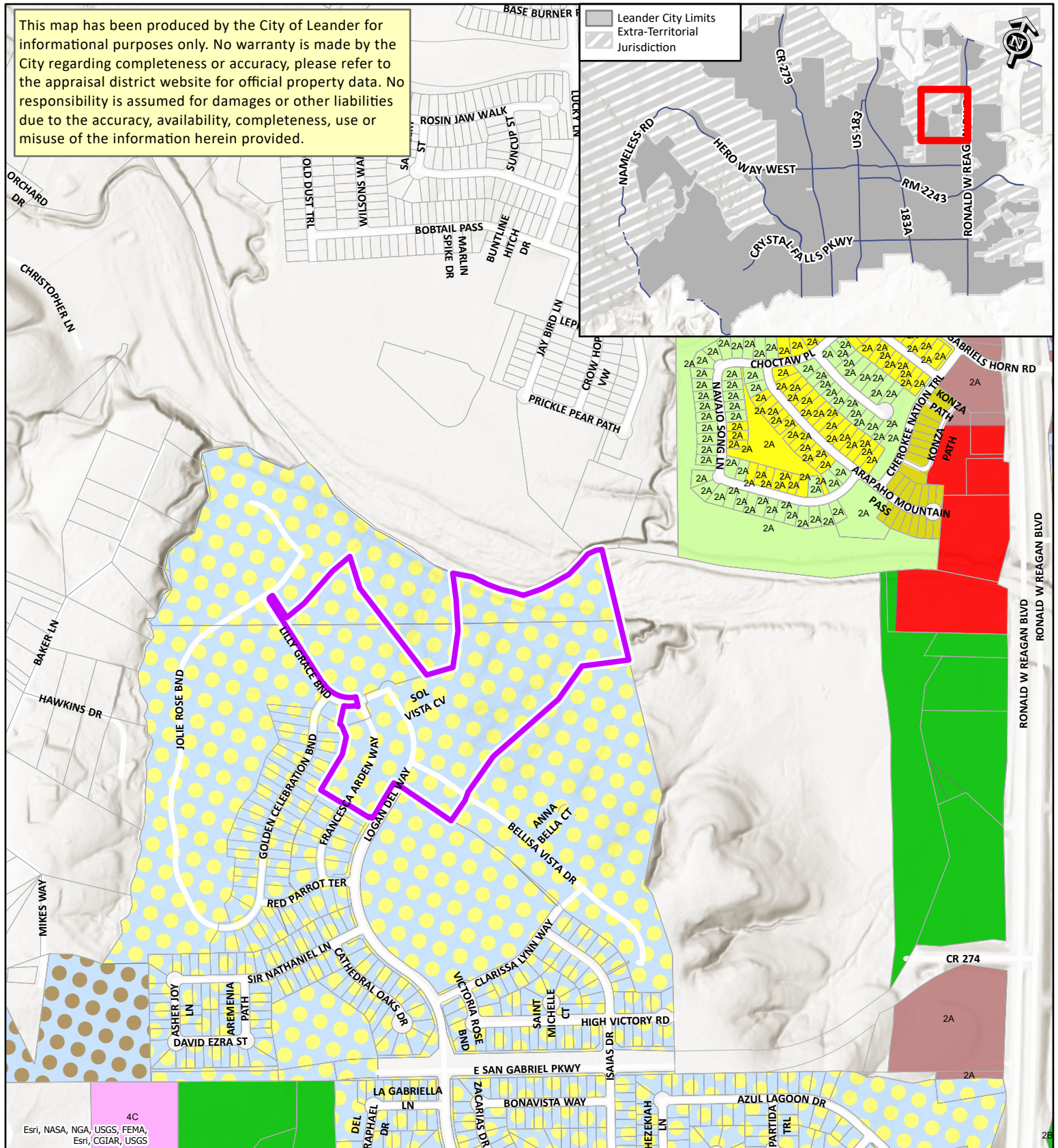
Emily Truman, P.E., CFM, PMP, City Engineer

Attachments

1. Acceptance Documents - Palmera Bluff Section 4

This map has been produced by the City of Leander for informational purposes only. No warranty is made by the City regarding completeness or accuracy, please refer to the appraisal district website for official property data. No responsibility is assumed for damages or other liabilities due to the accuracy, availability, completeness, use or misuse of the information herein provided.

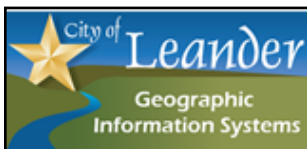
Leander City Limits
Extra-Territorial Jurisdiction



SUBDIVISION ACCEPTANCE

Palmera Bluff Sec 4 - 20-PICP-024

Accepted Subdivision



RESIDENTIAL
SFR - Single-Family Rural
SFU - Single-Family Urban
SFC - Single-Family Compact
SFL - Single-Family Limited
RETAIL / COMMERCIAL
LC - Local Commercial

GC - General Commercial
HC - Heavy Commercial
PUD LAND USE
PUD - Single-Family
PUD - Multi-Family
PUD - Local Commercial



0 500 1,000
Feet

May 8, 2023

BUILDING OWNER/DESIGNATED AGENT:

Palmera Bluff Development, Inc.
1011 N. Lamar
Austin, TX 78703

PROJECT:

Palmera Bluff Section 4

1445 CR 270, Leander, TX 78641

TDLR Project #: TABS2021015024

Contour Project No: 21-057

Lead Designer: Randall Jones & Associates Engineering, Inc.



REGISTERED ACCESSIBILITY SPECIALIST:

Elaine Andersen, RAS #1284
Co-Founder

PROJECT SCOPE: Construction of subdivision infrastructure to serve 43 total lots including curb ramps & sidewalks not located in front of single family lots.

INSPECTION COMPLETED – NO VIOLATIONS

Dear Owner:

We are pleased to inform you that the referenced facility has been inspected and found to be in substantial compliance with provisions of the Texas Government Code, Chapter 469.

The inspection results will be forwarded to the Texas Department of Licensing and Regulation for issuance of the final approval letter. For newly constructed buildings and facilities, the Department will provide a Notice of Substantial Compliance (Certificate and Decal) to the owner upon receipt of a completed Notice of Substantial Compliance Request Form.

Please note, this determination is applicable only to ensuring compliance with Texas Government Code, Chapter 469 and does not address the requirements of the Americans with Disabilities Act (ADA), (P.L. 101-336), or any other federal, state, or local requirement. For information on the ADA, call the ADA Hotline, (800) 949-4232 or the United States Department of Justice at (202) 514-0301.

If you have any questions or need further assistance, or if you are not the owner of record for this facility, contact Elaine Andersen at Elaine@Contour-Collective.com.

A handwritten signature in black ink that reads 'Elaine Andersen'.

RAS 1284

ENGINEER'S CONCURRENCE FOR FINAL COMPLETION

PROJECT: Palmera Bluff Section 4 – 20-PICP-024

SCOPE OF WORK: W _____ WW _____ S/D xx ALL _____

OWNER/DEVELOPER'S NAME AND ADDRESS

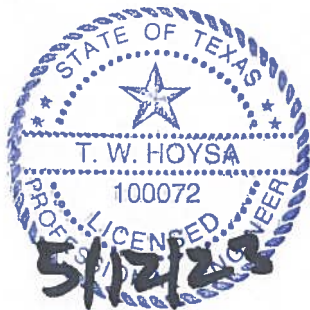
Dustin Einhaus
Pamera Bluff Development, Inc.
1011 N Lamar Boulevard
Austin, Texas 78703

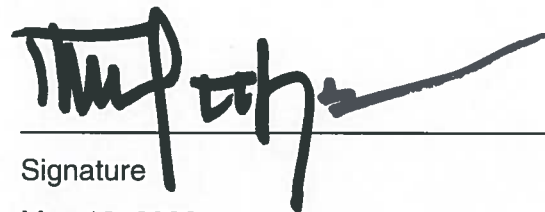
CONSULTANT ENGINEER'S NAME AND ADDRESS

LJA Engineering, Inc.
T. Walter Hoysa, P.E.
2700 La Frontera Boulevard, Suite 150
Round Rock, Texas 78681

On this day, I, the undersigned Professional Engineer, made a visual inspection of the above referenced project. Based on the site visit, the jellyfish structures have been completed and filters have been installed for Palmera Bluff Section 4 Public Improvement Construction Plans (20-PICP-024), in substantial conformance with the approved plans. Named improvements appear to be constructed in substantial conformance with the approved plans. No deficiencies in construction were visible or brought to my attention except the below listed items. I, therefore, recommend acceptance of this project by the City of Leander once the following listed items are corrected to the satisfaction of the City of Leander, and the Design Engineer:

Maintain erosion controls until permanent revegetation is established.





Signature

May 12, 2023

Date

100072

Texas Registration Number

ENGINEER'S CONCURRENCE FOR FINAL COMPLETION

PROJECT: Palmera Bluff Section 4 – 20-PICP-024

SCOPE OF WORK: W _____ WW _____ S/D _____ ALL xx

OWNER/DEVELOPER'S NAME AND ADDRESS

Dustin Einhaus
Pamera Bluff Development, Inc.
1011 N Lamar Boulevard
Austin, Texas 78703

CONSULTANT ENGINEER'S NAME AND ADDRESS

LJA Engineering, Inc.
T. Walter Hoysa, P.E.
2700 La Frontera Boulevard, Suite 150
Round Rock, Texas 78681

On this day, I, the undersigned Professional Engineer, made a visual inspection of the above referenced project. Based on the site visit, all water, wastewater, storm drainage, and roadway improvements for Palmera Bluff Section 4 Public Improvement Construction Plans (20-PICP-024), have been completed in substantial conformance with the approved plans. All improvements appear to be constructed in substantial conformance with the approved plans. No deficiencies in construction were visible or brought to my attention except the below listed items. I, therefore, recommend acceptance of this project by the City of Leander once the following listed items are corrected to the satisfaction of the City of Leander, and the Design Engineer:

Maintain erosion controls until permanent revegetation is established.





Signature

May 4, 2023

Date

Date

100072

Texas Registration Number

MAINTENANCE BOND
Subdivision Improvements

Bond Number: 2331915

THE STATE OF TEXAS §

COUNTY OF WILLIAMSON §

KNOW ALL BY THESE PRESENTS, that Liberty Civil Construction, LLC
as Principal, whose address is 2937 Hero Way Leander, TX 78641 and
Swiss Re Corporate Solutions America Insurance Corporation a Corporation organized under the
laws of the State of Missouri, and duly authorized to do business in the State of Texas, as
Surety, are held and firmly bound unto the City of Leander, Texas as Obligee, in the penal sum
of One Hundred Eighty-four Thousand Two Hundred Ninety-five & 59/100
(\$ 184,295.59) to which payment will and truly to be made we do bind ourselves, our and each
of our heirs, executors, administrators, successors and assigns jointly and severally, firmly by
these presents.

WHEREAS, the said Principal has constructed Palmera Bluff Section 4 Public Improvement Construction Plans Project #20-PICP-024
(the "improvements") pursuant to the ordinances of the Obligee, which ordinances are hereby
expressly made a part hereof as though the same were written and embodied herein;

WHEREAS, said Obligee requires that the Principal furnish a bond conditioned to
guarantee for the period of two (2) years after acceptance by the Obligee, against all defects in
workmanship and materials which may become apparent during said period;

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that, if the
Principal keeps and perform the requirement of the Obligee's ordinances and this Maintenance
Bond to maintain the improvements and keep the same in good repair and shall indemnify the
Obligee for all loss that the Obligee may sustain by reason of any defective materials or
workmanship which become apparent during the period of two (2) years from and after the date
of acceptance by the Owner, then this obligation shall be void, otherwise to remain in full force
and effect, and Owner shall have and cover from said Principal and Surety damages in the
premises, as provided, and it is further agreed that this obligation shall be a continuing one
against the Principal and Surety hereon, and that successive recoveries may be had thereon for
successive breaches until the full amount shall have been exhausted; and it is further understood
that the obligation herein to maintain said improvements shall continue throughout the
maintenance period, and the same shall not be diminished in any manner from any cause during
said time.

Principal agrees to repair or reconstruct the improvements in whole or in part at any time
within the two year period to such extent as the Obligee deems necessary to properly correct all
defects except for normal wear and tear. If the Principal fails to make the necessary corrections
within ten days after being notified, the Obligee may do so or have done all said corrective work
and shall have recovery hereon for all expenses thereby incurred. Principal will maintain and
keep in good repair the improvements for a period of two years from the date of acceptance; it
being understood that the purpose of this Maintenance Bond is to cover all defective conditions
arising by reason of defective material, work, or labor performed by said Principal or its

subcontractors, and in the case the said Principal shall fail to do so within ten days after being notified, it is agreed that the Obligee may do said work and supply such materials, and charge the same against Principal and Surety on this obligation.

The Surety shall notify the Obligee at least fifteen (15) days prior to the end of the first full calendar year and prior to the lapse of this Maintenance Bond at the end of the second full calendar year.

Surety and Principal agree that whenever a defect or failure of the improvement occurs within the period of coverage under this Bond, the Surety and Principal shall provide a new maintenance bond or other surety instrument in a form acceptable to the Obligee and compliant with the Obligee's ordinances conditioned to guarantee for the period of one (1) year after the Obligee's acceptance of the corrected defect or failure, against all defects in workmanship and materials associated with the corrected defect or failure which may become apparent during said period, which shall be in addition to this Maintenance Bond.

The Surety agrees to pay the Obligee upon demand all loss and expense, including attorneys' fees, incurred by the Obligee by reason of or on account of any breach of this obligation by the Surety. Provided further, that in any legal action be filed upon this bond, venue shall lie in the county where the improvements are constructed.

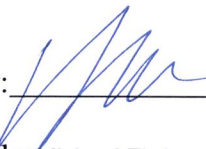
This Bond is a continuing obligation and shall remain in full force and effect until cancelled as provided for herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the improvements, or the work to be performed thereon, or the plans, specifications or drawings accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the improvements, or the work to be performed thereon.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this 12th day of June, 2023.

Liberty Civil Construction, LLC

Principal

By: 

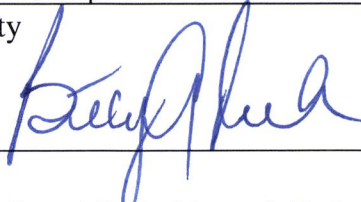
Title: Michael Ehrhardt

Address: 2937 Hero Way

Leander, TX 78641

Swiss Re Corporate Solutions America Insurance Corporation

Surety

By: 

Title: Betty J. Reeh, Attorney-in-Fact

Address: 1200 Main St., Suite 800

Kansas City, MO 64105

The name and address of the Resident Agent of Surety is:

Acrisure LLC dba IBTX - Bryan Moore

32335 US Highway 281 S, Suite 1201 Bulverde, TX 78163

(Seal)

SWISS RE CORPORATE SOLUTIONS

SWISS RE CORPORATE SOLUTIONS AMERICA INSURANCE CORPORATION ("SRCSAIC")
SWISS RE CORPORATE SOLUTIONS PREMIER INSURANCE CORPORATION ("SRCSPIC")
WESTPORT INSURANCE CORPORATION ("WIC")

GENERAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, THAT SRCSAIC, a corporation duly organized and existing under laws of the State of Missouri, and having its principal office in the City of Kansas City, Missouri, and SRCSPIC, a corporation organized and existing under the laws of the State of Missouri and having its principal office in the City of Kansas City, Missouri, and WIC, organized under the laws of the State of Missouri, and having its principal office in the City of Kansas City, Missouri, each does hereby make, constitute and appoint:

BETTY J. REEH, CLARK D. FRESHER, BRYAN K. MOORE, ANDREW ADDISON, ELIZABETH ORTIZ,
ANA OWENS, PATRICK COYLE, PATRICIA ANN LYTTLE, AND MICHAEL D. HENDRICKSON

JOINTLY OR SEVERALLY

Its true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver, for and on its behalf and as its act and deed, bonds or other writings obligatory in the nature of a bond on behalf of each of said Companies, as surety, on contracts of suretyship as are or may be required or permitted by law, regulation, contract or otherwise, provided that no bond or undertaking or contract or suretyship executed under this authority shall exceed the amount of:

FIFTY MILLION (\$50,000,000.00) DOLLARS

This Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolutions adopted by the Boards of Directors of both SRCSAIC and SRCSPIC at meetings duly called and held on the 18th of November 2021 and WIC by written consent of its Executive Committee dated July 18, 2011.

"RESOLVED, that any two of the President, any Managing Director, any Senior Vice President, any Vice President, the Secretary or any Assistant Secretary be, and each or any of them hereby is, authorized to execute a Power of Attorney qualifying the attorney named in the given Power of Attorney to execute on behalf of the Corporation bonds, undertakings and all contracts of surety, and that each or any of them hereby is authorized to attest to the execution of any such Power of Attorney and to attach therein the seal of the Corporation; and it is

FURTHER RESOLVED, that the signature of such officers and the seal of the Corporation may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be binding upon the Corporation when so affixed and in the future with regard to any bond, undertaking or contract of surety to which it is attached."



By Erik Janssens
Erik Janssens, Senior Vice President of SRCSAIC & Senior Vice President
of SRCSPIC & Senior Vice President of WIC

By Gerald Jagrowski
Gerald Jagrowski, Vice President of SRCSAIC & Vice President of SRCSPIC
& Vice President of WIC



IN WITNESS WHEREOF, SRCSAIC, SRCSPIC, and WIC have caused their official seals to be hereunto affixed, and these presents to be signed by their authorized officers

this 10 day of NOVEMBER, 20 22

State of Illinois
County of Cook

SS

Swiss Re Corporate Solutions America Insurance Corporation
Swiss Re Corporate Solutions Premier Insurance Corporation
Westport Insurance Corporation

On this 10 day of NOVEMBER, 20 22, before me, a Notary Public personally appeared Erik Janssens, Senior Vice President of SRCSAIC and Senior Vice President of SRCSPIC and Senior Vice President of WIC and Gerald Jagrowski, Vice President of SRCSAIC and Vice President of SRCSPIC and Vice President of WIC, personally known to me, who being by me duly sworn, acknowledged that they signed the above Power of Attorney as officers of and acknowledged said instrument to be the voluntary act and deed of their respective companies.



Christina Manisco
Christina Manisco, Notary

I, Jeffrey Goldberg, the duly elected Senior Vice President and Assistant Secretary of SRCSAIC and SRCSPIC and WIC, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney given by said SRCSAIC and SRCSPIC and WIC, which is still in full force and effect.

IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Companies this 12th day of June, 20 23.

Jeffrey Goldberg
Jeffrey Goldberg, Senior Vice President &
Assistant Secretary of SRCSAIC and
SRCSPIC and WIC

IMPORTANT NOTICE

In order to obtain information or make a complaint:

You may contact **Jeffrey Goldberg, Vice President - Claims**, at **1-800-338-0753**.

You may call **Swiss Re Corporate Solutions America Insurance Corporation or Swiss Re Corporate Solutions Premier Insurance Corporation's** toll-free number for information or to make a complaint at:

1-800-338-0753

You may also write to **Swiss Re Corporate Solutions America Insurance Corporation or Swiss Re Corporate Solutions Premier Insurance Corporation** at the following address:

**1200 Main Street, Suite 800
Kansas City, MO 64105**

You may contact the **Texas Department of Insurance** to obtain information on companies, coverages, rights or complaints at:

1- 800-252-3439

You may write the **Texas Department of Insurance**:

**P.O. Box 149104
Austin, TX 78714-9104
Fax: (512) 475-1771
Web: <http://www.tdi.state.tx.us>
E-mail: ConsumerProtection@tdi.state.tx.us**

PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim you should first contact the **Swiss Re Corporate Solutions America Insurance Corporation or Swiss Re Corporate Solutions Premier Insurance Corporation**. If the dispute is not resolved, you may contact the Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR POLICY: This notice is for information only and does not become a part or condition of the attached document.

AVISO IMPORTANTE

Para obtener informacion o para someter un queja:

Puede comunicarse con **Jeffrey Goldberg, Vice President - Claims**, al **1-800-338-0753**.

Usted puede llamar al numero de telefono gratis de **Swiss Re Corporate Solutions America Insurance Corporation o Swiss Re Corporate Solutions Premier Insurance Corporation's** para informacion o para someter una queja al:

1-800-338-0753

Usted tambien puede escribir a **Swiss Re Corporate Solutions America Insurance Corporation o Swiss Re Corporate Solutions Premier Insurance Corporation** al:

**1200 Main Street, Suite 800
Kansas City, MO 64105**

Puede escribir al **Departamento de Seguros de Texas** para obtener informacion acerca de companias, coberturas, derechos o quejas al:

1- 800-252-3439

Puede escribir al **Departamento de Seguros de Texas**:

**P.O. Box 149104
Austin, TX 78714-9104
Fax: (512) 475-1771
Web: <http://www.tdi.state.tx.us>
E-mail: ConsumerProtection@tdi.state.tx.us**

DISPUTAS SOBRE PRIMAS O RECLAMOS:

Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con el **Swiss Re Corporate Solutions America Insurance Corporation o Swiss Re Corporate Solutions Premier Insurance Corporation** primero. Si no se resuelve la disputa, puede entonces comunicarse con el Departamento de Seguros de Texas.

UNA ESTE AVISO A SU POLIZA:

Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.

MAINTENANCE BOND
Subdivision Improvements

THE STATE OF TEXAS §

COUNTY OF WILLIAMSON §

KNOW ALL BY THESE PRESENTS, that Denbow Company, Inc.
as Principal, whose address is 2780 US-290 West, Dripping Springs, TX 78620 and
SureTec Insurance Company a Corporation organized under the
laws of the State of Texas, and duly authorized to do business in the State of Texas, as
Surety, are held and firmly bound unto the City of Leander, Texas as Obligee, in the penal sum
of Seven Thousand Seventy Two and 05/100 Dollars
(\$ 7,072.05) to which payment will and truly to be made we do bind ourselves, our
and each of our heirs, executors, administrators, successors and assigns jointly and severally,
firmly by these presents.

WHEREAS, the said Principal has constructed Palmera Bluff Section 4
Public Improvement Construction Plan - Project No. 20-PICP-024 (the
“improvements”) pursuant to the ordinances of the Obligee, which ordinances are hereby
expressly made a part hereof as though the same were written and embodied herein;

WHEREAS, said Obligee requires that the Principal furnish a bond conditioned to
guarantee for the period of two (2) years after acceptance by the Obligee, against all defects in
workmanship and materials which may become apparent during said period;

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that, if the
Principal keeps and perform the requirement of the Obligee’s ordinances and this Maintenance
Bond to maintain the improvements and keep the same in good repair and shall indemnify the
Obligee for all loss that the Obligee may sustain by reason of any defective materials or
workmanship which become apparent during the period of two (2) years from and after the date
of acceptance by the Owner, then this obligation shall be void, otherwise to remain in full force
and effect, and Owner shall have and cover from said Principal and Surety damages in the
premises, as provided, and it is further agreed that this obligation shall be a continuing one
against the Principal and Surety hereon, and that successive recoveries may be had thereon for
successive breaches until the full amount shall have been exhausted; and it is further understood
that the obligation herein to maintain said improvements shall continue throughout the
maintenance period, and the same shall not be diminished in any manner from any cause during
said time.

Principal agrees to repair or reconstruct the improvements in whole or in part at any time
within the two year period to such extent as the Obligee deems necessary to properly correct all
defects except for normal wear and tear. If the Principal fails to make the necessary corrections
within ten days after being notified, the Obligee may do so or have done all said corrective work
and shall have recovery hereon for all expenses thereby incurred. Principal will maintain and
keep in good repair the improvements for a period of two years from the date of acceptance; it
being understood that the purpose of this Maintenance Bond is to cover all defective conditions
arising by reason of defective material, work, or labor performed by said Principal or its

subcontractors, and in the case the said Principal shall fail to do so within ten days after being notified, it is agreed that the Obligees may do said work and supply such materials, and charge the same against Principal and Surety on this obligation.

The Surety shall notify the Obligees at least fifteen (15) days prior to the end of the first full calendar year and prior to the lapse of this Maintenance Bond at the end of the second full calendar year.

Surety and Principal agree that whenever a defect or failure of the improvement occurs within the period of coverage under this Bond, the Surety and Principal shall provide a new maintenance bond or other surety instrument in a form acceptable to the Obligees and compliant with the Obligees' ordinances conditioned to guarantee for the period of one (1) year after the Obligees' acceptance of the corrected defect or failure, against all defects in workmanship and materials associated with the corrected defect or failure which may become apparent during said period, which shall be in addition to this Maintenance Bond.

The Surety agrees to pay the Obligees upon demand all loss and expense, including attorneys' fees, incurred by the Obligees by reason of or on account of any breach of this obligation by the Surety. Provided further, that in any legal action be filed upon this bond, venue shall lie in the county where the improvements are constructed.

This Bond is a continuing obligation and shall remain in full force and effect until cancelled as provided for herein.

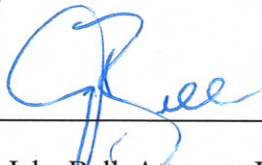
Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the improvements, or the work to be performed thereon, or the plans, specifications or drawings accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the improvements, or the work to be performed thereon.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this 5th day of May, 2023.

Denbow Company, Inc.
Principal

By: 
Title: DAVID DENBOW - PRESIDENT
Address: 2780 West Highway
290, Dripping Springs,
TX 78620

SureTec Insurance Company
Surety

By: 
Title: Jake Bell, Attorney-In-Fact
Address: 2103 CityWest Blvd., Suite 1300,
Houston, TX 77042

The name and address of the Resident Agent of Surety is:
2103 CityWest Blvd., Suite 1300, Houston, TX 77042

(Seal)



SureTec Insurance Company

LIMITED POWER OF ATTORNEY

Know All Men by These Presents, That SURETEC INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Texas, and having its principal office in Houston, Harris County, Texas, does by these presents make, constitute and appoint

Jake Bell

its true and lawful Attorney-in-fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings or other instruments or contracts of suretyship to include waivers to the conditions of contracts and consents of surety for:

Principal: Denbow Company, Inc.

Obligee: City of Leander

Amount: \$ 7,072.05

and to bind the Company thereby as fully and to the same extent as if such bond were signed by the President, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney-in-Fact may do in the premises. Said appointment is made under and by authority of the following resolutions of the Board of Directors of the SureTec Insurance Company:

Be it Resolved, that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

Attorney-in-Fact may be given full power and authority for and in the name of and of behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

Be it Resolved, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached. (Adopted at a meeting held on 20th of April, 1999.)

In Witness Whereof, SURETEC INSURANCE COMPANY has caused these presents to be signed by its President, and its corporate seal to be hereto affixed this 3rd day of February, A.D. 2023.

SURETEC INSURANCE COMPANY

By: 
Michael C. Keimig, President

State of Texas
County of Harris

ss:



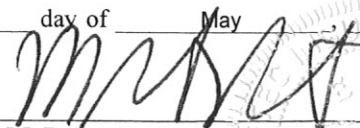
On this 3rd day of February, A.D. 2023 before me personally came Michael C. Keimig, to me known, who, being by me duly sworn, did depose and say, that he resides in Houston, Texas, that he is President of SURETEC INSURANCE COMPANY, the company described in and which executed the above instrument; that he knows the seal of said Company; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Company; and that he signed his name thereto by like order.




Tanya Sneed, Notary Public
My commission expires March 30, 2027

I, M. Brent Beaty, Assistant Secretary of SURETEC INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Company, which is still in full force and effect; and furthermore, the resolutions of the Board of Directors, set out in the Power of Attorney are in full force and effect.

Given under my hand and the seal of said Company at Houston, Texas this 5th day of May, 2023, A.D.


M. Brent Beaty, Assistant Secretary

Any instrument issued in excess of the penalty stated above is totally void and without any validity.
For verification of the authority of this power you may call (713) 812-0800 any business day between 8:30 am and 5:00 pm CST.

SureTec Insurance Company

IMPORTANT NOTICE **Statutory Complaint Notice/Filing of Claims**

To obtain information or make a complaint: You may call the Surety's toll free telephone number for information or to make a complaint or file a claim at: 1-866-732-0099. You may also write to the Surety at:

SureTec Insurance Company
9500 Arboretum Blvd., Suite 400
Austin, TX 78759

You may contact the Texas Department of Insurance to obtain information on companies, coverage, rights or complaints at 1-800-252- 3439. You may write the Texas Department of Insurance at:

PO Box 149104
Austin, TX 78714-9104
Fax#: 512-490-1007
Web: <http://www.tdi.texas.gov>
Email: ConsumerProtection@tdi.texas.gov

PREMIUM OR CLAIMS DISPUTES: Should you have a dispute concerning your premium or about a claim, you should contact the Surety first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

**FINAL BILLS PAID AFFIDAVIT
AND WAIVER OF LIEN**

STATE OF TEXAS
COUNTY OF WILLIAMSON

Date: June 13, 2023

Developer: Palmera Bluff Development, Inc.

Contractor/Material
Provider ("Affiant"): Liberty Civil Construction, LLC.

Project: **Palmera Bluff Section 4 Public Improvements Construction
Plans Project (20-PICP-024)**

This is to acknowledge and certify that Affiant has completed the construction of all improvements for the project noted above and that Affiant has been paid in full for all labor and material provided to the above-noted construction project, except for retainage, and acknowledges and certifies that Affiant, and all of his or its agents, employees, successors, assigns, subsidiaries, and legal representatives will and do release and waive all Mechanic's liens, or similar lien rights, which have or might arise as a result of the Affiant's or Affiant's agents' or employees' providing labor and materials to the above-noted project. Affiant understands that a portion or all of the property upon which the project is located has been or will be accepted by the City of Leander, Texas, for ownership, maintenance, and operation. Affiant further agrees that it shall look solely to the Developer for payment of the retainage and shall have no cause of action whatsoever, against the City in the event that the retainage is not paid to the Affiant, and that Affiant shall not file a lien of any kind which has or may arise related to the release of the retainage for the project. Affiant acknowledges and understands that the City is relying on the representations made in this document to accept the phase or portion of the subdivision in which the project is located.

In addition to the foregoing, Affiant acknowledges and certifies that Affiant has paid all laborers, subcontractors, materialmen, and all other persons or parties who have provided labor or materials through, for, or on behalf of the Affiant to the above-noted construction project.

Affiant indemnifies and holds Owner harmless from any liens, debts or obligations which arise as a result of labor or materials provided by or through Affiant to the project through the date set out above. Affiant further indemnifies and holds harmless all real property on which the improvements were constructed and all interests in such property, including leasehold interests, from any liens, debts, or obligations arising from any labor or materials provided by or through Affiant to the project through the date set out above.

Initialed: _____



SUBSCRIBED AND SWORN TO BY Affiant on this 13 day of June, 2023.

AFFIANT:

Signature: 

Typed Name: Steve Loudon

Title: Director of Project Management

STATE OF TEXAS

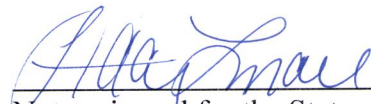
COUNTY OF WILLIAMSON

BEFORE ME the undersigned authority on this day personally appeared, Steve Loudon, known to me to be the person noted above, and acknowledged to me the following: that he/she executed the foregoing for the purpose and consideration therein expressed, in the capacity therein stated, and as the duly authorized act and deed of the party releasing and waiving the lien therein; and that every statement therein is within his/her knowledge and is true and correct.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 13th day of June, 2023.

[S E A L]




Notary in and for the State of Texas

Name: Stacy Small

My commission expires: 03/04/2024

Initialed: 

June 14, 2023

Mr. Sarvesh D. Dhakal, PE
Assistant City Engineer
City of Leander
201 N. Brushy Street
Leander, TX 78641

Attn.,

Final Costs and Quantities for
Palmera Bluff Section 4 (20-PICP-024)

Dear Sarvesh:

Please find enclosed the final costs and quantities from the general contractor, Liberty Civil Construction, LLC. The quantities break down to the following sub-totals:

Street, Grading, and Erosion Control Improvements	\$ 709,352.23
Drainage Improvements	\$ 367,364.49
Water Improvements	\$ 335,732.18
Wastewater Improvements	\$ 430,506.95
Street Light Improvements	\$ 70,720.57
Landscape Improvements	
Total	\$1,913,676.42

Maintenance Bond:

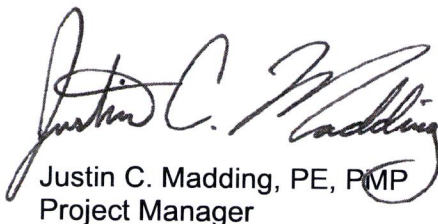
Total Improvements =	\$1,913,676.42
Maintenance Bond (10%) =	\$ 191,367.64

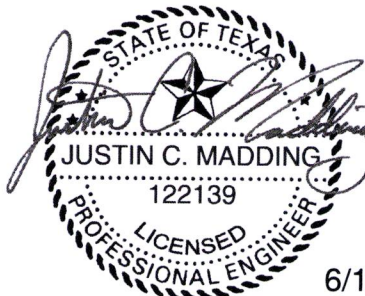
Inspection Fee:

Total Improvements =	\$1,913,676.42
Inspection Fees (3.5%) =	\$ 66,978.67
Currently Paid Inspection Fees =	\$ 53,608.20
Remaining Inspection Fees =	\$ 13,370.47

If we can be of any further assistance, please do not hesitate to call at 512-439-4700.

Sincerely,
LJA ENGINEERING, INC.


Justin C. Madding, PE, PMP
Project Manager



6/14/23

**PALMERA BLUFF SEC 4 FINAL COST AND
QUANTITIES - STREETS**

PROJECT: PALMERA BLUFF SECTION 4

A	B				C
Item No.	Description of Work	UNIT	QTY	UNIT PRICE	Scheduled Value
	STREETS				
	SUBGRADE PREPARATION	SY	6507	\$2.13	\$13,859.91
	8" BASE	SY	6507	\$10.69	\$69,559.83
	CURB & GUTTER	LF	3076	\$16.50	\$50,754.00
	2" HMAC	SY	5027	\$15.20	\$76,410.40
	STOP SIGNS W/STOP BAR	EA	3	\$800.00	\$2,400.00
	4' SIDEWALK	LF	548	\$27.27	\$14,943.96
	CURB RAMPS	EA	8	\$1,040.00	\$8,320.00
	BLUE RAISED REFLECTORS	EA	3	\$11.50	\$34.50
	STREET END MARKERS	EA	3	\$1,000.00	\$3,000.00
	SUBTOTAL STREETS				\$239,282.60
	STREETS (LOGAN DEL WAY)				
	SUBGRADE PREPARATION	SY	3032	\$2.13	\$6,458.16
	11" BASE	SY	3032	\$14.13	\$42,842.16
	CURB & GUTTER	LF	1053	\$16.50	\$17,374.50
	CROSSWALK STRIPING	EA	2	\$1,000.00	\$2,000.00
	BIKE LANE STRIPING	LS	1	\$13,989.38	\$13,989.38
	4" DOUBLE SOLID YELLOW CENTER LINE STRIPING	LF	500	\$4.18	\$2,090.00
	STREET SIGNS	EA	8	\$310.00	\$2,480.00
	STREET NAME BLADE SIGN	EA	1	\$300.00	\$300.00
	2" HMAC	SY	2452	\$15.20	\$37,270.40
	5' SIDEWALK (LOGAN DEL WAY)	LF	1086	\$30.00	\$32,580.00
	BLUE RAISED REFLECTORS	EA	1	\$11.50	\$11.50
	CURB RAMPS	EA	4	\$1,040.00	\$4,160.00
	SUBTOTAL STREETS (LOGAN DEL WAY)				\$161,556.10
	CHANGE ORDER #1				
	ADDIT BASE & GEOGRID				
	DEDUCT 8" BASE	SY	-1360	\$10.69	-\$14,538.40
	ADD 10" BASE	SY	1360	\$15.37	\$20,903.20
	ADD GEOGRID	SY	1360	\$5.17	\$7,031.20
	SIDEWALK & CURB RAMP CHANGES				
	DEDUCT 4' SIDEWALK	LF	-548	\$27.27	-\$14,943.96
	ADD 5' SIDEWALK	LF	548	\$30.00	\$16,440.00
	ADD AMENITY CENTER CURB RAMP	EA	1	\$1,040.00	\$1,040.00
	SUBTOTAL CHANGE ORDER #1				\$15,932.04

**PALMERA BLUFF SEC 4 FINAL COST AND
QUANTITIES - STREETS**

PROJECT: PALMERA BLUFF SECTION 4

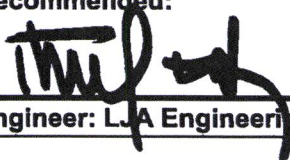
A	B				C
Item No.	Description of Work	UNIT	QTY	UNIT PRICE	Scheduled Value
GRAND TOTAL					\$416,770.74

Approved:

PALMERA BLUFF DEVELOPMENT, INC.

Date

Recommended:



Engineer: LJA Engineering

5/17/23
Date

FINAL COST AND QUANTITIES PALMERA BLUFF
4 - UTILITIES

5/17/2023

PROJECT: PALMERA BLUFF SECTION 4

A	B				C
Item No.	Description of Work	UNIT	QTY	UNIT PRICE	Scheduled Value
	CLEARING AND EXCAVATION				
	CLEARING (ROW)	SY	5261	\$4.99	\$26,252.39
	CLEARING (UTILITIES OUTSIDE ROW)	SY	261	\$0.69	\$180.09
	EXCAVATION/EMBANKMENT (ROW)	SY	5261	\$22.41	\$117,899.01
	SUBTOTAL CLEARING AND EXCAVATION				\$144,331.49
	DRAINAGE				
	18" RCP	LF	671	\$69.97	\$46,949.87
	24" RCP	LF	339	\$86.05	\$29,170.95
	30" RCP	LF	42	\$137.25	\$5,764.50
	INLETS 10-FOOT (4' DEEP)	EA	7	\$5,351.59	\$37,461.13
	INLETS 10-FOOT (4.5' DEEP)	EA	2	\$5,489.15	\$10,978.30
	INLETS 10-FOOT (5.2' DEEP)	EA	1	\$5,656.06	\$5,656.06
	18" STANDARD HEADWALL W/ENERGY DISSIPATORS	EA	1	\$5,918.68	\$5,918.68
	24" STANDARD HEADWALL W/ENERGY DISSIPATORS	EA	1	\$6,313.13	\$6,313.13
	MORTARED ROCK RIP-RAP 10"-12" ROCK	SY	22	\$304.21	\$6,692.62
	5' STORM SEWER MANHOLES	EA	3	\$5,864.97	\$17,594.91
	JELLYFISH FILTER	LS	1	\$111,586.94	\$111,586.94
	SUBTOTAL DRAINAGE				\$284,087.09
	WATER				
	8" PVC-900	LF	1228	\$59.24	\$72,746.72
	12" PVC-900	LF	183	\$111.58	\$20,419.14
	5 1/4" FIRE HYDRANT ASSEMBLY (Including but not limited to: 6" Tee, 6" Gate Valve and 6" DI Lead)	EA	3	\$8,302.69	\$24,908.07
	8" GATE VALVE	EA	3	\$2,691.29	\$8,073.87
	12" GATE VALVE	EA	1	\$4,470.56	\$4,470.56
	DOUBLE SERVICE	EA	14	\$2,266.66	\$31,733.24
	SINGLE SERVICE	EA	8	\$1,912.07	\$15,296.56
	2" IRRIGATION SERVICES	EA	3	\$7,860.38	\$23,581.14
	2-4" IRRIGATION SLEEVES	EA	2	\$4,304.10	\$8,608.20

FINAL COST AND QUANTITIES PALMERA BLUFF
4 - UTILITIES

5/17/2023

PROJECT: PALMERA BLUFF SECTION 4

A	B				C
Item No.	Description of Work	UNIT	QTY	UNIT PRICE	Scheduled Value
	ADJUST VALVE CASTINGS	EA	7	\$219.52	\$1,536.64
	INSTALL 8" PLUG	EA	1	\$658.02	\$658.02
	WET CONNECT	EA	2	\$3,470.82	\$6,941.64
	INSTALL BLOW OFF VALVE	EA	1	\$3,457.89	\$3,457.89
	2" AARV	EA	2	\$5,079.71	\$10,159.42
	SUBTOTAL WATER				\$232,591.11
	WASTEWATER				
	8" PVC SDR26 (0-8')	LF	63	\$81.98	\$5,164.74
	8" PVC SDR26 (8-10')	LF	62	\$86.55	\$5,366.10
	8" PVC SDR26 (10-12')	LF	56	\$93.81	\$5,253.36
	8" PVC SDR26 (12-14')	LF	57	\$100.56	\$5,731.92
	8" PVC SDR26 (18-20')	LF	58	\$116.14	\$6,736.12
	8" PVC SDR26 (20-22')	LF	218	\$155.36	\$33,868.48
	8" PVC SDR26 (22-24')	LF	274	\$182.72	\$50,065.28
	SINGLE SERVICE	EA	2	\$2,847.77	\$5,695.54
	DOUBLE SERVICE	EA	9	\$3,683.22	\$33,148.98
	DOUBLE SERVICE ON EXISTING WYE	EA	9	\$4,205.93	\$37,853.37
	4' DIA MANHOLES	EA	1	\$5,862.63	\$5,862.63
	5' DIA MANHOLES	EA	3	\$8,655.46	\$25,966.38
	EXTRA DEPTH MANHOLES	VLF	40	\$687.10	\$27,484.00
	ADJUST MANHOLE CASTINGS	EA	4	\$531.32	\$2,125.28
	ADJUST EXISTING MANHOLE CASTINGS	EA	8	\$854.55	\$6,836.40
	CONNECT TO EXISTING WW MANHOLE	EA	1	\$2,769.95	\$2,769.95
	SUBTOTAL WASTEWATER				\$259,928.53
	EROSION CONTROL				
	REVEG INCLUDING VEGETATIVE FILTER STRIP	SY	11588	\$2.89	\$33,489.32
	GUARD RAIL	LF	81	\$175.48	\$14,213.88
	SUBTOTAL EROSION CONTROL IMPROVEMENTS				\$47,703.20
	LOGAN DEL WAY				
	CLEARING AND EXCAVATION				
	CLEARING (ROW)	SY	4140	\$5.10	\$21,114.00
	EXCAVATION/EMBANKMENT (ROW)	SY	4140	\$18.15	\$75,141.00
	SUBTOTAL CLEARING AND EXCAVATION				\$96,255.00
	DRAINAGE				
	18" RCP	LF	157	\$70.34	\$11,043.38
	24" RCP	LF	475	\$85.08	\$40,413.00

FINAL COST AND QUANTITIES PALMERA BLUFF
4 - UTILITIES

5/17/2023

PROJECT: PALMERA BLUFF SECTION 4

A	B				C
Item No.	Description of Work	UNIT	QTY	UNIT PRICE	Scheduled Value
	INLETS 10-FOOT	EA	4	\$5,312.13	\$21,248.52
	5' STORM SEWER MANHOLES	EA	2	\$5,286.25	\$10,572.50
	SUBTOTAL DRAINAGE				\$83,277.40
	WATER				
	12" PVC-900	LF	608	\$121.60	\$73,932.80
	5 1/4" FIRE HYDRANT ASSEMBLY (Including but not limited to: 6" Tee, 6" Gate Valve and 6" DI Lead)	EA	1	\$8,651.32	\$8,651.32
	12" GATE VALVE	EA	2	\$4,467.91	\$8,935.82
	WET CONNECT	EA	1	\$3,677.94	\$3,677.94
	SINGLE SERVICE	EA	1	\$1,710.10	\$1,710.10
	2-4" IRRIGATION SLEEVES	EA	1	\$5,574.65	\$5,574.65
	ADJUST VALVE CASTINGS	EA	3	\$219.48	\$658.44
	SUBTOTAL WATER				\$103,141.07
	WASTEWATER				
	8" PVC SDR26 (22-24')	LF	454	\$182.85	\$83,013.90
	DOUBLE SERVICE	EA	1	\$3,841.60	\$3,841.60
	5' DIA MANHOLES	EA	3	\$8,584.16	\$25,752.48
	5' DIA DROP MANHOLES	EA	1	\$12,559.75	\$12,559.75
	EXTRA DEPTH MANHOLES	VLF	63	\$687.07	\$43,285.41
	ADJUST MANHOLE CASTINGS	EA	4	\$531.32	\$2,125.28
	SUBTOTAL WASTEWATER				\$170,578.42
	EROSION CONTROL				
	REVEG	SY	1555	\$2.76	\$4,291.80
	SUBTOTAL EROSION CONTROL IMPROVEMENTS				\$4,291.80
	GRAND TOTAL				\$1,426,185.11

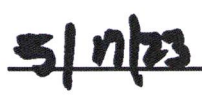
Approved:

PALMERA BLUFF DEVELOPMENT, INC.

DATE

Recommended:





Engineer: LJA Engineering

DATE



EXECUTIVE SUMMARY
07/06/2023

AGENDA SUBJECT:

Acceptance of public infrastructure improvements for Horizon Lake Phase 3 Sections 1 and 2.

BACKGROUND:

The public infrastructure improvements required for the Horizon Lake Phase 3 Sections 1 & 2 Subdivision have been installed, inspected, and are satisfactorily completed. All documentation required for acceptance of this subdivision have been received, including record drawings, statement of substantial completion prepared by a professional engineer licensed in the State of Texas, copies of all inspection reports and certified test results, electronic files of the improvements and final plat, affidavit of all bills paid, and a two (2)- year term maintenance bond.

The maintenance bond will commence its two (2)- year term upon City Council acceptance, as anticipated, on July 6, 2023, which will provide warranty and maintenance coverage for the public infrastructure improvements through July 6, 2025. The Engineering Department will perform a formal inspection of the improvements approximately thirty (30) days prior to the expiration of the maintenance bond to assure that any defects in materials, construction, or maintenance are corrected prior to expiration of the bond.

RECOMMENDATION:

Staff recommends City Council's formal acceptance of the public infrastructure improvements for Horizon Lake Phase 3 Sections 1 & 2.

PRESENTER:

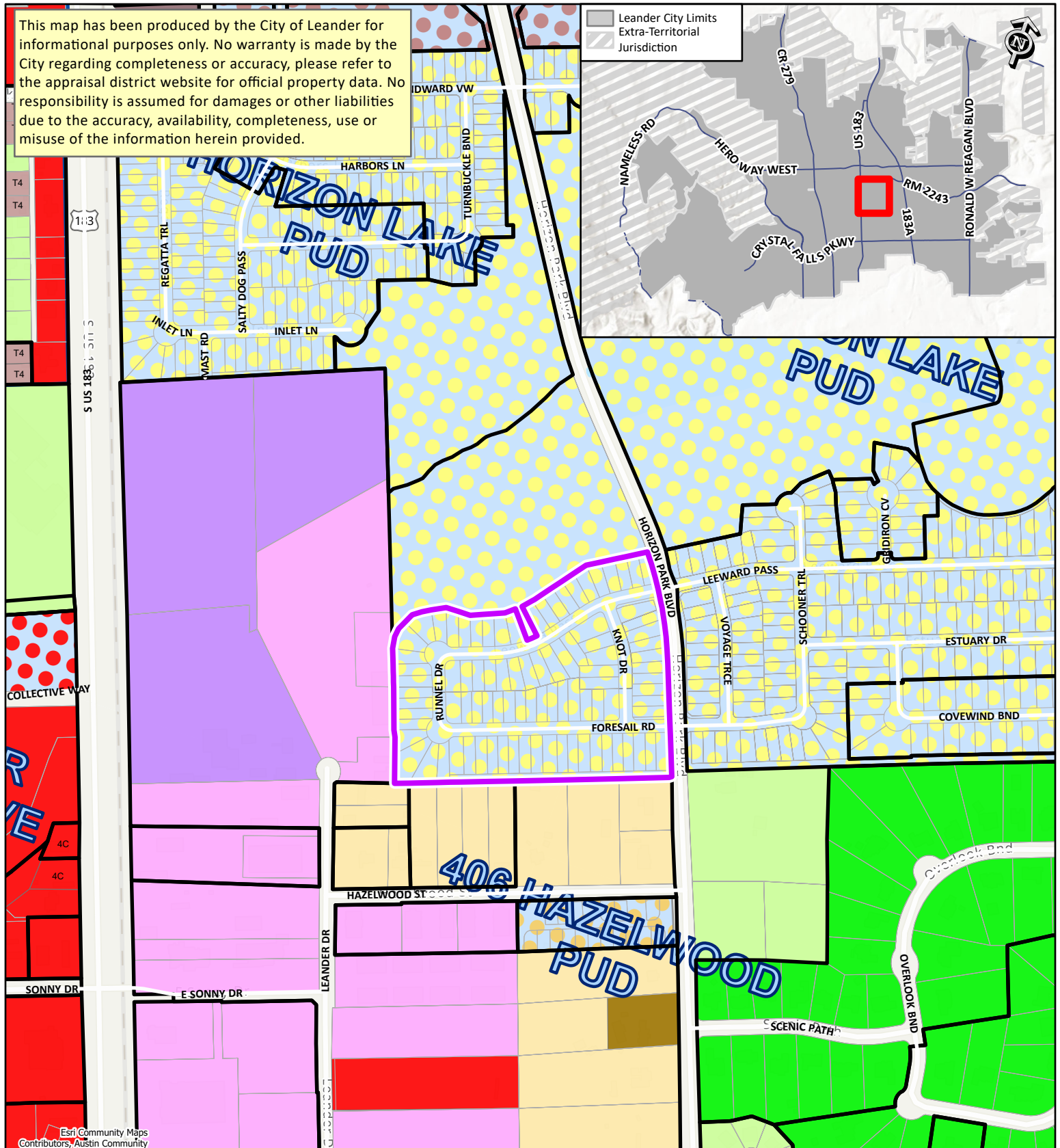
Emily Truman, P.E., CFM, PMP, City Engineer

Attachments

1. Acceptance Documents - Horizon Lake Phase 3 Sections 1 & 2

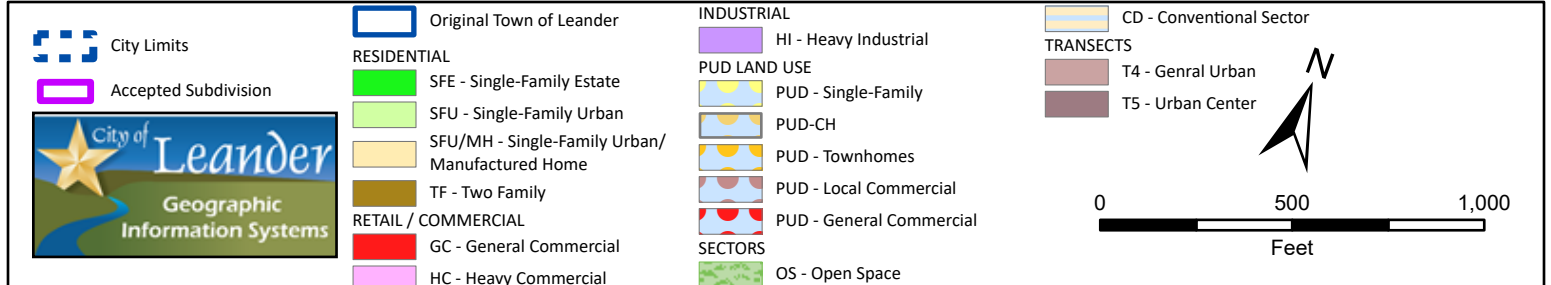
This map has been produced by the City of Leander for informational purposes only. No warranty is made by the City regarding completeness or accuracy, please refer to the appraisal district website for official property data. No responsibility is assumed for damages or other liabilities due to the accuracy, availability, completeness, use or misuse of the information herein provided.

Leander City Limits
Extra-Territorial
Jurisdiction



SUBDIVISION ACCEPTANCE

Horizon Lake Ph 3 Sec 1 & 2





May 31, 2023

Michael Slack
Taylor Morrison
9601 Amberglen Blvd., Bldg. G, Ste. 200
Austin, Texas 78729

TDLR Project No.: TABS2022011524

PROJECT:

Horizon Lake, Phase 3, Sections 1 & 2
RM 2243 and Horizon Park Blvd.
Leander, TX 78641

CORRECTIVE MODIFICATIONS – NO VIOLATIONS

Dear Michael:

Your submittal regarding the referenced violations pending report has been reviewed. We are pleased to inform you that all items cited in the inspection report appear to be in substantial compliance with requirements of the Texas Government Code, Chapter 469.

These results will be forwarded to the Texas Department of Licensing and Regulation for issuance of the final approval letter. For newly constructed buildings and facilities, the Department will provide a Notice of Substantial Compliance (Certificate and Decal) to the owner upon receipt of a completed Notice of Substantial Compliance Request Form.

This determination is applicable only to ensuring compliance with Texas Government Code, Chapter 469 and does not address the requirements of the Americans with Disabilities Act (ADA), (P.L. 101-336), or any other federal, state, or local requirement. For information on the ADA, call the ADA Hotline, (800) 949-4232 or the United States Department of Justice at (202) 514-0301.

Please reference the TDLR Project Number in all future correspondence pertaining to this project.

Sincerely,

A handwritten signature in dark ink, reading 'Jesús Lardizábal'.

Jesús Lardizábal, RAS #1051

June 5, 2023

Emily Truman, P.E., CFM
City of Leander City Engineer
P.O. Box 319
Leander, TX 78646

RE: Horizon Lake Phase 3, Sections 1 & 2 - Subdivision Improvements
App. No.: 21-PICP-043
Engineer's Concurrence

Dear Ms. Truman,

This letter is to inform you that I, and/or my designated representative, have made a final visual observation of the above referenced project. I have also visited the site during construction and observed the installation of street, drainage, water, and wastewater improvements. Based on these observations, I hereby certify that these improvements were completed in substantial conformance with the approved plans and specifications.

Please feel free to contact me if you need any additional information or have any further questions.

Sincerely,
Pape-Dawson Engineers, Inc.
Texas Board of Professional Engineers, Firm Registration # 470



Michael Fisher, P.E.
Senior Vice President



H:\Projects\510\95\04\301 Construction Documents\Documents\Plan Processing\City\Closeout\Concurrence Letter\HORIZON LAKE PH 3 SEC 1-2 - ENGINEERS CONCURRENCE.docx

MAINTENANCE BOND
Subdivision Improvements

Bond #276980C

THE STATE OF TEXAS §

COUNTY OF WILLIAMSON §

KNOW ALL BY THESE PRESENTS, that JL Gray Construction, Inc.
as Principal, whose address is 408 Fannin Avenue, Round Rock, TX 78664 and
Westfield Insurance Company a Corporation organized under the
laws of the State of Ohio, and duly authorized to do business in the State of Texas, as
Surety, are held and firmly bound unto the City of Leander, Texas as Obligee, in the penal sum
of Two Hundred Twenty Seven Thousand Sixty Seven and 63/100 Dollars
(\$227,067.63) to which payment will and truly to be made we do bind ourselves, our and each of
our heirs, executors, administrators, successors and assigns jointly and severally, firmly by these
presents.

WHEREAS, the said Principal has constructed Horizon Lake Phase 2, Section 1 Public
Improvements Construction Plans (21-PICP-013) (the "improvements") pursuant to the
ordinances of the Obligee, which ordinances are hereby expressly made a part hereof as though
the same were written and embodied herein;

WHEREAS, said Obligee requires that the Principal furnish a bond conditioned to
guarantee for the period of two (2) years after acceptance by the Obligee, against all defects in
workmanship and materials which may become apparent during said period;

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that, if the
Principal keeps and perform the requirement of the Obligee's ordinances and this Maintenance
Bond to maintain the improvements and keep the same in good repair and shall indemnify the
Obligee for all loss that the Obligee may sustain by reason of any defective materials or
workmanship which become apparent during the period of two (2) years from and after the date
of acceptance by the Owner, then this obligation shall be void, otherwise to remain in full force
and effect, and Owner shall have and cover from said Principal and Surety damages in the
premises, as provided, and it is further agreed that this obligation shall be a continuing one
against the Principal and Surety hereon, and that successive recoveries may be had thereon for
successive breaches until the full amount shall have been exhausted; and it is further understood
that the obligation herein to maintain said improvements shall continue throughout the
maintenance period, and the same shall not be diminished in any manner from any cause during
said time.

Principal agrees to repair or reconstruct the improvements in whole or in part at any time
within the two year period to such extent as the Obligee deems necessary to properly correct all
defects except for normal wear and tear. If the Principal fails to make the necessary corrections
within ten days after being notified, the Obligee may do so or have done all said corrective work
and shall have recovery hereon for all expenses thereby incurred. Principal will maintain and
keep in good repair the improvements for a period of two years from the date of acceptance; it
being understood that the purpose of this Maintenance Bond is to cover all defective conditions
arising by reason of defective material, work, or labor performed by said Principal or its

subcontractors, and in the case the said Principal shall fail to do so within ten days after being notified, it is agreed that the Obligee may do said work and supply such materials, and charge the same against Principal and Surety on this obligation.

The Surety shall notify the Obligee at least fifteen (15) days prior to the end of the first full calendar year and prior to the lapse of this Maintenance Bond at the end of the second full calendar year.

Surety and Principal agree that whenever a defect or failure of the improvement occurs within the period of coverage under this Bond, the Surety and Principal shall provide a new maintenance bond or other surety instrument in a form acceptable to the Obligee and compliant with the Obligee's ordinances conditioned to guarantee for the period of one (1) year after the Obligee's acceptance of the corrected defect or failure, against all defects in workmanship and materials associated with the corrected defect or failure which may become apparent during said period, which shall be in addition to this Maintenance Bond.

The Surety agrees to pay the Obligee upon demand all loss and expense, including attorneys' fees, incurred by the Obligee by reason of or on account of any breach of this obligation by the Surety. Provided further, that in any legal action be filed upon this bond, venue shall lie in the county where the improvements are constructed.

This Bond is a continuing obligation and shall remain in full force and effect until cancelled as provided for herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the improvements, or the work to be performed thereon, or the plans, specifications or drawings accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the improvements, or the work to be performed thereon.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this 10th day of March, 2023.

JL Gray Construction, Inc.

Principal

By: 

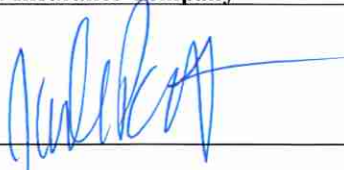
Title: VICE PRESIDENT

Address: 408 Fannin Avenue

Round Rock, TX 78664

Westfield Insurance Company

Surety

By: 

Title: Jade Porter, Attorney-in-Fact

Address: 2255 Ridge Road, Suite 333

Rockwall, TX 75087

The name and address of the Resident Agent of Surety is:

Jack Nottingham

2255 Ridge Road, Suite 333, Rockwall, TX 75087

(Seal)

RIDER

To be attached to and form a part of **Maintenance Bond** Bonds, No. **276980C**

dated the **10th** day of **March** **2023**, issued by the

Westfield Insurance Company, as Surety, on behalf of

JL Gray Construction, Inc., as Principal,

in the penal sum of **Two Hundred Twenty-Seven Thousand Sixty-Seven and 63/100** Dollars (**\$227,067.63**),

and in favor of **City of Leander**

In consideration of the premium charged for the attached bond, it is hereby agreed that the attached bond be amended as follows:

The Legal Project name is being corrected from Horizon Lake Phase 2, Section 1 Public Improvements Construction Plans (21-PICP-013) to Horizon Lake Phase 3, Sections 1 & 2 Public Improvements (21-PICP-043) per the City of Leander.

Provided, However, that the attached bond shall be subject to all its agreements, limitations and conditions except as herein expressly modified, and further that the liability of the Surety under the attached bond and the attached bond as amended by this rider shall not be cumulative.

This rider shall become effective as of the **10th** day of **March** **2023**

Signed, sealed and dated this **21st** day of **June** **2023**

ATTEST:

PRINCIPAL

JL Gray Construction, Inc.

By

SURETY

Westfield Insurance Company

ACCEPTED BY OWNER:
City of Leander

By

By

Jack Nottingham, Attorney-in-Fact

THIS POWER OF ATTORNEY SUPERCEDES ANY PREVIOUS POWER BEARING THIS SAME POWER # AND ISSUED PRIOR TO 05/25/22, FOR ANY PERSON OR PERSONS NAMED BELOW.

POWER NO. 4220012 14

General
Power
of Attorney

Westfield Insurance Co.
Westfield National Insurance Co.
Ohio Farmers Insurance Co.
Westfield Center, Ohio

CERTIFIED COPY

Know All Men by These Presents, That WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, corporations, hereinafter referred to individually as a "Company" and collectively as "Companies," duly organized and existing under the laws of the State of Ohio, and having its principal office in Westfield Center, Medina County, Ohio, do by these presents make, constitute and appoint
TONY FIERRO, JOHNNY MOSS, JAY JORDAN, MISTIE BECK, JEREMY BARNETT, JADE PORTER, ROBERT G. KANUTH, JARRETT WILLSON, JACK NOTTINGHAM, BRADY WILSON, BRENNAN WILLIAMSON, JOINTLY OR SEVERALLY

of **ROCKWALL** and State of **TX** its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver **any and all bonds, recognizances, undertakings, or other instruments or contracts of suretyship in any penal limit.**

LIMITATION: THIS POWER OF ATTORNEY CANNOT BE USED TO EXECUTE NOTE GUARANTEE, MORTGAGE DEFICIENCY, MORTGAGE GUARANTEE, OR BANK DEPOSITORY BONDS.

and to bind any of the Companies thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the applicable Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises. Said appointment is made under and by authority of the following resolution adopted by the Board of Directors of each of the WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY:

"Be It Resolved, that the President, any Senior Executive, any Secretary or any Fidelity & Surety Operations Executive or other Executive shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

The Attorney-in-Fact may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements of indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed by the President and sealed and attested by the Corporate Secretary."

"Be it Further Resolved, that the signature of any such designated person and the seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signatures or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached." (Each adopted at a meeting held on February 8, 2000).

In Witness Whereof, WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY have caused these presents to be signed by their **National Surety Leader** and **Senior Executive** and their corporate seals to be hereto affixed this **25th** day of **MAY** A.D., **2022**.

Corporate
Seals
Affixed



WESTFIELD INSURANCE COMPANY
WESTFIELD NATIONAL INSURANCE COMPANY
OHIO FARMERS INSURANCE COMPANY

By:
Gary W. Stumper, National Surety Leader and Senior Executive

State of Ohio
County of Medina ss.:

On this **25th** day of **MAY** A.D., **2022**, before me personally came **Gary W. Stumper** to me known, who, being by me duly sworn, did depose and say, that he resides in **Medina, OH**; that he is **National Surety Leader and Senior Executive** of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, the companies described in and which executed the above instrument; that he knows the seals of said Companies; that the seals affixed to said instrument are such corporate seals; that they were so affixed by order of the Boards of Directors of said Companies; and that he signed his name thereto by like order.

Notarial
Seal
Affixed



David A. Kotnik, Attorney at Law, Notary Public
My Commission Does Not Expire (Sec. 147.03 Ohio Revised Code)

State of Ohio
County of Medina ss.:

I, **Frank A. Carrino**, Secretary of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Companies, which is still in full force and effect; and furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seals of said Companies at Westfield Center, Ohio, this **21st** day of **June** A.D., **2023**.



Frank A. Carrino, Secretary

**IMPORTANT NOTICE
STATE OF TEXAS
COMPLAINT PROCEDURES**

1. IMPORTANT NOTICE

To obtain information or make a complaint:

2. You may contact your agent.

3. You may call **Westfield Insurance Company, Westfield National Insurance Company, and/or Ohio Farmers Insurance Company's** toll-free telephone number for information or to make a complaint at:

1-800-243-0210

4. You may also write to **Westfield Insurance Company, Westfield National Insurance Company, and/or Ohio Farmers Insurance Company** at:

**Attn: Bond Claims
One Park Circle
P O Box 5001
Westfield Center, OH 44251-5001
Fax #330-887-0840**

5. You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

1-800-252-3439

6. You may write to the Texas Department of Insurance, Consumer Protection Section (MC 111-1A):

P.O. Box 149091
Austin, TX 78714-9091
Fax: (512) 490-1007
Web: www.tdi.texas.gov
E-mail: ConsumerProtection@tdi.texas.gov

7. PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim, you should contact the agent, Westfield Insurance Company, Westfield National Insurance Company, or Ohio Farmers Insurance Company first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

8. ATTACH THIS NOTICE TO YOUR POLICY:

This notice is for information only and does not become a part or condition of the attached document.

AVISO IMPORTANTE

Para obtener informacion o para someter una queja:

Puede comunicarse con su (title) al (telephone number).

Usted puede llamar al numero de telefono gratis de **Westfield Insurance Company, Westfield National Insurance Company, and/or Ohio Farmers Insurance Company's** para informacion o para someter una queja al:

1-800-243-0210

Usted tambien puede escribir a **Westfield Insurance Company, Westfield National Insurance Company, and/or Ohio Farmers Insurance Company**:

**Attn: Bond Claims
One Park Circle
P O Box 5001
Westfield Center, OH 44251-5001
Fax #330-887-0840**

Puede comunicarse con el Departamento de Seguros de Texas para obtener informacion acerca de companies, coberturas, derechos o quejas al:

1-800-252-3439

Puede escribir al Departamento de Seguros de Texas, Consumer Protection Section (MC 111-1A):

P.O. Box 149091
Austin, TX 78714-9091
Fax: (512) 490-1007
Web: www.tdi.texas.gov
E-mail: ConsumerProtection@tdi.texas.gov

DISPUTAS SOBRE PRIMAS O RECLAMOS:

Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con el agente, Westfield Insurance Company, Westfield National Insurance Company, o Ohio Farmers Insurance Company primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI).

UNA ESTE AVISO A SU POLIZA: Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.

General
Power
of Attorney

CERTIFIED COPY

POWER NO. 4220012 14

Westfield Insurance Co.
Westfield National Insurance Co.
Ohio Farmers Insurance Co.
Westfield Center, Ohio

Know All Men by These Presents, That WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, corporations, hereinafter referred to individually as a "Company" and collectively as "Companies," duly organized and existing under the laws of the State of Ohio, and having its principal office in Westfield Center, Medina County, Ohio, do by these presents make, constitute and appoint
TONY FIERRO, JOHNNY MOSS, JAY JORDAN, MISTIE BECK, JEREMY BARNETT, JADE PORTER, ROBERT G. KANUTH, JARRETT WILLSON, JACK NOTTINGHAM, BRADY WILSON, BRENNAN WILLIAMSON, JOINTLY OR SEVERALLY

of **ROCKWALL** and State of **TX** its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings, or other instruments or contracts of suretyship in any penal limit. - - - - -

LIMITATION: THIS POWER OF ATTORNEY CANNOT BE USED TO EXECUTE NOTE GUARANTEE, MORTGAGE DEFICIENCY, MORTGAGE GUARANTEE, OR BANK DEPOSITORY BONDS.

and to bind any of the Companies thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the applicable Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises. Said appointment is made under and by authority of the following resolution adopted by the Board of Directors of each of the WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY:

"Be It Resolved, that the President, any Senior Executive, any Secretary or any Fidelity & Surety Operations Executive or other Executive shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

The Attorney-in-Fact may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements of indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed by the President and sealed and attested by the Corporate Secretary."

"Be it Further Resolved, that the signature of any such designated person and the seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signatures or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached." (Each adopted at a meeting held on February 8, 2000).

In Witness Whereof, WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY have caused these presents to be signed by their **National Surety Leader and Senior Executive** and their corporate seals to be hereto affixed this 25th day of **MAY** A.D., 2022 .

Corporate
Seals
Affixed



WESTFIELD INSURANCE COMPANY
WESTFIELD NATIONAL INSURANCE COMPANY
OHIO FARMERS INSURANCE COMPANY

By:

Gary W. Stumper, National Surety Leader and
Senior Executive

State of Ohio
County of Medina ss.:

On this 25th day of **MAY** A.D., 2022 , before me personally came **Gary W. Stumper** to me known, who, being by me duly sworn, did depose and say, that he resides in **Medina, OH**; that he is **National Surety Leader and Senior Executive** of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, the companies described in and which executed the above instrument; that he knows the seals of said Companies; that the seals affixed to said instrument are such corporate seals; that they were so affixed by order of the Boards of Directors of said Companies; and that he signed his name thereto by like order.

Notarial
Seal
Affixed



David A. Kotnik, Attorney at Law, Notary Public
My Commission Does Not Expire (Sec. 147.03 Ohio Revised Code)

State of Ohio
County of Medina ss.:

I, **Frank A. Carrino**, Secretary of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Companies, which is still in full force and effect; and furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seals of said Companies at Westfield Center, Ohio, this 10th day of **March** A.D., 2023 .



Frank A. Carrino, Secretary

June 21, 2023

Sarvesh Dhakal, P.E.
Engineer
201 N. Brushy Street
Leander, Texas 78646

RE: Horizon Lake Phase 3, Sections 1 & 2
App. No.: 21-PICP-043
Final Cost Certification

Dear Mr. Dhakal:

Following is the information as applicable for items that will be owned and maintained by the City within this project:

Final Plat Legal Name as Recorded: Horizon Lake, Phase 3, Sections 1 & 2.

Name on Approved Construction Documents: Horizon Lake, Phase 3, Sections 1 & 2.

Name on Bank Bond for Fiscal Posting: Horizon Lake Phase 3, Sections 1 & 2 Public Improvements Construction Plans (21-PICP-043).

HORIZON LAKE PHASE 3, SECTION 1

COST SUMMARY

Street Improvements:	\$201,755.75
Water Improvements:	\$148,390.00
Wastewater Improvements:	\$311,971.75
Drainage Improvements:	\$533,583.50
Streetlight Improvements:	\$ 79,400.00
TOTAL:	\$1,275,101.00

HORIZON LAKE PHASE 3, SECTION 2

COST SUMMARY

Street Improvements:	\$186,672.75
Water Improvements:	\$172,995.00
Wastewater Improvements:	\$186,986.75
Drainage Improvements:	\$387,220.75
Streetlight Improvements:	\$ 61,700.00
TOTAL:	\$995,575.25

HORIZON LAKE PHASE 3, SECTIONS 1 & 2

MAINTENANCE BOND

Total Improvements	\$2,270,676.25
Maintenance Bond (10%)	\$ 227,067.63

INSPECTION FEES

Total Cost of Improvements	\$2,270,676.25
3.5% Inspection Fees Owed to City	\$ 79,473.67
Inspection Fees Paid at Submittal	\$ 59,749.79
Inspection Fees Owed to City	\$ 19,723.88

ENGINEER'S CONTACT INFORMATION

Michael Fisher, P.E.
Pape-Dawson Consulting Engineers, LLC
10801 N. Mopac Expressway. Building 3, Suite 200
Austin, TX 78759
mfisher@pape-dawson.com
(512) 454-8711

Please call if you have any questions.

Sincerely,
Pape-Dawson Consulting Engineers, LLC.
Texas Board of Professional Engineers, Firm Registration # 470



Michael Fisher, P.E.
Senior Vice President



**FINAL BILLS PAID AFFIDAVIT
AND WAIVER OF LIEN**

STATE OF TEXAS
COUNTY OF Williamson

Date: 3/10/2023

Developer: Taylor Morrison of Texas Inc. & Pulte Group Inc.

Contractor/Material
Provider ("Affiant"): JL Gray Construction

Project : Horizon Lake Phase 3, Sections 1 & 2 Public Improvement Construction Plans (21-PICP-043)

This is to acknowledge and certify that Affiant has completed the construction of all improvements for the project noted above and that Affiant has been paid in full for all labor and material provided to the above-noted construction project, except for retainage, and acknowledges and certifies that Affiant, and all of his or its agents, employees, successors, assigns, subsidiaries, and legal representatives will and do release and waive all Mechanic's liens, or similar lien rights, which have or might arise as a result of the Affiant's or Affiant's agents' or employees' providing labor and materials to the above-noted project. Affiant understands that a portion or all of the property upon which the project is located has been or will be accepted by the City of Leander, Texas, for ownership, maintenance, and operation. Affiant further agrees that it shall look solely to the Developer for payment of the retainage and shall have no cause of action whatsoever, against the City in the event that the retainage is not paid to the Affiant, and that Affiant shall not file a lien of any kind which has or may arise related to the release of the retainage for the project. Affiant acknowledges and understands that the City is relying on the representations made in this document to accept the phase or portion of the subdivision in which the project is located.

In addition to the foregoing, Affiant acknowledges and certifies that Affiant has paid all laborers, subcontractors, materialmen, and all other persons or parties who have provided labor or materials through, for, or on behalf of the Affiant to the above-noted construction project.

Affiant indemnifies and holds Owner harmless from any liens, debts or obligations which arise as a result of labor or materials provided by or through Affiant to the project through the date set out above. Affiant further indemnifies and holds harmless all real property on which the improvements were constructed and all interests in such property, including leasehold interests, from any liens, debts, or obligations arising from any labor or materials provided by or through Affiant to the project through the date set out above.

SUBSCRIBED AND SWORN TO BY Affiant on this 10th day of March, 2023.

Initialed: CK

AFFIANT:

Signature: _____

Cole Kenyon

Typed Name: Cole Kenyon

Title: Project Manager

STATE OF TEXAS

COUNTY OF Williamson

BEFORE ME the undersigned authority on this day personally appeared Cole Kenyon, known to me to be the person noted above, and acknowledged to me the following: that he/she executed the foregoing for the purpose and consideration therein expressed, in the capacity therein stated, and as the duly authorized act and deed of the party releasing and waiving the lien therein; and that every statement therein is within his/her knowledge and is true and correct.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 10th day of March 2023

[S E A L]



Notary in and for the State of Texas

Name: _____

Teresa Bortle

My

03-17-2024

commission

expires:

Initialed: CK



EXECUTIVE SUMMARY
07/06/2023

AGENDA SUBJECT:

Award of Solicitation S23-013 to Chasco Constructors, for construction services for Raider Way and East Woodview Drive (CIP T.12), in the amount of \$15,164,644.00; and authorize the City Manager to execute any and all necessary documents.

BACKGROUND:

In 2016, the City approved bonds for reconstruction, widening, and improvements to Raider Way and East Woodview Drive, adjacent to Rouse High School and Wiley Middle School, as proposed project T.12 Raider Way and East Woodview Drive Roadway Improvements in response to safety concerns and traffic congestion immediately adjacent to the two (2) schools. The road improvements will include widening Raider Way, providing for a center turn lane and better controlled crosswalks, northward from Crystal Falls Parkway to East Woodview Drive, adding center islands and turn lanes on East Woodview Drive between Raider Way and Tollway 183A, adjusting traffic signals, correcting drainage, adding detention ponds, replacing adjacent utilities underground, and increasing the water line size along East Woodview Drive.

HISTORY/TIMELINE:

07/07/2016 – City Council approved hiring Walker Partners, to assess, engineer, and design the improvements.
05/22/2023 – Engineered drawings were approved and permitted.
06/20/2023 – Five (5) bids were received; Chasco Constructors was deemed the lowest, qualified bid.

RECOMMENDATION:

Staff recommends award of Solicitation S23-013 to Chasco Constructors, for CIP T.12, in the amount of \$15,164,644.00; and authorize the City Manager to execute any and all necessary documents.

PRESENTER:

Tony Bettis, CIP Program Manager

Fiscal Impact

<u>Amount requested:</u>	\$15,164,644
<u>Approved in current budget (Yes / No):</u>	Yes
<u>Expenditure (New / Amended):</u>	New
<u>Recurring or one-time:</u>	One-Time
<u>Fund source (Operating / Utility / etc.):</u>	2016 & 2018 GO & W Imp Fees

Attachments

1. Contract Document
2. Recommendation & Bid Tabs

AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

This Agreement is by and between **CITY OF LEANDER** ("Owner") and **CHASCO CONSTRUCTORS** ("Contractor").

Terms used in this Agreement have the meanings stated in the General Conditions and the Supplementary Conditions.

Owner and Contractor hereby agree as follows:

ARTICLE 1—WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

The Work shall consist of the reconstruction and widening of Raider Way and East Woodview Drive, adding a deceleration turn lane from 183A Toll NB frontage Rd onto East Woodview Drive, a roundabout at the intersection of Raider Way and East Woodview Drive, and improvements including sidewalks, bike lanes, driveway improvements, roadway illumination, intersection and pedestrian crossing signal improvements, storm drain improvements, water line improvements, landscaping, water quality and detention facilities, relocation of existing overhead utilities into an underground duct bank, and relocation of existing water, wastewater, gas, and other utility lines as necessary.

ARTICLE 2—THE PROJECT

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: **T.12 - Construction services for the delivery of the of the improvements to Raider Way and Woodview Drive**

ARTICLE 3—ENGINEER

- 3.01 The Owner has retained Walker **Partners** ("Engineer") to act as Owner's representative, assume all duties and responsibilities of Engineer, and have the rights and authority assigned to Engineer in the Contract.
- 3.02 The part of the Project that pertains to the Work has been designed by **Walker Partners**

ARTICLE 4—CONTRACT TIMES

- 4.01 *Time is of the Essence*
- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.
- 4.02 *Contract Times: Dates*
- A. The Work will be substantially complete on or before **May 31, 2025**, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before **June 30, 2025**.

4.05 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
1. *Substantial Completion:* Contractor shall pay Owner **\$1,500.00** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete. This payment shall be made only in the case that the delay is caused by the sole negligence or willful disregard of Contractor, Contractor's Subcontractors, Vendors, and/or assigns.
 2. *Completion of Remaining Work:* After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner **\$1,500.00** for each day that expires after such time until the Work is completed and ready for final payment.
 3. Liquidated damages for failing to timely attain Milestones, Substantial Completion, and final completion are not additive, and will not be imposed concurrently.
- B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

4.06 *Special Damages*

- A. Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.
- C. The special damages imposed in this paragraph are supplemental to any liquidated damages for delayed completion established in this Agreement.

6.04 *Consent of Surety*

- A. Owner will not make final payment or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.

6.05 *Interest*

- A. All amounts not paid when due will follow the conditions outlined in the Prompt Payment Act

6.06 *Force Majeure*

- A. Force Majeure Event means an event caused by any of the following conditions: act of God; fire; flood; labor strike; sabotage; material shortages or unavailability or other delay in delivery of services not resulting from the responsible Party's failure to timely provide services therefor; power blackouts; lack of or delay in transportation; changes in government codes, ordinances, laws, rules, regulations, permits, or restrictions; war or civil disorder; or any other cause beyond the reasonable control of such Party. Neither Party shall be liable to the other for any delay or failure in performance of any part of this Contract to the extent that a Force Majeure Event causes such delay or failure. Any party claiming a Force Majeure event has an obligation to attempt to mitigate the impact of the Force Majeure event and find alternate means of performance. The Party additionally must notify the opposing party in writing of the event, the consequence of the event, the impact on performance, steps to mitigate, and the timeframe for resuming compliance.

ARTICLE 7—CONTRACT DOCUMENTS

7.01 *Contents*

- A. The Contract Documents consist of all of the following:
 - 1. This Agreement.
 - 2. Bonds:
 - a. Performance bond (together with power of attorney).
 - b. Payment bond (together with power of attorney).
 - 3. Evidence of Insurance.
 - 4. City of Leander Standard Definitions, Terms and Conditions (Updated Nov. 2022).
 - 5. EJCDC® C-700, Standard General Conditions of the Construction Contract (*Edits highlighted*).
 - 6. Specifications as listed in the table of contents of the project manual (copy of list attached).
 - 7. Drawings listed on the attached sheet index.
 - 8. IFB Bid documents.
 - 9. Addenda No. 1-5
 - 11. Form 01-339 Texas Sales and Use Tax Exemption Certification

11. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
 - e. Project Schedule.
 - e. Warranty Bond, if any.
- B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 Contractor's Representations

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
 1. Contractor has examined and carefully studied the Contract Documents, including Addenda.
 2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
 4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
 5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
 6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and

procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.

7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

8.02 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.03 *Standard General Conditions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

- B. Although drawn by Owner, both parties hereto expressly agree and assert that in the event of any dispute over its meaning or application, this Agreement shall be interpreted reasonably and fairly, and neither more strongly for nor against either party.
- C. This Agreement is to be governed by and shall be construed in accordance with the laws of the State of Texas without regard to conflicts of law principles, thereof. Proper venue for any dispute or litigation shall be only in Williamson County, Texas.
- D. This Agreement and all rights and obligations contained herein may not be assigned by Contractor without the prior written approval of the City. However, Contractor shall have the right to employ such assistance as may be required for the performance of the project, including the use of subcontractors, which employment shall not be deemed an assignment of the Contractors' rights and duties hereunder.
- E. To the extent this Agreement constitutes a contract for goods or services within the meaning of Section 2270.002 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2270 of the Texas Government Code, and subject to applicable Federal law, Contractor represents that neither Contractor nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Contractor (i) boycotts Israel or (ii) will boycott Israel through the term of this Agreement. The terms "boycotts Israel" and "boycott Israel" as used in this paragraph have the meanings assigned to the term "boycott Israel" in Section 808.001 of the Texas Government Code, as amended.
- F. To the extent this Agreement constitute a governmental contract within the meaning of Section 2252.151 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2252 of the Texas Government Code, and except to the extent otherwise required by applicable federal law, Contractor represents that Contractor nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Contractor is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201, or 2252.153 of the Texas Government Code.
- G. Contractor hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, and to the extent such Section is not inconsistent with a governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds. As used in the foregoing verification, "boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by the preceding statement in (A).
- H. Contractor hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association during the term of this Agreement. The foregoing verification is made solely

to comply with Section 2274.002, Texas Government Code. As used in the foregoing verification, "discriminate against a firearm entity or firearm trade association" means: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; but does not include (a) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; or (b) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association.

- I. Texas law requires that business entities, as defined in Texas Government Code, Section 2252.908, who contract with the City complete the on-line of Form 1295 "Certificate of Interested Parties" as promulgated by the Texas Ethics Commission (<https://www.ethics.state.tx.us/filinginfo/1295/>). Form 1295 is also required for any and all contract amendments, extensions or renewals. Prior to any payment to Contractor hereunder, Contractor shall provide proof of submission to the City Secretary that the appropriate Form 1295 documentation has been submitted.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on **the date the last signature and full execution of this agreement.**

Owner:

CITY OF LEANDER

By:

(individual's signature)

Date:

(date signed)

Name:

Title: City Manager

Attest:

(individual's signature)

Title:

City Secretary

Address for giving notices:

City of Leander

Attn: Tony Bettis

105 N. Brushy Street

Leander Texas 78641

Designated Representative:

Name:

Title:

Address:

Phone:

Email:

If [Type of Entity] is a corporation, attach evidence of authority to sign. If [Type of Entity] is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

Contractor:

Chasco Constructors, Ltd, LLP.

By:

(individual's signature)

Date:

(date signed)

Name:

Title: Owner/Operations Manager

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:

(individual's signature)

Title:

Estimator

Address for giving notices:

PO Box 1057
Round Rock, TX 78680

Designated Representative:

Name:

(typed or printed)

Title:

(typed or printed)

Address:

PO Box 1057
Round Rock, TX 78680

Phone:

Email:

License No.:

(where applicable)

State:

SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract. All provisions which are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

- 1.01 A.22 – Delete this paragraph in its entirety and replace with the following: “Engineer. The word “Engineer” in these Specifications shall be the licensed professional engineer that signed and sealed the Plans and Specifications.”

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

- 4.06 Add the following new paragraph immediately after Paragraph 4.05.G:

4.06 Document Management

The City of Leander utilizes Procore to track cost, schedule, scope and all related project transactions to include document control. Procore (alternatively known as the electronic project management control system (EPMCS), the Project Website or system) is a web-based application that is accessible anywhere you have a web connection. It will be used by the Owner, A/E and the Contractor to submit Contractor Application for Payment requests, RFI, ASI, PCO, Submittals, Progress Meeting Minutes, Contractor’s Daily Reports, Site Observation Reports, Testing by Third Party Consultants and general correspondence throughout the Construction period.

The City of Leander Project Manager will provide an overview of the system and coordinate for all parties to receive Owner system training for users logging into the system. The City of Leander Project Manager will also assign users with login credentials and establish levels of access.

ARTICLE 5 – SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

- 5.03 Add the following to Paragraph 5.03 A: “4. In preparing the Contract Documents the Engineer relied upon the geotechnical report entitled “San Gabriel Parkway Extension County Road 270 to Ronald Reagan Boulevard” prepared by Raba Kistner, Inc. which is included in the Technical Specifications.”
- 5.06 Delete Paragraphs 5.06 A and 5.06 B in their entirety and replace with the following: “No reports or drawings related to Hazardous Environmental Conditions at the Site are known to Owner.

ARTICLE 6 – BONDS AND INSURANCE

- 6.03 Add the following new paragraph immediately after Paragraph 6.03.A:

The limits of liability for the insurance required by Paragraph 6.03 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

1. Workers’ Compensation, and related coverages under Paragraphs 6.03.A and B of the General Conditions:
 - a. State: Statutory

- b. Applicable Federal (e.g., Longshoreman's): Statutory
- c. Employer's Liability: \$1,000,000

Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). CONTRACTOR shall assure compliance with this statute by submitting two (2) copies of a standard certificate of coverage (e.g. ACCORD form) to OWNER'S Representative for every person providing services on the Project as acceptable proof of coverage. The required Certificate of Insurance must be presented as evidence of coverage for CONTRACTOR. Worker's Compensation Insurance coverage written by the Texas Workers Compensation Fund is acceptable to Owner. CONTRACTOR'S policy shall apply to the State of Texas and include these endorsements in favor of the OWNER:

- a. Waiver of Subrogation, form WC 420304
 - b. 30-day Notice of Cancellation, form WC 420601
2. Contractor's General Liability under Paragraphs 6.03.A through C of the General Conditions which shall include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor:

The policy shall contain the following provisions:

- a. Blanket contractual liability coverage for liability assumed under this contract and all contracts relative to this Project.
- b. Completed Operations/Products Liability for the duration of the warranty period.
- c. Explosion, Collapse and Underground (X, C & U) coverage.
- d. Independent Contractors coverage.
- e. Aggregate limits of insurance per project, endorsement CG 2503.
- f. OWNER and ENGINEER listed as additional insured, endorsement CG 2010.
- g. 30-day notice of cancellation or revision in amount in favor of OWNER, endorsement CG 0205.
- h. Waiver of Transfer of Recovery Against Others in favor of OWNER, endorsement CG 2404.
- i. Provide coverages A&B with minimum limits as follows:

Each Occurrence (Bodily Injury and Property Damage)	\$1,000,000
Aggregate	\$2,000,000

3. Automobile Liability under Paragraph 6.03.C of the General Conditions:

- a. Bodily Injury:
Each Occurrence \$1,000,000
- b. Property Damage:
Each Occurrence \$1,000,000

The Policy shall contain the following endorsements in favor of the OWNER:

- a. Waiver of Subrogation endorsement TE 2046A
- b. 30-day Notice of Cancellation or change of amount endorsement TE 0202A
- c. Additional Insured endorsement TE 9901 B

6.04 B. Delete Paragraph 6.04.B in its entirety and insert the following in its place:

Contractor shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof. Contractor shall be responsible for any deductible or self-insured retention. This insurance shall:

- 1. include the interests of Owner, Contractor, Subcontractors, Engineer, and the officers, directors, partners, employees, agents and other consultants and subcontractors of any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or loss payee;
- 2. be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss and damage to the Work, temporary buildings, falsework, and materials and equipment in transit and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by these Supplementary Conditions.
- 3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
- 4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;
- 5. allow for partial utilization of the Work by Owner;
- 6. include testing and startup and close down of site;
- 7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued; and
- 8. comply with the requirements of Paragraph 6.06.C of the General Conditions.
- 9.

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

7.02 Insert the following Paragraph C:

Contractor shall provide Project Administration for all Subcontractors, vendors, suppliers, and others involved in implementing the Work and shall coordinate administration efforts with those of Engineer and Owner in accordance with these General Conditions and other provisions of the Contract Agreement, and as outlined in the preconstruction conference. Contractor's Project Administration includes periodic daily reporting on weather, work progress, labor, materials, equipment, obstructions to prosecution of the work, accidents and injuries in accordance with the Contract and transmitted no less frequently than on a weekly basis. This can be accomplished utilizing the Owner's Procore platform.

7.03 D. Insert the following paragraph:

WAGE RATES

Wage Rates (Information From Chapter 2258, Texas Government Code Title 10)

2288.021. Duty of Government Entity to Pay Prevailing Wage Rates

- a. The State or any political subdivision of the State shall pay a worker employed by it or on behalf of it:
 - (1) not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed; and
 - (2) not less than the general prevailing rate of per diem wages for legal holiday and overtime work.
- b. Subsection (a) does not apply to maintenance work.
- c. A worker is employed on a public work for the purposes of this section if a Contractor or Subcontractor in the execution of a contract for the public work with the State, a political subdivision of the State or any officer or public body of the State or a political subdivision of the State, employs the worker.

**2258.023. Prevailing Wage Rates to be Paid by Contractor and Subcontractor;
Penalty**

- a. The contractor who is awarded a contract by a public body, or a Subcontractor of the Contractor, shall pay not less than the rates determined under Section 2258.022 to a worker employed by it in the execution of the contract.
- b. A Contractor or Subcontractor who violates this section shall pay to the state or a political subdivision of the state on whose behalf the contract is made, \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. A public body awarding a contract shall specify this penalty in the contract.
- c. A contractor or subcontractor does not violate this section if a public body awarding a contract does not determine the prevailing wage rates, and specify the rates in the contract as provided by Section 2258.022.
- d. The public body shall use any money collected under this section to offset the costs incurred in the administration of this chapter.
- e. A municipality is entitled to collect a penalty under this section only if the municipality has a population of more than 10,000.

2258.051. Duty of Public Body to Hear Complaints and Withhold Payment

A public body awarding a contract, and an agent or officer of the public body, shall:

- 1. take cognizance of complaints of all violations of this chapter committed in the execution of the contract;
- and

2. withhold money forfeited or required to be withheld under this Chapter from the payments to the Contractor under the contract, except that the public body may not withhold money from other than the final payment without determination by the public body that there is good cause to believe that the Contractor has violated this chapter.

Applicable wage rates to be used in Williamson and/or Travis County may be obtained from the U.S. Department of Labor website at the following web addresses:

Construction Types: Heavy (Sewer/Water Treating Plant and Sewer/Incidental to Highway)
<http://www.wdol.gov/wdol/scafiles/davisbacon/TX33.dvb?v=0>

Construction Types: Heavy and Highway
<http://www.wdol.gov/wdol/scafiles/davisbacon/TX16.dvb?v=0>

7.10 Add the following paragraph after 7.10 A:

B. Owner is exempt from payment of sales and compensating use taxes of the State of Texas and of cities and counties thereof on all materials to be incorporated into the Work.

1. Owner will furnish the required certificates of tax exemption to Contractor for use in the purchase of supplies and materials to be incorporated into the Work.

Owner's exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by Contractor, or to supplies or materials not incorporated into the work.

7.11 Insert the following paragraph: "D. Contractor shall prepare and comply with the approved Storm Water Pollution Prevention Plan (SWPPP) for this project and shall be responsible for:

1. Maintain project plans with erosion/sedimentation control sheets at the Work site at all times.

2. Post a copy of the TCEQ/EPA permits at the Work site.

3. File a Notice of Intent with the TCEQ/EPA.

4. Perform normal site inspection of temporary sediment and erosion controls. Maintain records that indicate any problems and Contractor's efforts to repair the controls.

5. Upon completion of the Work, provide NPDES records to Owner.

6. File a Notice of Termination with the TCEQ/EPA once the Work has been accepted."

ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.03 Delete Paragraph 13.03 E in its entirety and replace with the following:

E. The unit price of an item of Unit Price Work shall be subject to reevaluation and adjustment under the following conditions:

1. if the Bid price of a particular item of Unit Price Work amounts to 5 percent or more of the Contract Price and the variation in the quantity of that particular item of Unit Price Work performed by the Contractor differs by more than 20 percent from the estimated quantity of such item indicated in the Agreement; and

2. if there is no corresponding adjustment with respect to any other item of Work; and

3. if the Contractor believes that Contractor has incurred additional expense or if the Owner believes that the quantity variation entitles Owner to an adjustment in the unit price, either Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Article 10 if the parties are unable to agree as to the effect of any such variations in the quantity of Unit Price Work performed.

ARTICLE 14 – TESTS AND INSPECTIONS, CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

14.06 Add the following paragraph: “B. The following conditions shall be deemed cause to stop work; however, work may be stopped for any other reason as listed in A of this Section.

1. Inadequate housekeeping practices, such as failure to sweep streets.
2. Spoil materials left in streets or public right of way.
3. Street closures without Owner’s authorization.
4. Nonconformance with any permits required for the project.”

ARTICLE 15 – PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 Delete Paragraph 15.01 B.1 in its entirety and replace with the following:

B. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer and City Inspector for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents, including a payment application checklist, updated CPM project schedule, periodic progress reports, evidence of as-built notations in the Construction Documents, and all updated logs.

ENGINEER’S LIMITATIONS

The Engineer expressly and completely relinquishes all power, right, control or authority to direct the order in which the work is done, to forbid the work from being done in a dangerous manner, or to exercise supervisory control, authority, or power with respect to the details, order, or safety of the work; and this power, right, control, and authority are relinquished with respect to the Contractor, his agents, employees, representatives, and subcontractors.

BIDS AND CONTRACTS

Pursuant to Subchapter J, Chapter 552, Texas Government Code, Contractor shall:

- a. Preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to the Owner for the duration of the Agreement;
- b. Promptly provide to the Owner any contracting information related to the Agreement that is in the custody or possession of the entity on request of the Owner; and
- c. On completion of the Agreement, either:
 - i. provide at no cost to the Owner all contracting information related to the Agreement that is in the custody or possession of the entity; or

- ii. preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to the governmental body.

The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Contractor agrees that the Agreement can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

"Contracting information" includes, but is not limited to, records, communications and other documents related to the bid process, contract, payments, receipts, scope of work/services, and performance."

June 26, 2023

City of Leander
Pat Bryson Municipal Hall
201 North Brushy Street
Leander, TX 78646

Attn: Mr. Tony Bettis, PMP

Re: Raider Way and Woodview Drive Improvements
City of Leander IFB No.: 23-013
Walker Partners Project No.: 3-00585

Dear Mr. Bettis:

On June 20, 2023, five bid packages were received for the City of Leander Raider Way and Woodview Drive Improvements Project in response to a publicly advertised Invitation to Bid. The five bidders had each attended the mandatory pre-bid conference held on June 1, 2023 at 2:00 pm.

The lowest qualified bid received by the City was from Chasco Constructors, LTD, LLP (Chasco),.

Walker Partners recommends that Council moves to select Chasco as the bidder that has submitted the bid package providing the best value for the City and that the Council further directs the City Manager to negotiate and finalize a contract with the selected bidder not to exceed an amount of \$15,164,644.00.

Please contact me if you have any questions or require any additional information.

Sincerely,



R. Alan Munger, P.E.
Manager

RAM:ram

Attachment

Walker Partners, LLC
Bid Tabulation

City of Leander
Raider Way and Woodview Drive Improvements
Project No.: 3-00585
June 20, 2023 at 2:00 pm

Bidders

				Chasco Constructors		Texas Road, LLC		Cash Construction Company, Inc.		Patin Construction, LLC		Capital Excavation Company	
Item No.	Bid Item Description	Quantities	Measure	Unit Price	Unit Amount	Unit Price	Unit Amount	Unit Price	Unit Amount	Unit Price	Unit Amount	Unit Price	Unit Amount
1.00	General Conditions												
1.01	MOBILIZATION & PROJECT INCIDENTALS	1	LS	600,000.00	600,000.00	600,000.00	600,000.00	375,287.00	375,287.00	50,000.00	50,000.00	700,000.00	700,000.00
1.02	TRAFFIC CONTROL PLAN - PREPARE PLAN	1	LS	22,000.00	22,000.00	74,000.00	74,000.00	56,900.00	56,900.00	10,000.00	10,000.00	73,000.00	73,000.00
1.03	TRAFFIC CONTROL PLAN - IMPLEMENTATION	1	LS	200,000.00	200,000.00	37,000.00	37,000.00	457,300.00	457,300.00	40,000.00	40,000.00	337,000.00	337,000.00
1.04	BARRICADES AND TRAFFIC HANDLING	24	MO	12,500.00	300,000.00	7,300.00	175,200.00	1,200.00	28,800.00	1,500.00	36,000.00	7,600.00	182,400.00
1.05	EXCAVATION SAFETY SYSTEM	3,710	LF	5.00	18,550.00	2.00	7,420.00	0.50	1,855.00	1.00	3,710.00	10.00	37,100.00
1.06	STORM WATER POLLUTION PREVENTION PLAN	1	LS	5,000.00	5,000.00	1,200.00	1,200.00	1,900.00	1,900.00	1,500.00	1,500.00	900.00	900.00
1.07	STORM WATER POLLUTION PREVENTION PLAN IMPLEMENTATION	1	LS	25,000.00	25,000.00	15,000.00	15,000.00	44,900.00	44,900.00	7,500.00	7,500.00	7,900.00	7,900.00
1.08	6" TOPSOIL	1,750	SY	5.00	8,750.00	3.00	5,250.00	12.00	21,000.00	10.00	17,500.00	5.00	8,750.00
1.09	SEEDING (PERM)(URBAN)(CLAY)(TXDOT)	1,750	SY	1.00	1,750.00	1.00	1,750.00	1.00	1,750.00	1.00	1,750.00	1.00	1,750.00
1.10	PROTECTIVE FENCING TYPE B WOOD FENCE	3,110	LF	10.00	31,100.00	10.00	31,100.00	8.00	24,880.00	10.00	31,100.00	8.00	24,880.00
1.11	SILT FENCE ASSEMBLY	11,585	LF	5.00	57,925.00	4.50	52,132.50	4.00	46,340.00	4.00	46,340.00	5.00	57,925.00
1.12	TEMP SEDIMENT CONT. FENCE (INSTALL)	781	LF	5.00	3,905.00	4.50	3,514.50	4.00	3,124.00	3.00	2,343.00	4.00	3,124.00
1.13	TEMP SEDIMENT CONT. FENCE (REMOVE)	781	LF	0.50	390.50	0.70	546.70	0.50	390.50	1.00	781.00	1.00	781.00
1.14	CURB INLET PROTECTION	340	LF	10.00	3,400.00	12.00	4,080.00	10.00	3,400.00	14.00	4,760.00	7.00	2,380.00
1.15	CONSTRUCTION ENTRANCE/EXIT SILT CONTROL	10	EA	2,500.00	25,000.00	1,500.00	15,000.00	1,200.00	12,000.00	1,800.00	18,000.00	2,160.00	21,600.00
1.16	GRATE INLET PROTECTION	3	EA	125.00	375.00	120.00	360.00	100.00	300.00	150.00	450.00	148.00	444.00
1.17	MULCH SOCK	1	EA	250.00	250.00	220.00	220.00	180.00	180.00	100.00	100.00	2,630.00	2,630.00
1.18	ROCK FILTER DAM (TY 1) (INSTALL)	2	EA	1,000.00	2,000.00	990.00	1,980.00	900.00	1,800.00	2,000.00	4,000.00	5,900.00	11,800.00
1.19	ROCK FILTER DAMS (REMOVE)	2	EA	250.00	500.00	990.00	1,980.00	60.00	120.00	250.00	500.00	5,200.00	10,400.00
1.20	ROCK FILTER BERM	17	EA	750.00	12,750.00	650.00	11,050.00	600.00	10,200.00	450.00	7,650.00	410.00	6,970.00
	Subtotal General Conditions				1,318,645.50		1,038,783.70		1,092,426.50		283,984.00		1,491,734.00
2.00	Demolition												
2.01	PREPARING RIGHT OF WAY	57	STA	12,500.00	712,500.00	4,300.00	245,100.00	440.00	25,080.00	8,000.00	456,000.00	700.00	39,900.00
2.02	REMOVE SIGNAL POLES	3	EA	2,000.00	6,000.00	1,300.00	3,900.00	1,100.00	3,300.00	500.00	1,500.00	2,980.00	8,940.00
2.03	REMOVE PC CONCRETE CURB	2,150	LF	10.00	21,500.00	12.00	25,800.00	7.00	15,050.00	3.00	6,450.00	7.00	15,050.00
2.04	REMOVE STABILIZED BASE AND ASPHALT PAVEMENT	16,174	SY	10.00	161,740.00	12.00	194,088.00	6.00	97,044.00	7.00	113,218.00	8.00	129,392.00
2.05	ASPHALT SURFACE MILLING	211	SF	28.00	5,908.00	36.00	7,596.00	5.00	1,055.00	5.00	1,055.00	30.00	6,330.00
2.06	REMOVE PC CONCRETE SIDEWALK & DRIVEWAY	26,244	SF	2.00	52,488.00	2.50	65,610.00	1.00	26,244.00	3.00	78,732.00	2.00	52,488.00
2.07	REMOVE INLET OR JUNCTION BOX	4	EA	2,500.00	10,000.00	2,400.00	9,600.00	3,000.00	12,000.00	1,000.00	4,000.00	1,270.00	5,080.00
2.08	REMOVE AND RELOCATE EXISTING FENCE	1,510	LF	75.00	113,250.00	7.50	11,325.00	58.00	87,580.00	20.00	30,200.00	55.00	83,050.00
2.09	REMOVE RCP (18"), INCLUDING BACKFILL	95	LF	35.00	3,325.00	50.00	4,750.00	13.00	1,235.00	20.00	1,900.00	9.00	855.00
2.10	REMOVE CMP (12"-24"), INCLUDING BACKFILL	867	LF	35.00	30,345.00	44.00	38,148.00	12.00	10,404.00	20.00	17,340.00	9.00	7,803.00
2.11	TREE PROTECTION	3,190	LF	5.00	15,950.00	5.50	17,545.00	5.00	15,950.00	7.00	22,330.00	8.00	25,520.00
2.12	REMOVE EXISTING TREE	80	EA	2,500.00	200,000.00	1,500.00	120,000.00	1,800.00	144,000.00	1,000.00	80,000.00	1,330.00	106,400.00
2.13	SALVAGE EXISTING FIRE HYDRANTS	7	EA	2,000.00	14,000.00	690.00	4,830.00	670.00	4,690.00	500.00	3,500.00	2,230.00	15,610.00
2.14	CONTRACTOR TO REMOVE & REPLACE ORNAMENTAL GATE/KEY PAD	1	EA	11,000.00	11,000.00	2,700.00	2,700.00	11,000.00	11,000.00	1,500.00	1,500.00	10,200.00	10,200.00
2.15	ABANDON-IN-PLACE 4 IN. DIA WATER LINE CUT, CAP, AND GROUT FILL	2,794	LF	15.00	41,910.00	9.00	25,146.00	15.00	41,910.00	2.00	5,588.00	16.00	44,704.00

				Chasco Constructors		Texas Road, LLC		Cash Construction Company, Inc.		Patin Construction, LLC		Capital Excavation Company	
Item No.	Bid Item Description	Quantities	Measure	Unit Price	Unit Amount	Unit Price	Unit Amount	Unit Price	Unit Amount	Unit Price	Unit Amount	Unit Price	Unit Amount
2.16	REMOVE 12 IN. DIA WATER LINE	92	LF	35.00	3,220.00	26.00	2,392.00	14.00	1,288.00	5.00	460.00	67.00	6,164.00
2.17	REMOVE 8 IN. DIA WATER LINE	1,770	LF	25.00	44,250.00	11.00	19,470.00	12.00	21,240.00	5.00	8,850.00	29.00	51,330.00
2.18	REMOVE 4 IN. DIA WATER LINE	285	LF	25.00	7,125.00	8.50	2,422.50	8.00	2,280.00	5.00	1,425.00	35.00	9,975.00
2.19	REMOVE 2 IN. DIA WATER LINE	2,295	LF	25.00	57,375.00	5.00	11,475.00	5.00	11,475.00	5.00	11,475.00	24.00	55,080.00
	Subtotal Demolition				1,511,886.00		811,897.50		532,825.00		845,523.00		673,871.00
3.00	Street Improvements												
3.01	STREET EXCAVATION	30,095	CY	25.00	752,375.00	16.00	481,520.00	24.00	722,280.00	25.00	752,375.00	19.00	571,805.00
3.02	EMBANKMENT	1,405	CY	12.00	16,860.00	9.50	13,347.50	8.00	11,240.00	25.00	35,125.00	13.00	18,265.00
3.03	MILLING ASPHALTIC PAVEMENT	350	SY	28.00	9,800.00	22.00	7,700.00	14.00	4,900.00	15.00	5,250.00	29.00	10,150.00
3.04	SUBGRADE WIDENING	8	STA	1,000.00	8,000.00	3,200.00	25,600.00	2,100.00	16,800.00	3,000.00	24,000.00	500.00	4,000.00
3.05	PLANE EXISTING ASPHALT PAVEMENT (2 1/2 INCHES)	515	SY	21.00	10,815.00	15.00	7,725.00	18.00	9,270.00	18.00	9,270.00	22.00	11,330.00
3.06	10" ITEM 210S FLEXIBLE BASE	2,235	CY	55.00	122,925.00	67.00	149,745.00	74.00	165,390.00	55.00	122,925.00	61.00	136,335.00
3.07	12" ITEM 210S FLEXIBLE BASE	5,190	CY	55.00	285,450.00	65.00	337,350.00	71.00	368,490.00	62.00	321,780.00	57.00	295,830.00
3.08	FLEX BASE (CMP IN PLACE)(TY A) (GR 1)(8")	215	CY	70.00	15,050.00	58.00	12,470.00	74.00	15,910.00	55.00	11,825.00	86.00	18,490.00
3.09	PRIME COAT (AE-P)(0.275 GAL/SY)	180	GAL	12.00	2,160.00	10.00	1,800.00	5.00	900.00	6.00	1,080.00	12.00	2,160.00
3.10	PRIME COAT (AE-P) (0.275 Gal/SY)	6,420	GAL	5.50	35,310.00	10.00	64,200.00	5.00	32,100.00	6.00	38,520.00	6.00	38,520.00
3.11	7" ASPHALT STABILIZED BASE	6,825	SY	44.00	300,300.00	55.00	375,375.00	54.00	368,550.00	60.00	409,500.00	44.00	300,300.00
3.12	HOT MIX ASPHALTIC PAVEMENT (4") TY-B	19,195	SY	26.00	499,070.00	31.00	595,045.00	30.00	575,850.00	33.50	643,032.50	26.00	499,070.00
3.13	HOT MIX ASPHALTIC CONCRETE PAVEMENT (2") TY-C	19,195	SY	17.00	326,315.00	20.00	383,900.00	18.00	345,510.00	20.00	383,900.00	17.00	326,315.00
3.14	5.5" D-GR HMA (TY. B)(110 LBS/SY-IN)	55	TN	238.00	13,090.00	250.00	13,750.00	220.00	12,100.00	250.00	13,750.00	238.00	13,090.00
3.15	2" D-GR HMA (TY. C)(110 LBS/SY-IN)	80	TN	296.00	23,680.00	220.00	17,600.00	250.00	20,000.00	275.00	22,000.00	300.00	24,000.00
3.16	CONC PVMT (CONT REINF - CRCP) (8") - INCLUDES ROUNDAABOUT	4,810	SY	100.00	481,000.00	62.00	298,220.00	120.00	577,200.00	130.00	625,300.00	111.00	533,910.00
3.17	8" EMBANKMENT - UNDER HMAC	5,450	CY	11.00	59,950.00	6.50	35,425.00	5.00	27,250.00	38.00	207,100.00	25.00	136,250.00
3.18	P.C. CONCRETE CURB AND GUTTER (ASPHALT RDWY)	6,419	LF	26.00	166,894.00	13.00	83,447.00	24.00	154,056.00	14.00	89,866.00	27.00	173,313.00
3.19	P.C. CONCRETE CURB AND GUTTER (CONC RDWY)	2,355	LF	20.00	47,100.00	27.00	63,585.00	24.00	56,520.00	14.00	32,970.00	29.00	68,295.00
3.20	DOWELED CURB (MEDIANS)	1,900	LF	30.00	57,000.00	13.00	24,700.00	25.00	47,500.00	15.00	28,500.00	29.00	55,100.00
3.21	P.C. CONCRETE RIBBON CURB	323	LF	30.00	9,690.00	34.00	10,982.00	23.00	7,429.00	14.00	4,522.00	35.00	11,305.00
3.22	ROUNDAABOUT MOUNTABLE CURB (SPECIAL)	310	LF	50.00	15,500.00	55.00	17,050.00	46.00	14,260.00	20.00	6,200.00	58.00	17,980.00
3.23	4" REINFORCED CONCRETE SIDEWALK OVER 2" BEDDING SAND	49,089	SF	9.00	441,801.00	7.00	343,623.00	8.00	392,712.00	10.00	490,890.00	7.00	343,623.00
3.24	6" REINFORCED CONCRETE SIDEWALK OVER 2" BEDDING SAND	18,198	SF	10.50	191,079.00	9.00	163,782.00	9.00	163,782.00	12.00	218,376.00	9.00	163,782.00
3.25	TYPE I DRIVEWAY (1 & 2 FAMILY DRIVEWAY)	3,362	SF	11.00	36,982.00	14.00	47,068.00	11.00	36,982.00	15.00	50,430.00	15.00	50,430.00
3.26	TYPE II DRIVEWAY (COMMERCIAL/ MULTI-FAMILY)	21,362	SF	12.00	256,344.00	10.00	213,620.00	12.00	256,344.00	15.00	320,430.00	13.00	277,706.00
3.27	P.C. CONCRETE MEDIANS AND ISLANDS (INCL. MEDIAN NOSE)	1,869	SF	12.00	22,428.00	11.00	20,559.00	20.00	37,380.00	10.00	18,690.00	9.00	16,821.00
3.28	PAVERS (4") (TRUCK APRON)	13,754	SF	40.00	550,160.00	13.00	178,802.00	15.00	206,310.00	10.00	137,540.00	18.00	247,572.00
3.29	6" CONCRETE EDGE - RIPRAP	75	CY	1,250.00	93,750.00	560.00	42,000.00	910.00	68,250.00	250.00	18,750.00	770.00	57,750.00
3.30	CONCRETE VALLEY GUTTERS	269	LF	55.00	14,795.00	440.00	118,360.00	170.00	45,730.00	75.00	20,175.00	89.00	23,941.00
3.31	TYPE 1 CURB RAMP	2	EA	1,750.00	3,500.00	2,700.00	5,400.00	2,000.00	4,000.00	2,500.00	5,000.00	1,670.00	3,340.00
3.32	TYPE 1B CURB RAMP	13	EA	1,500.00	19,500.00	2,700.00	35,100.00	1,300.00	16,900.00	2,500.00	32,500.00	2,340.00	30,420.00
3.33	COMBINED SIDEWALK CURB RAMP WITH PAVERS	12	EA	1,800.00	21,600.00	2,700.00	32,400.00	1,600.00	19,200.00	3,000.00	36,000.00	1,730.00	20,760.00
3.34	TxDOT CURB RAMP - TYP 7	4	EA	2,100.00	8,400.00	2,200.00	8,800.00	1,700.00	6,800.00	3,000.00	12,000.00	2,380.00	9,520.00
3.35	TEMPORARY PAVEMENT - 2" HMAC	293	TN	168.00	49,224.00	210.00	61,530.00	190.00	55,670.00	25.00	7,325.00	195.00	57,135.00
3.36	TEMPORARY PAVEMENT - 8" FLEX BASE	597	CY	85.00	50,745.00	100.00	59,700.00	80.00	47,760.00	55.00	32,835.00	124.00	74,028.00
3.37	TEMPORARY MAILBOX ASSEMBLY	1	EA	1,000.00	1,000.00	190.00	190.00	280.00	280.00	1,000.00	1,000.00	260.00	260.00

				Chasco Constructors		Texas Road, LLC		Cash Construction Company, Inc.		Patin Construction, LLC		Capital Excavation Company	
Item No.	Bid Item Description	Estimated Quantities	Measure	Unit Price	Unit Amount	Unit Price	Unit Amount	Unit Price	Unit Amount	Unit Price	Unit Amount	Unit Price	Unit Amount
3.38	PERMANENT MAILBOX ASSEMBLY	1	EA	2,500.00	2,500.00	620.00	620.00	280.00	280.00	2,500.00	2,500.00	530.00	530.00
3.39	DRY STACK ROCK WALL	5,586	SF	25.00	139,650.00	50.00	279,300.00	35.00	195,510.00	40.00	223,440.00	30.00	167,580.00
3.40	FENCING (6")(BLACK VINYL COATED CHAIN LINK)	1,815	LF	37.00	67,155.00	12.00	21,780.00	34.00	61,710.00	40.00	72,600.00	36.00	65,340.00
	Subtotal Street Improvements				5,228,947.00		4,653,170.50		5,169,105.00		5,489,271.50		4,876,351.00
4.00	Drainage Improvements												
4.01	18" RCP, CL III	1,976	LF	90.00	177,840.00	260.00	513,760.00	180.00	355,680.00	110.00	217,360.00	223.00	440,648.00
4.02	18" RCP, CL III	65	LF	110.00	7,150.00	200.00	13,000.00	170.00	11,050.00	120.00	7,800.00	260.00	16,900.00
4.03	24" RCP, CL III	661	LF	110.00	72,710.00	240.00	158,640.00	200.00	132,200.00	135.00	89,235.00	260.00	171,860.00
4.04	30" RCP, CL III	1,208	LF	115.00	138,920.00	360.00	434,880.00	240.00	289,920.00	175.00	211,400.00	320.00	386,560.00
4.05	36" RCP, CL III	104	LF	190.00	19,760.00	420.00	43,680.00	300.00	31,200.00	225.00	23,400.00	280.00	29,120.00
4.06	7'x4' PRECAST REINFORCED CONCRETE BOX CULVERT	79	LF	780.00	61,620.00	1,100.00	86,900.00	980.00	77,420.00	800.00	63,200.00	1,240.00	97,960.00
4.07	3' x 2' RCB, DIRECT BURY	44	LF	315.00	13,860.00	650.00	28,600.00	530.00	23,320.00	500.00	22,000.00	400.00	17,600.00
4.08	18" RCP BEND	1	EA	950.00	950.00	700.00	700.00	200.00	200.00	1,500.00	1,500.00	1,290.00	1,290.00
4.09	18" RCP BEND	1	EA	950.00	950.00	700.00	700.00	200.00	200.00	1,500.00	1,500.00	1,350.00	1,350.00
4.10	24" RCP BEND	2	EA	1,150.00	2,300.00	830.00	1,660.00	270.00	540.00	2,500.00	5,000.00	1,410.00	2,820.00
4.11	30" RCP BEND	1	EA	1,900.00	1,900.00	1,000.00	1,000.00	390.00	390.00	3,500.00	3,500.00	1,530.00	1,530.00
4.12	4' MANHOLE	2	EA	8,000.00	16,000.00	5,700.00	11,400.00	5,300.00	10,600.00	7,500.00	15,000.00	6,900.00	13,800.00
4.13	EXTRA DEPTH OF 4' MANHOLE	4	VF	600.00	2,400.00	570.00	2,280.00	590.00	2,360.00	500.00	2,000.00	430.00	1,720.00
4.14	6' MANHOLE	2	EA	10,000.00	20,000.00	7,500.00	15,000.00	7,600.00	15,200.00	10,000.00	20,000.00	8,400.00	16,800.00
4.15	EXTRA DEPTH OF 6' MANHOLE	1	VF	1,300.00	1,300.00	740.00	740.00	740.00	740.00	1,000.00	1,000.00	610.00	610.00
4.16	3' X 3' JUNCTION BOX	5	EA	6,800.00	34,000.00	4,300.00	21,500.00	5,500.00	27,500.00	7,500.00	37,500.00	5,700.00	28,500.00
4.17	4' X 4' JUNCTION BOX	10	EA	7,000.00	70,000.00	5,900.00	59,000.00	5,500.00	55,000.00	10,000.00	100,000.00	6,300.00	63,000.00
4.18	6' X 6' JUNCTION BOX	1	EA	11,000.00	11,000.00	6,900.00	6,900.00	7,500.00	7,500.00	15,000.00	15,000.00	10,500.00	10,500.00
4.19	3'X3' JUNCTION BOX FOR POND OUTLET STRUCTURE (GRATE)	3	EA	8,000.00	24,000.00	6,800.00	20,400.00	7,200.00	21,600.00	8,500.00	25,500.00	4,890.00	14,670.00
4.20	4'X4' JUNCTION BOX FOR POND OUTLET STRUCTURE (GRATE)	1	EA	11,000.00	11,000.00	10,000.00	10,000.00	9,400.00	9,400.00	12,500.00	12,500.00	7,200.00	7,200.00
4.21	18" S.E.T. (6:1) (P)	1	EA	3,000.00	3,000.00	4,100.00	4,100.00	2,300.00	2,300.00	4,000.00	4,000.00	2,290.00	2,290.00
4.22	24" S.E.T. (4:1) (C)	1	EA	3,500.00	3,500.00	3,800.00	3,800.00	2,900.00	2,900.00	5,000.00	5,000.00	3,130.00	3,130.00
4.23	36" S.E.T. (4:1) (C)	1	EA	10,000.00	10,000.00	7,900.00	7,900.00	4,900.00	4,900.00	7,000.00	7,000.00	7,000.00	7,000.00
4.24	18" OUTFALL THROUGH POND WALL	2	EA	200.00	400.00	1,100.00	2,200.00	390.00	780.00	4,000.00	8,000.00	4,150.00	8,300.00
4.25	24" OUTFALL THROUGH POND WALL	1	EA	300.00	300.00	1,100.00	1,100.00	390.00	390.00	5,000.00	5,000.00	4,150.00	4,150.00
4.26	30" OUTFALL THROUGH POND WALL	2	EA	400.00	800.00	1,700.00	3,400.00	390.00	780.00	7,500.00	15,000.00	4,150.00	8,300.00
4.27	36" OUTFALL THROUGH POND WALL	1	EA	500.00	500.00	2,700.00	2,700.00	390.00	390.00	10,000.00	10,000.00	8,000.00	8,000.00
4.28	7'x4' OUTFALL THROUGH POND WALL	2	EA	1,500.00	3,000.00	4,800.00	9,600.00	390.00	780.00	35,000.00	70,000.00	8,000.00	16,000.00
4.29	10' CURB INLET, STANDARD	19	EA	9,000.00	171,000.00	5,500.00	104,500.00	7,700.00	146,300.00	7,500.00	142,500.00	11,100.00	210,900.00
4.30	20' CURB INLET, STANDARD	5	EA	18,000.00	90,000.00	10,000.00	50,000.00	13,200.00	66,000.00	15,000.00	75,000.00	15,600.00	78,000.00
4.31	20' CURB INLET, STANDARD W/ WEIR	1	EA	19,000.00	19,000.00	3,800.00	3,800.00	14,900.00	14,900.00	20,000.00	20,000.00	16,100.00	16,100.00
4.32	CONTECH JELLYFISH VAULT JFPD0406-4-2, COMPLETE AND IN PLACE	1	EA	90,000.00	90,000.00	82,000.00	82,000.00	86,600.00	86,600.00	125,000.00	125,000.00	78,000.00	78,000.00
4.33	CONTECH JELLYFISH VAULT JFPD0811-10-3, COMPLETE AND IN PLACE	1	EA	175,000.00	175,000.00	169,000.00	169,000.00	170,600.00	170,600.00	300,000.00	300,000.00	155,000.00	155,000.00
4.34	CONTECH JELLYFISH VAULT JFPD0816-33-7, COMPLETE AND IN PLACE	1	EA	340,000.00	340,000.00	328,000.00	328,000.00	331,800.00	331,800.00	450,000.00	450,000.00	294,000.00	294,000.00
4.35	12" DRY ROCK RIPRAP, 2' THICK LAYER	22	SY	250.00	5,500.00	200.00	4,400.00	110.00	2,420.00	150.00	3,300.00	106.00	2,332.00
4.36	6" DRY ROCK RIPRAP, 1' THICK LAYER	14	SY	100.00	1,400.00	240.00	3,360.00	81.00	1,134.00	150.00	2,100.00	166.00	2,324.00
4.37	ENERGY DISSIPATORS ON CONCRETE SLAB	30	SY	350.00	10,500.00	270.00	8,100.00	260.00	7,800.00	250.00	7,500.00	360.00	10,800.00

				Chasco Constructors		Texas Road, LLC		Cash Construction Company, Inc.		Patin Construction, LLC		Capital Excavation Company	
Item No.	Bid Item Description	Quantities	Measure	Unit Price	Unit Amount	Unit Price	Unit Amount	Unit Price	Unit Amount	Unit Price	Unit Amount	Unit Price	Unit Amount
4.38	DRY STACK ROCK WALL (DETENTION POND)	17,300	SF	33.00	570,900.00	41.00	709,300.00	48.00	830,400.00	35.00	605,500.00	32.00	553,600.00
4.39	CHAIN LINK BARRIER FENCE, 6' HIGH W/ PVC COATED FABRIC	1,813	LF	36.00	65,268.00	20.00	36,260.00	34.00	61,642.00	40.00	72,520.00	36.00	65,268.00
4.40	CHAIN LINK DOUBLE 6' GATE, 6' HIGH W/ PVC COATED FABRIC	3	EA	2,500.00	7,500.00	1,900.00	5,700.00	2,700.00	8,100.00	3,500.00	10,500.00	2,500.00	7,500.00
4.41	PEDESTRIAN HANDRAIL	484	LF	160.00	77,440.00	170.00	82,280.00	170.00	82,280.00	205.00	99,220.00	171.00	82,764.00
4.42	EXCAVATION, POND, INCL. 4" TOPSOIL	19,881	CY	6.00	119,286.00	43.00	854,883.00	26.00	516,906.00	65.00	1,292,265.00	36.00	715,716.00
4.43	SEEDING FOR EROSION CONTROL	11,374	SY	1.00	11,374.00	3.00	34,122.00	1.00	11,374.00	1.00	11,374.00	1.00	11,374.00
	Subtotal Drainage Improvements				2,463,328.00		3,941,245.00		3,423,496.00		4,215,174.00		3,665,286.00
5.00	Water Improvements												
5.01	REPOSITIONING AND ADJUSTING WATER METERS	6	LF	2,500.00	15,000.00	1,200.00	7,200.00	730.00	4,380.00	1,000.00	6,000.00	1,990.00	11,940.00
5.02	ENCASEMENT PIPE 36 IN. DIA, SPLIT STEEL (WELDED)	16	LF	650.00	10,400.00	560.00	8,960.00	530.00	8,480.00	2,500.00	40,000.00	2,290.00	36,640.00
5.03	ENCASEMENT PIPE 30 IN. DIA, STEEL	28	LF	400.00	11,200.00	280.00	7,840.00	280.00	7,840.00	700.00	19,600.00	610.00	17,080.00
5.04	ENCASEMENT PIPE 24 IN. DIA, STEEL	311	LF	300.00	93,300.00	260.00	80,860.00	200.00	62,200.00	300.00	93,300.00	260.00	80,860.00
5.05	ENCASEMENT PIPE 24 IN. DIA, SPLIT STEEL (BOLTED)	208	LF	680.00	141,440.00	610.00	126,880.00	660.00	137,280.00	2,500.00	520,000.00	810.00	168,480.00
5.06	ENCASEMENT PIPE 18 IN. DIA, STEEL	149	LF	190.00	28,310.00	130.00	19,370.00	130.00	19,370.00	250.00	37,250.00	199.00	29,651.00
5.07	ENCASEMENT PIPE 8 IN. DIA, SDR-35 PVC SLEEVE	78	LF	110.00	8,580.00	81.00	6,318.00	150.00	11,700.00	150.00	11,700.00	101.00	7,878.00
5.08	ENCASEMENT PIPE 4 IN. DIA, SDR-35 PVC SLEEVE	289	LF	65.00	18,785.00	54.00	15,606.00	110.00	31,790.00	100.00	28,900.00	59.00	17,051.00
5.09	FACTORY RESTRAINED JOINT PIPE, 16 IN. DIA, CLASS 350 DUCTILE IRON, (ALL DEPTHS) INCLUDING EXCAVATION AND BACKFILL	177	LF	285.00	50,445.00	240.00	42,480.00	300.00	53,100.00	200.00	35,400.00	360.00	63,720.00
5.10	FACTORY RESTRAINED JOINT PIPE, 12 IN. DIA, CLASS 350 DUCTILE IRON, (ALL DEPTHS) INCLUDING EXCAVATION AND BACKFILL	275	LF	225.00	61,875.00	160.00	44,000.00	240.00	66,000.00	185.00	50,875.00	260.00	71,500.00
5.11	FURNISH AND INSTALL 12 IN. CLASS 350 DI PIPE IN EXISTING 24 IN. STEEL CASING, COMPLETE IN PLACE, INCL EXCAV AND BACKFILL OF PITS, REMOVE 24 IN. DIA PLUGS	403	LF	365.00	147,095.00	250.00	100,750.00	180.00	72,540.00	250.00	100,750.00	290.00	116,870.00
5.12	DUCTILE IRON, (ALL DEPTHS) INCLUDING EXCAVATION AND BACKFILL	37	LF	145.00	5,365.00	140.00	5,180.00	200.00	7,400.00	100.00	3,700.00	340.00	12,580.00
5.13	FACTORY RESTRAINED JOINT PIPE, 6 IN. DIA, CLASS 350 DUCTILE IRON, (ALL DEPTHS) INCLUDING EXCAVATION AND BACKFILL	335	LF	130.00	43,550.00	110.00	36,850.00	160.00	53,600.00	85.00	28,475.00	120.00	40,200.00
5.14	PIPE, 16 IN. DIA, PVC C900, DR14, MIN. 305PSI, (ALL DEPTHS) INCLUDING EXCAVATION & BACKFILL	40	LF	225.00	9,000.00	200.00	8,000.00	280.00	11,200.00	250.00	10,000.00	330.00	13,200.00
5.15	EXCAVATE AND RESTRAIN EXISTING 16" PVC PIPE ON RAIDER (BACKFILL WITH CLSM)	263	LF	200.00	52,600.00	210.00	55,230.00	120.00	31,560.00	300.00	78,900.00	160.00	42,080.00
5.16	PIPE, 12 IN. DIA, PVC C900, DR14, MIN. 305PSI, (ALL DEPTHS) INCLUDING EXCAVATION & BACKFILL	2,350	LF	150.00	352,500.00	180.00	423,000.00	190.00	446,500.00	125.00	293,750.00	160.00	376,000.00
5.17	EXCAVATE AND RESTRAIN EXISTING 12" PVC PIPE ON RAIDER (BACKFILL WITH CLSM)	205	LF	165.00	33,825.00	210.00	43,050.00	95.00	19,475.00	150.00	30,750.00	122.00	25,010.00
5.18	PIPE, 8 IN. DIA, PVC C900, DR14, MIN. 305PSI, (ALL DEPTHS) INCLUDING EXCAVATION & BACKFILL	366	LF	150.00	54,900.00	97.00	35,502.00	130.00	47,580.00	100.00	36,600.00	136.00	49,776.00
5.19	PIPE, 4 IN. DIA, PVC C900, DR14, MIN. 305PSI, (ALL DEPTHS) INCLUDING EXCAVATION & BACKFILL	272	LF	90.00	24,480.00	63.00	17,136.00	100.00	27,200.00	75.00	20,400.00	88.00	23,936.00
5.20	2 IN. DIA NEW SERVICE TO 2 IN. DIA PRIVATE SERVICE (INSTALL CSV AND PRV)	3	EA	8,500.00	25,500.00	3,700.00	11,100.00	4,000.00	12,000.00	4,000.00	12,000.00	6,500.00	19,500.00
5.21	1 IN. DIA NEW SERVICE TO 1 IN. DIA PRIVATE SERVICE (INSTALL CSV AND PRV)	4	EA	5,700.00	22,800.00	2,700.00	10,800.00	3,000.00	12,000.00	4,000.00	16,000.00	4,080.00	16,320.00

				Chasco Constructors		Texas Road, LLC		Cash Construction Company, Inc.		Patin Construction, LLC		Capital Excavation Company	
Item No.	Bid Item Description	Quantities	Measure	Unit Price	Unit Amount	Unit Price	Unit Amount	Unit Price	Unit Amount	Unit Price	Unit Amount	Unit Price	Unit Amount
5.22	PRESSURE TAP, 16 IN. X 6 IN. DIA (INCLUDES TAPPING SLEEVE AND VALVE)	1	EA	7,400.00	7,400.00	9,200.00	9,200.00	6,300.00	6,300.00	12,500.00	12,500.00	11,500.00	11,500.00
5.23	PRESSURE TAP, 12 IN. X 8 IN. DIA (INCLUDES TAPPING SLEEVE AND VALVE)	1	EA	7,000.00	7,000.00	9,800.00	9,800.00	7,200.00	7,200.00	10,000.00	10,000.00	11,600.00	11,600.00
5.24	PRESSURE TAP, 12 IN. X 6 IN. DIA (INCLUDES TAPPING SLEEVE AND VALVE)	3	EA	6,000.00	18,000.00	8,100.00	24,300.00	5,500.00	16,500.00	10,000.00	30,000.00	10,600.00	31,800.00
5.25	WET CONNECTION, 16 IN. X 16 IN. DIA	3	EA	5,200.00	15,600.00	6,700.00	20,100.00	4,900.00	14,700.00	12,500.00	37,500.00	7,400.00	22,200.00
5.26	WET CONNECTION, 12 IN. X 12 IN. DIA	11	EA	3,000.00	33,000.00	5,000.00	55,000.00	3,200.00	35,200.00	10,000.00	110,000.00	7,000.00	77,000.00
5.27	WET CONNECTION, 8 IN. X 8 IN. DIA	4	EA	2,000.00	8,000.00	4,100.00	16,400.00	2,300.00	9,200.00	10,000.00	40,000.00	6,900.00	27,600.00
5.28	WET CONNECTION, 4 IN. X 4 IN. DIA	1	EA	1,500.00	1,500.00	2,100.00	2,100.00	2,100.00	2,100.00	10,000.00	10,000.00	4,550.00	4,550.00
5.29	DUCTILE IRON FITTINGS	9	EA	7,500.00	67,500.00	7,700.00	69,300.00	7,400.00	66,600.00	7,500.00	67,500.00	2,200.00	19,800.00
5.30	VALVES, RESILIENT SEAT GATE VALVE, 16 IN. DIA.	1	EA	14,000.00	14,000.00	13,000.00	13,000.00	12,200.00	12,200.00	15,000.00	15,000.00	13,600.00	13,600.00
5.31	VALVES, RESILIENT SEAT GATE VALVE, 12 IN. DIA.	11	EA	7,000.00	77,000.00	5,300.00	58,300.00	4,600.00	50,600.00	6,000.00	66,000.00	5,900.00	64,900.00
5.32	VALVES, RESILIENT SEAT GATE VALVE, 8 IN. DIA.	4	EA	3,200.00	12,800.00	3,000.00	12,000.00	2,800.00	11,200.00	2,200.00	8,800.00	3,670.00	14,680.00
5.33	VALVES, RESILIENT SEAT GATE VALVE, 6 IN. DIA.	14	EA	2,400.00	33,600.00	2,200.00	30,800.00	2,000.00	28,000.00	1,500.00	21,000.00	3,280.00	45,920.00
5.34	VALVES, RESILIENT SEAT GATE VALVE, 4 IN. DIA.	1	EA	2,150.00	2,150.00	2,000.00	2,000.00	1,800.00	1,800.00	1,200.00	1,200.00	2,750.00	2,750.00
5.35	FIRE HYDRANTS	18	EA	6,700.00	120,600.00	5,900.00	106,200.00	5,700.00	102,600.00	8,000.00	144,000.00	7,400.00	133,200.00
5.36	AUTOMATIC COMBINATION AIR/VACUUM RELEASE VALVE ASSEMBLY, 2 IN. DIAMETER	3	EA	7,000.00	21,000.00	6,900.00	20,700.00	3,900.00	11,700.00	5,500.00	16,500.00	5,900.00	17,700.00
5.37	DEFLECTION TEST 510.3(26)(f) OF EXISTING 24 IN. DIA STEEL CASING UNDER 183A	403	LF	10.00	4,030.00	6.00	2,418.00	4.00	1,612.00	1.50	604.50	18.00	7,254.00
5.38	VIDEO INSPECTION 510.3(26)(g) OF EXISTING 24 IN. DIA STEEL CASING UNDER 183A	403	LF	4.00	1,612.00	6.00	2,418.00	5.00	2,015.00	1.50	604.50	5.00	2,015.00
	Subtotal Water Improvements				1,655,742.00		1,560,148.00		1,522,722.00		2,065,559.00		1,748,341.00
6.00	Traffic Signal Improvements												
6.01	DRILL SHAFT (TRF SIG POLE) (24 IN)	6	LF	300.00	1,800.00	370.00	2,220.00	320.00	1,920.00	250.00	1,500.00	211.00	1,266.00
6.02	DRILL SHAFT (TRF SIG POLE) (30 IN)	11	LF	490.00	5,390.00	600.00	6,600.00	380.00	4,180.00	375.00	4,125.00	320.00	3,520.00
6.03	DRILL SHAFT (TRF SIG POLE) (36 IN)	13	LF	540.00	7,020.00	660.00	8,580.00	530.00	6,890.00	425.00	5,525.00	370.00	4,810.00
6.04	CONDT (PVC) (SCHD 80) (2")	16	LF	20.00	320.00	25.00	400.00	22.00	352.00	70.00	1,120.00	58.00	928.00
6.05	CONDT (PVC) (SCHD 80) (3")	112	LF	23.00	2,576.00	29.00	3,248.00	26.00	2,912.00	75.00	8,400.00	63.00	7,056.00
6.06	CONDT (PVC) (SCHD 80) (3")(BORE)	255	LF	45.00	11,475.00	55.00	14,025.00	48.00	12,240.00	90.00	22,950.00	74.00	18,870.00
6.07	ELEC CONDR (NO. 8) BARE	383	LF	2.00	766.00	2.00	766.00	2.00	766.00	2.50	957.50	2.00	766.00
6.08	ELEC CONDR (NO. 8) INSULATED (LUM)	150	LF	2.00	300.00	2.50	375.00	2.00	300.00	3.00	450.00	3.00	450.00
6.09	GROUND BOX TY C (162911) W / APRON	5	EA	1,900.00	9,500.00	2,300.00	11,500.00	2,000.00	10,000.00	2,500.00	12,500.00	2,110.00	10,550.00
6.10	ALUMINUM SIGNS (TY A)	41	SF	135.00	5,535.00	170.00	6,970.00	150.00	6,150.00	50.00	2,050.00	42.00	1,722.00
6.11	SIGN, PEDESTRIAN (9"X15") (R10-3E) (R-L)	4	EA	155.00	620.00	100.00	400.00	91.00	364.00	100.00	400.00	84.00	336.00
6.12	LEFT TURN YIELD ON GREEN BALL (30"X36")(R10-12)	2	EA	260.00	520.00	320.00	640.00	280.00	560.00	300.00	600.00	260.00	520.00
6.13	SIGN,"CR 271" (12"X42")	2	EA	420.00	840.00	510.00	1,020.00	450.00	900.00	500.00	1,000.00	420.00	840.00
6.14	SIGN,"Crystal Falls Pkwy" (12"X88")	2	EA	420.00	840.00	580.00	1,160.00	510.00	1,020.00	550.00	1,100.00	470.00	940.00
6.15	INSTALL HWY TRF SIG (SYSTEM)	1	EA	6,000.00	6,000.00	7,300.00	7,300.00	6,500.00	6,500.00	26,500.00	26,500.00	23,200.00	23,200.00
6.16	MAST ARM, 8' LUMINAIRE/W LED LUMINAIRE HEAD EQUIVALENT TO (250 WATT H.P.S.)	2	EA	1,600.00	3,200.00	2,000.00	4,000.00	1,700.00	3,400.00	1,200.00	2,400.00	1,050.00	2,100.00
6.17	ROD, 5/8 " X 8' COPPER GROUND	1	EA	155.00	155.00	190.00	190.00	170.00	170.00	125.00	125.00	105.00	105.00
6.18	BACK PLATE (12 IN (3-SEC)	3	EA	125.00	375.00	150.00	450.00	140.00	420.00	200.00	600.00	158.00	474.00
6.19	BACK PLATE (12 IN (5-SEC)	1	EA	200.00	200.00	240.00	240.00	220.00	220.00	225.00	225.00	184.00	184.00
6.20	PED SIG SEC (LED)(COUNTDOWN)	4	EA	960.00	3,840.00	1,200.00	4,800.00	1,000.00	4,000.00	1,000.00	4,000.00	790.00	3,160.00
6.21	VEH SIG SEC (12 IN) LED (GRN ARW)	1	EA	325.00	325.00	400.00	400.00	350.00	350.00	525.00	525.00	450.00	450.00
6.22	VEH SIG SEC (12 IN) LED (GRN)	5	EA	325.00	1,625.00	400.00	2,000.00	350.00	1,750.00	525.00	2,625.00	450.00	2,250.00

				Chasco Constructors		Texas Road, LLC		Cash Construction Company, Inc.		Patin Construction, LLC		Capital Excavation Company	
Item No.	Bid Item Description	Quantities	Measure	Unit Price	Unit Amount	Unit Price	Unit Amount	Unit Price	Unit Amount	Unit Price	Unit Amount	Unit Price	Unit Amount
6.23	VEH SIG SEC (12 IN) LED (YEL ARW)	1	EA	325.00	325.00	400.00	400.00	350.00	350.00	525.00	525.00	450.00	450.00
6.24	VEH SIG SEC (12 IN) LED (YEL)	12	EA	325.00	3,900.00	400.00	4,800.00	350.00	4,200.00	525.00	6,300.00	450.00	5,400.00
6.25	VEH SIG SEC (12 IN) LED (RED ARW)	1	EA	325.00	325.00	400.00	400.00	350.00	350.00	525.00	525.00	450.00	450.00
6.26	VEH SIG SEC (12 IN) LED (RED)	16	EA	325.00	5,200.00	400.00	6,400.00	350.00	5,600.00	525.00	8,400.00	450.00	7,200.00
6.27	TRAF SIG CBL (TY C)(2 CONDR) (14 AWG)	480	LF	2.00	960.00	2.00	960.00	2.00	960.00	2.50	1,200.00	2.00	960.00
6.28	TRAF SIG CBL (TY A)(5 CONDR) (14 AWG)	412	LF	2.00	824.00	2.50	1,030.00	2.00	824.00	3.75	1,545.00	3.00	1,236.00
6.29	TRAF SIG CBL (TY A)(7 CONDR) (14 AWG)	289	LF	3.00	867.00	2.50	722.50	2.00	578.00	5.00	1,445.00	4.00	1,156.00
6.30	INS TRF SIG PL AM(S)1 ARM(32')	1	EA	14,500.00	14,500.00	14,000.00	14,000.00	15,900.00	15,900.00	10,250.00	10,250.00	9,000.00	9,000.00
6.31	INS TRF SIG PL AM(S)1 ARM(48') LUM	1	EA	51,500.00	51,500.00	18,000.00	18,000.00	55,700.00	55,700.00	33,000.00	33,000.00	28,700.00	28,700.00
6.32	PED POLE ASSEMBLY	1	EA	2,400.00	2,400.00	2,900.00	2,900.00	2,600.00	2,600.00	2,700.00	2,700.00	2,320.00	2,320.00
6.33	PED DETECT PUSH BUTTON (APS)	4	EA	1,700.00	6,800.00	1,200.00	4,800.00	1,000.00	4,000.00	1,000.00	4,000.00	790.00	3,160.00
6.34	MODULAR HYBRID VIDEO IMAGING AND RADAR DETECTION PROCESSOR SYSTEM	1	EA	10,000.00	10,000.00	13,000.00	13,000.00	11,100.00	11,100.00	10,500.00	10,500.00	9,100.00	9,100.00
6.35	MODULAR HYBRID VIDEO CAMERA ASSEMBLY	1	EA	5,500.00	5,500.00	6,700.00	6,700.00	5,900.00	5,900.00	5,000.00	5,000.00	4,340.00	4,340.00
6.36	MODULAR HYBRID SET-UP SYSTEM	1	EA	370.00	370.00	450.00	450.00	400.00	400.00	600.00	600.00	530.00	530.00
6.37	MODULAR HYBRID COMMUNICATIONS COAX CABLE	159	LF	4.00	636.00	4.00	636.00	4.00	636.00	4.00	636.00	3.00	477.00
6.38	REMOV TRAFFIC SIGNAL	3	EA	1,500.00	4,500.00	1,600.00	4,800.00	1,400.00	4,200.00	12,500.00	37,500.00	9,500.00	28,500.00
Raider Way @ Mid-block Crossing-1 & Mid-block Crossing 2													
6.39	DRILL SHAFT (TRF SIG POLE) (30 IN)	45	LF	350.00	15,750.00	430.00	19,350.00	380.00	17,100.00	375.00	16,875.00	320.00	14,400.00
6.40	CONDT (PVC) (SCHD 80) (2")	64	LF	20.00	1,280.00	25.00	1,600.00	22.00	1,408.00	70.00	4,480.00	58.00	3,712.00
6.41	CONDT (PVC) (SCHD 80) (2")(BORE)	140	LF	37.00	5,180.00	46.00	6,440.00	40.00	5,600.00	80.00	11,200.00	68.00	9,520.00
6.42	CONDT (PVC) (SCHD 80) (3")	82	LF	24.00	1,968.00	29.00	2,378.00	26.00	2,132.00	75.00	6,150.00	63.00	5,166.00
6.43	CONDT (PVC) (SCHD 80) (3")(BORE)	140	LF	45.00	6,300.00	55.00	7,700.00	48.00	6,720.00	85.00	11,900.00	74.00	10,360.00
6.44	ELEC CONDR (NO. 4) BARE	80	LF	3.50	280.00	4.00	320.00	4.00	320.00	4.25	340.00	4.00	320.00
6.45	ELEC CONDR (NO. 4) INSULATED	40	LF	3.50	140.00	4.50	180.00	4.00	160.00	5.00	200.00	4.00	160.00
6.46	ELEC CONDR (NO. 8) BARE	461	LF	2.00	922.00	2.00	922.00	2.00	922.00	2.50	1,152.50	2.00	922.00
6.47	ELEC CONDR (NO. 8) INSULATED (LUM)	1,296	LF	2.00	2,592.00	2.50	3,240.00	2.00	2,592.00	3.00	3,888.00	3.00	3,888.00
6.48	GROUND BOX TY C (162911) W / APRON	4	EA	1,900.00	7,600.00	2,300.00	9,200.00	2,000.00	8,000.00	2,500.00	10,000.00	2,110.00	8,440.00
6.49	ELC SRV TY D 120 / 240 060 (NS) SS (E) SP (O)	2	EA	7,300.00	14,600.00	8,900.00	17,800.00	7,800.00	15,600.00	7,250.00	14,500.00	6,300.00	12,600.00
6.50	ALUMINUM SIGNS (TY A)	4	SF	37.00	148.00	45.00	180.00	40.00	160.00	800.00	3,200.00	680.00	2,720.00
6.51	SIGN, PEDESTRIAN (9"X15") (R10-3E)(R-L)	4	EA	160.00	640.00	190.00	760.00	170.00	680.00	100.00	400.00	79.00	316.00
6.52	INSTALL HWY TRF SIG (ISOLATED)(HAWK SYSTEM)	2	EA	8,700.00	17,400.00	11,000.00	22,000.00	9,400.00	18,800.00	35,000.00	70,000.00	25,800.00	51,600.00
6.53	POLE MOUNTED CONTROLLER ON SIGNAL POLE	2	EA	18,500.00	37,000.00	23,000.00	46,000.00	20,100.00	40,200.00	25,000.00	50,000.00	20,000.00	40,000.00
6.54	MAST ARM, 8' LUMINAIRE/W LED LUMINAIRE HEAD EQUIVALENT TO (250 WATT H.P.S.)	4	EA	1,600.00	6,400.00	2,000.00	8,000.00	1,700.00	6,800.00	2,500.00	10,000.00	2,110.00	8,440.00
6.55	CONTROL, PHOTOELECTRIC	2	EA	300.00	600.00	370.00	740.00	330.00	660.00	75.00	150.00	63.00	126.00
6.56	POWER SUPPLY	2	EA	2,330.00	4,660.00	2,800.00	5,600.00	2,500.00	5,000.00	425.00	850.00	370.00	740.00
6.57	ROD, 5/8 " X 10' COPPER GROUND (CONTROLLER ONLY)	2	EA	160.00	320.00	190.00	380.00	170.00	340.00	200.00	400.00	158.00	316.00
6.58	ROD, 5/8 " X 8' COPPER GROUND	4	EA	160.00	640.00	190.00	760.00	170.00	680.00	125.00	500.00	105.00	420.00
6.59	HAWK BACK PLATE (12 IN (3-SEC)	8	EA	220.00	1,760.00	270.00	2,160.00	240.00	1,920.00	500.00	4,000.00	420.00	3,360.00
6.60	PED SIG SEC (LED)(COUNTDOWN)	4	EA	1,700.00	6,800.00	1,200.00	4,800.00	1,000.00	4,000.00	800.00	3,200.00	680.00	2,720.00
6.61	VEH SIG SEC (12 IN) LED (YEL)	8	EA	325.00	2,600.00	400.00	3,200.00	350.00	2,800.00	500.00	4,000.00	420.00	3,360.00
6.62	VEH SIG SEC (12 IN) LED (RED)	16	EA	325.00	5,200.00	400.00	6,400.00	350.00	5,600.00	500.00	8,000.00	420.00	6,720.00
6.63	TRAF SIG CBL (TY C)(2 CONDR) (14 AWG)	262	LF	2.00	524.00	2.00	524.00	2.00	524.00	2.50	655.00	2.00	524.00
6.64	TRAF SIG CBL (TY A)(5 CONDR) (14 AWG)	282	LF	2.00	564.00	2.50	705.00	2.00	564.00	3.75	1,057.50	3.00	846.00
6.65	TRAF SIG CBL (TY A)(7 CONDR) (14 AWG)	442	LF	3.00	1,326.00	2.50	1,105.00	2.00	884.00	5.00	2,210.00	4.00	1,768.00

				Chasco Constructors		Texas Road, LLC		Cash Construction Company, Inc.		Patin Construction, LLC		Capital Excavation Company	
Item No.	Bid Item Description	Quantities	Measure	Unit Price	Unit Amount	Unit Price	Unit Amount	Unit Price	Unit Amount	Unit Price	Unit Amount	Unit Price	Unit Amount
6.66	INS TRF SIG PL AM(S)1 ARM(28') LUM	4	EA	14,000.00	56,000.00	18,000.00	72,000.00	15,600.00	62,400.00	20,000.00	80,000.00	14,700.00	58,800.00
6.67	PED DETECT (PUSH BTN AND SIGN ASSEMBLY)	4	EA	2,400.00	9,600.00	1,200.00	4,800.00	1,000.00	4,000.00	1,000.00	4,000.00	790.00	3,160.00
	Subtotal Traffic Signal Improvements				380,623.00		406,526.50		395,228.00		547,111.50		442,900.00
7.00	Pavement Markings and Signing Improvements												
7.01	REFL. TY. 1 THERMO PVMT MARKINGS 4" IN WIDTH, 100 MILS IN THICKNESS, SOLID YELLOW IN COLOR, ITEM 8715-A-4Y	7,714	LF	1.00	7,714.00	0.80	6,171.20	0.50	3,857.00	0.81	6,248.34	1.00	7,714.00
7.02	REFL. TY. 1 THERMO PVMT MARKINGS 4" IN WIDTH, 100 MILS IN THICKNESS, BROKEN, YELLOW IN COLOR, ITEM 8715-A-4BY	3,367	LF	1.00	3,367.00	0.80	2,693.60	0.50	1,683.50	0.81	2,727.27	1.00	3,367.00
7.03	REFL. TY. I THERMO PVMT MARKINGS 4" IN WIDTH, 100 MILS IN THICKNESS, SOLID, WHITE IN COLOR. ITEM 8715-A-24W	2,530	LF	1.00	2,530.00	0.80	2,024.00	0.50	1,265.00	0.81	2,049.30	1.00	2,530.00
7.04	REFL. TY. I THERMO PVMT MARKINGS 24" IN WIDTH, 100 MILS IN THICKNESS, SOLID, WHITE IN COLOR. ITEM 8715-A-24W	90	LF	15.00	1,350.00	9.50	855.00	9.00	810.00	9.70	873.00	16.00	1,440.00
7.05	REFL. TY. I THERMO PVMT MARKINGS 24" IN WIDTH, 100 MILS IN THICKNESS, SOLID, YELLOW IN COLOR. ITEM 8715-A-24Y	609	LF	8.00	4,872.00	9.50	5,785.50	9.00	5,481.00	9.70	5,907.30	12.00	7,308.00
7.06	REFL. TY. I THERMO PVMT MARKINGS 8" IN WIDTH, 100 MILS IN THICKNESS, SOLID, WHITE IN COLOR. ITEM 8715-A-8SW	857	LF	3.00	2,571.00	3.50	2,999.50	3.00	2,571.00	3.75	3,213.75	2.00	1,714.00
7.07	REFL. TY. I THERMO PVMT MARKINGS 8" IN WIDTH, 100 MILS IN THICKNESS, SOLID, YELLOW IN COLOR. ITEM 8715-A-8SW	89	LF	4.00	356.00	3.50	311.50	3.00	267.00	3.75	333.75	2.00	178.00
7.08	REFL. TY. I THERMO PVMT MARKINGS 12" IN WIDTH, 100 MILS IN THICKNESS, SOLID, WHITE IN COLOR. ITEM 8715-A-12SW	905	LF	5.00	4,525.00	5.50	4,977.50	5.00	4,525.00	5.65	5,113.25	6.00	5,430.00
7.09	REFL. TY. I THERMO PVMT MARKINGS 12" IN WIDTH, 100 MILS IN THICKNESS, SOLID, YELLOW IN COLOR. ITEM 8715-A-12SW	13	LF	5.00	65.00	5.50	71.50	5.00	65.00	5.65	73.45	6.00	78.00
7.10	REFL. TY. I THERMO PVMT MARKINGS 12" IN WIDTH x 18", TALL TRIANGLES, 100 MILS IN THICKNESS, BROKEN, WHITE IN COLOR. ITEM 8715-A-4BW	68	LF	47.00	3,196.00	55.00	3,740.00	51.00	3,468.00	55.65	3,784.20	53.00	3,604.00
7.11	REFL. TY. I THERMO PVMT MARKINGS 18" IN WIDTH, 100 MILS IN THICKNESS, BROKEN, WHITE IN COLOR. ITEM 8715-A-4BW	173	LF	11.00	1,903.00	13.00	2,249.00	12.00	2,076.00	13.25	2,292.25	9.00	1,557.00
7.12	TYPE I BICYCLE LANE MARKINGS, 6" WIDTH, BROKEN, WHITE IN COLOR, ITEM 829S-A6B	926	LF	2.00	1,852.00	2.00	1,852.00	2.00	1,852.00	2.20	2,037.20	2.00	1,852.00
7.13	TYPE I BICYCLE LANE MARKINGS, 6" WIDTH, SOLID, WHITE IN COLOR, ITEM 829S-A6S	7,766	LF	2.00	15,532.00	2.00	15,532.00	2.00	15,532.00	2.20	17,085.20	1.00	7,766.00
7.14	BIKE BOX (SMALL) WITH BIKE ARROW & BIKE SYMBOL - TY I	14	EA	1,150.00	16,100.00	1,400.00	19,600.00	1,300.00	18,200.00	1,375.00	19,250.00	16,800.00	235,200.00
7.15	TYPE I BICYCLE LANE PREFERENTIAL (DIRECTIONAL ARROW) SYMBOLS, WHITE IN COLOR. ITEM 829S-B	7	EA	370.00	2,590.00	430.00	3,010.00	400.00	2,800.00	440.00	3,080.00	160.00	1,120.00
7.16	TYPE I BICYCLE LANE (BIKE RIDER) SYMBOLS, WHITE IN COLOR. ITEM 829S-C	7	EA	450.00	3,150.00	520.00	3,640.00	480.00	3,360.00	532.00	3,724.00	160.00	1,120.00
7.17	CROSSWALK (RE: TxDOT PM(4)-22 WITH REFL. TY. 1 THERMO PVMT MARKINGS, 24 IN WIDTH, 100 MILS THICKNESS, SOLID, WHITE, ITEM 8715-A-24SW	534	LF	15.00	8,010.00	9.50	5,073.00	9.00	4,806.00	9.70	5,179.80	15.00	8,010.00
7.18	REFL. TY. I THERMO PVMT MARKINGS, WORD "YIELD", 8" TO 10" IN WIDTH, 100 MILS THICKNESS, SOLID, WHITE IN COLOR. ITEM 871S-B	4	EA	790.00	3,160.00	930.00	3,720.00	850.00	3,400.00	940.00	3,760.00	310.00	1,240.00

Item No.	Bid Item Description	Estimated		Chasco Constructors		Texas Road, LLC		Cash Construction Company, Inc.		Patin Construction, LLC		Capital Excavation Company	
		Quantities	Measure	Unit Price	Unit Amount	Unit Price	Unit Amount	Unit Price	Unit Amount	Unit Price	Unit Amount	Unit Price	Unit Amount
7.19	REFL. TY. I THERMO PVMT MARKINGS, WORD "ONLY", 8" TO 10" IN WIDTH, 100 MILS THICKNESS, WHITE IN COLOR. ITEM 871S-B	10	EA	290.00	2,900.00	340.00	3,400.00	310.00	3,100.00	345.00	3,450.00	290.00	2,900.00
7.20	TURN LANE SYMBOLS, 6" TO 10" WIDTH, 100 MILS IN THICKNESS, WHITE IN COLOR, ITEM 871S	22	EA	210.00	4,620.00	250.00	5,500.00	230.00	5,060.00	250.00	5,500.00	208.00	4,576.00
7.21	CLASS E, RAISED PAVEMENT MARKERS, II-W TYPE (WHITE). ITEM 873S-EW	168	EA	8.00	1,344.00	9.50	1,596.00	9.00	1,512.00	9.70	1,629.60	9.00	1,512.00
7.22	CLASS E, RAISED PAVEMENT MARKERS, II-S TYPE (AMBER). ITEM 873S-EA	251	EA	8.00	2,008.00	9.50	2,384.50	9.00	2,259.00	9.70	2,434.70	9.00	2,259.00
7.23	CLASS E, RAISED PAVEMENT MARKERS, II-B TYPE (BLUE). ITEM 873S-EB	18	EA	8.00	144.00	9.50	171.00	9.00	162.00	9.70	174.60	9.00	162.00
7.24	END SCHOOL ZONE (S5-2)	3	EA	65.00	195.00	68.00	204.00	63.00	189.00	70.00	210.00	410.00	1,230.00
7.25	30 MPH SPEED LIMIT (R2-1)	5	EA	300.00	1,500.00	330.00	1,650.00	300.00	1,500.00	335.00	1,675.00	390.00	1,950.00
7.26	20 MPH SCHOOL SPEED LIMIT (S5-1)	5	EA	375.00	1,875.00	400.00	2,000.00	370.00	1,850.00	410.00	2,050.00	48.00	240.00
7.27	CELL PHONE USE PROHIBITED (S7-1T)	5	EA	65.00	325.00	68.00	340.00	63.00	315.00	70.00	350.00	48.00	240.00
7.28	PEDESTRIAN CROSSING (S1-1)	16	EA	320.00	5,120.00	340.00	5,440.00	310.00	4,960.00	345.00	5,520.00	410.00	6,560.00
7.29	AHEAD (SW16-9P)	4	EA	65.00	260.00	68.00	272.00	63.00	252.00	70.00	280.00	48.00	192.00
7.30	CHURCH (W8)	2	EA	3,100.00	6,200.00	3,400.00	6,800.00	3,100.00	6,200.00	3,450.00	6,900.00	410.00	820.00
7.31	STOP (R1-1)	12	EA	290.00	3,480.00	310.00	3,720.00	290.00	3,480.00	320.00	3,840.00	410.00	4,920.00
7.32	ARROW POINTING TO LINE (W16-7PL)	12	EA	50.00	600.00	56.00	672.00	51.00	612.00	60.00	720.00	48.00	576.00
7.33	STOP ON RED (CROSSWALK) (R10-23)	4	EA	85.00	340.00	93.00	372.00	85.00	340.00	65.00	260.00	1,260.00	5,040.00
7.34	ROAD NARROWS (W5-1)	1	EA	310.00	310.00	340.00	340.00	310.00	310.00	345.00	345.00	410.00	410.00
7.35	ONE WAY LEFT (R6-1L)	1	EA	310.00	310.00	330.00	330.00	300.00	300.00	332.00	332.00	390.00	390.00
7.36	ONE WAY RIGHT (R6-1R)	3	EA	310.00	930.00	330.00	990.00	300.00	900.00	332.00	996.00	390.00	1,170.00
7.37	CENTER LANE TURN ONLY (R3-9-B)	2	EA	325.00	650.00	350.00	700.00	320.00	640.00	350.00	700.00	410.00	820.00
7.38	DO NOT ENTER (R5-1)	1	EA	330.00	330.00	350.00	350.00	320.00	320.00	360.00	360.00	410.00	410.00
7.39	DIVIDED MEDIAN (R4-7)	2	EA	300.00	600.00	330.00	660.00	300.00	600.00	335.00	670.00	410.00	820.00
7.40	ROUNDAABOUT (W2-6)	4	EA	325.00	1,300.00	350.00	1,400.00	320.00	1,280.00	350.00	1,400.00	410.00	1,640.00
7.41	15 MPH SPEED LIMIT (W13-1P)	4	EA	52.00	208.00	56.00	224.00	51.00	204.00	60.00	240.00	53.00	212.00
7.42	NO U-TURN (R3-4)	3	EA	300.00	900.00	320.00	960.00	300.00	900.00	325.00	975.00	390.00	1,170.00
7.43	BIKE LANE (W11-1)	1	EA	310.00	310.00	330.00	330.00	310.00	310.00	340.00	340.00	390.00	390.00
7.44	BIKE AND PEDESTRIAN SIGN	1	EA	330.00	330.00	350.00	350.00	320.00	320.00	360.00	360.00	410.00	410.00
7.45	TRAIL CROSSING	1	EA	52.00	52.00	56.00	56.00	51.00	51.00	57.00	57.00	53.00	53.00
7.46	SHARE THE ROAD (W16-1P)	1	EA	85.00	85.00	93.00	93.00	85.00	85.00	95.00	95.00	80.00	80.00
7.47	END SCHOOL ZONE (S5-2ATP)	3	EA	330.00	990.00	350.00	1,050.00	320.00	960.00	360.00	1,080.00	48.00	144.00
7.48	WRONG WAY (R5-19)	1	EA	340.00	340.00	360.00	360.00	330.00	330.00	365.00	365.00	410.00	410.00
7.49	STOP SIGN AHEAD	1	EA	345.00	345.00	360.00	360.00	340.00	340.00	370.00	370.00	410.00	410.00
7.50	183 A TOLL (M90-1T)(4)	2	EA	375.00	750.00	400.00	800.00	370.00	740.00	410.00	820.00	420.00	840.00
7.51	JUNCTION (M2-1)	1	EA	75.00	75.00	80.00	80.00	74.00	74.00	82.00	82.00	53.00	53.00
7.52	CITY OF LEANDER STREET NAME (COL #401-4)	5	EA	40.00	200.00	43.00	215.00	40.00	200.00	45.00	225.00	53.00	265.00
7.53	YIELD (R1-2)	8	EA	325.00	2,600.00	340.00	2,720.00	310.00	2,480.00	345.00	2,760.00	410.00	3,280.00
7.54	PRECAST CONCRETE WHEEL STOPS (6' LENGTH) @ 10' SPACING	342	EA	110.00	37,620.00	120.00	41,040.00	110.00	37,620.00	147.00	50,274.00	120.00	41,040.00
7.55	BIKE ROUTE (R3-17)	2	EA	310.00	620.00	330.00	660.00	310.00	620.00	340.00	680.00	390.00	780.00
7.56	BIKE ROUTE AHEAD (3-17aP)	1	EA	65.00	65.00	68.00	68.00	63.00	63.00	70.00	70.00	53.00	53.00
7.57	BIKE ROUTE ENDS (3-17bP)	1	EA	325.00	325.00	340.00	340.00	310.00	310.00	345.00	345.00	53.00	53.00
7.58	BIKE ROUTE (D11-1)	1	EA	325.00	325.00	340.00	340.00	310.00	310.00	345.00	345.00	53.00	53.00
7.59	BIKE ROUTE ENDS (M4-6)	1	EA	65.00	65.00	68.00	68.00	63.00	63.00	70.00	70.00	390.00	390.00

				Chasco Constructors		Texas Road, LLC		Cash Construction Company, Inc.		Patin Construction, LLC		Capital Excavation Company	
Item No.	Bid Item Description	Estimated Quantities	Measure	Unit Price	Unit Amount	Unit Price	Unit Amount	Unit Price	Unit Amount	Unit Price	Unit Amount	Unit Price	Unit Amount
7.60	NO MOTOR VEHICLES (R5-3)	3	EA	300.00	900.00	330.00	990.00	300.00	900.00	330.00	990.00	53.00	159.00
7.61	REBOUNDABLE WHITE REFLECTOR DELINEATOR POSTS (36") (PAVEMENT MOUNT)	136	EA	200.00	27,200.00	220.00	29,920.00	200.00	27,200.00	215.00	29,240.00	133.00	18,088.00
8.00	Subtotal Pavement Markings and Signing Improvements				192,489.00		204,620.80		186,239.50		216,311.96		398,398.00
	Roadway Illumination Improvements												
8.01	STREET LIGHT STANDARD FOUNDATION	34	EA	1,600.00	54,400.00	2,000.00	68,000.00	1,700.00	57,800.00	1,850.00	62,900.00	1,610.00	54,740.00
8.02	CONDUIT (RMC)(2")	12,000	LF	37.00	444,000.00	45.00	540,000.00	35.00	420,000.00	18.00	216,000.00	37.00	444,000.00
8.03	ELEC CONDR (NO. 6)(BARE)	132	CLF	210.00	27,720.00	250.00	33,000.00	220.00	29,040.00	5.50	726.00	207.00	27,324.00
8.04	ELEC CONDR (NO. 6)(INSULATED)	264	CLF	225.00	59,400.00	270.00	71,280.00	240.00	63,360.00	5.50	1,452.00	223.00	58,872.00
8.05	INS RD IL AM (TY AL) 40T-8 (.25 KW)S	34	EA	3,300.00	112,200.00	4,100.00	139,400.00	3,600.00	122,400.00	1,900.00	64,600.00	3,320.00	112,880.00
8.06	GROUNDING	34	EA	185.00	6,290.00	230.00	7,820.00	200.00	6,800.00	950.00	32,300.00	184.00	6,256.00
8.07	PULL BOXES	35	EA	1,700.00	59,500.00	210.00	7,350.00	1,800.00	63,000.00	800.00	28,000.00	1,710.00	59,850.00
8.08	LIGHTING CONTROL PANEL	1	EA	8,358.00	8,358.00	11,000.00	11,000.00	9,400.00	9,400.00	6,500.00	6,500.00	8,700.00	8,700.00
9.00	Subtotal Roadway Illumination Improvements				771,868.00		877,850.00		771,800.00		412,478.00		772,622.00
	Irrigation and Landscape Improvements												
9.01	LANDSCAPE (INCLUDES PLANTINGS, SOIL AMENDMENTS - LABOR, MATERIALS, EQUIPMENT FOR ALL PLANTINGS, APPROVALS AND WARRANTY)	1	LS	477,000.00	477,000.00	475,000.00	475,000.00	516,500.00	516,500.00	485,000.00	485,000.00	491,000.00	491,000.00
9.02	IRRIGATION SYSTEM (INCLUDES POINT OF CONNECTIONS, CONTROLLER & MAINLINE, 2-INCH WATER METER, ELECTRICAL SERVICE FOR CONTROLLER INCLUDING LABOR, MATERIALS, INSTALLATION AND APPROVED OPERATION)	1	LS	388,000.00	388,000.00	320,000.00	320,000.00	319,000.00	319,000.00	480,000.00	480,000.00	270,000.00	270,000.00
10.00	Subtotal Irrigation and Landscape Improvements				865,000.00		795,000.00		835,500.00		965,000.00		761,000.00
	Dry Utility Improvements												
10.01	CUT & RESTORE PAVEMENT	1,650	SY	70.00	115,500.00	34.00	56,100.00	3.00	4,950.00	33.50	55,275.00	2.00	3,300.00
10.02	EXCAVATION SAFETY SYSTEM	3,570	LF	10.00	35,700.00	2.50	8,925.00	15.00	53,550.00	21.00	74,970.00	15.00	53,550.00
10.03	CONDUIT (PVC)(SCH 40)(3 INCH)	14,313	LF	5.50	78,721.50	5.50	78,721.50	22.00	314,886.00	12.50	178,912.50	21.00	300,573.00
10.04	CONDUIT (PVC)(SCH 40)(4 INCH)	24,442	LF	7.00	171,094.00	7.50	183,315.00	16.00	391,072.00	14.50	354,409.00	15.00	366,630.00
10.05	FURNISH & INSTALL 96" x 96" VAULT	2	EA	6,800.00	13,600.00	27,000.00	54,000.00	16,200.00	32,400.00	13,000.00	26,000.00	15,300.00	30,600.00
10.06	FURNISH & INSTALL 74" x 46" ENCLOSURE PAD & ENCLOSURE	10	EA	5,200.00	52,000.00	10,000.00	100,000.00	8,000.00	80,000.00	7,000.00	70,000.00	7,600.00	76,000.00
10.07	FURNISH & INSTALL 56" x 46" ENCLOSURE PAD & ENCLOSURE	2	EA	3,700.00	7,400.00	10,000.00	20,000.00	6,000.00	12,000.00	5,500.00	11,000.00	5,700.00	11,400.00
10.08	DUCT BANK	3,570	LF	70.00	249,900.00	170.00	606,900.00	270.00	963,900.00	22.00	78,540.00	250.00	892,500.00
10.09	FURNISH & INSTALL 3 x 5 x 3 HANDHOLE	12	EA	3,700.00	44,400.00	9,500.00	114,000.00	10,300.00	123,600.00	2,200.00	26,400.00	9,700.00	116,400.00
10.10	TIMBER POLE	3	EA	2,600.00	7,800.00	3,100.00	9,300.00	1,100.00	3,300.00	6,000.00	18,000.00	2,630.00	7,890.00
	Subtotal Dry Utility Improvements				776,115.50		1,231,261.50		1,979,658.00		893,506.50		1,858,843.00
	TOTAL BID				15,164,644.00		15,520,503.50		15,909,000.00		15,933,919.46		16,689,346.00

1

Texas Road's amount on Bid Form: \$73,500.00

2

Texas Road's amount on Bid Form: \$944,000.00

3

Texas Road's amount on Bid Form: \$15,586,653.50

4

Capital Excavation's amount on bid form: \$8,440.00



EXECUTIVE SUMMARY
07/06/2023

AGENDA SUBJECT:

Award of Solicitation S23-012 for Professional Auditing Services to Whitley Penn LLP in the amount of \$59,900.00 for the first year engagement with the option to extend up to a maximum of five (5) years; and authorize the City Manager to execute any and all necessary documents and renewals.

BACKGROUND:

In May 2022, the City's Home Rule Charter was amended to allow the City to use the same outside auditing firm to audit the City's financial records for no more than five (5) years in succession. However, the previous limit was three (3) consecutive years and the City's contract with the previous audit services firm has expired. Solicitation #S23-012 was issued in May for Professional Audit Services for the current fiscal year, FY23. Two (2) responses to the solicitation were received. A thorough review of the responses was conducted by the Finance Department staff. Whitley Penn, LLP was determined to be the most qualified firm. Fees have been negotiated and a letter of engagement drafted for consideration.

Whitley Penn LLP, established in 1983, is a regional firm with more than eight hundred (800) professionals in the Austin, Dallas, Fort Worth, Houston, Midland, Odessa, Plano, San Antonio, Texas and Hobbs New Mexico. Whitley Penn has a dedicated Public Sector team consisting of four (4) partners, six (6) managers, eleven (11) senior associates and a pool of more than twenty (20) associates dedicated to serving municipal clients. In the local area, the firm provides auditing services to the Cities of Round Rock, Dripping Springs, and Liberty Hill.

The contract structure is for one (1) fiscal year with an option to renew for four (4) successive one (1)- year engagements.

RECOMMENDATION:

To authorize the City Manager to execute any and all contracts for Audit Services performed by Whitley Penn, LLP.

PRESENTER:

Robert G. Powers, Executive Finance Director

Fiscal Impact

Fiscal Year: 2024
Amount Requested: \$59,900.00
Budgeted Y/N: FY24
Account(s) : 01-03-5607

SUMMARY:

The engagement is a one-year contract for auditing services with option to renew an additional four years.

Attachments

1. Fee Schedule
2. Evaluation Matrix
3. Engagement Letter

June 27, 2023

Kay Johnson
General Services Division
City of Leander, Texas

Ms. Johnson,

Thank you for allowing Whitley Penn, LLP to participate in the Request for Qualifications (RFQ) process. This letter will serve as our firm's fee estimate for the prescribed work listed in the City's RFQ Solicitation # S23-012 *Professional Audit Services*.

<u>Fiscal Year</u>	<u>Annual Audit Fee</u>
2023	\$ 59,900
2024	\$ 61,700
2025	\$ 63,550

The fee above includes assistance with preparing the annual comprehensive financial report.

The fees presented above are our estimate to complete the audit engagement. However, we are available throughout the year for questions regarding auditing and accounting matters. These consultations are included with the annual fee.

Please note our fees are negotiable if fee becomes a significant factor in selecting an auditor.

We appreciate the opportunity to be involved in this RFQ process and we would consider the City to be a valued client. Please let us know if you have additional questions or need more information. We look forward to hearing from you.

Sincerely,



Roger Tovar, CPA
Partner
Whitley Penn, LLP

EVALUATION MATRIX
RFQ S23-012
PROFESSIONAL AUDIT SERVICES

Evaluation Category	Maximum Points	Whitley Penn, LLP	CliftonLarsonAllen LLP (CLA)
Audit Team Relevant Qualifications and Experience	50	46	47
Available Resources	10	10	10
Methodology, Approach and Timeline	20	20	20
Work Samples and References	20	20	18
Total	100	96	95

Recommended for Award: **Whitley Penn, LLC**

June 27, 2023

To the Members of
City Council and City Manager
City of Leander, Texas

You have requested that we audit the financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of City of Leander, Texas (the "City"), as of September 30, 2023, and for the year then ended, and the related notes to the financial statements, which collectively comprise the City's basic financial statements.

We are pleased to confirm our acceptance and our understanding of this audit engagement by means of this letter. Our audit will be conducted with the objectives of our expressing an opinion on each opinion unit. The objectives of our audit of the financial statements are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with auditing standards generally accepted in the United States of America (GAAS) and in accordance with *Government Auditing Standards* will always detect a material misstatement when it exists. Misstatements, including omissions, can arise from fraud or error and are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

Accounting principles generally accepted in the United States of America require that *certain information* be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by *Governmental Accounting Standards Board*, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to the required supplementary information (RSI) in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist primarily of inquiries of management regarding their methods of measurement and presentation and comparing the information for consistency with management's responses to our inquiries. We will not express an opinion or provide any form of assurance on the RSI. The following RSI is required by accounting principles generally accepted in the United States of America. This RSI will be subjected to certain limited procedures but will not be audited:

- Management's Discussion and Analysis;
- Budgetary Comparison Information – General Fund;
- Pension Information; and
- Other Post-employment Benefit Information

Supplementary information other than RSI will accompany the City's basic financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the basic financial statements and certain additional procedures, including comparing and reconciling the supplementary information to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and additional procedures in accordance with auditing standards generally accepted in the United States of America. We intend to provide an opinion on the following supplementary information in relation to the financial statements as a whole:

- Combining and individual fund financial statements and schedules; and
- Budgetary Comparison Schedule

Also, the document we submit to you will include the following other additional information that will not be subjected to the auditing procedures applied in our audit of the financial statements:

- Introductory Section
- Statistical Section

Audit of the Financial Statements

We will conduct our audit in accordance with auditing standards generally accepted in the United States of America (U.S. GAAS), the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States of America. As part of an audit of financial statements in accordance with GAAS and *in accordance with Government Auditing Standards*, we exercise professional judgment and maintain professional skepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. However, we will communicate to you in writing concerning any significant deficiencies or material weaknesses in internal control relevant to the audit of the financial statements that we have identified during the audit.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.
- Conclude, based on the audit evidence obtained, whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the City ability to continue as a going concern for a reasonable period of time.

Because of the inherent limitations of an audit, together with the inherent limitations of internal control, an unavoidable risk that some material misstatements or noncompliance may not be detected exists, even though the audit is properly planned and performed in accordance with GAAS and *Government Auditing Standards* of the Comptroller General of the United States of America. Please note that the determination of abuse is subjective and *Government Auditing Standards* does not require auditors to detect abuse.

Our responsibility as auditors is limited to the period covered by our audit and does not extend to any other periods.

We will issue a written report upon completion of our audit of the City's basic financial statements. Circumstances may arise in which our report may differ from its expected form and content based on the results of our audit. Depending on the nature of these circumstances, it may be necessary for us to modify our opinions, add an emphasis-of-matter or other-matter

paragraph(s) to our auditor's report, or if necessary, withdraw from the engagement. If our opinions on the basic financial statements are other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or to issue a report as a result of this engagement.

In accordance with the requirements of *Government Auditing Standards*, we will also issue a written report describing the scope of our testing over internal control over financial reporting and over compliance with laws, regulations, and provisions of grants and contracts, including the results of that testing. However, providing an opinion on internal control and compliance over financial reporting will not be an objective of the audit and, therefore, no such opinion will be expressed.

Management's Responsibilities

Our audit will be conducted on the basis that management and, when appropriate, those charged with governance acknowledge and understand that they have responsibility:

- For the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America;
- For the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error;
- To provide us with:
 - a) Access to all information of which management is aware that is relevant to the preparation and fair presentation of the financial statements such as records, documentation, and other matters;
 - b) Additional information that we may request from management for the purpose of the audit; and
 - c) Unrestricted access to persons within the City from whom we determine it necessary to obtain audit evidence.
 - d) A written acknowledgement of all the documents that management expects to issue that will be included in the annual report and the planned timing and method of issuance of that annual report; and
 - e) A final version of the annual report (including all the documents that, together, comprise the annual report) in a timely manner prior to the date of the auditor's report
- For adjusting the financial statements to correct material misstatements and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the current year period(s) under audit are immaterial, both individually and in the aggregate, to the financial statements as a whole;
- For acceptance of nonattest services, including identifying the proper party to oversee nonattest work;
- For maintaining adequate records, selecting and applying accounting principles, and safeguarding assets;
- For informing us of any known or suspected fraud affecting the entity involving management, employees with significant role in internal control and others where fraud could have a material effect on compliance;
- For the accuracy and completeness of all information provided;
- For taking reasonable measures to safeguard protected personally identifiable and other sensitive information; and
- For confirming your understanding of your responsibilities as defined in this letter to us in your management representation letter.

As part of our audit process, we will request from management and, when appropriate, those charged with governance, written confirmation concerning representations made to us in connection with the audit.

We understand that your employees will prepare all confirmations we request and will locate any documents or invoices selected by us for testing.

If you intend to publish or otherwise reproduce the financial statements and make reference to our firm, you agree to provide us with printers' proofs or masters for our review and approval before printing. You also agree to provide us with a copy of the final reproduced material for our approval before it is distributed.

Nonattest services could include assistance with the preparation of financial statements and note disclosures. We will not assume management responsibilities on behalf of the City. However, we will provide advice and recommendations to assist management of the City in performing its responsibilities.

The City management is responsible for (a) making all management decisions and performing all management functions; (b) assigning a competent individual to oversee the services; (c) evaluating the adequacy of the services performed; (d) evaluating and accepting responsibility for the results of the services performed; and (e) establishing and maintaining internal controls, including monitoring ongoing activities.

Our responsibilities and limitations of the nonattest services are described below:

The nonattest services are limited to the services we described above. Our firm, in its sole professional judgment, reserves the right to refuse to do any procedure or take any action that could be construed as making management decisions or assuming management responsibilities, including determining account coding and approving journal entries. Our firm will advise the City regarding these nonattest services, but the City must make all decisions with regard to those matters.

Fees and Timing

The timing of our audit will be scheduled for performance and completion as follows:

Document internal control and preliminary tests	July/August 2023
Mail Confirmations	October 2023
Perform year-end audit procedures	November/December 2023
Issue audit reports	February 2024

We anticipate meeting these deadlines barring any delays.

Roger Tovar, CPA is the engagement partner for the audit services specified in this letter. His responsibilities include supervising Whitley Penn, LLP's services performed as part of this engagement and signing or authorizing another qualified firm representative to sign the audit report.

Our fee for the audit services will be based on the amount of time required and the difficulty of the work involved which we estimate to be \$59,900. The fee estimate for the audit is based on anticipated cooperation from the City's personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, we will keep you informed of any problems we encounter and our fees will be adjusted accordingly.

Our invoices for these fees will be rendered each month as work progresses and are payable on presentation and payment is due in Tarrant County. You agree to pay reasonable attorney fees and collection costs incurred relating to collection of fees for services performed under the terms of this engagement. In accordance with Whitley Penn, LLP policy, work may be suspended if your account becomes 30 days or more past due and will not resume until your account is paid in full. In addition, invoices not paid in full by the last day of the month will be assessed interest at a rate of one percent per month. If we elect to terminate our services for nonpayment, our engagement will be deemed to have been complete even if we have not issued our report. You will be obligated to compensate us for all time expended and to reimburse us for all out-of-pocket expenditures through the date of termination. Our final auditors' report will be released upon final payment of any outstanding invoices.

You may request that we perform additional services not addressed in this engagement letter. If this occurs, we will communicate with you concerning the scope of the additional services and the estimated fees. We also may issue a separate engagement letter covering the additional services. In the absence of any other written communication from us documenting such additional services, our services will continue to be governed by the terms of this engagement letter.

We would like to make the following comments regarding the fee estimates:

1. Our fee estimates have not considered the effects of any changes to auditing standards and accounting principles, which may be promulgated by the AICPA, Congress, or any other regulatory body in the future and are unknown to us at this time. If significant additional time is necessary resulting in increased fees, we will endeavor to notify you of any such circumstances as they are assessed.
2. The City's personnel are responsible for the preparation of all items requested in the Prepared by Client ("PBC") listing and received by the date requested. Any delays caused by not preparing the items when requested may result in additional fees, as well as the possibility of postponing our fieldwork. The PBC listing will be provided to you during the planning process of the engagement.
3. Time incurred for audit adjustments identified during our audit and the related additional testing required has not been considered in our fee estimates. Prior to performing any additional testing, we will notify you of the exceptions and obtain approval for any additional fees which may be incurred.
4. Our fee estimates are based on all general ledger sub ledgers being reconciled to the general ledger balance and any adjustment necessary should be recorded to the general ledger prior to our fieldwork start date.

The ethics of our profession prohibit the rendering of professional services where the fee for such services is contingent, or has the appearance of being contingent, upon the results of such services. Accordingly, it is important that our bills be paid promptly when received. If a situation arises in which it may appear that our independence would be questioned because of significant unpaid bills, we may be prohibited from issuing our auditors' report.

In the unlikely event that differences concerning our services or fees should arise that are not resolved by mutual agreement, to facilitate judicial resolution and save time and expense of both parties, the City and Whitley Penn, LLP agree not to demand a trial by jury in any action, proceeding or counterclaim arising out of or relating to our services and fees for this engagement. Any controversy, dispute, or questions arising out of or in connection with this agreement or our engagement shall be determined by arbitration conducted in accordance with the rules of the American Arbitration Association, and any decision rendered by the American Arbitration Association shall be binding on both parties to this agreement. The costs of any arbitration shall be borne equally by the parties. Any and all claims in arbitration relating to or arising out of this contract/agreement shall be governed by the laws of Texas and to the extent any issue regarding the arbitration is submitted to a court, including the appointment of arbitrators or confirmation of an award, the District courts in Tarrant County shall have exclusive jurisdiction. Any action arising out of this agreement or the services provided shall be initiated within two years of the service provided.

This letter replaces and supersedes any previous proposals, correspondence and understanding, whether written or oral. The agreements contained in this engagement letter shall survive the completion or termination of this engagement.

To ensure that Whitley Penn, LLP's independence is not impaired under the AICPA Code of Professional Conduct, you agree to inform the engagement partner before entering into any substantive employment discussions with any of our personnel.

Other Matters

During the course of the engagement, we may communicate with you or your personnel via fax or e-mail, and you should be aware that communication in those mediums contains a risk of misdirected or intercepted communications.

In the course of our services, our firm may transmit confidential information that you provided us to third parties in order to facilitate our services. As applicable, we require confidentiality agreements with all our service providers to maintain the confidentiality of your information and additionally the firm will take reasonable precautions to determine that our service providers have the appropriate procedures in place to prevent the unauthorized release of confidential information to others.

We will remain ultimately responsible for the work provided by any third-party service providers used under this agreement. By your signature below, you consent to having confidential information transmitted to entities outside the firm. Please feel free to inquire if you would like additional information regarding the transmission of confidential information to entities outside the firm.

Regarding the electronic dissemination of audited financial statements, including financial statements published electronically on your Internet website, you understand that electronic sites are a means to distribute information and, therefore, we are not required to read the information contained in these sites or to consider the consistency of other information in the electronic site with the original document.

Professional standards prohibit us from being the sole host and/or the sole storage for your financial and non-financial data. As such, it is your responsibility to maintain your original data and records and we cannot be responsible to maintain such original information. By signing this engagement letter, you affirm that you have all the data and records required to make your books and records complete.

In the event we are required by government regulation, required by subpoena or other legal process to produce information or our personnel for interviews or depositions in relation to a matter involving the City, the City will, so long as we are not a party or the focus of the proceeding or inquiry in which the information is sought, reimburse us for our professional time and expenses, as well as the fees and expenses of our counsel, incurred in responding to such requests.

The audit documentation for this engagement is the property of Whitley Penn, LLP and constitutes confidential information. However, we may be requested to make certain audit documentation available to your pass-through regulatory entity and federal agencies and the U.S. Government Accountability Office pursuant to authority given to it by law or regulation, or to peer reviewers. If requested, access to such audit documentation will be provided under the supervision Whitley Penn, LLP's personnel. Furthermore, upon request, we may provide copies of selected audit documentation to these agencies and regulators. The regulators and agencies may intend, or decide, to distribute the copies of information contained therein to others, including other governmental agencies.

The City may wish to include our report on these financial statements in an exempt offering document. The City agrees that the aforementioned auditor's report, or reference to our Firm, will not be included in such offering document without prior permission or consent. Any agreement to perform work in connection with an exempt offering document, including an agreement to provide permission or consent, will be a separate engagement letter. For exempt offerings for which we are not involved, you will clearly indicate that we were not involved with the contents of such offering document and a disclosure as shown below will be included in the exempt offering:

"Whitley Penn, our independent auditor, has not been engaged to perform and has not performed, since the date of its report included herein, any procedures on the financial statements addressed in that report. Whitley Penn also has not performed any procedures relating to this offering document."

Further, we will be available during the year to consult with you on financial management and accounting matters of a routine nature.

During the course of the audit, we may observe opportunities for economy in, or improved controls over, your operations. We will bring such matters to the attention of the appropriate level of management, either orally or in writing.

We agree to retain our audit documentation or work papers for a period of at least five years from the date of our report.

You agree to inform us of facts that may affect the financial statements of which you may become aware during the period from the date of the auditor's report to the date the financial statements are issued.

At the conclusion of our audit engagement, we will communicate to the Members of City Council the following significant findings from the audit:

- Our view about the qualitative aspects of the City's significant accounting practices;
- Significant difficulties, if any, encountered during the audit;
- Uncorrected misstatements, other than those we believe are trivial, if any;
- Disagreements with management, if any;
- Other findings or issues, if any, arising from the audit that are, in our professional judgment, significant and relevant to those charged with governance regarding their oversight of the financial reporting process;
- Material, corrected misstatements that were brought to the attention of management as a result of our audit procedures;
- Representations we requested from management;
- Management's consultations with other accountants, if any; and
- Significant issues, if any, arising from the audit that were discussed, or the subject of correspondence, with management.

In accordance with the requirements of *Government Auditing Standards*, we have attached a copy of our latest external peer review report of our firm for your consideration and files.

Please sign and return the attached copy of this letter to indicate your acknowledgment of, and agreement with, the arrangements for our audit of the financial statements compliance over major federal award programs including our respective responsibilities.

We appreciate the opportunity to be your financial statement auditors and look forward to working with you and your staff.

Respectfully,



Austin, Texas

RESPONSE:

This letter correctly sets forth our understanding.

Acknowledged and agreed on behalf of City of Leander, Texas by:

Signature: _____

Name and Title: _____

Date: _____



CliftonLarsonAllen LLP
CLAconnect.com

REPORT ON THE FIRM'S SYSTEM OF QUALITY CONTROL

To the Partners of Whitley Penn LLP
and the National Peer Review Committee

We have reviewed the system of quality control for the accounting and auditing practice of Whitley Penn LLP (the firm) applicable to engagements not subject to PCAOB permanent inspection in effect for the year ended April 30, 2021. Our peer review was conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants (Standards).

A summary of the nature, objectives, scope, limitations of, and the procedures performed in a System Review as described in the standards may be found at www.aicpa.org/prsummary. The summary also includes an explanation of how engagements identified as not performed or reported in conformity with applicable professional standards, if any, are evaluated by a peer reviewer to determine a peer review rating.

Firm's Responsibility

The firm is responsible for designing a system of quality control and complying with it to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. The firm is also responsible for evaluating actions to promptly remediate engagements deemed as not performed or reported in conformity with professional standards, when appropriate, and for remediating weaknesses in its system of quality control, if any.

Peer Reviewer's Responsibility

Our responsibility is to express an opinion on the design of the system of quality control and the firm's compliance therewith based on our review.

Required Selections and Considerations

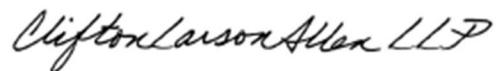
Engagements selected for review included engagements performed under *Government Auditing Standards* (including compliance audits under the Single Audit Act), audits of employee benefit plans, audits performed under the Federal Deposit Insurance Corporation Improvement Act (FDICIA), and an examination of a service organization (SOC 1 engagement).

As a part of our peer review, we considered reviews by regulatory entities as communicated by the firm, if applicable, in determining the nature and extent of our procedures.

Whitley Penn LLP
Page 2

Opinion

In our opinion, the system of quality control for the accounting and auditing practice of Whitley Penn LLP applicable to engagements not subject to PCAOB permanent inspection in effect for the year ended April 30, 2021, has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Firms can receive a rating of *pass*, *pass with deficiency(ies)*, or *fail*. Whitley Penn LLP has received a peer review rating of *pass*.

A handwritten signature in cursive script that reads "CliftonLarsonAllen LLP".

CliftonLarsonAllen LLP

Phoenix, Arizona
October 6, 2021



EXECUTIVE SUMMARY
07/06/2023

AGENDA SUBJECT:

Approval of the Verena at Leander License to Encroach Agreement, Case LA-23-0017, to allow for the installation and maintenance of signage within portions of the right-of-way of Hero Way West, Leander, Williamson County, Texas.

BACKGROUND:

License agreements are required when developers propose to place private improvements within the public right-of-way. This agreement grants the developer permission to install the improvements as well as provide conditions that describe the responsibility of maintaining and possible removal of improvements. In addition, the developer is required to indemnify the City against claims and liabilities and carry insurance.

The developer of the Verena of Leander located at 11350 Hero Way West is requesting a license to encroach agreement to install and maintain a monument sign within a portion of the right-of-way of Hero Way West.

RECOMMENDATION:

Staff recommends approval of the license agreement.

PRESENTER:

Robin M. Griffin, AICP, Executive Director of Development Services

Attachments

1. License to Encroach
2. Location Map
3. Letter of Intent



6/08/2023

Stephen F. Douglass
Verena at Leander Titleholder, LLC
303 W. Madison Street
Chicago, IL 60606

RE: Construction of Improvement in Public Utility Easement – Verena at Leander:

Dear Mr. Douglass,

This letter sets forth the agreement (the “Agreement”) between Verena at Leander Titleholder, LLC (the “Owner”) and the City of Leander (the “City”) regarding the Owner’s construction of an enlarged and redesigned monumnet sign (the “Improvement”) within a Public Utility Easement described in Document No. 2001029855, Official Public Records of Williamson County, Texas (the “PUE”) located on that certain property described in Exhibit A (the “Property”). The City and any other entity with the right to use the PUE shall be referred to as the “Grantee”. The City consents to the Owner constructing, installing, placing, repairing, and maintaining the Improvement within the PUE, provided that the Owner complies with the following terms and conditions:

- 1) The Improvement shall be constructed in accordance applicable local, state, and federal regulations, the plans approved by the City, and any permit issued by the City for the Improvement.
- 2) The Owner acknowledges and agrees that the placement of the Improvement within the PUE shall not in any manner restrict or limit Grantee’s rights under the PUE.
- 3) The Owner shall be responsible for any damage caused to any utilities located in the PUE that occurs due to construction, installation, placement, repair, or maintenance of the Improvements. The Owner shall pay the Grantee the amount incurred by the Grantee for repairing such damage within thirty (30) days of receiving an invoice from the Grantee.
- 4) The Owner acknowledges and understands that this Agreement in no way restricts, limits, or modifies the Grantee’s rights under the PUE. In the event that a Grantee requires the Improvements to be removed or relocated so that a Grantee may exercise its rights under the PUE, the Owner shall remove or relocate the Improvements at Owner’s sole cost and expense within a reasonable time after notice from the Grantee that the Improvements must be removed or relocated, and no later than thirty (30) days after the date of such notice.
- 5) The Owner acknowledges and understands that the Grantee’s activities under the PUE may damage or destroy the Improvements. The Owner acknowledges and agrees that the Grantees

and their respective agents, employees, independent contractors, successors, and assigns, shall not be responsible for repairing or replacing the Improvements, or for compensating the Owner for any damage caused to the Improvement by Grantee's activities under the PUE. Grantee's sole obligation shall be to return the ground to substantially the same condition (excluding the Improvement) that existed prior to the work done under the PUE.

Notwithstanding anything herein to the contrary, no party shall be deemed to be in default hereunder until the passage of thirty (30) business days after receipt by such party of notice of default from the other party. Upon the passage of thirty (30) business days without cure of the default, such party shall be deemed to have defaulted for purposes of this Agreement. In the event of default, the non-defaulting party to this Agreement may pursue the remedy of specific performance or other equitable or legal remedy not inconsistent with this Agreement or applicable state law. All remedies will be cumulative and the pursuit of one authorized remedy will not constitute an election of remedies or a waiver of the right to pursue any other authorized remedy. The City may terminate this Agreement if the Owner fails to cure a default within the time required by this Agreement. In the event the City terminates the Agreement, the Owner shall remove the Improvement from the PUE within thirty days of termination of this Agreement. In the event of any dispute, litigation or other proceeding between the parties hereto to enforce any of the provisions of this Agreement or any right of either party hereunder, the unsuccessful party to such dispute, litigation or other proceeding shall pay to the successful party all costs and expenses, including reasonable attorneys' fees, incurred at trial, on appeal, and in any arbitration, administrative or other proceedings, all of which may be included in and as a part of the judgment rendered in such litigation.

All notices hereunder shall be in writing and shall be deemed to have been properly delivered and received as of the time of delivery if personally delivered, as of the time deposited in the mail system if sent by United States certified mail, return receipt requested, and postage prepaid, or as of the time of delivery to Federal Express (or comparable express delivery system) if sent by such method with all costs prepaid. All notices, demands and requests hereunder shall be addressed to the addresses set forth in the parties signature blocks below.

This letter agreement: (i) together with all related matters, shall be governed by the laws of the State of Texas, without reference to conflict of law principles that direct the application of the laws of a different State; (ii) constitutes the entire understanding between the parties with respect to its subject matter and supersedes all prior agreements and understandings; (iii) may be amended or modified only by an instrument in writing executed by each of the parties hereto; (iv) is a covenant that runs with the Property and is binding upon the future owners of the Property and shall inure to the benefit of the legal representatives, heirs, successors and assigns of the parties; (v) may be executed in any number of counterparts, each of which will be deemed an original, and all of which shall be deemed one and the same agreement; and (vi) venue shall lie in Williamson County, Texas. This agreement shall be recorded in the Official Public Records of Williamson County, Texas.

[Remainder of the page intentionally left blank]

CITY OF LEANDER

Richard B. Beverlin, III
City Manager
P. O. Box 319
Leander, Texas 78646-0319

THE STATE OF TEXAS

§

COUNTY OF WILLIAMSON

§

§

This instrument was acknowledged before me on this the ____ day of _____, 20____, Richard B. Beverlin, III, City Manager, City of Leander, Texas, on behalf of the City.

Notary Public - State of Texas



Stephen F. Douglass, Vice President
Verena at Leander Titleholder, LLC
303 W. Madison Street
Chicago, IL 60606
Cook County

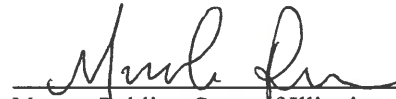
THE STATE OF ILLINOIS

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COUNTY OF COOK_____

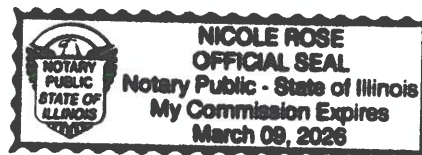
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This instrument was acknowledged before me on this the 12 day of June, 2023, by Stephen F. Douglass, Vice President of Verena at Leander Titleholder, LLC, and on behalf of said entity.



Notary Public - State of Illinois

AFTER RECORDING PLEASE RETURN TO:
City of Leander
City Secretary
P.O. Box 319
Leander, Texas 78646-0319



2 SIGN LOCATION PLAN

Verena at Leander Titleholder, LLC
c/o Green Courte Partners, LLC
303 W. Madison Street, Suite 1500
Chicago, IL 60606
312-925-6422

April 24, 2023

City of Leander, TX
105 N. Brushy Street
Leander, TX 78641

RE: Requested License to Encroach

To Whom It May Concern:

Verena at Leander Titleholder, LLC owns Verena at Leander, an Independent Living community located at 11350 Hero Way West in Leander.

Legal Description: S9987-LEANDER 2243 REPLAT (BLK A LTS 1-3 AMD), BLOCK A, Lot 2
Subdivision: L50QS – SENIOR COMMUNITY LEANDER

Requested Improvements: The property's existing monument sign sits partially in an existing 15-foot utility easement. We wish to enlarge and redesign the monument sign, per Permit Number SIGN-2022-00114, such that the new sign and two new entry pillars will also partially encroach upon the utility easement. The footings will extend three feet below grade.

Proposed Location: Please see **Exhibit A** which illustrates how the sign partially encroaches on the easement, and how the proposed stone pillars are located mostly within the easement.

Documentation of Consent: We have been informed by the City that the only utility required to provide consent is the electric utility. Please see **Exhibit B** for that consent.

Certificate of Liability Insurance: Please see **Exhibit C** for the certificate of liability insurance, naming City of Leander as additional insured.

Thank you for your consideration.

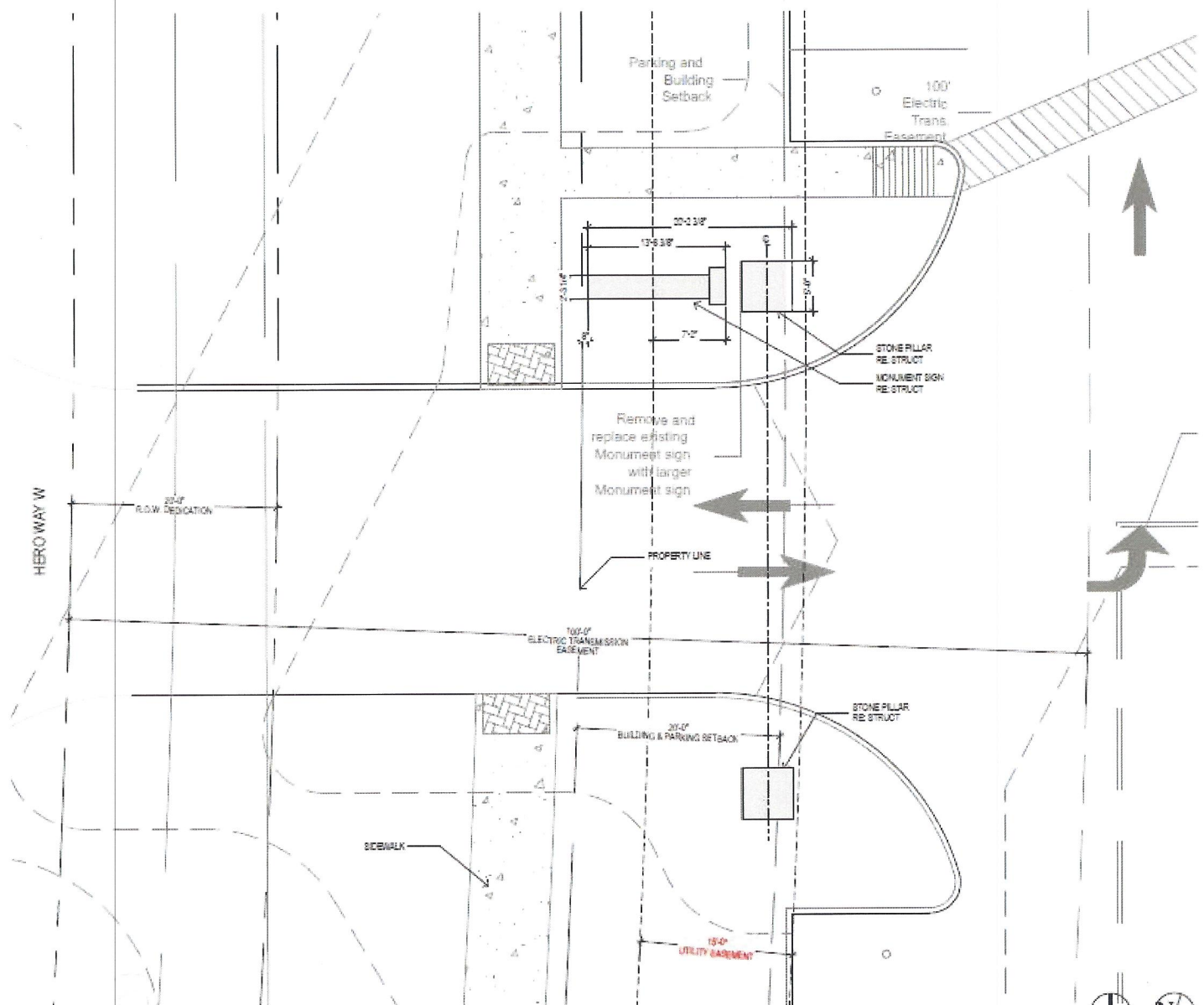
Sincerely,



Stephen F. Douglass
Vice President
Verena at Leander Titleholder, LLC

Cc: Katherine Loayza, Jackson Walker L.L.P.

EXHIBIT A



A4

ENTRY MONUMENT SIGN PLAN
SCALE: 1/8" = 1'-0"

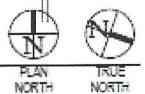


EXHIBIT B



February 28, 2023

Balfour Beatty
1114 Lost Creek Blvd, Suite 500
Austin, TX 78746

Dear Member:

Please use this letter as PEC's formal acknowledgement that the scope of work as outlined and described by Balfour Beatty (for the work at 11350 Hero Way West, Leander, Texas 78641) is acceptable to PEC, and that the Balfour Beatty team has our approval to proceed with their work within our existing electric easement.

If you have any questions, please call the PEC Planning Department at 877-372-0391 and press "8" to be connected to the Liberty Hill office.

Sincerely,

Vance Hoy
Electrical Distribution Design and Planning Manager

VH:wb
Y99M/ Account



EXHIBIT C

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/24/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Beecher Carlson Insurance Services Part of Brown & Brown Inc. 6 Concourse Parkway, Suite 2300 Atlanta, GA 30328 www.bbinsurance.com	CONTACT NAME: Judith Boich PHONE (A/C, No, Ext): E-MAIL ADDRESS: Judith.Boich@bbrown.com INSURER(S) AFFORDING COVERAGE INSURER A: Columbia Casualty Company INSURER B: American Casualty Company of Reading, PA INSURER C: INSURER D: INSURER E: INSURER F:	FAX (A/C, No): 770-870-3031 NAIC # 31127 20427
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COVERAGES **CERTIFICATE NUMBER:** 74036040 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☒ CLAIMS-MADE ☐ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☒ LOC OTHER:			6080953963 Retro Date 5/15/2020	5/15/2022	5/15/2023	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$3,000,000 PRODUCTS - COMP/OP AGG \$ Included \$
B	AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY			6043602653	5/15/2022	5/15/2023	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	☒ UMBRELLA LIAB ☐ EXCESS LIAB ☐ OCCUR ☒ CLAIMS-MADE DED ☒ RETENTION \$10,000			6043602670 Retro Date 5/15/2020	5/15/2022	5/15/2023	EACH OCCURRENCE \$10,000,000 AGGREGATE \$10,000,000 \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				☐ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Professional Liability			6080953963 Retro Date 5/15/2020	5/15/2022	5/15/2023	PL - Each Claim \$1,000,000 PL - Aggregate \$3,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

City of Leander, Texas is included as additional insured, where required by written contract.

CERTIFICATE HOLDER

CANCELLATION

City of Leander, Texas 105 N Brushy Street Leander, TX 78641	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Beecher Carlson Insurance Services, LLC</i> Beecher Carlson Insurance Services, LLC
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EXECUTIVE SUMMARY
07/06/2023

AGENDA SUBJECT:

Conduct a Public Hearing on Zoning Case Z-22-0050 to amend the current zoning of Interim SFR-1-B (Single-Family Rural) to adopt the Speaking Rock PUD (Planned Unit Development) with base zoning district of SFE-2-A (Single-Family Estate) on one parcel of land approximately 10.7563 acres $\pm$ in size, more particularly described by Travis Central Appraisal District Parcel 513825; and more commonly known as 1601 Speaking Rock, Leander, Travis County, Texas.

- Discuss and consider action regarding Zoning Case Z-22-0050 as described above.

BACKGROUND:

This request is the second step in the zoning process.

HISTORY/TIMELINE:

06/08/2023 - Planning & Zoning Commission, 1st Public Hearing

APPLICANT/AGENT:

Rao's Consulting Engineers (Rao Vasamsetti) on behalf of Speaking Rock Ventures, LLC

RECOMMENDATION:

Staff recommend approval of the request. The Planning & Zoning Commission recommended approval during the June 8, 2023 meeting.

PRESENTER:

Robin M. Griffin, AICP, Executive Director of Development Services

Attachments

1. Planning Analysis
2. Current Zoning Map
3. Future Land Use Map
4. Public Notification Map
5. Proposed Zoning Map
6. Aerial Map
7. PUD Notes
8. Letter of Intent
9. Neighborhood Outreach Report
10. Ordinance
11. P&Z Minutes



PLANNING ANALYSIS

ZONING CASE Z-22-0050 SPEAKING ROCK PUD

GENERAL INFORMATION

Owner/Agent: Rao's Consulting Engineers (Rao Vasamsetti) on behalf of Speaking Rock Ventures, LLC.

Current Zoning: Interim SFR-1-B (Single-Family Rural)

Proposed Zoning: Speaking Rock PUD (Planned Unit Development) with base zoning district of SFE-2-A (Single-Family Estate)

Size and Location: The property is located at 1601 Speaking Rock, Leander, Travis County, Texas., including approximately 10.76 acres.

Staff Contact: Justin Hunt, Planner

APPLICANT REQUEST

The applicant has submitted a request to change the designated zoning district of their property in order to develop a residential subdivision.

STAFF CONCLUSIONS

Y N

- ☒ ☐ Does the proposal comply with the intent statements of the Composite Zoning Ordinance? *see page 2*
- ☒ ☐ Does the proposal comply with the goal statements of the Comprehensive Plan? *see page 3*
- ☒ ☐ Does the proposal warrant any other special considerations? *see below*

SPECIAL CONSIDERATIONS

Special Considerations: The total number of units is limited to seventeen (17), and detached single-family units are the only allowable uses.

SITE INFORMATION:

ABUTTING ZONING AND LAND USE:

	ZONING	LAND USE
NORTH	PUD	Residential- Travisso PUD
EAST	PUD/SFU	Residential- Travisso PUD & The Bluffs at Crystal Falls
SOUTH	PUD	Residential- Travisso PUD
WEST	PUD	Residential- Travisso PUD

SURROUNDING AREA:

This property is surrounded by the Travisso PUD.

PHYSICAL AND NATURAL FEATURES:

This property contains many trees with an increasing elevation headed East.

MAJOR CORRIDORS:

This property has access onto Osage Drive.

TRANSPORTATION PLAN REQUIREMENTS:

Our transportation plan suggests future improvements to Osage Drive to a collector.

EXISTING UTILITIES:

This property has access to water and wastewater along Osage Drive.

CURRENT LAND USES:

This property is currently undeveloped.

PROPOSED ZONING DISTRICT:**USE COMPONENT**

SFE – SINGLE FAMILY ESTATE:

Features: 12,000 sq. ft. lot min.; 1,600 sq. ft. living area min.

Intent: Development of single-family detached dwellings on large lots and for other compatible and complimentary uses. The purpose of this component is to provide regulations to maintain and protect the City's single-family residences and neighborhoods in an area with larger lot sizes.

SITE COMPONENT**TYPE 2:**

Features: Accessory buildings greater of 10% of primary building or 120 sq. ft.; accessory dwellings for SFR, SFE and SFS; drive-thru service lanes; uses not to exceed 40,000 sq. ft.; multi-family provides at least 100% of units with an enclosed garage parking space.

Intent:

- (1) The Type 2 site component may be utilized with non-residential developments that are adjacent to a residential district or other more restrictive district to help reduce potential negative impacts to the more restrictive district and to provide for an orderly transition of development intensity.
- (2) The Type 2 site component is intended to be utilized for residential development not meeting the intent of a Type 1 site component and not requiring the additional accessory structure or accessory dwelling privileges of the Type 3 site component.
- (3) This component is intended to be utilized with the majority of LO and LC use components except those that meet the intent of the Type 1 or Type 3 site component or with any use requiring drive-through service lanes.
- (4) This component is intended to be utilized with LO, LC, GC, HC, and HI use components when adjacent to residential districts and additional compatibility standards are warranted.
- (5) This component is generally not intended to be utilized with HC and HI use components except where such component is adjacent to, and not adequately buffered from, residential districts or other more restricted districts, and except as requested by the land owner.
- (6) Compliance with Type 1 standards shall also be deemed as compliance with this component.

ARCHITECTURAL COMPONENT**TYPE A:**

Features: 5 or more architectural features.

Intent:

- (1) The Type A architectural component is intended to be utilized for high quality developments or to provide variety as an additional option for portions of a residential development and may be utilized in or adjacent to single-family uses.
- (2) This component is intended to be utilized for single-family development that backs up to, or sides to, a major thoroughfare.
- (3) Combined with appropriate use and site components, this component is intended to help provide for harmonious land use transitions by applying this component to a less restrictive use or site component adjacent to a more restrictive use or site component. This standard may be utilized to help ensure compatibility for non-residential uses, multi-family, two-family, townhouse or small lot residential development with adjacent property that is more restricted.
- (4) This component is intended to be utilized for buildings requiring heights greater than those provided in other architectural components.
- (5) This component may be utilized for any high profile development, for any property in a prominent location or at an important gateway to the community.
- (6) This component is not intended to become an involuntary standard for the majority of a single-family subdivision, especially with SFR, SFE, SFS, SFU and SFC components.

COMPREHENSIVE PLAN:**Applicable Comprehensive Plan goal statements**

- Strategy 10.2: Support housing that has well-defined design character, compatibility with adjacent uses, and balanced density.

Applicable Future Land Use categories**NEIGHBORHOOD RESIDENTIAL**

- The Neighborhood Residential land use category is intended to be developed primarily as new single-family detached residential subdivisions with associated amenities, such as parks, trails, open space areas, and elementary schools. These areas are intended to have a mix of suburban and auto-oriented development character which are primarily found in the form of detached residential lots.

Architectural styles, building height and massing are relatively uniform in this type of land use. Most streets are considered to be local and low-volume with curb and gutter, sidewalks, consistent speeds and highly accessible driveways. Strategically located parks are essential and in some cases a school or other institutional use are integrated or in close proximity.

Some neighborhood-serving retail and office uses are permitted in these areas with highly-restrictive use, site and design requirements. These type of uses are residential in scale and architectural design and are walkable in nature, though auto-serving. These uses are not shown on the Future Land Use Map as commercial and are supported when integrated into a development with appropriate site and zoning compatibility considerations.

INTERGOVERNMENTAL/INTERDEPARTMENTAL REVIEW:

This proposal was reviewed by all applicable departments within the City of Leander. All plats submitted will be reviewed by City Staff.

SCHEDULE:**DEVELOPMENT MEETING**

A development meeting was held with Staff on 08/29/2022. No significant changes have been made.

NOTIFICATION

5/18/2023 - Public Notice on Hill Country News
5/24/2023 - Mail Notification to Property Owners within 200'
5/24/2023 - Public Hearing Signage Posted on Property
6/8/2023 - Planning and Zoning Commission Public Hearing
7/6/2023 - City Council Public Hearing & First Reading of the Ordinance
7/20/2023 - City Council Second & Final Reading of the Ordinance

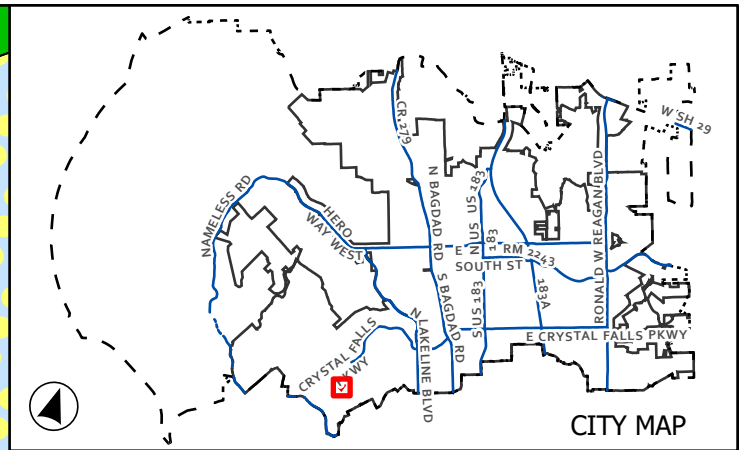
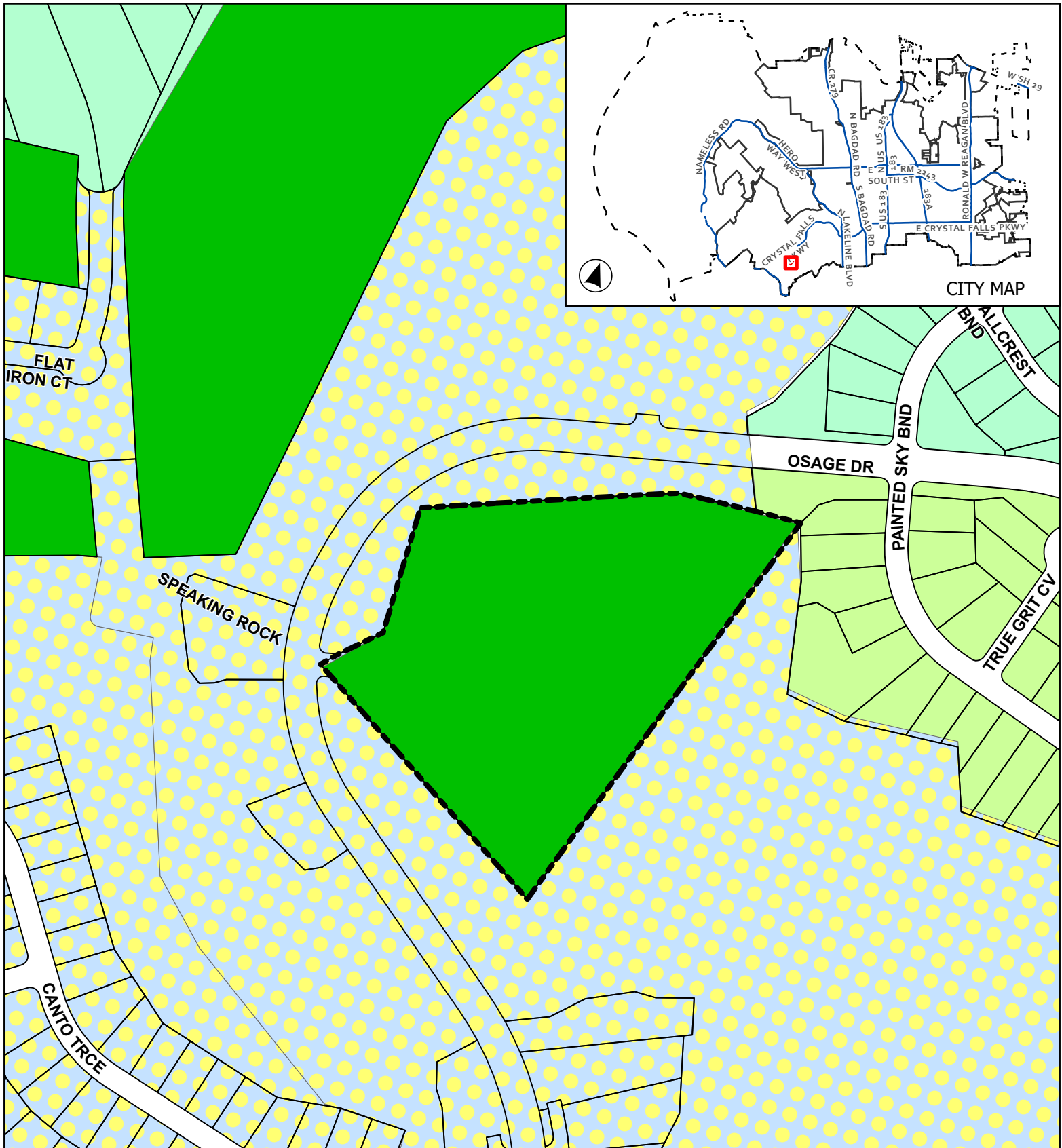
PUBLIC NOTIFICATION:

In addition to the notice mailed on behalf of the City to all property owners within 200', the agent reached out to all property owners of property zoned as single-family or any properties used as single-family uses within 500' as per Article X, Section 3 (d) of the Composite Zoning Ordinance. Any Homeowner's Association located within 500' were also contacted.

Please see the full report from the applicant attached.

APPROVAL CRITERIA:

This request is consistent with the intent of the future land use map designation of Neighborhood Residential and the proposed subdivision would be compatible with the surrounding land uses.



CASE: Z-22-0050 ATTACHMENT 2 VILLAS AT SPEAKING ROCK PUD

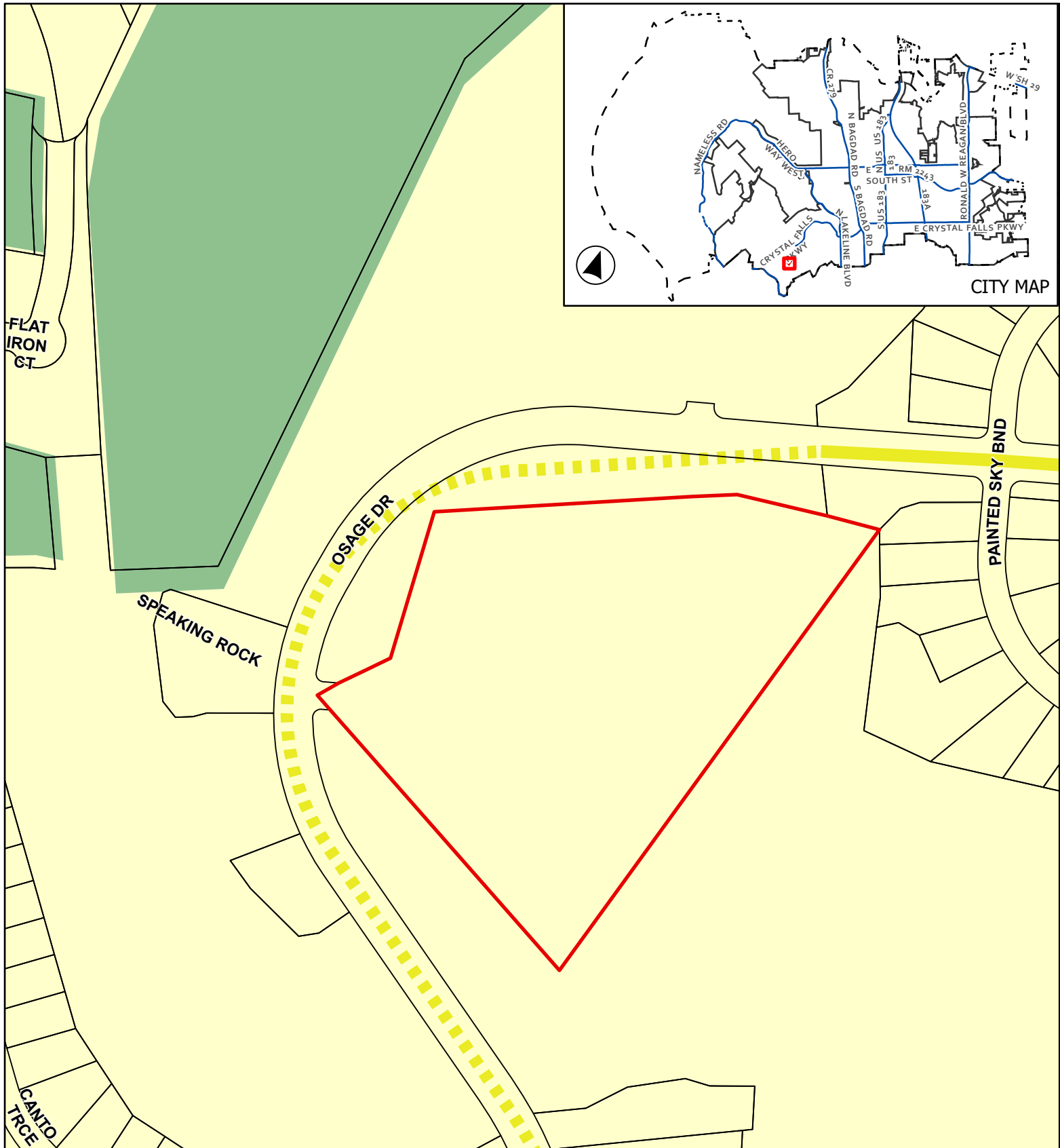
Current Zoning

This map has been produced by the City of Leander for informational purposes only. No warranty is made by the City regarding completeness or accuracy. This data should not be construed as a legal description or survey instrument. No responsibility is assumed for damages or other liabilities due to the accuracy, availability, completeness, use or misuse of the information herein provided.

- Leander City Limits
- SFR - Single-Family Rural
- SFS - Single-Family Suburban
- SFU - Single-Family Urban

- PUD - Single-Family
- Subject Boundary
- Extra-Territorial Jurisdiction

0 95 190 Feet



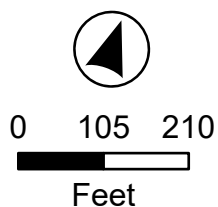
CASE: Z-22-0050

ATTACHMENT 3

VILLAS AT SPEAKING ROCK PUD

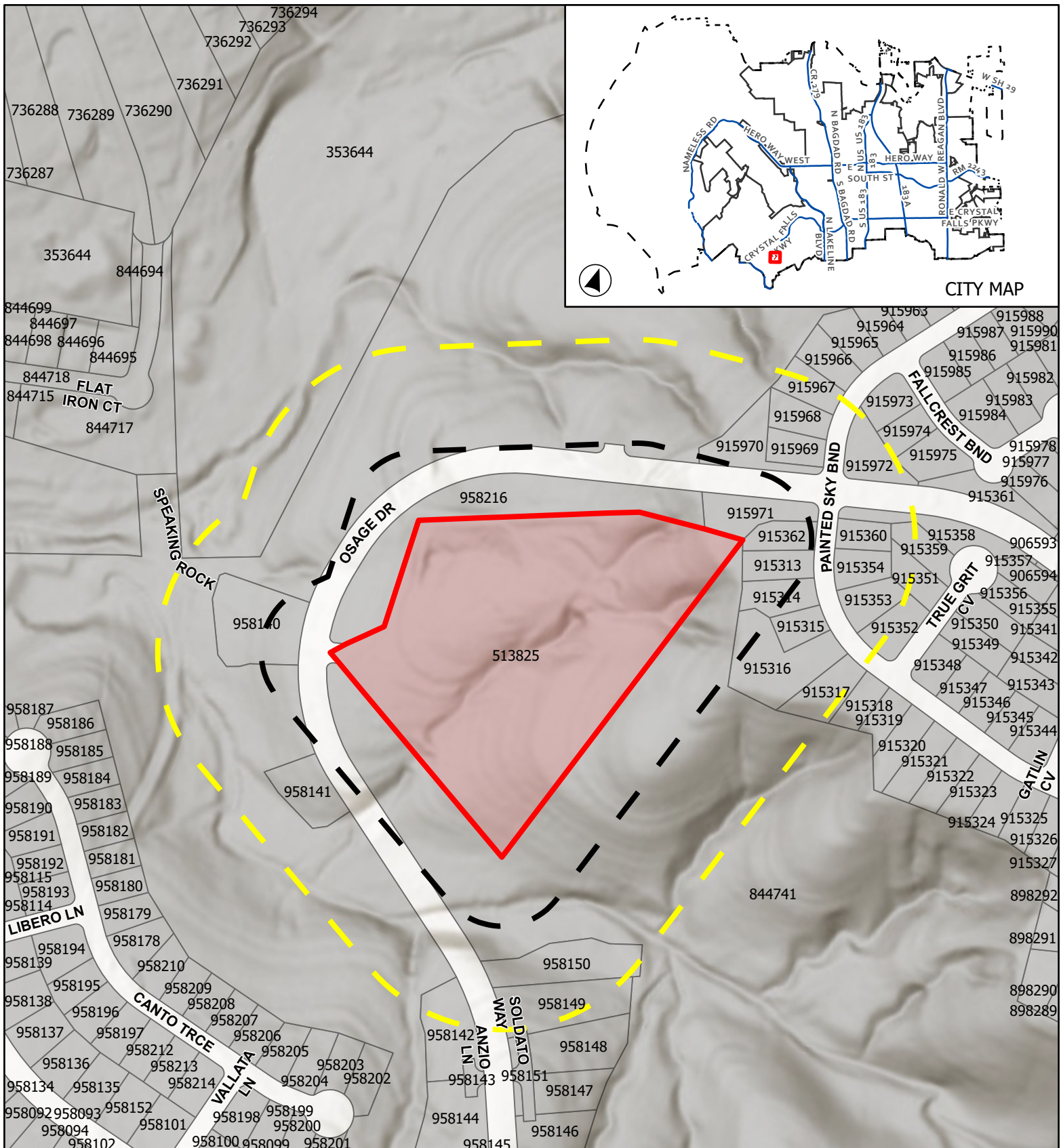
Future Land Use Map

This map has been produced by the City of Leander for informational purposes only. No warranty is made by the City regarding completeness or accuracy. This data should not be construed as a legal description or survey instrument. No responsibility is assumed for damages or other liabilities due to the accuracy, availability, completeness, use or misuse of the information herein provided.



- Leander City Limits
- ETJ Boundary
- Subject Boundary
- Collector, Existing
- Collector, Proposed

- Future Land Use
- Neighborhood Residential
- Parks and Preserves



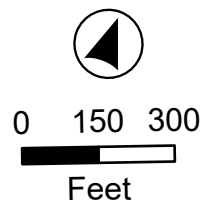
CASE: Z-22-0050

ATTACHMENT 4

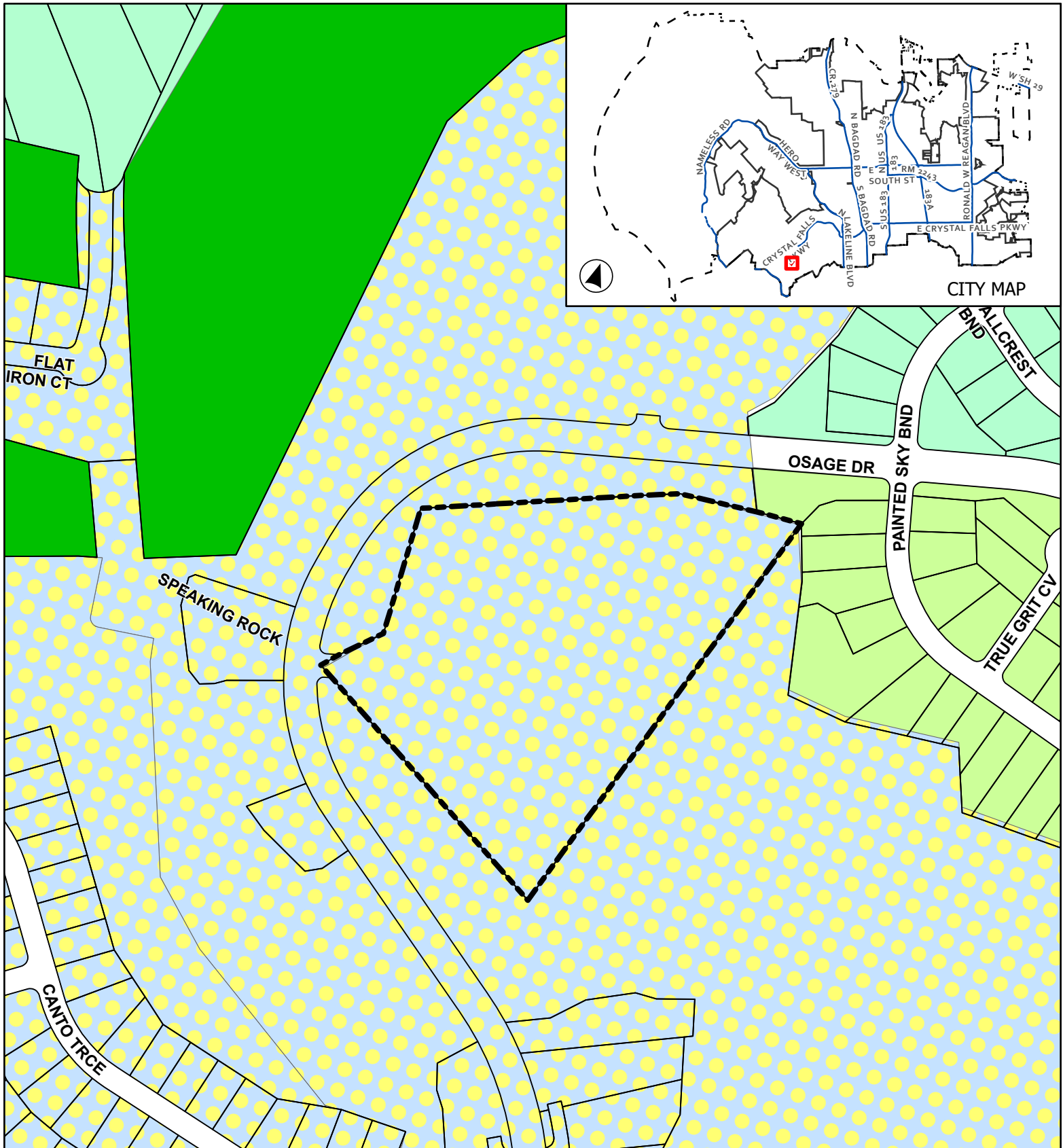
VILLAS AT SPEAKING ROCK PUD

Public Notification

This map has been produced by the City of Leander for informational purposes only. No warranty is made by the City regarding completeness or accuracy. This data should not be construed as a legal description or survey instrument. No responsibility is assumed for damages or other liabilities due to the accuracy, availability, completeness, use or misuse of the information herein provided.



- City Limits
- Subject Boundary
- ETJ Boundary
- Notification Buffer**
 - 200'
 - 500'



CASE: Z-22-0050

ATTACHMENT 5

VILLAS AT SPEAKING ROCK PUD

Proposed Zoning

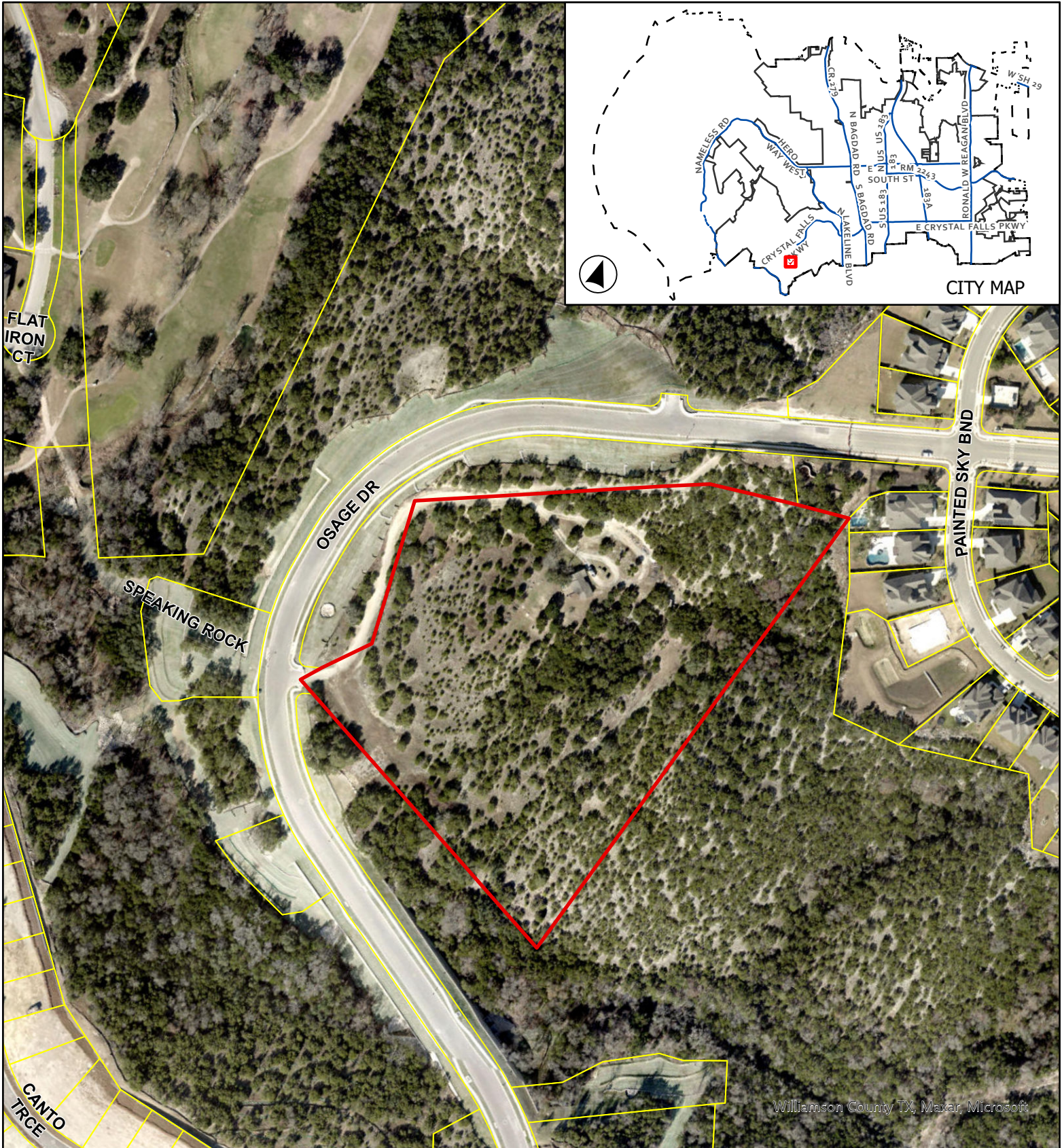
-  Leander City Limits
-  Subject Boundary
-  Extra-Territorial Jurisdiction
-  SFR - Single-Family Rural

-  SFS - Single-Family Suburban
-  SFU - Single-Family Urban
-  PUD - Single-Family

This map has been produced by the City of Leander for informational purposes only. No warranty is made by the City regarding completeness or accuracy. This data should not be construed as a legal description or survey instrument. No responsibility is assumed for damages or other liabilities due to the accuracy, availability, completeness, use or misuse of the information herein provided.



0 95 190
Feet



CASE: Z-22-0050

ATTACHMENT 6

VILLAS AT SPEAKING ROCK PUD

Aerial Map

This map has been produced by the City of Leander for informational purposes only. No warranty is made by the City regarding completeness or accuracy. This data should not be construed as a legal description or survey instrument. No responsibility is assumed for damages or other liabilities due to the accuracy, availability, completeness, use or misuse of the information herein provided.



0 100 200



Feet

-  Leander City Limits
-  Subject Boundary

EXHIBIT -A

Villas at Speaking Rock Planned Unit Development

A. Purpose and Intent

1. The Villas at Speaking Rock PUD is comprised of approximately 10.75 acres, as shown in Exhibit B. The development of this property includes single-family houses.

B. Applicability and Base Zoning

1. All aspects regarding the development of this PUD shall comply the City of Leander Composite Zoning Ordinance, except as established in this exhibit, titled Exhibit A.
2. For the purpose of establishing development standards for the PUD, the following base zoning districts have been selected from the Leander Composite Zoning Ordinance.

SFE-2-A (Single-Family Estate)

C. Conceptual Site Layout & Land Use Plan

1. A Conceptual Site Layout and Land Use Plan has been attached to this PUD, Exhibit C, to illustrate the design intent for the property. The Conceptual Site Layout and Land Use Plan is intended to serve as a guide to illustrate the general community vision and design concepts and is not intended to serve as a final document.

D. Allowable Uses

1. The allowable uses shall include detached single-family houses.
2. The total number of units is limited to seventeen (17)

E. Subdivision Platting

1. The Concept Plan and Preliminary Plat may be submitted for concurrent review and approval.

F. Transportation

1. Lots may be accessed by private streets. If private streets with sidewalks on one side of the street are proposed, the private street right-of-way may be reduced to thirty (30') feet.



A 10.76 ACRE TRACT

SURVEY OF A 10.76 ACRE TRACT OF LAND OUT OF THE J.H. DAVIS SURVEY NO. 73, ABSTRACT NO. 2150, AND THE B.F. DAVIS SURVEY NO. 73, ABSTRACT 2280, TRAVIS COUNTY, TEXAS, AND BEING THAT SAME 10.7563 ACRE TRACT DESCRIBED IN DEED TO SPEAKING ROCK VENTURES, LLC, OF RECORD IN DOCUMENT NO. 2022173553, OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS. AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS: NOTE: (BASIS OF BEARING IS TEXAS SOUTH CENTRAL ZONE, NAD83.) (Job Number: 22-187-07)

BEGINNING: At a PK nail with washer stamped "RICKMAN" set for an angle point in the east right of way line of Osage Drive (70 Foot Right of Way), as described in the Final Plat of Travisso, Phase 5, Section 1, of record in Document No. 202100097, Official Public Records, Travis County, Texas, the southwest corner of This Tract and the POINT OF BEGINNING;

THENCE: N 40°14'12" E, with the east right of way line of Osage Drive and the west line of This Tract, at a record distance of 44.8 feet passing the east right of way line of Osage Drive and a southeast corner of the Remainder of a 1708.590 Acre Tract described in deed to Lookout Partners, L.P., of record in Volume 13085, Page 1927, Real Property Records, Travis County, Texas, continuing for a total distance of 148.14 feet to a ½" iron rod found for an angle point;

THENCE: N 03°05'25" W, 277.99 feet with the east line of the Remainder of the 1708.590 Acre Tract and the west line of This Tract to a 1/2" iron rod found for the southwest corner of the Remainder of a 5.69 Acre Tract described in deed to Milton J. Scott and Adeline Scott of record in Volume 10574, Page 686, Real Property Records, Travis County, Texas, and the northwest corner of This Tract;

THENCE: Departing the east line of the Remainder of the 1708.590 Acre Tract, with the south line of the Remainder of the 5.69 Acre Tract and the north line of This Tract the following calls and distances:

N 66°52'23" E, 469.15 feet to a ½" iron rod found for an angle point;

N 67°38'00" E, 82.49 feet to a ½" iron rod found for an angle point;

N 84°51'20" E, at a distance of 171.5 feet passing the record east corner of the Remainder of the 5.69 Acre Tract and the southwest corner of Lot 108, Block V, "HOA/DE/LS," The Bluffs at Crystal Falls Section 3, Phase 30, according to plat of record in Document No. 201800336, Official Public Records, Travis County, Texas, continuing for a total distance of 269.89 feet to a ½" iron rod found for the southeast

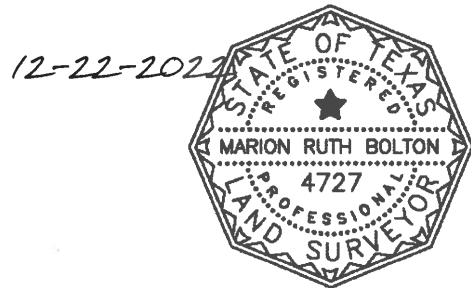
corner of Lot 108, the west corner of Lot 107, The Bluffs at Crystal Falls Section 3, Phase 30, the north corner of the Remainder of a 2144.875 Acre Tract described in deed to Travisso, Ltd., of record in Document No. 2013056181, Official Public Records, Travis County, Texas, and the northeast corner of This Tract;

THENCE: S 16°29'13" W, 988.25 feet with the northwest line of the Remainder of the 2144.875 Acre Tract and the southeast line of This Tract to a ½" iron rod found for a reentrant corner of the Remainder of the 2144.875 Acre Tract and the southeast corner of This Tract;

THENCE: N 61°12'03" W, with a northeast line of the Remainder of the 2144.875 Acre Tract and the southwest line of This Tract, at a distance of 623.45 feet passing a ½" iron rod with cap stamped "Dawson" found for a northwest corner of the Remainder of the 2144.875 Acre Tract and an angle point in the east right of way line of Osage Drive, continuing for a total distance of 658.20 feet to the POINT OF BEGINNING and containing 10.76 acres of land in Travis County, Texas, according to a survey on the ground on December 6, 2022, by Rickman Land Surveying, LLC.

Marion Ruth Bolton

Marion Ruth Bolton
Registered Professional Land Surveyor No. 4727





NOTE: THIS EXHIBIT IS CONCEPTUAL AND HAS NOT BEEN REVIEWED
FOR COMPLIANCE WITH THE COMPOSITE ZONING ORDINANCE OR
SUBDIVISION ORDINANCE

VILLAS AT SPEAKING ROCK
(10.75-ACRES)

OSAGE DRIVE

VILLAS AT
SPEAKING ROCK
EXHIBIT - C
LEANDER, TX

RCE RAO'S CONSULTING
ENGINEERS

TXPE FIRM#17655
P.O. BOX. 592991 SAN ANTONIO TX 78258
PHONE: 210.549.7557. FAX: 512.856.4595
www.raosengineering.com



RAO'S CONSULTING ENGINEERS

TBPE Registered Engineering Firm No. F-17655

210.549.7557 512.856.4595 www.raosengineering.com

P.O.BOX NO: 592991,

SAN ANTONIO, TX 78258

Land Development | Water Resources | Environmental | Transportation

Date: 5th November 2022

Development Services
City of Leander
201 N. Brushy Street
Leander, Texas 78641

Re: **Villas at Speaking Rock – PUD Plan**

TO WHOM IT MAY CONCERN:

Attached is a PUD plan for the 10.7564-acres Single-Family houses plat part of the villas at Speaking Rock development. The design of the community is not final and is subject to refinement during the platting and site planning stages. This PUD Plan does not constitute plat or site plan approval of the attached plan.

The property zoned as SFR-1-B (Single-Family Rural) with this PUD plan we are requesting change to PUD-SFE-1-A (Single-Family Estates)

We have provided detailed information on attached Exhibit-A

If you have any questions or need any additional information, please call me at 210-549-7550

Respectfully,
Rao's Consulting Engineers, LLC.
Texas Board of Professional Engineers Firm Registration #17655

Rao Vasamsetti, P.E.

APPLICANT'S SUMMARY OF NEIGHBORHOOD COMMUNICATIONS

This summary is only required for a PUD or a Minor PUD.

1. How and when were the surrounding neighborhood and residential property owners within 500' notified, how was information shared, and who was directly involved in the communication process? Please provide the address of the properties notified and the name and contact information of the residents directly involved in the communication process. Attach any materials that were distributed.

Surrounding neighborhood and residential property owners has been notified
and mailing list and notifications are included

2. Who was notified (i.e. property owners, HOA, etc)? The HOA and/or a representative if there is no organized HOA must be contacted, if applicable. Provide a separate sheet listing the contact information used including the names and addresses of the individuals.

Both property owners and HOA has been notified and individual names and addresses are
included in the package

3. What concerns were raised during these communications?

No, not received any concerns

4. What specific conditions were added to or modified within the zoning request in response to the concerns raised at the meeting?

No additional conditions are modifications are required

The above information is deemed to be true to the best of my knowledge.

Signature: Date: 12/01/2022

AN ORDINANCE OF THE CITY OF LEANDER, TEXAS

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF LEANDER, TEXAS, AMENDING THE ZONING ORDINANCE BY CREATING THE SPEAKING ROCK PUD (PLANNED UNIT DEVELOPMENT) WITH THE BASE ZONING DISTRICT OF SFE-2-B (SINGLE-FAMILY ESTATE); MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the owner of the property described herein after (the "Property") has requested that the Property be rezoned;

WHEREAS, after giving at least ten (10) days written notice to the owners of land within two hundred (200') feet of the Property, the Planning & Zoning Commission held a public hearing on the proposed rezoning and forwarded its recommendation on the rezoning to the City Council;

WHEREAS, after publishing notice of the public hearing at least fifteen (15) days prior to the date of such hearing, the City Council at a public hearing has reviewed the request and the circumstances of the Property and finds that a substantial change in circumstances of the Property, sufficient to warrant a change in the zoning of the Property, has transpired;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEANDER, TEXAS, THAT:

SECTION 1. Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

SECTION 2. Amendment of Zoning Ordinance. Ordinance No. 05-018-00, as amended, the City of Leander Composite Zoning Ordinance (the "Zoning Ordinance" or "Code"), is hereby modified and amended by rezoning the Property as set forth in Section 3.

SECTION 3. Applicability. This ordinance applies to the following parcel of land, which is herein referred to as the "Property". That certain parcel of land being including 10.7563 acres $\pm$; being more particularly described in Exhibit "B"; located commonly known as 1601 Speaking Rock; identified by Travis Central Appraisal District tax identification number 513825; more particularly described in Instrument Number 2022173553; recorded in the Official Public Records of Travis County, Texas.

SECTION 4. Property Rezoned. The Zoning Ordinance is hereby amended by creating the Speaking Rock PUD (Planned Unit Development) with the base zoning district of SFE-2-A (Single-Family Estate). The PUD shall be developed and occupied in accordance with this Ordinance, the PUD plan attached as Exhibits "A", "B", and "C" which are hereby adopted and incorporated herein for all purposes, and the Composite Zoning Ordinance to the extent not amended by this Ordinance. In the event of a conflict between the Composite Zoning Ordinance

and the requirements for the Property set forth in this Ordinance, this Ordinance shall control.

SECTION 5. Recording Zoning Change. The City Council directs the Planning Department to record this zoning classification on the City's official zoning map with the official notation as prescribed by the City's zoning ordinance.

SECTION 6. Severability. Should any section or part of this ordinance be held unconstitutional, illegal, or invalid, or the application to any person or circumstance for any reasons thereof ineffective or inapplicable, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portion or portions thereof; but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this ordinance are declared to be severable.

SECTION 7. Open Meetings. That it is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapt. 551, Loc. Gov't. Code.

PASSED AND APPROVED on First Reading this the 6th day of July, 2023.
FINALLY PASSED AND APPROVED on this the 20th day of July, 2023.

ATTEST:

THE CITY OF LEANDER, TEXAS:

Dara Crabtree, City Secretary

Christine DeLisle, Mayor



**MINUTES
PLANNING & ZONING COMMISSION
CITY OF LEANDER, TEXAS**

Pat Bryson Municipal Hall
201 North Brushy Street - Leander, Texas

June 8, 2023 at 6:00 PM



Place 1 – Donnie Mahan, *Chair*
Place 2 – John Cosgrove
Place 3 – Ron May
Place 4 – Deirdre Moss

Place 5 – James Oliver
Place 6 – Laura Lantrip, *Vice-Chair*
Place 7 – Rick Carpenter

The meeting will be live-streamed at the following link: <https://www.leandertx.gov/video>.

1. Call to Order at 6:00 p.m.
2. Roll Call.
All present except Chair Donnie Mahan.
3. Director's report to the Planning & Zoning Commission on actions taken by the City Council at the June 1, 2023 meeting
4. Review of meeting protocol.
5. Citizen Comments: Three (3) minutes allowed per speaker.
No one wished to speak.

CONSENT AGENDA: ACTION

6. Approval of Subdivision Case PP-22-0023 regarding Cypress Meadows Preliminary Plat on one parcel of land approximately 44.1 acres $\pm$ in size, more particularly described by Williamson Central Appraisal District Parcel R403528; generally located south west of S US 183 and Hernandos Loop, Leander, Williamson County, Texas.
7. Approval of Subdivision Case FP-21-0022 regarding Hawkes Landing North Phase 2 Final Plat on one parcel of land approximately 66.174 acres $\pm$ in size, more particularly described by Williamson Central Appraisal District Parcel R616492; generally located north of the intersection of Landing Ln and Mariann Dr and west of North Bagdad Rd, Leander, Williamson County, Texas.

8. Approval of Subdivision Case FP-22-0031 regarding Travisso Phase 4, Section 6B Final Plat on one parcel of land approximately 46.899 acres ± in size, more particularly described by Travis County Central Appraisal District Parcel 353024; generally located north of Travisso Parkway and west of Da Vinci Trail, Leander, Travis County, Texas.
9. Approval of Minutes.

Motion made by Commissioner Ron May, seconded by Commissioner Rick Carpenter to approve the consent agenda.

AYE: Commissioner John Cosgrove, Commissioner Deirdre Moss, Vice Chair Laura Lantrip, Commissioner Rick Carpenter, Commissioner James Oliver, Commissioner Ron May

6 - 0 Passed

PUBLIC HEARING: ACTION

10. Conduct a Public Hearing and consider action regarding Zoning Case Z-22-0050 to amend the current zoning of Interim SFR-1-B (Single-Family Rural) to adopt the Speaking Rock PUD (Planned Unit Development) with base zoning district of SFE-2-A (Single-Family Estate) on one parcel of land approximately 10.7563 acres ± in size, more particularly described by Travis Central Appraisal District Parcel 513825; and more commonly known as 1601 Speaking Rock, Leander, Travis County, Texas.
 - Discuss and consider action regarding Zoning Case Z-22-0050 as described above.

Motion made by Commissioner James Oliver, seconded by Commissioner Deirdre Moss to approve the Zoning request.

AYE: Commissioner John Cosgrove, Commissioner Deirdre Moss, Vice Chair Laura Lantrip, Commissioner Rick Carpenter, Commissioner James Oliver, Commissioner Ron May

6 - 0 Passed

REGULAR AGENDA

11. Adjournment at 6:10 p.m.

APPROVED:

CHAIRMAN MAHAN

ATTEST:

ELLEN COUFAL
PLANNING & ZONING COMMISSION SECRETARY



EXECUTIVE SUMMARY
07/06/2023

AGENDA SUBJECT:

Conduct a Public Hearing on Annexation Case A-23-0008 regarding the voluntary annexation of 2.3872 acres $\pm$ in size, more particularly described by Williamson Central Appraisal District Parcel R032108; and commonly known as 800 Riva Ridge Road, Leander, Williamson County, Texas.

- Discuss and consider action on Annexation case A-23-0008 as described above.

BACKGROUND:

A resolution was adopted on June 15, 2023 and commenced the voluntary annexation of 2.3872 acres $\pm$ as described above. The resolution sets the public hearing for July 6, 2023 and the readings of the ordinance for July 6, 2023 and July 20, 2023.

This property is subject to a development agreement between the property owner and the City that requires annexation when the land use redevelops and is no longer used for agricultural purposes. Approval of this item does not approve the annexation.

HISTORY/TIMELINE:

06/15/2023 - Resolution Adopted

APPLICANT/AGENT:

Milian Consulting, LLC (G. Maximiliano Martinez, PE) on behalf of Brigido Cruces and Miriam Garcia

RECOMMENDATION:

The City Council approved the annexation resolution on June 15, 2023. Staff recommends approval of the annexation.

PRESENTER:

Robin M. Griffin, AICP, Executive Director of Development Services

Attachments

1. Resolution
2. Location Map
3. Annexation Schedule
4. Petition
5. Ordinance

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF LEANDER, TEXAS, ACCEPTING THE PETITION FOR ANNEXATION OF 2.3872 ACRES, MORE OR LESS, OF LAND LOCATED IN WILLIAMSON COUNTY, TEXAS; SETTING AN ANNEXATION SCHEDULE; PROVIDING FOR OPEN MEETINGS AND OTHER RELATED MATTERS.

WHEREAS, the owners of certain property located within Williamson County, Texas, have petitioned the City of Leander, Texas, (hereinafter, the “City”), a home-rule City, for annexation of said property, more particularly described in **Exhibit A** attached hereto and incorporated by reference herein (the, “Subject Property”), into the City limits; and

WHEREAS, the Subject Property is contiguous and adjacent to the corporate limits of the City and the owner(s) have made application for annexation; and

WHEREAS, after review and consideration of such requests and petition for annexation from the owners of the Subject Property, the City Council finds that the Subject Property may be annexed pursuant to §43.0671 of the *Local Government Code*; and

WHEREAS, the petitioner has agreed and consented to the annexation of the Subject Property by the City and further agreed to be bound by all acts, ordinances, and all other legal action now in force and effect within the corporate limits of the City and all those which may be hereafter adopted.

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

Section 1. Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 2. Proceedings. The petition for annexation of the Subject Property, including the abutting streets, roadways, and rights of way, not previously annexed into the City, and the draft service plan shown in **Exhibit B**, are hereby accepted:

2.3872 Acres, more or less, out of the HENRY GARMS SURVEY, ABSTRACT NO. 269, commonly addressed as 800 Riva Ridge, Williamson County, Texas.

A public hearing has been set for the date of the 6th day of July, 2023. Notice of such hearing shall be posted and the hearing shall be open to the public to accept public comment on the annexation request. In the event of a conflict between the Subject Property description contained herein, **Exhibit A** shall control.

Section 3. Severability. Should any section or part of this Resolution be held unconstitutional, illegal, or invalid, or the application to any person or circumstance thereof ineffective or inapplicable, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portion or portions

thereof; but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this Resolution are declared to be severable.

Section 4. Open Meetings. It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, *Chapt. 551, Tex. Gov't. Code.*

PASSED AND APPROVED this the 6th day of July, 2023.

ATTEST:

THE CITY OF LEANDER, TEXAS

Dara Crabtree, City Secretary

Christine DeLisle, Mayor

Exhibit A

SUBJECT PROPERTY DESCRIPTION

(see attached)

Exhibit B

Service Agreement

AGREEMENT REGARDING POST-ANNEXATION PROVISION OF SERVICES FOR PROPERTY TO BE ANNEXED INTO THE CITY OF LEANDER

This Agreement is entered into by and between the City of Leander, Texas, a municipal corporation (“City”), and Miriam Garcia and Brigido Cruces, (“Landowners”). The City and the Landowners may be referred to herein singularly as “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, upon the request of the Landowners, the City intends to institute annexation proceedings for an area of land described more in **Exhibit A** and attached hereto and incorporated by reference herein, less and except any property previously annexed by the City. (the, “Subject Property”); and

WHEREAS, Section 43.0672, Loc. Gov’t. Code, requires the Parties to enter into a written agreement identifying a list of public services to be provided to the Subject Property and a schedule for the provision of those services that are not otherwise provided on the effective date of the annexation; and

WHEREAS, this Agreement is being entered into by and between the Parties to comply with Texas Local Government Code, Chapter 43, Sub-Chapter C-3, Section 43.0672, prior to the City’s consideration of an ordinance annexing the Subject Property, it being understood, acknowledged and agreed by the Parties that annexation of the Subject Property is a condition precedent to this Agreement becoming effective; and

WHEREAS, this Agreement shall be deemed effective on the effective date of an ordinance approved by the City annexing the Subject Property (hereinafter, the “Effective Date”); and

WHEREAS, the Subject Property is not included in the municipal annexation plan and is exempt from the requirements thereof; and

WHEREAS, the infrastructure provided for herein and that are existing are sufficient to service the Subject Property on the same terms and conditions as other similarly situated properties

currently within the City limits and no capital improvements are required to offer municipal services on the same terms and conditions as other similarly situated properties within the City; and

WHEREAS, it is found that all statutory requirements have been satisfied and the City is authorized by *Chapter 43, Loc. Gov't. Code*, to annex the Subject Property into the City; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

The following services and schedule represent the provision of services agreed to between the Landowners of the Subject Property and the City establishing a program under which the City will provide municipal services to the Subject Property, as required by section 43.0672 of the Texas Local Government Code. The services detailed herein will be provided at a level consistent with service levels provided to other similarly situated areas within the City.

The following services will be provided for the Subject Property on the Effective Date of annexation:

- (2) **General Municipal Services.** Pursuant to the requests of the owner and this Agreement, the following services shall be provided immediately from the effective date of the annexation:

2. Police protection as follows:

Routine patrols of areas, radio response to calls for police service and all other police services now being offered to the citizens of the City. Upon annexation, police protection will be provided to the Subject Property at a level consistent with the service to other areas of the City with similar population density and characteristics. The City's police services include neighborhood patrols, criminal investigations, crime prevention, community services and school programs.

- B. Fire protection and Emergency Medical Services as follows:

Fire protection by the present personnel and equipment of the City fire fighting force and the volunteer fire fighting force with the limitations of water available. Radio response for Emergency Medical Services with the present personnel and equipment.

C. Solid waste collection services as follows:

Solid waste collection and services as now being offered to the citizens of the City. The City provides residential solid waste collection services within the City limits for a fee under a contract between the City and private refuse collection operator. The residential solid waste collection services include garbage collection, recycling, bulky item collection and yard waste collection. Commercial solid waste collection services are also available. This service will be provided for a fee to any person within the Subject Property requesting the service after the Effective Date of annexation, provided that a privately owned solid waste management service provider is unavailable. If the Subject Property is already receiving service, the City may not prohibit solid waste collection by the privately owned solid waste management service provider, nor may the City offer solid waste collection services for a period of two (2) years following the Effective Date of the annexation unless a privately owned solid waste management service provider is or becomes unavailable, as established by Texas Local Government Code section 43.0661. If a landowner uses the services of a privately owned solid waste management service provider or services are available from a privately owned solid waste management service provider during the two (2) years following annexation, the City will not provide solid waste collection services to that landowner.

D. Animal control as follows:

Service by present personnel, equipment and facilities or by contract with a third party, as provided within the City.

E. Maintenance of City-owned parks and playgrounds within the City.

F. Inspection services in conjunction with building permits and routine City code enforcement services by present personnel, equipment and facilities. Municipal Court and General Administration services will also be available to property owners and residents in the Subject Property on the same basis those facilities are available to current City property owners and residents.

G. Maintenance of other City facilities, buildings, and service.

H. Land use regulation as follows:

On the effective date of annexation, the zoning jurisdiction of the City shall be extended to include the annexed area, and the use of all property therein shall be grandfathered; and shall be temporarily zoned "SFR-1-B" with the intent to rezone the Subject Property upon request of the landowner or staff. The Planning & Zoning Commission and the City Council will consider rezoning the Subject Property at future times in response to requests submitted by the Landowners or authorized city staff. The City will impose and enforce its adopted ordinances, including but not limited to, zoning, subdivision development, site development and building code regulations within the Subject Property upon the Effective Date of the annexation. Enforcement will be in accordance with City ordinances. Development plans and plats for projects within the Subject Property will be reviewed for compliance with City standards.

(2) **Scheduled Municipal Services.** Due to the size and vacancy of the Subject Property, the plans and schedule for the development of the Subject Property, the following municipal services will be provided on a schedule and at increasing levels of service as provided herein:

2. Water service and maintenance of water facilities as follows:

(2) Inspection of water distribution lines as provided by statutes of the State of Texas.

(ii) In accordance with the applicable rules and regulations for the provision of water service, water service will be provided to the Subject Property, or applicable portions thereof, by the utility holding a water certificate of convenience and necessity ("CCN") for the Subject Property, or portions thereof as applicable, or absent a water CCN, by the utility in whose jurisdiction the Subject Property, or portions thereof as applicable, is located, in accordance with all the ordinances, regulations, and policies of the City in effect from time to time for the extension of water service. If connected to the City's water utility system, the Subject Property's owner shall construct the internal water lines and pay the costs of line extension and construction of such facilities necessary to provide water service to the Subject Property as required in City ordinances. Upon acceptance of the water lines within the Subject Property and any off-site improvements, water service will be provided by the City utility department on the same terms, conditions and requirements as are applied to all similarly situated areas and customers of the City; subject to all the ordinances, regulations and policies of the City in effect from time to time. The system will be accepted and maintained by the City in accordance with its usual acceptance and maintenance policies. New water line extensions will be installed and extended upon request under the same costs and terms as with other similarly situated customers of the City. The ordinances of the City in effect at the time a request for service is submitted shall govern the costs and request for service. The continued use of a water well that is in use on the effective date of the annexation and is in compliance with applicable rules and regulations shall be permitted and such use may continue until the Subject Property's owner requests and is able to connect to the City's water utility system.

B. Wastewater service and maintenance of wastewater service as follows:

(2) Inspection of sewer lines as provided by statutes of the State of Texas.

(ii) In accordance with the applicable rules and regulations for the provision of wastewater service, wastewater service will be provided to the subjects property, or applicable portions thereof, by the utility holding a wastewater CCN for the Subject Property, or portions thereof as applicable, or absent a wastewater CCN, by the utility in whose jurisdiction the Subject Property, or portions thereof as applicable, is located, in accordance with all the ordinances, regulations, and policies of the City in effect from time to time for the extension of wastewater service. If connected to the City's wastewater utility system, the Subject Property's owner shall construct the internal wastewater lines and pay the costs of line extension and construction of facilities necessary to provide wastewater service to the Subject Property as required in City ordinances. Upon acceptance of the wastewater lines within the Subject Property and any off-site improvements, wastewater service will be provided by the City utility department on the same terms, conditions and requirements as are applied to all similarly situated areas and customers of the City, subject to all the ordinances, regulations and policies of the City in effect from time to time. The wastewater system will be accepted and maintained by the City in accordance with its usual policies. Requests for new wastewater line extensions will be installed and extended upon request under the same costs and terms as with other similarly situated customers of the City. The ordinances in effect at the time a request for service is submitted shall govern the costs and request for service. The continued use of a septic system that is in use on the effective date of the annexation and is in compliance with all applicable rules and regulations shall be permitted and such use may continue until the Subject Property owner requests and is able to connect to the City's wastewater utility system.

C. Maintenance of streets and rights-of-way as appropriate as follows:

(2) Provide maintenance services on existing public streets within the Subject Property and other streets that are hereafter constructed and finally accepted by the City. The maintenance of the streets and roads will be limited as follows:

(2) Emergency maintenance of streets, repair of hazardous potholes, measures necessary for traffic flow, etc.; and

(B) Routine maintenance as presently performed by the City.

(ii) The City will maintain existing public streets within the Subject Property, and following installation and acceptance of new roadways by the City as provided by city ordinance, including any required traffic signals, traffic signs, street markings, other traffic control devices and street lighting, the City will maintain such newly constructed public streets, roadways and rights-of-way within the boundaries of the Subject Property, as follows:

(2) As provided in C(i)(A)&(B) above;

(B) Reconstruction and resurfacing of streets, installation of drainage facilities, construction of curbs, gutters and other such major improvements as the need therefore is determined by the governing body under City policies;

© Installation and maintenance of traffic signals, traffic signs, street markings and other traffic control devices as the need therefore is established by appropriate study and traffic standards; and

(D) Installation and maintenance of street lighting in accordance with established policies of the City;

(iii) The outer boundaries of the Subject Property abut existing roadways. The Landowners agrees that no improvements are required on such roadways to service the Subject Property.

(3) **Capital Improvements.** Construction of the following capital improvements shall be initiated after the effective date of the annexation: None. Upon development of the Subject Property or redevelopment, the Landowners will be responsible for the development costs the same as a developer in a similarly situated area under the ordinances in effect at the time of development or redevelopment. No additional capital improvements are necessary at this time to service the Subject Property the same as similarly situated properties. When deemed necessary, capital improvement acquisition or construction will occur in accordance with applicable ordinances and regulations and the adopted capital improvement plans of the City, as applicable and amended, which are incorporated herein by reference.

(4) **Term.** If not previously expired, this agreement expires at the end of ten (10) years.

(5) **Property Description.** The legal description of the Subject Property is as set forth in the Annexation Ordinance and exhibits attached to the Annexation Ordinance to which this Agreement is attached.

(6) **Binding Effect/Authority.** This Agreement binds and inures to the benefit of the Parties and their respective heirs, successors, and permitted assigns. Each Party further warrants that each signatory to this Agreement is legally authorized to bind the respective individual or entity for the purposes established herein.

(7) **Choice of Law.** This Agreement will be construed under the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. Venue for any dispute shall lie exclusively in Williamson County, Texas.

(8) **Counterparts.** This Agreement may be executed in any number of counterparts with the same effect as if all signatory Parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

(9) **Legal Construction.** If any provision in this Agreement is for any reason found to be unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the Parties, the unenforceability will not affect any other provision hereof, and this Agreement will be construed as if the unenforceable provision had never been a part of the Agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Headings in this Agreement are for reference only and are not intended to restrict or define the text of any section. This Agreement will not be construed more or less favorably between the Parties by reason of authorship or origin of language.

(10) **Entire Agreement.** This Agreement contains the entire Agreement between the Parties relating to the rights herein granted and the obligations herein assumed and cannot be varied except by written agreement of the Parties. Any oral representation or modification concerning this instrument shall be of no force and effect except for any subsequent modification in writing, signed by the Party to be charged.

EXECUTED and AGREED to by the Parties this the ____ day of _____, 20__.

ATTEST:

THE CITY OF LEANDER, TEXAS

Dara Crabtree, City Secretary

Richard B. Beverlin, III, City Manager

LANDOWNER(S):

By: _____

Name (print): _____

Title: _____

Date: _____

By: _____

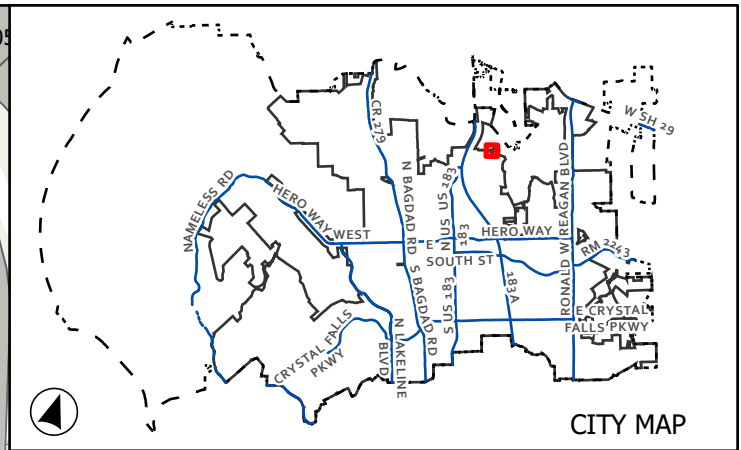
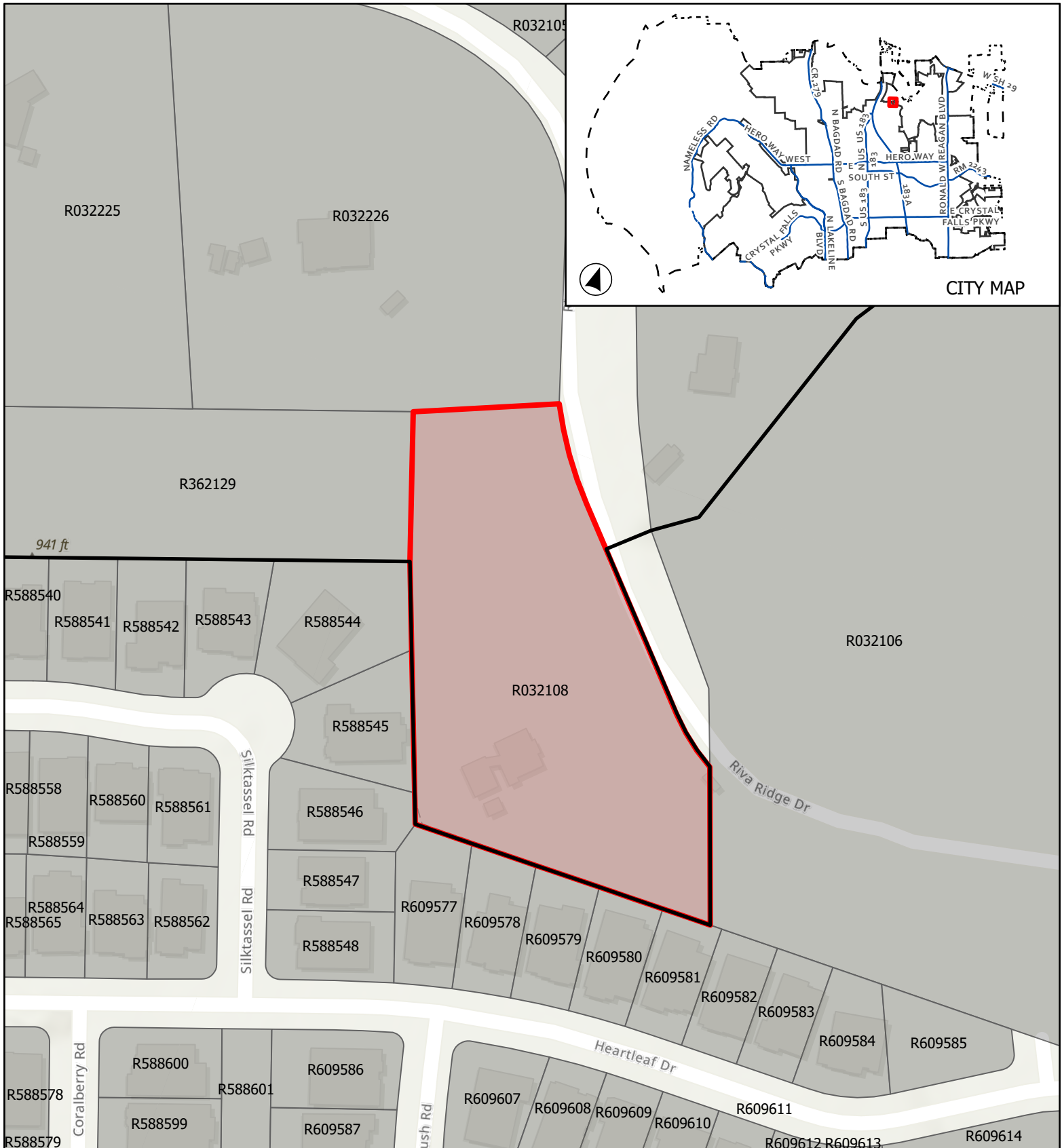
Name (print): _____

Title: _____

Date: _____

Subject Property

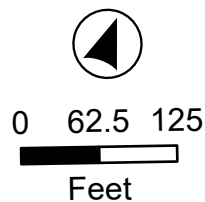
(see attached)



CASE: A-23-0008 ATTACHMENT 2 800 RIVA RIDGE

Location Map

This map has been produced by the City of Leander for informational purposes only. No warranty is made by the City regarding completeness or accuracy. This data should not be construed as a legal description or survey instrument. No responsibility is assumed for damages or other liabilities due to the accuracy, availability, completeness, use or misuse of the information herein provided.



- City Limits
- ETJ Boundary
- Subject Boundary

**Schedule for Voluntary Annexation
2.3872 +/- ACRES IN WILLIAMSON COUNTY**

DATE	ACTION/EVENT	LEGAL AUTHORITY
Thursday, June 15, 2023* Tuesday, June 6, 2023 Council packet deadline	COUNCIL CONSIDERS ACCEPTANCE OF ANNEXATION PETITION REQUEST FROM LANDOWNER(S) AND INITIATION OF ANNEXATION - AND SETS A PUBLIC HEARING FOR Thursday, July 6, 2023	Loc. Gov't Code, §43.0671
Thursday, June 22, 2023 * Publish notice of Public Hearing. & Send notice to school district and to each public entity. [Noon, Friday June 16, 2023– Deadline to send notice to paper]	NEWSPAPER NOTICE RE: PUBLIC HEARING; (Certified Notice to Railroad - if railroad company's right-of-way is in the area proposed for annexation.) POST NOTICE OF HEARING ON CITY'S WEBSITE AND MAINTAIN UNTIL HEARINGS COMPLETE. SCHOOL DISTRICT NOTICE. Notify each school district of possible impact <u>w/in the period prescribed for publishing the notice of the Public Hearing.</u> PUBLIC ENTITY NOTICES. Notify each public entity__that is located in or provides services to the area proposed for annexation. Public Entity includes: a county (Williamson/Travis), a fire protection service provider, including a volunteer fire department, emergency medical services provider, including a volunteer emergency medical services provider, or special district (MUD, WCID, or other district created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution) - of possible impact <u>w/in the period prescribed for publishing the notice of the Public Hearing.</u>	Not less than 10 days nor more than 20 days before public hearing. Loc. Gov't Code, §43.0673 Loc. Gov't Code, §§43.905 & 43.9051 ; send notice to school district and to each public entity not less than 10 days nor more than 20 days before the Public Hearing.
Thursday, July 6, 2023*	PUBLIC HEARING – REGULAR MEETING	The governing body must provide persons interested in the annexation the opportunity to be heard. Loc. Gov't Code, §43.0673
Thursday, July 6, 2023* Tuesday, June 27, 2023 – Council packet deadline	FIRST READING OF ORDINANCE <i>REGULAR MEETING</i>	Loc. Gov't Code, §43.0673
Thursday, July 20, 2023. Or at a special called meeting after the First Reading; Or within 90 days of First Reading.	SECOND & FINAL READING OF ORDINANCE <i>REGULAR MEETING</i>	Second reading of annexation Ordinance – City Charter, Section 4.06(c)
Within 30 days of Second Reading	CITY SENDS COPY OF MAP showing boundary changes to County Voter Registrar in a format that is compatible with mapping format used by registrar	Elec. Code §42.0615
Within 60 days of Second Reading	CITY PROVIDES CERTIFIED COPY OF ORDINANCE AND MAPS TO: 1. County Clerk 2. County Appraisal District 3. County Tax Assessor Collector 4. 911 Addressing 5. Sheriff's Office 6. City Department Heads 7. State Comptroller 8. Franchise Holders ESD - if annexed area located in district and city intends to remove the area from the district and be the sole provider of emergency services; See Health and Safety Code, Section 775.022	Williamson County ESD No. 5 ; Notice must be sent to the secretary of the ESD board by certified mail, return receipt requested, as applicable Leander is located in Williamson and Travis Counties. Confirm which ESD needs notice of disannexation.

*Dates in BOLD are MANDATORY dates to follow. Please advise of schedule deviation.

STATE OF TEXAS §
 §
COUNTY OF WILLIAMSON §

REQUEST & PETITION TO THE CITY COUNCIL OF THE CITY OF LEANDER
FOR ANNEXATION OF PROPERTY

WHEREAS, the undersigned is the owner of a certain area of land located within Williamson County, Texas, such property being more particularly described hereinafter by true and correct legal description (the, "Subject Property"); and

WHEREAS, the undersigned has sought the annexation of the Subject Property by the City of Leander, Texas, (hereinafter sometimes referred to as "City"), in order to obtain the benefits of City services to the Subject Property by the City; and

WHEREAS, the Subject Property is contiguous and adjacent to the corporate limits of the City; and

WHEREAS, the City, pursuant to §43.003, *Tex. Loc. Gov't. Code* and the request of the property owner, is authorized to annex the Subject Property; and

WHEREAS, pursuant to §43.0672, *Tex. Loc. Gov't. Code*, the City and the undersigned have negotiated and entered into a written agreement for the provision of services to the Subject Property, said agreement being attached hereto as **Exhibit A** and incorporated by reference herein; and

WHEREAS, the undersigned agrees and consents to the annexation of the Subject Property by the City and further agrees to be bound by all acts, ordinances, and all other legal action now in force and effect within the corporate limits of the City and all those which may be hereafter adopted.

NOW THEREFORE, the undersigned by this Petition and Request:

SECTION ONE: Requests the City Council of the City to commence annexation proceedings and to annex into the corporate limits of the City of Leander, Texas, of all portions of the Subject Property, including the abutting streets, roadways, and rights-of-way, not previously annexed into the City, and further described as follows:

2.3872 Acres, more or less, out of the HENRY GARMES SURVEY, ABSTRACT NO. 269, Williamson County, Texas.

SECTION TWO: Requests that after annexation the City provide such services as are legally permissible and provided by the City, including sanitation, water and general governmental services as set forth in the written agreement regarding the provision of services attached hereto as **Exhibit A**.

SECTION THREE: Acknowledges executing and entering into the agreement, attached

hereto as **Exhibit A**, and that such agreement is wholly adequate and acceptable to the undersigned who hereby requests the City Council to proceed with the annexation and to publish notice and hold the requisite public hearing thereon, in accordance with the applicable laws of the State of Texas.

SECTION FOUR: Acknowledges that the undersigned understands and agrees that all City services to the Subject Property will be provided by the City on the same terms and conditions as provided to other similarly situated areas of the City and as provided in the written agreement regarding the provision of services attached hereto as **Exhibit A**.

SECTION FIVE: Agrees that a copy of this Request and Petition may be filed of record in the offices of the City of Leander and in the real property records of Williamson County, Texas, and shall be notice to and binding upon all persons or entities now or hereafter having any interest in the Subject Property.

FILED, this ____ day of _____ 20____, with the City Secretary of the City of Leander, Williamson County, Texas.

Petitioners:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

STATE OF TEXAS §
§
COUNTY OF _____ §

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared _____, owner of the Subject Property and Petitioner herein, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that they had authority to bind the entity and that they executed the same for the purposes therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the ____ day of _____ 20__.

(SEAL)

Notary Public - State of Texas

STATE OF TEXAS §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared _____, owner of the Subject Property and Petitioner herein, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that they had authority to bind the entity and that they executed the same for the purposes therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the ____ day of _____ 20____.

(SEAL)

Notary Public - State of Texas

Exhibit A
SERVICE AGREEMENT
(SEE ATTACHED)

AN ORDINANCE OF THE CITY OF LEANDER, TEXAS

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF LEANDER, TEXAS ANNEXING 2.3872 ACRES OF LAND, MORE OR LESS, LOCATED IN WILLIAMSON COUNTY, INCLUDING THE ABUTTING STREETS, ROADWAYS, AND RIGHTS-OF-WAY INTO THE CORPORATE LIMITS OF THE CITY, AT THE REQUEST OF THE PROPERTY OWNER; APPROVING AN AGREEMENT FOR THE PROVISION OF SERVICES FOR THE ANNEXED AREA; MAKING FINDINGS OF FACT; PROVIDING A SEVERABILITY CLAUSE AND AN EFFECTIVE DATE; AND PROVIDING FOR OPEN MEETINGS AND OTHER RELATED MATTERS.

WHEREAS, the City of Leander, Texas, is a home-rule municipality authorized by State law to annex territory lying adjacent and contiguous to the City;

WHEREAS, the owners of the property, as hereinafter described, made written request for the City to annex such property in compliance with the *Tex. Loc. Gov't. Code*;

WHEREAS, the property is adjacent and contiguous to the present city limits;

WHEREAS, the City Council heard and has decided to grant the owners' request that the City annex said property;

WHEREAS, a public hearing was conducted prior to consideration of this Ordinance in accordance with §43.0673 of the *Tex. Loc. Gov't. Code*;

WHEREAS, notice of the public hearing was published not more than twenty (20) nor less than ten (10) days prior to the public hearing;

WHEREAS, the City intends to provide services to the property to be annexed according to the agreement for the provision of services attached hereto as **Exhibit "B"**.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEANDER, TEXAS:

SECTION 1. That all of the above premises and findings of fact are found to be true and correct and are incorporated into the body of this Ordinance as if copied in their entirety.

SECTION 2. All portions of the following described properties (hereinafter referred to as the "Annexed Property"), not previously annexed into the City, including the abutting streets, roadways and rights-of-way, are hereby annexed into the corporate limits of the City of Leander:

All that certain area of land being 2.3872 acres, more or less, in Williamson County, Texas, being more particularly described in **Exhibit A** attached hereto and incorporated herein for all purposes.

SECTION 3. That the provision of services agreement submitted herewith is hereby approved as part of this Ordinance, made a part hereof and attached hereto as **Exhibit “B”**.

SECTION 4. That the future owners and inhabitants of the Annexed Property shall be entitled to all of the rights and privileges of the City as set forth in the provisions of services agreement attached hereto as **Exhibit “B”**, and are further bound by all acts, ordinances, and all other legal action now in full force and effect and all those which may be hereafter adopted.

SECTION 5. That the official map and boundaries of the City, heretofore adopted and amended be and hereby are amended so as to include the Annexed Property as part of the City of Leander.

SECTION 6. That the Annexed Property shall be temporarily zoned District “SFR-1-B” as provided in the City Zoning Ordinance, as amended, until permanent zoning is established therefore.

SECTION 7. That if any provision of this Ordinance or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 8. That this Ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the *Tex. Loc. Gov’t. Code*.

SECTION 9. That it is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, *Chapt. 551, Tex. Gov’t. Code*.

PASSED AND APPROVED on First Reading this 6th day of July, 2023.

FINALLY PASSED AND APPROVED on this 20th day of July, 2023.

ATTEST:

CITY OF LEANDER, TEXAS

Dara Crabtree, City Secretary

Christine DeLisle, Mayor

Exhibit “A”

PROPERTY DESCRIPTION

[SEE ATTACHED]

Exhibit “B”

**AGREEMENT REGARDING POST-ANNEXATION PROVISION OF SERVICES
FOR PROPERTY TO BE ANNEXED INTO THE CITY OF LEANDER**

[Insert executed Agreement]



EXECUTIVE SUMMARY
07/06/2023

AGENDA SUBJECT:

Discuss and consider action on an Ordinance amending Article 7.02, Judge, of the Code of Ordinances by adding to the provisions for the appointment and term of the Judge, removing a provision regarding removal of the Judge, and adding qualifications for holding the office of Judge; and providing for related matters.

BACKGROUND:

The proposed ordinance, if approved, would accomplish two (2) objectives:

1. Remove conflicts between the City's Home Rule Charter Section 7 adopted in 2005 and Article 7.02 of the Code of Ordinances that was adopted in 2003. The provisions of the City's Charter govern, so this is a good opportunity to clean up the conflicts; and
2. Establish minimum criteria for future selections of the Presiding Judge.

The proposed minimum qualifications are taken from the requirements for statutory County Courts in Texas. Staff recommends that only the minimum qualifications be established in the ordinance. This will allow the City Manager to tailor any subsequent search for a new Presiding Judge to the needs and expectations of the City at that particular time. The minimum qualifications would be:

- a. Citizen of the United States, age 25 or older;
- b. Resident of Williamson or Travis County or a county adjacent to either for at least two (2) years; and
- c. A licensed attorney who has practiced law or served as a judge in the state of Texas for four (4) years.

PRESENTER:

Robert Powers, Executive Director of Finance

Attachments

1. Ordinance Amending
2. Ordinance Redline
3. Texas Judge Qualifications
4. Municipal Courts in Texas
5. Charter - Municipal Court
6. State Judicial Conduct

Ordinance of the City of Leander, Texas

Whereas the City Council of the City of Leander, Texas (the "City") desires to remove conflicts between the City's Home Rule Charter Section 7, adopted in 2005, and Article 7.02, of the City's Code of Ordinances, adopted in 2003; and

the City Council of the City of Leander, Texas (the, "City") desires to remove conflicts between the City's Home Rule Charter Section 7, adopted in 2005, and Article 7.02, of the City's Code of Ordinances, adopted in 2003; and

the City desires to add criteria for the qualifications for holding the office of Judge.

Now, therefore, the City Council of the City of Leander, Texas, does hereby enact the following Ordinance:

Section 1. Findings of Fact. The above and foregoing recitals are hereby found to be true and correct and are incorporated herein as findings of fact.

Section 2. Amendment to Ordinance. Article 02, Judge, of the City of Leander, Texas, Code of Ordinances, is hereby amended and replaced in its entirety to read as set forth in Exhibit A attached hereto and incorporated herein for all purposes.

Section 3. Severability. If any provision of this Ordinance is illegal, invalid, or unenforceable under present or future laws, the remainder of this Ordinance will not be affected and, in lieu of each illegal, invalid, or unenforceable provision, a provision as similar in terms to the illegal, invalid, or unenforceable provision as is possible and is legal, valid, and enforceable will be added to this Ordinance.

Section 4. Effective Date. This Ordinance will become effective upon its adoption, passage by the City Council in accordance with the procedures on the date of passage as required and publication as required by law.

Section 5. Open Meeting. It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

Witness my hand and the seal of the City of Leander, Texas, this 15th day of September, 2023.

CITY OF LEANDER, TEXAS

By: _____

Christine DeLisle, Mayor

Dara Crabtree, City Secretary

Dara Crabtree, City Secretary

□□□**C**□□ 7.□□ □□□□□

§ 7.□.□□1. □□ic□cr□at□.

There is hereby created the office of judge of the municipal court, who shall have all the powers and authority of this city and shall perform all the duties as required by state law and the ordinances of this city.

§ 7.□.□□□. □ppoint□ nt□tr□.

- (a) The municipal judge and the number of associate judges authorized by the city council in the budget shall be appointed and removed by the City Manager. The municipal judge and associate judges shall take office immediately following appointment and taking the oath of office required by the state constitution and state laws.
- (b) The municipal judge shall be appointed for a term of two (2) years.
- (c) The associate judges shall serve at the will of the City Manager.

§ 7.□.□□□. Co□p□ation.

The municipal judge shall be compensated for his/her services at a rate set by the city council, which shall be commensurate with the time involved in electing [executing] his/her duties.

§ 7.□.□□□. Continuin□□ucation.

The municipal judge shall each year meet the annual continuing judicial education requirements of the state □overnment Code.

§ 7.□.□□□. □r□i□in□ □u□□□□ualification□

- (a) Citizen of □nited States, age 25 or older□
- (b) □esident of □ illiamson or Travis County or a county adjacent to either for at least 2 years□
- (c) A licensed attorney who has practiced law or served as a judge in the state of Texas for □ years□
- (d) □as not been suspended, voluntarily resigned, or been removed from the office of □udge as a result of an investigation by the Texas State Commission on □udicial Conduct□and
- (e) □as not been the subject of an □rder for Additional Education, □rivate Sanction, or □ublic Sanction, as a result of an investigation by the Texas State Commission on □udicial Conduct in the previous three years prior to consideration for appointment.

§ 7.□.□□□. □at□.

The judge of the municipal court, prior to taking office, shall take the oath of office required by the state constitution and state laws.

ARTICLE 7.02 JUDGE

§ 7.02.001. Office created.

There is hereby created the office of judge of the municipal court, who shall have all the powers and authority of this city and shall perform all the duties as required by state law and the ordinances of this city.

(2003 Code, sec. 7.102)

§ 7.02.002. Appointment; term.

(a) The municipal judge and the number of associate judges authorized by the city council in the budget shall be appointed and removed by the City Manager. The municipal judge and associate judges shall take office immediately following appointment and taking the oath of office required by the state constitution and state laws.

(b) The municipal judge shall be appointed for a term of two (2) years.

(c) The associate judges shall serve at the will of the City Manager.

~~(a) The city council shall appoint the municipal judge of the city.~~

~~(b) The municipal judge shall be appointed for a term of two (2) years and such terms shall coincide with the term of the mayor. The municipal judge shall take office immediately following the appointment.~~

~~(2003 Code, sec. 7.103)~~

~~(e)~~

§ 7.02.003. Compensation.

The municipal judge shall be compensated for his/her services at a rate set by the city council, which shall be commensurate with the time involved in electing [executing] his/her duties.

(2003 Code, sec. 7.104)

§ 7.02.004. Continuing education.

The municipal judge shall each year meet the annual continuing judicial education requirements of the state Government Code.

(2003 Code, sec. 7.105)

~~§ 7.02.005. Removal.~~

~~The judge of the municipal court may be removed by a majority vote of the city council. The judge of the municipal court may also be removed from office by a city council resolution declaring lack of confidence in the judge, provided that two-thirds (2/3) of the city council vote in favor of said resolution.~~

~~(2003 Code, sec. 7.106)~~

§ 7.02.005. Presiding Judge Qualifications

(a) Citizen of United States, age 25 or older;

(b) Resident of Williamson or Travis County or a county adjacent to either for at least 2 years;

(c) A licensed attorney who has practiced law or served as a judge in the state of Texas for 4 years;

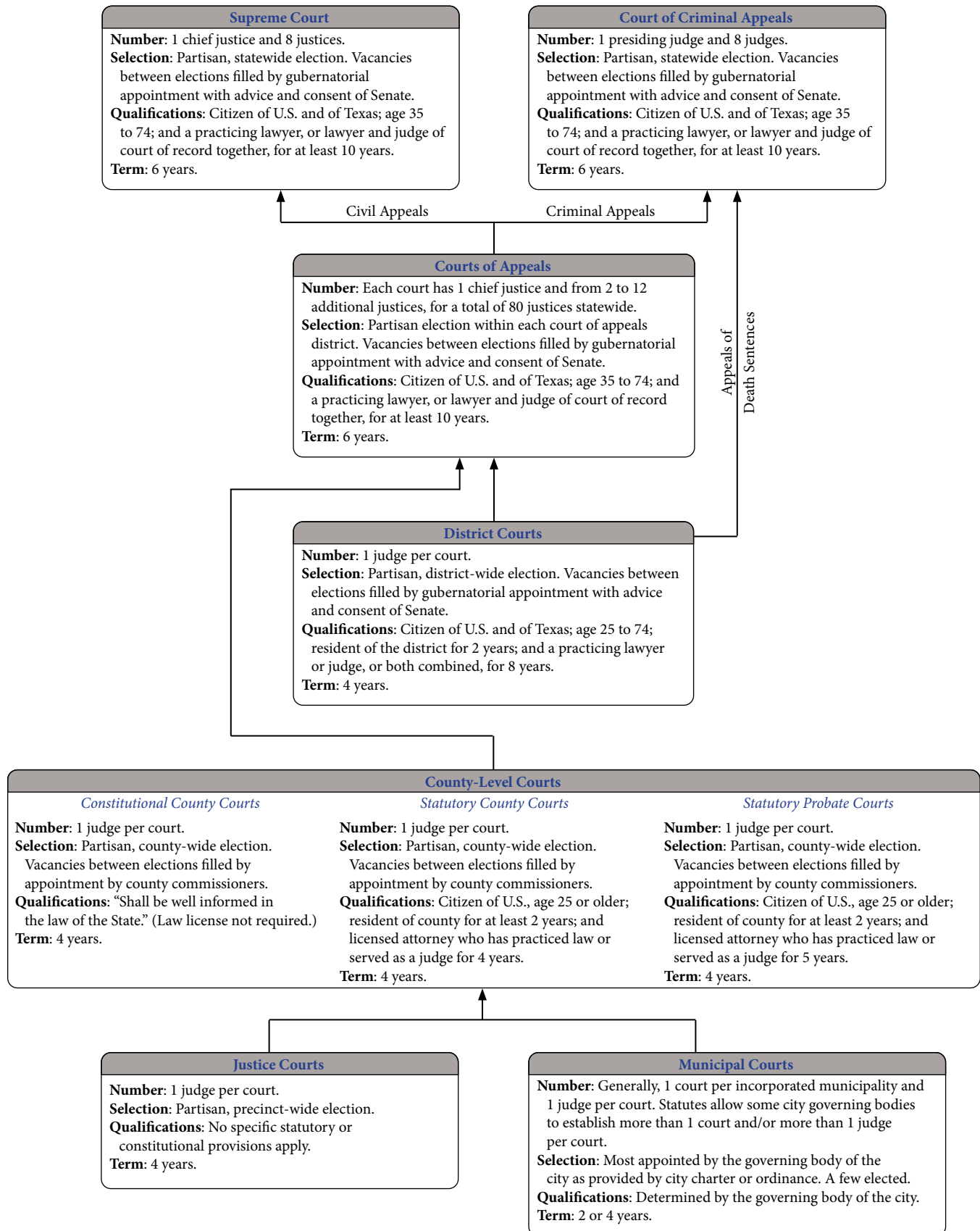
- (d) Has not been suspended, voluntarily resigned, or been removed from the office of Judge as a result of an investigation by the Texas State Commission on Judicial Conduct; and
- (e) Has not been the subject of an Order for Additional Education, Private Sanction, or Public Sanction, as a result of an investigation by the Texas State Commission on Judicial Conduct in the previous three years prior to consideration for appointment.

§ 7.02.006. Oath.

The judge of the municipal court, prior to taking office, shall take the oath of office required by the state constitution and state laws.

(2003 Code, sec. 7.107)

Judge Qualifications and Selection in the State of Texas



1

AN INTRODUCTION TO MUNICIPAL COURTS AND THE TEXAS JUDICIAL SYSTEM

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CHAPTER 1

AN INTRODUCTION TO MUNICIPAL COURTS AND THE TEXAS JUDICIAL SYSTEM

Introduction

More people (*e.g.*, defendants, witnesses and jurors) come into personal contact with municipal courts than all other Texas courts combined. Because these experiences are frequently the only contact citizens have with the courts, public impression of the entire Texas judicial system is largely dependent upon their experience in municipal court. Municipal judges constitute 42 percent of the entire state judiciary. Accordingly, municipal judges occupy a unique and most important position in the Texas judicial system.

Because the qualification and selection process of judges varies amongst municipalities, municipal judges come from a diverse range of occupational and educational backgrounds.¹ In this, diversity is strength. Yet, in spite of such diversity, characteristics that tend to unite municipal judges are a fundamental respect for the rule of law, a love for community and a dedication to public service.

During the last 20 years, municipal courts have experienced a virtual deluge of change. Increased subject matter jurisdiction, a higher volume of diverse cases and a litany of new laws and legal issues have redefined the role of Texas municipal courts. Challenging the notion that municipal courts merely adjudicate traffic offenses, municipal courts in the 21st century serve a critical role in preserving public safety, protecting the quality of life in Texas communities, and deterring future criminal behavior.

Even seasoned trial lawyers who become judges learn that the transition to the bench is not necessarily easy. The perspective of a judge is different from any other participant in the judicial process and the challenges are unique to the occupation. A perpetual hunger for knowledge and a fundamental love for learning distinguish an exceptional judge from his or her peers. Being a judge requires a conceptual framework for understanding the judicial system.

I. The History and Significance of Local Trial Courts

While popular culture fixates on felonious criminal behavior and the events transpiring in district courts, criminologists have long recognized that the key to restoring order

¹ Nearly three quarter of municipal judges have attended college. Forty-seven percent attended law school. *Annual Report of the Texas Judicial System*, Fiscal Year 2004, Office of Court Administration, Austin, Texas (Henceforth, cited as OCA).

and reducing crime begins at the community level. In their groundbreaking book *Fixing Broken Windows*, Kelling and Coles illustrate that in order to prevent “more serious,” though albeit, less common crimes, the criminal justice system must locally address the more frequent, “less serious” crimes that collectively create a community environment conducive to all types of disorder and lawlessness.²

Texas municipal courts stem from a long tradition of local courts that have embraced the notion that the preservation of community life and the prevention of greater lawlessness begins at home in our towns and cities.

While the first local trial courts date back to the Old Testament (Exodus 18:13-26), local trial courts in America originate back to the justice of the peace and magistrate courts of 14th century England. During the 19th century, a majority of the United States continued the tradition of local courts through either the election or appointment of justices of the peace, mayors, police magistrates, recorders, and other judicial officers.

During the 20th century, local trial courts of limited jurisdiction experienced both considerable criticism and change. The impartiality of many local trial courts was called into question by the existence of the fee system (a system that paid the judicial officer directly from fees assessed against defendants found guilty). The demise of this notorious fee system began in *Tumey v. Ohio*³ in which the U.S. Supreme Court held that a judge in a misdemeanor case is disqualified from adjudicating the case if the judge’s fee depends on the conviction of the defendant.

Within 50 years, the Supreme Court once again addressed another controversial issue pertaining to lower court judges: Should lower court judges be attorneys? In *North v. Russell*,⁴ the court held that non-lawyer judges do not deny defendants equal protection, nor do they violate the due process clause of the 14th Amendment. While some states, such as California and Iowa, now require that lower court judges be attorneys, in 1988 only 57 percent of lower court judges in the United States were attorneys.⁵

By the 1980s, criticisms of the quality of justice dispensed in the lower courts led many states to initiate various reforms, such as increased emphasis on judicial education. By the end of the 20th century, at least 31 states mandated judges of limited jurisdiction to have a requisite number of judicial education hours before taking the

² George L. Keeling & Catherine M. Coles, *Fixing Broken Windows*, New York, N.Y.: Simon & Shuster (1996).

³ 273 U.S. 510 (1927).

⁴ 427 U.S. 395 (1976).

⁵ David W. Neubauer, *America’s Courts and the Criminal Justice System (6th Edition)*, Belmont, California: West/Wadsworth (1999).

bench. Additionally, 44 other states require continuing judicial education.⁶ While such efforts to reform the local trial courts have resulted in beneficial changes in some jurisdictions, the problems facing local trial courts remain as varied as the courts themselves. In general, however, the most pressing problems of lower courts continue to involve inadequate financing,⁷ inadequate facilities, lax court procedures, and unbalanced caseloads.⁸

By 1998, local trial courts of limited jurisdiction existed in all but four states, the District of Columbia and Puerto Rico.⁹ These courts constitute 84 percent of all courts in America. The judges that serve such courts constitute 66 percent of the American judiciary. In 1995 alone, over 61 million cases, 72 percent of all state criminal cases, were filed in local trial courts of limited jurisdiction.¹⁰ In 1992, 71 percent of all filings in lower courts pertained to traffic cases.¹¹ While the volume and types of cases being heard in the local trial courts have continued to increase, by the mid-1990s the number of traffic offenses declined by 20 percent. This decrease is attributed to the fact that some states have opted to decriminalize and transfer common traffic offenses from the criminal dockets of local courts to administrative proceedings in the executive branch of government.¹²

II. The Constitutional Origins of Municipal Courts in Texas

The Texas courts named in the State Constitution of 1876 are collectively referred to as constitutional courts. Such courts include the high appellate courts (Texas Supreme Court and Texas Court of Criminal Appeals), the intermediate courts of appeals, the district courts, the constitutional county courts, and the justice courts.

Notably, the Constitution of 1876 was the first constitution since statehood not to expressly include municipal courts (or as they were called at the time “corporation courts”).¹³ Though the Court of Criminal Appeals would ultimately refuse to acknowledge the omission as an express repeal of the authority of the Legislature to

⁶ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *State Court Organization* (1998).

⁷ Despite a history in which many states have looked to local trial courts as sources of revenue through fines and court costs, few local courts receive funding from their state.

⁸ Neubauer, *supra* Note 5.

⁹ U.S. Department of Justice, *supra* Note 6.

¹⁰ Brian J. Ostrom & Neal Kauder, *Examining the Work of State Courts*, Williamsburg, Virginia: National Center for State Courts, 1996.

¹¹ Brian J. Ostrom, *State Court Caseload Statistics: Annual Report*, Williamsburg, Virginia: National Center for State Courts, 1994.

¹² Ostrom & Kauder, *supra* Note 10.

¹³ David B. Brooks, 22 *Municipal Law and Practice*, Section 15.04 (Texas Practice 2d ed. 1999).

create municipal courts,¹⁴ the omission sparked a controversy involving the constitutional legitimacy and authority of municipal courts.

At the heart of this controversy, lasting from 1876 to 1900, were a host of vexing legal questions. Could the Legislature still create such courts? Could municipal courts share criminal jurisdiction with the justice courts over state law violations? Did municipal courts have exclusive jurisdiction of certain subject matter? Were municipal courts truly “state trial courts?” Could city ordinance violations be prosecuted in the name of State of Texas? If so, who represented the State (the city attorney, the county attorney)? During this period of time, both the Court of Criminal Appeals and the Supreme Court issued conflicting opinions.¹⁵

In an attempt to resolve the confusion in 1891, the State Constitution was amended to allow the Legislature to “establish such other courts as it may deem necessary and prescribe the jurisdiction and organization thereof and may conform the jurisdiction of the district and other inferior courts thereto.”¹⁶ In essence, the amendment modified the Constitution to allow the Legislature to statutorily create additional courts as it deemed necessary in an effort to ensure judicial efficiency. Thus, although such courts (known as statutory courts) were not expressly named, they would be implicitly authorized by the Constitution.¹⁷

While the constitutional amendment allowing such statutory courts seemed to provide a doctrinal source of legitimacy for municipal courts, the amendment did not explicitly answer a fundamental question: Did the Constitution authorize such state statutory courts to be created at the municipal level of government?

In 1898, the Court of Criminal Appeals considered the amendment in light of an opinion issued by its sister court (the Supreme Court) and held that the Constitution did not authorize the Legislature to give jurisdiction of state law violations to municipal courts.¹⁸ A year after the Court’s opinion, finding “great doubt and confusion concerning the jurisdiction of municipal courts,” the Legislature enacted a comprehensive statute to create municipal courts and to establish uniform procedure and jurisdiction.¹⁹

¹⁴ *Ex parte Hart*, 56 S.W. 341, 344 (1900).

¹⁵ For contemporary insight into this period of confusion, see generally, *Aguirre v. State*, 22 S.W.3d 463, 467 (Tex. Crim. App. 1999).

¹⁶ Article V, Section 1, Texas Constitution.

¹⁷ Other statutory courts include county courts at-law and specialized district courts.

¹⁸ *Coombs v. State*, 44 S.W. 854 (Tex. Crim. App. 1898).

¹⁹ Section 19, Act of April 1, 1899, 26th Leg. Ch. 33, 1899 Tex. Gen. Laws 40, 44 (Hereafter, referred to as The Municipal Courts Act of 1899).

Ultimately, The Municipal Courts Act of 1899 proved to be a pivotal turning point in the development of municipal courts. One year later and contrary to an earlier opinion, the Court of Criminal Appeals in *Ex parte Wilbarger*²⁰ acknowledged that the Constitution permitted jurisdiction of state law offenses to be given to municipal courts. *Wilbarger* proved to be a seminal case. Subsequent to its opinion in *Wilbarger*, the Court of Criminal Appeals has consistently held that despite the fact that they exist in the context of city government, municipal courts are state trial courts and “are governed by the same rules of practice as are other state courts.”²¹

III. The Texas Judicial System

In simplest terms, the Texas judicial system is composed of three levels of trial courts and two levels of appellate courts. A trial court hears testimony and receives physical evidence and renders a verdict as decided by either the judge or jury.²² In the United States, state trial courts are generally divided into two categories: courts of general jurisdiction and courts of limited jurisdiction. A court of general jurisdiction has unlimited civil and criminal jurisdiction, though its judgments are subject to appellate review. A court of limited jurisdiction may hear only certain types of matters (civil, criminal or both).

For the most part, an appellate court examines the merits of the proceedings in trial courts.²³ While there are limited exceptions, which will later be discussed in detail, appellate courts typically neither hear evidence nor determine guilt or innocence. The appeals heard in these courts are based upon the “record” (a written transcription of the testimony given, exhibits introduced and the documents filed in the trial court) and the written and oral arguments of the appellate lawyers.

Unlike other states, Texas courts do not have uniform jurisdiction (*i.e.*, the authority to hear an unlimited range of cases). Rather, each court can only hear cases within the parameters provided to it by either the Texas Constitution or the State Legislature.²⁴

²⁰ *Ex parte Wilbarger*, 55 S.W. 968 (Tex. Crim. App. 1900). *Wilbarger* also upheld the constitutionality of municipal courts sharing concurrent jurisdiction with justice courts. Notably, the Court’s opinion in *Wilbarger* contradicted its earlier decision in *Leach v. State*, 36 S.W. 471 (Tex. Crim. App. 1896). *Leach* held that the role of municipal courts was strictly limited to adjudicating local ordinance violations. In as such, municipal courts were not state trial courts and municipal judges were not included as state officers. *Id.* 472-473. *Leach* was overruled in favor of *Wilbarger*. See *Ex parte Abrams*, 120 S.W. 883 (Tex. Crim. App. 1908).

²¹ *Ex parte Quintanilla*, 207 S.W.2d 377 (Tex. Crim. App. 1947).

²² Texas trial courts include municipal, justice, county, and district courts.

²³ While county courts hear appeals from municipal and justice courts, they are not considered state appellate courts. State appellate courts include 14 courts of appeals, the Supreme Court and the Court of Criminal Appeals.

²⁴ Notably, while district courts in Texas are referred to as “state trial courts of general jurisdiction” they too are limited in the types of cases that they can adjudicate.

Such limited authority is known as subject matter jurisdiction. Ultimately, to be certain of either a trial or an appellate court’s jurisdiction, one must be familiar with either the constitutional provision or statute that created the particular court.

Since all Texas courts are limited by their own jurisdiction, there may be a natural tendency for judges to feel distant or isolated from the rest of the judicial system. It is nevertheless important to recognize that the entire Texas judicial system is interconnected. With this in mind, the following information examines the five levels of the judiciary with a particular emphasis on how each court functions in relation to municipal courts.

A. Local Trial Courts of Limited Jurisdiction

There are two types of local trial courts of limited jurisdiction in Texas: justice courts and municipal courts. Respectively, the courts are presided over by justices of the peace and municipal judges.

The justice of the peace is the judicial figure generally associated with local justice in rural territories. Richard the Lionheart is said to have commissioned the first justices of the peace, known as *custodes pacis*, in 1195. They were knights responsible for preserving the peace in unruly areas. In American jurisprudence, justices of the peace have historically acted as judicial officers in rural and unincorporated portions of state territories. Such was the case in Texas, where “in the early days of the Republic, and during early statehood, the population of Texas was sparse and the power of government of necessity was decentralized.”²⁵ In 1928, all states included justices of the peace as an important component of their judicial system. By the middle of the 20th century, reformist pressures coupled with population shifts toward incorporated rural and urban areas brought an end to the era of the justice of the peace.²⁶ In 1998, justice of the peace courts existed in only 12 states: Arizona, Arkansas, Delaware, Louisiana, Mississippi, Montana, Nevada, New York, Oregon, Texas, Utah, and Wyoming.²⁷

In suburban and metropolitan townships, police magistrate courts served as the urban counterpart of the justice of the peace courts. In Texas, such courts were known as corporation courts (denoting the creation of such courts within incorporated cities and towns).²⁸ Such courts were presided over by either the mayor or a designated police official (sometimes known as a police judge). In Texas, such officials were known as

²⁵ See, Interpretative Commentary, Article V, Section 19, *Vernon’s Annotated Texas Constitution*.

²⁶ Ellen H. Steury & Nancy Frank, *Criminal Court Process*, St. Paul, Minnesota: West Publishing (1996).

²⁷ U.S. Department of Justice, *supra* Note 6.

²⁸ Though Government Code, Section 29.002 now provides that a reference in state law to “corporation court” means “municipal court,” the name change was not made official until the 1969 revision of the Code of Criminal Procedure.

recorders.²⁹ A combination of law enforcement official and judicial officer, the recorder not only adjudicated common lesser criminal offenses, but also provided legal advice to the police, set bond on arrestees and conducted preliminary hearings in felony cases. Over a period of time, the inherent conflicting duties of the police magistrate led to its abolition and the creation of two distinct positions: the police legal advisor and the municipal judge.³⁰ In 1998, municipal courts existed in 29 states.³¹

1. Municipal Courts

As the population of Texas has grown, so has the number of municipal courts and judges.³² In terms of size, Texas municipal courts are as diverse as the state itself. Texas municipal courts vary from the large courts of record in Houston, Dallas and San Antonio to the smallest town with a court, Domino (population 52).

a. Jurisdiction

While the volume of cases adjudicated by municipal courts vary, they are unified in their criminal jurisdiction. Municipal courts have jurisdiction over “fine-only” criminal offenses. The term “fine-only” deserves emphasis and a word of warning. The typical notion of a fine-only offense is a Class C misdemeanor, punishable by a maximum fine of \$500.³³ Be aware, however, that the Penal Code provides that all state law violations defined outside of the Penal Code are to be prosecuted as a Class C misdemeanor as long as they are punishable by fine-only.³⁴ Thus, for such non-Penal Code criminal offenses the maximum dollar amount is determined by the Legislature (*e.g.*, passing a school bus, defined in the Transportation Code, is punishable by a maximum fine of \$1,000). Additionally, the courts may impose sanctions not consisting of confinement in jail or imprisonment. The imposition of a sanction or denial, suspension, or revocation of a privilege does not affect the original jurisdiction of the local trial courts in Texas.³⁵

²⁹ The term “recorder” stems from Norman law where it was the duty of the judicial officer to recite or testify from recollection as to what had previously transpired in court. Subsequently, the term denoted an appointed local official authorized to officially register important legal instruments (*e.g.*, deeds, liens, mortgages).

³⁰ In 1971, Section 29.002(d), Government Code, was amended to provide that “a reference in the laws of this state to a ‘recorder’ means a ‘judge of a municipal court.’”

³¹ U.S. Department of Justice, *supra* Note 6.

³² In 1983, the Office of Court Administration reported in the *Annual Report of the Texas Judicial System* an estimated 828 municipal courts and 1,073 judges. By the year 2004, OCA estimated that there were 894 municipal courts and 1,343 judges.

³³ Section 12.23, Penal Code.

³⁴ Section 12.41(3), Penal Code.

³⁵ Articles 4.11, 4.14, Code of Criminal Procedure; Section 29.003, Government Code.

Municipal courts have original and exclusive jurisdiction over violations of city ordinances and the resolutions, rules and orders of a joint airport board that occur in the territorial jurisdiction of the city and on property owned by the city in the city's extraterritorial jurisdiction. Such violations are punishable by a fine up to \$500 or a fine not to exceed \$2,000 if the subject matter relates to health, fire safety, or zoning.³⁶ In Texas, ordinance violations punishable by the imposition of a fine are adjudicated as a criminal matter. Notably, such violations may only be adjudicated in a municipal court.³⁷

Municipal courts also have concurrent jurisdiction with justice courts in offenses occurring within the territorial limits and on property owned by the city in the city's extraterritorial jurisdiction.³⁸

Municipal courts have limited civil jurisdiction for the purpose of bond forfeitures and are able to assess civil penalties for owners of dangerous dogs. Additionally, municipalities may declare the violation of city ordinances relating to parking and stopping vehicles to be civil offenses and prescribe the civil fines. These cities must establish an administrative adjudication hearing procedure for these offenses. Cities with municipal courts of record may by ordinance expand the court's jurisdiction to include nuisance abatement.³⁹ Additionally, judges of such courts have writ power and the authority to issue administrative search warrants.⁴⁰

b. Trial and Appeals

In the year 2004, approximately 27 percent of cases filed in municipal court resulted in a trial.⁴¹ While 99 percent of cases were tried before a judge alone, more than 4,100 cases resulted in a jury trial. While under the U.S. Constitution, the 6th Amendment constitutional right to a trial by jury only applies to defendants charged with offenses

³⁶ Section 54.001, Local Government Code.

³⁷ Section 29.003(a), Government Code.

³⁸ Article 4.14, Code of Criminal Procedure, and Section 29.003, Government Code.

³⁹ Section 30.00005, Government Code.

⁴⁰ Section 30.00006, Government Code. A *writ of mandamus* is a court order requiring a public official or corporation to act in a specific manner with the law. A *writ of habeas corpus* is a court order pertaining to the legality of an individual's detention or the circumstances of his or her detention. A *writ of attachment* is employed to enforce obedience to an order or judgment (e.g., to compel compliance with a subpoena or to seize property to secure a claim).

⁴¹ In FY 2004, 7,629,829 cases were filed in Texas municipal courts. Of those cases filed and not dismissed, 2,035,586 proceeded to trial.

punishable by imprisonment for more than six months,⁴² the Texas Constitution extends the right to a jury trial to all criminal matters, including fine-only offenses.⁴³

Depending on whether or not the court is a court of record, appeals from municipal courts differ. Most municipal courts in Texas are not courts of record. In courts of non-record, appeals result in a trial *de novo* (i.e., the case is tried once again before either the county court, county court at law or designated court as if the first trial never occurred).⁴⁴ In municipal courts of record, appeals stem from the preservation of error in the court record and transcript.⁴⁵ Pursuant to a final judgment of guilt in a municipal court of record, defendants are not entitled to a trial *de novo*. Rather, similar to appeals from county and district courts, appeals from municipal courts of record are governed by the Texas Rules of Appellate Procedure. However, unlike appeals from county and district court that are reviewed by the Court of Appeals, appeals from municipal courts of record are held in either the county court, county court at law or a statutorily created municipal court of appeals.

Under Legislation passed in 1997, known as The Municipal Courts of Record Act, a municipal court may become a court of record through passage of a local ordinance.⁴⁶ Barring, however, special legislation from the Legislature, a municipal judge of a court of record must be a licensed attorney with two years experience practicing law in Texas. Currently, it is estimated that there are in excess of 70 municipal courts of record.

2. Justice Courts

In contrast to municipal courts, which are statutory courts, justice courts are a product of the Texas Constitution. The Texas Constitution provides that each county shall be divided into at least one, and not more than eight justice precincts, in each of which is to be elected one or two justices of the peace. Approximately 827 justice courts are in operation today.

⁴² *Baldwin v. New York*, 399 U.S. 66 (1970).

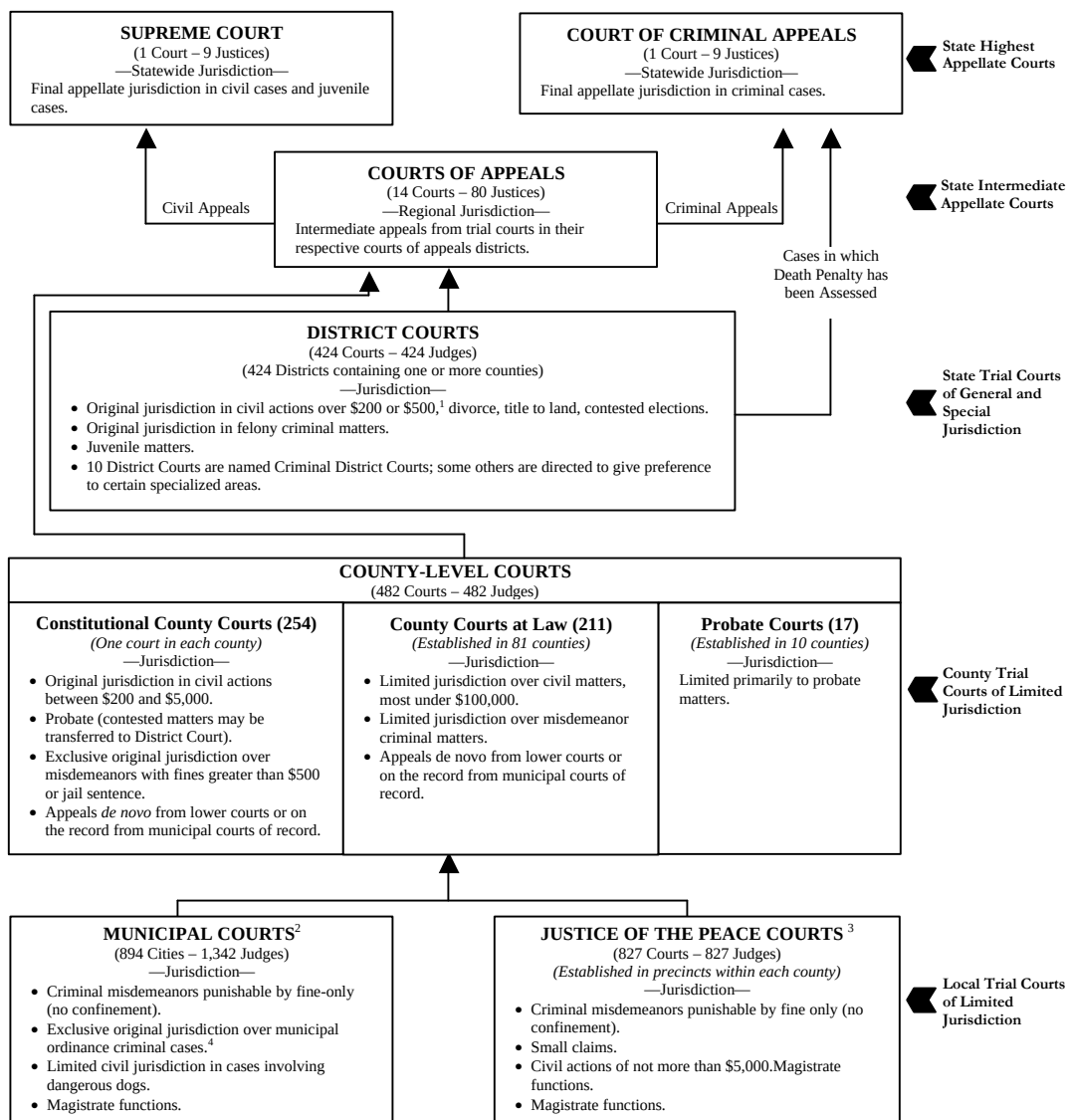
⁴³ *Bearden v. State*, 648 S.W.2d 688 (Tex. Crim. App. 1983); See also, Attorney General Opinion No. DM 97-097 (1997).

⁴⁴ Assuming compliance with Articles 45.042-45.043, Code of Criminal Procedure, in non-record municipal courts, defendants have the right to appeal upon the judge entering a final judgment of guilt regardless of whether the determination of guilt was a result of a plea or the rendering of a verdict.

⁴⁵ In *Ex parte Spring*, 586 S.W.2d 482 (Tex. Crim. App. 1978) the Court of Criminal Appeals held that municipal courts of record do not violate the equal protection clause. In *Spring*, the appellant attempted to assert that municipal courts of record were unconstitutional because defendants convicted in non-record courts would be entitled to a trial *de novo*. Though the issue has never been considered by the courts, it is possible for an appeal from a municipal court of record to be reviewed by a non-attorney county court judge.

⁴⁶ See generally, Chapter 30, Government Code. Prior to the Municipal Courts of Record Act, such municipal courts could only be created by the Legislature.

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¹ The dollar amount is currently unclear.

² Some municipal courts are courts of record – appeals from those courts are taken on the record to the county-level courts.

³ All justice of the peace courts and most municipal courts are not courts of record. Appeals from these courts are by trial *de novo* in the county-level courts and, in some instances, in the district courts.

⁴ An offense that arises under a municipal ordinance is punishable by a fine not to exceed: (1) \$2000 for ordinances that govern fire safety, zoning and public health or (2) \$500 for all others.

While most municipal judges are appointed, justices of the peace are elected by voters of the respective precinct of the county in partisan elections for four-year terms of office. There are no special statutory or constitutional qualifications to serve as a justice of the peace. Eight percent of justices of the peace attended law school.⁴⁷

As previously stated, justices of the peace share concurrent original jurisdiction with municipal courts over criminal state law violations. Notably, however, justice courts do not have jurisdiction to adjudicate city ordinance violations. In terms of civil jurisdiction, justice courts have exclusive original jurisdiction in civil cases in which the amount in controversy (the amount of money or damages involved) is \$200 or less. They also have concurrent jurisdiction with both the county and district courts in civil matters where jurisdiction is not statutorily limited to the district or county courts and in which the amount in controversy is not more than \$5,000, exclusive of interest. By statute, justice courts have jurisdiction of cases involving forcible entry and detainer (evictions), foreclosure of mortgages and enforcement of liens on personal property in cases where the amount in controversy is within the justice court's jurisdiction. There are other notable exceptions to a justice court's civil jurisdiction.⁴⁸ Trials in justice of the peace courts are not of record. Appeals from these courts are trial *de novo* in the county court, the county court at law, or the district court.

Finally, in rural areas without a medical examiner, justices of the peace act as coroners and are authorized to conduct inquests which involve inquiring into the causes and circumstances of any death that occurs as a result of violent, sudden or unnatural death.⁴⁹

B. County Trial Courts of Limited Jurisdiction

In comparison to other states, Texas is unique in that, in addition to having local trial courts of limited jurisdiction, it also has county trial courts of limited jurisdiction. There are three types of county trial courts of limited jurisdiction: constitutional county courts, county courts at law and county probate courts.

1. Constitutional County Courts

As provided in the Texas Constitution, each of the state's 254 counties has a constitutional county court.

⁴⁷ OCA, *supra*, note 1 at 87.

⁴⁸ Justice courts do not have jurisdiction of a suit on behalf of the state to recover a penalty, forfeiture or escheat; a suit for divorce, a suit to recover damages for slander or defamation of character; a suit for trial of title to land; or a suit for the enforcement of a lien on land. Section 27.031, Government Code.

⁴⁹ See generally, Chapter 49, Code of Criminal Procedure. Prior to 1987, municipal judges were also authorized to conduct inquests.

In criminal matters, such courts can have original jurisdiction over Class A and B misdemeanors, as well as any misdemeanor punishable by a term of incarceration in jail.⁵⁰ Unless a statute creating an offense gives exclusive original jurisdiction to the justice court, constitutional county courts have concurrent criminal jurisdiction with justice courts over state law fine-only offenses.⁵¹ In essence, this means that county courts share jurisdiction with justice and municipal courts over most fine-only offenses.⁵² Constitutional county courts have the authority to issue writs necessary to enforce their jurisdiction.⁵³

In terms of civil jurisdiction, constitutional county courts have concurrent civil jurisdiction with justice courts when the amount in controversy ranges from \$200 to \$5,000, exclusive of interest.⁵⁴ They have concurrent jurisdiction with district courts when the amount in controversy ranges from \$500 to \$5,000, exclusive of interest. Such county courts also have the general jurisdiction of a probate court in uncontested cases.⁵⁵

Some constitutional county courts have additional statutory authority. Thus, to ascertain the jurisdiction of any specific constitutional county court one must be familiar with specific legislation that may modify the court's jurisdiction.⁵⁶

County level courts are unique in that they are the only trial courts that may also hear appeals. With noted exceptions, constitutional county courts have appellate jurisdiction in cases appealed from municipal and justice courts.⁵⁷ Unless the appeal is from a

⁵⁰ Class A misdemeanors are punishable by confinement not to exceed one year in jail and/or a fine not to exceed \$4,000 (Section 12.21, Penal Code). Class B misdemeanors are punishable by confinement not to exceed 180 days in jail and/or a fine not to exceed \$2,000 (Section 12.22, Penal Code). Additionally, if an offense is not a felony and confinement in jail is affixed to the offense as a possible punishment it adjudicated as if were a Class B misdemeanor (Section 12.41, Penal Code).

⁵¹ Article 4.07, Code of Criminal Procedure.

⁵² *Fouke v. State*, 529 S.W.2d 772 (Tex. Crim. App. 1975).

⁵³ Article V, Section 16, Texas Constitution. Such writs include the *writ of mandamus*, *habeas corpus* and attachment defined *supra*, note 38. County courts may additionally issue a *writ of procedendo*, an order to a lower court to proceed to judgment. Such writs may be issued because the defendant did not perfect his or her appeal from municipal court to the county court. *Mann v. Brown*, 516 S.W.2d 22 (Tex. App.-Tyler 1974). It is inappropriate, however, for a county court to issue such a writ merely because the defendant seeking a trial *de novo* did not appear for trial county court. *Ex parte Swift*, 358 S.W.2d 629 (Tex. Crim. App. 1962).

⁵⁴ Section 26.042, Government Code.

⁵⁵ Section 4, Probate Code.

⁵⁶ Sections 26.101-26.354, Government Code.

⁵⁷ A constitutional county court located in a county with a statutory criminal district court has no criminal jurisdiction (Section 26.045(c), Government Code). Additionally, the constitutional county court may transfer its jurisdiction to either the appropriate district court or county court at law (Article 4.11, Code of Criminal Procedure). Finally, a county court may not have criminal jurisdiction because a specific statute governing either the county court at law or the municipal court of record. Accordingly, to ascertain the

municipal court of record (where trial proceedings are recorded), the appeal takes the form of a trial *de novo* (a completely new trial). The authority of a county-level court of limited jurisdiction to hear appeals from a local-level court of limited jurisdiction is known as incidental appellate jurisdiction. Texas is one of only six states in the country to utilize incidental appellate jurisdiction among its courts of limited jurisdiction.⁵⁸

Constitutional county court judges are selected by partisan election. Though they are required by the Texas Constitution to be “well informed of the law of the State,” they are not required to be attorneys. In 2004, 14 percent of constitutional county court judges were law school graduates.⁵⁹ Accordingly, though the appellate courts have never considered the issue, it appears possible for an appeal from a municipal court of record to be reviewed by a non-attorney county court judge.⁶⁰

2. County Courts at Law

There are 211 county courts at law established in 81 counties. Because the Texas Constitution limits each county to a single constitutional county court, the Legislature created statutory “county courts at law” to aid the single county court in its judicial functions. The civil and criminal jurisdiction of such statutory county-level trial courts varies considerably and is established by the statute that creates the particular court. County courts at law may be designated as juvenile courts. Some have subject matter jurisdiction in only limited fields, such as civil, criminal or probate. In fact, some only hear matters appealed from municipal and justice courts. Others have jurisdiction over a diverse range of subject matter. The civil jurisdiction of most county courts at law is usually greater than that of the justice of the peace courts and less than that of the district courts. County court at law judges are selected through partisan elections. Candidates for county court at law judge must be at least 25 years old, be a county resident for at least two years and be a licensed attorney who has either practiced law or served as a judge for four years.

3. County Probate Courts

There are 16 county probate courts in Texas. The Texas Constitution grants the Legislature the authority to determine which Texas courts have jurisdiction over probate matters. The statutorily created county probate courts of Texas are located in the state’s six largest metropolitan areas and have original and exclusive jurisdiction

jurisdiction of a county court, readers must often be familiar with specific statutes impacting the local judiciary.

⁵⁸ See, U.S. Department of Justice, *supra* Note 6. Other states include Delaware, Georgia, Mississippi, Ohio, and Rhode Island.

⁵⁹ OCA, *supra*, note 1 at 57.

⁶⁰ George E. Dix and Robert O. Dawson, 40 *Criminal Practice and Procedure*, Section 1.49 (Texas Practice 2d ed. 2001).

over their counties' probate matters, guardianship cases and mental health commitments. In most counties, the constitutional county court has original probate jurisdiction. In some counties, the Legislature has authorized certain statutorily created county courts to share this original jurisdiction so that a county court at law will have concurrent jurisdiction over probate matters with the constitutional county court. The original probate jurisdiction of district courts is limited to those situations in which a contested probate matter is transferred from a constitutional county court and when the Legislature has granted the district court original control and jurisdiction over personal representatives. In the more populated counties, the Legislature has created county probate courts to exclusively hear probate matters. Thus, depending on the jurisdictional grant by the Legislature, probate matters might be heard in the county court, county court at law, statutory probate court, or district court of a particular county. The qualifications for county probate judge are the same as county court at law judge.

C. District Courts: State Trial Court of General Jurisdiction and Special Jurisdiction

District courts in Texas are constitutionally created trial courts of general jurisdiction. In 2004, there were 424 district courts. The geographical area served by each court is established by the Legislature, but each county must be served by at least one district court. In sparsely populated areas of the state, several counties may be served by a single district court, while an urban county may be served by many district courts. District courts have original jurisdiction in all felony criminal cases,⁶¹ misdemeanors involving "official misconduct," divorce cases, cases involving title to land, election contest cases, civil matters in which the amount in controversy is \$200 or more, and any matters in which jurisdiction is not placed in another trial court. While most district courts try both criminal and civil cases, in the more densely populated counties the courts may specialize in civil, criminal, juvenile, or family law matters (such courts are known as

For a county by county breakdown of intermediate court of appeals regions, go to: www.courts.state.tx.us/appcourt.asp.

⁶¹ There are five categories of felonies in Texas. State jail felonies punishable by 180 days to two years in a state jail; an optional fine not to exceed \$10,000 (Section 12.35, Penal Code). Third degree felonies are punishable by 2-10 years in prison; an optional fine not to exceed \$10,000 (Section 12.34, Penal Code). Second-degree felonies are punishable by 2-20 years in prison; an optional fine not to exceed \$10,000 (Section 12.33, Penal Code). First-degree felonies are punishable by 5-99 years in prison; an optional fine not to exceed \$10,000. Capital felonies are punishable by either life in prison or death by lethal injection (Section 12.31, Penal Code).

state trial courts of special jurisdiction). Such courts may be statutorily created in the same manner as a county court at law.⁶²

Because municipal judges, acting as magistrates, are involved in the preliminary stages of a wide array of criminal offenses, they can potentially play an indirect role in adjudications in district court.⁶³ Additionally, in the event that a party makes a motion to either disqualify or recuse a municipal judge, the case must be submitted to the presiding judge of the administrative judicial region.⁶⁴ Section 74.042 of the Government Code establishes nine administrative judicial regions in the State, with the presiding judge for each region being designated by the Governor. The presiding judge of the administrative judicial region is generally a current district judge.⁶⁵ Finally, in the event that a municipal judge finds an “officer of the court”⁶⁶ in contempt, the officer must be released on a personal bond pending the assignment of a trial judge to hear the contempt accusation by the presiding judge of the administrative judicial region.

D. State Intermediate Appellate Courts

The 14 courts of appeal have intermediate appellate jurisdiction in both civil and criminal cases appealed from district or county courts.⁶⁷ Each court of appeals has jurisdiction in a specific geographical region of the State. Each court is presided over by a chief justice, and it has at least two other justices. The specific number of justices on each court is set by statute and ranges from three to 13. The Legislature, however, may increase the number whenever the workload of an individual court requires additional judges.

Presently there are 80 justices authorized for these courts. Appeals in the courts of appeals are usually heard by a panel of three justices, unless in a particular case an *en*

⁶² See generally, Chapter 24, Government Code.

⁶³ Municipal judges acting as magistrates have been called to testify in suppression hearings in district court. See generally, “Taking the Stand: Testifying on Juvenile Magistration,” *Municipal Recorder* (Vol. 11, No. 1) December 2001.

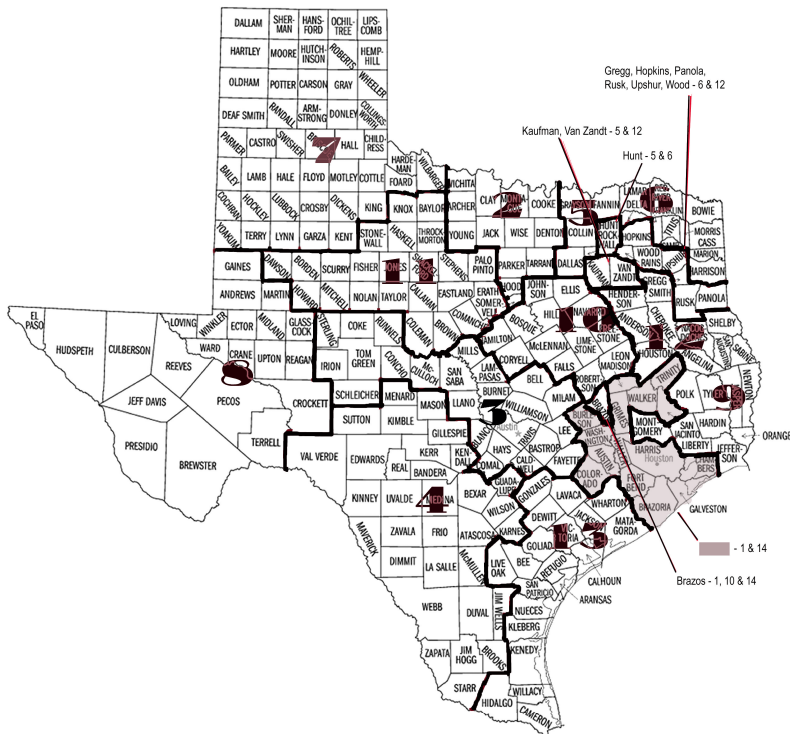
⁶⁴ Texas Rule of Civil Procedure 18. In terms of recusal and disqualification, the rules of civil procedure apply to all judges in criminal cases. *Arnold v. State*, 853 S.W.2d 543 (Tex. Crim. App. 1993).

⁶⁵ Section 74.045, Government Code. The judge may also be a retired district judge or an appellate judge with district court experience.

⁶⁶ Section 21.002, Government Code. “Officers of the court” generally refers to attorneys, bailiffs and clerks. For additional information, see Chapter 5 Contempt.

⁶⁷ Courts of appeal are located in the following cities: Amarillo (District 7), Austin (District 3), Beaumont (District 9), Corpus Christi (District 13), Dallas (District 5), Eastland (District 11), El Paso (District 8), Fort Worth (District 2), Houston (two courts: Districts 1 and 14), San Antonio (District 4), Texarkana (District 6), Tyler (District 12), and Waco (District 10). See illustration on next page for the location of the corresponding numbered districts.

banc hearing is ordered. In this instance, all the justices of the court hear and consider the case.



Appeals from the district and county courts are neither automatic nor discretionary. In other words, while the appellant (the party making the appeal) must perfect their appeals in a timely manner, the court of appeals must generally hear the appeal. Such, however, is not the case in appeals of cases originating in municipal court. Defendants convicted in municipal court and subsequently convicted again following a trial *de novo* in a county level court may only appeal their conviction to the appropriate court of appeals if the fine is \$100 or more or the sole issue on appeal is the constitutionality of the statute or ordinance on which the conviction is based.⁶⁸ Defendants convicted in municipal courts of record who appeal to the county level court may also appeal their cases to the appropriate court of appeals. It should be noted that if the State prevails at trial in a municipal court of record and the conviction is reversed at the county level, the State may appeal to the appropriate court of appeals. Because appeals from non-

⁶⁸ Article 4.03, Code of Criminal Procedure.

record municipal courts result in a trial *de novo*, acquittals in the county level court preclude appeal by the State. Concurrently with the high appellate courts, the courts of appeals have writ power (*e.g.*, most commonly the *writ of mandamus* and the *writ of habeas corpus*).⁶⁹

Since there are 14 appellate districts, it is important that judges know the location of their respective court of appeals. Most intermediate appellate courts now make their published opinions available online. Such opinions constitute case law and are published in the *South Western Reporter Series*.⁷⁰ Published decisions constitute case law. A court of appeal may, however, construe laws differently. Thus, barring an opinion by either of the state's highest appellate courts, such published opinions are only controlling authority in their territory (not to say they cannot be persuasive in others).

Court of appeals justices are selected by partisan elections and serve six-year overlapping terms. Candidates must be at least 35 years of age, a citizen of the United States and of Texas and a practicing attorney or a judge for a court of record for at least 10 years.

E. State Highest Appellate Courts

Texas is one of two states in the United States of America (the other being Oklahoma) to have a bifurcated (divided into two courts) high appellate court system. Review by either the Court of Criminal Appeals or Supreme Court of Texas is generally not a matter of right, but of sound judicial discretion. Four votes are required for a case to be reviewed by either court.⁷¹ Respective to their jurisdictions, each court has legislative authority to create rules of evidence and procedure. Additionally, each court has jurisdiction to answer certified questions posed to it by federal appellate courts. The qualifications for each court are the same as the court of appeals. Because they are coequals within their respective jurisdictions, there are no cross appeals between the two courts of last resort. While each court construes both the Federal and State Constitutions, they are the final authority in construing the Texas Constitution. Appellants wishing to appeal beyond either of the high courts must couch their appeals in terms of the Federal Constitution. In such cases, appeals may be made to the 5th Circuit Court of Appeals and U. S. Supreme Court.

⁶⁹ See, *supra*, note 51.

⁷⁰ For more information on case law and the *Southwest Reporter Series*, see Chapter 8 Legal Research.

⁷¹ Known euphemistically as “the rule of four” in criminal cases, see Texas Rules of Appellate Procedure 69.1.

1. Court of Criminal Appeals

The Court of Criminal Appeals is the highest state court of appeal for criminal subject matter. The Court holds sessions throughout the year in Austin, Texas. The Court is comprised of nine members, a Presiding Judge and eight Judges. Decisions of courts of appeals in a criminal case may be appealed to the Court of Criminal Appeals by petition for discretionary review (PDR), filed by the State or the defendant, or both. Alternatively, the Court may review a decision on its own motion. All cases that result in the death penalty are automatically directed to the Court of Criminal Appeals from the trial court level. The Court also hears direct appeals stemming from the denial of bail. Determinations of the Court are final unless they involve a question of federal constitutional law. In such instances, they enter the federal system.

Prior to 1981, all criminal cases were appealed directly to the Court of Criminal Appeals from the district and county courts. During this period of time, municipal and justice court cases could not be appealed beyond the county level courts unless the fine exceeded \$100 dollars. In such cases, the only appeal remaining was to the U.S. Supreme Court.

While relatively few cases reaching the Court of Criminal Appeals directly pertain to municipal courts, the decisions of the Court remain of paramount importance. Not only do the opinions of the Court directly impact the civil liberties of the people of Texas, but they often establish case law that control how all Texas courts are to construe the procedural and substantive criminal laws.

The Court of Criminal Appeals oversees the administration of the Judicial and Court Personnel Training Fund that funds judicial education for all levels of the judiciary.⁷²

2. Supreme Court

The Supreme Court has statewide, final appellate jurisdiction in all civil cases (which includes juvenile law). Most of the cases that are heard by this Court are appeals from an appellate ruling by one of the intermediate courts of appeals. The Supreme Court also has the authority to determine certain legal matters over which no other court has jurisdiction. The Court consists of a Chief Justice and eight Justices. Decisions of the Courts of Appeals in civil cases may be appealed to the Supreme Court by either or both parties through the filing of a petition for review (formerly “writ of error”).

In addition to its adjudicative functions, the Supreme Court has many administrative duties. The Court is responsible for overseeing the efficient operation of the Texas judicial system. Accordingly, it promulgates the rules of administration for the Texas

⁷² See generally, Chapter 56, Government Code.

judicial system, the rules for the operation of the Office of Court Administration, the Commission on Judicial Conduct, the State Bar of Texas, the Court Reporter Certification Board, and other state agencies in the judicial branch of government. An important administrative function of the Supreme Court is the transfer of cases between the 14 courts of appeals to ensure an equal workload distribution among those courts.

IV. Magistrate Functions

While every member of the judiciary in Texas is a state magistrate, municipal judges and justices of the peace perform more magistrate duties than all other members of the judiciary combined. In the capacity of a magistrate, municipal judges serve an important gate-keeping function in the adjudication of all criminal matters (misdemeanors and felonies).

A. Warrants

What is a warrant? An arrest warrant is “a written order from a magistrate, directed to a peace officer or some other person specifically named, commanding him to take the body of the person accused of an offense to be dealt with according to law.”⁷³ An arrest warrant must be supported by a sworn affidavit containing substantial facts establishing probable cause in every instance in which an arrest warrant is requested. (In fiscal year 2004, the Office of Court Administration (OCA) reported that municipal judges issued 2,172,260 arrest warrants.) In contrast to an arrest warrant, a search warrant is “a written order, issued by a magistrate and directed to a peace officer, commanding him to search for any property or thing and to seize the same and bring it before [the] magistrate or commanding him to search for and photograph a child and deliver to the magistrate any of the film exposed pursuant to the order.”⁷⁴ (According to the OCA, in fiscal year 2004, municipal judges issued 5,937 search warrants.)

The purpose of the search provisions in both Article I, Section 9 of the Texas Constitution⁷⁵ and the 4th Amendment of the U. S. Constitution⁷⁶ are to safeguard the privacy and security of individuals against arbitrary invasion.⁷⁷ As neutral and

⁷³ Article I, Section 9, Texas Constitution; Article 15.01, Code of Criminal Procedure.

⁷⁴ Article 18.01(a), Code of Criminal Procedure.

⁷⁵ “The people shall be secure in their persons, houses, papers, and possessions, from all unreasonable seizures or searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause, supported by oath or affirmation.”

⁷⁶ “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or Affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

⁷⁷ *Juarez v. State*, 758 S.W.2d 772 (Tex. Crim. App. 1988).

detached public officials, magistrates serve as an institutional safety mechanism that protects the citizenry from unreasonable searches and seizures.

Underlying the determination of whether or not to issue a warrant is the concept of probable cause. Magistrates are called upon to issue warrants for the search and/or seizure of persons, places or things based on a sworn affidavit presented by a law enforcement officer. It is the duty of the magistrate to determine, prior to the issuance of a warrant, whether or not probable cause exists. Without the initial finding of probable cause, the warrant should not be issued. Probable cause exists where the police have reasonably trustworthy information sufficient to warrant a reasonable person to believe a particular person has committed or is committing an offense. “The determination of the existence of probable cause concerns the factual and practical considerations of everyday life on which reasonable and prudent [people], not legal technicians, act.”⁷⁸ “Probable cause deals with probabilities; it requires more than mere suspicion but far less evidence than that needed to support a conviction or even that needed to support a finding by a preponderance of the evidence.”⁷⁹ The rule of probable cause seeks to accommodate the sometimes opposing interests of safeguarding citizens from rash and unreasonable police conduct and giving fair leeway to legitimate law enforcement efforts.”⁸⁰ In determining whether or not probable cause exists, the reviewing magistrate is limited to considering only that information contained within the “four corners” of the affidavit presented by the law enforcement officer (hence the “four corners” rule). Accordingly, verbal statements made by the affiant during the reviewing process may not be considered in determining probable cause.

For additional information on the issuance of search and arrest warrants, see *TMCEC Bench Book*.

B. Presentation before the Magistrate

An initial appearance is required promptly after the arrest of the suspect. The law requires the appearance be within 24 and 48 hours.⁸¹ At the initial appearance, the magistrate informs the defendant of his or her rights and explains the formal charge or charges pending against the defendant.

For additional information on conducting an “Article 15.17 hearing,” see *TMCEC Bench Book*.

⁷⁸ *Woodward v. State*, 668 S.W.2d 337, 345 (Tex. Crim. App. 1982).

⁷⁹ *United States v. Woolery*, 670 F.2d 513, 515 (5th Cir. 1982).

⁸⁰ *Woodward v. State*, 668 S.W.2d at 345-46.

⁸¹ *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991); Articles 14.06(a) and 15.17, Code of Criminal Procedure.

Additionally, it is at this time that the issues of appointment of counsel and indigence may be raised.⁸² If the arrest was made without a warrant, probable cause may be determined. If the magistrate has jurisdiction over the offense, he or she may accept a plea at this time. Though Texas law has long embraced the general concept of requiring that the accused be promptly taken before a magistrate, the Texas Code of Criminal Procedure has never specified a name for such proceeding. This has caused more than a little confusion amongst scholars and courts. While the term “initial appearance” suitably describes what is required under Texas law, readers should be aware that Texas case law synonymously uses various descriptive terms including “magistratized,” “magistrated,”⁸³ “Article 15.17 Appearance,”⁸⁴ and “Preliminary Initial Appearance (PIA).”⁸⁵ With little hope of clarifying legislation on the horizon, such ambiguity is likely to continue. While the Court of Criminal Appeals has shown no preference to any one term it has taken issue with courts and attorneys mistakenly referring to it as an “arraignment.”⁸⁶

C. Bail

If the accused has not been released by law enforcement prior to being brought before the court, the judge, acting as a magistrate, will set bail and in some cases order special conditions for pretrial release. The accused can generally secure release in one of the following four ways: (1) post the full amount of bail in the form of money (*i.e.*, a cash bond); (2) use property as collateral for release (*i.e.*, a property bond); (3) the amount of bail may be posted by a third person (*i.e.*, a surety bond); or (4) the accused may be released on his or her own

For additional information on setting bail and related issues, see TMCEC *Bench Book*.

⁸² The 77th Legislature passed Senate Bill 7 creating the Texas Fair Defense Act. The Act provides how and when counsel must be appointed to represent indigent defendants. The judges of county and district courts trying criminal cases were required to prepare written countywide procedures for timely and fairly appointing counsel in these cases. All 254 counties have submitted their interim countywide procedures to the Office of Court Administration (OCA). The county and district courts may designate a magistrate to appoint counsel. Accordingly, all magistrates are strongly encouraged to contact their local district or county judges to ascertain what role, if any, they will serve in their county’s implementation of the Texas Fair Defense Act.

⁸³ *Watson v. State*, 762 S.W.2d 591, 594 (Tex. Crim. App. 1988).

⁸⁴ *State v. Vogel*, 852 S.W.2d 567, 569-570 (Tex. App.-Dallas 1992, pet. ref’d).

⁸⁵ *Green v. State*, 872 S.W.2d 717 (Tex. Crim. App. 1994). Holding that PIA is not a “critical stage” where right to counsel attaches.

⁸⁶ *Watson v. State*, 762 S.W.2d 591, 594 (Tex. Crim. App. 1988). Arraignments are detailed in Chapter 26 of the Code of Criminal Procedure. Arraignments occur in felony cases and misdemeanors punishable by incarceration. In such cases, an arraignment occurs after the accused is presented before the magistrate. The purpose of an arraignment is to formally identify the defendant, allow the defendant to enter a plea and to appoint counsel if necessary. Unless waived, service of process upon the defendant is required at least two days prior to an arraignment.

recognizance in lieu of a monetary bond (*i.e.*, personal bond). The law generally requires that bail be set at an amount to assure the appearance of the accused in light of his or her financial resources and ties to the community and bail is not to be used as an instrument of oppression.

D. Magistrate Order for Emergency Protection (MOEP)

According to the OCA, between 1999 and 2003, the number of emergency protective orders issued by municipal judges in their magistrate capacity increased nearly 111 percent.

At a defendant's first appearance before a magistrate after having been arrested for an offense involving family violence or stalking, the magistrate may issue a Magistrate's Order for Emergency Protection (MOEP).⁸⁷ A MOEP, also known as an EPO (Emergency Protective Order), is preferable to the use of a peace bond.⁸⁸ A MOEP may be granted without prompting or suggestion by the magistrate or upon the motion of the victim, the victim's guardian, a peace officer, or the attorney representing the State.⁸⁹ If the defendant is arrested for an offense involving serious bodily injury or the use or exhibition of a deadly weapon, the magistrate is without discretion and required to issue the order.⁹⁰

For additional information on issuing a Magistrate's Order for Emergency Protection, see *TMCEC Bench Book*.

E. Examining Trials

Following arrest, suspects in the United States are entitled to a timely preliminary hearing before a neutral magistrate to determine if probable cause exists that justifies detaining the defendant prior to trial.⁹¹ In Texas, such a preliminary hearing is known as an examining trial. The general underlying function of an examining trial is to protect citizens and society from the consequences and financial costs of unwarranted prosecutions. Notably, there is no federal

For additional information on conducting an examining trial, see *TMCEC Bench Book*.

⁸⁷ Article 17.292, Code of Criminal Procedure.

⁸⁸ Though Chapter 7 of the Code of Criminal Procedure authorizes Texas magistrates to issue peace bonds, the general consensus among legal scholars and practitioners is that peace bonds are archaic and riddled with legal problems. See generally, Sidney Childress, "Peace Bonds – Ancient Anachronism or Viable Criminal Prevention Devices?," 21 Am. J. Crim. L. 107 (1994). In light of disciplinary actions against magistrates who have used them (see, *State Commission on Judicial Conduct 2000: Annual Report*, 64 TXBJ 298, 310), their use is generally discouraged.

⁸⁹ Article 17.292(a)(1-4), Code of Criminal Procedure.

⁹⁰ Article 17.292(b)(1-2), Code of Criminal Procedure.

⁹¹ *Gerstein v. Pugh*, 420 U.S. 103 (1975).

constitutional right to an examining trial.⁹² Additionally, a grand jury indictment terminates a defendant's statutory right to an examining trial.⁹³ Not all criminal defendants are entitled to an examining trial—only defendants accused of felonies. Finally, while municipal judges in their capacity as magistrates may conduct examining trials, they are not authorized to conduct examining trials in capital cases.⁹⁴

F. Miscellaneous

The aforementioned magistrate functions are by no means exhaustive. Magistrates are also authorized to conduct property hearings,⁹⁵ issue summons,⁹⁶ order protection by a peace officer,⁹⁷ issue a writ of attachment,⁹⁸ issue emergency mental commitments,⁹⁹ and conduct tow hearings.¹⁰⁰

V. The Role of Municipal Courts in Local Government

The role of municipal courts in city government has at times proven problematic for all parties involved. As previously detailed in our discussion of the constitutional origins of municipal courts, following the decision in *Ex parte Wilbarger*¹⁰¹ (acknowledging that the Texas Constitution permits jurisdiction of state law offenses to be given to municipal courts), the Court of Criminal Appeals has consistently held that despite the fact that they exist in the context of city government, municipal courts are state trial courts and “are governed by the same rules of practice as are other state courts.”¹⁰² This often overlooked statement of law has long been the source of various intergovernmental problems that are unique to municipal courts.

A. Whose Court Is It Anyway?

Since municipal courts are locally funded, operated and administrated, there is a common tendency for municipal officials (city council members, mayors, city managers, *etc.*), to view their municipal court in a light similar to other city departments. Municipal courts are, however, different. Neither municipal courts¹⁰³ nor

⁹² *Harris v. Estelle*, 487 F.2d, 1293 (5th Cir. 1974).

⁹³ *State ex rel. Holmes v. Salinas*, 784 S.W.2d 421 (Tex. Crim. App. 1990).

⁹⁴ Article 16.15, Code of Criminal Procedure.

⁹⁵ Article 18.17, Code of Criminal Procedure.

⁹⁶ Article 15.03, Code of Criminal Procedure.

⁹⁷ Article 7.15, Code of Criminal Procedure.

⁹⁸ Article 24.11, Code of Criminal Procedure.

⁹⁹ See, Chapter 2-33, TMCEC *Bench Book*.

¹⁰⁰ See, Chapter 2-36, TMCEC *Bench Book*.

¹⁰¹ *Ex parte Wilbarger*, 55 S.W. 968 (Tex. Crim. App. 1900).

¹⁰² *Ex parte Quintanilla*, 207 S.W.2d 377 (Tex. Crim. App. 1947).

¹⁰³ In fact, the law has long been clear that municipalities have no independent right to exist separate from the conditional authority given to them that is subject to legislative discretion. Thus, the charters of a

local ordinances¹⁰⁴ are a product of municipal sovereignty. As previously detailed, municipal courts originate from two sources: the Texas Constitution and the State Legislature. As explained in *Ex parte Quintanilla*,¹⁰⁵ despite their location within municipalities, they are in fact “state,” not “city,” trial courts. Because cities are not required to have municipal courts, all local governing bodies, officials and employees should be mindful that activating a state trial court at the municipal level of government subjects the entire city government to a wide array of state and federal laws. This legal fact poses many questions that have yet to be definitively resolved.

B. Judicial Independence

At the core of many local conflicts involving municipal courts are questions about the relationship between the municipal court (including court personnel) and the city council, mayor and city manager. A fundamental principle of American jurisprudence is the doctrine of separation of powers.¹⁰⁶ The doctrine of separation of powers serves as a “self-executing safeguard against the encroachment or aggrandizement of one branch [of government] at the expense of the other.”¹⁰⁷ “The purpose of separation and equilibration of powers in general ... [is] not merely to assure effective government but to preserve individual freedom.”¹⁰⁸ Although the Federal Constitution does not expressly provide for the separation of powers, the framers of the Texas Constitution expressly incorporated it in each of the Texas Constitutions.¹⁰⁹ In explaining the doctrine, as it exists in Texas, the Court of Criminal Appeals has stated:

Article II, § 1, in a single, tersely phrased paragraph, provides that the constitutional division of the government into three departments (Legislative, Executive and Judicial) shall remain intact, ‘except in the instances herein expressly permitted.’ This separation of the powers of government ensures ‘that a

municipality “may be annulled or revoked at the will and pleasure of the Legislature, as it deems the public good may require... .” *Blessing v. City of Galveston*, 42 Tex. 641, 657-658 (1875).

¹⁰⁴ *Pye v. Peterson*, 45 Tex. 312 (1876).

¹⁰⁵ 207 S.W.2d 377 (Tex. Crim. App. 1947).

¹⁰⁶ “The governments of states and the United States are divided into three departments or branches: the legislative which is empowered to make laws, the executive which is required to carry out the laws, and the judicial which is charged with interpreting the laws and adjudicate disputes under the law. Under this constitutional doctrine ... one branch is not permitted to encroach on the domain or exercise the powers of another. See U.S. Constitution, Articles I-III.” *Black’s Law Dictionary*, 6th Edition (1990).

¹⁰⁷ *Buckley v. Valeo*, 424 U.S. 1, 122 (1976).

¹⁰⁸ *Morrison v. Olson*, 108 S.Ct. 2597, 2637 (1988) (Scalia, J dissenting).

¹⁰⁹ “The powers of the Government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are Legislative to one, those which are Executive to another and those which are Judicial to another; and no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.” Article II, Section 1, Texas Constitution.

power which has been granted to one department of government may be exercised only by that branch to the exclusion of others.’ The separation of powers doctrine therefore requires that ‘any attempt by one department of government to interfere with the powers of another is null and void.’¹¹⁰

While it is not illogical to analogize municipal government to the three branches of federal and state government (the mayor represents the executive branch; the city council represents the legislative branch; the municipal court represents the judicial branch), such an analogy is not necessarily applicable to all municipalities. In comparison to federal and state government, municipal governments are neither uniform in structure, nor as rigid in terms of power distribution.¹¹¹ Additionally, there are not always traditional “checks and balances” in municipal government between the city council, mayor and municipal court. Ultimately, to ascertain the structure and power distribution of any municipal government, one must examine either the special act of the Legislature creating the municipality, the general-law provisions, or the city charter. Regardless of local structure, municipal officials should be careful not to usurp or exercise judicial power that state law gives only to municipal courts.

Regardless of whether separation of power exists within municipal government, the Supreme Court has stated that in Texas the “‘inherent judicial power’ of a court is not derived from legislative grant or specific constitutional provision but from the very fact that the court has been created and charged by the Constitution with certain duties and responsibilities; the inherent powers of a court are those which it may call upon to aid in the exercise of its jurisdiction, in the administration of justice and in the preservation of its independence and integrity.”¹¹²

Accordingly, preservation of public confidence in the administration of justice requires city officials and their employees to both constantly acknowledge and scrupulously guard the judicial independence of the municipal court. Municipal courts must not act, or be expected to operate, as a rubber stamp for the mayor, city manager, police department, or any other operating department.

Preserving judicial independence and avoiding the appearance of impropriety is frequently difficult in small municipalities. When either judges act also as clerks, clerks serve in other various municipal capacities (city secretary, police dispatcher, etc.), or where the offices of the court are located in the same building as the police department, the potential for ethical and legal troubles are significantly increased. Ideally, these situations should be altogether avoided. At a minimum, however, municipal judges and local officials should devise strategies and make concerted

¹¹⁰ *Meshell v. State*, 739 S.W.2d 246, 252 (Tex. Crim. App. 1987).

¹¹¹ See generally, *Brooks*, *supra* note 13 at Section 1.01.

¹¹² *Eichelberger v. Eichelberger*, 582 S.W.2d 395 (Tex. 1979).

efforts to avoid the appearance of impropriety.¹¹³ Because municipal courts make up the greatest portion of the judicial system, and because more people come into contact with municipal courts on a daily basis than all other Texas courts combined, it is imperative that all Texas municipalities be mindful that maintaining public confidence in all Texas courts begins at home, in the local trial courts.

C. Tension between Express and Implicit Functions of Municipal Courts

While municipal courts serve the express function of preserving public safety, protecting the quality of life in Texas communities and deterring future criminal behavior, there is no denying the implicit, though significant, function of revenue generation.¹¹⁴ The conflict between the express function and consequential implicit function of municipal courts is potentially an additional source of tension in municipal government. Not surprisingly, a common complaint regarding local trial courts is that they engage in “cash register justice.” Regardless of what portion of a city’s budget comes from fines and court costs, a municipal court should not be viewed by either a public official or the public at large as being tantamount to either a “cash cow” or an ATM for local expenditures. Conversely, judges must recognize that mayors, city managers and council members are required to be concerned about revenues. While finding a balance between judicial independence and fiscal reality may present special challenges in municipal government, achieving such a balance should be a goal shared by all members of municipal government. Ethically, a judge is prohibited from setting fines for the purpose of either satisfying or dissatisfying the city council, city manager, or mayor. Justice requires, regardless of intergovernmental pressures, that a municipal judge decide each case upon its merits. While city councils may create violations, and law enforcement and prosecutors may make formal accusations, only a court may determine if a legal violation has occurred.¹¹⁵

D. State Law

The inappropriate enforcement and adjudication of state traffic laws in local and county governments resulted in the passage of state laws designed to penalize local

¹¹³ Common examples to be avoided: judges and or clerks discussing the merits of pending cases with either peace officers or prosecutors; judges advising peace officers or prosecutors on which cases should be filed.

¹¹⁴ In FY 2004 alone, Texas municipal courts generated more than \$540 million in revenue for local and state government (more than all other courts in Texas combined). See, OCA, *supra* note 1 at 57.

¹¹⁵ “Neither the Legislature nor city council can by a declaration make that a nuisance which is not in fact a nuisance, and the question as to whether or not a building is a nuisance, is a justifiable question, determined alone by the court or jury having the case.” *Hart v. City of Dallas*, 565 S.W.2d 373 (Tex. Civ. App.-Tyler 1978).

governments and public officials who use their courts predominantly for the purposes of funding city government.¹¹⁶

Local governments are legally prohibited from having traffic-offense quotas. Section 720.002 of the Transportation Code prohibits municipalities from either formally or informally establishing a plan to evaluate, promote, compensate, or discipline a municipal judge or peace officer based on the number of citations issued or fines collected. Furthermore, the law prohibits municipal officials and employees from expecting, requiring, or even suggesting, that a municipal court or municipal judge collect a predetermined amount of money from persons convicted of a traffic offense during any period of time. Additionally, municipal officials or employees may not expect, require, or suggest that a peace officer issue a predetermined or specified number of traffic citations within a specified period.

The prohibition of traffic quotas is not intended to prohibit municipalities from considering the amount of revenue collected by municipal courts when evaluating the performance of municipal judges who are employed by the municipality.¹¹⁷ Neither does the law prohibit municipalities from obtaining budgetary information from a municipal court including an estimate of the amount of money the court anticipates will be collected in a budget year.

It is important that mayors, city managers and city attorneys know that municipalities have been subject to costly whistleblower lawsuits for violating the State's prohibition against traffic-offense quotas.¹¹⁸ In addition to applicable criminal penalties,¹¹⁹ a violation of the law by an elected official is misconduct and a ground for removal from office. A violation of the law by a person who is not an elected official is a ground for removal from the person's position.

VI. Basic Municipal Court Organization

Although some of the fundamental elements of municipal courts in Texas are authorized or required by law, municipalities have some latitude in prescribing the organizational structure of the court. In Texas, cities are created under statutes that make them either home-rule or general-law cities. Home-rule cities have been empowered to enact charter and ordinance provisions not inconsistent with state law

¹¹⁶ In addition to Chapter 720, Section 542.402(b) of the Transportation Code places a 30 percent cap on the amount of revenue that may be collected locally in the form of fines.

¹¹⁷ It is debatable whether Section 720.002(d) is applicable to home rule and general law municipalities where judges are not simply "employees" but rather are appointed "public officials." [See generally, *Thompson v. City of Austin*, 979 S.W.2d 676 (Tex. App.-Austin 1998)].

¹¹⁸ *City of Jersey Village v. Campbell*, 920 S.W.2d 694 (Tex. App.-Houston [1 Dist.] 1996); *City of Austin v. Ender* 30 S.W.3d 590 (Tex. App.-Austin 2000).

¹¹⁹ Official oppression Section 39.03(a)(2), Penal Code.

that prescribe structural details of local court organization. Texas statutes also provide general-law cities some choices regarding the organization of the court. Thus, variations exist throughout the state with regard to court organization. The basic organization of the municipal court personnel consists of the following officers of the court: judge(s), court clerk(s), deputy clerk(s), prosecutor(s), bailiff(s), warrant officer(s), and defense counsel.

A. Judge

The judge is generally responsible for presiding over trials and other court proceedings and for the general administration of the court. Additionally, as previously detailed, all judges in Texas are magistrates. It is important that when acting in an official capacity that all judges are able to differentiate between judicial and magistrate duties and authority. Regardless of which hat (judge or magistrate) a municipal judge is wearing, he or she must be impartial, ensure that justice is done and base decisions on the law as applicable to the facts.

In the capacity of a trial court judge, the judge is not an adversary and must decide questions only on the basis of law. He or she must never assume the role of prosecutor or of defense counsel, act as special advisor to the police, or rubber stamp of law enforcement. The judge must never be influenced by the city to produce revenue or to enforce laws selectively. When cases proceed to trial, only the evidence presented and the applicable law can be the legitimate basis for any judicial decision. Accordingly, the judge must allow both prosecution and defense, as well as all other components of the system, to perform their duties vigorously but always within the limits allowed by law.

Municipal judges are public officials. This is significant in that Article XVI, Section 40 of the Texas Constitution provides in pertinent part that:

No person shall hold or exercise at the same time, more than one civil office of emolument, except that of Justice of the Peace... It is further provided that a nonelective state officer may hold other nonelective offices under the state or the United States, if the other office is of benefit to the State of Texas or is required by the state or federal law, and there is no conflict with the original office for which he receives salary or compensation...

This provision raises the issue of whether a municipal judge may serve more than one municipality as judge. In 1996, the Office of the State Attorney General addressed whether a municipal judge may serve in a dual capacity.¹²⁰ The opinion states that a compensated municipal judge — whether full-time or part-time, elected or appointed

¹²⁰ Attorney General Opinion No. DM-428 (1996).

— holds a “public office” and is subject to Article XVI, Section 40 of the Texas Constitution, which prohibits the holding of more than one office. The appointed municipal judge may hold more than one such office, provided the holding of the second office is “of benefit to the state” as required by Article XVI, Section 40. The opinion does not decide whether holding more than one municipal judgeship is “of benefit to the state.” After this opinion was rendered, the 75th Legislature amended Section 574.001 of the Government Code to provide that a person may hold the office of municipal judge for more than one municipality at the same time if each office is filled by appointment and the holding of these offices is considered to be of benefit to the state.

For more on the role of the judge, see Chapter 2 of this publication.

1. Qualification and Selection

Separate statutory authorization for the selection of municipal judges exists for home-rule cities and for general-law cities.

Under home-rule, state law provides that the judge may be selected in the manner prescribed by the city charter.¹²¹ The selection may be by election or by appointment.

General-law cities may provide by ordinance for the appointment or election of the municipal judge. The election of judges must be conducted in the same manner and for the same term as the mayor. If changing from the elective to the appointive method of selection, a new judge may not be appointed until after the incumbent’s term has expired. When the mayor serves as *ex officio* judge, the city council may adopt an ordinance establishing the position of municipal judge and appoint a judge at any time into the position. That judge serves for the remaining unexpired term of the mayor and may be reappointed or the council may appoint another person into the position of judge.¹²²

2. Term of Office

A municipal judge’s term of office is two years unless the municipality sets a term of four years.¹²³ If a municipal judge in a general-law city is temporarily unable to serve, the city may appoint a qualified person to sit temporarily for the regular judge. That person would temporarily have the same powers and duties of office and would be entitled to the same compensation as the regular judge.¹²⁴ The ordinance or special

¹²¹ Section 29.004(a), Government Code.

¹²² Section 29.004(b), Government Code.

¹²³ Article XI, Section 11, Texas Constitution; Section 29.005, Government Code.

¹²⁴ Section 29.006, Government Code.

statute creating a municipal court of record establishes the term of office for judge. In home-rule and general-law cities, the city's governing body shall fill a vacancy for the remainder of the unexpired term.¹²⁵

3. Removal

Grounds for removal may be located in the ordinance or special statute creating a court of record.¹²⁶ More than one intermediate court of appeals has held that in home-rule municipalities, judges may be removed pursuant to the terms of the city charter.¹²⁷ Generally, as a matter of law, municipal judges may be removed from office by the city's governing body for incompetence, corruption, misconduct, or malfeasance in office. A municipal judge may also be removed from office by the Supreme Court through formal proceedings initiated by the State Commission on Judicial Conduct upon a finding of judicial misconduct.¹²⁸ The Commission on Judicial Conduct may also sanction a judge for improper behavior of the court's staff.

For additional information on the Commission's function and proceedings, see Chapter 7 of this publication.

4. Duties and Responsibilities

The basic judicial duties and responsibilities of the municipal judge are generally set forth in a city ordinance, city charter and the Code of Criminal Procedure. While an exact list would be difficult to assemble, the following duties apply to all Texas municipal judges:

- Preside over jury and non-jury trials;
- Make evidentiary rulings during trial and pretrial hearings;
- Issue process (subpoenas, summonses, warrants, *capias*, *capias pro fines*, and attachments) to compel the attendance of persons as witnesses and parents of juveniles and to compel the appearance of defendants in municipal court;¹²⁹

¹²⁵ Section 29.011, Government Code.

¹²⁶ Section 30.000085, Government Code.

¹²⁷ *Willmann v. City of San Antonio*, 123 S.W.3d 469 (Tex. App.-San Antonio 2003); *Barnett v. City of Plainview*, 848 S.W.2d 339 (Tex. App.-Amarillo 1993); *Ratliff v. City of Wichita Falls*, 115 S.W.2d 1153 (Tex. Civ. App.-Amarillo 1938).

¹²⁸ Article V, Section 1-a, Texas Constitution.

¹²⁹ Article 45.014, Code of Criminal Procedure. See also, Articles 16.10, 16.11 and 24.01, Code of Criminal Procedure.

- Grant continuances in cases where sufficient cause is shown that a case should be postponed (The judge has discretion to approve or disapprove continuances in most instances.);¹³⁰
- Keep and maintain a docket containing each case filed and court action taken;¹³¹
- Rule on motions for new trials;¹³² and
- Prepare or assist in the reporting of all traffic convictions to the Texas Department of Public Safety.¹³³

The judge generally relies heavily on the administrative support of the clerk, but may not delegate judicial duties to the clerk or allow the clerk to influence any judicial decisions. Where there is more than one judge in a municipality, one of the judges is generally designated to be the presiding judge or the administrative judge. As the chief administrator for the court, the presiding judge is responsible for organizing and scheduling court activities, developing and maintaining policies and procedures, allocating the workload and assigning cases to the various courts, supervising the court support personnel, and performing a variety of other administrative functions.

A judge is not permitted to delegate duties conferred by law unless there is express statutory or constitutional authorization permitting the judge to do so.¹³⁴ Thus, unless there is clear language in the statutes permitting the judge to delegate duties to the clerk, the judge may not do so. For example, the judge may not delegate authority or require the clerk to do the following: preside over trials and hearings; rule on motions; make rulings on the law; draft or present jury charges; decide verdicts or render judgments; set fines or bond amounts; forfeit bonds;¹³⁵ or issue warrants.¹³⁶

The judge may not delegate to the clerk any action that the judge is statutorily bound to take or any action on a case that requires an interpretation or application of law or determination of fact based upon the circumstances in any particular case. Put simply, if the law says a judge has to do something, or if a decision has to be made on the law or facts of a case, the judge may not delegate the task: the judge must decide.

¹³⁰ Chapter 29, Code of Criminal Procedure.

¹³¹ Article 45.017, Code of Criminal Procedure.

¹³² Articles 45.037-45.040, Code of Criminal Procedure.

¹³³ Section 543.203, Transportation Code.

¹³⁴ *Newsom v. Adams*, 451 S.W.2d 948 (Tex. Civ. App.-Beaumont 1970), as cited in Attorney General Opinion No. H-386 (1974).

¹³⁵ Attorney General Opinion No. O-7104 (1946).

¹³⁶ *Sharp v. State*, 677 S.W.2d 513 (Tex. Crim. App. 1984).

Individuals carrying out government functions may be held liable for certain actions that they might take pursuant to their jobs. So not to intimidate public employees from performing their necessary tasks, however, the law provides absolute immunity from liability for some official acts and qualified good faith immunity for others. The law generally requires that a judge perform the act in a judicial capacity before the judge is entitled to immunity. These protected judicial acts cannot generally be delegated. If they are improperly delegated to the clerk for example, the delegating officer (whether a judge or not) can be held liable.¹³⁷

For additional information on judicial immunity, see Chapter 2 of this publication.

B. Court Clerk

The court clerk must fulfill all duties impartially and competently. Within the role of administratively assisting the court as a whole, the court clerk is responsible for seeing that the court's papers are accurate, orderly and complete. While the clerk's duty is to serve all participants equally in the legal system, the clerk must remain independent of any particular participant. This means that the clerk must be as courteous and helpful to defense lawyers as to prosecutors and to defendants as to police officers. The clerk must never attempt to influence the outcome of any case.

Each participant has an equal right to know and understand the court's procedures. The court clerk can have a tremendous impact on public perception. The clerk should provide participants with information on court procedures while avoiding giving legal advice.

The court clerk is responsible for and involved in the planning, scheduling and coordinating of the clerical activities of the municipal court and performs a variety of functions fundamental to the overall administration of the court. The responsibility of the court clerk's position and the scope of duties have greatly increased in recent years. The professionalism, timeliness and accuracy of the court clerk are important to the proper operation of the municipal court.

Unlike the municipal judge, many of the court clerk's activities are not specifically provided for by statute. The clerk is required to "keep minutes of the proceedings of the court, issue process and generally perform the duties for the municipal court that a county clerk performs for the county court."¹³⁸ City secretaries may serve as court clerk. If the judge is elected, the clerk is also elected unless an ordinance makes the city secretary the court clerk or in home-rule cities, the charter provides for the

¹³⁷ *Daniels v. Stovall*, 660 F. Supp. 301 (S.D. Tex. 1987).

¹³⁸ Section 29.010(c), Government Code.

appointment of the court clerk. The specific duties and responsibilities inherent in the office of the court clerk may be set out in the city charter or ordinances.

1. Qualification and Selection

In general-law and home-rule cities, the court clerk is usually appointed by the city council. However, some cities provide by ordinance that the city secretary serves as *ex officio* court clerk. The city secretary who serves in an *ex officio* capacity may be authorized by ordinance to appoint a deputy clerk. When a city elects the municipal judge, the clerk is elected in the same manner unless an ordinance designates the city secretary to serve as court clerk or in a home-rule city if the charter provides for the appointment of the court clerk.¹³⁹

The city council may establish the qualifications for the position of the court clerk. Qualifications vary greatly depending on the size and workload of the court, the nature of cases processed, the size of the staff and how the workload is distributed and whether the court's work is done by computer or manually. Knowledge of court functions and procedures, advanced clerical skills, experience in dealing with the public, and basic knowledge of accounting or bookkeeping are most desirable. Where courts have automated court records, clerks may also be required to possess data processing skills and management techniques.

While the presiding judge establishes judicial policy and general court procedures, the clerk helps implement those policies and procedures. The judge may delegate many administrative tasks to the court clerk but is prohibited by law from delegating judicial duties and functions either to the court clerk or to anyone else. Despite the close working relationship between the judge and clerk, there must be a clear separation between judicial and administrative functions. The clerk's primary responsibilities include processing the clerical work of the court, administering daily operations of the court, maintaining court records including the docket, coordinating the scheduling of cases, and performing other duties as may be outlined in the city charter or ordinances. In the absence of more detailed written administrative duties for a clerk by the governing body, the judge may assign various administrative duties. In larger cities, the clerk may answer directly to the city manager or council. This arrangement can potentially be ethically problematic for the judge and an additional source of tension between the court and municipal government.

¹³⁹ Section 29.010(a) and (d), Government Code.

2. Term of Office

The term of office for municipal court clerk is two years unless the city provides a term of four years.¹⁴⁰ When the city secretary serves as court clerk, then the court clerk's term runs concurrently with the city secretary's term.

The court clerk may be removed from office for the same reasons as other city officials. Cities should specify grounds and procedures for removal. State law governing general-law cities provides that city officials may be removed for incompetence, corruption, misconduct, or malfeasance in office. Removal may occur after providing the officer with due notice and an opportunity to be heard.¹⁴¹ In addition, if the governing body lacks confidence in a municipal officer elected by the governing body, the governing body may remove the officer at any time. The removal is effective only if two-thirds of the elected aldermen vote in favor of a resolution declaring the lack of confidence.¹⁴² Of course, the governing body of the municipality should exercise care in removing a judge or clerk from office and consider Sections 29.005 and 29.010 in the Government Code which provide terms of office for both the judge and clerk. Municipal courts of record may have statutes that prohibit removal of a municipal judge by the city council.¹⁴³ Accordingly, specific statutes would need to be consulted.

If the office of court clerk, like that of municipal judge, is vacated, regardless of the reason for the vacancy, the city's governing body shall appoint a replacement for the remainder of the unexpired term.¹⁴⁴

3. Duties and Responsibilities

The judge is responsible for administering the total operations of the municipal court. The court clerk is responsible for implementing the policies the judge establishes and for administering court policy and procedures. Clerks and judges should not assume each other's duties. There is a clear separation of judicial and administrative functions that should be clearly understood by both officers. The municipal judge may also delegate various tasks but never judicial duties or functions to the court clerk.

State law provides that the municipal court clerk shall keep the minutes of court proceedings, issue all process and generally perform comparable duties of the county

¹⁴⁰ Article XI, Section 11, Texas Constitution; Section 29.010(b), Government Code.

¹⁴¹ Section 22.077(a), Local Government Code.

¹⁴² Section 22.077(b), Local Government Code.

¹⁴³ Chapter 30, Government Code.

¹⁴⁴ Section 29.011, Government Code.

clerk in county court.¹⁴⁵ Home-rule cities may prescribe other duties of the clerk by charter or ordinance.

The basic duties of the court clerk include the following:

- Administering oaths to persons filing complaints before the court;¹⁴⁶
- Processing traffic citations, parking citations and all other complaints;
- Preparing court process as directed by the judge;
- Transmitting fines and pleas received to the municipal judge for acceptance and entering of judgment;
- Receiving appearance bonds from persons charged with offenses in municipal court;
- Maintaining accurate records for the court including: (1) the docket and minutes of the court proceedings;¹⁴⁷ and (2) a fee book and receipt book showing the fines and fees collected in each case;
- Scheduling cases for a hearing according to court policy;
- Preparing dockets of cases filed with the court and a subsidiary docket of cases which require action each day;
- Notifying defendants and jurors of court appearances and the penalties for failure to appear unless appearance has been waived by the court;
- Preparing subpoenas and attachments for witnesses;¹⁴⁸
- Preparing summons, arrest warrants and other process at the direction of the judge;
- Explaining to defendants the procedures in municipal court;
- Delivering all case documents, including the appeal bond and a transcript of the court proceedings, to the county court upon appeal of a case;¹⁴⁹
- Reporting traffic convictions to the Texas Department of Public Safety;¹⁵⁰

¹⁴⁵ Section 29.010(c), Government Code.

¹⁴⁶ Article 45.019(e), Code of Criminal Procedure.

¹⁴⁷ Article 33.07, Code of Criminal Procedure (Courts of Record); Article 45.017, Code of Criminal Procedure.

¹⁴⁸ Articles 24.03 and 24.11, Code of Criminal Procedure.

¹⁴⁹ Article 44.18, Code of Criminal Procedure.

¹⁵⁰ Section 543.206, Transportation Code.

- Compiling statistical reports for the judge including reports to the city administration, the Texas Judicial Council/Office of Court Administration, the State Comptroller, the Department of Public Safety, and others;
- Preparing other financial reports for the judge and submitting copies to the city's financial officer and auditor and to the State Comptroller;
- Managing data processing of court records if court records are processed by automation or by whatever means are authorized, if not automated; and
- Performing other non-judicial duties as may be delegated by the judge.

For a more extensive description of the clerk's duties and the contrast between judicial and ministerial duties, see the TMCEC study guide entitled *Authority and Duties*.

C. Prosecutor

Regardless if a municipal court is located in an urban or rural area, state law requires that all prosecutions be conducted by the city attorney of the municipality or by a deputy city attorney.¹⁵¹ The city attorney with the permission of the county attorney may represent the State in county court.¹⁵² While the county attorney has the ultimate right to prosecute in a municipal court, he or she may not receive additional compensation.¹⁵³

It should be emphasized that Article 45.201 only requires the designated attorneys to be present to conduct "prosecutions" at bench or jury trials.¹⁵⁴ Thus, prosecutors are not required to be present at docket calls.

While defendants have a constitutional right to represent themselves, a significant amount of Texas case law provides that an attorney must represent nonhuman entities (e.g., governments, corporations and associations). Furthermore, Section 81.102 of the Government Code requires that persons practicing law be licensed by the Supreme Court of Texas and in good standing with the State Bar of Texas. Accordingly, while peace officers can be called as witnesses to testify, they cannot act as prosecutors presenting the State's case.

¹⁵¹ Article 45.201, Code of Criminal Procedure.

¹⁵² Before the Court of Criminal Appeals, however, a city attorney, even with special legislation in the Government Code, does not have a superior right to represent the state over the state prosecuting attorney. *Aguirre v. State*, 22 S.W.3d 463 (Tex. Crim. App. 1999).

¹⁵³ *Harris County v. Stewart*, 41 S.W. 650 (Tex. 1897); *Howth v. Greer*, 552 S.W. 211 (Tex. Civ. App. 1905).

¹⁵⁴ Attorney General Opinion No. GA-067 (2003).

Chapter 45 of the Code of Criminal Procedure makes no distinction between the largest and smallest municipal courts. Just as all municipal courts are required to have judges, they are also required to have prosecutors at trial. What may a judge do if no prosecutor is present to represent the State at trial? There are three options:

1. postpone the trial to a date certain;
2. appoint an attorney *pro tem* as provided in Article 2.07 of Code of Criminal Procedure (Used in conjunction with the postponement option, the appointment of an attorney *pro tem* may be a viable option for smaller courts who rarely hold trials.); or
3. proceed to trial. (Presumably, this option triggers Article 45.032 that states if “upon a trial the State fails to prove a *prima facie* case of the offense alleged in the complaint, the defendant is entitled to a directed verdict of ‘not guilty’.”)

Because prosecutors, not judges, decide which complaints are filed in court, only the prosecutors should advise and direct peace officers in preparing criminal cases. The prosecutor’s role is to seek justice, to screen out or to ask for dismissal of cases where there is insufficient evidence or evidence wrongfully gathered and to seek convictions fairly and only of the guilty. In the broad view, the prosecutor represents the public’s interest in enforcing the criminal law strictly but fairly. The prosecutor also has a duty to maintain public respect for the judicial system.

1. Term of Office

The city attorney’s term, subject to conditions regarding removal, may be set by ordinance or charter or by the agreement for employment. Assistant city attorneys serving as prosecutors work at the pleasure and discretion of the city attorney. While most intermediate and larger municipalities have “in-house” city attorney offices, either law firms or solo practitioners represent most Texas cities. Typically, in such circumstances, the city contracts for specified services and duration of services. Such variations make it hard to generalize about who specifically prosecutes in Texas municipal courts.

2. Duties and Responsibilities

Just as municipal court clerks perform many of the same duties as their counterparts at the county and district levels, the city prosecutor performs basically the same role as the prosecuting attorney in other criminal trial courts. However, in municipal courts with larger dockets, the prosecutor’s time for case preparation and consultation with police officers, witnesses and complainants is usually much more limited than in other trial courts.

Judges should be mindful that prosecutors have discretion over which cases to prosecute and trial strategy. Prosecutors, however, should be mindful that they cannot dismiss charges or cases except upon written grounds and with the judge's approval.¹⁵⁵ It is the primary duty of a municipal prosecutor, not to ensure convictions, but to see that justice is done.¹⁵⁶

Duties of the city prosecutor are as follows:

- Investigating the facts surrounding alleged offenses and deciding whether or not to file charges;
- Preparing and drafting complaints (The court clerk may assist the prosecutor in preparing routine complaints. However, ultimate responsibility for the legal sufficiency and accuracy of complaints is the prosecutor's.);
- Administering oaths to persons filing complaints before the court;¹⁵⁷
- Preparing and presenting the State's case at trial;
- Arranging for the appearance of State's witnesses, including requests for subpoenas and attachments;
- Filing motions with the court that may be necessary to present cases;
- Requesting dismissal of cases under proper circumstances;
- Advising the police department in case preparation, as well as answering legal questions; and
- Negotiating with either the defendant or defense lawyer.

D. Bailiff

A police officer usually serves as bailiff. In some cities, the judge may appoint the bailiff. In the larger cities with more than one court, the presiding judge usually appoints the bailiffs. When the bailiff is appointed by the judge, it is not required that the bailiff be a peace officer.

1. Qualification

There are no state statutory qualifications for bailiff. Minimum qualifications for the position of bailiff commonly include the following: high school graduation or G.E.D.;

¹⁵⁵ Articles 45.201 and 32.02, Code of Criminal Procedure.

¹⁵⁶ Article 45.201(d), Code of Criminal Procedure.

¹⁵⁷ Article 45.019(e), Code of Criminal Procedure.

knowledge of the operations, procedures and decorum of the municipal court; and experience in dealing with the public.

2. Duties and Responsibilities

The bailiff is directly responsible for maintaining order, security and decorum while the court is in session. By announcing “All rise,” bailiffs generally announce when court is in and out of session. They maybe assigned other duties including maintaining custody of those convicted until payment or arrangements are finalized with the clerk. Bailiffs may also administer oaths to witnesses if directed and authorized by the judge; attend to the jury; keep the jury together and separate from all other citizens during deliberations; carry written communications between the jury and judge; and inform the judge when a verdict has been reached.

E. Warrant Officer

The primary role of the warrant officer is to serve all process or papers issued by the municipal court. In small and medium-sized cities, this function is usually conducted by the police department and sometimes by those specially designated as warrant officers. As peace officers, warrant officers must comply with the minimum educational, training, physical, mental, and moral standards established by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE).¹⁵⁸

The Code of Criminal Procedure provides that all process (any means used by a court to exercise jurisdiction over a defendant) issuing out of the municipal court shall be served by a police officer or city marshal under the same rules that apply to service by sheriffs and constables of process issuing out of justice court.¹⁵⁹ Failure, neglect, or refusal to serve process may make the responsible officer liable for a fine of \$10-\$200 for contempt of court.¹⁶⁰ To serve process means to deliver a writ or summons to the party to whom it is addressed.

F. Defense Counsel

The role of defense counsel is to represent a client zealously within the bounds of the law. Like the prosecutor, the defense counsel has a duty to maintain public respect for the system. Even citizens who have committed crimes are entitled to have their rights respected and to be treated fairly. Even where the verdict is guilty, defense counsel

For a more complete discussion of the right to counsel, see Chapter 4 of this publication.

¹⁵⁸ Chapter 415, Government Code.

¹⁵⁹ Article 45.202, Code of Criminal Procedure.

¹⁶⁰ Article 2.16, Code of Criminal Procedure.

has a duty to argue for fair punishment.

VII. Court Decorum

*Justice does not depend upon legal dialectics so much as upon the atmosphere of the courtroom, and that in the end depends primarily upon the judge.*¹⁶¹

– Judge Learned Hand

All judges are guardians of the inherent dignity the public has historically associated with courts.¹⁶² Described as “hallowed places of quiet dignity,”¹⁶³ American courts not only serve as forums for adjudicating alleged wrongdoing, they embody the important appearance of authority, vital to preserving the public’s perception of an orderly society.

Despite relaxed social norms for behavior and general de-emphasis on formality throughout society, the U.S. Supreme Court has consistently emphasized that protecting the dignity of the courts and preserving public perception require all judges to remain vigilant in maintaining court decorum.¹⁶⁴ Preservation efforts begin in municipal court.

Ethically, all Texas judges are required to “maintain order and decorum in proceedings before the court.”¹⁶⁵ All Texas courts are legally required to conduct proceedings with dignity and in an orderly and expeditious manner, assuring that justice is done.¹⁶⁶ In complying with the objectives of the Code of Criminal Procedure, municipal and justice courts are specifically required to “ensure appropriate dignity in court procedure without undue formalism.”¹⁶⁷

While the Code of Judicial Conduct describes what is generally required of Texas judges, the Code of Criminal Procedure’s requirement for municipal judges is more nebulous. What is “appropriate dignity in court procedure”? What constitutes “undue formalism”? The law provides little guidance. Consequently, the task of finding a balance between “appropriate dignity” and “undue formalism” belongs to each municipal judge.

¹⁶¹ *Brown v. Walter*, 62 F.2d 798, 800 (1933).

¹⁶² *Illinois v. Allen*, 397 U.S. 337 (1970) (Douglas, J., dissenting).

¹⁶³ *Mayberry v. Pennsylvania*, 400 U.S. 455, 456 (1971).

¹⁶⁴ See, *J.E.B. v. Alabama ex rel. T.B.*, 114 S. Ct. 1419, 1438 n.3 (1994) (Scalia, J., dissenting) (asserting that appearance of justice is equally important as actual justice); *Illinois v. Allen*, 397 U.S. 337, 343 (1970) (declaring that dignity, order and decorum are necessary for success of criminal justice system).

¹⁶⁵ Texas Code of Judicial Conduct, Canon 3(B)(3).

¹⁶⁶ Section 21.001(b), Government Code.

¹⁶⁷ Article 45.001(3), Code of Criminal Procedure.

Have most municipal judges considered, yet alone achieved, such a balance? In recent years, Texas municipal courts have been criticized for the informality of their proceedings (*e.g.*, judges seldom wear robes, patrons do not have to rise when the judge enters the room, bailiffs participate in the taking of pleas).¹⁶⁸ While such criticisms are often presumed to describe courts in smaller municipalities (who have fewer resources), metropolitan municipal courts are not immune from such criticism.¹⁶⁹

There are sufficient reasons to believe that efforts are necessary to improve perception of municipal courts.¹⁷⁰ Institutional research conducted by the Texas Municipal Courts Education Center suggests that municipal judges sometimes neglect court decorum for a variety of reasons. The most common reason for lax court decorum is a general failure to appreciate its importance. Other reasons include a lack of resources, lack of official support and official discouragement.

Court decorum is not about the vanity of the individual judge or sovereign authority. Rather, court decorum is a utility that creates an optimal climate for the administration of justice. Changes in municipal courts begin at home beginning with the judge. Thus, not only must municipal judges be aware of the importance of court decorum, city officials must also appreciate its importance as a vital component in the administration of justice. The appearance of a citizen before a municipal court is a rare opportunity for the citizen to gain insight into the quality of city government and its elected leaders. Accordingly, ensuring positive public perception requires each city to implement necessary changes in their municipal courts. Many municipal judges inherit chambers and courtrooms that leave much to be desired, while 26 percent of municipal judges inherit no courtroom at all.¹⁷¹ While some issues, such as posting and enforcing rules of decorum, can be implemented by the judge alone, the administration of justice necessitates a commitment from city counsel, city managers and mayors. While cities should budget adequate funds for municipal court operations, city councils dedicated to improving their municipal courts are statutorily authorized to earmark 10 percent of time payment revenue for the specific purpose of insuring the efficient administration

¹⁶⁸ Horton & Turner, *Lone Star Justice: A Comprehensive Overview of the Texas Criminal Justice System*, Austin: Eakin Press (1999) at 166.

¹⁶⁹ Cities with large dockets have been described as distributors of “assembly-line justice.” Scholars studying such courts conclude that emphasizing the number of cases processed potentially sacrifices procedural and substantive rights, as well as court decorum. Critics have gone as far as describing such municipal courts as “hurricanes of humanity” where the “process is the punishment.” See generally, David W. Neubauer, *America’s Courts and the Criminal Justice System 6th Edition* (West 1999) at 470-475.

¹⁷⁰ *The Courts and the Legal Profession in Texas – The Insider’s Perspective: A Survey of Judges, Court Personnel and Attorneys*, Alexandria, Virginia: State Justice Institute (1998) (suggesting that municipal courts rank last in overall impression among judge and court personnel and second to last among lawyers).

¹⁷¹ See generally, TMCEC *Municipal Court Recorder* Vol. 11, No. 8 (August 2002).

of justice.¹⁷² The law specifically requires municipalities to prioritize the needs of the municipal judge who collected the fee in making such expenditures.

In assessing how a courtroom or other facility serving as a courtroom functions, consider the following criteria:¹⁷³

- **Function and Organization** – In addition to a judge’s bench, at a minimum, courtroom facilities should be of adequate size to accommodate a jury box (a designated areas capable of seating six jury panel member), a witness stand (a designated seat for witnesses when called to testify), designated places for court personnel (court clerk and/or court reporter, bailiff), a gallery (all Texas courts and trial proceeding are required to be open to the public), and designated places for the prosecutor and defendant (separate tables facing the bench for both the defendant and prosecutor). Ideally, a courtroom also contains a jury room (a room separate from the court that can be used during jury deliberation and recess). In laying out a courtroom, municipalities should be mindful that all courts are required under federal and state law to be accessible to people with disabilities.
- **Symbolic Values** – The interior of a municipal courtroom should reflect the cultural and social values of the city, state and nation. The fixtures of the courtroom should announce to all who enter it the importance of the administration of justice. The room should be organized to psychologically differentiate it from other governmental workspaces. This can be achieved through the prominent display of the seals of the city and state and the display of the state and national flags. The gavel and the robe are the two symbols most frequently associated with the courts. Despite the importance of such symbols, a survey conducted by the Texas Municipal Courts Education Center concluded that only 58 percent of municipal judges wear robes. Judges who do not wear robes ignore research that concludes that the robe is an important symbol of judicial authority that evidences the judge’s commitment to impartiality. Additionally, the robe establishes the formality of the court and gives the court credibility (*i.e.*, if you don’t dress like a judge you are less likely to be treated like a judge). Finally, in rural courts, where the judge may be known as a friend or neighbor, the robe eliminates the familiarity that potentially hinders the administration of justice.¹⁷⁴
- **Environmental Factors** – A well functioning courtroom should also meet more pragmatic criteria. Facilities should have adequate lighting, air-conditioning and

¹⁷² Section 133.103, Local Government Code.

¹⁷³ National Conference of State Trial Judges, *The Judge’s Book*, Chicago: American Bar Association (1989) at 10.

¹⁷⁴ Felix F. Stumpf, *Bench Trial Skills and Demeanor: An Interactive Manual For New Nonlawyer Judges*, Reno, Nevada: The National Judicial College (1995).

heating. Additionally, to ensure that all people present can hear the proceeding, the court should be equipped with audio amplification equipment.

- Construction, Materials and Furnishings – The quality of construction and décor directly affect the durability of a courtroom. From a management perspective, the appearance of the courtroom directly impacts morale. Simply stated, quality environments encourage quality performance.¹⁷⁵
- Security – Because violent outbursts are occurring more frequently in the courtroom, judges and city officials should take appropriate measures to protect both court personnel and members of the public. Depending on the volume of cases adjudicated by the court, expenditures pertaining to court security can be supplemented (or altogether covered) by adoption of an ordinance creating a municipal court building security fund.¹⁷⁶ The statute governing the security fund contains a detailed list of physical items and services that may be purchased to improve court security. Most municipalities have opted to create the municipal court building security fund because defendants, rather than taxpayers, bare the additional court cost. Expenditures alone do not, however, ensure security. Protecting patrons and avoiding civil liability require municipalities to develop, implement and monitor security plans. Related consulting costs can also be offset by municipal court building security fund revenue.

For additional information and data on court decorum in Texas municipal courts, see TMCEC *Municipal Court Recorder* Vol. 11, No. 8 (August 2002).

VIII. Contacts

There is interaction and cooperation between the municipal court and various state agencies and professional organizations where duties overlap and interface. Some of those agencies are profiled here.

A. Attorney General's Office

The Attorney General created a Municipal Affairs Division in 1992 to work with cities to address issues and resolve problems. The staff is available to discuss municipal issues with court staff members. The telephone number is 512/475-4683 and the Internet web address is www.oag.state.tx.us.

The Attorney General's Office publishes legal opinions interpreting and applying various provisions of the law. Every year a number of such opinions directly pertain to

¹⁷⁵ See generally, Burns, *Designing the Good Courtroom*, Popular Government (Fall 1984).

¹⁷⁶ Article 102.017, Code of Criminal Procedure.

municipal court subject matter or procedure. Assistance or copies of opinions may be obtained at P.O. Box 12548, Austin, Texas 78711-2548 or by calling 512/463-2110.

The Attorney General's Office administers the Crime Victims' Compensation Fund that provides benefits to crime victims. For additional information, call 800/983-9933. Municipal courts are excellent local sites for dissemination of information on crime victims.

B. State Comptroller's Office

The State Comptroller's Office is ultimately responsible for the collection of court costs and for their final distribution. They receive municipal court's quarterly reports. The Comptroller has staff who are available to assist municipal courts and to answer questions about collecting and reporting state court costs on criminal convictions. You may call the Local Government Assistance Division of the Comptroller's Office toll-free at 800/531-5441, ext. 34679 for quarterly report information or state court costs information. Their Internet web address is www.window.state.tx.us/lga/.

C. State Bar of Texas

The State Bar of Texas, an administrative agency of the Texas Supreme Court, is charged with many responsibilities, including providing educational programs for legal professionals and the public, administering the mandatory continuing education program for attorneys and managing the grievance procedure.

For additional information or to learn about the grievance process against attorneys, call 800/204-2222 or 512/463-1463. The mailing address is P.O. Box 12487, Austin, Texas 78711. The State Bar sponsors a peer assistance program for lawyers with alcohol and drug abuse problems. To refer a lawyer, contact 800/343-8527. The State Bar's Internet web address is www.texasbar.com.

D. State Commission on Judicial Conduct

The State Commission on Judicial Conduct is designated to investigate and resolve complaints filed against judges. It is helpful to note that the Commission staff attorneys may be able to assist judges and clerks in working through some of the difficult ethical situations and issues they encounter. The Commission also sponsors a peer assistance program for judges troubled by substance abuse. Contact the Commission at P.O. Box 12265, Austin, Texas 78711-2265 or at 877/228-5750. The Commission's Internet web address is www.scjc.state.tx.us.

E. Texas Court Clerks Association

The Texas Court Clerks Association (TCCA) is a non-profit organization established to increase the proficiency of judicial administrators and clerical personnel through education and networking. The Association offers:

- An annual meeting;
- Regional seminars offered by its local chapters; and
- A legislative program.

The TCCA is an affiliate of the Texas Municipal League. It is the sponsor of the Municipal Court Clerks Certification Program in cooperation with the Texas Municipal Courts Education Center. The Association's Internet web address is www.texascourtclerks.org.

F. Texas Department of Public Safety

The Transportation Code requires municipal courts to report all traffic convictions or bond forfeitures in traffic cases to the Texas Department of Public Safety (DPS).¹⁷⁷ This report should be submitted in a form acceptable to DPS. These may include DPS form DL-18, computer records, or copies of citations with disposition information attached. Any form of report that is acceptable to DPS is a sufficient report.

Through the Nonresident Violator Compact (NVC), compliance with traffic laws may be enforced even when citations are issued to motorists who live outside Texas. The police, municipal and justice courts and DPS must cooperate to enforce the NVC. DPS is the Texas "licensing agency" responsible for receiving reports from local authorities on failure of out-of-state motorists to comply with the terms of traffic citations.

The Department of Public Safety also provides and maintains statewide driving records. Such information may be helpful to the courts in assessing punishment or prescribing rehabilitative techniques for defendants. The Department of Public Safety may also be helpful in determining ownership of out-of-county vehicles for parking violations.

Cities may contract with DPS to deny renewal of the driver's license of a person who has failed to appear in court or who has failed to pay a fine. To request a contract, call DPS at 512/424-5974. For information on reporting call DPS at 512/424-2028. DPS forms can be obtained through their Internet website: www.txdps.state.tx.us.

¹⁷⁷ Section 543.203, Transportation Code.

G. Texas Judicial Council/Office of Court Administration

All Texas courts are required to report various statistical data to the Texas Judicial Council on a monthly basis. To assist in this data gathering, the Judicial Council has distributed reporting questionnaires and monthly report forms. The data collected is published in an annual report. The report may be obtained by contacting the Texas Judicial Council, Office of Court Administration, P.O. Box 12066, Austin, Texas 78711 or at 512/463-1625. The Internet web address for the Office of Court Administration is www.courts.state.tx.us/oca/.

H. Texas Municipal Courts Association

Texas Municipal Courts Association (TMCA) is non-profit association of municipal judges and court support personnel. Its primary purpose is to provide the municipal courts with an efficient organization for the purpose of continuing judicial education and to oversee the grant and programs of the Texas Municipal Courts Education Center (TMCEC). The Association also hosts an annual meeting, annual awards program for outstanding judges and clerks and an active legislative program. For additional information, contact the TMCEC at 800/252-3718 for the name of the current president or regional director in your area. The TMCA website is www.txmca.com.

I. Texas Municipal Courts Education Center

The Texas Municipal Courts Education Center (TMCEC) was formed in 1984 by the Texas Municipal Courts Association (TMCA) to provide extensive, regular education and training programs for municipal judges and court support personnel. The Center is financed by a grant to TMCA from the Court of Criminal Appeals out of funds appropriated by the Legislature to the Judicial and Court Personnel Training Fund.

The Center conducts courses in various locations throughout the state to facilitate compliance by municipal judges with the Court of Criminal Appeals' order mandating continuing education on an annual basis. Courses are offered for judges, clerks, court administrators, bailiffs, warrant officers, and prosecutors. The Center publishes a newsletter and course materials to help judges and court support personnel in performing their official duties, in understanding and applying the law and in staying current with all the changes and developments in the law. At this time, annual attendance at judicial education programs is not mandated by the state for court clerks, but is highly recommended. Specific course locations and dates may be obtained by writing or calling the Center at 800/252-3718. TMCEC staff attorneys are available to answer questions about municipal court procedures. The mailing address is 1609 Shoal Creek Blvd., Suite 302, Austin, Texas 78701. The Center's Internet web address is www.tmcec.com.

J. Texas Municipal League

The Texas Municipal League (TML) provides a variety of services to municipalities. The League's legal staff also provides assistance to courts. The League monitors legislation proposed and passed by the Legislature to assure that the interests of municipalities are represented. Contact the Texas Municipal League at 1821 Rutherford Lane, Suite 400, Austin, Texas 78754-5128 or at 512/231-7400. The League's Internet web address is www.tml.org.

Works Consulted

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§ 7.11. Municipal Court.

There shall be a court, designated as the “Municipal Court” of the City of Leander, for the trial of misdemeanor offenses, with all such powers and duties as are now, or may hereafter be, prescribed by laws of the State of Texas relative to municipal court. The Municipal Court shall be organized and supervised as follows:

- (a) The municipal judge and the associate judges authorized by council shall be appointed by the city manager. They shall be compensated as recommended by the city manager and approved by the city council. The municipal judge shall be responsible for the supervision and management of the court.
- (b) There shall be a court clerk appointed by the city manager.
- (c) The clerk and deputy clerks shall have the power to administer oaths and affidavits, make certificates, affix the seal of said court thereto, and perform any and all acts usual and necessary to be performed by the clerks of courts and conducting the business thereof.
- (d) All costs, fees, special expenses and fines imposed by the municipal court shall be paid into the city treasury for the use and benefit of the city, except as required by state law.

[Amended November 2005]

Once the investigation is complete, the case is presented to the Commission for its consideration. Based on the specific constitutional provisions, statutes and canons under which the Commission operates, it considers and votes on each matter. In each case, the Complainant will be informed of the Commission's final action in writing. However, the Texas Government Code provides that the judge's name may not be stated in the correspondence to the Complainant, unless a public sanction has been issued. Likewise, in some instances, the name of the Complainant may be kept confidential.

Commission Decisions

The State Commission on Judicial Conduct has several options available when taking action on a case. The types of actions include dismissal, sanction, suspension, and the acceptance of a voluntary agreement to resign from judicial office in lieu of disciplinary action. The Commission may also initiate formal proceedings, which could result in the removal of the judge from the bench. After a thorough review of your complaint, the Commission has several options.

- **Administrative Dismissal:** The Executive Director administratively dismisses a case when a Complainant makes a report that fails to state an allegation of judicial misconduct.
- **Dismissal:** The Commission may vote to dismiss a case in which there is insufficient evidence of misconduct, or the Commission's investigation concludes that no sanctionable misconduct has occurred. All dismissed cases can be reconsidered by the Commission. The Commission describes the Reconsideration Policy in all letters of dismissal along with an explanation for dismissing the case.
- **Order of Additional Education:** Legal and procedural issues are often complex. The Commission may find that the judge's actions exceeded their authority or are contrary to procedural rules. In a case where the judge was misguided but not acting in bad faith, the Commission may order additional education for the judge. Orders of additional education may also be combined with private or public sanctions.
- **Private Sanction:** Sanctions are issued when sufficient evidence supports a finding of judicial misconduct. As it deems appropriate, the Commission uses, by order of severity, admonitions, warnings and reprimands to privately sanction judges. If the Commission votes to issue a private sanction, the appropriate order is prepared and the offending judge is served with the order and the Complainant is notified of the Commission's action. However, because the Commission is controlled by constitutional and statutory provisions that prohibit the release of information regarding investigation and resolution of a case, no other information regarding the case will be released to the public.
- **Public Sanction:** Sanctions are issued when sufficient evidence supports a finding of judicial misconduct. As it deems appropriate, the Commission uses, by order of severity, admonitions, warnings and reprimands to publicly sanction judges. If the Commission votes to issue a public sanction, the appropriate order is prepared, the offending judge and the Complainant are provided a copy of the order, and the order is publicly disseminated to ensure public awareness.
- **Suspension:** If a judge is indicted for a felony or charged with a misdemeanor involving the judge's official position, the Commission itself may vote to suspend the judge from office, with or without pay, pending the disposition of the charge under the provisions of 15(a) of the Procedural Rules for the Removal or Retirement of Judges and Article 5, Section 1-a(6)A of the Texas Constitution. The judge may request a hearing before the Commission in the event of a suspension under these circumstances.

Additionally, the Commission may request that the Supreme Court of Texas suspend a judge under the provisions of Rule 15(b) of the Procedural Rules for Removal or Retirement of Judges. Rule 15(b) states, Upon filing with the Commission of a sworn complaint charging a person holding such office with willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of office, willful violation of the Code of Judicial Conduct, or willful and persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or the administration of justice, the Commission, after giving the person notice and an opportunity to appear and be heard before the Commission (under the provisions of Rule 6), may recommend to the Supreme Court the suspension of such person from office.

The order of suspension and all records and proceedings relating to it will be made public.

- **Voluntary Agreement to Resign:** In some cases, a judge may decide to resign in lieu of disciplinary action. Upon the Commission's acceptance of the agreement, the resignation will be public and may be used in subsequent proceedings before the Commission. The Commission will notify the Complainant of the agreement.
- **Formal Proceedings:** In certain circumstances, the Commission may vote formal proceedings. The Commission may itself hold a trial, or request the Texas Supreme Court to appoint a special master to conduct the proceeding and report findings of fact to the Commission. The Commission may request additional evidence, dismiss the case, issue a public censure, or recommend removal. Formal proceedings and related information become public when the Commission files formal charges. The Commission itself cannot remove a judge. Under the provisions of the formal proceeding process, only the Review Tribunal may order a judge removed from the bench. The Supreme Court retains appellate authority over the decision of the Review Tribunal.



EXECUTIVE SUMMARY
07/06/2023

AGENDA SUBJECT:

Discuss and consider action on a Resolution of support for the dissolution of the Leander Library Foundation.

BACKGROUND:

The Leander Library Foundation was incorporated in 2009 for the purpose of promoting reading and literacy, and raising funds for the benefit of City of Leander public library services. The bylaws of the Leander Library Foundation vested the ability to appoint and remove the directors of the Foundation to the City Council of the City of Leander and made the actions of the Foundation subject to various statutory requirements of the Texas Local Government Code.

The Leander Library Foundation seeks to dissolve the Foundation so that they may pursue more robust fundraising activities. Due to the entanglement of Foundation bylaws and articles of incorporation with the City of Leander, the Foundation also is requesting permission from the City of Leander to dissolve. This action is being taken because the City Council currently appoints the Board of Directors.

All the funds held by the City of Leander for the Leander Library Foundation were expended in fiscal year 2022. Assets of the Leander Library Foundation, consisting of donated books to the used bookstore located at the Leander Public Library facility, will be transferred to the City of Leander as part of winding up the Leander Library Foundation affairs.

The Board took a formal vote at their May 16, 2023 meeting to move forward with dissolving the Foundation and to wrap up their affairs by the end of June and to not move forward with forming a Friends of the Library group. They will be giving the remaining balance in their bank account to the library.

PRESENTER:

Mark Tummons, Parks and Recreation Director

Attachments

1. Resolution

A RESOLUTION OF THE CITY OF LEANDER, TEXAS

RESOLUTION NO.

A RESOLUTION OF SUPPORT FOR THE DISSOLUTION OF THE LEANDER LIBRARY FOUNDATION.

WHEREAS, the Leander Library Foundation was incorporated in 2009 for the purpose of promoting reading and literacy and raising funds for the benefit of City of Leander public library services; and

WHEREAS, the bylaws of the Leander Library Foundation vested the ability to appoint and remove the directors of the Foundation to the City Council of the City of Leander and made the actions of the Foundation subject to various statutory requirements of the Texas Local Government Code; and

WHEREAS, the Leander Library Foundation seeks to dissolve the Foundation so that they may pursue more robust fundraising activities; and

WHEREAS, due to the entanglement of Foundation bylaws and articles of incorporation with the City of Leander, the Foundation also is requesting permission from the City of Leander to dissolve; and

WHEREAS, all funds held by the City of Leander for the Leander Library Foundation were expended in fiscal year 2022

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

SECTION 1. The City Council hereby supports dissolving the Leander Library Foundation.

SECTION 2. Assets of the Leander Library Foundation, consisting of donated books to the used bookstore located at the Leander Public Library located at 1011 S. Bagdad Road, Leander, Texas, will be transferred to the City of Leander

DULY PASSED AND APPROVED this the 6th day of July, 2023.

CITY OF LEANDER, TEXAS

Christine DeLisle, Mayor

ATTEST:

Dara Crabtree, City Secretary