AGENDA

PLANNING & ZONING COMMISSION

REGULAR MEETING

MONDAY, MAY 22, 2023, 6:30 P.M.

PUBLIC LIBRARY ANNEX, COUNCIL CHAMBERS

404 NORTH MAIN STREET

1. CALL TO ORDER

2. PUBLIC COMMENTS FOR NON-AGENDA RELATED ITEMS

Individuals may request to speak on items not on the agenda. Speaker comments are limited to three (3) minutes and no formal action can be taken. All speakers must limit their comments to the specific subject matter noted on the "PUBLIC COMMENT FORM" and refrain from personal attacks or derogatory comments directed at any Commissioner, Staff, or others.

3. CONSENT AGENDA

All matters listed below are to be considered routine by the Commission and will be enacted in one motion. There will not be separate discussion on the items. If discussion is desired, that items can be removed from the consent agenda and will be considered separately as a new business item.

<!--[if !supportLists]-->1. Consider approval of the following Minutes:

3.I. April 24, 2023 Minutes

Documents:

APRIL 24, 2023 MINUTES.PDF

4. NEW BUSINESS

4.I. Project #: 202300056: An Ordinance Amending The Official Zoning Map Of The City Of Elgin, Texas Adopted In Chapter 46, Section 46-3, Revised Code Of Ordinances City Of Elgin, Texas, 2013 And Making This Amendment A Part Of Said Official Zoning Map To Wit: To Rezone Land From "R-1" Single Family Housing District To "R-2" Single Family & Duplex Dwelling District Located On Parcels Of Land Known By The Travis County Appraisal District As Parcels 358800, 358801, & 358802, Located Between Carlson Ln. & Carlson Rd. Across From Eagles Landing Ph. 2 (BEING A 52.76 ACRE TRACT OUT OF THE HENRY MARTIN SURVEY NUMBER 65, ABSTRACT 518, TRAVIS CO., TX), Being More Described In Exhibit "A"; And Providing For A Savings Clause And Repealing Conflicting Ordinances And Resolutions (Carlson Tract Rezoning).

Documents:

CARLSON TRACT REZONING COMBINED PACKET.PDF

5. WORKSHOP

5.I. Review, Discuss, And Provide Input For Lund Farms Development Agreement.

Documents:

LUND FARMS DEVELOPMENT AGREEMENT COMBINED FOR PZC WORKSHOP.PDF

6. ANNOUNCEMENTS

7. ADJOURNMENT

The Commission may adjourn the public meeting at any time during the meeting and convene in Executive Session pursuant to Chapter 551 of the Texas Government Code to discuss any matter as specifically listed on the agenda and/or as permitted by Chapter 551 of the Texas Government Code. The Commission will return to an open session for possible discussion and action as a result of the Executive Session.

Notice of Assistance at Public Meetings, the City of Elgin is committed to compliance with the Americans with Disabilities Act. Elgin City Hall and Council Chambers are wheelchair accessible and special marked parking is available. Persons with disabilities who plan to attend this meeting and who may need assistance are requested to contact the City Secretary's Office at (512) 281-5724. Please provide a forty-eight (48) hour notice when feasible.

Para informacion en espanol favor de llamar (512) 281-0119. Servicios de traduccion disponible en la reunion.

**MINUTES**
**CITY OF ELGIN PLANNING AND ZONING COMMISSION**
**REGULAR MEETING**
**MONDAY, APRIL 24, 2023**

**I. CALL TO ORDER – ROLL CALL:** The Chair called the meeting to order at 6:30 P.M. at the Library Annex (Civic Center) located at 404 N. Main St., Elgin, TX U.S.A.

**COMMISSION PRESENT**: Chair Antonio Prete, Vice-Chair Ronnie Creppon, Berney Williams, Jason Tatum, David Lanford and Scott Mackay (arrived at 6:34 P.M.).

**COMMISSION ABSENT**: Dorothy McCarther.

**STAFF PRESENT:** David Harrell, Development Services Director; Melissa Lipiec, Secretary; and Beau Perry, TRC Engineers (3rd Party City Engineers).

**II. PUBLIC COMMENT FOR NON-AGENDA RELATED ITEMS:** No members of the public desired to speak on this item.

**III. CONSENT AGENDA**

1. March 27, 2023, Minutes.

   David Lanford requested that the minutes be pulled for discussion. The Chairman moved this item to section V. New Business 0.1.

**IV. OLD BUSINESS**

1. Project #: 202200129: A preliminary plat for "Ella Estates Preliminary Plat" located on a parcel of land known by the Bastrop County Appraisal District as Parcel 13241, located at the intersection of VFW Road and Ella Ln. for a total of 7 lots on 10.733 acres of land.
   A. Staff Presentation - David Harrell indicated the applicant was able to finish up Commission concerns and that hard copies of the plat and TRC approval letter were before them for review. Based on that Staff had no issues or concerns regarding this submittal.

   B. Applicant Presentation - None, applicant was not present.

   C. Discussion – Chairman Prete stated that all items from last meeting had been addressed.

   D. Consideration – Jason Tatum moved to approve project number 202200129, Ella Estates Preliminary Plat. The motion was seconded by David Lanford and a vote was taken. The motion passed with a vote of six (6) for and zero (0) against.

## IV. OLD BUSINESS (Cont.)

2. Project #: 202200130: A final plat for "Ella Estates Final Plat" located on a parcel of land known by the Bastrop County Appraisal District as Parcel 13241, located near the intersection of VFW Road and Ella Ln. for a total of 7 lots on 10.733 acres of land.
    A. Staff Presentation – David Harrell indicated the applicant was able to finish up Commission concerns and that hard copies of the plat and TRC approval letter were before them for review. Based on that Staff had no issues or concerns regarding this submittal.

    B. Applicant Presentation – None, applicant was not present.

    C. Discussion – None

    D. Consideration – Jason Tatum moved to approve project number 202200130 Ella Estates Final Plat. Ronnie Creppon seconded the motion and a vote was taken. The motion passed unanimously with a vote of six (6) for and zero (0) against.

## V. NEW BUSINESS

0.1 March 27, 2023, Minutes
Ronnie Creppon made a motion to approve the March 27, 2023, minutes as presented. The motion was seconded by Berney Williams. The motion passed unanimously with a vote of six (6) for and zero (0) against.

1. Project #: 202200183: A final plat for "Briarwood Phase 1" located on a parcel of land known by the Travis County Appraisal District as Parcel 248232, located adjacent to Neidig Elementary and Austin Community College off County Line Rd and for a total of 236 lots on 46.868 acres of land.
    A. Staff Presentation – David Harrell conducted a power-point presentation of the staff report.

    B. Applicant Presentation – John Kim, applicant, indicated he had no presentation but was present for any questions.

    C. Open Public Hearing –The public hearing was opened at 6:42 P.M., with no members of the public desiring to speak.

    D. Close Public Hearing – The public hearing was closed at 6:42 P.M.

    E. Discussion – There was discussion between the Commission and City Staff regarding the reason for an in-city MUD, the existence of a development agreement for this project and what concessions the developer is making as part of that agreement. Chairman Antonio Prete pointed out the issues he had with the plat regarding benchmarks, the wording on the owner's signature block, and the wording on the Surveyor's signature block.

    F. Consideration – Jason Tatum, made a motion to approve the item contingent upon the following conditions: 1) show location of benchmarks; 2) revise wording on owner's signature block be revised to remove "subject to any easements, and/or restrictions heretofore granted and not released." 3) revise the surveyor's signature block to replace " upon completion of construction" to "prior to recordation of the final plat.", seconded by Ronnie Creppon. The motion passed unanimously by a vote of six (6) to zero (0).

**V. NEW BUSINESS (cont.)**

2. Project #: 202300050: A subdivision variance from Sec. 36-175 to allow for the creation of a 4.179-acre flag lot, out of the A373 Young Richard, Tract 2, Bastrop Co., TX for a future subdivision plat (BCAD # 8728395).
    A. Staff Presentation – David Harrell conducted a power-point presentation of the staff report.

    B. Applicant Presentation – Applicant, Stephanie Worthy indicated that she had no presentation but was present for any questions.

    C. Open Public Hearing – The public hearing was opened at 7:10 P.M. with one (1) member of the public to speak:

        i. Paul George, 1313 FM 1704, stated that he was concerned about the subdivision because McVay Lane is on his property and not a public roadway. He also stated that the power-point presentation showing that the driveway entrance to the proposed lot will be off of FM 1704 and that satisfied his concerns.

    D. Close Public Hearing – The public hearing was closed at 7:14 P.M.

    E. Discussion – There was discussion between the Commission and City staff about other possible solutions, but because McVay lane is not a public right of way, the entrance to the proposed lot was required to be on FM 1704 per the City's subdivision ordinance.

    F. Consideration – Ronnie Creppon made a motion to approve the Subdivision Variance to allow a flag lot. David Lanford seconded the motion. The motion passed unanimously with a vote of six (6) for and zero (0) against.

3. Project #:202300055: An ordinance amending the official zoning map of the City of Elgin, Texas adopted in Chapter 46, Section 46-3, Revised Code of Ordinances City of Elgin, Texas, 2013 and making this amendment a part of said official zoning map to wit: To rezone land from "R-1" Single Family Dwelling District to "C-3" Highway Commercial District located on parcels of land known by the Travis County Appraisal District as Parcel 815585, located at 13708 County Line Rd. (ABS 518 SUR 65 MARTIN H, ACR 4.096), being more described in Exhibit "A"; and providing for a savings clause and repealing conflicting ordinances and resolutions.
    A. Staff Presentation – David Harrell conducted a power-point presentation of the staff report.

    B. Applicant Presentation – Applicant was not present for presentation.

    C. Open Public Hearing –The public hearing was opened at 7:28 P.M., with no members of the public desiring to speak.

    D. Close Public Hearing – The public hearing was closed at 7:28 P.M.

    E. Discussion – There was discussion between the Commission and City Staff regarding zoning of the surrounding lots in the area and uses allowed in the C-3 zoning district.

    F. Consideration – David Lanford made a motion to recommend denial of the zoning request from "R-1" Single Family Dwelling District to "C-3" Highway Commercial District seconded by Ronnie Creppon. The motion passed unanimously by a vote of six (6) to zero (0).

**V. NEW BUSINESS (cont.)**

4. An Ordinance amending Ch. 46 Zoning, Article I In General, Article IV Zoning District Regulations; and providing for a savings clause and repealing conflicting ordinances or resolutions.
    A. Staff Presentation – David Harrell conducted a power-point presentation of the staff report.

    B. Open Public Hearing –The public hearing was opened at 7:32 P.M. with one (1) member of the public to speak.

        i. Sarah Gudenkauf,813 Old McDade Road, thanked the Commission for considering the Ordinance and stated that the wording on page 4, Section VII(d) was confusing to her. She also questioned whether the 370 square foot minimum was too large. In addition, she questioned whether the minimum 10,000 square foot lot size was too large and would be exclusive to a large number of lots.

    C. Close Public Hearing – The public hearing was closed at 7:42 P.M.

    D. Discussion – There was discussion between the Commission and City Staff regarding lowering the minimum size for Accessory Dwelling Units to 250 square feet and the 10,000 square foot lot requirement. Beau Perry provided input stating that all lots will be subject to the City's impervious cover and off-street parking requirements which may be the deciding factor on whether an accessory dwelling unit can be allowed on the property.

    E. Consideration – Scott Mackay made a motion to recommend approval of the ordinance with the following conditions: 1) change Section VII, item (d) to clean up the language and to make the minimum size for Accessory Dwelling Units 250 square feet, seconded by Berney Williams. The motion passed by a vote of four (4) to two (2) with Jason Tatum and Ronnie Creppon voting against the motion.

**VI. ANNOUNCEMENTS**

David Harrell stated that he had no announcements. Scott Mackay asked about bringing the fence ordinance back on the agenda. It was determined that his issue with the fence ordinance was being addressed by Staff and there was no need to bring it back as an agenda item. Chairman Antonio Prete ask about continuing education for the Commission conducted by the City Attorney. David Harrell responded stating he would set it up. Ronnie Creppon announced that his term would be up in September according to the new term limits set by Council. He stated that he has served on that board for thirty-five (35) years.

**VII. ADJOURNMENT**
The meeting was adjourned by the Chair at 8:02 P.M.

_____
Antonio Prete, Chair

ATTEST:_____
Melissa Lipiec, Secretary

On a motion by _____, seconded by _____
the foregoing instrument was passed and approved on this 22nd day of May 2023.

# Development Service Department

## STAFF REPORT

**Rezoning from "R-1" Single Family Dwelling District to "R-2" Single Family & Duplex Dwelling District (Carlson Tract Rez.)**

**Project #: 202300056**

| | |
|---|---|
| **Date:** | May 15, 2023 |
| **Applicant:** | Chris Reed c/o Doucet & Associates |
| **Representative:** | SAME |
| **Hearing Dates:** | Planning & Zoning Commission – May 22, 2023<br>City Council – June 6, 2023 |
| **Location:** | Travis Co. Appraisal District Parcels 358800, 358801, & 358802. |

**APPLICATION SUMMARY**

Recommendation of a rezoning (a change to the official zoning map) by the Commission and consideration (action) by the City Council of 52.76 acres of land located between Carlson Ln. (south), Elgin Rolling Meadows Development (east) and Carlson Rd. (north). The proposal is to change the zoning from R-1 Single Family District to R-2 Single Family & Duplex Dwelling District for a proposed single family residential development.

**DEPARTMENT COMMENTS**

Since the property is rezoning to the R-2 zoning district, there is no development text or development map like a Planned Development District (PDD) rezoning. The applicant has provided a proposed development plan (concept plan) for informational purposes (see attachment 6). Assuming the zoning change is granted by the City Council, the applicant will file a separate concept plan application and it will eventually go before the Planning & Zoning Commission for future consideration (action). This potential approval will set the development pattern of the tract.

**BACKGROUND**

Originally the applicant filed a rezoning application on this site for an R-3 zoning back in September 2022. At that time, the Commission recommended denial of the request and had concerns about the size of the lots. The applicant withdrew the application before it went before the Council.

**STAFF ANALYSIS**

In review of the Elgin Comprehensive Plan the parcel is located within the Agricultural Land Use category. This category's primary land usage is agriculture (see attachment 2) according to the provided map and associated land use language. The current R-1 zoning category, as the parcel was zoned automatically when annexed, allows for single family homes as a use by right. This is a conflict with the land use and zoning, the rezoning will keep the conflicting residential uses. It is Staff's professional opinion that the overall development pattern of the area has changed since the approval of enlargement of the Eagles Landing development across Carlson Ln. which allows for single family homes (see attachment 3).

With a proposed rezoning, the Commission/Council must look at the potential uses that would be added or subtracted to a site. In this case there is only the addition of duplexes under the proposed zoning category.

| **"R-1" District** | **"R-2" District** |
|---|---|
| | **Duplex** |
| Detached single-family dwelling. | Detached single-family dwelling. |
| Churches, but not including revival tents or arbors. | Churches, but not including revival tents or arbors. |
| Public school offering general educational courses the same as ordinarily given in public schools and having no rooms regularly used for housing and sleeping. | Public school offering general educational courses the same as ordinarily given in public schools and having no rooms regularly used for housing and sleeping. |
| Public park and playground. | Public park and playground |
| Library. | Library. |
| Growing of farm products. | Growing of farm products. |
| Municipal use | Municipal use |
| Telephone exchanges. | Telephone exchanges. |
| Home occupations. | Home occupations. |
| Transportation and utility easements, alleys and rights-of-way | Transportation and utility easements, alleys and rights-of-way |
| Accessory building which is not a part of a main building, including one private garage, or accessory building which is a part of a main building, including one private garage. | Accessory building which is not a part of a main building, including one private garage, or accessory building which is a part of a main building, including one private garage. |
| Accessory uses, which shall include the following where the primary use is residential: Customary home occupations, if done inside of building, such as dressmaking, babysitting, seamstress, tailoring, millinery, tutoring, when engaged in by members of the resident family and employing not more than one person, not a member of the resident family, but not including beauty culture, barbering or appliance repairing. | Accessory uses, which shall include the following where the primary use is residential: Customary home occupations, if done inside of building, such as dressmaking, babysitting, seamstress, tailoring, millinery, tutoring, when engaged in by members of the resident family and employing not more than one person, not a member of the resident family, but not including beauty culture, barbering or appliance repairing. |

Next Page

Below is a list of zoning standards for each zoning category, changes are highlighted in yellow between zoning categories:

| | **R-1 (exist. zoning)** | **R-2 (prop. zoning)** |
|---|---|---|
| Height | 2.5 stories or 35 feet | 2.5 stories or 35 feet |
| Front Setback | 25 feet; garage at 25 feet | 25 feet; garage at 25 feet |
| Side Setback | 7.5 feet for 1 story; 10 feet for more than 1 story | 5 feet for 1 story; 10 feet for more than 1 story |
| Rear Setback | 10 feet | 10 feet |
| Lot Width | 75 feet | 60 feet |
| Lot Area | 9,000 sq. ft. | 7,500 sq. ft. |
| Impervious Cover on Lot | 45% interior; 50% corner | 45% interior; 50% corner |

Rezoning of this parcel is also regarded as spot zoning. Typically, spot zoning is viewed unfavorably, and case law exists regarding it. In consultation with the City Attorney, there are several findings from the Texas Supreme Court that should be considered when making your decision:

1. Whether the City has disregarded the zoning ordinance or long-range master plans and maps that have been adopted by ordinance;

2. The nature and degree of an adverse impact on surrounding properties; i.e., is the change substantially inconsistent with surrounding properties;

3. Whether the use of the property as presently zoned is suitable or unsuitable; and,

4. Whether the rezoning ordinance bears a substantial relationship to the public health, safety, morals or general welfare or protect and preserve historical and cultural places and areas.

Based on the information within the packet, staff has issues and concerns regarding the proposal.

The rezoning to the R-2 zoning category is not in conformance with the development pattern of the area. The newer developments within the area are zoned Planned Development District (PDD) which denotes the development plan as a master planned community and different lot sizes. Also, the rezoning would disregard the long-range master plan as the present R-1 zoning category allows for larger lots than the proposed R-2 zoning category; this makes the present R-1 zoning category the suitable development pattern.

**ATTACHMENTS**

Additional information is provided through attached exhibits.

1. Application
2. Staff Added Comprehensive Plan Exhibits
3. Staff Added Zoning Map
4. Ordinance with Exhibit
5. 200' Notice Letter and Map
6. Proposed Applicant Development Plan

# Attachment 1
# Application

Revised: 5-13-2022

Elgin TEXAS
perfectly situated...

# NON-PDD REZONING APPLICATION

**Date:** 3/30/2023

## SITE INFORMATION

**Project Address**: 18512 Carlson Lane, Elgin, TX 78621

**Parcel Identification Number (if no address)**: _____

## APPLICANT

**Name:** Doucet & Associates, Inc. (Christopher A. Reid, PE)

**Postal Address:** 7401B Highway 71 West, Suite 160
Austin, TX 78735

**E-Mail Address:** creid@doucetengineers.com; **Phone Number:** (512) 583-2600

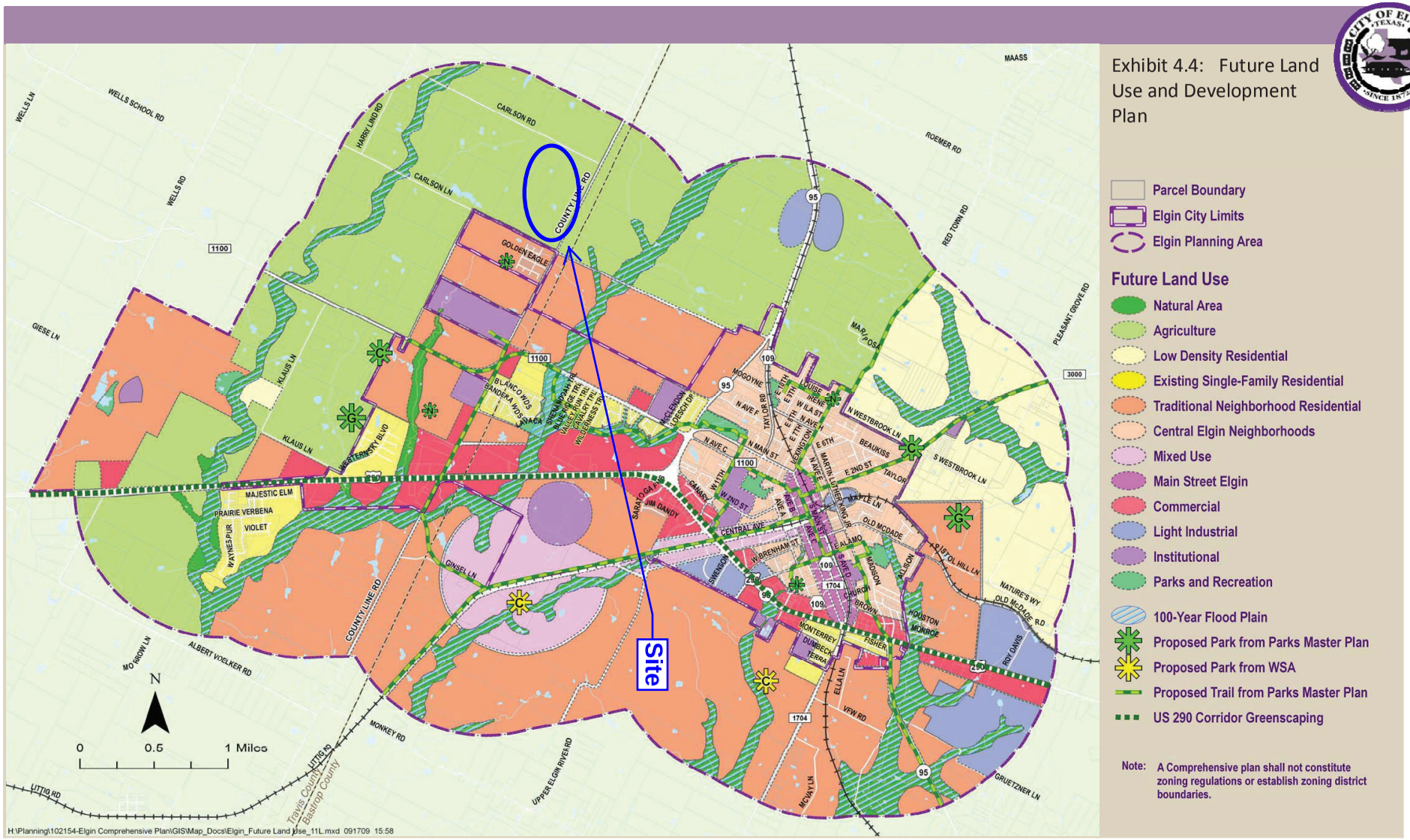
The information given on this application is accurate to the best of my knowledge. All provisions of laws and ordinances governing this work will be complied with, whether specified on this application or not.

| | Christopher A. Reid | 3/30/2023 |
|---|---|---|
| **Signature** | **Printed Name** | **Date** |

**Project Description:**

PrimaVesta Land Company, LLC is requesting R-2 zoning for three (3) tracts totaling approximately 53 acres, prior to development of approximately 166 single-family and related street, sidewalk, drainage and utility improvements.

# Attachment 2
# Staff Added Comprehensive Plan Exhibits




Source: Wilbur Smith Associates, Inc., 2009.

## Agricultural

**General Description:** Areas dedicated to food production and raising livestock. Development in these areas is very minimal, and primarily associated with agricultural activity. Elgin desires to keep these areas as farmland or ranchland wherever possible in order to maintain and promote an agricultural economic base, as well as provide a local food source, and preserve the rural character of the community.

**Transect Zone:** Natural (T1)

**Primary Land Use:** Agricultural

**Supporting Land Uses:** Rural residences (farm houses), equestrian facilities, agricultural storage, small-scale commercial, and industrial uses directly related to agricultural activity.

**Residential Densities:** 1 unit per 10 acres or more.

**Form and Character:** The area is defined by vast areas of open space and agricultural land with a rural or natural character. Built structures are very sparse and typically associated with farming operations such as barns, pens, sheds, and feed storage. Because it is a working landscape, agricultural areas are associated with some "nuisances" such as noise, dust, and fertilizer that are best mitigated by maintaining large parcel sizes and limiting urbanization where possible.

**Parks and Open Space:** The low-density of development and open spaces that are inherent in agricultural areas do not require that additional parks be provided. A regional park may be appropriate if it is focused on a natural or historic feature of local/regional significance.

# Attachment 3
# Staff Added Zoning Map

# Zoning Map

8/24/2022, 6:28:38 PM

Zoning

- C1 - Neighborhood Shopping District
- C3 - Highway Commercial District
- PDD - Planned Development District
- R1 - Single Family
- R3 - Single Family/Two Family/Industrialized Housing District
- Travis Parcels March 2022
- Bastrop Parcels August 2022

1:18,056

0 0.17 0.35 0.7 mi

0 0.3 0.6 1.2 km

Esri, HERE, Garmin, (c) OpenStreetMap contributors, Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community, Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community

Web AppBuilder for ArcGIS

Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community | Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community | Esri, HERE, Garmin, (c) OpenStreetMap contributors | TRC GIS, City of Elgin |

# Attachment 4
# Ordinance with Exhibit

**ORDINANCE NO. 2023-06-06-??**

**AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF ELGIN, TEXAS ADOPTED IN CHAPTER 46, SECTION 46-3, REVISED CODE OF ORDINANCES CITY OF ELGIN, TEXAS, 2013 AND MAKING THIS AMENDMENT A PART OF SAID OFFICIAL ZONING MAP TO WIT: TO REZONE LAND FROM "R-1" SINGLE FAMILY HOUSING DISTRICT TO "R-2" SINGLE FAMILY & DUPLEX DWELLING DISTRICT LOCATED ON PARCELS OF LAND KNOWN BY THE TRAVIS COUNTY APPRAISAL DISTRICT AS PARCELS 358800, 358801, & 358802, LOCATED BETWEEN CARLSON LN. & CARLSON RD. ACROSS FROM EAGLES LANDING PH. 2 (BEING A 52.76 ACRE TRACT OUT OF THE HENRY MARTIN SUVEY NUMBER 65, ABSTRACT 518, TRAVIS CO., TX), BEING MORE DESCRIBED IN EXHIBIT "A"; AND PROVIDING FOR A SAVINGS CLAUSE AND REPEALING CONFLICTING ORDINANCES AND RESOLUTIONS.**

**WHEREAS,** an application has been made to the City Council of Elgin, Texas to amend the Official Zoning Map to rezone the property described in Exhibit "A" attached hereto and incorporated herein, from R-1 Single Family Dwelling District to R-2 Single Family & Duplex Dwelling District, and

**WHEREAS,** the City Council has submitted the requested change in the Official Zoning Map to the Planning and Zoning Commission for its recommendation and report, and

**WHEREAS,** the Planning and Zoning Commission held a public hearing concerning the requested change on May 22, 2023, following lawful publication of the notice of said public hearing, and

**WHEREAS,** after considering the public testimony received at such hearing, the Planning and Zoning Commission has recommended that the Official Zoning Map be amended so that the zoning classification of the property described in Exhibit "A" is R-2 Single Family & Duplex Dwelling District, and

**WHEREAS,** on June 6, 2023, after proper notification, the City Council held a public hearing on the requested zoning, and

**WHEREAS,** the City Council determines that the zoning provided for herein promote the health, safety, morals, and protects and preserves the general welfare of the community, and

**WHEREAS,** each and every requirement set forth in Chapter 211, Sub-Chapter A, Texas Local Government Code, and Chapter 46, City of Elgin Ordinances, concerning public notices, hearings, and other procedural matters has been fully complied with, Now Therefore

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ELGIN, TEXAS, THAT:**

I.

The Official Zoning Map adopted in Chapter 46, Section 46-3, City of Elgin, Texas is hereby amended so that the zoning classification of the property described in Exhibit "A" is rezoned from R-1 Single Family Dwelling District to R-2 Single Family & Duplex Dwelling District.

II.

A. All ordinances, parts of ordinances, or resolutions in conflict herewith are expressly repealed.

B. The invalidity of any section or provision of this Ordinance shall not invalidate other sections or provisions thereof.

C. The City Council hereby finds and declares that written notice of the date, hour, place, and subject of the meeting at which this Ordinance was adopted was posted and that such meeting was open to the public as required by law at all times during which this Ordinance and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

**READ, PASSED,** and **ADOPTED** on first reading this the 6th day of June 2023.

_____

THERESA Y MCSHAN, Mayor
City of Elgin, Texas

ATTEST:

_____

JENNIFER STUBBS, City Secretary

DOUCET

7401B Highway 71 West, Suite 160, Austin, TX 78735
Office: 512.583.2600
Fax: 512.583.2601
Doucetengineers.com

"Exhibit "------"

**Carlson 53 Acre**
**Travis County, Texas**

**D&A Job No. 2403-001**
**July 11, 2022**

## METES & BOUNDS DESCRIPTION

**BEING A 52.76 ACRE TRACT OUT OF THE HENRY MARTIN SUVEY NUMBER 65, ABSTRACT 518, TRAVIS COUNTY, TEXAS, SAID 52.76 ACRE TRACT BEING ALL OF A CALLED 12.00 ACRE TRACT, DESCRIBED TO PRIMA VISTA LAND COMPANY, LLC, AS RECORDED IN DOCUMENT NUMBER 2022025519 OF THE OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS [O.P.R.T.C.T], BEING ALL OF A CALLED 28.772 ACRE TRACT, DESCRIBED TO PRIMA VISTA LAND COMPANY, LLC, AS RECORDED IN DOCUMENT NUMBER 2021245210 [O.P.R.T.C.T.], AND BEING ALL OF A CALLED 11.976 ACRE TRACT, DESCRIBED TO PRIMA VISTA LAND COMPANY, LLC, AS RECORDED IN DOCUMENT NUMBER 2021267038 [O.P.R.T.C.T.], SAID 52.76 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY THE METES AND BOUNDS AS FOLLOWS:**

**COMMENCING** at a iron pipe found for the west corner of a called 52.964 acre tract, described to Larry Hjalmar Axelson and Mary Jo Bengtson, as recorded in Document Number 2007074197 [O.P.R.T.C.T], same being on the north right-of-way line of Carlson Lane an apparent 50-foot wide right-of-way as recorded in Document Number 202100261 [O.P.R.T.C.T], also being the east corner of a called 56.75 acre tract, described to Roland J. Carlson (no record information found),

**THENCE,** S63°18'33"E, with the north right-of-way line of said Carlson Lane and the southwest line of said 52.964 acre tract, a distance of 653.00 feet to a 1/2-inch iron rod found for the west corner of said 12.00 acre tract, same being the east corner of said 52.964 acre tract, also being in the north right-of-way line of said Carlson Lane for the **POINT OF BEGINNING** and west corner of the tract described herein;

**THENCE,** N27°22'54"E, departing the north right-of-way line of said Carlson Lane and continuing with the northwest line of said 12.00 acre tract, the northwest line of said 28.772 acre tract, the northwest line of said 11.976 acre tract, and the southeast line of said 52.964 acre tract, a distance of 3,503.22 feet to a 1/2-inch iron rod found for the north corner of said 11.976 acre tract and for the east corner of said 52.964 acre tract, same being on the south right-of-way line of Carlson Road, an apparent 60-foot wide right-of-way, as recorded in Volume 8942, Page 716 of the Real Property Records of Travis County, Texas [R.P.R.T.C.T.];

**THENCE,** S62°39'18"E, with the south right-of-way line of said Carlson Road and continuing with the northeast line of said 11.976 acre tract, and the most northerly northeast line of said 28.772 acre tract, a distance of 656.60 feet to a 1/2-inch iron rod found for the most northerly east corner of said 28.772 acre tract, and for the north corner of a called 5.012 acre tract, described to Harry L Davis and Evelyn J Miller, as recorded in Document Number 2018139941 [O.P.R.T.C.T.], same being in the south right-of-way line of said Carlson Road;

**THENCE,** S27°22'55"W, departing the south right-of-way line of said Carlson Road, and continuing with the southeast line of said 28.772 acre tract and the northwest line of said 5.012 acre tract, a distance of 3,497.90 feet to a 1/2-inch iron rod found for the south corner of said 28.772 acre tract, and for the west corner of a called 5.012 acre tract, described to Mario Alberto Urbina Gutierrez, as recorded in Document Number 2018151638 [O.P.R.T.C.T.], same being on the north right-of-way of said Carlson Lane;

(CONTINUED ON NEXT PAGE)



COMMITMENT YOU EXPECT | EXPERIENCE YOU NEED | PEOPLE YOU TRUST

DOUCET

7401B Highway 71 West, Suite 160, Austin, TX 78735
Office: 512.583.2600
Fax: 512.583.2601
Doucetengineers.com



**THENCE,** N63°07'08"W, with the south right-of-way line of said Carlson Road and the most southerly southwest line of said 28.772 acre tract and the southwest line of said 12.00 acre tract, a distance of 656.60 feet to the POINT OF BEGINNING of the tract described herein and containing approximately 52.76 acres.

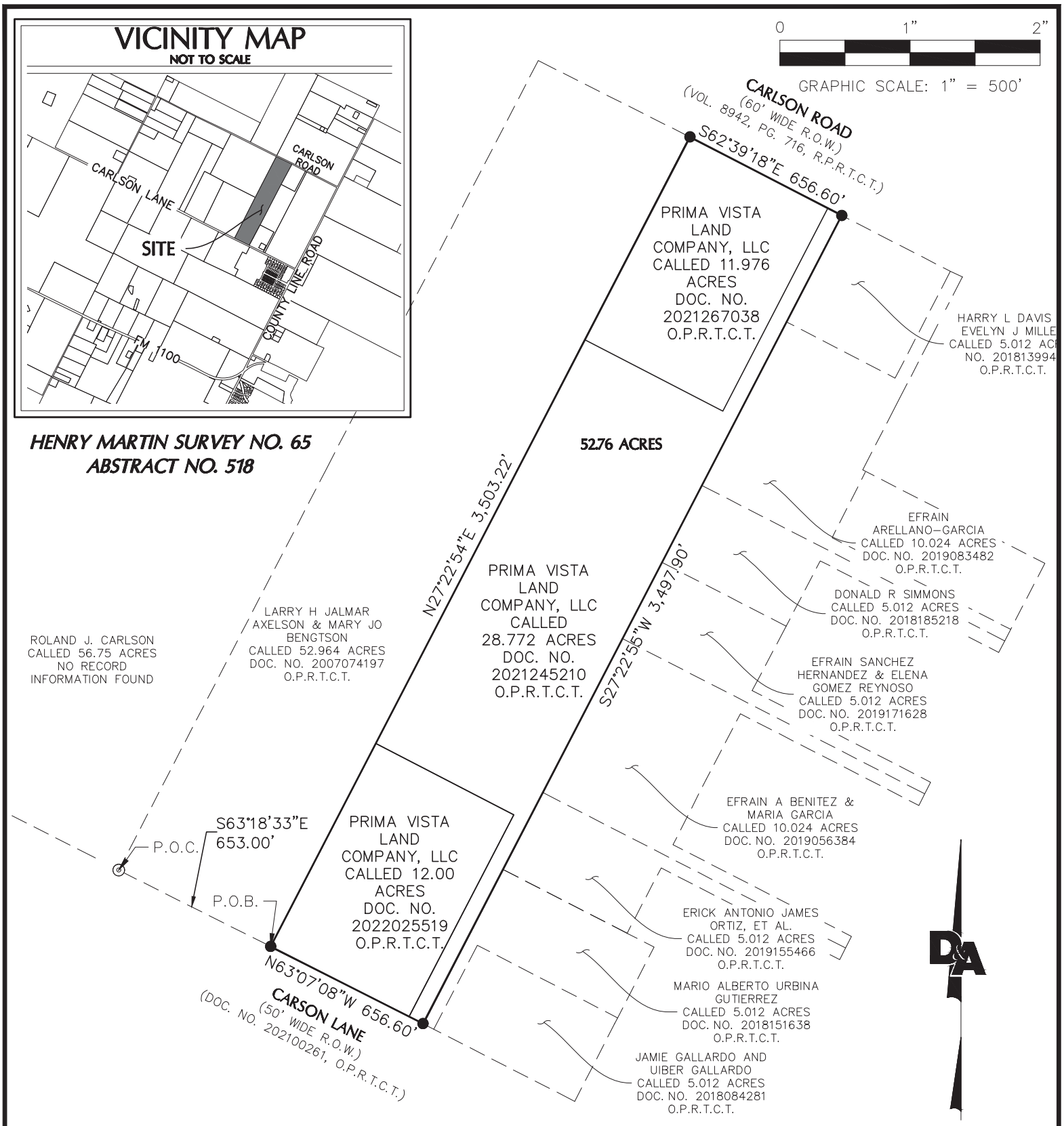
This survey was performed without the benefit of a title commitment. Easements or other matters of record may exist where none are shown.

I, J. Dillon Fugate, Registered Professional Land Surveyor, hereby certify that this property description and accompanying plat of even date represent an actual survey performed on the ground.

07/11/2022

J. Dillon Fugate — Date

Registered Professional Land Surveyor
Texas Registration No. 6360
Doucet & Associates
DFugate@DoucetEngineers.com
TBPELS Firm Registration No. 10105800




52.76 ACRE
EXHIBIT

TRAVIS COUNTY, TEXAS


DOUCET
Civil Engineering // Entitlements // Geospatial
7401 B. Highway 71 W, Ste. 160
Austin, TX 78735, Tel: (512)-583-2600
www.doucetengineers.com
TBPE Firm Number: 3937
TBPELS Firm Number: 10105800


| | |
|---|---|
| Date: | 07/11/2022 |
| Scale: | 1" = 500' |
| Drawn by: | SWP |
| Reviewer: | DF |
| Project: | 2403-001 |
| Sheet: | 3 OF 4 |
| Field Book: | N/A |
| Party Chief: | ADM |
| Survey Date: | 05/04/2022 |

X:\Departments\Geospatial\Projects\2403-001 Carlson 53 Tract\CAD\dwg\Active - Exhibits\52.76AC Carson Ln Exhibit Grid.dwg

## LEGEND

| | |
|---|---|
| ━━━━━━ | PROPERTY LINE/SUBJECT EASEMENT |
| ────── | EXISTING PROPERTY LINE |
| — — — — | ADJOINER PROPERTY LINE |
| ● | 1/2" IRON ROD FOUND [UNLESS NOTED] |
| ◎ | IRON PIPE FOUND [AS NOTED] |
| P.O.B. | POINT OF BEGINNING |
| P.O.R. | POINT OF COMMENCMENT |
| DOC. NO. | DOCUMENT NUMBER |
| VOL. | VOLUME |
| PG. | PAGE |
| R.O.W. | RIGHT-OF-WAY |
| R.P.R.T.C.T. | REAL PROPERTY RECORDS, TRAVIS COUNTY, TEXAS |
| O.P.R.T.C.T. | OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS |

CONTROL NOTE:

BASIS OF BEARING IS THE TEXAS COORDINATE SYSTEM, CENTRAL ZONE (4203), NORTH AMERICAN DATUM 1983 (NAD83), 2011 ADJUSTMENT (EPOCH 2010). ALL COORDINATE VALUES AND DISTANCES SHOWN ARE GRID VALUES.
UNITS: US SURVEY FEET.

I, J. DILLON FUGATE, REGISTERED PROFESSIONAL LAND SURVEYOR, HEREBY CERTIFY THAT THIS PLAT AND ACCOMPANYING LEGAL DESCRIPTION OF EVEN DATE REPRESENT AN ACTUAL SURVEY PERFORMED ON THE GROUND UNDER MY SUPERVISION.

07/11/2022

J. DILLON FUGATE — DATE
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 6360
DOUCET & ASSOCIATES
DFUGATE@DOUCETENGINEERS.COM

STATE OF TEXAS
REGISTERED
DILLON FUGATE
6360
PROFESSIONAL
LAND SURVEYOR

52.76 ACRE
EXHIBIT

TRAVIS COUNTY, TEXAS

DOUCET
Civil Engineering // Entitlements // Geospatial
7401 B. Highway 71 W, Ste. 160
Austin, TX 78735, Tel: (512)-583-2600
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| | |
|---|---|
| Date: | 07/11/2022 |
| Scale: | N/A |
| Drawn by: | SWP |
| Reviewer: | DF |
| Project: | 2403-001 |
| Sheet: | 4 OF 4 |
| Field Book: | N/A |
| Party Chief: | ADM |
| Survey Date: | 05/04/2022 |

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# Attachment 5

# 200' Notice Letter and Map

May 9, 2023

# NOTICE OF A REZONING REQUEST

You are being notified because your property is located within two hundred (200) feet of this request. The map on the back of this page shows the lot making the request (red solid shape) and your lot within the notice area (blue line). This notice is to inform you of a public hearing to be held by the City Council on the item as denoted below:

> Project #202300056: An ordinance amending the official zoning map of the City of Elgin, Texas adopted in Chapter 46, Section 46-3, Revised Code of Ordinances City of Elgin, Texas, 2013 and making this amendment a part of said official zoning map to wit: To rezone land from "R-1" Single Family Housing District to "R-2" Single Family & Duplex Dwelling District located on parcels of land known by the Travis County Appraisal District as Parcels 358800, 358801, & 358802, located between Carlson Ln. & Carlson Rd. across from Eagles Landing Ph. 2 (BEING A 52.76 ACRE TRACT OUT OF THE HENRY MARTIN SUVEY NUMBER 65, ABSTRACT 518, TRAVIS CO., TX), being more described in Exhibit "A"; and providing for a savings clause and repealing conflicting ordinances and resolutions. (Carlson Tract Rezoning).

With a public hearing as below:

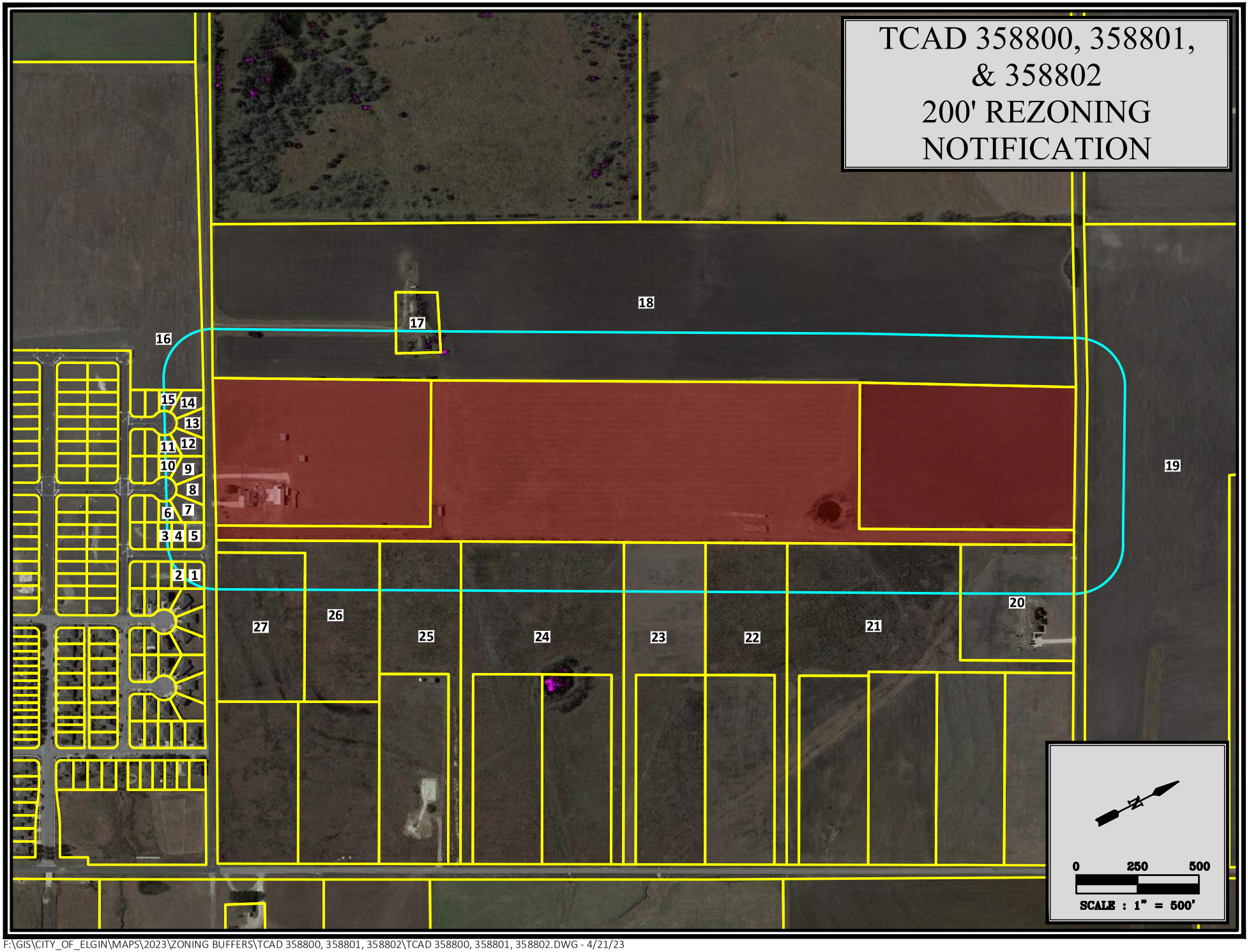
> By the Planning & Zoning Commission on May 22, 2023, beginning at 6:30 P.M. Central Standard Time (CST) for recommendation. This meeting is to be held at Elgin Public Library Annex (Civic Center) located at 404 N. Main St. Elgin, TX, 78621, U.S.A.
>
> By the City Council on June 6, 2023, beginning at 6:30 P.M. Central Standard Time (CST) for consideration. This meeting is to be held at Elgin Public Library Annex (Civic Center) located at 404 N. Main St. Elgin, TX, 78621, U.S.A.

The public is welcome to attend the meeting and may give a public comment on this item. Any person may be represented by an attorney.

Any interested person may also express written comments by emailing the Development Services Department at planninganddevelopment@elgintexas.gov or by postal mail at the following:

City of Elgin
Development Services Department
P.O. Box 591
Elgin, TX 78621 U.S.A.

Requests for any additional information may be directed to planninganddevelopment@elgintexas.gov or to (512) 281-0119.




F:\GIS\CITY_OF_ELGIN\MAPS\2023\ZONING BUFFERS\TCAD 358800, 358801, 358802\TCAD 358800, 358801, 358802.DWG - 4/21/23

# Attachment 6
# Proposed Applicant Development Plan

LAND USE SUMMARY

| Residential | Total | Mix |
|---|---|---|
| 60 x 120' SFD Residential | 166 units | 100.00 % |
| Residential Total: | 166 units | |
| Gross Area: | 52.8 acres | |
| Gross Density: | 3.14 du/ac | |
| Detention: | 4.8 acres | |
| Net Area: | 48.0 acres | |
| Net Density: | 3.46 du/ac | |

* This is a proposal. This plan could be changed, and may result entirely different than what is shown. This proposal cannot be conditionally approved for the rezoning.

North

0 150 300 600

Scale: 1" = 300'

Date: February 27, 2023

SEC Planning, LLC

*Land Planning + Landscape Architecture + Community Branding*

AUSTIN, TEXAS
t 512.246.7003
www.secplanning.com + info@secplanning.com

LOTTING PLAN D
CARLSON TRACT

PRIMA VESTA LAND COMPANY, LLC
ELGIN, TEXAS

SHEET FILE: I:\210161-PVLC\Cadfiles\PLANNING\Lotting\Lotting D.dwg

Base mapping compiled from best available information. All map data should be considered as preliminary, in need of verification, and subject to change. This land plan is conceptual in nature and does not represent any regulatory approval. Plan is subject to change.

# Development Services Department

## STAFF REPORT

### Review, Discuss, and provide Input regarding Lund Farms Development Agreement

**Date:** May 12, 2023

**WORKSHOP SUMMARY**

The purpose of this meeting is to allow the Commission to review what has been submitted so far, discuss, and offer input on this proposed item. Please be aware City Staff has removed some of the pages such as blank signature & repeating pages to shorten the packet size. Staff has also provided a City Limits Map to assist with the overall development pattern of the area and its location. The lot in dotted lines is making the request. City Staff will provide an overview of the items in the meeting.

**DEVELOPMENT AND CONSENT AGREEMENT**
**(Lund Farms)**

| | | |
|---|---|---|
| **THE STATE OF TEXAS** | § | |
| | § | **KNOW ALL BY THESE PRESENTS:** |
| **COUNTY OF BASTROP** | § | |

**THIS DEVELOPMENT AND CONSENT AGREEMENT** ("*Agreement*") is entered into between the **CITY OF ELGIN, TEXAS**, a Texas home-rule city located in Bastrop County, Texas, with extraterritorial jurisdiction extending into Travis County, Texas ("*City*") and **LUND FARM INVESTMENT LLC**, a Texas limited liability company ("*Developer*"). **LUND FARM MUNICIPAL UTILITY DISTRICT**, a conservation and reclamation district of the State of Texas (the "*District*") to be created will join this Agreement as set forth below and after such joinder shall become a party to this Agreement. In this Agreement, the City, District and Developer are sometimes individually referred to as a "*Party*" and collectively referred to as the "*Parties*".

## INTRODUCTION

**WHEREAS**, the Developer currently owns approximately 569.717 acres of land that is more particularly described in **Exhibit "A"** attached hereto (the "*Property*") that is located in the extraterritorial jurisdiction of the City;

**WHEREAS**, the Developer intends to develop the Property as a master-planned mixed use residential community that will include commercial uses and park and recreational facilities to serve the community (the "*Project*"). Because the Property constitutes a significant area and the Project will be developed in phases under a master development plan, the Developer and the City desire to enter into this Agreement, which will provide an alternative to the City's typical regulatory process for development, encourage innovative and comprehensive master-planning of the Property, provide certainty of regulatory requirements throughout the term of this Agreement and result in a high-quality development for the benefit of the present and future residents of the City and the Property.

The Developer and the City intend that this Agreement shall be binding upon the District from and after the date the District executes a joinder to this Agreement in substantially the same form as set forth in **Exhibit "B"**, attached hereto and made a part hereof. The District shall execute such joinder at the time of its organizational meeting.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements of the Parties contained in this Agreement, the Parties agree as follows:

## I.
## DEFINITIONS

When used in this Agreement, capitalized terms not otherwise defined shall have the meanings set forth below:

**1.01** "Agreement" means this Development and Consent Agreement, as it may be amended from time to time.

**1.02** "Applicable Rules" means the City's or County's rules and regulations applicable to the Project, subject to any variances or exceptions approved in or pursuant to this Agreement.

**1.03** "Aqua" means Aqua Water Supply Corporation.

**1.04** "CCN" means certificate of convenience and necessity.

**1.05** "CCN Release Fee" means the payment to Aqua in order to release the Property from Aqua's Water CCN service territory,

**1.06** "City" means the City of Elgin, Texas, a home-rule city located in Bastrop County, Texas, with extraterritorial jurisdiction extending into Bastrop and Travis Counties, Texas.

**1.07** "City Manager" means the City Manager of the City.

**1.08** "Collector Road Improvements" means the new minor divided collector roads, with a 60' right-of-way, to be funded and constructed by Developer, as more particularly identified and described in **Exhibit "C"** attached hereto.

**1.09** "Commission" or "TCEQ" means the Texas Commission on Environmental Quality or its successor agency.

**1.10** "Concept Plan" means the concept plan for development of the Property that is attached as **Exhibit "D"**.

**1.11** "County" means Bastrop County, Texas or Travis County, Texas, as applicable.

**1.12** "County Line Road Funding Contribution" shall have the meaning set forth in Section 3.03(c) of this Agreement.

**1.13** "Cumulative Road Project Costs" shall have the meaning set forth in Section 3.03(c) of this Agreement.

**1.14** "Developer" means Lund Farm Investment LLC, or its successors and assigns under this Agreement.

**1.15** "District" means Lund Farm Municipal Utility District, a political subdivision of the State of Texas, to be created over the Property with the consent of the City.

**1.16** "Effective Date" means the last date of execution of this Agreement by the City and Developer.

**1.17** "EST" means the 0.5 MG elevated storage tank to be constructed by the City at Developer's expense on the EST Site as a condition of wholesale water service by the City to the District in excess of 371 LUEs, as more particularly described in **Exhibit "G"**.

**1.18** "EST Site" means that tract of land generally described on **Exhibit "H"** attached hereto that Developer or District shall convey to City for construction of the EST.

**1.19** "Emergency Services Tract" shall have the meaning set forth in Section 3.04 of this Agreement.

**1.20** "Interceptor" means the wastewater improvements that will connect the Project to the City's Wastewater System, generally consisting of approximately 5,000 linear feet of wastewater gravity line improvements and related appurtenances that would extend from the City's existing wastewater facilities located in the Harvest Ridge development through Elm Creek to the southern boundary of the Property, as more particularly described and depicted in **Exhibit "F"** attached hereto.

**1.21** "Living Unit Equivalent" or "LUE" means the capacity necessary to serve a single-family residential connection or its equivalent.

**1.22** "Lund Road Improvements" those certain road improvements to be undertaken by Developer to the existing Lund Road located within the Property, as more particularly described in **Exhibit "E"** attached hereto.

**1.23** "Off-Site Transmission Line Improvements" means the 12-inch diameter off-site water transmission line improvements to connect the Property to the City's water system, as more particularly described in **Exhibit "G"** attached hereto.

**1.24** "On-Site Facilities" means all water, wastewater and drainage facilities internal to the Property that are necessary for service to the Property specifically excluding the Interceptor.

**1.25** "Petition" means the Developer's request to the City for consent to creation of the District.

**1.26** "Project" shall have the meaning set forth in the Recitals of this Agreement.

**1.27** "Property" means the approximate 569.717-acre tract of real property more particularly described in **Exhibit "A"** attached hereto.

**1.28** "Strategic Partnership Agreement" means the Strategic Partnership Agreement in the form attached hereto as **Exhibit "L"**.

**1.29** "Water and Wastewater Services Agreement" means the Wholesale Water and Wastewater Services Agreement in the form attached hereto as **Exhibit "I"** setting forth the terms and conditions pursuant to which the City agrees to provide wholesale water and wastewater services to the District.

**1.30** "Water Project" means the water improvements that will connect the Project to the City's Water System or that are otherwise required to be constructed in order for the City to provide wholesale water services to the District, generally consisting of the Off-Site Transmission Line Improvements and the EST, as more particularly described and depicted in **Exhibit "G"**.

## II.
## CREATION OF DISTRICT AND RELATED MATTERS

**2.01 Consent to Creation of District.** The City acknowledges receipt of Developer's request, in accordance with Section 54.016 of the Texas Water Code and Section 42.042 of the Texas Local Government Code, for creation of the District, including powers from Article III, Section 52 of the Texas Constitution. On the Effective Date, the City has approved the resolution substantially similar to the form attached as **Exhibit J** consenting to the inclusion of all of the Property within the proposed District and the creation of the District (the "Consent Resolution"). The City agrees that the Consent Resolution will constitute and evidence the City's consent to the creation of the District. No further consent will be required on the part of the City to evidence the City's consent to the creation of the District, but the City agrees to provide a resolution confirming its consent if requested by Developer or the District in connection with Developer's application to the Commission to create the District or any District bond sale.

**2.02 Annexation.** The City agrees that it will not annex the District until: (i) Developer has been reimbursed by the District for all of the water, wastewater, roadway, drainage and recreational facilities and all related costs in accordance with the rules of the Commission or other laws of the State of Texas, or (ii) the City has expressly assumed the obligation to reimburse Developer for all costs of the water, wastewater, roadway, drainage and recreational facilities and all related costs.

**2.03 Bonds.** The District may issue bonds or notes for purposes authorized by applicable law, including: (a) the purchase, construction, acquisition, repair, extension, and improvement of land, easements, works, improvements, facilities, plants, equipment, and appliances, and capacity or contract rights, necessary or appropriate (i) to provide a water supply for municipal uses, domestic uses, and commercial purposes; (ii) to collect, transport, process, dispose of, and control all domestic, industrial, or communal wastes whether in fluid, solid, or composite state; and (iii) to gather, conduct, divert, and control local storm water or other local harmful excesses of water in the District; (b) to pay expenses authorized by Section 49.155 of the Texas Water Code; (c) to develop and maintain park and recreational facilities as authorized by Subchapter N of Chapter 49 (Sections 49.461, et seq.) of the Texas Water Code; (d) to purchase committed capacity in, or paying for contract rights related to, water supply or wastewater treatment or collection facilities and services, subject to Commission rules and regulations; and (e) subject to the approval of the Commission or statutory authorization to do so, to design, acquire, construct, and finance road improvements as provided in Section 54.234 of the Texas Water Code. The District may also issue bonds for refunding purposes. The District may reimburse Developer for expenditures authorized by Commission rules and regulations and this Agreement.

**2.04 Joinder of Agreement by District**. At its organizational meeting, the District's Board of Directors shall approve and join this Agreement by execution of the Joinder Agreement in the form attached hereto as **Exhibit "B"**, , and return a fully executed, certified copy of the Joinder Agreement to the City Manager and Developer within thirty (30) days after the meeting.

## III.
## PROJECT DESCRIPTION; DEVELOPER COMMITMENTS

**3.01 Project Description**. The Developer proposes to construct a mixed-use, multi-phase project (the "*Development*") over the Property that is projected to include approximately 1,856 single family residential units, 648 multi-family units (which may include multifamily structures up to three stories in height and detached multi-family dwelling units) and commercial development for a total of 2,500 living unit equivalents ("*LUEs*"). Not less than 100 acres of the Property shall be developed as public parkland and/or open space (including floodplain areas). The Development will also include (i) a community pool, amenity area and trails; (ii) approximately two (2) acres to be dedicated to the City for public safety services, (iii)

approximately nine (9) acres of land designated for commercial (retail) uses, and (iv) an EST and associated site to be dedicated to the City of Elgin. Developer shall construct the park, amenity, trail and recreational improvements in phases as subdivision platting and development of the Property progresses, and there shall be no minimum park, open space or recreational requirement in each individual subdivision phase.

The City agrees that the Project may include "Cottage Homes," defined to be small, single-family homes arranged in and around common shared green space rather than areas designated for typical fee simple single family homes. Vehicular access to the Cottage Homes will be from the alleys or private drives and homes may have attached or detached garages. Cottage Homes may range from a minimum of 600 square feet to 1,200 square feet with condominium or fee simple lot configurations with a minimum square footage of twice the building footprint. Architecture for Cottage Homes will be harmonious with adjacent single family homes and will be limited to 5% of that total lot count.

**3.02 School Contribution.** Developer shall contribute to the City payment in an amount equal to $200 per single family lot platted within the Property to be used by the City for the benefit of the independent school district serving the Property. Payment shall be made prior to, and as a condition of, recording each subdivision plat within the Official Public Records of the County. In each case, the payment amount shall be equal to the $200 multiplied by the number of single family lots (or dwelling units for multifamily development) in the subdivision plat to be recorded. The payment shall be applicable to any cottage homes located on a single family residential lot.

**3.03 Developer's Road Construction and Funding Obligations**.

(a) Lund Road Improvements. Developer shall fund and construct the Lund Road Improvements. The Lund Road Improvements shall be undertaken in accordance with all Applicable Rules, and shall be constructed by Developer in phases that correspond to the construction of public improvements in each platted subdivision that contains the Lund Road Improvements. Developer will dedicate public right-of-way to the City or County (as jointly specified by such parties) for the expansion of Lund Road along the entirety of the Property that abuts Lund Road. The right-of-way dedication shall not exceed forty feet (40') in width (1/2 of a total 80' right of way), and shall be dedicated in phases as subdivision platting of the lands that contain the right-of-way area progresses.

(b) Collector Road Improvements. Developer shall fund and construct the Collector Road Improvements. The Collector Road Improvements shall be undertaken in accordance with all Applicable Rules and shall be constructed by Developer in phases that correspond to the construction of public improvements in each platted subdivision that contains the Collector Road Improvements. The 60-foot right-of-way required for the Collector Road Improvements shall be dedicated by Developer or the District to the County, as applicable, at no cost or expense to the City or County. To the extent the County requires alternative Collector Road Improvements, Developer shall construct the roadway improvements required by the County.

(c) County Line Road Contribution. In the event the Developer's total out-of-pocket costs and expenses for design, permitting and construction of the Lund Farm Improvements and the Collector Road Improvements (collectively, the "*Cumulative Road Project Costs*") is less than the sum of $4,320,000, then Developer shall donate to the City the difference between $4,320,000 and the Cumulative Road Project Costs (the "*County Line Road Funding Contribution*"). The Developer shall donate the County Line Road Funding Contribution to the City within sixty (60) days after final completion of the Collector Road

Improvements. The City shall utilize the County Line Road Funding Contribution for improvements to County Line Road serving the District.

(d) County Line Road Right-of-Way Dedication. Developer will dedicate public right-of-way to the City or County (as jointly specified by such parties) for the expansion of County Line Road along the entirety of the Property that abuts County Line Road. The right-of-way dedication shall not exceed twenty-five feet (25') in width, and shall be dedicated in phases as subdivision platting of the lands that contain the right-of-way area progresses.

(e) Other Transportation Improvements. Developer will provide a Traffic Impact Analysis (a "TIA") providing information on the projected traffic associated with the Development, particularly as it relates to the impact on State Highway 95. The TIA will consider impacts of the entire Development based on the Concept Plan and will identify any potential traffic operational problems or concerns and recommend appropriate actions to address such problems or concerns. The TIA will also consider the potential traffic to be generated by other undeveloped land in the area and shall be consistent with applicable City ordinance requirements and the TxDOT Access Management Manual. In conjunction with any such Developer improvements, the City may, at its sole discretion, cost participate in the construction of any offsite transportation improvements not identified by the TIA as it deems warranted and appropriate. It is anticipated, and hereby acknowledged by both the City and Developer, that significant improvements and/or upgrades to adjacent public roadways will be required in support of the Development. Developer and/or the District shall be responsible for their proportionate share (based upon the impact of the Development on such traffic patterns as described in the TIA) of the costs associated with the design, engineering, and construction of improvements identified by the TIA at such times as traffic generated by the Project necessitates such improvements as set forth in the TIA.

**3.04 Developer's Public Safety Tract Contribution**. Developer and City shall work in good faith to identify approximately two acres of land within the Property (the "*Emergency Services Tract*") to be dedicated by the Developer to the City to be used for public safety facilities to benefit the residents of the District, including by way of example, for the location of police, fire and/or emergency services facilities. Developer will, at the time of final platting the lands within which the Emergency Services Tract is located, convey the Emergency Services Tract to the City by warranty deed, at no cost to the City. The City shall not sell or convey the Emergency Services Tract to any third party, other than to an emergency services district or other public safety services entity. Further, the Emergency Services Tract shall only be used for the construction and operation of an emergency services station or similar facility. The City hereby agrees, and the warranty deed to the City shall state, that ownership of the Emergency Services Tract shall revert to Developer in the event that the City or a permitted successor-in-interest has not constructed and commenced operation of an emergency services station or similar facility within five (5) years of the date of conveyance from Developer to the City pursuant to this provision.

**3.05 Swimming Pool and Recreational Amenities**. As part of the Project, Developer shall fund and construct a swimming pool and recreational center amenity complex on approximately three acres of land within the Property. Upon completion of construction, the Developer may convey the facilities to the District or to a homeowners' association for ownership, operation and maintenance. Private lands and facilities conveyed to a homeowners association do not count towards the City's parklands dedication requirement.

**3.06 Parkland, Greenbelt and Trails**. As part of the Project, the Developer shall set aside and dedicate lands within the Property for public open space/greenbelt/recreational use as depicted in the Concept Plan.

The greenbelt area shall be improved to include trailheads, benches, hiking trails and not less than seven parking spaces (including one handicap space) and other improvements in accordance with the Parks Plan attached hereto as **Exhibit "M"**. The greenbelt lands and related improvements shall be dedicated to the District for ownership, operation and maintenance as public parkland. Developer will receive a 100% credit against the City's parkland dedication requirements for all lands dedicated to the District and located outside FEMA-designated floodplain, to the extent such requirements apply to the Property now or in the future, and the City further agrees that no additional parkland dedication or park fees will be required provided the Developer meets the minimum public parkland dedication requirements in effect as of the Effective Date of this Agreement.

## IV.
## DEVELOPMENT MATTERS

**4.01 Phased Development**. Developer intends to develop the Property in phases. Portion of the Property not under active development may remain in use for agriculture, wildlife or open space.

**4.02 Concept Plan; Exceptions**. The City hereby confirms (i) that it approves the Concept Plan and (ii) that the Concept Plan complies with the City's General Plan, as amended. The City approves the land uses, densities, exceptions, roadway alignments and widths and other matters shown on the Concept Plan and confirms that the Concept Plan has been approved by all required City departments, boards and commissions.

**4.03 Amendments.** Due to the fact that the Property comprises a significant land area and its development will occur in phases over a number of years, modifications to the Concept Plan may become desirable due to changes in market conditions or other factors. Variations of a preliminary plat or final plat from the Concept Plan that do not increase the overall density of development of the Property will not require an amendment to the Concept Plan. Minor changes to the Concept Plan, including minor modifications of street alignments, minor changes in lot lines, the designation of land for public or governmental uses, changes in lot sizes that do not result in an increase in the overall density of development of the Property (including any increase in lot sizes resulting in a decrease in the total number of lots) or any change to a public use, including, but not limited to school use, will not require an amendment to the Concept Plan or City approval. Major changes to the Concept Plan must be consistent with the terms of this Agreement and will be subject to review and approval by the City Council, which will not be unreasonably withheld, delayed or conditioned. Notwithstanding anything herein to the contrary, an increase of the unit count by up to five percent (5%) of the currently-planned count shall not require an amendment to the Concept Plan or additional City approval, regardless of the resulting increase in density of development.

**4.04 Development Review and Approval; Moratorium**.

(a) City Review of Development. It is the Parties' mutual intention that the City will have the sole responsibility for review and approval of all subdivision construction plans, site development plans, preliminary plans, and subdivision plats within the Property.

(b) Moratorium. The Parties acknowledge that the construction and funding of the utility and other improvements contemplated herein represent a significant investment by the Developer in the City's infrastructure. In exchange for this investment, the City agrees that any moratorium the City may impose

on development or construction, whether it be imposed through the non-issuance of building permits or otherwise, shall not apply to the Property.

**4.05 Permitted Variances to City Development Requirements**. In order to facilitate the development of the Property, the City agrees to provide variances to certain development requirements set forth by City ordinance. No other action will be required on the part of the Developer to obtain such variances or initiate subdivision plat approvals that vary from the City's development requirements, to the extent any variance is in conformity with **Exhibit "K"**, attached hereto and made a part hereof.

**4.06 Term of Approvals.** Except as provided below, the approval of the Concept Plan set forth in Section 4.02 above will be effective for the term of this Agreement. Such Concept Plan approval will be deemed to have expired if no final plats of the Property or a portion thereof are recorded during the term of this Agreement.

## V.
## WATER AND WASTEWATER UTILITY FACILITIES AND SERVICE MATTERS

**5.01 General.** The City shall provide wholesale water and wastewater services to the District, and the District shall provide retail water and wastewater services to all customers within the Project.

**5.02 Water and Wastewater Services Agreement**. Simultaneously with the execution of this Agreement, the Developer and City shall execute the Water and Wastewater Services Agreement in the form attached hereto setting forth the terms and conditions pursuant to which the City shall provide wholesale water and wastewater services to the District with the following terms:

(a) The City will provide or contract for the provision of wholesale wastewater utility services to the District sufficient to serve the land uses shown on the Concept Plan. The rates charged by the City shall be the same as those charged by the City to other wholesale customers, and such rates may be reviewed and adjusted by the City annually, based on a cost of service study performed by the City. In any event, this Agreement does not prevent the District or its customers from appealing the wastewater rates pursuant to §13.043, Texas Water Code.

(b) The City will receive, treat and dispose of, or shall contract for the treatment and disposal of, all sewage generated by residents within the District. The City will maintain an adequate wastewater treatment capacity at all times to serve the residents within the District at the same level these services are provided within the City. The City may limit service to the District in the same manner and to the same extent that service is limited inside the City limits.

(c) The District will have guaranteed reservation and ownership of capacity in City's wastewater utility system as set forth elsewhere in this Agreement.

(d) If necessary, Developer will provide easements within the area of the District for all District master meters in accordance with applicable City ordinance requirements. Master meters shall be installed to measure District wastewater flows. In the event wastewater mains enter the District from other City service areas, master meters will be installed at both ends of the system serving the District so that the differential flows will be measured to determine flows from District customers. Developers and/or District shall not be required to provide easements outside the area of the District.

**5.03 Water CCN.** The Parties acknowledge that the Property is currently located within the Aqua Water CCN. Developer or the District shall pay all costs and expenses required to remove the Property from the Aqua Water CCN (or to secure Aqua's consent to the provision of retail water service by the District in Aqua's CCN), including the CCN Release Fee and the costs of any petition or request filed with the Public Utility Commission of Texas to remove the Property from the Aqua Water CCN. The amount of the CCN Release Fee shall be $2,221,896, or such other sum agreed upon by Aqua. Subject to payment of the CCN Release Fee by Developer or District, the City agrees to fully cooperate with Developer and the District to cause decertification of the Property from the Aqua Water CCN.

**5.04 Design and Construction of On-Site Facilities**. The Developer, on behalf of the District and at Developer's sole expense, shall construct all On-Site Facilities that are necessary and required to serve the Property, including the water distribution system improvements; wastewater collection system improvements; drainage system and storm water management improvements; sidewalks, and roads, all of which such improvements shall be located within designated easements or rights of way. The On-Site Facilities will be designed and constructed in accordance with the Applicable Rules in effect as of the Effective Date of this Agreement and the Water and Wastewater Services Agreement. Neither Developer nor the District will be required to pay for or construct any improvements to the City's existing utility systems or other offsite improvements required to serve the Property except as provided for in this Agreement and the Water and Wastewater Services Agreement.

**5.05 Ownership, Operation and Maintenance of On-Site Facilities**.

(a) Upon completion of construction of the On-Site Facilities by Developer in accordance with the requirements of the District and acceptance by the District, the District shall be responsible for all costs and expenses associated with ownership, operation and maintenance of the facilities (subject to any warranty obligations of the Developer). The District agrees to operate and maintain such facilities in good condition and working order and to provide retail services to the Project

(b) The Parties acknowledge that it is their intention that all streets located within the Property shall be dedicated to, and maintained by, the County, and that all alleys will be maintained by the District or a homeowners association.

(c) The District shall be responsible for ownership, operation and maintenance of the drainage facilities (including any water quality ponds) until annexation and dissolution of the District. The District may assign maintenance obligations for the drainage facilities to a homeowners' association.

**5.06 Offsite Transmission Line Improvements.**

(a) The Offsite Transmission Line Improvements are required for the City to commence the provision wholesale water services to the District. The Offsite Transmission Line Improvements shall be constructed by Developer on behalf of the District in accordance with plans and specifications approved by the City, which approval shall not be unreasonably withheld, conditioned or delayed.

(b) In consideration of the design, permitting and construction of the Offsite Transmission Line Improvements, Developer will acquire on behalf of the District, and is hereby conveyed, a reservation and commitment of 2,500 LUEs of capacity in the Offsite Transmission Line Improvements. In consideration of the capacity interest and reservation, Developer may seek reimbursement from the District for the Offsite Transmission Line Improvements as permitted by applicable law.

(c) Upon completion of Offsite Transmission Line Improvements by Developer on behalf of the District, (a) the City will accept such facilities for operation and maintenance in accordance with the Applicable Rules; and (b) Developer will promptly convey those facilities to the City, subject to (i) the City's obligation to provide wholesale service to the District as provided in this Agreement and the Water and Wastewater Services Agreement; (ii) a reservation of necessary capacity as stated above in those facilities for the benefit of the District; and (iii) Developer's right, if any, to reimbursement from the District for the cost of those facilities in accordance with the rules of the Commission. Developer will also assign all contract rights, warranties, guarantees, assurances of performance, and bonds related to the facilities conveyed to the City. The City agrees that its acceptance of facilities and the related assignments will not be unreasonably withheld, conditioned, or delayed as long as the facilities have been constructed in accordance with all state and local codes and plans and specifications approved by the City, which approvals shall be based on the standards in effect as of the Effective Date of this Agreement. Upon any such conveyance and acceptance, the City agrees to operate and maintain such facilities in good condition and working order and to provide wholesale water service to the District in accordance with this Agreement. Conveyance will not affect the Developer's right to reimbursement from the District for the cost of any facilities.

(d) In the event the City requires Developer to oversize the Offsite Transmission Line Improvements, the City shall fund all such oversizing costs based on the incremental costs of construction of the oversized facilities relative to facilities that would be required for service to the Property only. The oversizing costs shall be determined by alternate bidding of facilities to identify the incremental oversizing costs. The City shall pay Developer for the oversizing costs within thirty (30) days after acceptance of the Offsite Transmission Line Improvements by all parties.

**5.07 EST Site**. The Developer or District shall dedicate and convey the EST Site to the City at no cost or expense to the City (provided the City shall provide water impact fee credit for the land costs in an amount equal to the Developer's purchase price, which was $46,000 per acre). The EST Site shall be conveyed free and clear of all liens, claims and encumbrances. The EST Site shall be conveyed to the City simultaneously with conveyance of the completed EST to the City.

**5.08 Construction of EST**.

(a) General. The Developer shall be responsible for design and construction of the EST, and Developer shall pay all costs and expenses associated therewith (unless it is oversized at the City's request). As consideration for payment of such costs and expenses, the City shall grant all applicants for service with the payment of water impact fees up to an amount equal to the total costs and expenses for the EST funded by Developer for design, permitting and construction of the EST. The total cost of the EST shall be submitted and approved by the City at the completion of the facility, which approval shall not be unreasonably withheld, conditioned or delayed if Developer provides invoices substantiating all costs and expenses funded by Developer.

(b) Service Limitations. The completion of the EST shall be a condition of wholesale water service by the City to the District in excess of 371 LUEs.

(c) Design. The EST shall be constructed by Developer on behalf of the District in accordance with plans and specifications approved by the City, which approval shall not be unreasonably withheld, conditioned or delayed.

(d) Bidding and Construction of EST. After completion of plans and specifications for the EST, the Developer will competitively advertise a contract for construction of the EST in accordance with the requirements applicable to municipal utility districts in the State of Texas.

(e) Capacity Interest in EST. In consideration of the payment by Developer of the costs of design and construction of the EST, Developer will acquire on behalf of the District, and is hereby conveyed, a reservation and commitment of 2,500 LUEs (500,000 gallons) of capacity in the EST. In consideration of the capacity interest and reservation, Developer may seek reimbursement from the District for the EST as permitted by applicable law.

(f) Oversizing. In the event the City requires Developer to oversize the EST, the City shall fund all such oversizing costs based on the incremental costs of construction of the oversized facilities relative to facilities that would be required for service to the Property only (500,000 gallons). The oversizing costs shall be determined by alternate bidding of facilities to identify the incremental oversizing costs. The City shall deposit its pro rata share of the costs (according to the final design capacity relative to 500,000 gallons) in an escrow account prior to award of a contract for construction of the EST. Payment shall be released from the escrow account to Developer as construction progresses according to the City's pro rata share of the costs of each pay application.

(g) Impact Fee Credit. As more particularly specified in Section 5.11 below, the Developer shall be entitled to water impact fee credit for all costs and expenses funded by Developer relating to the EST including all costs of design, permitting and construction, and the value of the EST Site (calculated at Developer's acquisition costs of $46,000 per acre).

**5.09 Wastewater Interceptor**.

(a) The Interceptor is required for the City to provide wholesale wastewater services to the District. The Interceptor shall be constructed by Developer on behalf of the District in accordance with plans and specifications approved by the City, which approval shall not be unreasonably withheld, conditioned or delayed. In consideration of the design, permitting and construction of the Interceptor, Developer will acquire on behalf of the District, and is hereby conveyed, a reservation and commitment of 2,500 LUEs of capacity in the Interceptor. In consideration of the capacity interest and reservation, Developer may seek reimbursement from the District for the Interceptor as permitted by applicable law.

(b) In consideration of the design, permitting and construction of the Interceptor, Developer will acquire on behalf of the District, and is hereby conveyed, a reservation and commitment of 2,500 LUEs of capacity in the Interceptor. In consideration of the capacity interest and reservation, Developer may seek reimbursement from the District for the Interceptor as permitted by applicable law.

(c) Upon completion of construction of Interceptor by Developer on behalf of the District, (a) the City will accept such facilities for operation and maintenance in accordance with the Applicable Rules; and (b) Developer will promptly convey those facilities to the City, subject to (i) the City's obligation to provide wholesale service to the District as provided in this Agreement; (ii) a reservation of all capacity in those facilities for the benefit of the District; and (iii) Developer's right, if any, to reimbursement from the District for the cost of those facilities in accordance with the rules of the Commission. Developer will also assign all contract rights, warranties, guarantees, assurances of performance, and bonds related to the facilities conveyed to the City. The City agrees that its acceptance of facilities and the related assignments will not be unreasonably withheld, conditioned, or delayed as long as the facilities have been constructed in

accordance with all state and local codes and plans and specifications approved by the City, which approvals shall be based on the standards in effect as of the Effective Date of this Agreement. Upon any such conveyance and acceptance, the City agrees to operate and maintain such facilities in good condition and working order and to provide wholesale wastewater service to the District in accordance with this Agreement. Conveyance will not affect the Developer's right to reimbursement from the District for the cost of any facilities.

**5.10 Oversizing**. In the event the City requires Developer to oversize any Interceptor facilities in excess of the capacity required for service to the Property, the City shall reimburse all such oversizing costs based on the incremental costs of construction of the oversized facilities relative to facilities that would be required for service to the Property only. When practicable, the oversizing costs shall be determined by alternate bidding of facilities to identify the incremental oversizing costs. The City shall reimburse the Developer for the incremental oversizing costs within thirty (30) days after acceptance by the City of the oversized facility.

**5.11 Water Impact Fees**.

(a) Subject to the water impact fee credit described below, the Developer shall be obligated to pay on behalf of the District to the City a water impact fee for each new retail water customer that connects to the District's water system and receives water service. The water impact fee paid for each new single family residential water connection to the District's water system shall be due and payable to the City prior to recordation of the final subdivision plat associated with such connection. For commercial development, the water impact fee shall be paid at the time of setting the water meter when the number of LUEs for the service connection are known. Any water impact fees adopted by the City will be consistent throughout the City's service area in which the Property is located.

(b) The City agrees to credit all water service connections within the Property with the payment of water impact fees in an amount equal to the total costs and expenses paid by the Developer to the City for the EST (including design, permitting and construction) and for the value of the EST Site (determined by Developer's acquisition cost). For purposes of administering the water impact fee credit, all water service connections within the Property shall be credited with the payment of water impact fees until the Developer completes construction of the EST. After completion of construction of the EST, the final amount of monies paid by the Developer for the EST shall be calculated. If for any reason the total amount of monies paid by Developer exceeds the impact fee credit available based on the final number of lots within the Property and land use, then the City shall be under no obligation to reimburse the extra costs paid by the Developer but acknowledges that the District may reimburse Developer for such costs that are not credited by the City.

(c) In consideration for the payment of water impact fees (including credited impact fees), the District will acquire the right to receive, and the City's commitment for, wholesale water service from the City's water system for the LUEs of service for which water impact fees have been paid or credited. Any water impact fees adopted by the City will be consistent throughout the City's service area in which the Property is located.

**5.12 Wastewater Impact Fees**.

(a) The District shall pay the City a wastewater impact fee for each new retail wastewater customer that connects to the District's wastewater system and receives wastewater service. The wastewater impact fee paid for each new single family residential retail wastewater connection to the District's wastewater

system shall be due and payable to the City prior to recordation of the final plat associated with such connection. For commercial development, the wastewater impact fee shall be paid at the time of setting the water meter when the number of wastewater LUEs for the service connection are known.

(b) In consideration of the payment of wastewater impact fees, the District will acquire the right to receive, and the City's commitment for, wastewater service from the City's wastewater system for the LUEs of service for which wastewater impact fees have been paid. Any wastewater impact fees adopted by the City will be consistent throughout the City's service area in which the Property is located.

(c) If any costs of the Interceptor are now or in the future included in the City's capital improvement plan, the District will receive a credit against the City's impact fees in an amount equal to the costs of the Interceptor.

**5.13 Offsite Real Property Acquisition.** If Developer is unable to acquire any real property interests located outside the boundaries of the Property required for any water or wastewater facilities after using good faith efforts to do so and after providing the City with written notice, the City shall acquire the offsite real property interests, using its powers of eminent domain if necessary, at Developer's sole cost and expense; subject to the terms and conditions set forth herein. In connection therewith, the City agrees to use good faith efforts to acquire interim possession and use rights that allow Developer to access the properties and proceed with construction of the offsite water and/or wastewater facilities. Within sixty (60) business days after receipt of the written request from Developer requesting that the City acquire the offsite real property interests, documenting its good faith efforts to secure the real property interests (including but not limited to offers, counteroffers, positions of the parties, valuation documentation, etc.), and confirming its intent to construct the facilities, the City shall provide a preliminary written estimate to Developer of projected costs and expenses related to acquisition of the offsite real property interests. Developer shall provide payment in the full amount of the written estimate to the City within thirty (30) days after receipt of the written estimate. Developer shall pay all costs and expenses incurred by the City relating to the acquisition of the offsite real property interests, including, without limitation, costs of negotiating easements with landowners, preparation of easement instruments and surveys, payment of a negotiated sum for purchase of an easement, and purchase or condemnation costs incurred by the City, including any litigation related thereto (including legal fees, witness costs, and court costs). In the event that the actual costs of easement acquisition exceed the original estimate, Developer shall provide payment of the additional amount within thirty (30) days of receipt of a written request for payment from the City. In the event that the actual costs of easement acquisition are less than this sum, the City shall promptly refund the excess amount to Developer.

**5.14 Service Providers.** Developer will have the right to select the providers of CATV, gas, electric, telephone, telecommunications and all other utilities and services, including solid waste collection and recycling services, or to provide "bundled" utilities within the Property.

**5.15 Fire Protection Services**. The City and the Developer understand and acknowledge that an emergency services district ("*ESD*") exists which includes all of the Property. The District and the Developer agree to cooperate with the ESD to provide fire protection services to the Property.

## VI.
## LIMITED PURPOSE ANNEXATION

Upon request of the City, the District agrees to enter into the Strategic Partnership Agreement with the City pursuant to Section 43.0751 of the Texas Local Government Code, which will allow the City to annex for limited purposes any commercial property within the District. Any such Strategic Partnership Agreement shall provide for sales tax revenues collected within such lands to be allocated equally between the City and the District.

## VII.
## AUTHORITY AND VESTING OF RIGHTS.

**7.01 Authority**. This Agreement is entered into, in part, under the statutory authority of Section 402.104, Texas Local Government Code and Section 212.172 of the *Texas Local Government Code*, which authorizes the City to make written contracts with the owners of land establishing lawful terms and considerations that the parties agree to be reasonable, appropriate, and not unduly restrictive of business activities. The Parties intend this Agreement to guarantee the continuation of the extraterritorial status of the Land as provided in this Agreement; authorize certain land uses and development on the Land; provide for the uniform review and approval of plats and development plans for the Land; provide exceptions to certain ordinances; and provide other terms and consideration, including the continuation of land uses after annexation of the Land.

**7.02 Vesting of Rights**. The City acknowledges the importance to Developer of having certainty and predictability of development regulations while planning such an extensive project that will be developed over a several years. Likewise, the Developer recognizes the City's need over time to modify its existing development regulations in response to the requirements of a growing City. As a result, Developer shall have statutory authority to develop the Property in accordance with the terms of this Agreement subject to any limitations contained in Chapter 245, Texas Local Government Code. This Agreement shall constitute the first permit in a series of applications for the purpose of vesting as contemplated in Chapter 245 of the Texas Local Government Code.

## VIII.
## TERM, TERMINATION, AMENDMENT

**8.01 Term.** The term of this Agreement will commence on the Effective Date and continue for twenty (20) years thereafter, unless terminated on an earlier date under other provisions of this Agreement or by written agreement of the City and Developer. Upon the expiration of twenty (20) years, this Agreement shall automatically renew for a term of fifteen (15) additional years, then again for a term of ten (10) additional years unless, prior to the expiration of the then-current term, Developer gives City written notice of its intent not to extend this Agreement.

**8.02 Termination and Amendment by Agreement**. This Agreement may be terminated or amended as to all of the Property at any time by mutual written agreement of the City, Developer, and the District, or may be terminated or amended only as to a portion of the Property by the mutual written agreement of the City, the owners of a majority of the portion of the Property affected by the amendment or termination, and the District. After full build-out of the District, this Agreement may be amended by mutual written agreement of the District and the City, and the joinder of Developer will not be required.

## IX.
## REMEDIES

**9.01 Notice and Opportunity to Cure**. If any Party defaults in its obligations under this Agreement, a non-defaulting Party must, prior to exercising a remedy available to that Party due to the default, give written notice to the defaulting Party, specifying the nature of the alleged default and the manner in which it can satisfactorily be cured, and to extend to the defaulting party at least 30 days from receipt of the notice to cure the default. If the nature of the default is such that it cannot reasonably be cured within the 30 day period, the commencement of the cure within the 30 day period and the diligent prosecution of the cure to completion will be deemed a cure within the cure period.

**9.02 Remedies for Default**. If a Party contends that another Party is in default of this Agreement, the non-defaulting Party shall get written notice of such contention to the defaulting Party, specifying the nature of the alleged default, and allow the applicable time period for cure of the default set forth in Section 10.01 above. The defaulting Party shall either cure the alleged default timely, or if the non-defaulting Party and defaulting Party agree in writing for an extension of time to cure, not later than the extended cure deadline or, within the time for cure stated in the non-defaulting Party's initial notice of default, give written notice to the non-defaulting Party denying the existence of the alleged default and invoking the following dispute resolution mechanisms. First, if the Parties shall mutually agree to submit to mediation, they shall attempt to resolve the dispute amicably. If mediation is unsuccessful or if one or both of the Parties declined to engage in mediation, then either party may institute legal proceedings in a state district court in Bastrop County, Texas, pursuing all available remedies at law or equity, including without limitation, a suit for specific performance and or a writ of mandamus in the event of a default by the City. All matters of fact and law shall be submitted to and determined by the court (subject to appeal). Each Party shall pay its own costs in attorneys' fees.

**9.03 Attorneys' Fees**. In the event that any matter relating to this Agreement results in the institution of legal proceedings by any Party to this Agreement, each Party in such proceeding shall be responsible for the expenses incurred by it in connection with such proceedings, including, without limitation, court costs and attorneys' fees.

## X.
## GENERAL PROVISIONS

**10.01 Notices.** Any notices given under this Agreement must be in writing and may be given: (i) by depositing it in the United States mail, certified, with return-receipt requested, addressed to the Party to be notified and with all charges prepaid; or (ii) by depositing it with Federal Express or another service guaranteeing "next day delivery", addressed to the Party to be notified and with all charges prepaid; (iii) by personally delivered delivering it to the Party, or any agent of the Party listed in this Agreement; or (iv) by facsimile or email with confirming copy sent by one of the other describe methods of notice set forth. Notice by United States mail will be effective on the earlier of the date of receipt for three days after the date of mailing. Notice given in any other manner will be effective only when received. For purposes of notice, the addresses of the parties will until changed as provided below, be as follows:

**ELGIN:** City of Elgin
P.O. Box 591
Elgin, Texas 78621
Attn: City Manager

**DEVELOPER:** Lund Farm Investment LLC

410 East 94th Street, Apartment 26A
New York, New York 10128

With Copy To: McLean & Howard, LLP
4301 Bull Creek Road, Suite 150
Austin, Texas 78731
Attn: Tony Corbett

The Parties may change their respective addresses or designate additional parties to receive copies of notices under this Agreement by giving at least five (5) days' written notice to the other Parties.

**10.02 Assignment.** This Agreement, and the rights of Developer hereunder, may be assigned by Developer, to a purchaser of all or a portion of the undeveloped portion of the Property. Any assignment will be in writing, specifically setting forth the assigned rights and obligations and be executed by the proposed assignee and a copy provided to the City. If Developer assigns its rights and obligations hereunder as to a portion of the Property, then the rights and obligations of any assignee and Developer will be severable, and Developer will not be liable for the nonperformance of the assignee and vice-versa. In the case of nonperformance by one developer, the City may pursue all remedies against that nonperforming developer, but will not impede development activities of any performing developer as a result of that nonperformance. This Agreement is not intended to be binding upon, or create any encumbrance to title as to, any ultimate consumer who purchases a fully developed and improved lot within the Property.

**10.03 Memorandum of Agreement**. A memorandum of this Agreement may be filed by the Developer in the Official Public Records of the County.

**10.04 Cooperation; Approvals**. The City, the District and Developer each agree to execute such further documents or instruments as may be necessary to evidence their agreements hereunder. In the event of any third party lawsuit or other claim relating to the validity of this Agreement or any actions taken hereunder, Developer and the City agree to cooperate in the defense of such suit or claim, as to use and to use their respective best efforts to resolve the suit or claim without diminution in their respective rights and obligations under this Agreement. Whenever the term "approve" or "approval" is used in this Agreement, the Party whose approval is required will not unreasonably withhold or delay it. Where approval is necessary, the Party seeking approval may request approval in writing. If a Party whose approval is requested fails to either approve this submittal or provide written comments specifically identifying the required changes within sixty (60) calendar days, the submittal, as submitted by the requesting Party, will be deemed to have been approved by the Party whose approval is requested.

**10.05 Severability; Waiver**. If any provision of this Agreement is illegal, invalid, or unenforceable, under present or future laws, it is the intention of the Parties that the remainder of this Agreement will not be affected, and in lieu of each illegal, invalid, or unenforceable provision, that a provision be added to this Agreement which is legal, valid, enforceable and is as similar in terms to the illegal, invalid or enforceable provision as is possible. Any failure by a Party to insist upon strict performance by the another Party of any material provision of this Agreement will not be deemed a waiver thereof or any other provision, and such Party may at any time thereafter insist upon strict performance of any and all provisions of this Agreement.

**10.06 Applicable Law and Venue**. The interpretation, performance, enforcement and validity of this Agreement is governed by the laws of the State of Texas. Venue will be in a court of appropriate jurisdiction in the County.

**10.07 Entire Agreement**. This Agreement contains the entire agreement of the Parties regarding the subject matter hereof. There are no other agreements or promises, oral or written, between the Parties regarding the subject matter of this Agreement. This Agreement can be amended only by written agreement signed by the Parties. This Agreement supersedes all other agreements between the Parties concerning the subject matter.

**10.08 Exhibits, Headings, Construction, and Counterparts**. All schedules and exhibits referred to in or attached to this Agreement are incorporated into and made a part of this Agreement for all purposes. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs. Wherever appropriate, words of the masculine gender may include the feminine or neuter, and the singular may include the plural, and vice-versa. The Parties acknowledge that each of them have been actively and equally involved in the negotiation of this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting party will not be employed in interpreting this Agreement or any exhibits hereto. If there is any conflict or any consistency between the provisions of this Agreement and otherwise applicable City ordinances, the terms of this Agreement will control. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument.

**10.09 Time**. Time is of the essence of this Agreement. In computing the number of days for purposes of this Agreement, all days will be counted, including Saturdays, Sundays, and legal holidays. However, if the final day of any time period falls on a Saturday, Sunday, or legal holiday, then the final day will be deemed to be the next day that is not a Saturday, Sunday, or legal holiday.

**10.10 Force Majeure**. If, for any reason of force majeure, any Party is rendered unable, wholly or in part, to carry out its obligations under this Agreement, then the Party whose performance is so affected shall give notice of the reasons in writing to the other parties within a reasonable time after the occurrence of the event or cause relied on, the obligation of the Party giving the notice, so far as it is affected by the force majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period. The term "*force majeure*" as used in this Agreement shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of the Public Enemy, orders or actions of any kind of government of the United States or of the State of Texas, or any civil or military authority, interactions, riots, epidemics, pandemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrest, restraints of government and people, civil disturbances, explosions, breakage or accidents to dams, machinery, pipelines, canals, or other structures , and any inability of a Party to perform on account of any other cause not reasonably within the control of the Party.

**10.11 Authority for Execution**. The City certifies, represents and warrants that the execution of this Agreement is duly authorized and adopted in conformity with its City ordinances. Developer hereby certifies, represents and warrants that the execution of this Agreement is duly authorized and adopted in conformity with the company agreement of Developer.

**10.12 Interested Parties**. Developer acknowledges that Texas Government Code Section 2252.908 (as amended, "*Section 2252.908*") requires disclosure of certain matters by contractors entering into a contract with a local government entity such as the City. Developer confirms that it has reviewed Section 2252.908 and, if required to do so, will (1) complete a Form 1295, using the unique identification number specified on page 1 of the Agreement, and electronically file it with the Texas Ethics Commission ("*TEC*"); and (2) submit the signed Form 1295, including the certification of filing number of the Form 1295 with the TEC, to the City at the same time the Developer executes and submits this Agreement to the City. Form 1295s

are available on the TEC's website at https://www.Endethics.state.tx.us/filinginfo/1295/. The Agreement is not effective until the requirements listed above are satisfied and any approval or award of the Agreement by the City is expressly made contingent upon Developer's compliance with these requirements. The signed Form 1295 may be submitted to the City in an electronic format.

**10.13 Conflicts of Interest**. Developer acknowledges that Texas Local Government Code Chapter 176 (as amended, "*Chapter 176*") requires the disclosure of certain matters by contractors doing business with or proposing to do business with local government entities such as the City. Developer confirms that it has reviewed Chapter 176 and, if required to do so, will complete and return Form CIQ promulgated by the TEC, which is available on the TEC's website at https://www.ethics.state.tx.us/forms/conflict/, within seven days of the date of submitting the Agreement to the City or within seven days of becoming aware of a matter that requires disclosure under Chapter 176, whichever is applicable.

**10.14 Verification Under Chapter 2271, Texas Government Code**. If required under Chapter 2271 of the Texas Government Code (as amended, "*Chapter 2271*"), Developer represents and warrants that, at the time of execution and delivery of this Agreement, neither Developer, nor any wholly or majority-owned subsidiary, parent company, or affiliate of Developer that exist to make a profit, boycott Israel or will boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Chapter 2271, to the extent such Chapter does not contravene applicable Federal law. As used in the foregoing verification, "boycott Israel" means 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 specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. Developer understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with Developer.

**10.15 Verification Under Subchapter F, Chapter 2252, Texas Government Code**. For purposes of Subchapter F of Chapter 2252 of the Texas Government Code (as amended, "*Subchapter F*"), Developer represents and warrants that, neither Developer, nor any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of Developer that exist to make a profit, are companies identified on a list prepared and maintained by the Texas Comptroller of Public Accounts (the "*Comptroller*") described within Subchapter F and posted on the Comptroller's internet website at:

https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf,
https://comptroller.texas.gov/purchasing/docs/iran-list.pdf, and
https://comptroller.texas.gov/purchasing/docs/fto-list.pdf.

The foregoing representation is made solely to comply with Subchapter F, to the extent such subchapter does not contravene applicable Federal law, and excludes companies that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan, Iran, or a foreign terrorist organization. Developer understands "affiliate" to mean any entity that controls, is controlled by, or is under common control with Developer.

**10.16 Exhibits.** The following exhibits are attached to this Agreement and incorporated herein by reference:

**Exhibit A - Description of Property**
**Exhibit B - Form of District Joinder Agreement**
**Exhibit C - Description of Collector Road Improvements**

| | |
|---|---|
| **Exhibit D -** | **Concept Plan** |
| **Exhibit E -** | **Description of Lund Road Improvements** |
| **Exhibit F -** | **Description of Interceptor** |
| **Exhibit G -** | **Description of Water Project** |
| **Exhibit H -** | **EST Site** |
| **Exhibit I -** | **Form of Water and Wastewater Services Agreement** |
| **Exhibit J -** | **Form of Consent Resolution** |
| **Exhibit K -** | **Variances to City Development Code** |
| **Exhibit L -** | **Form of Strategic Partnership Agreement** |
| **Exhibit M -** | **Parks Plan** |

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement on the dates indicated below to be effective as of the Effective Date.

**[The remainder of this page intentionally left blank.]**

NOTES:

1. THIS SURVEY HAS BEEN PREPARED UTILIZING A COMMITMENT FOR TITLE INSURANCE PREPARED BY **HERITAGE TITLE COMPANY OF AUSTIN, INC.**, G.F. NO. **202103847.** EFFECTIVE DATE**: SEPTEMBER 13, 2021.** PARTIES TO THIS TRANSACTION ARE RESPONSIBLE FOR VERIFICATION OF ALL EASEMENTS, COVENANTS AND CONDITIONS WHICH MAY AFFECT THIS TRACT BUT ARE NOT SHOWN HEREON.

2. THE BEARINGS SHOWN HEREON ARE BASED ON THE TEXAS COORDINATE SYSTEM, CENTRAL ZONE (4203) NAD 83.

3. TITLE COMMITMENT SCHEDULE B, ITEM 10

a. EASEMENT DATED APRIL 21, 1941, GRANTED BY ED PEARSON TO TEXAS POWER & LIGHT COMPANY, RECORDED IN VOLUME 105, PAGE 437, DEED RECORDS, BASTROP COUNTY, TEXAS. **AFFECTS, SEE SURVEY**

b. EASEMENT DATED APRIL 29, 1947, GRANTED BY JIM MOGONYE AND WIFE, ALVINA MOGONYE, TO TEXAS POWER & LIGHT COMPANY, RECORDED IN VOLUME 124, PAGE 122, DEED RECORDS, BASTROP COUNTY, TEXAS. **AFFECTS, SEE SURVEY**

c. EASEMENT DATED MARCH 12, 1949, GRANTED BY W. C. RIVERS TO TEXAS POWER & LIGHT COMPANY, RECORDED IN VOLUME 125, PAGE 613, DEED RECORDS, BASTROP COUNTY, TEXAS. **AFFECTS, SEE SURVEY**

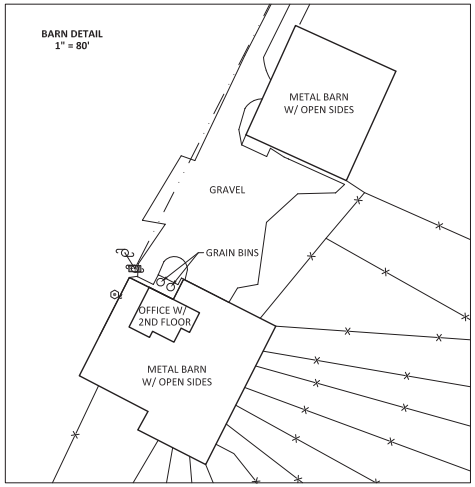
d. CHANNEL EASEMENT DATED SEPTEMBER 8, 1956, GRANTED BY JOHN L. NEWSTROM TO THE STATE OF TEXAS ACTING THROUGH THE STATE HIGHWAY COMMISSION, RECORDED IN VOLUME 144, PAGE 96, DEED RECORDS, BASTROP COUNTY, TEXAS. **AFFECTS, SEE SURVEY**

e. EASEMENT DATED OCTOBER 15, 1962, GRANTED BY JIM MOGONYE AND WIFE, ALBINA MOGONYE, TO TEXAS POWER & LIGHT COMPANY, RECORDED IN VOLUME 159, PAGE 167, DEED RECORDS, BASTROP COUNTY, TEXAS. **AFFECTS, SEE SURVEY**

f. RIGHT-OF-WAY EASEMENT DATED JULY 9, 1993, GRANTED BY FRED LUNDGREN, JR. TO AQUA WATER SUPPLY CORPORATION, INC., RECORDED IN VOLUME 694, PAGE 59, OFFICIAL RECORDS, BASTROP COUNTY, TEXAS. **AFFECTS, SEE SURVEY**

g. RIGHT-OF-WAY EASEMENT DATED JULY 9, 1993, GRANTED BY FRED LUNDGREN, JR. TO AQUA WATER SUPPLY CORPORATION, INC., RECORDED IN VOLUME 694, PAGE 60, OFFICIAL RECORDS, BASTROP COUNTY, TEXAS. **AFFECTS, SEE SURVEY**

**DID NOT RESEARCH OIL, GAS AND MINERAL LEASES**



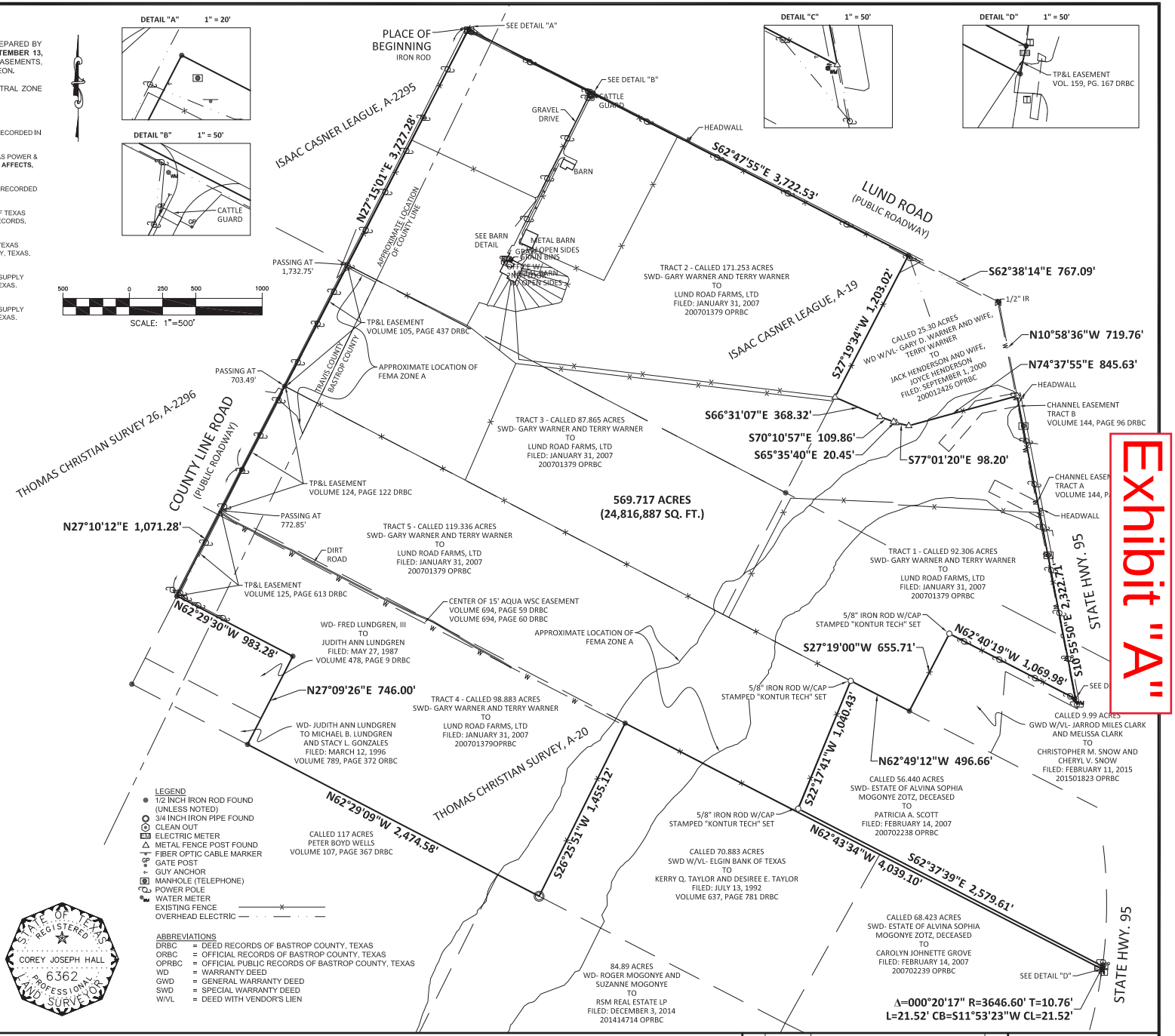




Exhibit "A"

LEGEND
- 1/2 INCH IRON ROD FOUND (UNLESS NOTED)
- 3/4 INCH IRON PIPE FOUND
- CLEAN OUT
- ELECTRIC METER
- METAL FENCE POST FOUND
- FIBER OPTIC CABLE MARKER
- GATE POST
- GUY ANCHOR
- MANHOLE (TELEPHONE)
- POWER POLE
- WATER METER
- EXISTING FENCE
- OVERHEAD ELECTRIC

ABBREVIATIONS

| | | |
|---|---|---|
| DRBC | = | DEED RECORDS OF BASTROP COUNTY, TEXAS |
| ORBC | = | OFFICIAL RECORDS OF BASTROP COUNTY, TEXAS |
| OPRBC | = | OFFICIAL PUBLIC RECORDS OF BASTROP COUNTY, TEXAS |
| WD | = | WARRANTY DEED |
| GWD | = | GENERAL WARRANTY DEED |
| SWD | = | SPECIAL WARRANTY DEED |
| W/VL | = | DEED WITH VENDOR'S LIEN |

**TO: HERITAGE TITLE COMPANY OF AUSTIN, INC.**
**RE: XIAOZHOU YANG**

THE UNDERSIGNED HEREBY CERTIFIES:
THIS SURVEY WAS MADE ON THE GROUND UNDER MY SUPERVISION ON **AUGUST 28, 2020**, AND IS A TRUE, CORRECT AND ACCURATE REPRESENTATION OF THE PROPERTY AS DETERMINED BY SURVEY, THE LINES AND DIMENSIONS OF SAID PROPERTY BEING AS INDICATED BY THE PLAT; THE SIZE, LOCATION AND TYPE OF BUILDINGS ARE AS SHOWN, ALL IMPROVEMENTS BEING WITHIN THE BOUNDARIES OF THE PROPERTY, AND SET BACK FROM THE PROPERTY LINES THE DISTANCES INDICATED. THERE ARE NO ENCROACHMENTS, CONFLICTS OR PROTRUSIONS, EXCEPT AS SHOWN HEREON, AND SAID PROPERTY HAS ACCESS TO AND FROM A DEDICATED ROADWAY.

ACCORDING TO THE FLOOD INSURANCE RATE MAP (FIRM) FOR BASTROP COUNTY, TEXAS, COMMUNITY PANEL NUMBERS **48021C0025E & 48021C0050E, EFFECTIVE JANUARY 19, 2006, AND** TRAVIS COUNTY, TEXAS COMMUNITY PANEL NUMBER **48453C0320H, EFFECTIVE SEPTEMBER 26, 2008**, THE SUBJECT TRACT IS LOCATED IN **ZONES "X & A"**, WHICH IN THIS CASE **IS PARTIALLY** LOCATED IN A SPECIAL FLOOD HAZARD AREA.

STATE OF TEXAS
REGISTERED
COREY JOSEPH HALL
6362
PROFESSIONAL
LAND SURVEYOR

COREY J. HALL, RPLS
TEXAS REGISTRATION NO. 6362


KONTUR TECHNICAL, LLC
26 WOODLAND LANE, ROUND ROCK, TEXAS 78664
TELEPHONE: (512) 360-0012 WWW.KON-TECH.COM
TX SURVEYING FIRM #10194591 TX ENGINEERING FIRM # F-21974


# LAND TITLE SURVEY

BEING A 569.717 ACRE (24,816,887 SQUARE FEET) TRACT OF LAND OUT OF THE ISAAC CASNER LEAGUE, A-19 AND THOMAS CHRISTIAN SURVEY, A-20, LOCATED IN BASTROP COUNTY, TEXAS, AND OUT OF THE ISAAC CASNER LEAGUE, A-2295 AND THOMAS CHRISTIAN SURVEY, A-2296, LOCATED IN TRAVIS COUNTY, TEXAS, SAID 569.717 ACRE TRACT BEING ALL OF TRACTS 1-5 AS CONVEYED IN A SPECIAL WARRANTY DEED FROM GARY WARNER AND TERRY WARNER TO LUND ROAD FARMS, LTD, FILED JANUARY 31, 2007 AND RECORDED IN DOCUMENT NO. 200701379 OF THE OFFICIAL PUBLIC RECORDS OF BASTROP COUNTY (OPRBC),

| NO. | DATE | REVISIONS | BY |
|---|---|---|---|
| 1 | 10/13/20 | LABELED EASEMENTS/ROADWAYS | CJH |
| 2 | 10/4/21 | UPDATE TITLE | BRC |

| | |
|---|---|
| DRAWN BY: | CJH |
| CHECKED BY: | CJH |
| DATE: | 08/28/20 |
| SCALE: | 1" = 500' |
| JOB NO.: | 4040.001 |

Exhibit "B"

**JOINDER AGREEMENT**

THIS JOINDER AGREEMENT (the "Joinder Agreement"), dated as of _____, _____, is executed by LUND FARM MUNICIPAL UTILITY DISTRICT ("*District*"), in connection with that certain Consent and Development Agreement (the "*Consent Agreement*") entered into by and between the CITY OF ELGIN, TEXAS, a home rule city located in Bastrop County, Texas (the "City") and LUND FARM INVESTMENT LLC, a Texas limited liability company ("*Developer*"), dated effective as of _____, _____. Capitalized terms used herein but not otherwise defined herein shall have the definitions provided in the Development Agreement.

In accordance with the third introductory paragraph of the Consent Agreement, a copy of which is attached hereto as Exhibit "A" and incorporated herein for all purposes, the District executes this Joinder Agreement in order to become a Party to the Consent Agreement. Accordingly, the District hereby agrees as follows with City and Developer:

1. The District acknowledges and confirms that it has received a copy of the Consent Agreement and the schedules and exhibits thereto.

2. The District hereby acknowledges, agrees, and confirms that, by its execution of this Joinder Agreement, the District shall automatically be deemed to be a Party to the Consent Agreement, and shall have all of the rights and obligations of the District with regard to property within the District thereunder as if it had originally executed the Consent Agreement. The District hereby ratifies, as of the date hereof, and agrees to be bound by all of the terms, provisions and conditions contained in the Consent Agreement applicable to it to the same effect as if it were an original Party thereto.

3. This Joinder Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Texas, and exclusive venue shall lie in Bastrop County, Texas.

IN WITNESS WHEREOF, the District has caused this Joinder Agreement to be duly executed by its authorized officer as of the day and year first above written.

**LUND FARM MUNICIPAL UTILITY DISTRICT**

By: _____

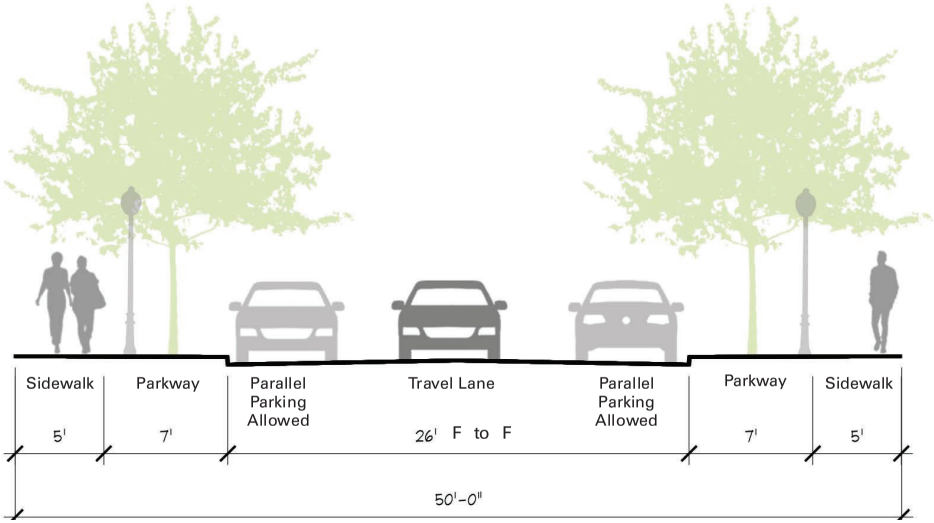
Name Printed: _____

Title: _____

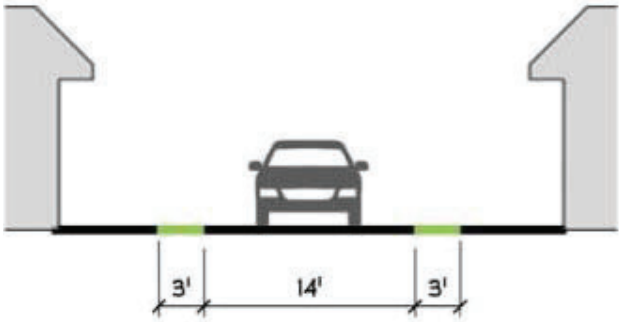
_____

Secretary

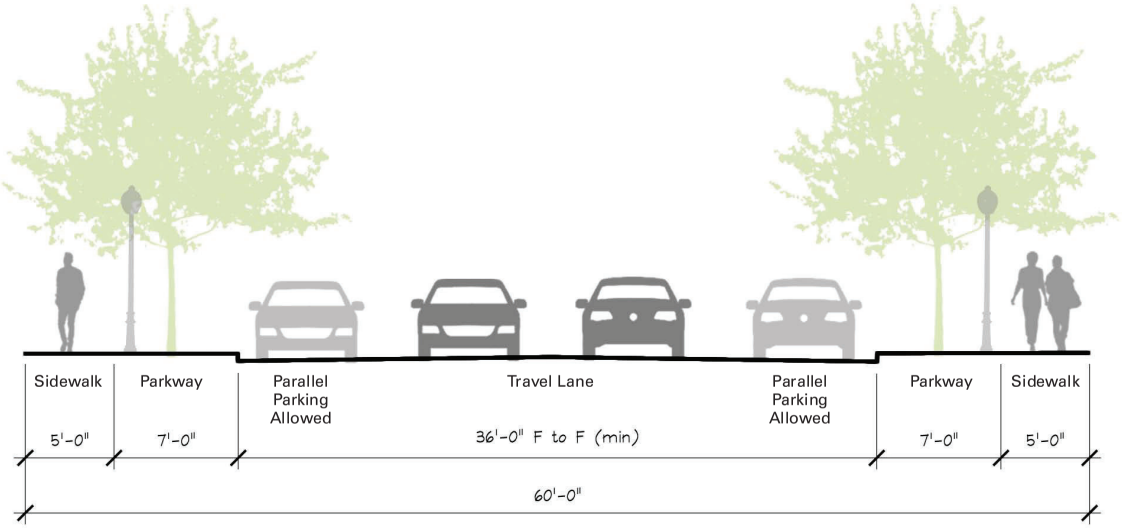
key map




## Residential street
50' ROW




## Alley
20' ROW




## Collector
60' ROW

TBG

# Lund Farm

exhibit c
description of collector road improvements

Elgin, Texas
05 / 01 / 2023

TBG
3232 E Cesar Chavez St.
Bldg 1, Suite 100
Austin, TX 78702

(512) 744 0757
tbg.partners.com

The information shown is based on the best information available and is subject to change without notice.

| SF Product Type | Approx. Yield | | Percentage | |
|---|---|---|---|---|
| 35'X120' ALLEY | 90 | 90 | 4.8% | 4.8% |
| 40'X120' ALLEY | 118 | 917 | 6.4% | 49.4% |
| 40'X120' FRONT | 799 | | 43.0% | |
| 45' X 120' ALLEY | 14 | 619 | 0.8% | 33.3% |
| 45'X120' FRONT | 605 | | 32.6% | |
| 50'X120' FRONT | 203 | 203 | 10.9% | 10.9% |
| 60'X120' FRONT | 27 | 27 | 1.5% | 1.5% |
| **SF TOTAL** | ± 1,856 | ± 1,856 | 100.0% | 100.0% |
| | | | | |
| Total Proposed Blocks | | | 85 | |
| Total Proposed Streets | | | 77,710 LF | |

| Total Site Acreage | 569.7 acres | |
|---|---|---|
| Multi-Family | +/- 38.5 ac | ± 648 un. |
| Mixed Use | +/- 7.5 ac | -- |
| FEMA Floodplain | +/- 62.9 ac | |
| Parkland | +/- 85.8 ac | |
| Detention | +/- 22.2 ac | |

**EXHIBIT "E" TO CONSENT AND DEVELOPMENT AGREEMENT**
**DESCRIPTION OF LUND ROAD IMPROVEMENTS**

The existing right-of-way for Lund Road is approximately 60 feet. Developer will dedicate public right-of-way to the City or County (as jointly specified by such parties) for the expansion of Lund Road along the entirety of the Property that abuts Lund Road. The right-of-way dedication shall not exceed forty feet (40') in width (1/2 of a total 80' right of way) and shall be dedicated in phases as subdivision platting of the lands that contain the right-of-way area progresses. The exact street cross section and improvements that would be provided by the Developer are to be confirmed through negotiations with the City/County. Monetary implications are as described in the Lund Farm MUD Term Sheet.

**EXHIBIT "F" TO CONSENT AND DEVELOPMENT AGREEMENT**
**DESCRIPTION OF INTERCEPTOR**

The Developer desires that the City provide wholesale wastewater services to the District. A wastewater memo showing the needed wastewater interceptor size to serve the District has been provided to the City for review as part of this submittal. The costs associated with oversizing the infrastructure beyond what is required for the District will be the responsibility of the City as outlined in the Lund Farms Consent and Development Agreement. A visual for the proposed offsite wastewater extension has been attached as part of this Exhibit.

N

0 300' 600' 1,200'

PROPERTY BOUNDARY
PROPOSED OFFSITE WASTEWATER LINE
FEMA FLOODPLAIN (+/-52.9 AC)
WETLANDS
5' CONTOURS

NOTE:
THE BOUNDARY OF WATERWAY BUFFER ZONES SHALL COINCIDE WITH THE BOUNDARIES OF THE FULLY DEVELOPED 100-YEAR FLOODPLAIN AS MODIFIED BY ANY PROPOSED IMPROVEMENTS. THE FULLY DEVELOPED 100-YEAR FLOODPLAIN WILL BE ESTABLISHED BY AN ENGINEERING STUDY REVIEWED AND APPROVED BY STAFF.

| REV | DESCRIPTION | DATE | APR |
|---|---|---|---|
| △ | | | |
| △ | | | |
| △ | | | |
| △ | | | |
| △ | | | |

DESIGNED BY:
REVIEWED BY:
DRAWN BY:

BGE

BROWN & GAY ENGINEERS, INC.
7000 NORTH MOPAC, SUITE 330 AUSTIN, TX 78731 TBPE Registration No. F-1046
TEL: 512.879.0400 www.brownandgay.com

# LUND ROAD FARMS
## DEVELOPMENT & CONSENT AGREEMENT

## EXHIBIT F – OFFSITE WASTEWATER

\\brownjoy.net\ypanzura\Regions\TXC\Projects\Lund_Farm_Investment_LLC\10400-Lund_Road_Farms\LD\02_ENGR\03_Documents\06_Development Agreement\20230501 Development Agreement Submittal\F_Wastewater Memo\F_Description of Interceptor.dwg Layout:

| | |
|---|---|
| **PROJECT:** | Lund Farms |
| **SUBJECT:** | Offsite Wastewater Interceptor |
| **CLIENT:** | Blossom Development |
| **DATE:** | May 1, 2023 |
| **BGE NO.:** | 10400-00 |
| **ATTACHMENTS:** | A – Concept Plan<br>B – Offsite Wastewater Interceptor Capacity Calculations<br>C – Plan View of Offsite Wastewater Interceptor Route<br>D – Elgin WWTP No.2 Report by TRC (September 2022) |
| **PREPARED BY:** | Kristal Harris, P.E. |

In support of the ongoing discussions regarding wastewater service for the proposed Lund Farms, we have prepared the following summary of calculations and exhibits. Generally, the information presented herein is based on City of Elgin (and TCEQ) design criteria, including assumptionsand formulas. The calculations are to be considered preliminary nature and not to be used for construction at this time. We will provide final construction drawings, specifications, calculations, and relevant support documents as the project continues through the various stages of entitlement.

## 1. Background

Blossom Development has purchased one large tract of land totaling 569.717 acres (the *Project*) located west of SH-95 and east of County Line Road, approximately 1.75 miles north of the intersection with FM 1100, partially in the ETJ of Elgin, Texas. The project is anticipated to contain up to 1,856 new single-family homes, multi-family, a mixed-use site, a public safety site, an amenity center, pocket parks, and a substantial amount of open space/parkland. A Concept Plan of the Project has been provided in **Exhibit A**. In order to service the development, a new wastewater interceptor is necessary to be designed and constructed from the City's existing infrastructure located with the Harvest Ridge development to the south of the Project. Included herein and attached are supporting calculations in **Exhibit B** and a preliminary route in **Exhibit C** for the proposed wastewater main.

Additionally, Lund Farms will also be responsible for contributing impact charges to the City as a pro rata share of the current expansion planned to its existing wastewater treatment plant.

## 2. Wastewater Capacity and Sizing

*See **Exhibit B** for calculation details

Standards and Assumptions Used:

- TCEQ wastewater flow criteria
- 245 gpd of wastewater flow per connection
- Infiltration Rate at 750 gpd per acre
- Design considerations for worst case under peak weather flows

a. Lund Farms (570 acres): 1,578 gpm PWWF (2,500 LUEs)
Proposed 15" Main (at 0.35% slope) 85% capacity = 1,767 gpm PWWF

### 3. Wastewater Treatment Plant Expansion (Pro Rata Cost Share)

The City of Elgin is proposing to construct a Wastewater Treatment Plant #2. Assuming that the City proceeds with a 1.5 mgd design to serve additional future development (Option B), the cost of the treatment plant and associated 27" trunk line is shown to be $37,173,000 in the report completed by TRC in September 2022, attached as **Exhibit D**. In the report, Lund Farms is shown to have 2,000 LUEs accounted for out of the 7,389 LUE total. Since the time that this report was put together, the adjusted number of LUEs that should be taken into consideration for the Lund Farms development is 2,500 as reflected in this memo. Therefore, the updated total number of LUEs to be served by Wastewater Treatment Plant #2 is 7,889. Lund Farms accounts for 31.3% of that total.

Therefore, the Lund Farms contributing wastewater flow (ultimate) to the City's proposed plant expansion and pro rata share are calculated as follows:

Lund Farms 2,500 LUEs / Total 7,839 LUEs = **31.9% Option B WWTP #2 & Trunk Main Construction Cost**

Example: If the construction costs ended up being $37,173,000 as reflected in the TRC report, then the Lund Farms 31.9% pro rata share would be approximately $11,855,148 or $4,742 per LUE (at 2,500 LUEs).

### 4. Summary

The above information is based on the current conceptual lot count of a maximum 2,500 living unit equivalent connections planned for the Lund Farms project. The assumptions follow typical design practices often recognized by both the City of Austin and/or TCEQ for local District projects. Capacity shares presented can be calculated with more precision as development progresses through design phase entitlements, including current construction costs, available bid information, and to be based on jurisdictionally approved construction plans. Pro rata shares may also be affected by changes to total lot counts that substantially deviate from the benchmarks and assumptions provided herein, and are not to be considered a straight-line interpolation. The engineer should be notified of any changes to the information provided herein and given an opportunity to provide updated calculations, if necessary.

This information is being presented for review and further discussions related to the topics presented. Should you have any question, please feel free to reach me at 512-686-3564 or by e-mail at KHarris@bgeinc.com

Sincerely,

Kristal L. Harris

Kristal Harris, P.E.

Attachment A - See previous Exhibit "D"
Attachment B - Off-site Wastewater Interceptor Capacity Calculations
Attachment C - See previous Exhibit "F"
Attachment D - Elgin WWTP #2 Report by TRC (Sept. 2022)

Attachment "B"

| Offsite Wastewater Interceptor Capacity Calculations | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Line # | From | To | Description | Pipe Diameter (in) | Upstream Slope (%) | Total # of LUEs | F | Peaking Factor | PDWF (gpm) | Total Area (AC) | I/I(gpm) | PWWF (gpm) | Depth of PDWF (in) | PDWF % Full | Depth of PWWF (in) | PWWF % Full | Velocity (FULL, ft/s) |
| WW-A | Harvest Ridge | Lund Farms | WW Line A | 15 | 0.35% | 2500 | 425.35 | 3.01 | **1280.92** | 570.00 | 296.88 | **1577.79** | 9.60 | 63.70% | 11.20 | 74.70% | 3.40 |

*LUEs - Refers to the number of Living Unit Equivalents being serviced by the wastewater line*
*"F" is the average dry-weather wastewater flow (ADWF) in gal/min based on 70 gal/day/capita for the service population. In this case, for single-family residential land use, it is 245 gal/day/dwelling unit - (based on City of Austin Utility Criteria Manual 2.9.4)*
*Peaking Factor = (18+(0.0206 × F) 0.5 )/(4+(0.0206 × F) 0.5 ) - (based on City of Austin Utilities Criteria Manual 2.9.4.A.4)*
*PDWF = Peak-dry weather flow: PDFW (gal/day) = ADWF (gal/day) * PF - (based on City of Austin Utilities Criteria Manual 2.9.4)*
*Total Area = Area of Project to be serviced by the wastewater line*
*(I/I) = Infiltration flow (gpd): 750 gpd/acre - (based on City of Austin Utilities Criteria Manual 2.9.4.A.3)*
*PWWF = Peak wet-weather flow: PWWF (gal/day) = ADWF x PF + I/I - (based on City of Austin Utilities Criteria Manual 2.9.4.A.4)*
*Depth of PDWF = Test to ensure that PDWF does not exceed pipe capacity*
*PDWF % Full = Tested in FlowMaster to ensure that PDWF pipe capacity does not exceed 65% - (based on City of Austin Utilities Criteria Manual 2.9.4.B.2.a)*
*Depth of PWWF = Tested in FlowMaster to ensure that PDWF does not exceed pipe capacity*
*PWWF % Full = Tested in FlowMaster to ensure that PWWF pipe capacity does not exceed 85% - (based on City of Austin Utilities Criteria Manual 2.9.4.B.2.a)*
*Velocity = Tested in FlowMaster to ensure that the PDWF has a minimum velocity of 2 ft/s - (based on City of Austin Utilities Criteria Manual 2.9.4.B.3)*

STATE OF TEXAS
KRISTAL L. HARRIS
138014
LICENSED
PROFESSIONAL ENGINEER

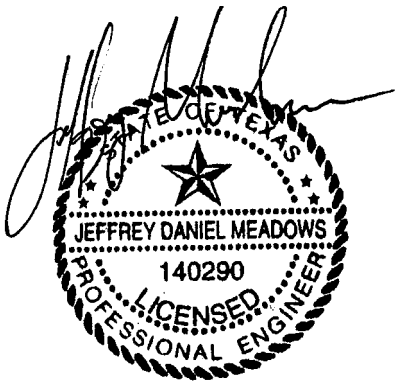
Attachment "D"

# CITY OF ELGIN

# WASTEWATER TREATMENT PLANT NO.2

**SEPTEMBER 2022**

09/07/2022




**Prepared By:**
TRC Engineering, Inc.
T.B.P.E. Firm No. F-8632
TRC Project No. 486501

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## APPENDICES

Exhibit A – Watershed & CCN Boundaries

Exhibit B – Development Map & Home Counts

Exhibit C – 1.0 MGD WWTP Layout (Expandable to 3.0 MGD)

Exhibit D – 1.5 MGD WWTP Layout (Expandable to 4.5 MGD)

# 1.0 INTRODUCTION

The City of Elgin has commissioned TRC Engineers, Inc. (TRC) to prepare an updated Engineering Study regarding the City's future Wastewater Treatment Plant No. 2 (WWTP No. 2). The original study was completed by TRC in 2018 and included flow projections through the year 2043 for both the Elm Creek and Willow Creek Watersheds. This updated report will provide flow projections through the year 2047 using the latest development information from the City. This report will include the following information:

- Future development map.
- Service area determination and map for the plant.
- General location of major sewer collection mains and opinion of probable construction costs.
- Opinion of probable construction costs for a 1.0 MGD and 1.5 MGD treatment plant.

The assumptions made for the purpose of this report are as follows:

- The determination for existing and future flows for the City's WWTP No. 2 is based on Texas Commission on Environmental Quality (TCEQ) "Chapter 217 – Design Criteria for Domestic Wastewater Systems" Section 217.32 (a).
- The sizing for collection mains is based on TCEQ "Chapter 217 – Design Criteria for Domestic Wastewater Systems" Section 217.53.
- The sizing for collection mains is preliminary and only takes into account contour elevations from GIS maps, not actual survey points.
- Sewer collection mains are sized with minimum pipe slope criteria.

The following studies prepared for the City of Elgin are referenced herein:

- *City of Elgin, Water and Wastewater Community Impact Fee – By TRC Engineers, July 2014.* This study provided wastewater design parameters specific to the City of Elgin.
- *City of Elgin, Wastewater Plant No.* 2 *– By TRC Engineers, December 2018.* This study provided the original flow projections and cost estimates for the WWTP No. 2.

## 1.1 WASTEWATER FLOWS

The wastewater flows shown in this report are described as "average" and "peak" flows. Average daily flow rates are a measure of the total amount of wastewater generated in a 24-hour period. Peak flow rates are higher than average flows and depict that the majority of wastewater flows happen over a short period of time. TCEQ defines the peak flow for a wastewater treatment plant as the maximum that occurs over a two-hour period for a single day. A peaking factor of 4.0 (times the average flow, which is recommended by TCEQ) was used in this study for all proposed and existing developments. The 4.0 peaking factor generally aligns with the City's wastewater treatment plants.

# 2.0 WILLOW CREEK AND ELM CREEK WATERSHEDS

Willow Creek and Elm Creek are the two watersheds that drain towards the proposed location of WWTP No. 2 (see **Exhibit A**); these watersheds encompass 24,185 acres of land. The watersheds extend as far as County Road 458 to the north, Littig Road to the south, County Line Road to the east, and FM 1100 to the west. Currently, 15,561 acres within these watersheds are located in the Elgin CCN, of which, 2,147 acres are within the Elgin City Limits. The remaining 8,624 acres (24,185 minus 15,561) are located outside of Elgin's CCN.

The City's CCN gives Elgin the exclusive right to provide retail sewer utility service to this geographical area. Chapter 13 of the Texas Water Code requires a CCN holder provide continuous and adequate service to the area within its CCN boundary.

As seen in **Exhibit A**, Willow Creek Watershed encompasses 13,781 acres and drains into Willow Creek, while Elm Creek Watershed covers 10,404 acres and drains into Elm Creek. These two creeks combine into Wilbarger Creek which ultimately drains to the Colorado River.

# 3.0 ELM CREEK WATERSHED

## 3.1 EXISTING LAND CONDITIONS

The Elm Creek watershed study area has approximately 10,404 acres, of which, 8,836 acres are located within the Elgin Sewer CCN and 2,147 acres are within the City limits. Table 3.1 below provides a description of the area and zoning within the City limits, CCN, and outside the CCN but within the watershed. The provided zones are for reference only; future reports may opt to calculate flow parameters based on zone approximations. The current report uses actual field data to calculate existing wastewater flows (see Section 3.2).

**Table 3.1**
**Elm Creek Watershed**

| Description | Zoned | Area (acres) |
|---|---|---|
| Within City Limits | (R-1) Single Family | 380 |
| | (R-3) Single Family, Duplex & Mobile | 563 |
| | (PDD) Planned Development District | 558 |
| | (A) Multifamily | 108 |
| | (C-1) Neighborhood Shopping Dist. | 4 |
| | (C-2) General Commercial District | 17 |
| | (C-3) Highway Industrial | 515 |
| | (I) Industrial | 2 |
| Total within City Limits | | 2,147 |
| Within CCN but outside City Limits | Not Zoned | 6,689 |
| Total in Elgin's CCN | | 8,836 |
| Within Watershed and out of CCN | Not Zoned | 1,568 |
| Elm Creek Watershed Total | | 10,404 |

The Elm Creek study area includes the areas listed in the above table.

## 3.2 Existing Sewer Production

The existing Elm Creek Lift Station receives flows from the Travis County Municipal Utility District 14 (TCMUD 14) and the portion of the City of Elgin (2,147 acres) located within Elm Creek watershed. Based on conversations with City staff in July 2022, the lift station receives flows between 8 to 12 million gallons per month or approximately 267,000 to 400,000 gallons per day. The flow information is based on estimates from the City and is not representative of any flow meter readings.

**Table 3.2**
**Flows Entering Elm Creek Lift Station**

| Average Flow | | Peak Flow (GPM)[2] |
|---|---|---|
| (gallons/day)[1] | (GPM) | |
| 330,000 | 230 | 920 |

[1] Determined by the given monthly flow rate from the City averaging 10 MG/month.
[2] Represents four times the average flow.

## 3.3 Future Production Within CCN

Future production within the Elm Creek watershed is likely to come from proposed housing developments that will be constructed over the next 5-25 years. A map of all proposed and under construction developments is provided in **Appendix B**. The estimated flows from all of these new developments are shown in Table 3.3. It is assumed that all developments shown in **Appendix B** will fall within the Elm Creek Watershed except for Brickston, Trinity Ranch, and Burleson Creek Estates. Brickston will drain towards the Willow Creek Watershed while Trinity Ranch and Burleson Creek Estates will drain towards the existing WWTP No. 1.

**Table 3.3**
**Proposed & Under Construction Developments Within Elm Creek Watershed**

| Development | People per Household(1) | Approx. Residential Units | Flow per Residential Unit (GPD)(2) | Average Flow (MGD) | Peak Flow (MGD) |
|---|---|---|---|---|---|
| **Subdivisions Under Construction** | | | | | |
| Harvest Ridge | 2.46 | 1171 | 246 | 0.288 | 1.152 |
| MUD 14 | | 1108 | | 0.273 | 1.090 |
| **Total** | | **2279** | | **0.561** | **2.242** |
| **Proposed Subdivisions & Developments** | | | | | |
| Cano | 2.46 | 8 | 246 | 0.002 | 0.008 |
| Creek's Crossing | | 287 | | 0.071 | 0.282 |
| Eagles Landing Phase 3 & 4 | | 215 | | 0.053 | 0.212 |
| Eagle's Landing Phase 5 | | 215 | | 0.053 | 0.212 |
| Larson Tract | | 840 | | 0.207 | 0.827 |
| Briarwood | | 774 | | 0.190 | 0.762 |
| Lund Farms | | 2000 | | 0.492 | 1.968 |
| Poth Tract | | 106 | | 0.026 | 0.104 |
| Northside Meadows | | 229 | | 0.056 | 0.225 |
| Stone Creek Ranch | | 407 | | 0.100 | 0.400 |
| **Total** | | **5110** | | **1.250** | **5.00** |
| **Combined Total** | | **7389** | | **1.811** | **7.242** |

(1) From Impact Fee Study.
(2) People per home times avg. production of 100 gallons per person per day.

Currently, four pipes discharge into the existing Elm Creek Lift Station; two 6" force mains, one 24" gravity main and one 12" gravity main. The combined capacity of these pipes is approximately 5,722 GPM (8.24 MGD), which is greater than the 7.2 mgd peak flow shown in Table 3.3.

## 3.4 Future Sewer Production Within Entire Watershed

In addition to the proposed developments, TRC assumed an additional 25% of residential units would be built within the Elm Creek Watershed to anticipate future development over the next 25 years. Table 3.4 shows the projected wastewater production for the year 2047 within the entire Elm Creek Watershed.

**Table 3.4**
**Elm Creek Entire Watershed Year 2047**

| Approx. Residential Units | Flow per Residential Unit GPD (1) | Average Flow (MGD) | Peak Flow (MGD) |
|---|---|---|---|
| 9,236 | 246 | 2.27 | 9.09 |

(1) 2.46 People per home times avg. waste of 100 gallons per person per day.

## 3.5 Future Sewer Trunk Line to Serve Elm Creek Watershed

Based on results from Sections 3.3 and 3.4 above, a 36” sewer trunk line would be sufficient to gravity flow the Elm Creek CCN area (Peak Flow 7.24 MGD) or the Elm Creek entire watershed (Peak Flow 9.09 MGD). This line would follow the existing low-level areas of Elm Creek and would extend from the existing Elm Creek Lift Station to the proposed WWTP No. 2 site. Table 3.5 provides the probable construction cost for the 36” pipe.

**Table 3.5**
**Opinion of Probable Construction Cost for 36” Trunk Line**

| Description | Unit | Quantity | Unit Cost | Subtotal |
|---|---|---|---|---|
| 36" Sewer Main | LF | 22,423 | $360 | $8,073,000 |
| Manholes | EA | 45 | $10,000 | $450,000 |
| Connect to Ex. Pump Station | LS | 1 | $15,000 | $15,000 |
| OSHA Trench Protection | LF | 22,423 | $2 | $45,000 |
| Video Sanitary Sewer | LF | 22,423 | $3 | $68,000 |
| SWPPP | LS | 1 | $30,000 | $30,000 |
| Land Acquisition (20' Easement) | AC | 10.3 | $20,000 | $206,000 |
| | | | Subtotal | $8,887,000 |
| | | | Engineering and Contingency (30%) | $2,667,000 |
| | | | **Total** | **$11,554,000** |

## 3.6 Elm Creek Lift Station

The Elm Creek Lift Station currently receives wastewater flows generated within the Elm Creek watershed, as shown on **Exhibit A**, and pumps the flow to the existing wastewater treatment plant. The use of this station will play an important role in determining how wastewater flow production is split between the Elm Creek drainage basin and the remaining part of the City's Little Sandy Creek watershed, which gravity feeds into the existing wastewater treatment plant.

Based on field measurements performed by City and TRC personnel, the existing pumping units have capacities of 685 GPM, 620 GPM and 627 GPM, which equates to a firm station capacity (with single largest unit out of service) of 1,247 GPM (1.80 MGD). As previously stated, the lift station currently pumps approximately 330,000 gallons per day on an average daily basis.

From the lift station, the wastewater is pumped through a 16" force main to the existing wastewater treatment plant. Using a maximum pipeline velocity of 6 feet per second, the pipeline has a maximum capacity of approximately 3,744 GPM (5.39 MGD).

When the Wastewater Plant No. 2 is constructed and as additional growth occurs within the City's CCN, City Staff will want to monitor flows at each plant and determine if the flows from the lift station should be diverted away from the existing plant and sent to Plant No. 2. It may be that only a fraction of the flow is diverted, depending on how much growth occurs within the City's current sewer collection system versus that which occurs within the Willow and Elm Creek Watersheds.

## 3.7 Summary

As described in Sections 3.3 and 3.4, this watershed is expected to experience significant growth within the next 25 years, especially within the CCN area, since it is close to the City of Elgin city limits and amenities. TRC provided an opinion of probable cost for a 36" trunk line ($11,554,000) to gravity flow from the existing Elm Creek Lift Station to the proposed WWTP No. 2. The exiting wastewater treatment plant is scheduled for updates and expansion with additional capacity for another 1.0 MGD.

# 4.0 WILLOW CREEK WATERSHED

## 4.1 Existing Land Conditions

The Willow Creek Watershed study area covers approximately 13,781 acres, of which 6,725 acres are located within the Elgin Sewer CCN. Table 4.1 provides a description of the area and zoning within the watershed. The provided zones are for reference only; future reports may opt to calculate flow parameters based on zone approximations.

**Table 4.1**
**Willow Creek Watershed**

| Description | Zoned | Area (acres) |
|---|---|---|
| Total in Elgin's CCN | Not Zoned | 6,725 |
| Within Watershed and out of CCN | Not Zoned | 7,056 |
| Elm Creek Watershed Total | | 13,781 |

## 4.2 Existing Sewer Production

Currently, there is no wastewater service to this area. The existing sanitary sewer needs are handled with on-site septic tanks. The amount of wastewater flow served by existing on-site septic systems is unknown and is not part of this study.

## 4.3 Immediate Sewer needs "Brickston Development"

Brickston is a proposed 675-acre development that is set to start construction in the near future. The development will bring 2,600 living unit equivalents (LUEs) to the area (see attached **Exhibit B** for approximate location). This development is currently under negotiations with the City for disposing sewer flows into the new WWTP No. 2. Table 4.2 shows the projected wastewater production from the planned development.

**Table 4.2**
**Brickston Development**

| Zoning | People per Household(1) | Approx. Residential Units(3) | LUE Conversion(4) | Flow/LUE(2) (GPD) | Average Flow (MGD) | Peak Flow (MGD) |
|---|---|---|---|---|---|---|
| Single Family | 2.46 | 1909 | 1 | 246 | 0.47 | 1.88 |
| Multifamily | 1.23 | 476 | 0.5 | 246 | 0.058 | 0.232 |
| Duplex | 1.72 | 112 | .7 | 246 | .019 | .076 |
| Elem. Schools | - | 1 | 15 | 246 | .0037 | .015 |
| EMS/Amenity Site | - | 1 | 10 | 246 | .0025 | .01 |
| Commercial | | 4.37 | 80 | 246 | .086 | .08 |
| | | | | TOTAL | 0.64 | 2.56 |

(1) From Impact Fee Study
(2) People per home times avg. waste of 100 gallons per person per day
(3) From preliminary Brickston Development Plans
(4) Travis County recommended values

## 4.4 Future Production within CCN

TRC assumed 20% of the total agricultural areas would become developed residential areas, to anticipate future development in the next 25 years within the CCN of Willow Creek watershed. This was determined by looking at actual properties that are likely to be developed, on an assumed population growth of 8% per year, and on a density of 0.3 people per acre. Table 4.3 shows the projected wastewater production for the year 2047.

**Table 4.3**
**Willow Creek (CCN Area) year 2047**

| Projected Population[4] | People per Household[1] | Approx. Residential Units | Flow per Residential Unity GPD[3] | Average Flow (MGD) | Peak Flow (MGD) |
|---|---|---|---|---|---|
| 13,813 | 2.46 | 5,615 | 246 | 1.38 | 5.52 |

(1) From Impact Fee Study.
(2) Assumed 4 residential units per acre.
(3) People per home times avg. waste of 100 gallons per person per day.
(4) Population determined by 8% growth/yr. of current population for the next 25 years.

## 4.5 Future Production within Entire Watershed

TRC assumed 20% of the total agricultural areas would become developed residential areas, to anticipate future development in the next 25 years within Willow Creek watershed. This was determined by looking at actual properties that are likely to be developed, on an assumed population growth of 8% per year, and on a density of 0.3 people per acre. Table 4.4 shows the projected wastewater production for the year 2047.

**Table 4.4**
**Willow Creek Entire watershed year 2047**

| Projected Population[4] | People per Household[1] | Approx. Residential Units | Flow per Residential GPD[3] | Average Flow (MGD) | Peak Flow (MGD) |
|---|---|---|---|---|---|
| 28,311 | 2.46 | 11,508 | 246 | 2.38 | 11.32 |

(1) From Impact Fee Study.
(2) Assumed 4 residential units per acre.
(3) People per home times avg. waste of 100 gallons per person per day.
(4) Population determined by 8% growth/yr. of current population for the next 25 years.

## 4.6 Sewer Trunk Line to Serve Brickston Development

To serve only the Brickston Development, a 21” trunk line would be required. This line would follow the existing low-level areas of Willow Creek and would extend from US 290 to the proposed WWTP No. 2 site.

**Table 4.5**
**21" Trunk Line Opinion of Probable Construction Cost**

| Description | Unit | Quantity | Unit Cost | Subtotal |
|---|---|---|---|---|
| 21" Sewer Main | LF | 11,980 | $190 | $2,277,000 |
| Manholes | EA | 30 | $10,000 | $300,000 |
| US 290 Bore | LS | 1 | $200,000 | $200,000 |
| OSHA Trench Protection | LF | 11,980 | $2 | $24,000 |
| Video Sanitary Sewer | LF | 11,980 | $3 | $36,000 |
| SWPPP | LS | 1 | $30,000 | $30,000 |
| Land Acquisition (20' Easement) | AC | 5.5 | $20,000 | $110,000 |
| | | | Subtotal | $2,977,000 |
| | | | Engineering and Contingency (30%) | $894,000 |
| | | | **Total** | **$3,871,000** |

## 4.7 Sewer Trunk Line to Serve Willow Creek Watershed

Based on results from Sections 4.4 and 4.5 a 27” sewer trunk line would be sufficient to gravity flow the Willow Creek CCN area (Peak Flow 5.52 MGD), and a 36” sewer trunk line would have capacity for the Willow Creek entire watershed (Peak Flow 11.32 MGD). At present time, TRC recommends focusing/serving the developments within the CCN; this is a requirement of Chapter 13 of the Texas Water Code. The smaller 27” trunk line would connect the CCN area within the watershed to the future WWTP No. 2. This line would follow the existing low-level areas of Willow Creek and would extend from US 290 to the proposed WWTP No. 2 site.

**Table 4.6**
**27" Trunk Line Opinion of Probable Construction Cost**

| Description | Unit | Quantity | Unit Cost | Subtotal |
|---|---|---|---|---|
| 27" Sewer Main | LF | 11,980 | $280 | $3,355,000 |
| Manholes | EA | 30 | $10,000 | $300,000 |
| US 290 Bore | LS | 1 | $225,000 | $225,000 |
| OSHA Trench Protection | LF | 11,980 | $2 | $24,000 |
| Video Sanitary Sewer | LF | 11,980 | $3 | $36,000 |
| SWPPP | LS | 1 | $30,000 | $30,000 |
| Land Acquisition (20' Easement) | AC | 5.5 | $20,000 | $110,000 |
| | | | Subtotal | $4,080,000 |
| | | | Engineering and Contingency (30%) | $1,224,000 |
| | | | **Total** | **$5,304,000** |

## 4.8 Summary

As described in Sections 4.4 and 4.5, this watershed is expected to experience significant growth within the next 25 years, especially within the CCN area, since it is close to US 290 highway and Elgin city limits and its amenities. TRC provided an opinion of probable cost for an 21” trunk line ($3,871,000) to gravity flow from the future Brickston

Development to the proposed WWTP No. 2; TRC also provided an opinion of probable cost for a 27" trunk line ($5,304,000) from US 290 highway to the future WWTP No. 2. TRC considers the 27" trunk line the desirable construction option since it can accommodate future development in the area for decades to come.

# 5.0 WASTEWATER TREATMENT PLANT

This section discusses the construction of a new wastewater treatment plant to treat wastewater flows produced within the Elm Creek and Willow Creek drainage basins shown on **Exhibit A**. Two options are presented for the treatment plant size: Option 1 consists of the plant being sized to treat primarily only the needs of the Brickston development, with minimal excess capacity for future development, while Option 2 consists of the plant being sized to treat the Brickston Development flows plus additional future flows developed within the drainage basins. The two options are discussed further below.

The new plant would be located in the southern portion of the drainage basins to allow wastewater production to be transported through the sewer collection system by gravity to the lowest ground elevation within the basins as shown on **Exhibit A**. A raw sewage pump station would be provided to receive the wastewater from the collection system and pump it into the above-ground plant structures. The pump station would be located near the vicinity of the plant site or within the site depending on ground topography.

The proposed plant would be expected to have the same effluent criteria parameters (as determined by TCEQ) to that of the City's existing wastewater treatment plant and would have similar plant components including a raw sewage pump station, influent screening, aeration basins, final clarifier basins, disinfection, tertiary filtration, sludge handling and chemical feed. A small operations/electrical building would be included.

## 5.1 OPTION 1: PLANT SIZED FOR DEVELOPMENT WITH MINIMAL EXCESS CAPACITY

As previously discussed, the anticipated average daily flow from the Brickston Development is 0.64 MGD upon total build-out. It is recommended that a plant capacity of 1.0 MGD be used to allow for some additional growth and to make it more easily expandable (assuming Option 2 is not the selected option). Note the following:

- If Option 1 is selected, the plant site can be expanded in the future as other drainage basin development occurs.

- Depending on how long it takes for the Brickston Development to build out, the Option 1 plant could treat flows produced from other developed areas within the drainage basin, but receipt of flows other than from Brickston would require the plant expansion to occur sooner than anticipated.

As shown in Table 5.1 below, the opinion of probable construction cost for a 1,000,000 gal/day wastewater treatment plant as described herein is $26,379,000, which includes 30% for engineering and contingency.

**Table 5.1**
**1.0 MGD Wastewater Treatment plant**
**Opinion of Probable Construction Cost**

| Description | Total |
|---|---|
| Site Work and Drainage | $354,000 |
| Raw Sewage Lift Station | $1,416,000 |
| Screenings Channel | $354,000 |
| Aeration Basins | $826,000 |
| Blowers | $413,000 |
| Clarifier Flow Split | $142,000 |
| Final Clarifiers | $1,416,000 |
| Chlorine Basins Flow Split | $71,000 |
| Site Work and Drainage | $450,000 |
| Raw Sewage LS | $1,798,000 |
| Screenings Channel | $450,000 |
| Aeration Basins | $1,049,000 |
| Blowers | $525,000 |
| Clarifier Flow Split | $180,000 |
| Final Clarifiers | $1,798,000 |
| Chlorine Basins Flow Split | $90,000 |
| Chlorine Basins | $375,000 |
| Tertiary Filters and NPW | $1,498,000 |
| Sludge Thickener | $600,000 |
| Aerobic Digesters (2) | $899,000 |
| Sludge Dewatering | $2,247,000 |
| Chemical Feed Building | $525,000 |
| Effluent Flow Metering Box | $90,000 |
| Yard Piping | $450,000 |
| Operations Building | $450,000 |
| Outfall Structure | $150,000 |
| Electrical | $2,247,000 |
| Subtotal | $15,871,000 |
| Contractor P/OH (15%) | $2,381,000 |
| Contractor Bonds/Insurance/Mobilization (8%) | $1,269,700 |
| **Total Construction** | **$19,522,000** |
| Engineering & Contingency (30%) | $5,587,000 |
| Land Acquisition | $1,000,000 |
| **Project Total** | **$26,379,000** |

## 5.2 Option 2: Plant Sized for Development with Additional Capacity

For this option, the new plant would be sized to treat the wastewater flow produced from the Brickston development and provide additional capacity for future development within

the two drainage basins as shown on **Exhibit A**. This option is provided for consideration because there are "economies of scale" associated with building a larger plant.

Consideration should be given to constructing a plant larger than what is required for the Brickston development because additional development will occur within the combined 15,561-acre drainage basins (area within City's current CCN). Drawings for planned developments within the two drainage basins currently total 7,389 living units equating to a wastewater flow production of 1.81 MGD (average daily flow).

As described in Sections 3.4 and 4.5 herein, the drainage basin total buildout could produce as much as 4.65 MGD of wastewater flow. It's not reasonable to presume this amount of growth would occur within a time frame that the capacity of a new treatment plant should be contemplated to handle this much flow. Thus, a determination must be made as to what plant flow should be considered to handle the planned development and allow for reasonably-expected growth.

One likely scenario would be to construct a plant with an average daily capacity of 1.50 MGD, providing an excess capacity of 0.86 MGD above that required by the development. This amount of excess capacity equates to approximately 3,496 additional single-family units for a total of 6,096 units that could be served by the plant. The plant could then be expanded in 1.50 MGD increments.

The opinion of probable construction cost for a 1.50 MGD wastewater treatment plant as described herein is $31,869,000. Table 5.2 provides a cost breakdown.

**Table 5.2**
**1.50 MGD Wastewater Treatment plant**
**Opinion of Probable Construction Cost**

| Description | Total |
|---|---:|
| Site Work and Drainage | $521,000 |
| Raw Sewage Lift Station | $2,084,000 |
| Screenings Channel | $456,000 |
| Aeration Basins | $1,628,000 |
| Blowers | $782,000 |
| Clarifier Flow Split | $157,000 |
| Final Clarifiers | $2,279,000 |
| Chlorine Basins Flow Split | $79,000 |
| Chlorine Basins | $587,000 |
| Tertiary Filters and NPW | $1,693,000 |
| Sludge Thickener | $600,000 |
| Aerobic Digesters (2) | $1,368,000 |
| Sludge Dewatering | $2,247,000 |
| Chemical Feed Building | $587,000 |
| Effluent Flow Metering Box | $105,000 |
| Yard Piping | $652,000 |

**Table 5.2**
**1.50 MGD Wastewater Treatment plant**
**Opinion of Probable Construction Cost**

| Description | Total |
|---|---|
| Operations Building | $450,000 |
| Outfall Structure | $163,000 |
| Electrical | $2,866,000 |
| Subtotal | $19,304,000 |
| Contractor P/OH (15%) | $2,896,000 |
| Contractor Bonds/Insurance/Mobilization (8%) | $1,545,000 |
| **Total Construction** | **$23,745,000** |
| Engineering & Contingency (15%) | $7,124,000 |
| Land Acquisition | $1,000,000 |
| **Project Total** | **$31,869,000** |

## 6.0 CONCLUSIONS

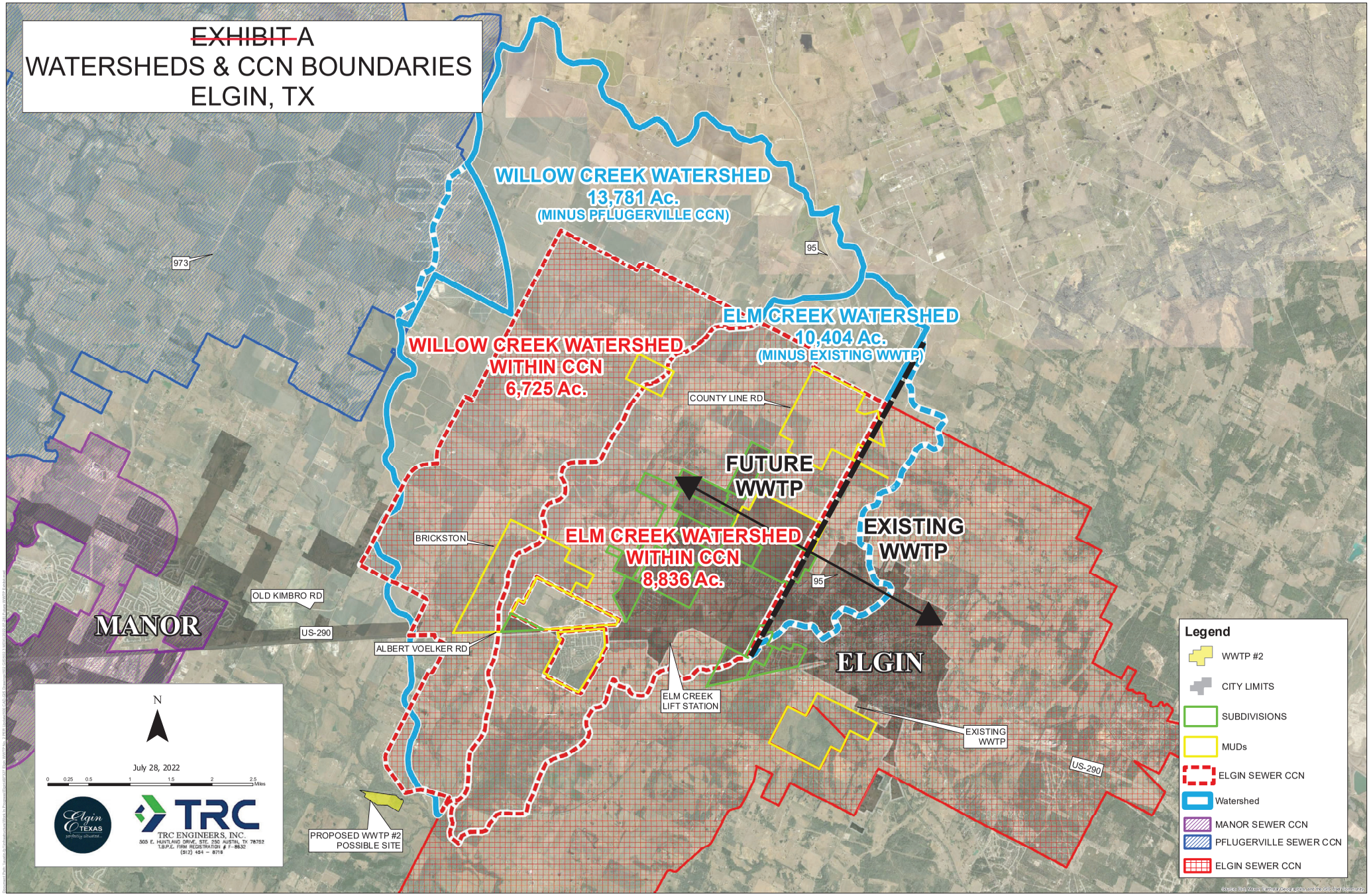
The City of Elgin could experience considerable growth in the near future as both Elm Creek and Willow Creek watersheds are expected to receive multiple large developments to satisfy the existing housing demand. Currently, the Willow Creek watershed has Brickston Development set to begin construction in the near future; this development alone may bring up to 7,000 new residents to the area. In addition, there are multiple residential developments planned in the Elm Creek watershed, which are mostly located along County Line Rd. and US 290. TRC has examined multiple construction scenarios to satisfy the projected demands, as summarized in Table 6.1:

**Table 6.1**
**Construction Scenarios to Satisfy Wastewater Projections**

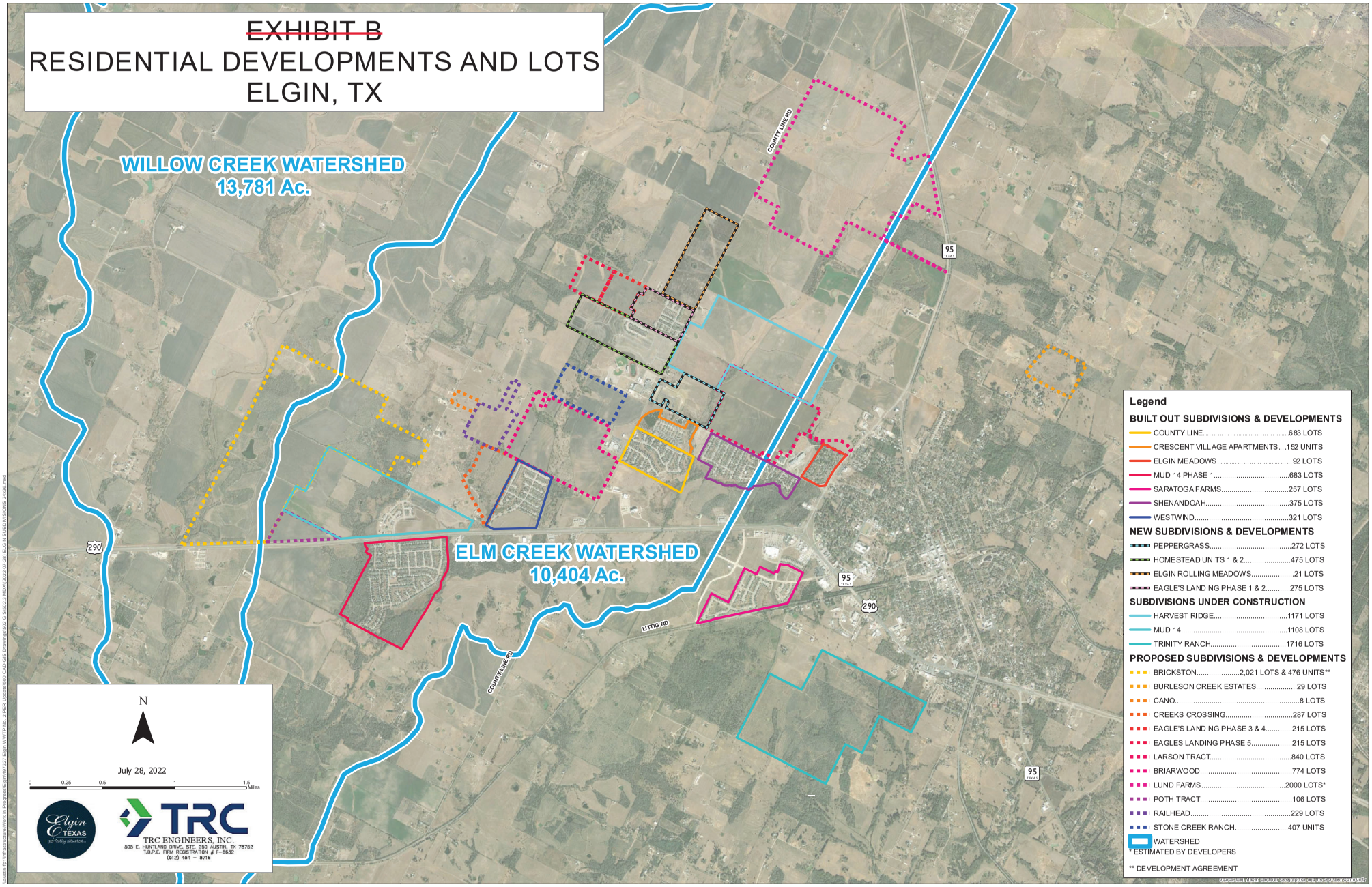
| Description | Subtotal |
|---|---|
| **OPTION 1 (Serves Brickston with Minimal Excess Capacity)** | |
| 1.0 MGD Wastewater Treatment Plant | $25,814,000 |
| 21" Trunk Line from Brickston | $3,871,000 |
| **Total** | **$30,250,000** |
| **OPTION 2 (Serves Additional Future Development)** | |
| 1.50 MGD Wastewater Treatment Plant | $31,195,000 |
| 27" Trunk Line from US 290 WWTP No. 2 | $5,304,000 |
| **Total** | **$37,173,000** |
| **36" Trunk Main to Relieve Elm Creek Lift Station** | **$11,554,000** |

From the above options, TRC recommends Option 2 to the City of Elgin. Option 2 provides the City with the additional capacity needed to handle the exponential growth that will result from all of the planned developments.

# ~~EXHIBIT~~ A
# WATERSHEDS & CCN BOUNDARIES
# ELGIN, TX



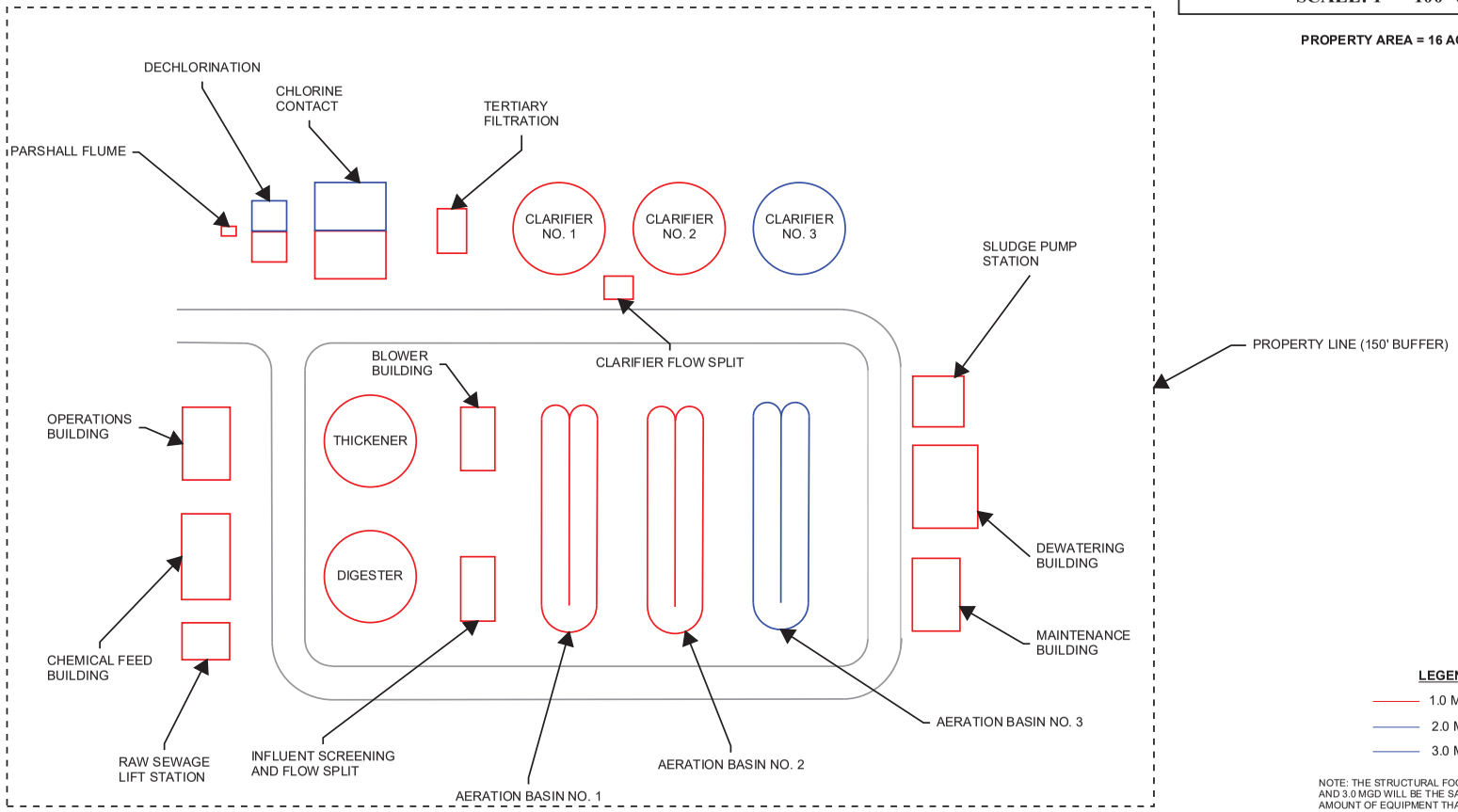
# ~~EXHIBIT B~~
# RESIDENTIAL DEVELOPMENTS AND LOTS
# ELGIN, TX



~~EXHIBIT C~~

**CITY OF ELGIN**
**WASTEWATER TREATMENT PLANT NO. 2**
**1.0 MGD (BUILDOUT TO 3.0 MGD)**
**SCALE: 1" = 100'-0"**

**PROPERTY AREA = 16 ACRES**




**LEGEND**

- 1.0 MGD
- 2.0 MGD
- 3.0 MGD

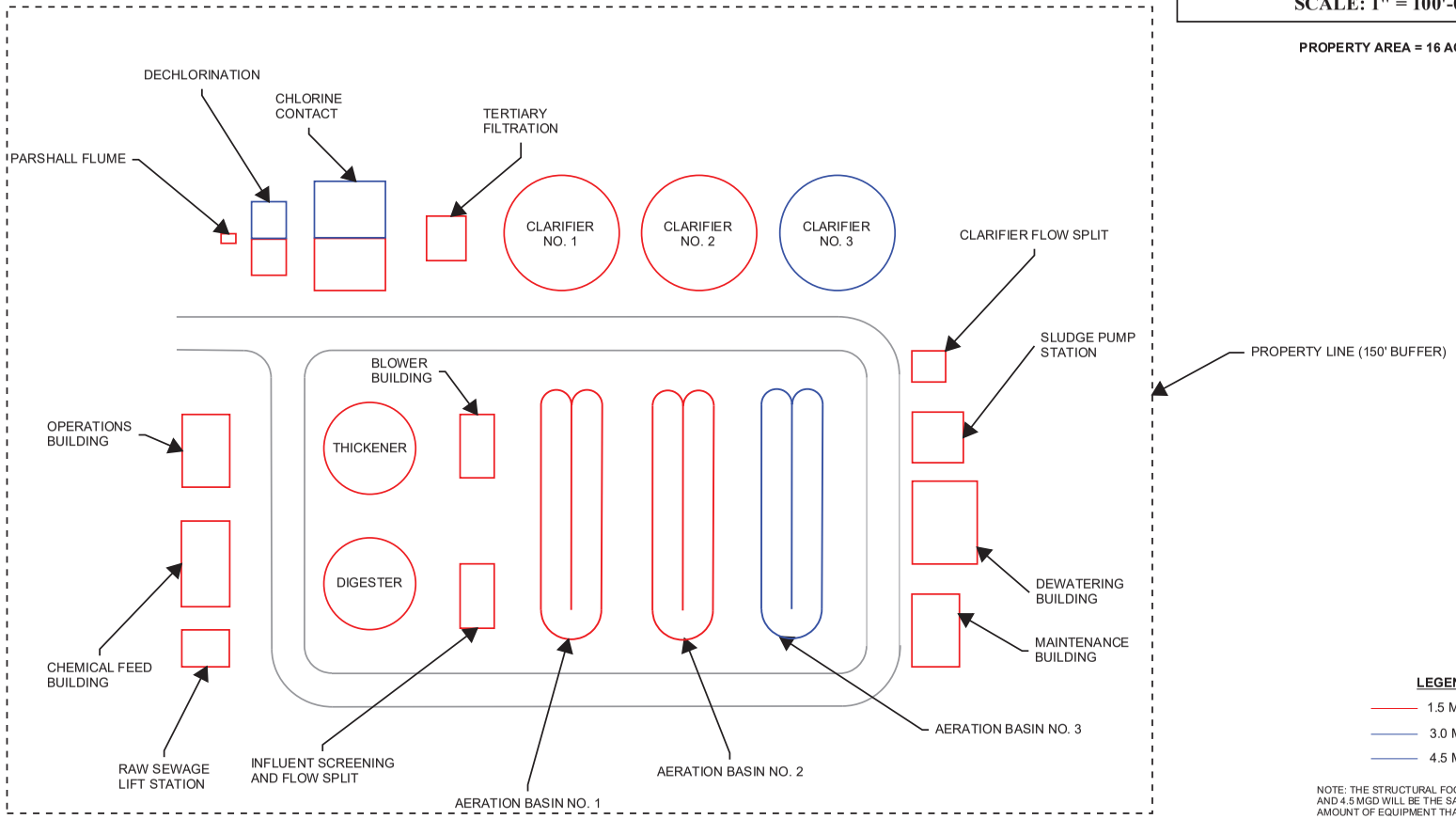
NOTE: THE STRUCTURAL FOOTPRINTS OF 2.0 MGD AND 3.0 MGD WILL BE THE SAME, HOWEVER, THE AMOUNT OF EQUIPMENT THAT WILL BE INSTALLED WILL BE LESS FOR 2.0 MGD THAN FOR 3.0 MGD.


TRC ENGINEERS, INC.
505 E. HUNTLAND DRIVE, STE. 250 AUSTIN, TX 78752
T.B.P.E. FIRM REGISTRATION # F-8632
(512) 454 – 8716

~~EXHIBIT D~~

# CITY OF ELGIN
# WASTEWATER TREATMENT PLANT NO. 2
# 1.5 MGD (BUILDOUT TO 4.5 MGD)
# SCALE: 1" = 100'-0"

**PROPERTY AREA = 16 ACRES**




**LEGEND**

- 1.5 MGD
- 3.0 MGD
- 4.5 MGD

NOTE: THE STRUCTURAL FOOTPRINTS OF 3.0 MGD AND 4.5 MGD WILL BE THE SAME, HOWEVER, THE AMOUNT OF EQUIPMENT THAT WILL BE INSTALLED WILL BE LESS FOR 3.0 MGD THAN FOR 4.5 MGD.


TRC

TRC ENGINEERS, INC.
505 E. HUNTLAND DRIVE, STE. 250 AUSTIN, TX 78752
T.B.P.E. FIRM REGISTRATION # F-8632
(512) 454 – 8716

N

0 300' 600' 1,200'

PROPERTY BOUNDARY
PROPOSED OFFSITE WASTEWATER LINE
FEMA FLOODPLAIN (+/-52.9 AC)
WETLANDS
5' CONTOURS

NOTE:
THE BOUNDARY OF WATERWAY BUFFER ZONES SHALL COINCIDE WITH THE BOUNDARIES OF THE FULLY DEVELOPED 100-YEAR FLOODPLAIN AS MODIFIED BY ANY PROPOSED IMPROVEMENTS. THE FULLY DEVELOPED 100-YEAR FLOODPLAIN WILL BE ESTABLISHED BY AN ENGINEERING STUDY REVIEWED AND APPROVED BY STAFF.

| REV | DESCRIPTION | DATE | APR |
|---|---|---|---|
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| △ | | | |
| △ | | | |

DESIGNED BY:
REVIEWED BY:
DRAWN BY:

BGE

BROWN & GAY ENGINEERS, INC.
7000 NORTH MOPAC, SUITE 330 AUSTIN, TX 78731 TBPE Registration No. F-1046
TEL: 512.879.0400 www.brownandgay.com

# LUND ROAD FARMS
## DEVELOPMENT & CONSENT AGREEMENT

## EXHIBIT F – OFFSITE WASTEWATER

\\brownjoy.net\ypanzura\Regions\TXC\Projects\Lund_Farm_Investment_LLC\10400-Lund_Road_Farms\LD\02_ENGR\03_Documents\06_Development Agreement\20230501 Development Agreement Submittal\F_Wastewater Memo\F_Description of Interceptor.dwg Layout:

**EXHIBIT "G" TO CONSENT AND DEVELOPMENT AGREEMENT**
**DESCRIPTION OF WATER PROJECT**

The Developer desires that the City provide wholesale water services to the District. A water study will be furnished to the City to show that adequate pressure and capacity will be provided to the proposed development. There will be a need for an Elevated Storage Tank as described in the Lund Farms Consent and Development Agreement – the proposed location is shown in Exhibit "H". The Offsite Transmission Line will connect to Eagles Landing and run north along County Line Road to tie into the proposed development. Additionally, the Offsite Transmission Line will connect the District back south to an existing City water line along SH-95, if needed, as shown in the exhibit. The opportunity for the City to oversize any infrastructure is as described in the Development Agreement.

**EXHIBIT “H” TO CONSENT AND DEVELOPMENT AGREEMENT**
**EST SITE**

See previous Exhibit "D" the Concept Plan under "Future Public Safety Site" off SH 95

Exhibit "I"

# WHOLESALE WATER AND WASTEWATER SERVICES AGREEMENT

**THE STATE OF TEXAS** §
§
**COUNTIES OF TRAVIS** §
**AND BASTROP** §

This Wholesale Water and Wastewater Service Agreement (this "Agreement") is made and entered into by and between Lund farm Investment LLC, a Texas limited liability company ("Owner"), and the City of Elgin, Texas (the "City"). The Owner and the City may be referred to herein each as a "Party" or collectively as the "Parties". The Lund Farm Municipal Utility District (or such other name as the Texas Commission on Environmental Quality may require, the "District"), which is a municipal utility district to be created, will either join this Agreement as set forth below and after such joinder shall become a party to this Agreement or Owner may assign its interest and obligations in full to the District.

WHEREAS, the Owner is a Texas limited liability company; and

WHEREAS, the City is a home-rule municipality located in Bastrop County, Texas, with extraterritorial jurisdiction extending into Travis County, Texas; and

WHEREAS, the Owner currently owns 569.717 acres of land more particularly described on Exhibit "A", attached hereto and made a part hereof (together with any property currently owned or hereafter acquired by Owner and annexed into the District, the "Property"); and

WHEREAS, the Property is located within the extraterritorial jurisdiction of the City; and

WHEREAS, the Parties anticipate that the Property will have approximately 2,500 living unit equivalents of water and wastewater service connections; and

WHEREAS, the Owner intends to develop the Property in phases; and

WHEREAS, the Owner and the City have entered into a Development and Consent Agreement dated _____ ("Development Agreement") that provides, among other things, that the City will provide wholesale potable water service to the District, and the City will manage, treat and dispose of wastewater that the residents of the Property generate; and

WHEREAS, the Parties have determined that it is in the best interest of the Parties to allow the City to provide wholesale water services to the District and for the City to provide wholesale wastewater services to the District in order for the City to manage, treat and dispose of wastewater that residents of the Property generate; and

WHEREAS, pursuant to the Development Agreement, the District and/or Owner on behalf of the District and the City shall construct new facilities to provide wastewater service to the Property, including participating in constructing an interceptor line connecting the Property to the wastewater facilities of the City ("Interceptor Line");

WHEREAS, the City has previously adopted the wholesale water and wastewater service rates attached hereto as Exhibit "B" (the "Wholesale Rates"); and

WHEREAS, the Parties hereto desire to enter into this Agreement in order to set out the rights and obligations of the Parties hereto with respect to wholesale water and wastewater service by the City to the District for the Property.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT, for and in consideration for the mutual promises hereinafter expressed, and other good and valuable consideration, the sufficiency of which is hereby acknowledged by the Parties, the Owner and the City agree and contract as follows:

1. Off-Site Water and Wastewater Facilities Design, Construction, and Financing.

   The responsibility and timing for the design, construction, and financing of the water and wastewater facilities and related appurtenances lying outside the boundaries of the Property necessary to serve the Property (collectively, the "Off-Site Water and Wastewater Facilities") are more specifically set forth in the Development Agreement. The Parties agree and affirm that the design, construction, and financing of the Off-Site Water and Wastewater Facilities shall be performed in accordance with the Development Agreement.

2. Interior Improvements.

   (a) The District and/or the Owner on behalf of the District shall be responsible for the design, engineering, permitting, construction, and financing of all wastewater improvements lying within the boundaries of the Property (the "Interior Improvements"). All Interior Improvements shall be engineered and designed by a Texas Licensed Professional Engineer in accordance with the applicable specifications of governmental agencies having jurisdiction.

   (b) The City shall have the right to inspect all phases of the construction of the Interior Improvements at the City's sole cost and expense. The District and/or the Owner on behalf of the District shall give written notice to the City of the date on which construction is scheduled to begin so that the City may advise its consulting engineer.

   (c) Upon completion of the Interior Improvements, the District shall own and maintain the Interior Improvements as long as the District is the retail water and wastewater service provider. Upon annexation of the District, the District shall convey the Interior Improvements to the City for operation and maintenance and the City will become the retail water and wastewater service provider. The District shall own an undivided interest in the capacity of the City's System (defined below) up to the capacity designed for the provision of water and wastewater service to the Owner and/or the District and the payment of associated costs of said facilities by the Owner and/or the District.

3. Permanent Service to the Property.

(a) After the Owner's completion and dedication of the Offsite Transmission Line Improvements (as defined in the Development Agreement), the City shall provide continuous and adequate wholesale water service to the Property sufficient (i) to serve the land uses shown on the Concept Plan attached to the Development Agreement, and (ii) to fulfill the requirements of any applicable rule or regulation of the Public Utility Commission of Texas or the Texas Commission on Environmental Quality and all duly adopted rules and regulations of the City, subject to payment of the monthly services charges based upon the Wholesale Rates set forth in this Agreement.

(b) After the Owner's completion and dedication of the Interceptor Line to the City (such improvements being defined as the Wastewater Project in the Development Agreement), the City shall provide continuous and adequate wholesale wastewater service to the District sufficient (i) to serve the land uses shown on the Concept Plan attached to the Development Agreement, and (ii) to fulfill the requirements of any applicable rule or regulation of the Public Utility Commission of Texas or the Texas Commission on Environmental Quality and all duly adopted rules and regulations of the City, subject to payment of the monthly services charges based upon the Wholesale Rates set forth in this Agreement.

(c) Once the Interceptor Line is constructed, the City will receive, treat and dispose of, or shall contract for the treatment and disposal of, all sewage generated by customers within the Property. The City will maintain an adequate water and wastewater system capacity at all times to serve the customers within the District at the same level these services are provided within the City.

(d) The District shall pay for all wholesale water service furnished by the City to the District as measured by a master meter to be owned and operated by the City located at a point of delivery mutually approved by the Parties.

(e) The District acknowledges that wastewater entering the City's wastewater system (the "City's System") from the wastewater system lying within the Property and being operated and maintained by the District, including the Interior Improvements (the "District's System"), originating from any source whatsoever must be given treatment and handling whether or not its source is revenue-producing for the District. Therefore, the District will pay for all wastewater entering the City's System from the District's System, including infiltration and inflow, at the Wholesale Rates. It is the District's responsibility to undertake reasonably prudent measures to minimize infiltration and inflow to the Interior Improvements.

(f) The Wholesale Rates, as reflected in Exhibit "B" hereto, charged by the City for service within the Property shall be the same as those rates charged by the City to its in-city wholesale water and wastewater customers. Such rates may be reviewed and adjusted annually by the City, based on a cost of performance study performed by the City and as allowed by applicable law. However, nothing in this provision or elsewhere in this Agreement or the Development Agreement shall be interpreted to prevent the District or its customers from appealing the water and wastewater rates pursuant to §13.043, Texas Water Code.

(g) The District shall have guaranteed reserved capacity and shall fully own capacity in the Off-Site Water and Wastewater Facilities sufficient to serve the needs of the Property, currently estimated to be _____ per day, as set forth in the Development Agreement, but subject to such increase as may be required based upon final density of the development in the Property.

(h) Condition of Water. All water furnished by the City to the District shall be potable and shall comply with all state and federal drinking water standards at the wholesale point of delivery.

(i) Condition of Wastewater Delivered.

(i) The District will operate and maintain the District's System to ensure that wastewater delivered to the City's System will have a pH factor between six and eleven and otherwise be in a condition that complies with the requirements of Chapter 42, Article III, Division 5 of the City's Code of Ordinances (the "Code") in existence on the Effective Date. If wastewater delivered from the District's System to the City's System fails to meet the specified standards and the City's Utilities Director determines that the addition of oxidizing chemicals or another reasonable method of pretreatment of wastewater or operation of the District's System is necessary in order for wastewater delivered to be non-injurious to the City's System, then the District will install facilities or implement methods of operation and maintenance to meet the standards and render wastewater from the District non-injurious to the City's System. Such facilities or methods shall be agreed upon by the City and the District's engineer. The District shall not be required to install facilities or employ methods that far exceed industry standards for wastewater pretreatment, given the nature and volume of wastewater being processed.

(ii) Should the wastewater entering the City's System from the District's System be found to be in violation of the applicable provisions of the Code, and should such violation be found to be the direct and sole source of injury to the City's System, the District shall pay for the reasonable, actual cost to repair the City's System. The City shall bear the burden of proving both the Code violation and that such violation was the sole and direct cause of the damage to the City's System.

(iii) If the District fails to implement measures required for protection of the City's system and the wastewater entering the City's System from the District's System is found to be in violation of the Code, the City may require the District to implement an operation and maintenance plan to ensure that flows received from the District are non-injurious to the City's System.

(g) Industrial Discharges and Prohibited Wastes.

(i) The District and the City acknowledge that both the City and District have the authority under federal and state law to establish:

(1) types and quantities of discharges that are prohibited for entry into their systems;

(2) discharge prohibitions for certain substances, as may be amended from time to time;

(3) pretreatment, permitting, monitoring, and other requirements for persons who discharge prohibited substances; and

(4) measures to protect the District's System and the City's System.

(ii) To the extent authorized by law, the District will ensure that all persons or entities lawfully connected to its system and discharging wastewater into the District's System abide by the applicable provisions in the Code, including any permitting requirements set forth therein.

(iii) To the extent authorized by law, the District will enact and enforce rules that are at least as stringent as those adopted by the City and will take reasonable steps to require customers connected to the District's System to comply with the District's regulations. The City will give written notice to the District of any future ordinance changes governing the pretreatment, monitoring, or discharge of wastewater containing industrial waste or other prohibited waste, and those changes will become applicable to wastewater discharges into the District's System that ultimately discharge into the City's System sixty (60) days after the delivery of the notice to the District.

(iv) The District will seek injunctive or other appropriate relief to prohibit wastewater discharges when the District's engineer becomes aware that such discharges will damage or pass through the City's System without adequate treatment, interfere with the treatment system, or otherwise pose an imminent danger to public health or when the specific person or industry is not making sufficient progress toward implementing an approved pretreatment system.

(v) During the term of this Agreement, the District will provide the City with copies of all relevant monitoring data and pretreatment enforcement actions under this Subsection 4(g) within thirty (30) days of written request by the City.

(vi) This Agreement does not limit, modify, restrict, or otherwise alter the responsibility or authority of the City to enforce its ordinances governing the pretreatment, monitoring and discharge of wastewater containing industrial waste or other prohibited waste, as amended, with respect to the District when and as such action is deemed necessary by the City's Utilities Director.

(h) Sampling and Testing.

(i) The District agrees that the City may, at its option and expense, sample wastewater discharges within the District's System at:

(1) the site of discharge;

(2) the point of entry; and

4. Quantity of Water and Wastewater Service.

(a) General. The City shall be the sole and exclusive provider of wholesale water and wastewater services to the District for so long as it meets its obligations under this Agreement.

(b) Wholesale Water Service Quantity and Pressure. Subject to Developer's funding and construction obligations under the Developer Agreement, the City agrees to divert, transport and treat for District all water needed and requested by District for the Project, up to, but not in excess of (i) a maximum daily flow rate of 4,200,000 gallons per day, (iii) a maximum hourly rate of 7,132,000 gallons per day, or 6,360,000 gallons per day and be able to meet peak hourly demands of 298,000 gallons per hour, whichever is less; and (iv) the minimum rates required for purchased water systems under TCEQ rules (30 TAC §290.45(f), as amended from time to time). The City agrees that the water supply shall be delivered at a delivery pressure necessary to maintain a minimum pressure of 35 psi to each retail customer meter within the District under normal operating conditions.

(c) Wholesale Wastewater Service Quantity. Subject to Developer's funding and construction obligations under the Developer Agreement, the City agrees to provide wholesale wastewater service to District for the Project in a quantity sufficient for service to 2,500 LUEs within the Property. The City agrees to expand and improve the City Wastewater System as necessary in order to provide

adequate wholesale wastewater service to District to meet retail service demands within the Project. The Wholesale Service Commitment shall be subject to the following additional limitations: The peak hour flow rate shall not exceed 1,281 gallons per minute during dry conditions and 1,578 gallons per minute during wet weather conditions.

5. Effect of Force Majeure.

In the event any Party is rendered unable by force majeure to carry out any of its obligations under this Agreement, in whole or in part, then the obligations of that Party, to the extent affected by the force majeure shall be suspended during the continuance of the inability; provided, however, that due diligence is exercised to resume performance at the earliest practical time. As soon as reasonably possible after the occurrence of the force majeure relied upon to suspend performance, the Party whose contractual obligations are affected thereby shall give notice and full particulars of the force majeure to the other Parties.

The cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure" includes acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and civil disturbances, explosions, breakage, or accidents to equipment, pipelines, or canals, partial or complete failure of water supply, and any other inability of any Party, whether similar to those enumerated or otherwise, that are not within the control of the Party claiming the inability and that could not have been avoided by the exercise of due diligence and care. It is understood and agreed that the settlement or strikes and lockouts shall be entirely within the discretion of the Party having the difficulty and that the requirement that any force majeure be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing Party if the settlement is unfavorable to it in the judgment of the Party having the difficulty. Nothing in this Section 7 shall be interpreted to prohibit the Owner from seeking alternative sources of wholesale wastewater service for the Property in the event of a force majeure.

6. Notices.

Any notice to be given hereunder by any Party to the other Parties shall be in writing and may be effected by personal delivery or by sending said notices by overnight delivery, registered or certified mail, return receipt requested, to the address of each contact of the Party being provided notice, as set forth below. Notice shall be deemed given when deposited with the United States Postal Service or overnight delivery carrier with sufficient postage affixed or payment provided. Any notice mailed to the Parties shall be addressed as follows:

| | |
|---|---|
| CITY: | City of Elgin<br>Attn: City Manager<br>PO Box 591<br>Elgin, Texas 78621 |
| With Copy to: | Sheets & Crossfield<br>Attn: Charlie Crossfield<br>309 E. Main Street<br>Elgin, Texas 78664-5264 |
| OWNER: | Lund Farm Investment LLC<br>410 East 94th Street<br>New York, New York 10128 |
| With Copy to: | McLean & Howard, LLP<br>4301 Bull Creek Road, Suite 150<br>Austin, Texas 78731<br>Attn: Tony Corbett |

Any Party may change the address for notice to it by giving written notice of such change in accordance with the provisions of this paragraph.

7. Remedies.

(a) If the City defaults under this Agreement, the Owner may enforce this Agreement by seeking damages and/or a writ of mandamus from any court of appropriate jurisdiction, or may give notice setting forth the event of default ("Notice") to the City. If the City fails to cure any default that can be cured by the payment of money ("Monetary Default") within 45 days from the date the City receives the Notice, or fails to commence the cure of any default specified in the Notice that is not a Monetary Default within 45 days of the date of the Notice, and thereafter to diligently pursue such cure to completion, the Owner may terminate this Agreement as to all of the Property owned by the Owner, or as to the portion of the Property affected by the default.

(b) If the Owner defaults under this Agreement, the City may enforce this Agreement by seeking specific performance from any court of appropriate jurisdiction, or the City may give Notice to the Owner. If the Owner fails to cure any Monetary Default within 45 days from the date it receives the Notice, or fails to commence the cure of any default specified in the Notice that is not a Monetary Default within 45 days of the date of the Notice, and thereafter to diligently pursue such cure to completion, the City may terminate this Agreement as to all of the Property owned by the Owner, or as to the portion of the Property affected by the default.

(c) If either Party defaults, the prevailing Party in the dispute will be entitled to recover its reasonable attorney's fees, expenses and court costs from the non-prevailing Party.

8. Effective Date.

This Agreement shall be effective from and after the date of due execution by both the Parties (the "Effective Date").

9. Term.

This Agreement shall commence upon the Effective Date and shall continue in effect with the term of the Development Agreement. Upon expiration of the Development Agreement, this Agreement shall also terminate.

10. Third Parties.

It is the express intention of the Parties that the terms and conditions of this Agreement may be enforced by any Party, but not by any third party or alleged third-party beneficiary.

11. Multiple Originals.

This Agreement may be executed in multiple originals, any copy of which shall be considered to be an original.

12. Severability; Waiver. If any provision of this Agreement is illegal, invalid, or unenforceable, under present or future laws, it is the intention of the parties that the remainder of this Agreement not be affected, and, in lieu of each illegal, invalid, or unenforceable provision, that a provision be added to this Agreement which is legal, valid, and enforceable and is as similar in terms to the illegal, invalid or enforceable provision as is possible.

Any failure by a Party to insist upon strict performance by the other Party of any material provision of this Agreement will not be deemed a waiver thereof or of any other provision, and such Party may at any time thereafter insist upon strict performance of any and all of the provisions of this Agreement.

13. Applicable Law and Venue. The interpretation, performance, enforcement and validity of this Agreement are governed by the laws of the State of Texas. Venue will be in a court of appropriate jurisdiction in Bastrop or Travis Counties, Texas.

14. Entire Agreement. This Agreement contains the entire agreement of the Parties. There are no other agreements or promises, oral or written, between the Parties regarding the subject matter of this Agreement other than the Development Agreement. This Agreement can be amended only by written agreement signed by the Parties. This Agreement supersedes all other agreements between the Parties concerning the subject matter.

15. Amendment.

No amendment of this Agreement shall be effective unless and until it is duly approved by each Party and reduced to a writing signed by the authorized representatives the Parties, respectively, which amendment shall incorporate this Agreement in every particular not otherwise changed by the amendment.

16. Exhibits, Headings, Construction and Counterparts. All schedules and exhibits referred to in or attached to this Agreement are incorporated into and made a part of this Agreement for all purposes. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs. Wherever appropriate, words of the masculine gender may include the feminine or neuter, and the singular may include the plural, and vice-versa. The Parties acknowledge that each of them has been actively and equally involved in the negotiation of this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting Party will not be employed in interpreting this Agreement or any exhibits hereto. If there is any conflict or inconsistency between the provisions of this Agreement and otherwise applicable City ordinances, the terms of this Agreement will control. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument. This Agreement will become effective only when one or more counterparts, individually or taken together, bear the signatures of all of the parties.

17. Time. Time is of the essence of this Agreement. In computing the number of days for purposes of this Agreement, all days will be counted, including Saturdays, Sundays and legal holidays; however, if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day will be deemed to be the next day that is not a Saturday, Sunday or legal holiday.

18. Authority for Execution. The City certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with its City Charter and City ordinances. The Owner hereby certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with the articles of incorporation and bylaws or partnership agreement of each entity executing on behalf of the Owner.

19. Reimbursement. The Parties acknowledge and agree that the Owner may seek reimbursement for the costs of the Off-Site Water and Wastewater Facilities and for other District facilities through the District pursuant to various provisions of the Texas Water Code and other statutory authorizations, and nothing contained in this Agreement is intended to interfere with any such reimbursement.

20. Assignability.

(h) This Agreement, and the rights of the Owner hereunder, may be assigned by the Owner, with the City's consent, to a subsequent developer of all or a portion of the Property. Any assignment will be in writing, specifically set

forth the assigned rights and obligations and be executed by the proposed assignee. The City's consent to any proposed assignment will not be unreasonably conditioned, withheld or delayed. No consent, however, shall be required for (i) an assignment to any subsidiary, parent company, or other affiliate of the Owner, or (ii) the Owner's assignment of its interests in full to the District, if the Districts agrees to be responsible for all assigned rights, privileges and obligations the Owner under this Agreement.

(i) This Agreement shall not be assigned by the City without the Owner's express prior written consent.

21. Successors and Assigns.

This Agreement shall be binding on and shall inure to the benefit of the heirs, successors and assigns of the Parties.

22. Joinder by the District.

The Owner and the City intend that this Agreement shall be binding upon the District from and after the date the District executes a joinder to this Agreement in substantially the same form as set forth in Exhibit "C", attached hereto and made a part hereof. The District shall execute such joinder at the time of its organizational meeting.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

## ~~EXHIBIT "B"~~
## CITY'S WHOLESALE WATER AND WASTEWATER RATES

B-1. Wastewater Rates.

The rate that the City charges the District for wastewater service will be the wastewater rate established by ordinance from time to time by the Elgin City Council, as modified by certain credits set forth in this Article X.1.

B-2. Cost of Service.

The District agrees that the wastewater rates charged to the District shall be based upon the Base Rate and Volume Rate established for City Residential Users. As consideration for the assessment of City Residential User rates, the City agrees that total v o l u m e charges billed by the City to the District shall be reduced by the credits set forth as follows. The City agrees that no costs for billing, collecting or customer meter reading shall be included in the calculations for Residential User rates to the District. The City agrees that such costs will not be included in the District's rates.

B-3. Initial Service Period.

From the date of commencement of wastewater service to the District by the City and the two years thereafter ("Initial Service Period"), the District shall pay a Base Charge of $23.98 per month for each sanitary sewer connection in the District. Additionally, the District shall pay a Volume Charge of $3.37 per thousand gallons of wastewater treated in the month, as metered during the City's normal billing cycle for the month. This Volume Charge is based on the following calculation: Total volume of wastewater metered divided by 1,000 multiplied by $3.37.

By way of illustration, if there are 250 sanitary sewer connections in the District during the initial service period, the monthly Base Charge will be 250 multiplied by $23.98 or $5,995.00.

The monthly Volume Charge during the initial service period will be $3.37 multiplied by the total volume of wastewater metered during the billing period divided by 1,000. Assuming an average volume of wastewater produced per connection of 5,500 gallons, the total volume of wastewater produced in the month for 250 connections would be 1,375,000 gallons divided by 1,000 times $3.37 for a total Volume charge of $4,633.75.

B-4. Remaining Contract Years.

Beginning after the Initial Service Period and for the remaining Contract Term, the monthly Base Charge and Volume Rate ·will be calculated as follows:

Base Rate = Rate established by Ordinance for the fiscal year for City residential customers (Annual Wastewater related Debt Service / Number of Connections /12 months.)

Volume Rate = Rate established by Ordinance for the fiscal year for each 1,000 gallons of wastewater generated by City residential customers minus a percentage of Utility Billing costs allocable to wastewater customers.

EXAMPLE:

Base Rate = $23.98 per month per connection
250 Connections = $5,995 per month

Volume Rate = $3.98 per 1,000 gallons
(Utility Billing Costs allocable to Sewer Customers)
(Total Annual Wastewater System O&M Costs)

($125,722)
($825,975) = 15.22%

15.22% x $3.98 = $0.61 adjustment

$3.98 – $0.61 = **$3.37 per 1,000 gallons of wastewater produced**

B-5. Water Rates.

The rate that the City charges the District for water service will be the water rate established by ordinance from time to time by the Elgin City Council, as modified by certain credits set forth in this Article X.1.

B-6. Cost of Service.

The District agrees that the water rates charged to the District shall be based upon the Base Rate and Volume Rate established for City Residential Users. As consideration for the assessment of City Residential User rates, the City agrees that total v o l u m e charges billed by the City to the District shall be reduced by the credits set forth as follows. The City agrees that no costs for billing, collecting or customer meter reading shall be included in the calculations for Residential User rates to the District. The City agrees that such costs will not be included in the District's rates.

B-7. Initial Service Period.

From the date of commencement of water service to the District by the City and the two years thereafter ("Initial Service Period"), the District shall pay a Base Charge of $30.83 per month for each water connection in the District. Additionally, the District shall pay a Volume Charge per thousand gallons of

water treated in the month for over 2,000 gallons of consumption, as metered during the City's normal billing cycle for the month. For each 1,000 gallons of metered water consumption over 2,000 gallons, the following rates apply: 2,001 to 4,000 gallons: $3.37; 4,001 to 8,000 gallons $3.42; 8,001 to 12,000 gallons $3.58; 12,001 gallons or more $3.73. This Volume Charge is based on the following calculation: Total volume of water metered divided by 1,000 multiplied by $3.37.

By way of illustration, if there are 250 water connections in the District during the initial service period, the monthly Base Charge will be 250 multiplied by $30.83 or $7,707.50.

The monthly Volume Charge during the initial service period will be $3.37 multiplied by the total volume of water metered during the billing period divided by 1,000. Assuming an average volume of water usage per connection of 5,500 gallons, the total volume of water used in the month for 250 connections would be 1,375,000 gallons divided by 1,000 times $3.37 for a total Volume charge of $4,633.75.

B-8. Remaining Contract Years.

Beginning after the Initial Service Period and for the remaining Contract Term, the monthly Base Charge and Volume Rate ·will be calculated as follows:

Base Rate = Rate established by Ordinance for the fiscal year for City residential customers (Annual Water related Debt Service / Number of Connections /12 months.)

Volume Rate = Rate established by Ordinance for the fiscal year for each 1,000 gallons of water generated by City residential customers minus a percentage of Utility Billing costs allocable to water customers.

EXAMPLE:

Base Rate = $30.83 per month per connection
250 Connections = $7,707.50 per month

Volume Rate = $3.98 per 1,000 gallons
(Utility Billing Costs allocable to Sewer Customers)
(Total Annual Water System O&M Costs)

($125,722)
($825,975) = 15.22%

15.22% x $3.98 = $0.61 adjustment

$3.98 – $0.61 = **$3.37 per 1,000 gallons of water consumed**

Exhibit "J"

**RESOLUTION NO. R-_____-_____**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELGIN CONSENTING TO THE INCLUSION OF LAND WITHIN LUND FARM MUNICIPAL UTILITY DISTRICT**

**WHEREAS**, the City of Elgin ("*City*") has received a request for its consent to the inclusion of the tract of real property encompassing approximately 569.717 acres being more particularly described by metes and bounds and by sketch in **Exhibit "A"** attached hereto (the "*Property*"), into the boundaries of a proposed district to be named Lund Farm Municipal Utility District or some other name permitted or required by law (the "*District*");

**WHEREAS**, pursuant to Texas Water Code, Section 54.016 and Texas Local Government Code, Section 42.042, land within the extraterritorial jurisdiction of a city may not be included within a district without the written consent of such city;

**WHEREAS**, all of the Property is located within the extraterritorial jurisdiction of the City;

**WHEREAS**, the City has received a request from the owner of the Property for the City's consent to inclusion of the Property into the District;

**WHEREAS**, the City Council of the City of Elgin desires to grant its written consent to the inclusion of the Property within the District,.

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

Section 1. The City Council of the City hereby grants its consent to the inclusion of the Property within the District.

Section 2. The City Council of the City hereby grants its consent to the acquisition of road powers by the District.

Section 3. The Mayor and City Secretary are authorized to execute any documents necessary to effectuate this Resolution.

Section 4. The City Council of the City further states that it has not relinquished any rights, duties or powers relating to its extraterritorial jurisdiction, and while the City consents to the inclusion of the Property into the District, the City does not release any lands from its extraterritorial jurisdiction.

Section 5. This Resolution shall become effective from and after the date of its passage.

**EXHIBIT "K"**
**VARIANCES TO CITY DEVELOPMENT CODE**

**A. <u>Applicability of Development Requirements.</u>**

For the avoidance of doubt, the City acknowledges and agrees that the Property is located within the City's extraterritorial jurisdiction and the Development will be subject only to City ordinances that apply to construction and operation of single-family residential subdivisions located within the City's extraterritorial jurisdiction, which, as of the Effective Date, are Chapter 32 of the City's Code of Ordinances (Signs) and Chapter 36 of the City's Code of Ordinances (Subdivision) (together, the "Applicable Ordinances").

The City hereby grants the following variances from the Applicable Ordinances:

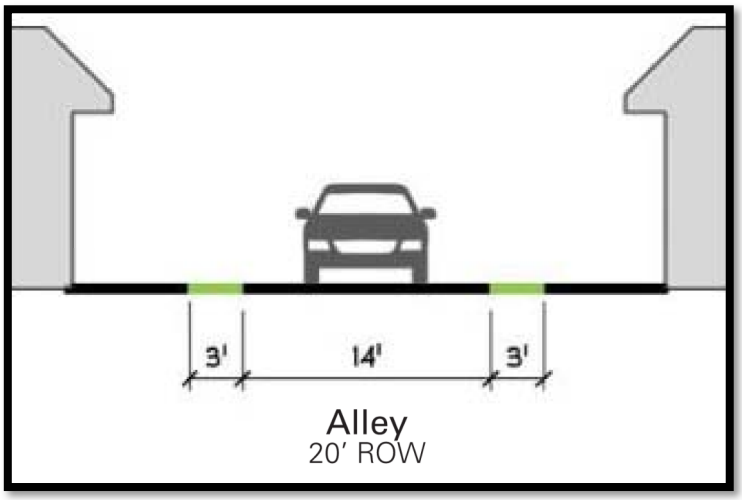
1. Chapter 32 of the Applicable Ordinances shall not apply to the Development.

2. All references within Chapter 36 of the Applicable Ordinances to zoning and other City ordinances that only apply within the City's corporate city limits shall not apply to the Development.

3. Sec. 36-29(h) – The Concept Plan shall expire upon termination of this Agreement.

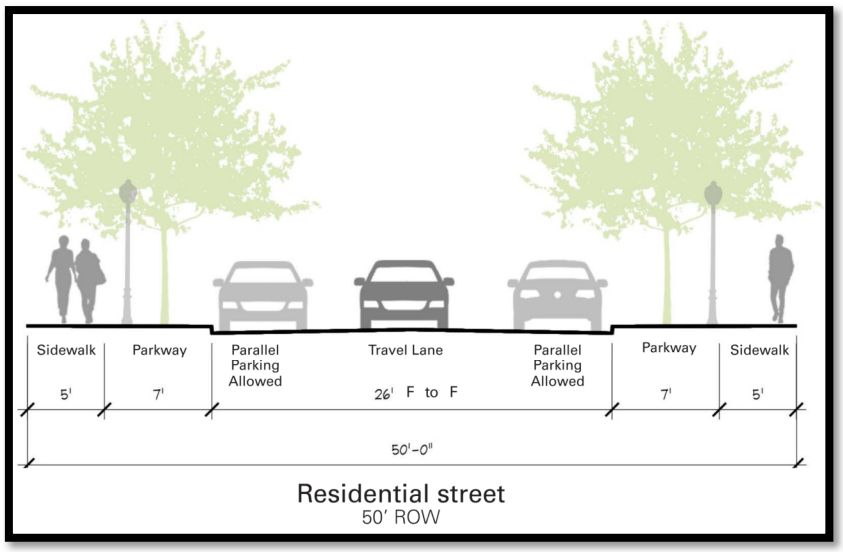
4. Sec. 36-30(g) – A preliminary plat shall expire 10 years after the date of approval.

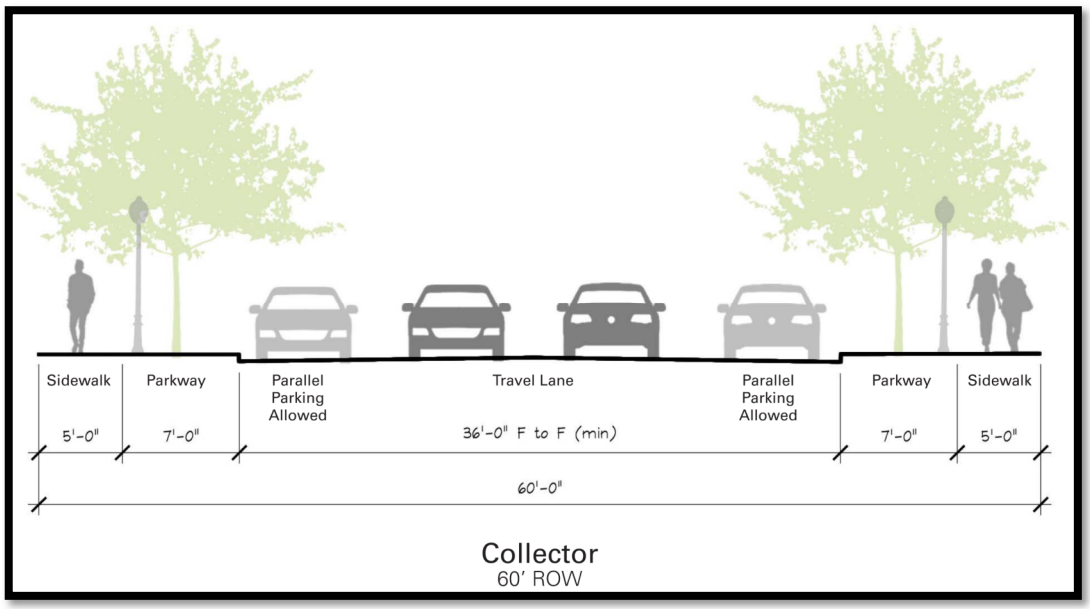
5. Sec. 36-79 – Alleys within the Development shall be: (i) exempt from all design criteria; (ii) public; (iii) constructed without curb and gutter of either asphalt or concrete, at Developer's election; and (iv) a minimum of fourteen feet (14') in pavement width and twenty feet (20') in right-of-way width as depicted in the image below.




6. Sec. 36-80 – Major/Arterial Streets shall not be included as part of this development. Collector Streets shall have a minimum dedicated right-of-way of sixty feet (60') and paving width of thirty-six feet (36'). Collector Streets shall allow parallel parking within the right-of-way. See example street section as depicted in the image below.

Minor or residential streets shall have a minimum right-of-way width of fifty feet (50’) and paving width of twenty-six feet (26’).




7. Sec. 36-80(4) – Streets with a width of less than one hundred feet (100’) will not be designed with increased right-of-way on either side of any intersection with Major Streets and Minor Streets.

8. Sec. 36-81(3) – Local streets are to have a minimum centerline radius of 170’, with no maximum radius.

9. Sec. 36-82(1) – All collector streets shall intersect at an angle of eighty degrees (80°) to one hundred degrees (100°). All minor or residential streels shall intersect at an angle of seventy degrees (70°) to one hundred and ten degrees (110°).

10. Sec. 36-83(a) Cul-de-sac maximum length shall not exceed eight hundred feet (800’), measured from center of turnaround to centerline of connecting road. A maximum of thirty (30) units shall be serviced from each cul-de-sac.

11. Sec. 36-140 – Eight feet (8') wide (minimum) meandering concrete trails within a 28' landscape area, may be utilized in lieu of street sidewalks and located on only one side of Collector Streets or Minor/ Residential Streets within the Development.

12. Sec. 36-141 – Street sidewalks and concrete trails along streets may meander outside the right-of-way in response to grading, existing trees or to create landscape planting areas along roadways. In the event that sidewalks are not located within the right-of-way, an easement shall be created to accommodatethe sidewalks.

13. Sec 36-142 – Sidewalks in front of residential lots will be installed during the installation of the residential landscape on said residential lot. Sidewalks along roadways in which there is not a residential lot shall be constructed during installation of associated landscaping. Said sidewalks and landscaping shall be installed along roadways within three years of construction of said roadway.

14. Sec. 36-170 – All single family detached lots platted in subdivisions located within the Development shall be a minimum of 3,600 square feet.

15. Sec. 36-171 – All single family detached lots platted in subdivisions located within the Development shall be a minimum of thirty feet (30') in width.

16. Sec. 36-177 – Lots may cross jurisdictional lines, provided that the entirety ofthe lot is contained within the limits of the municipal utility district.

17. Sec. 36-202(a)(l) and (2) - Residential blocks for collector streets shall be no longer than sixteen hundred feet (1,600'), measured along the street frontage. Maximum block length along an arterial street does not apply to this subdivision.

18. Sec. 36-202(b)(3) –There shall be no maximum length for a loop road.

19. Sec. 36-202(c) – Maximum block length along a major street does not apply to this subdivision.

20. Sec. 36-202(d) – Block length shall be measured along the centerline of the street from the street's intersection with the right-of-way of any intersecting street, ninety degree (90°) bend/turn, or knuckle. In the case of a cul-de-sac, block length shall be measured from the said intersecting right-of-way to the end of the cul-de-sac "bulb" right-of-way. If a change in land use occurs along a street segment, a new block length measurement will begin with the first residential frontage following this change.

21. Sec. 36-212(b)(2) – The boundary of waterway buffer zones shall coincide with the boundaries of the fully developed 100-year floodplain as modified by any proposed improvements. The fully developed 100-year floodplain will be

established by an engineering study reviewed and approved by Staff.

22. Sec. 36-313(b) – There shall be no cut or fill limitations for the construction of water quality basins, stormwater detention ponds, streets, driveways, utility infrastructure, floodplain mitigation or recreational/amenity ponds or other water features.

23. Sec. 36-366 – To the extent that the terms and provisions of Sec. 36-366 of the Applicable Ordinances and the terms and provisions of 30 Texas Administrative Code Chapter 217 conflict, the terms and provisions of 30 Texas Administrative Code Chapter 217 shall prevail and apply to the sanitary sewer system designed, permitted and constructed to serve the Development.

24. Sec. 36-370 – To the extent that the terms and provisions of Sec. 36-370 of the Applicable Ordinances and the terms and provisions of this Agreement conflict, the terms and provisions of this Agreement shall prevail and apply to dedication of parkland or payment of fees in lieu thereof for the Development.

Further, the City agrees that this Agreement, including all exhibits hereto, shall also serve as guidance for review and approval of any additional variances, waivers or other approvals not specifically provided in this Agreement, but necessary for construction of the Development as shown on the Concept Plan. The City agrees that the Concept Plan serves as a representation of general development intent and the modification of roadway alignments and layout are acceptable as long as the overall density of the development does not increase by more than 5%.

**B. <u>Single Family Residential Lot Design Standards</u>.**

The Following standards shall apply for all single family lots:

Front Setback: Twenty feet (20')*

Rear Setback: Ten feet (10') Side Setback: Five feet (5')

Corner Side Setback: Fifteen feet (15')

Building Height: Thirty-five feet (35'), as measured as the vertical distance from the front door threshold to the highest point of the roof.

Utility: Utilities and transformers/pull boxes will be located along front property lines within a 10' public utility easement adjacent to the right-of-way.

*Porches are allowed to encroach up to six feet (6') into the Front Setback

**C. <u>Roadway Standards</u>.**

1. Collector Streets, at Developer's election, may be designed with landscaped medians to improve aesthetic quality and preserve trees.

2. Collector Streets, at Developer's election, may be designed with a laydown or ribbon curb, so long as the runoff from such streets is captured and conveyed in a manner approved by the City Engineer.

3. Local Streets, at Developer's election, may be designed with a six inch (6") rollover curb.

4. Notwithstanding any contrary provisions of the Applicable Ordinances or this Agreement, in the event that the streets within the Development are designed and constructed pursuant to County requirements pursuant to Section 4.03 of this Agreement, the City hereby grants all required variances from the Applicable Ordinances necessary to permit construction of such streets to County standards.

**D. <u>Drainage and Grading</u>.**

Drainage collection facilities may be constructed with a mix of open concrete-lined (flowline and side slopes) channel and underground storm sewers.

**E. <u>Parkland Dedication</u>.**

The Developer agrees that the park, open space, and trail corridors within the right-of-way shown on the Concept Plan, or portions thereof, may be dedicated to the District or another governmental agency. The City agrees that the Developer will receive a 100% credit for such dedications against the City's parkland dedication requirements (not less than 100 acres of the Property shall be developed as public parkland and/or open space, including floodplain areas), to the extent such requirements apply to the Property now or in the future, and the City further agrees that no additional parkland dedication or park fees will be required pursuant to the City's parkland dedication requirements. To the extent that the Developer's dedications of trails and/or parkland, if any, do not offset all City parkland dedication requirements, Developer will pay parkland fees in accordance with applicable City ordinance requirements. Developer acknowledges that the Development must also comply with the City's parkland improvement requirements. Developer will submit plans for such improvements to the City prior to installation and, to the extent that the installation of such improvements does not offset all City parkland improvement requirements, Developer will pay parkland improvement fees in accordance with City ordinance requirements.

Due to the size, topography, natural features, aesthetics and constraints of the Property, the Developer and the City recognize some phases may dedicate more than required and others less than. Accordingly, Developer shall keep a running total with each preliminary plat of the planned and previously dedicated parkland mitigation to ensure compliance for the overall Development, rather than a plat-by-plat basis.

Exhibit "L"

**STRATEGIC PARTNERSHIP AGREEMENT**

**THE STATE OF TEXAS** §
§
**COUNTY OF BASTROP** §

This **STRATEGIC PARTNERSHIP AGREEMENT** (this "*Agreement*") is made and entered into by and between the City of Elgin, Texas, a Texas home rule municipality (the "*City*") and Lund Farm Municipal Utility District, a conservation and reclamation district of the State of Texas (the "*District*").

**RECITALS**

WHEREAS, the City is a home-rule municipal corporation created and existing under the laws of the State of Texas; and

WHEREAS, the District is a municipal utility district created under and operating in accordance with Article XVI, Section 59 of the Texas Constitution and Chapters 49 and 54 of the Texas Water Code, as amended; and

WHEREAS, the District encompasses approximately 569.717acres, more or less, located within the extraterritorial jurisdiction of the City (the "*Land*"); and

WHEREAS, the City, Lund Farm Investment LLC ("*Developer*"), and the District are parties to that certain Consent and Development Agreement dated the same date herewith (referred to as the "*Consent Agreement*") setting forth the terms and conditions pursuant to which the City consented to creation of the District; and

WHEREAS, the City and the District are sometimes individually referred to as a "*Party*" and collectively as the "*Parties*"; and

WHEREAS, Section 43.0751 of the Texas Local Government Code authorizes the City and the District to negotiate and enter into this Agreement; and

WHEREAS, that certain real property more particularly described in **Exhibit "A"** attached hereto (the "*Sketch of the Commercial Area*") may be developed for commercial uses; and

WHEREAS, effective on the Effective Date (set forth below), and pursuant to Sections 43.0751(f)(1) and (k) of the Texas Local Government Code, the City desires to annex the Commercial Area for the limited purpose of imposing and collecting sales and use taxes within the Commercial Area as permitted by Section 43.0751, Texas Local Government Code, which may include, but which are not limited to, the general sales tax and special sales and use taxes authorized by elections creating Type A and Type B corporations under Chapters 504 and 505 of the Texas Local Government Code (hereinafter the "*Type A and Type B Sales Tax*"), road maintenance sales taxes, sales taxes for the purposes of property tax reduction, and all other sales and use tax revenues generated on the Commercial Area (collectively, hereinafter the "*Sales and Use Tax Revenues*"); and

WHEREAS, subject to the terms and conditions of this Agreement, the District, on behalf of itself and all present and future owners of the Commercial Area, hereby agrees that as of the Effective Date, the Commercial Area will become annexed into the City for the limited purpose of imposing and collecting Sales and Use Tax Revenues within the Commercial Area, and for the other limited purposes set forth in this Agreement; and

WHEREAS, prior to approval of this Agreement by the District's Board of Directors (the "*Board*"), the District provided notice of two (2) public hearings in accordance with Section 43.0751(d) of the Texas Local Government Code, and all applicable laws, and the Board conducted such public hearings in accordance with all applicable laws, at which, members of the public who wished to present testimony or evidence regarding this Agreement were given the opportunity to do so; and

WHEREAS, the Board approved and adopted this Agreement on _____, _____, in open session in accordance with all applicable laws, which approval and adoption occurred before the City Council approved and adopted this Agreement; and

WHEREAS, prior to approval of this Agreement by the City Council of the City (the "*City Council*"), the City provided notice of two (2) public hearings in accordance with Section 43.0751(d) of the Texas Local Government Code, and all applicable laws, and the City Council conducted such public hearings in accordance with all applicable laws, at which members of the public who wished to present testimony or evidence were given the opportunity to do so; and

WHEREAS, the City Council approved and adopted this Agreement on_____, _____, in open session in accordance with all applicable laws, which approval and adoption occurred after the Board approved and adopted this Agreement; and

WHEREAS, all notices, hearings and other procedural requirements imposed by law for the adoption of this Agreement have been met; and

WHEREAS, in accordance with the requirements of Section 43.0751(p)(1) of the Texas Local Government Code, this Agreement does not require the District to provide revenue to the City solely for the purpose of obtaining an agreement with the City to forego annexation of the District; and

WHEREAS, in accordance with the requirements of Section 43.0751(p)(2) of the Texas Local Government Code, this Agreement provides benefits for the City and the District that are reasonable and equitable.

NOW THEREFORE, for and in consideration of the mutual agreements contained in this Agreement, and for the good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the City and the District agree as follows:

## XI.
## EFFECT OF RECITALS; PURPOSE OF AGREEMENT; ADOPTION OFAGREEMENT

**11.01** Recitals. The recitals set forth above are true and correct and are incorporated herein and made a part hereof for all purposes.

**11.02** Purpose. The purpose of this Agreement is to define and clarify, through contractual agreement, the terms and conditions of annexation by the City of the Commercial Area for limited purposes on the Effective Date and annexation of the Commercial Area for full purposes, all in accordance with Section 43.0751 of the Local Government Code.

**11.03** Public Hearings. The Parties acknowledge and agree that prior to the execution of this Agreement, the Board and the City Council conducted public hearings to consider the adoption of this Agreement and that such hearings were noticed and conducted in accordance with all applicable laws.

**11.04** Effective Date. The Effective Date of this Agreement is the date this Agreement is approved and adopted by the City Council (the "*Effective Date*").

**11.05** Filing in Property Records. This Agreement shall be filed in the Official Public Records of Travis County, Texas.

## XII.
## ADOPTION OF AGREEMENT AND CONSENT TO IMMEDIATE LIMITED PURPOSE ANNEXATION OF THE COMMERCIAL AREA

**12.01** Consent to Limited Purpose Annexation. THE DISTRICT ON BEHALF OF ITSELF AND ALL PRESENT AND FUTURE OWNERS OF PROPERTY WITHIN THE COMMERCIAL AREA, HEREBY REQUESTS THAT THE CITY ANNEX THE LAND FOR THE LIMITED PURPOSES AS PROVIDED IN THIS AGREEMENT. THE DISTRICT CONSENTS TO SUCH LIMITED PURPOSE ANNEXATION AND TO THE COLLECTION OF SALES AND USE TAX REVENUES BY THE CITY WITHIN THE COMMERCIAL AREA. SUCH CONSENT SHALL BIND THE DISTRICT AND EACH OWNER AND FUTURE OWNER OF PROPERTY WITHIN THE COMMERCIAL AREA.

**12.02** Limited Purpose Annexation of the Commercial Area. The City Council hereby annexes the Commercial Area for the limited purpose of collecting all sales and use taxes authorized by Chapter 321 of the Texas Tax Code (the "Tax Code"), including but not limited to the Sales and Use Tax Revenues, to be imposed by the City on sales consummated within the Commercial Area. The District acknowledges and agrees that no further notices, hearings, or other procedures shall be required to effectuate such limited purpose annexation.

**12.03** Duties During Limited Purpose Annexation.

(a) City. Except as otherwise provided in the Consent Agreement, the Parties acknowledge and agree that the limited purpose annexation of the Commercial Area pursuant to this Agreement shall not obligate the City to provide any municipal services to the Commercial Area, and further agree that the Sales and Use Taxes Revenues derived from the Commercial Area may be used by the City for any lawful purpose in any geographic portion of the City or otherwise, as permitted by law and subject to the provisions of Section 4.03 of this Agreement.

(b) District. The Parties acknowledge and agree that during the limited purpose annexation period, the District shall continue to perform its duties as set forth in the Consent Agreement, and is authorized to exercise all powers and functions of a municipal utility district provided by law, including, without limiting the foregoing, the power to incur additional debts, liabilities, or obligations, to construct additional utility facilities, or to contract with others for the provision and operation thereof, or sell or otherwise transfer property without prior approval of the City, and the exercise of such powers is hereby approved by the City.

## XIII.
## TAXATION DURING LIMITED PURPOSE ANNEXATION PERIOD

**13.01** Property Taxation During Limited Purpose Annexation. The District and the City agree that upon and after the Effective Date of this Agreement, the District may continue to levy and collect its property tax on all assessed valuation within the District boundaries, and the City shall not levy and collect ad valorem taxes on property in the District until the time that the City elects to annex the Commercial Area for full purposes (the "*Full Purpose Annexation Date*" as defined herein).

**13.02** Collection of Sales and Use Tax Revenues. The City may impose sales and use taxes, including but not limited to the general sales tax, Type A and Type B Sales Tax, road maintenance sales tax, and sales tax for the purposes of property tax reduction, within the Commercial Area pursuant to Section 43.0751(k) of the Texas Local Government Code. The sales and use taxes may be imposed on all eligible commercial activities at the rate allowed under the Tax Code. Collection of Sales and Use Tax Revenues shall take effect on the date described in Section 321.102 of the Tax Code.

**13.03** Use of the Sales and Use Tax Revenues. The City shall use the Sales and Use Tax Revenues for any lawful purpose. All Sales and Use Tax Revenues shall be allocated equally between the City and the District.

**13.04** Notification of Comptroller. The City shall send Notice of this Agreement, together with other required documentation, to the Comptroller in the manner provided by Section 321.102 of the Texas Tax Code, after the City Council annexes the Commercial Area for limited purposes.

## XIV.
## FULL PURPOSE ANNEXATION

**14.01** Full Purpose Annexation. Except as otherwise provided in this Agreement or the Consent Agreement, the City agrees that it shall not annex for full purposes any of the Commercial Area within the District until the date that the District has issued bonds to reimburse the Owner for the public infrastructure eligible for reimbursement under applicable laws or TCEQ regulations. SUBJECT TO THE FOREGOING, THE DISTRICT HEREBY CONSENTS TO THE AUTOMATIC FULL PURPOSE ANNEXATION OF ALL PORTIONS OF THE LAND ON THE FULL PURPOSE ANNEXATION DATE (DEFINED HEREIN) WITHOUT FURTHER PROCEDURAL ACTION OF ANY KIND BY THE CITY COUNCIL OR THE DISTRICT'S BOARD IN ACCORDANCE WITH SECTION 43.0751(h) OF THE TEXAS LOCAL GOVERNMENT CODE. FOR PURPOSES OF THIS AGREEMENT, THE "*FULL PURPOSE ANNEXATION DATE*" IS THE DATE ON WHICH THE CITY COUNCIL ADOPTS AN ORDINANCE THAT INCLUDES THE LAND WITHIN THE FULL PURPOSE BOUNDARY LIMITS OF THE CITY. The Full Purpose Annexation Date may be altered only by mutual written agreement of the District and the City.

**14.02** Annexation Procedures. The City shall comply with all applicable requirements of Texas law applicable to full purpose annexation of the Commercial Area. Without limitation and pursuant to Section 43.061(a)(5) of the Texas Local Government Code, the City shall comply with all applicable requirements of Subchapter C-1, Chapter 43, Texas Local Government Code.

**14.03** Assumption of the District's Outstanding Obligations, Assets, Debts and Liabilities. On Full Purpose Annexation Date, the District shall cease to exist, and the City shall take over all the property and other assets of the District, assume all the debts, liabilities and other obligations of the District.

**14.04** Tax Liability. Prior to the Full Purpose Annexation Date, neither the District nor any owners of taxable property within the District shall be liable for any debts of the City, and no ad valorem taxes shall be levied by the City upon taxable property within the District.

**14.05** District Residents as Citizens of the City Upon Full Purpose Annexation. Upon the Full Purpose Annexation Date, a resident of the District becomes a citizen of the City for all purposes and shall have all the rights, privileges, and responsibilities accorded to the citizens residing in all other areas that the City has annexed for full purposes. However, such citizens shall continue to also be citizens of the District until it is dissolved.

**14.06** Regulatory and Taxation Authority. Upon full purpose annexation of the District, the City shall have all the authority and power, including taxation authority, that the City enjoys in all other areas that the City has annexed or does annex for full purposes.

## XV.
## TERM, DEFAULT AND REMEDIES

**15.01** Term. As between the City and the District, this Agreement commences on the Effective Date and continues until 5:00 PM CST on the Full Purpose Annexation Date.

**15.02** Notification of Default or Violation. Upon the occurrence, or alleged occurrence, of an event of default under, or violation of, this Agreement, the non-defaulting party shall send the defaulting Party a Notice of the default or violation or the alleged default or violation. The defaulting Party must cure the default or violation within sixty (60) days of the date of the Notice (the "*Cure Period*").

**15.03** Remedies on Default or Violation. If the default or violation is not cured within the Cure Period, the non-defaulting party may sue for injunctive relief, mandamus, specific performance or for such other legal and equitable relief to which the non-defaulting party may be entitled, excluding consequential and incidental damages. All of these rights and remedies shall be cumulative.

## XVI.
## ADDITIONAL PROVISIONS

**16.01** Voting. The eligibility to vote in City elections of persons residing in a limited purpose annexation area shall be governed by Sections 43.0751(q) and 43.130 of the Texas LocalGovernment Code.

**16.02** Cooperation.

(a) The City and the District each agree to execute such further documents or instruments as may be necessary to evidence their agreements hereunder or enable the fulfillment of their respective obligations hereunder, provided in either case the terms of this Agreement are not modified or amended thereby.

(b) In the event of any third-party lawsuit or other claim relating to the validity of this Agreement or any actions taken hereunder, the City and the District agree to cooperate in the defense of such suit or claim, and to use their respective best efforts to resolve the suit or claim without diminution in their respective rights and obligations under this Agreement.

**16.03** Notice. Any Notice given under this Agreement ("Notice") must be in writing and may be given: (a) by depositing it in the United States mail, certified, with return receipt requested, addressed to the party to be notified and with all charges prepaid; or (b) by depositing it with Federal Express or another service guaranteeing "next day delivery," addressed to the party to be notified and with all charges prepaid; or (iii) by personally delivering it to the party, or any agent of the party listed in this Agreement. Notice by United States mail will be effective on the earlier of the date of receipt or three (3) days after the date of mailing. Notice given in any other manner will be effective only when received. For purposes of notice, the addresses of the Parties will, until changed as provided below, be as follows:

City:

City of Elgin
P.O. Box 591

Elgin, Texas 78621
Attn: City Manager

District:

_____
_____
_____
_____

The Parties may change their respective addresses to any other address within the United States of America by giving at least five (5) days' written notice to the other Parties. A Party may, by giving at least five (5) days' written notice to the other Party, designate additional parties to receive copies of notices under this Agreement.

**16.04** Severability; Amendment; and Waiver.

(a) If any provision of this Agreement is illegal, invalid, or unenforceable, under present or future laws, it is the intention of the Parties that the remainder of this Agreement not be affected, and, in lieu of each illegal, invalid, or unenforceable provision, that the Parties have a thirty (30) day period to negotiate a provision be added to this Agreement by mutual agreement of the Parties which is legal, valid, and enforceable and is as similar in terms to the illegal, invalid or enforceable provision as is possible. If no agreement can be reached to modify the illegal, invalid, or unenforceable provision, and the provision is an essential element of this Agreement, this Agreement shall be null and void.

(b) The Parties may not amend this Agreement, except in a written agreement executed by duly authorized representatives of the Parties.

(c) The Parties may not waive any provision in this Agreement, except pursuant to a writing executed by the Party or Parties against whom the waiver is sought to be enforced. A waiver made in writing on one occasion is effective only in that instance and only for the purpose it is given and is not to be construed as a waiver on any future occasion or against any other Party.

**16.05** Applicable Law and Venue. The interpretation, performance, enforcement and validity of this Agreement is governed by the laws of the State of Texas. Venue will be in a court of appropriate jurisdiction in Bastrop County, Texas. Any reference to a constitutional or statutory provision stated in this Agreement shall incorporate any amendments made to such provision from time to time during the term of this Agreement.

**16.06** Entire Agreement. This Agreement and the Exhibits attached hereto, the Consent Agreement and the Exhibits attached thereto, contain the entire agreement of the Parties. There are no other agreements or promises, oral or written, between the Parties regarding the subject matter of this Agreement.

**16.07** Exhibits; Headings; Construction; and Counterparts. All schedules and exhibits referred to in or attached to this Agreement are incorporated into and made a part of this Agreement for all purposes. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs. Wherever appropriate, words of the masculine gender may include the feminine or neutral, and the singular may include the plural, and vice versa. The Parties acknowledge that each of them has been actively and equally involved in the negotiation of this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting party will not be

employed in interpreting this Agreement or any exhibits attached hereto. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which will together constitute the same instrument.

**16.08** Time. Time is of the essence of this Agreement. In computing the number of days for purposes of this Agreement, all days will be counted, including Saturdays, Sundays and legal holidays; however, if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day will be deemed to be the next day that is not a Saturday, Sunday, or legal holiday.

**16.09** Authority for Execution. The City certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with its City Charter and City ordinances. The District certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with all laws, rules, regulations and orders governing or pertaining to the District.

**16.10** Assignment. No Party shall assign its interest in this Agreement, in whole or in part, without the other Party's written consent. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective representatives, successors, and assigns as permitted by this Agreement.

**16.11** Interpretation. This Agreement has been negotiated by the Parties, each of which has been represented by counsel; consequently, the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

**16.12** No Third-Party Beneficiaries. This Agreement is solely for the benefit of the City and the District, and neither the City nor the District intend by any provision of this Agreement to create any rights in any third-party beneficiaries or to confer any benefit or enforceable rights under this Agreement or otherwise upon anyone other than the City and the District.

**16.13** Incorporation of Exhibits by Reference. All exhibits attached to this Agreement are incorporated into this Agreement by reference for the purposes set forth herein, as follows:

Exhibit A Sketch of the Commercial Area (to be inserted)

Exhibit B Metes and Bounds Description of the Commercial Area (to be inserted)

**16.14** Counterpart Originals. This Agreement may be executed in multiple counterparts,each of which shall be deemed to be an original.

| OPEN SPACE SUMMARY | |
|---|---|
| Total Site Acreage | 569.7 ac |
| FEMA Floodplain | +/- 62.9 ac |
| Parkland | +/- 85.8 ac<br>378 ac required per code |
| Detention | +/- 22.2 ac |

| TRAILS | |
|---|---|
| **Neighborhood Trail**<br>*Material varies depending on storm water impact* | +/- 6.2 mi. |
| **Regional Trail**<br>*Concrete* | +/- 1 mi. |
| **TOTAL** | +/- 7 mi |
| TH Trailheads | |