



AGENDA
CITY COUNCIL REGULAR MEETING
CITY COUNCIL CHAMBERS
5803 THUNDERBIRD
LAGO VISTA, TX
APRIL 17, 2025 AT 1:00 PM

JOIN MEETING VIA VIDEO CONFERENCE

Please join my meeting from your computer, tablet or smartphone.

<https://meet.goto.com/826865181>

You can also dial in using your phone.

United States: +1 (571) 317-3122

Access Code: 826-865-181

CALL TO ORDER, CALL OF ROLL

Kevin Sullivan, Mayor

Rob Durbin, Mayor Pro-Tem, Place 3

Shane Saum, Council Member, Place 1

Adam Benefield, Council Member, Place 2

Norma Owen, Council Member, Place 4

Paul Roberts, Council Member, Place 5

Paul Prince, Council Member, Place 6

EXECUTIVE SESSION

Convene into a closed Executive Session pursuant to;

- A. Consultation with Legal Counsel concerning all regular meeting agenda items requiring confidential, attorney/client advice (as needed). (Texas Government Code Section 551.071)
- B. Consultation with Legal Counsel concerning legal advice and consultation regarding development agreement related to Turnback Ranch Dodge Trail Extension pursuant to Texas Government Code Sec. 551.071, on a matter in which the duty of the attorney to the governing body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter.
- C. Consultation with Legal Counsel concerning legal advice and consultation regarding Lago Vista Police Department, Texas Public Information Act and related legal issues concerning scene investigation and threat of contemplated litigation by B Heckendorf, on a matter in which the duty of the attorney to the governing body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter.
- D. Consultation with Legal Counsel concerning legal questions and advice related to dormant PDD's pursuant to Texas Government Code Section 551.071 - on a matter in

which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter.

- E. Consultation with Legal Counsel concerning legal questions and advice related to pending or contemplated litigation concerning employment-related claims of J. Bartholomew, pursuant to Texas Government Code Section 551.071.
- F. Consultation with Legal Counsel concerning legal questions and advice related to pending or contemplated litigation related to golf course irrigation contract with Duininck, Inc. d/b/a Duininck Golf pursuant to Texas Government Code Section 551.071.
- G. Consultation with Legal Counsel concerning the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of an employee pursuant to Texas Government Code Section 551.074 - city manager interviews with potential candidates, and 551.071 - legal advice related thereto.

ACTION ON EXECUTIVE SESSION ITEMS (action and/or vote may be taken on the following agenda items):

Reconvene from Executive Session into open session to act as deemed appropriate in City Council's discretion regarding:

- A. Consultation with Legal Counsel concerning all regular meeting agenda items requiring confidential, attorney/client advice (as needed). (Texas Government Code Section 551.071)
- B. Consultation with Legal Counsel concerning legal advice and consultation regarding development agreement related to Turnback Ranch Dodge Trail Extension pursuant to Texas Government Code Sec. 551.071, on a matter in which the duty of the attorney to the governing body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter.
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- G. Consultation with Legal Counsel concerning the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of an employee pursuant to Texas Government Code Section 551.074 - city manager interviews with potential candidates, and 551.071 - legal advice related thereto.

INVOCATION

PLEDGE OF ALLEGIANCE, PLEDGE TO TEXAS FLAG

CITIZEN COMMENTS

In accordance with the Open Meetings Act, Council is prohibited from acting or discussing (other than factual responses to specific questions) any items not on the agenda.

To participate in the citizen comments portion of the meeting, you must submit a completed form. If you are attending the meeting in the City Council Chambers you must complete the form available at that location and provide it to the Mayor prior to the start of the meeting. If you will be participating using the online videoconferencing tool, you must complete the form and submit it by email in accordance with the instructions included within the form. It is found on the City's website at the link below. The Council will reconvene from executive session at or around 3:00 p.m.

[Citizen Participation Registration Form](#)

ITEMS OF COMMUNITY INTEREST

Pursuant to Texas Government Code Section 551.0415, the City Council may report on any of the following items:

- a. Expression of thanks, gratitude, and condolences.
- b. Information regarding holiday schedules.
- c. Recognition of individuals, i.e. Proclamations.
- d. Reminders regarding City Council events.
- e. Reminders regarding community events.
- f. Health and safety announcements.

STAFF AND COUNCIL LIAISON REPORTS

1. Routine Reports from City Staff

2. Routine Reports from City Council Board/Commission/Committee Liaisons.

- Charter Review Committee, Councilor Prince & Councilor Saum
- Building and Standards Commission, Councilor Benefield
- Keep Lago Vista Beautiful, Councilor Benefield
- Lago Vista Starry Skies, Councilor Benefield
- Airport Advisory Board, Councilor Saum
- Planning & Zoning Commission, Mayor Pro Tem Durbin
- Economic Development Advisory Committee, Councilor Owen
- Lago Vista Independent School District, Councilor Owen
- Lago Vista Property Owner's Association, Councilor Owen
- Turnback Canyon Trail Conservancy, Councilor Owen
- Golf Course Advisory Committee, Councilor Prince
- Library Advisory Board, Councilor Prince
- Parks & Recreation Advisory Committee, Councilor Prince
- Board of Adjustment, Councilor Roberts
- Governmental Affairs, Councilor Saum
- Water Issues; Lower Colorado River Authority Board, Texas Water Development Board, and other entities as appropriate, Councilor Saum
- Youth Advisory Committee, Mayor Sullivan
- Capital Area Council of Governments, Mayor Sullivan
- Texas Department of Transportation, Mayor Sullivan

- CapMetro, Mayor Sullivan

WORK SESSION

3. Discussion regarding the Private use of Publicly dedicated City-owned park land.
4. Discussion regarding the Irrigation System Sub-Committee Report.
5. Discussion regarding Council's wish-list and priority items for the 2025-2026 budget.
6. Discussion on the possible adoption of an official newspaper for the City of Lago Vista.
7. Discussion, regarding establishing an enhanced reporting requirements for the City Manager's Weekly Report.

CONSENT AGENDA

All matters listed under Consent Agenda, are to be considered routine by the City Council and will be enacted by one motion. There will not be separate discussion on these items. If discussion is desired, that item will be removed from the consent agenda and will be considered separately.

8. Consider approval of April 9, 2025 Special Called City Council Meeting minutes.
9. Consider approval of April 3, 2025 Regular City Council Meeting minutes.
10. Consider approval of **Ordinance No. 25-04-17-01** amending the Fee Schedule for Public Pool Use.
11. Discussion, consideration and possible action on passing **Resolution No. 25-2123** formally adopting an updated City Council Work Plan.

ACTION ITEMS

12. Discussion, consideration, and possible action awarding Bennett Paving's bid for RFP 25-04 in the amount of \$2,917,882.45 to repave over 47 City streets and authorize the Interim City Manager to execute the contract.
13. Discussion, consideration, and possible action to approve an alternate art piece for Keep Lago Vista Beautiful.
14. Discussion, consideration and possible action on approving the City Facility Naming/Renaming application submitted by the Friends of the Library to re-name the greenspace as "Friends of the Library Park".
15. Discussion, consideration and possible action on the development of a policy framework for reviewing and evaluating Dormant Planned Development Districts (PDDs).

16. Discussion, consideration, and possible action on **Ordinance No. 25-04-17-02** amending the speed limit on Lohman Ford Rd.
17. Discussion, consideration, and possible action on **Ordinance No. 25-04-17-03** amending the speed limit on Boggy Ford Rd.
18. Discussion, consideration and possible action on approving the installation of a third stop sign at the intersection of Boggy Ford Rd, Highland Lakes Drive, and Emerald Drive.
19. Discussion, consideration and possible action on passing **Resolution 25-2124** adopting the City of Lago Vista Sunshine Policy.
20. Discussion, consideration and possible action to reschedule the June 19, 2025 Regular City Council Meeting due to City Hall being closed in observance of the Juneteenth holiday.

ADJOURNMENT

IT IS HEREBY CERTIFIED that the above Notice was posted on the Bulletin Board in accordance with Government Code section 551.041 located at all times in City Hall in said City by _____ on the **11th** day of **April** 2025.

Maria Franco, City Secretary, TRMC

THIS MEETING SHALL BE CONDUCTED PURSUANT TO THE TEXAS GOVERNMENT CODE SECTION 551.001 ET SEQ. AT ANY TIME DURING THE MEETING THE COUNCIL RESERVES THE RIGHT TO ADJOURN INTO EXECUTIVE SESSION ON ANY OF THE ABOVE POSTED AGENDA ITEMS IN ACCORDANCE WITH THE SECTIONS 551.071, 551.072, 551.073, 551.074, 551.075 OR 551.076.

THE CITY OF LAGO VISTA IS COMMITTED TO COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT. REASONABLE MODIFICATIONS AND EQUAL ACCESS TO COMMUNICATIONS WILL BE PROVIDED UPON REQUEST.

AT THIS MEETING AT THE STATED LOCATION, A QUORUM OF THE CITY COUNCIL WILL BE PHYSICALLY PRESENT, AND THIS NOTICE SPECIFIES THE INTENT TO HAVE A QUORUM PRESENT THERE, AND THE MEMBER OF THE CITY COUNCIL PRESIDING OVER THE MEETING WILL BE PHYSICALLY PRESENT AT THAT LOCATION. ONE OR MORE MEMBERS OF THE CITY COUNCIL MAY PARTICIPATE IN THIS MEETING REMOTELY, AND IF SO, VIDEOCONFERENCE EQUIPMENT PROVIDING TWO-WAY AUDIO AND VIDEO DISPLAY AND COMMUNICATION WITH EACH MEMBER WHO IS PARTICIPATING BY VIDEOCONFERENCE CALL WILL BE MADE AVAILABLE.



Item Cover Page

CITY COUNCIL AGENDA ITEM REPORT

DATE: April 17, 2025

SUBMITTED BY: Paul Prince, City Council

SUBJECT: Discussion regarding the Private use of Publicly dedicated City-owned park land.

BACKGROUND: Recently, questions have been raised regarding the parkland that has been dedicated to the City by Hines (Tessera). This item allows the Council to have a comprehensive discussion surrounding this topic as well as other developments.

FINDINGS: Attached is Resolution 20-1837 which was approved by the City Council on June, 4th 2020 and the accompanying staff report. It is the special warranty deed which dedicated 7.7241 acres of property as parkland to the City of Lago Vista. According to the attached plat, and staff report, it appears to include the property.

Also attached is Resolution 17-1703 which was approved by Council on June, 15th 2017. This resolution states that Hines Lake Travis Land II Limited Partnership agreed to pay all costs associated with the operation and maintenance of public park facilities within Tessera. It also states the developer expended \$1.7 million of bond proceeds to construct park improvements. The 5.32 acres of parkland and facilities to be dedicated to the City include General Public access to hike and bike trails and General Public access to the pavilion and pool between Memorial Day & First day of school from 8 a.m. to 11:30 a.m.

The Restated Development Agreement between the City and Hines for the Tessera PDD speaks of Public Parks in section 4.05 and of Parkland dedication in section 4.07.

The property conveyed under Resolution 20-1836 has not, and likely will not, been developed to make it usable as Public Parkland. It appears that the conveyance of this Public Parkland and the associated Facilities discussed in Resolution

17-1703 has not occurred. Further, it seems there is little awareness by the General Public of this Public Parkland and the associated Facilities.

FINANCIAL IMPACT: n/a

ATTACHMENTS:

[20-1837 Resolution Deed for Tessera Lot 17-X Block D.pdf](#)
[700 SS Tessera Parkland dedication.pdf](#)
[SS Tessera Parkland dedication.pdf](#)
[FP Tessera Ph 1A Lt 17R1-X & 17R2-X BI D _ Plat.pdf](#)
[17-1703 Resolution Tessera Public Park Facilities.pdf](#)
[Resolution 20-1836.pdf](#)
[20120819 - Tessera Development Agreement.pdf](#)

RESOLUTION 20-1837

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGO VISTA, TEXAS, ACCEPTING BY SPECIAL WARRANTY DEED 7.7241 ACRES OF PROPERTY DONATED BY HINES LAKE TRAVIS LAND II LIMITED PARTNERSHIP, DEDICATING THE PROPERTY AS PARKLAND, AND AUTHORIZING EXECUTION OF SPECIAL WARRANTY DEED.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LAGO VISTA, TEXAS, THAT:

WHEREAS, the City is statutorily authorized to require parkland as part of the property development process as provided for in Chapter 212 of the Local Government Code; and

WHEREAS, parkland dedication requirements are being met by dedication of Lot 17R1-X, Block D, Replat of Lot 17-X, Block D, Tessera on Lake Travis, Phase 1A, being approximately 7.7241 acres pursuant to Chapter 10, Subdivision, Section 5, Parkland Dedication, of the City's Code of Ordinances; and

WHEREAS, the City Council finds that it is in the best interest of the City and its residents to accept the property as shown in the special warranty deed attached as "Attachment A" as public parkland; and

BE IT RESOLVED that the 7.7241-acre property, being Lot 17R1-X, Block D, Replat of Lot 17-X, Block D, Tessera on Lake Travis, Phase 1A, as described in the Special Warranty Deed attached as "Attachment A" between the City of Lago Vista and the Hines Lake Travis Land II Limited Partnership is hereby accepted.

BE IT FURTHER RESOLVED that the property referenced herein shall be permanent parkland of the City of Lago Vista.

BE IT FURTHER RESOLVED THAT the Mayor is authorized to execute the Special Warranty Deed attached as "Attachment A" and city staff is directed to take other appropriate action related to this agreement.

PASSED AND APPROVED by the City Council of the City of Lago Vista this the 4th day of June 2020.

by: Ed Tidwell
Ed Tidwell, MAYOR

ATTEST:

Sandra Barton
Sandra Barton, CITY SECRETARY

ATTACHMENT "A"
[ADD WARRANTY DEED AFTER APPROVAL]

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

**SPECIAL WARRANTY DEED DEDICATING
PROPERTY AS PUBLIC PARKLAND**

HINES LAKE TRAVIS LAND II LIMITED PARTNERSHIP, a Texas limited partnership ("Grantor"), for and in consideration of the sum of TEN (\$10.00) DOLLARS and other good and valuable consideration to it paid, by the CITY OF LAGO VISTA, TEXAS ("Grantee") whose address is 5803 Thunderbird Drive, Lago Vista, Texas, the receipt of which is hereby acknowledged and confessed, has Granted, Sold and Conveyed, and by these presents does Grant, Sell and Convey, unto Grantee as dedicated public parkland and for all other purposes for which a public parkland is commonly used, including installing, repairing, maintaining, altering, replacing, relocating and operating facilities in, into, upon, over, across, and under all that certain tract or parcel of real estate, lying and being situated in the County of Travis, State of Texas, and more particularly described on Exhibit "A" attached hereto (the "Property"), subject, however, to the following reservations from and exceptions to conveyance and warranty:

Taxes and assessments by any taxing authority for the year 2018 and thereafter, together with subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership;

Easements, restrictions, reservations, covenants, and rights-of-way of record and/or apparent on the Property;

Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments, protrusions or any overlapping of improvements;

Utility easements and prescriptive rights visible and apparent on the ground, including easements, or claims of easements, which are not recorded in the public records;

Rights to oil, gas and other minerals of every kind and character in, on and under the property, together with the rights, privileges and immunities relating thereto.

Further, Grantor hereby reserves from this conveyance access, parking, communication, utility and water line easements on the Property for the benefit of Lot 17R1-X, Block D, Replat of Lot 17-X, Block D, Tessera on Lake Travis, Phase 1A, according to the subdivision plat recorded in Document No. 202000006, Official Public Records of Travis County, Texas and to portions of

said Lot 17R1-X, together with all and singular the rights and appurtenances thereto in any way belonging, in accordance with the terms and conditions set forth in the attached Exhibit "B".

To have and to hold the Property, together with all and singular the rights and appurtenances thereto in anywise belonging unto Grantee, its successors and assigns forever, and it does hereby bind itself, its successors and assigns, to warrant and forever defend, all and singular, the Property unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming, or to claim the same, or any part thereof, by and through Grantor, but not otherwise.

Parkland Dedication requirements are being met by dedication of Lot 17R1-X, Block D, Replat of Lot 17-X, Block D, Tessera on Lake Travis, Phase 1A, being approximately 1.208 acres pursuant to Chapter 10, Subdivision, Section 5, Parkland Dedication, of the City's Code of Ordinances.

Grantee further acknowledges and agrees that to the maximum extent permitted by law, the conveyance of the Property as is made "AS IS" AND WITH ALL FAULTS and Grantor has not made, does not make and specifically negates and disclaims any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied concerning or with respect to the Property regarding the Property's compliance with any environmental protection, pollution or land use laws, rules, regulations, orders or requirements, including the existence of hazardous substances in or on the Property, whether in the past or present.

Grantee joins in the execution of this Deed to acknowledge Grantee's agreement to the above stated exceptions and reservations from this conveyance, including the easements reserved by Grantor subject to the terms and conditions set forth in the attached Exhibit "B".

[Signature pages begin on next page]

Dated: July 1, 2020.

GRANTOR

HINES LAKE TRAVIS LAND II LIMITED PARTNERSHIP,
a Texas limited partnership

By: Hines Lake Travis II GP LLC, a Delaware limited
liability company, its General Partner

By: Hines Interests Limited Partnership, a Delaware limited
partnership, its sole member

By: Hines Holdings, Inc., a Texas corporation, its General Partner



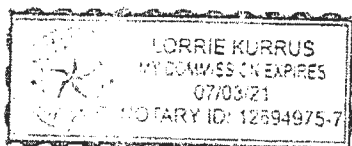
By: [Signature]
Title: Robert W. Witte, Senior Managing Director

STATE OF TEXAS §

COUNTY OF HARRIS §

BEFORE ME, a Notary Public, on this day personally appeared ROBERT W. WITTE
Senior Managing Director, of Hines Holdings, Inc., a Texas corporation, on behalf of said corporation in
its capacity as general partner of Hines Interests Limited Partnership, a Delaware limited
partnership, on behalf of said limited partnership, in its capacity as sole member of Hines Lake
Travis GP, LLC, a Delaware limited liability company, on behalf of said limited liability company,
in its capacity as general partner of Hines Lake Travis Land Limited Partnership, a Texas limited
partnership, on behalf of said limited partnership.

GIVEN UNDER MY HAND AND SEAL of office this 1st day of JULY,
2020.



Lorrie Kurrus
Notary Public, in and for the State of Texas

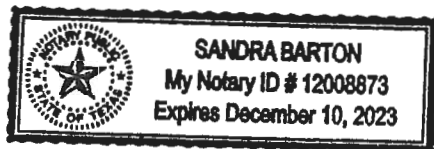
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

The City of Lago Vista, Texas, a body politic and political subdivision of the State of Texas did at a regular meeting with a quorum being present, on June 4, 2020 vote to authorize the acceptance of this dedication of the Property as a public parkland.

Ed Tidwell
Ed Tidwell, Mayor

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on June 9, 2020 by Ed Tidwell, in his capacity as Mayor of the City of Lago Vista, Texas.



Sandra Barton
Notary Public in and for
The State of Texas

After recording, please return to:
Sandra Barton,
City Secretary
City of Lago Vista, Texas
5803 thunderbird Drive
Lago Vista, Texas 78645

EXHIBIT A
DESCRIPTION OF PROPERTY

Lot 17R2-X, Block D, Replat of Lot 17-X, Block D, Tessera on Lake Travis, Phase 1A, according to the subdivision plat recorded in Document No. 202000006, Official Public Records of Travis County, Texas.

EXHIBIT B

TERMS AND CONDITIONS OF RESERVED EASEMENTS FOR THE BENEFIT OF THE DOMINANT ESTATE

Grantor is the owner of Lot 17R1-X, Block D, Replat of Lot 17-X, Block D, Tessera on Lake Travis, Phase 1A, according to the subdivision plat recorded in Document No. 202000006, Official Public Records of Travis County, Texas (“Dominant Estate” or “Lot 17R1-X”). The Dominant Estate is adjacent to Lot 17R2-X, Block D, Replat of Lot 17-X, Block D, Tessera on Lake Travis, Phase 1A, according to the subdivision plat recorded in Document No. 202000006, Official Public Records of Travis County, Texas (“Servient Estate” or “Property”). The reserved access, communication, utility, water line and drainage easements are referred to collectively as the “Reserved Easements” and individually as “Reserved Easement.” The equipment, cables, conduits, pipes, and structures that may be constructed, operated, maintained, repaired, and replaced within a Reserved Easement are referred to collectively as the “Facilities” and individually as a “Facility.” It is contemplated Grantor will obtain development permits and a site plan to be approved by the City of Lago Vista for development of the Dominant Estate (“Dominant Estate Site Plan”).

Reserved Easements Defined.

1. **Access Easement.** An access easement to provide free and uninterrupted vehicular and pedestrian ingress and egress from the Dominant Estate to Pace Ravine Drive. The Access Easement shall be over and across existing paved parking areas and driveways on the Property. As of the date of this Deed, the Dominant Estate is undeveloped. Grantee agrees the Dominant Estate Site Plan will authorize the construction of a driveway connecting existing paved areas on the Property to paved areas on the Dominant Estate to provide free and interrupted vehicular and pedestrian ingress and egress to Pace Ravine Drive.
2. **Parking Easement.** A parking easement to allow vehicular parking on the existing parking areas on the Property.
3. **Communication Easement.** A communication easement to be used to construct, place, operate, inspect, maintain, repair, replace and remove buried cables, fiber, video cabling, and conduits as Grantor may from time to time require to provide communication, video, security video, and alarm services to the Dominant Estate, consisting of cable, markers and necessary fixtures and appurtenances, a Litespan cabinet and one or more splice boxes over, across, under and upon the Property.
4. **Utility Easement.** A utility easement to be used to construct, place, operate, inspect, maintain, repair, replace and remove buried electric lines, propane lines and any other dry utility line not classified as a communication utility line as Grantor may from time to time require, consisting of cable, markers and necessary fixtures and appurtenances to connect to utility service or distribution lines on the Property.

5. **Water Line Easement.** A water line easement to be used to construct, place, operate, inspect, maintain, repair, replace and remove water lines and irrigation lines as Grantor may from time to time require to provide water for domestic and irrigation purposes on the Dominant Estate.
6. **Drainage Easement.** A drainage easement to be used to convey storm water sheet flow runoff from the Dominant Estate over, upon, and across the Property and, if determined necessary by the City of Lago Vista, the drainage easement includes the right to enter the Property to construct, operate, inspect, inspect, maintain, replace, and repair open drainageways and/or enclosed storm sewer pipes or structures.

Terms and Conditions Applicable to Specific Reserved Easements

1. The Reserved Easements, except the Access and Parking Easements, are blanket easements.
2. The Access and Parking Easements are limited to the paved parking areas and driveways on the Property existing on the effective date of the deed conveying the Property to Grantee.
3. Any blanket Reserved Easement that is converted to a defined easement includes the easement right of ingress and egress over, along and across the Property to access Facilities and defined Reserved Easements and the easement right to be relocated on the Property.

General Terms and Conditions Applicable to the Reserved Easements

1. The obligations, benefits and burdens created by the Reserved Easements shall be covenants running with the land and shall apply to, be binding upon the Property and inure to the benefit of the Grantor, and the future record title owners of the Dominant Estate.
2. The cost of constructing, maintaining, and repairing a Facility within the Property will be borne by Grantor. Grantor shall comply with all applicable City ordinances regarding permitting and construction requirement for maintenance or repair of a Facility. Prior to constructing a Facility, Grantor must obtain all necessary local, state and federal permits and approvals required to construct the Facility and provide Grantee a copy of all such governmental permits and approvals. Grantee agrees to approve, and issue permits for the construction of a Facility if the permit application complies with all applicable Lago Vista regulations. Grantor must provide Grantee at least thirty (30) calendar days' advance written notice of intent to construct a Facility. Grantor, and its contractors shall not permit any liens to attach to the Property by reason of the design, engineering or construction of a Facility. At least ten (10) Business Days before construction activities begin on the Property, all contractors engaged by Grantor must provide Grantee evidence of commercial general liability insurance in an amount not less than \$1,000,000.00 per occurrence, naming Grantee as an additional insured party, and otherwise reasonably acceptable to Grantee. If the Property is damaged by Grantor or Grantor's agents, servants, contractors, or employees during the design, engineering, construction, repair or replacement of a Facility, Grantor shall promptly repair and restore, or cause to be repaired and restored, the Property to substantially the same condition as existed prior to the damage.
3. Grantor is not and shall not be construed as Grantee's agent in contracting for the construction, maintenance, repair or replacement of any Facility, and shall have no authority to pledge,

mortgage, hypothecate or otherwise encumber any interest in the Reserved Easements or the Property. Grantor shall indemnify and hold harmless Grantee from and against any and all mechanics', materialmen's or other liens or claims (and all costs and expenses associated therewith) asserted, filed or arising out of any such work.

4. Once a Site Plan is approved by the City of Lago Vista for the construction of a Facility, if requested by Grantee, Grantor agrees to execute a recordable amendment to the applicable Reserved Easement converting the Reserved Easement from a blanket easement to a defined easement; provided, the width of the defined Reserved Easement will be no less than fifteen feet (15').
5. If a Facility needs to be relocated, the cost to relocate the Facility will be borne by the Party requesting or requiring the relocation of the Facility and Grantee shall provide an adequate substitute defined easement area is provided if the Facility is relocated outside of its defined easement area. Grantee shall have the right to perform the required construction and relocation of a Facility after Grantor approves the new location of the Facility, which approval shall not be unreasonably denied, delayed or conditioned.
6. The Reserved Easements are appurtenant to and run with the Dominant Estate Property and all portions of it, whether or not the easement is referenced in any conveyance of the Dominant Estate Property or any portion of it. The Reserved Easements bind and inure to the benefit of Grantor and Grantee and their respective successors, and assigns.
7. The Reserved Easements are perpetual.
8. The Reserved Easements are non-exclusive.
9. Grantee and Grantee's successors, and assigns have the right to use the surface of the Property for all purposes that do not unreasonably interfere with or interrupt the use of the easement.
10. **INDEMNIFICATION AND HOLD HARMLESS. GRANTOR, AND GRANTOR'S SUCCESSORS AND ASSIGNS HEREBY COVENANTS AND AGREES TO RELEASE, DEFEND, HOLD HARMLESS, AND INDEMNIFY THE CITY AND ITS PAST, PRESENT AND FUTURE OFFICERS, AGENTS, SERVANTS AND EMPLOYEES, FROM AND AGAINST ALL THIRD-PARTY CLAIMS, SUITS, JUDGMENTS, DAMAGES, AND DEMANDS (TOGETHER, "CLAIMS") AGAINST THE CITY, WHETHER REAL OR ASSERTED, INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEY'S FEES, RELATED EXPENSES, EXPERT WITNESS FEES, CONSULTANT FEES, AND OTHER COSTS, ARISING OUT OF THE NEGLIGENCE OR OTHER WRONGFUL CONDUCT OF GRANTOR, INCLUDING THE NEGLIGENCE OF GRANTOR'S EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, MATERIAL MEN, AND AGENTS, IN CONNECTION WITH THE DESIGN OR CONSTRUCTION OF ANY PUBLIC INFRASTRUCTURE, STRUCTURES, OR OTHER FACILITIES OR IMPROVEMENTS THAT ARE REQUIRED OR PERMITTED UNDER THIS EXHIBIT B AND/OR CITY REGULATIONS AND/OR ANY APPLICABLE DEVELOPMENT STANDARDS AND/OR ANY OTHER GOVERNING REGULATIONS; AND IT IS EXPRESSLY UNDERSTOOD THAT SUCH CLAIMS SHALL, EXCEPT AS MODIFIED BELOW, INCLUDE CLAIMS EVEN IF CAUSED**

BY THE CITY'S OWN CONCURRENT NEGLIGENCE, SUBJECT TO THE TERMS OF THIS SECTION. GRANTOR SHALL NOT, HOWEVER, BE REQUIRED TO INDEMNIFY THE CITY AGAINST CLAIMS CAUSED BY THE CITY'S SOLE OR GROSS NEGLIGENCE. IF THE CITY INCURS CLAIMS THAT ARE CAUSED BY THE CONCURRENT NEGLIGENCE OF GRANTOR AND THE CITY, THE GRANTOR'S INDEMNITY OBLIGATION WILL BE LIMITED TO A FRACTION OF THE TOTAL CLAIMS EQUIVALENT TO GRANTOR'S OWN PERCENTAGE OF RESPONSIBILITY.



AGENDA ITEM
City of Lago Vista

To: Mayor & City Council

Council Meeting: 4 June, 2020

From: Erin Selvera (City Attorney)

Subject: Discussion, consideration and possible action on Resolution No. 20-1837; A Resolution of the City Council of the City of Lago Vista, Texas, accepting by special warranty deed 7.7241 acres of property donated by Hines Lake Travis Land II Limited Partnership, dedicating the property as parkland, and authorizing execution of special warranty deed.

Request: Business Item

Legal Document: Resolution

Legal Review: ☐

EXECUTIVE SUMMARY:

Lago Vista Subdivision Regulations Section 5.10 requires the developer for each residential subdivision in the City or the City's extraterritorial jurisdiction to set aside and dedicate public parkland or make an in-lieu financial contribution to the City at the minimum rate of one (1) acre for every thirty (30) new dwelling units or \$1,050.00 per dwelling unit. The developer for Tessera is dedicating the 7.7241 acres at the intersection of pace Ravine Drive, Tessera Parkway and Cape Travis Bend as parkland. The park contains the swimming pool and associated facilities for the subdivision.

Impact if Approved:

The parkland will be deeded to the City.

Impact if Denied:

The parkland would continue to be owned by the developer. At some point the property will need to be transferred to the city.

Is Funding Required? ☐ Yes ☒ No If Yes, Is it Budgeted? ☐ Yes ☐ No ☒ N/A

Indicate Funding Source:**Suggested Motion/Recommendation/Action**

Motion to - -

Motion to - -

Motion to - -

Known as:

Tessera parkland swimming pool property deed. Resolution 20-1837

Agenda Item Approved by City Manager



AGENDA ITEM

City of Lago Vista

To: Mayor & City Council

Council Meeting: 4 June, 2020

From: Erin Selvera (City Attorney)

Subject: Discussion, consideration and possible action on Resolution No. 20-1837; A Resolution of the City Council of the City of Lago Vista, Texas, accepting by special warranty deed 7.7241 acres of property donated by Hines Lake Travis Land II Limited Partnership, dedicating the property as parkland, and authorizing execution of special warranty deed.

Request: Business Item

Legal Document: Resolution

Legal Review: ☐

EXECUTIVE SUMMARY:

Lago Vista Subdivision Regulations Section 5.10 requires the developer for each residential subdivision in the City or the City's extraterritorial jurisdiction to set aside and dedicate public parkland or make an in-lieu financial contribution to the City at the minimum rate of one (1) acre for every thirty (30) new dwelling units or \$1,050.00 per dwelling unit. The developer for Tessera is dedicating the 7.7241 acres at the intersection of Pace Ravine Drive, Tessera Parkway and Cape Travis Bend as parkland. The park contains the swimming pool and associated facilities for the subdivision.

Impact if Approved:

The parkland will be deeded to the City.

Impact if Denied:

The parkland would continue to be owned by the developer. At some point the property will need to be transferred to the city.

Is Funding Required? ☐ Yes ☒ No If Yes, Is it Budgeted? ☐ Yes ☐ No ☒ N/A

Indicate Funding Source:**Suggested Motion/Recommendation/Action**

Motion to - -

Motion to - -

Motion to - -

Known as:

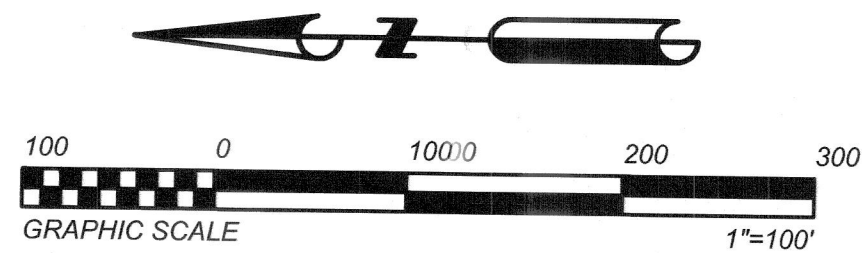
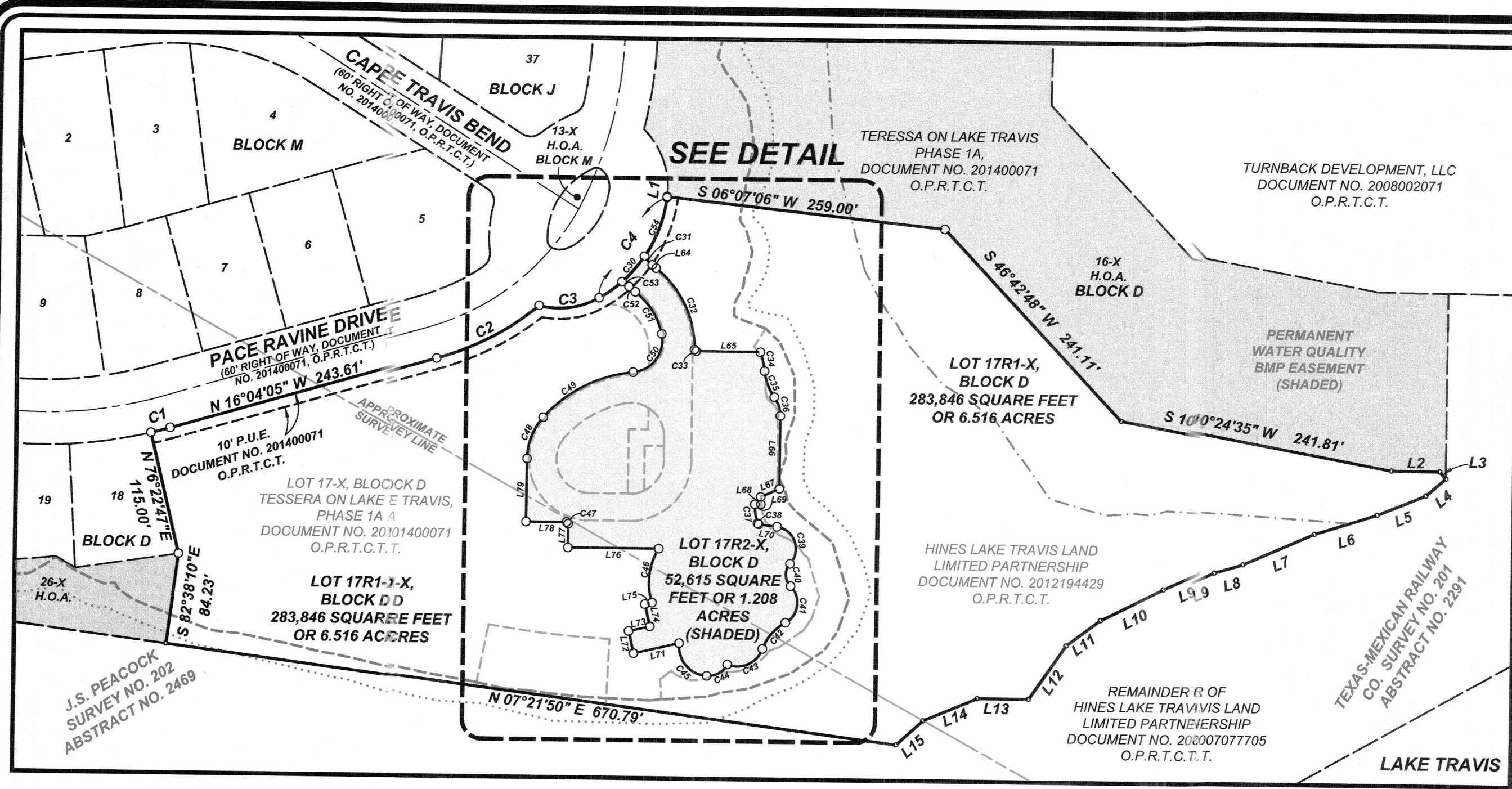
Tessera parkland swimming pool property deed. Resolution 20-1837

Agenda Item Approved by City Manager

202000006

41754

JANUARY 13, 2020

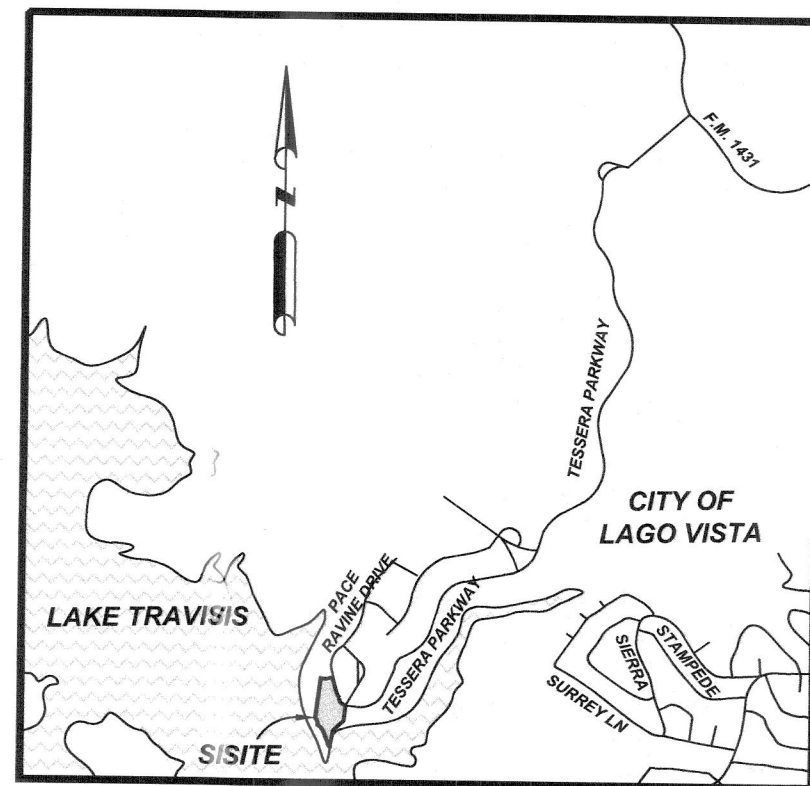


LEGEND

- ... DIMENSION POINT, NOTHING FOUND/D OR SET
- ... SET 1/2" REBAR WITH ALUMINUM CAP STAMPED "MLA RPLS 4873" (OR COTTON SPINDLE IN ROCK)
- BMP ... BEST MANAGEMENT PRACTICE
- P.U.E. ... PUBLIC UTILITY EASEMENT
- O.P.R.T.C.T. ... OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS
- ... 722' CONTOUR BASED ON LOWER COLORADO RIVER AUTHORITY BENCHMARK A590 (ELEVATION= 858.83') AS SURVEYED ON THE GROUND IN MARCH 2010
- ... LOCATION OF 715' CONTOUR AND INUNDATION EASEMENT TO THE LOWER COLORADO RIVER AUTHORITY, VOLUME 643, PAGE 36, D.R.T.C.T. (LOCATION IS BASED ON FIELD SURVEY BY THIS FIRM ON MARCH 2010)
- ... CRITICAL WATER QUALITY BUFFER ZONE LINE, OFFSET (UPSTREAM) 75' FROM THE 681' CONTOUR LINE, BASED ON LOWER COLORADO RIVER AUTHORITY BENCHMARK A590 (ELEVATION = 858.83') AS SURVEYED ON THE GROUND IN MARCH 2010

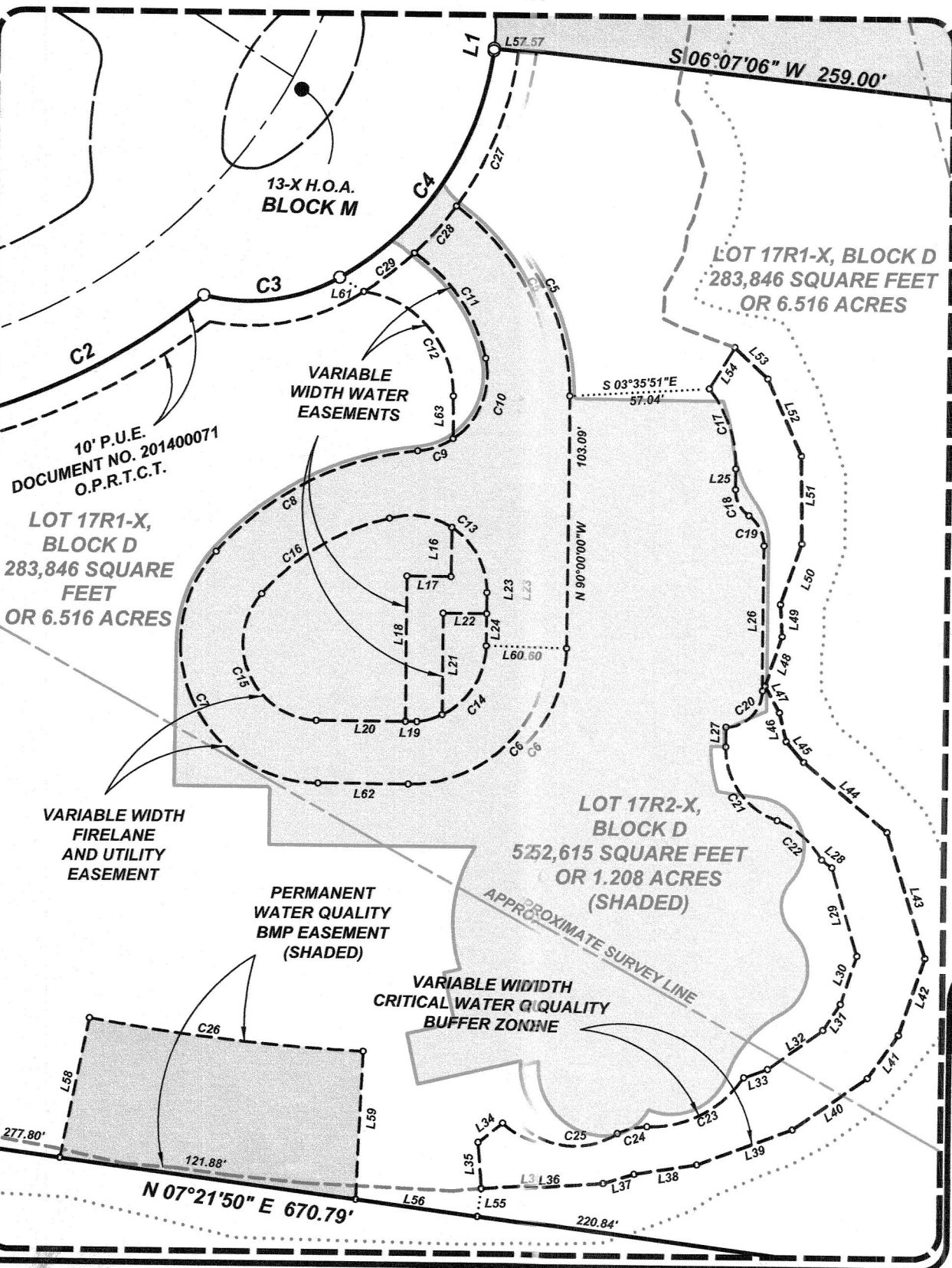
VICINITY MAP

NOT TO SCALE



EASEMENTS DETAIL

SCALE 1"=60.00'



LINE TABLE

LINE	BEARING	DISTANCE	LINE	BEARING	DISTANCE	LINE	BEARING	DISTANCE	LINE	BEARING	DISTANCE
L1	N 83°28'04" W	1.08'	L17	N 00°00'00" E	18.03'	L49	N 86°14'02" E	13.09'	L65	S 00°20'42" W	59.45'
L2	S 00°25'24" W	44.88'	L18	N 90°00'00" W	59.36'	L50	S 71°30'35" E	26.17'	L66	S 90°00'00" W	67.52'
L3	S 49°22'55" W	8.70'	L19	S 00°00'00" E	4.70'	L51	N 88°57'51" E	35.96'	L67	N 23°50'45" W	18.82'
L4	N 40°37'05" W	24.25'	L20	N 00°00'00" E	36.43'	L52	N 66°02'46" E	34.36'	L68	S 88°56'33" W	7.09'
L5	N 22°23'31" W	48.36'	L21	N 90°00'00" E	41.38'	L53	N 43°01'25" E	18.64'	L69	N 00°17'34" W	17.11'
L6	N 17°39'36" W	60.72'	L22	S 00°00'00" E	17.78'	L54	N 58°59'59" W	19.80'	L70	S 07°17'33" W	5.54'
L7	N 23°45'43" W	71.84'	L23	N 90°00'00" E	8.60'	L55	N 82°38'10" W	11.41'	L71	N 13°08'02" W	43.06'
L8	N 16°42'32" W	27.46'	L24	N 90°00'00" W	13.11'	L56	N 07°21'50" E	50.27'	L72	N 76°51'58" E	21.00'
L9	N 24°47'17" W	37.68'	L25	S 90°00'00" W	8.46'	L57	S 06°07'06" E	10.00'	L73	S 13°08'02" E	20.00'
L10	N 26°34'43" W	64.70'	L26	N 90°00'00" W	59.00'	L58	S 78°51'14" E	58.32'	L74	N 76°51'58" E	21.00'
L11	N 36°53'10" W	39.46'	L27	N 90°00'00" W	8.06'	L59	N 87°44'28" W	60.43'	L75	S 13°08'02" E	6.80'
L12	N 55°38'08" W	60.57'	L28	S 37°20'40" W	5.26'	L60	S 01°07'15" W	25.50'	L76	N 00°00'58" E	84.13'
L13	N 00°00'00" E	47.34'	L29	S 73°34'21" W	37.53'	L61	N 23°28'04" E	11.48'	L77	S 89°59'02" E	22.09'
L14	N 22°50'44" W	54.23'	L30	N 71°46'45" W	20.76'	L62	N 00°00'00" E	36.39'	L78	N 00°00'58" E	37.65'
L15	N 42°24'52" W	33.53'	L31	N 56°36'08" W	12.79'	L63	S 90°00'00" E	17.38'	L79	S 89°50'35" E	58.59'
L16	N 90°00'00" W	20.14'	L32	N 35°58'38" W	27.50'	L64	S 38°16'49" W	4.76'			

CURVE TABLE

CURVE	RADIUS	ARC LENGTH	DELTA ANGLE	CHORD DIST.	CHORD BEARING	CURVE	RADIUS	ARC LENGTH	DELTA ANGLE	CHORD DIST.	CHORD BEARING
C1	430.00'	18.37'	2°26'52"	18.34'	S 14°50'39" E	C28	135.00'	25.73'	10°55'12"	25.69'	N 48°48'48" W
C2	260.00'	107.20'	23°37'25"	106.44'	N 21°27'52" W	C29	135.00'	25.95'	11°00'45"	25.91'	N 37°50'51" W
C3	75.00'	57.25'	43°43'58"	55.87'	N 01°07'59" W	C30	125.00'	31.46'	14°25'07"	31.37'	N 48°56'50" E
C4	125.00'	116.06'	53°11'57"	111.94'	N 34°56'27" W	C31	32.22'	10.73'	19°04'44"	10.68'	S 47°49'11" W
C5	94.75'	89.94'	54°23'11"	86.60'	S 62°25'01" W	C32	96.50'	86.13'	51°08'12"	83.30'	S 63°50'55" W
C6	56.75'	88.64'	89°29'46"	79.90'	N 44°44'34" W	C33	1.50'	2.33'	89°04'19"	2.10'	S 44°52'52" W
C7	56.75'	129.93'	131°11'00"	103.36'	N 06°35'30" E	C34	78.87'	17.96'	13°02'38"	17.92'	S 76°50'51" W
C8	124.75'	94.09'	43°12'43"	91.87'	S 19°47'48" E	C35	50.00'	25.93'	29°43'02"	25.64'	S 68°30'39" W
C9	31.25'	15.48'	28°23'01"	15.32'	S 15°47'48" E	C36	29.44'	18.68'	36°20'52"	18.37'	S 71°49'34" W
C10	31.25'	37.62'	68°58'56"	35.39'	S 68°28'46" E	C37	55.92'	17.94'	18°22'42"	17.86'	S 80°55'41" W
C11	69.25'	53.20'	44°00'51"	51.90'	N 39°18'37" E	C38	1.25'	1.41'	64°26'47"	1.33'	S 39°31'01" W
C12	42.50'	61.47'	82°52'17"	56.25'	S 38°40'21" W	C39	20.50'	44.57'	124°34'28"	36.30'	N 49°27'59" W
C13	31.35'	58.24'	106°27'02"	50.22'	S 38°40'21" W	C40	15.00'	23.02'	87°55'05"	20.82'	S 69°34'47" W
C14	31.56'	45.97'	83°28'13"	42.01'	N 48°03'28" W	C41	21.14'	39.69'	107°33'14"	34.11'	N 82°16'27" W
C15	31.27'	70.14'	128°31'48"	56.32'	N 06°11'31" E	C42	45.00'	32.94'	41°56'18"	32.21'	N 49°27'59" W
C16	99.25'	61.45'	35°28'27"	60.47'	S 35°31'18" E	C43	24.65'	39.46'	91°42'34"	35.38'	N 24°34'50" W
C17	50.90'	35.16'	39°34'17"	34.46'	S 73°11'30" W	C44	20.30'	23.16'	65°22'30"	21.83'	N 29°23'10" W
C18	13.00'	12.51'	55°09'00"	12.04'	S 62°25'30" W	C45	27.66'	44.14'	91°25'24"	39.60'	N 49°00'48" E
C19	15.00'	14.44'	55°09'00"	13.89'	S 62°25'30" W	C46	59.05'	51.96'	50°25'14"	50.30'	S 83°37'21" E
C20	15.00'	23.22'	88°42'36"	20.97'	N 45°45'38" W	C47	1.50'	2.36'	90°00'00"	2.12'	N 45°00'58" E
C21	31.60'	39.28'	71°13'22"	36.80'	S 53°54'24" W	C48	58.50'	41.89'	41°01'35"	41.00'	S 69°19'47" E
C22	35.75'	24.81'	39°46'07"	24.32'	S 48°40'40" W	C49	126.50'	95.40'	43°12'43"	93.16'	S 27°12'38" E
C23	46.28'	46.06'	57°01'56"	44.18'	N 27°27'18" W	C50	29.50'	50.13'	97°21'57"	44.31'	S 54°17'16" E
C24	30.65'	42.75'	75°58'48"	39.69'	N 13°13'40'43" W	C51	67.50'	46.93'	39°50'16"	45.99'	S 57°06'38" E
C25	32.23'	42.75'	75°58'48"	39.69'	N 04°04'47" E	C52	100.00'	7.55'	4°19'27"	7.55'	N 39°21'13" E
C26	850.47'	112.75'	7°33'45"	112.67'	N 06°06'21'02" E	C53	28.03'	8.04'	16°26'20"	8.01'	N 33°17'46" E
C27	135.00'	69.00'	29°17'08"	68.25'	N 68°58'50" W	C54	125.00'	58.68'	26°53'50"	58.14'	S 69°36'19" E

SHEET 1 OF 2

DATE: 12/02/2019

DRAWN BY: OP

CHECKED BY: MLL

FILE: 09107.CRD

JOB NO.: 09107V



MAARSHALL LANCASTER & ASSOCIATES, INC.

CONSULTING LAND SURVEYORS

commercial, retail and industrial construction surveying
land title surveys · topography · subdivision platting

1864 Norwood Drive, Suite E, Hurst, TX 76054

metro (817) 268-8000 fax (817) 282-2231

www.mla-survey.com firm no.10045100

OWNER/DEVELOPER

HINES LAKE TRAVIS LAND II
LIMITED PARTNERSHIP
811 MAIN STREET, SUITE 416100
HOUSTON, TEXAS 77002
PHONE: 713-237-5600

ENGINEER

ADAMS ENGINEERING &
DEVELOPMENT CONSULTANTS
8951 CYPRESS WATERS
BOULEVARD, SUITE 150
DALLAS, TEXAS 75019
PHONE: 817-328-3200

**FINAL PLAT OF
LOTS 17R1-X & 17R2-X, BLOCK D,
TESSERA ON LAKE
TRAVIS PHASE 1A**
BEING A REPLAT OF
LOT 17-X, BLOCK D,
AN ADDITION TO THE CITY OF LAGO VISTA,
TRAVIS COUNTY, TEXAS,
ACCORDING TO THE PLAT RECORDED IN
DOCUMENT NO. 201400071, O.P.R.T.C.T.
BEING 7.724 ACRES SITUATED
IN THE TEXAS-MEXICAN RAILWAY CO.
SURVEY NO. 201, ABSTRACT NO. 2291
AND J.J.S. PEACOCK SURVEY NO. 202,
ABSTRACT NO. 2469
TRAVIS COUNTY, TEXAS

OWNER'S CERTIFICATE AND DEDICATION

STATE OF TEXAS

COUNTY OF TRAVIS

KNOW ALL MEN BY THESE PRESENTS, THAT I, **HINES LAKE TRAVIS II LIMITED PARTNERSHIP**, A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF TEXAS, WITH ITS HOME ADDRESS AT 811 MAIN STREET, SUITE 4100, HOUSTON, TEXAS 77002, OWNER OF 7.724 ACRES OF LAND, KNOWN AS LOT 17-X, BLOCK D, TESSERA ON LAKE TRAVIS, PHASE 1A, OUT OF THE TEXAS-MEXICAN RAILWAY CO. SURVEY NO. 201, ABSTRACT NO. 2291 AND THE J.S. PEACOCK SURVEY NO. 202, ABSTRACT NO. 2469, TRAVIS COUNTY, TEXAS, AS RECORDED IN DOCUMENT NO. 201400071, OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, DOES HEREBY SUBDIVIDE OR DEVELOP 7.724 ACRES OF LAND OUT OF THE TEXAS-MEXICAN RAILWAY CO. SURVEY NO. 201, ABSTRACT NO. 2291 AND THE J.S. PEACOCK SURVEY NO. 202, ABSTRACT NO. 2469, TRAVIS COUNTY, TEXAS TO BE KNOWN AS **LOTS 17R1-X & 17R2-X, BLOCK D, TESSERA ON LAKE TRAVIS PHASE 1A**, IN ACCORDANCE WITH THE PLAT SHOWN HEREON, SUBJECT TO ANY AND ALL EASEMENTS OR RESTRICTIONS HERETOFORE GRANTED, AND DO HEREBY DEDICATE TO THE PUBLIC THE USE OF THE STREETS AND EASEMENTS SHOWN HEREON.

WITNESS MY HAND, THIS THE 6th DAY OF January, 2020, AD

HINES LAKE TRAVIS II LIMITED PARTNERSHIP

BY: **HINES LAKE TRAVIS II GP LLC, C, ITS GENERAL PARTNER**

BY: **HINES INTERESTS LIMITED PARTNERSHIP, ITS SOLE MEMBER**

BY: **HINES HOLDINGS, S, INC., ITS GENERAL PARTNER**

BY: _____

NAME: Robert W. Witte

TITLE: Senior Managing Director

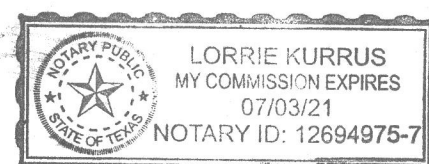
STATE OF TEXAS

COUNTY OF HARRIS

BEFORE ME, A NOTARY PUBLIC, ON THIS DAY PERSONALLY APPEARED Robert W. Witte, Senior Managing Director OF HINES HOLDINGS, INC., A TEXAS CORPORATION, ON BEHALF OF SAID CORPORATION IN ITS CAPACITY AS GENERAL PARTNER OF HINES INTEREST LIMITED PARTNERSHIP, A DELAWARE LIMITED PARTNERSHIP, ON BEHALF OF SAID LIMITED PARTNERSHIP, IN ITS CAPACITY AS SOLE MEMBER OF HINES LAKE TRAVIS GP, LLC, A DELAWARE LIMITED LIABILITY COMPANY, ON BEHALF OF SAID LIMITED LIABILITY COMPANY, IN ITS CAPACITY AS GENERAL PARTNER OF HINES LAKE TRAVIS II LIMITED PARTNERSHIP, A TEXAS LIMITED PARTNERSHIP, ON BEHALF OF SAID LIMITED PARTNERSHIP.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 6th DAY OF January, 2020

Lorrie Kurrus
NOTARY PUBLIC, IN AND FOR THE STATE OF TEXAS



GENERAL NOTES

1. THE BASIS OF BEARINGS FOR THIS PLAT IS THE TEXAS STATE PLANE COORDINATE SYSTEM BASED ON THE LOWER COLORADO RIVER AUTHORITY (LCRA) MONUMENTS A590 AND L702.

2. TITLE ENCUMBRANCE RESEARCH (SUCH AS EASEMENTS) SHOWN ON THIS SURVEY IS BASED ON INFORMATION CONTAINED IN SCHEDULE "B" OF A TITLE COMMITMENT PREPARED BY OLD REPUBLICAN NATIONAL TITLE INSURANCE COMPANY, GF NO. 12441NHL, ISSUED ON JULY 11, 2013. REFERENCE IS MADE TO SAID COMMITMENT AND RECORD DOCUMENTS LISTED THEREIN FOR FULL PARTICULARS. EASEMENTS AND OTHER TITLE ENCUMBRANCES, BOTH RECORDED AND UNRECORDED, MAY EXIST THAT ARE NOT CONTAINED WITHIN SAID TITLE COMMITMENT (AND THEREFORE NOT SHOWN ON THIS SURVEY). **MARSHALL LANCASTER & ASSOCIATES, INC. MAKES NO REPRESENTATION AS TO THE ACCURACY OR COMPLETENESS OF SAID TITLE ENCUMBRANCE RESEARCH.**

3. SOURCE BENCHMARK: (LCRA MONUMENT NO. A 590) 3-1/2" ALUMINUM DISK IN CONCRETE STAMPED "LCRA A590", LOCATED 4.6 MILES NORTHWEST OF THE INTERSECTION OF F.M. ROAD NO. 1431 AND LOHMAN FORD ROAD ON THE SOUTH SIDE OF F.M. ROAD NO. 1431.

4. THE SUBDIVISION SHOWN HEREON IS ENTIRELY WITHIN THE CITY LIMITS OF LAGO VISTA, TEXAS.

5. NO DEVELOPMENT OR CLEARING OR GRADING SHALL TAKE PLACE IN THE CRITICAL WATER QUALITY BUFFER ZONE EXCEPT AS ALLOWED BY THE HIGHLAND LAKES WATERSHED ORDINANCES.

6. NOTES AND RESTRICTIONS SET FORTH ON PLAT FOR TESSERA ON LAKE TRAVIS PHASE 1A, AS RECORDED IN DOCUMENT NO. 201400071, OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS, ARE APPLICABLE TO THIS REPLAT.

7. THE LAND IN THIS SUBDIVISION IS SUBJECT TO THE TERMS AND CONDITIONS OF THE RESTATED DEVELOPMENT AGREEMENT, HAVING AN EFFECTIVE DATE OF AUGUST 16, 2012, BY AND AMONG HINES LAKE TRAVIS II LIMITED PARTNERSHIP, HINES LAKE TRAVIS II LIMITED PARTNERSHIP AND THE CITY OF LAGO VISTA, TEXAS, RECORDED IN DOCUMENT NO. 2014184192, OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, AS AMENDED.

LOWER COLORADO RIVER AUTHORITY NOTES

CRITICAL WATER QUALITY BUFFER ZONE PLAT NOTE:

THE CRITICAL WATER QUALITY BUFFER ZONE EASEMENT IS FOR THE PROTECTION OF THE ENVIRONMENT BY IMPROVING THE QUALITY OF STORMWATER RUNOFF FROM DEVELOPED LANDS. THE NATIVE LAND OR MANAGEMENT PRACTICES WITHIN THE EASEMENT ARE TO HELP MAINTAIN CLEAN WATER IN CREEKS, RIVERS AND LAKES. NO STRUCTURE OR IMPROVEMENTS, OTHER THAN NATIVE PLANT ENHANCEMENT OR MAINTENANCE OF THE AREA IN ACCORDANCE WITH LCRA RULES, MAY BE PLACED OR PERFORMED WITHIN THE EASEMENT WITHOUT SPECIFIC PRIOR AUTHORIZATION AND APPROVAL IN WRITING FROM THE LCRA, ITS SUCCESSORS OR ASSIGNS, OR OTHER GOVERNMENTAL ENTITY WITH AUTHORITY TO PERMIT SUCH IMPROVEMENT FOR THE PROTECTION OF THE ENVIRONMENT. THE EASEMENT SHALL BE MAINTAINED BY EACH LOT OWNER BY PRESERVING AND RESTORING NATIVE VEGETATION. THE EASEMENT MAY NOT BE AMENDED EXCEPT BY EXPRESS WRITTEN AGREEMENT OF THE LCRA, ITS SUCCESSORS OR ASSIGNS, OR OTHER GOVERNMENTAL ENTITY WITH PROPER AUTHORITY.

PERMANENT WATER QUALITY BMP EASEMENT PLAT NOTE:

THE PERMANENT WATER QUALITY BEST MANAGEMENT PRACTICE (BMP) EASEMENT IS FOR THE PURPOSE OF PROTECTING THE ENVIRONMENT BY IMPROVING THE QUALITY OF STORMWATER RUNOFF FROM DEVELOPED LANDS. NO STRUCTURE OR OTHER IMPROVEMENT MAY BE CONSTRUCTED OR MAINTAINED WITHIN A WATER QUALITY BMP EASEMENT AREA UNLESS SPECIFICALLY AUTHORIZED AND APPROVED IN WRITING IN ADVANCE BY THE LOWER COLORADO RIVER AUTHORITY (LCRA).

THE WATER QUALITY BMP EASEMENT MAY BE ENFORCED BY THE LOWER COLORADO RIVER AUTHORITY OR ANY OTHER GOVERNMENTAL ENTITY WITH THE AUTHORITY TO PROTECT THE ENVIRONMENT FOR THE BENEFIT OF THE PUBLIC, BY INJUNCTION OR OTHER ACTION IN A COURT OF APPROPRIATE JURISDICTION.

PERMIT PLAT NOTE:

ALL PROPERTY HEREIN IS SUBJECT TO THE LOWER COLORADO RIVER AUTHORITY'S HIGHLAND LAKES WATERSHED ORDINANCE. WRITTEN NOTIFICATION AND/OR PERMITS ARE REQUIRED PRIOR TO COMMENCING ANY DEVELOPMENT ACTIVITIES. CONTACT LCRA WATERSHED MANAGEMENT AT 1-800-776-5272, EXTENSION 2324 FOR MORE INFORMATION.

SURVEYOR'S CERTIFICATE

I, MARSHALL LANCASTER, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF TEXAS, HEREBY CERTIFY, THAT THIS PLAT IS TRUE AND CORRECT, THAT IT WAS PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY MADE UNDER MY SUPERVISION ON THE GROUND, AND THAT ALL NECESSARY SURVEY MONUMENTS ARE CORRECTLY SET OR FOUND AS SHOWN THEREON.

Marshall Lancaster

12-3-2019

MARSHALL LANCASTER
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 4873
1864 NORWOOD DRIVE, SUITE E
HURST, TEXAS 76054



ADMINISTRATOR CERTIFICATION

Sandra Barton
ADMINISTRATOR
CITY OF LAGO VISTA, TEXAS

12/19/2019

CERTIFICATION OF APPROVAL

Sandra Barton
ATTEST, CITY SECRETARY
CITY OF LAGO VISTA, TEXAS



12-19-19

THE STATE OF TEXAS
COUNTY OF TRAVIS

I, DANA DEBEAUVOIR, CLERK OF THE TRAVIS COUNTY, TEXAS, DO HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT OF WRITING AND ITS CERTIFICATE OF AUTHENTICATION, WAS FILED FOR RECORD IN MY OFFICE ON THE 13th DAY OF January, 2020 A.D. AT 3:50 O'CLOCK P.M. AND DULY RECORDED ON THE 13th DAY OF January, 2020 A.D. AT 3:50 O'CLOCK P.M. IN THE PLAT RECORDS OF THE SAID COUNTY AND STATE IN DOCUMENT NUMBER 202000006 OF THE OFFICIAL RECORDS OF TRAVIS COUNTY.

WITNESS MY HAND AND SEAL OF OFFICE OF THE COUNTY CLERK, THE 13th DAY OF January, 2020 A.D.

DANA DEBEAUVOIR, COUNTY CLERK
TRAVIS COUNTY, TEXAS

BY: K. Reyna
DEPUTY



FILED FOR RECORD THIS 13th DAY OF January, 2020 AT 3:50 O'CLOCK P.M.

Dana Debeauvoir
DANA DEBEAUVOIR, COUNTY CLERK
TRAVIS COUNTY, TEXAS

BY: K. Reyna
DEPUTY



**FINAL PLAT OF
LOTS 117R1-X & 17R2-X, BLOCK D,
TESSERA ON LAKE
TRAVIS PHASE 1A
BEING A REPLAT OF
LOT 17-X, BLOCK D,
AN ADDITION TO THE CITY OF LAGO VISTA,
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TRAVIS COUNTY, TEXAS**

OWNER/DEVELOPER

HINES LAKE TRAVIS II
LIMITED PARTNERSHIP
811 MAIN STREET, SUITE 4100
HOUSTON, TEXAS 77002
PHONE: 713-237-5600

ENGINEER

ADAMS ENGINEERING &
DEVELOPMENT CONSULTANTS
8951 CYPRESS WATERS
BOULEVARD, SUITE 150
DALLAS, TEXAS 75019
PHONE: 817-328-3200

SHEET 2 OF 2

DATE: 12/02/2019

DRAWN BY: OP

CHECKED BY: MLL

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RESOLUTION NO. 17-1703

**RESOLUTION BY THE CITY COUNCIL OF THE CITY OF LAGO VISTA,
TEXAS AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT FOR
PUBLIC PARK FACILITIES OPERATION AND MAINTENANCE SERVICES**

WHEREAS, pursuant to the terms of the August 16, 2012 Restated Development Agreement for Tessera on Lake Travis (“Development Agreement”), the Park Developer, Hines Lake Travis Land II Limited Partnership agreed to pay all costs for the operation and maintenance of public park facilities within Tessera on Lake Travis; and

WHEREAS, Park Developer has used \$1.7 million of proceeds for the bonds sold which were used to fund the construction of the public park facilities as described more fully in Exhibit A, The Agreement for Public Park Facilities Operation and Maintenance Services; and

WHEREAS, pursuant to the 2015 SAP, 2.146 million in bond proceeds have been spent on public park facilities; and

WHEREAS, Park Developer has or will expend more than \$585,000.00 to complete the construction of the public park facilities which are to be conveyed to the City in accordance with the terms of the Development Agreement; and

WHEREAS, the Tessera on Lake Travis Homeowner’s Association, Inc. (“HOA”) will be responsible for the operation and maintenance of the Public Park Facilities; and

WHEREAS, the terms of Exhibit A comport with the Bond Indentures for the PID Bonds.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LAGO VISTA, TEXAS, THAT:

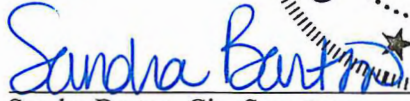
SECTION 1. The above recitals are hereby found to be true and correct and incorporated herein for all purposes.

SECTION 2. The City Council of the City of Lago Vista, Texas does hereby authorize the Mayor to execute the Agreement for Public Park Facilities Operation and Maintenance Services, which is attached hereto as Exhibit A and incorporated herein for all purposes.

SECTION 3. This Resolution shall be in full force and effect from and after its passage.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF LAGO VISTA, TEXAS, ON THE 15th DAY OF JUNE, 2017.

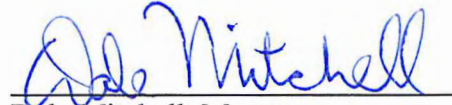
ATTEST



Sandra Barton, City Secretary



CITY OF LAGO VISTA



Dale Mitchell, Mayor

**AGREEMENT FOR
PUBLIC PARK FACILITIES OPERATION AND MAINTENANCE SERVICES**

THIS AGREEMENT FOR OPERATON AND MAINTENANCE SERVICES FOR PUBLIC PARK FACILITIES ("Agreement") is made and entered into to be effective this 15th day of June, 2017, by and among the **CITY OF LAGO VISTA**, a home rule municipal corporation situated in the State of Texas (hereinafter referred to as "**City**"), **HINES LAKE TRAVIS LAND II LIMITED PARTNERSHIP**, a Texas limited partnership (hereinafter referred to as the "**Park Developer**") and **Tessera on LAKE TRAVIS HOMEOWNER'S ASSOCIATION, INC.**, a Texas non-profit corporation ("**HOA**").

RECITALS

WHEREAS, pursuant to Section 4.05(b) of the August 16, 2012 Restated Development Agreement for Tessera on Lake Travis ("**Development Agreement**"), Park Developer agreed to enter into an agreement with City that would bind Park Developer to pay all costs for the operation and maintenance public park facilities within the Tessera on Lake Travis development ("**Tessera**") until the HOA has sufficient revenues to fund such activities;

WHEREAS, pursuant to the October 4, 2012 Tessera on Lake Travis Public Improvement District Financing Agreement Between Hines Lake Travis Land Limited Partnership, Park Developer and the City ("**Financing Agreement**"), proceeds from bonds sold by the Tessera on Lake Travis Public Improvement District ("**PID Bonds**") in the amount of \$1.7 million were used to fund the construction of the public park facilities described in the Service and Assessment Plan ("**SAP**") adopted by the City Council in November 2012 ("**PID Park Facilities**");

WHEREAS, the 2015 SAP states that \$2.146 million in bond proceeds have been spent on public park facilities;

WHEREAS, Park Developer has or will expend more than \$585,000.00 to complete the construction of the public park facilities described herein ("**Public Park Facilities**");

WHEREAS, the Public Park Facilities have been constructed and Park Developer will convey the Public Park Facilities to the City in accordance with the terms of the Development Agreement;

WHEREAS, pursuant to Article 8 of the Development Agreement, the HOA is to be responsible for the operation and maintenance of the Public Park Facilities;

WHEREAS, the City has not expended any City funds to construct the Public Park Facilities and is not obligated to accept the Public Park Facilities unless Park Developer and the HOA enter into this Agreement; and

WHEREAS, the terms of this Agreement must comport with the Bond Indentures for the PID Bonds.

NOW, THEREFORE, for and in consideration of the above stated premises and the mutual promises and covenants set forth herein, the Parties agree as follows:

SECTION 1 PUBLIC PARK FACILITIES

1.01 The Public Park Facilities subject to this Agreement are:

- a. Approximately 6,840 linear feet of improved hike and bike trails situated on approximately 3.14 acres of public trail easements ("**Trail Facilities**");
- b. An approximately 2.18 acre area containing the Public Park Facilities except for the Trail Facilities ("**Park Area**");
- c. The concrete ADA ramp from the Park Area to Turnback Pointe;
- d. Parking lot containing 25 parking spaces located within the Park Area;
- e. Approximately 2,006 square foot pavilion with restrooms located on the Park Area outside of the Fenced Pool Area ("**Pavilion**");
- f. Showers outside of the Fenced Pool Area; and
- g. Swimming pool and water recreation facilities located within an approximately 9,600 square foot fenced area ("**Fenced Pool Area**") located within the Park Area.

1.02 Combined, the Public Park Facilities are located on approximately 5.323 acres of land ("**Public Park Area**").

1.03 Except for the Fenced Pool Area and reserved use of the Pavilion, the Public Park Facilities, including the restroom facilities in the Pavilion and the showers, will be available for use by residents and non-residents of Tessera (the "**General Public**") at all times that the Public Park Facilities are open for use, as specified in the applicable Park Rules defined in Section 2.01 below. The Pavilion will be available for use by the General Public at all times that the Trail Facilities are open for use except when the Pavilion has been properly reserved in advance for a specific event or function in accordance with the Pavilion Use Rules. The Fenced Pool Area will be available for use by the General Public during General Public Swimming Hours as set forth in the Pool Rules attached hereto as Exhibit "B".

1.04 Landscaping, including trees planted by the Park Developer or the HOA on the Park Lot and public trail easements, have not been conveyed to the City and remain the property of the HOA.

SECTION 2 DUTIES AND RESPONSIBILITIES

2.01 The City hereby authorizes the HOA to maintain and operate the Public Park Facilities subject to the terms of this Agreement subject to budget attached hereto as Exhibit "D". The Public Park Facilities shall be operated in accordance with the **"Trail Rules"** attached hereto as Exhibit "A", the **"Pool Rules"** attached hereto as Exhibit "B", and the **Pavilion Use Rules** attached hereto as Exhibit "C" (collectively **"Park Rules"**).

2.02 The HOA will operate and maintain the Park Facilities in accordance with this Agreement and its attachments and all applicable laws; provided, however, that the HOA may contract with a third party to provide all or some of the services described herein.

2.03 The HOA will, without cost to the City, provide the following services for the Public Park Facilities:

- a. Pay for all electric, water, wastewater and any other utility services.
- b. Collect and properly dispose of all trash, garbage, litter, and debris.
- c. Operate and maintain the swimming pool, related pool equipment, plumbing fixtures and showers.
- d. Operate and maintain the Pavilion, including the restrooms.
- e. Maintain the fencing around the swimming pool.
- f. Provide life guards during hours that the swimming pool is available to the General Public.

2.04 The City and the HOA anticipate that the Park Rules may need to be adjusted as use of the Park Facilities increases overtime. Modification of the Park Rules will be adopted in accordance to the provisions of this Section 2.04 and the agreement amendment requirements of Section 18.02 of this Agreement shall not apply. The HOA may modify the Park Rules and adopt additional rules regarding use of the Public Park Facilities, as it deems appropriate, for the safety of people and pets using the Public Park Facilities and for the protection of the Public Park Facilities. Except in emergency situations, the HOA will provide the City a copy of all proposed new rules and rule modifications no less than 30 days and no more than 60 days before the HOA proposes to implement such new and modified Park rules. If the City does not concur with the proposed new and modified Park Rules, the City shall so notify the HOA of the City's non-concurrence within twenty (20) days of the City's receipt of the proposed changes to the Park Rules. Within ten (10) days of the delivery of the City's notice of non-concurrence, authorized representatives of the City and HOA will meet and will negotiate in good faith to resolve issues raised by the City. If the HOA believes that an impasse with City staff exists regarding a proposed park rule, the HOA may request a resolution of the impasse at the next scheduled City Council meeting, subject to compliance with the Texas Open Meetings Act. If the City does not deliver a notice of non-concurrence to the HOA within the above described twenty (20) day notice period, it will be deemed that the City concurs with the proposed changes to the Park

Rules and the HOA may implement the modified Park Rules on the effective date provided in the notice of proposed change to Park Rules.

2.05 The HOA may, at its sole discretion, temporarily modify the Park Rules to protect people and pets using the Public Park Facilities and for the protection of the Public Park Facilities. The procedures for modifying Park Rules, as set forth in Section 2.04 shall not apply during emergency or potential emergency conditions, including, flooding, increased risk of wildfire, and inclement weather.

2.06 The HOA shall have sole authority regarding the placement of signs setting forth the Park Rules on the lot where the Fenced Pool Area and pavilion are located. The HOA shall have sole responsibility for operating and maintaining electric security devices in and around the Fenced Pool Area and the Pavilion.

2.07 Neither the Park Developer nor the HOA shall have any obligation to fund private or public security patrols of the Public Park Facilities. Life guards on duty at the swimming pool are authorized to determine whether a person is complying with Pool Rules. Instructions from and decisions by a lifeguard, including, an instruction to leave the Fenced Pool Area and denial of entry into the Fenced Pool Area shall be final. The City will assist the HOA and the life guards in enforcing the Pool Rules if a person, after a request and a warning, refuses to follow the instructions of a life guard. A person who refuses to leave the Fenced Pool Area at the instruction of the HOA or a life guard may, at the discretion of the HOA or a life guard, be denied entry into the Fenced Pool Area for a period of the thirty (30) days. The City will not issue a pool pass to any person who has been instructed to leave the Fenced Pool Area after failure to obey instructions from a life guard if the HOA has notified the City of the person's identity.

2.08 The Park Developer shall, as required by the Development Agreement, provide funding to the HOA for all the costs of operating and maintaining the Public Park Facilities until such time that Park Developer assigns all of the financial obligation to fund operation and maintenance costs to the HOA. Other than providing funding, the Park Developer has no responsibility for the operation and maintenance of the Public Park Facilities or HOA owned property. Nothing in this Agreement shall be construed or interpreted as creating any agreements between Park Developer and the HOA.

2.09 In accordance with the "facility basis" methodology described in the November 1, 2011 Memorandum by McCall, Parkhurst & Horton L. L. P. ("**City Bond Counsel**") attached as Exhibit B to the Federal Tax Certificate signed in conjunction with the PID Bonds, the City has determined that the use of the Public Park Facilities as allowed and described in the Park Rules do not constitute a "private business use" as described in Section 141(b)(6) of the Internal Revenue Code.

2.10 The HOA understands that the City has financed the Public Park Facilities with proceeds of the PID Bonds, the interest of which is excludable from "gross income" for federal income tax purposes, and that, therefore, this Agreement has to comply with the management contract's safe-harbor guidelines of Rev. Proc. 2017-13, I.R.B. 2017-6, as amended and superseded

("Guidelines"). The HOA agrees that it is not entitled to and will not take any tax position that is inconsistent with being a service provider to the City with respect to the Project. In furtherance thereof, the HOA agrees not to claim any depreciation or amortization deduction, investment tax credit, or deduction that an owner would otherwise be allowed with respect to the Public Park Facilities. The HOA and the City agree to make a good-faith effort to amend this Agreement, to the extent necessary to ensure compliance with the Guidelines.

SECTION 3 TERM OF AGREEMENT

3.01 This Agreement has an initial term of three (3) years beginning on the Effective Date. The initial three-year term will automatically renew for a two-year term under the same conditions and terms of this Agreement unless one party notifies the other of its intent to not renew this Agreement. Notice of intent to terminate this Agreement must be in writing and delivered at least twelve months prior, but no earlier than eighteen months prior, to the expiration date of the initial three-year term, or the initial two-year renewal term. If this Agreement is not terminated as of the end of the initial two-year renewal term, this Agreement will automatically renew for a second three-year term under the same conditions and terms of this Agreement. The second three-year term will automatically renew for a second two-year term under the same conditions and terms of this Agreement unless one party notifies the other of its intent to not renew this Agreement. This Agreement will continue to be automatically renewed in accordance with the three-year/two-year cycle unless terminated in accordance with this section.

SECTION 4 ALTERATIONS AND ADDITIONS TO PUBLIC PARK AREA

4.01 The HOA shall not make or cause to be made any permanent additions, or improvements to the Public Park Facilities without the prior written consent of the City.

4.02 The HOA may install, modify, relocate, remove and replace landscaping, including trees planted by the Park Developer or the HOA within the Public Park Area without notice or approval from the City.

SECTION 5 RIGHT OF ACCESS

5.01 Subject to the rights of the HOA under the terms of this Agreement, the City retains through its City Manager, Police and Fire personnel, and other designated representatives, the right at any time to enter any portion of the Public Park Facilities (without causing or constituting a termination of the use or an interference of the use of the Public Park Facilities by the HOA or its members) for the purpose of inspecting and doing any and all activities necessary for the proper conduct and operation of public property; provided, such entry shall not authorize or empower the City to assume responsibility for operating or maintain the Public Park Facilities.

SECTION 6 LIABILITY LIMITATION

6.01 The Park Developer and the HOA covenant and agree that the City shall in no way or under any circumstances be responsible for any real or personal property belonging to the HOA, its members, employees, agents, contractors, subcontractors, invitees, licensees, or trespassers, which may be stolen, destroyed, or in any way damaged. If swimming pool or water feature equipment or furniture within the Fenced Pool Area is damaged during the hours the Fenced Pool Area is open for General Public use, the HOA and the City will each pay fifty percent (50%) of the cost of repairing or replacing the equipment and furniture.

SECTION 7 INSURANCE

7.01 The HOA shall not commence operation of the Public Park Facilities for the General Public until the HOA has obtained all the insurance required under this Agreement and the City has approved such insurance. The HOA shall be responsible for delivering to the City the HOA's certificate of insurance for approval. HOA shall indicate on the certificate of insurance whether or not its insurance covers contractors or subcontractors. The insurance coverage required herein shall include the coverage of all subcontractors, or such subcontractors shall provide to HOA documentation of insurance reasonably equivalent to that required of the HOA, according to the liability exposures related to the subcontractor's services and/or materials.

- a. Commercial General Liability Insurance: The HOA shall procure and maintain during the term of this Agreement and any extension period, a commercial general liability insurance policy in the amount not less than \$1,000,000.00 covering each occurrence.
- b. Worker's Compensation Insurance: If the HOA utilizes employees to perform the duties and responsibilities under this Agreement, then the HOA shall maintain, during the term of this Agreement, and any extension period, statutory Workers Compensation Insurance on all of its employees engaged in work under this Agreement, and for all subcontractors unless such subcontractors maintain their own Workers' Compensation Insurance.
- c. Automobile Insurance: If the HOA owns or operates motor vehicles, the HOA shall procure and maintain, during the term of this Agreement and any extension period, a comprehensive bodily injury and property damage automobile liability policy in the amount not less than \$500,000.00 for each accident. This policy shall cover any automobile used within the scope of this Agreement.

7.02 The insurance specified in 7.01. hereof shall comply with the following requirements:

- a. The City shall be named as an Additional Insured. Exception: The additional insured requirement does not apply to Workers' Compensation policies.
- b. Thirty (30) day notice of cancellation or non-renewal.
- c. Waiver of rights of recovery (subrogation) in favor of the City.

- d. The insurers for all policies must be licensed/approved to do business in the State of Texas. All insurers must have a minimum rating of A-: VII in the current A. M. Best Key Rating Guide or have reasonably equivalent financial strength and solvency to the satisfaction of the City. If the rating is below that required, written approval of the City is required.
- e. If insurance policies are not written for specified coverage limits, an Umbrella or Excess Liability insurance for any differences is required. Excess Liability shall follow the form of the primary coverage.
- f. Unless otherwise stated, all required insurance shall be written on an "occurrence basis." If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with or prior to the date of this Agreement and the certificate of insurance shall state that the coverage is claims-made and the retroactive date. The insurance coverage shall be maintained for the duration of this Agreement. An annual certificate of insurance submitted to the City shall provide evidence of such insurance coverage.
- g. Self-insured retention (SIR) affecting required insurance coverage shall be acceptable to and approved in writing by the City. In lieu of traditional insurance, alternative coverage maintained through insurance pools or risk retention groups, must also approved by the City.

SECTION 8 RELATIONSHIP OF PARTIES

8.01 The HOA shall perform all duties and responsibilities as an independent contractor, and not as an agent, servant or employee of the City. The HOA shall have exclusive control of, and the exclusive right to control the details of the work performed hereunder, and all persons performing same, and shall be solely responsible for the acts and omissions of the HOA's officers, agents, employees and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between the City and the HOA, its officers, agents, employees and subcontractors.

8.02 Nothing herein shall be construed as creating a partnership, joint venture or contractual obligations between the Park Developer and the HOA, its officers, agents, employees and subcontractors.

SECTION 9 LICENSES AND PERMITS

9.01 The HOA shall comply with all federal, state, and local laws, rules, and regulations, as well as with all regulations, restrictions, and requirements of the Police, Fire, and Code Compliance Departments now or hereafter in effect which are applicable to its operations. The HOA shall obtain and keep in effect at its own cost and expense all licenses and permits, and pay all taxes incurred or required in connection with this Agreement and its operations hereunder.

SECTION 10 LIENS

10.01 The HOA agrees not to take any action that results in the filing of any lien on the Public Park Facilities. In the event that a lien is filed, as a result of any action of the HOA, the HOA will take all necessary steps to bond around or remove the lien within fifteen (15) business days of its filing.

SECTION 11 ASSIGNMENT OF PARK DEVELOPER'S OBLIGATIONS

11.01 Prior to Park Developer assigning to the HOA the obligation to fund the operation and maintenance of the Public Park Facilities, the City must be provided evidence that the dues and assessments paid by lot owners within Tesseria are sufficient to maintain and operate the Public Park Facilities. The HOA will, as necessary increase the amount of annual dues and assessment collected to provide for the same level of operation and maintenance of the Public Park Facilities at the time that the HOA assumes full funding obligations pursuant to this Section 11.01.

11.02 Any assignment of Park Developer's obligations under this Agreement and the Development Agreement to fund the operation and maintenance of the Public Park Facilities will not release Park Developer of said funding obligations unless the City has approved the written assignment; provided, however, the City shall not unreasonably deny, delay, or condition its approval of the assignment. The City's approval of Park Developer's assignment to the HOA of the obligation to fund the operation and maintenance of the Public Park Facilities shall be deemed an assignment and release of Park Developer's funding obligations under this Agreement and the Development Agreement.

SECTION 12 TERMINATION AND DEFAULT

12.01 In the event the HOA fails to comply with any of the material terms and conditions of this Agreement, after notice and opportunity to cure as provided in this Agreement, the City shall have the right, upon delivery of a Notice of Termination to the HOA, to declare this Agreement terminated and to enter and take full possession of the Public Park Facilities save and except such personal property and equipment as may be owned by the HOA. In the event of such termination of this Agreement by the City, all rights, privileges and obligations of the HOA hereunder shall cease and terminate. Material terms and conditions of this Agreement are limited to: a) the HOA failing or refusing to comply with the requirements of Section 2.03 of this Agreement; b) the Park Developer refusing or failing to meet its obligation to fund the operation and maintenance of the Park Facilities; and c) the HOA refusing or failing to meet its funding obligations under this Agreement.

12.02 The City must notify the HOA by written notice sent in accordance with Section 14 of the HOA's failure to comply with specific material terms of this Agreement. The HOA shall have 60 calendar days from the date of receipt of the notice to correct the deficiencies identified in the notice or to begin correcting the deficiency if it takes more than 60 days to correct a deficiency. If Park Developer has not fully assigned to the HOA the Park Developer's obligations to fund the operation and maintenance of the Public Park Facilities, then the City shall send to Park Developer a copy of all correspondence between the City and the HOA regarding the operation and maintenance of the Public Park Facilities, including any notice regarding the HOA's failure to comply with the terms of this Agreement.

12.03 Upon termination of this Agreement, the parties shall be released from all obligations contained in this Agreement.

SECTION 13 NON-DISCRIMINATION/DISABILITIES

13.01 HOA, in its maintenance, operation and use of the Public Park Facilities shall not discriminate against any person or persons because of race, age, gender, religion, color, national origin, sexual orientation or disability.

SECTION 14 NOTICES

14.01 Any notice required shall be sufficient if deposited in the U.S. Mail, postage prepaid, certified mail, return receipt requested, and addressed to the other party as follows:

Any notice mailed to the City shall be addressed:

City of Lago Vista
Attn: City Manager
P.O. Box 4727 (mail)
5803 Thunderbird (hand delivery)
Lago Vista, Texas 78645
Fax (512) 267-7070

With copy to:

The Knight Law Firm, LLP
223 W. Anderson Lane, Suite A105
Austin, Texas 78752
Telephone (512) 323-5778
Fax (512) 323-5773

Any notice mailed to the Park Developer shall be addressed:

Hines Interests Limited Partnership
Attention: Mark Cover
811 Main St, Suite 4100
Houston, Texas 77008
Telephone (713) 237-5660
Fax (713) 237-5657

with copies to:

Hines Interests Limited Partnership
Attention: Darlene Louk
515 Congress, Suite 1425
Austin, Texas 78701
Telephone (512) 652-0590
Fax (512) 652-0598

Hines Interests Limited Partnership
Attention: Rob Witte
2200 Ross, Suite 42W
Dallas, Texas 75201
Telephone (972) 716-2925
Fax (972) 934-1460

Sneed, Vine & Perry, P.C.
Attn: Robert Kleeman
900 Congress Avenue, Suite 300
Austin, Texas 78701
Telephone (512) 494-3135
Fax (512) 476-1825

Any notice mailed to the HOA shall be addressed:

Tessera on Lake Travis Homeowner's Association
c/o First Services Residential
Post Office Box 342585
Austin, 78734

14.02 Mailing of all notices pursuant to this Section shall be deemed sufficient if mailed postage prepaid, certified mail, return receipt requested, and addressed as specified above, unless either party has been notified in writing of any changes to such address(es) or addressee(s). All notices shall be considered delivered two business days after the day the notice is placed in the United States Postal Service for delivery in accordance with this Section 14.

SECTION 15 VENUE AND JURISDICTION

15.01 This Agreement shall be governed by the laws of the State of Texas. Venue for any action brought to interpret or enforce, or arising out of or incident to, the terms of this License Agreement shall be in Travis County, Texas.

SECTION 16 ASSIGNING, MORTGAGING

16.01 Except for contracts with third parties to maintain and operate the Public Park Facilities, the HOA agrees that it will not assign all or any part of its rights, privileges or duties hereunder without the prior written consent of the City, and any attempted assignment of same without such prior consent of the City, shall be void. Consent shall not be unreasonably withheld, delayed or conditioned.

16.02 Subject to the limitations contained herein, the covenants, conditions, and agreements made and entered into by the parties hereunder are declared to be for the benefit of and binding on their respective successors, representatives, and permitted assigns, if any.

SECTION 17 WAIVER, SECTION HEADINGS, AND SEVERABILITY

17.01 It is agreed that in the event any covenant, condition, or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of such covenant, condition or provision shall in no way affect any other covenant, condition, or provision herein contained, provided however, that the invalidity of any such covenant, condition, or provision does not materially prejudice either the HOA or the City in connection with the rights and obligations contained in the valid covenants, conditions, or provisions of this Agreement.

17.02 The waiver by the City of any default or breach of a term, covenant, or condition of this Agreement shall not be deemed to be a waiver of any other breach of that term, covenant or condition or any other term, covenant, or condition of this Agreement, regardless of when the breach occurred.

17.03 The headings in this Agreement are inserted for reference only, and shall not define or limit the provisions hereof.

SECTION 18 ENTIRE UNDERSTANDING; AMENDMENT

18.01 This Agreement including all Exhibits attached hereto constitutes the final, entire, and complete agreement among the Park Developer, the HOA and the City and supersedes any prior and contemporaneous negotiations, understandings, representations, and/or agreements between the parties regarding the operation, maintenance and repair of Public Park Facilities. Any prior or contemporaneous oral or written agreement that purports to vary from the terms hereof shall be void.

18.02 Except as provided in Section 2.04, neither this Agreement nor any provision hereof may be modified except by an instrument in writing, signed by duly authorized representatives of the respective parties. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

CITY OF LAGO VISTA, TEXAS

Attest:

By: Sandra Barton
Name: Sandra Barton
Title: City Secretary
Date: 6-15-17



By: Dale Mitchell
Name: Dale Mitchell
Title: Mayor
Date: 6-15-17

TESSERA ON LAKE TRAVIS HOMEOWNER'S ASSOCIATION, INC.,
a Texas non-profit corporation

By: Darlene Louk
Darlene Louk, Director

EXECUTED on this the 15 day of June, 2017.

HINES LAKE TRAVIS LAND II LIMITED PARTNERSHIP,
a Texas limited partnership

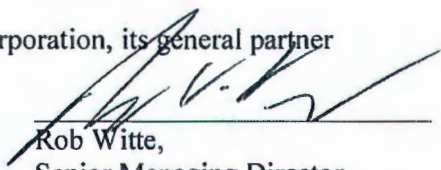
By: Hines Lake Travis GP, LLC, a Delaware limited liability company, its general partner

By: Hines Interests Limited Partnership, a Delaware limited partnership, its sole member

By: Hines Holdings, Inc., a Texas corporation, its general partner

DL

By:


Rob Witte,
Senior Managing Director

EXECUTED on this the 15th day of JUNE, 2017.

EXHIBIT A TRAIL RULES

- ❖ Open to the General Public from Sunrise to Sunset
- ❖ Trails are for walking, hiking, running and biking. Bikes yield to all other trail users.
- ❖ Children under 18 must be accompanied by an adult who is at least 18 years old at all times.
- ❖ Stay on trails at all times and proceed at your own risk in area of rugged terrain, especially along cove and lake edges.
- ❖ All motor vehicles, including ATVs and Golf Carts, are prohibited from all trails and parks.
- ❖ Alcoholic beverages are prohibited.
- ❖ Respect the wildlife. Hunting is strictly prohibited.
- ❖ Firearms are prohibited.
- ❖ No fires of any type, including ground fires, contained wood or charcoal fires, are allowed along the trail systems.
- ❖ No smoking.
- ❖ No Soliciting is allowed. No one may rent or sell any item or service on the trail system without approval from the HOA.
- ❖ Loud speakers, amplified sound and noise disturbances are prohibited.
- ❖ Carry it In, Carry It Out. Please respect all areas: Turnback Cove, Lake Travis, and Tessera's treasured open spaces, creek crossings and trails.
- ❖ Obey posted signs.

EXHIBIT B POOL RULES

OPERATING HOURS AND GENERAL PUBLIC ACCESS

POOL SEASON - The Fenced Pool Area may, at the discretion of the HOA, be opened to residents of Tessera for swimming ("**Resident Pool Season**") during the months of April through October. The precise opening and closing dates for Resident Pool Season will be determined by the HOA. The Fenced Pool Area will be open to the General Public from Memorial Day Weekend through the weekend before the beginning day of the Lago Vista Independent School District school year in accordance with the hours and schedule set forth below ("**General Public Pool Season**"). The Fenced Pool Area capacity shall not exceed the capacity established by local regulations and shall be open on a first come, first served basis and shall be enforced through the on-duty life guards.

GENERAL PUBLIC SWIMMING- During the General Public Pool Season, the Fenced Pool Area will be available for use by the General Public Sunday through Thursday from 8:00 AM to 11:30 AM ("**General Public Swimming Hours**"). Four lifeguards must be on duty to meet State requirements for use by the General Public. All patrons must leave the Fenced Pool Area before and after General Public Swimming Hours due to opening and closing procedures. During General Public Swimming Hours, the registration desk will be attended. All General Public patrons must sign in at the registration desk, show a valid swim pass card issued by the City of Lago Vista and identification. Whenever feasible, HOA will use the same third-party life guard vendor used by the City. The HOA contract with a third-party life guard vendor will require the life guards to account for City pool admissions daily to the City. Residents of Tessera may swim during General Public Swimming Hours.

TESSERA RESIDENT SWIMMING- Daily 8:00 AM to 8:00 PM. No lifeguard supervision. State requirements limit use to residents of Tessera. Residents of Tessera and their guests must use the Resident Swim Pass Cards issued by the HOA.

RULES POSTED WITHIN THE FENCED POOL AREA

- ❖ Swim at your own risk.
- ❖ General public pool hours are 8:00 AM to 11:30 AM Sunday through Thursday between Memorial Day Weekend and the weekend prior to the beginning of LVISD classes in August. Season Pass issued by the City of Lago Vista and picture identification or payment of City's daily admission fee required for entry into the Fenced Pool Area.
- ❖ Resident pool hours are 8:00 AM to 8:00 PM., subject to adjustment by the HOA.
- ❖ Use pool area shower before entering pool or using water feature.
- ❖ No glass containers allowed within Fenced Pool Area.
- ❖ No food or beverage in the pool.
- ❖ No alcoholic beverages allowed within the Fenced Pool Area.
- ❖ No smoking or other tobacco use allowed within the Fenced Pool Area.
- ❖ No diving, jumping, running, or horseplay.
- ❖ Limit of 4 guests allowed per family present.
- ❖ Swim diapers and plastic pants are required on children who are not potty-trained.
- ❖ Children under 18 must be accompanied by an adult who is at least 18 years old at all times.
- ❖ Appropriate swim attire required.
- ❖ Animals prohibited within the Fenced Pool Area.
- ❖ Changing of diapers within 6 feet of pool or water feature is prohibited.
- ❖ Use of water feature if ill with a contagious disease is prohibited.
- ❖ Do not drink water from the water feature.
- ❖ Use of water feature when ill with diarrhea in the last seven (7) days is prohibited.
- ❖ In the event of a malfunction, unsanitary condition, or any other non-emergency problem requiring correction at the pool, contact First Services Residential at 512-266-6771.
- ❖ All emergencies dial 911.

EXHIBIT C

PAVILION RESERVATION RULES

- ❖ Pavilion is available to the General Public unless the Pavilion has been reserved.
- ❖ Reservations are made through the HOA.
- ❖ Reservations must be made at least 48 hours in advance.
- ❖ The hours that the Pavilion is available for reservation coincide with the hours that the Trails are open.
- ❖ Guests are to adhere to the Trail Rules and must coordinate with the HOA and if necessary, with the City, to have proper permits and security for the particular use of the Pavilion.
- ❖ HOA reserves the right to limit the number of people that may attend an event at the Pavilion.
- ❖ HOA reserves the right to limit the number of hours per reservation.
- ❖ Parties are responsible for the cleanup and removal of all trash associated with an event at the Pavilion.
- ❖ HOA may require a security deposit for the cost of removing trash and cleaning the Pavilion.
- ❖ Children under 18 must be accompanied by an adult who is at least 18 years old at all times.

RESOLUTION 20-1836

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGO VISTA, TEXAS, ACCEPTING BY SPECIAL WARRANTY DEED 4.4260 ACRES OF PROPERTY DONATED BY HINES LAKE TRAVIS LAND II LIMITED PARTNERSHIP, DEDICATING THE PROPERTY AS PARKLAND, AND AUTHORIZING EXECUTION OF SPECIAL WARRANTY DEED.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LAGO VISTA, TEXAS, THAT:

WHEREAS, the City is statutorily authorized to require parkland as part of the property development process as provided for in Chapter 212 of the Local Government Code; and

WHEREAS, parkland dedication requirements are being met by dedication of Lot 1-X, Block P being approximately 1.5245 acres, and Lot 13-X, Block D being approximately 2.9015 acres, Tessera on Lake Travis, Phase 1A, pursuant to Chapter 10, Subdivision, Section 5, Parkland Dedication, of the City's Code of Ordinances; and

WHEREAS, the City Council finds that it is in the best interest of the City and its residents to accept the property as shown in the special warranty deed attached as "Attachment A" as public parkland; and

BE IT RESOLVED that the property being Lot 1-X, Block P and Lot 13-X, Block D, Tessera on Lake Travis, Phase 1A, as described in the Special Warranty Deed attached as "Attachment A" between the City of Lago Vista and the Hines Lake Travis Land II Limited Partnership is hereby accepted.

BE IT FURTHER RESOLVED that the property referenced herein shall be permanent parkland of the City of Lago Vista.

BE IT FURTHER RESOLVED THAT the Mayor is authorized to execute the Special Warranty Deed attached as "Attachment A" and city staff is directed to take other appropriate action related to this agreement.

PASSED AND APPROVED by the City Council of the City of Lago Vista this the 20th day of February 2020.



by: Ed Tidwell
Ed Tidwell, MAYOR

ATTEST:

Sandra Barton
Sandra Barton, CITY SECRETARY

ATTACHMENT "A"
[ADD WARRANTY DEED AFTER APPROVAL]

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

**SPECIAL WARRANTY DEED DEDICATING
PROPERTY AS PUBLIC PARKLAND**

HINES LAKE TRAVIS LAND II LIMITED PARTNERSHIP, a Texas limited partnership ("Grantor"), for and in consideration of the sum of TEN (\$10.00) DOLLARS and other good and valuable consideration to it paid, by the CITY OF LAGO VISTA, TEXAS ("Grantee") whose address is 5803 Thunderbird Drive, Lago Vista, Texas, the receipt of which is hereby acknowledged and confessed, has Granted, Sold and Conveyed, and by these presents does Grant, Sell and Convey, unto Grantee as dedicated public parkland and for all other purposes for which a public parkland is commonly used, including installing, repairing, maintaining, altering, replacing, relocating and operating facilities in, into, upon, over, across, and under all that certain tract or parcel of real estate, lying and being situated in the County of Travis, State of Texas, and more particularly described on Exhibit "A" attached hereto (the "Property"), subject, however, to the following reservations from and exceptions to conveyance and warranty:

Taxes and assessments by any taxing authority for the year 2018 and thereafter, together with subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership;

Easements, restrictions, reservations, covenants, and rights-of-way of record and/or apparent on the Property;

Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments, protrusions or any overlapping of improvements;

Utility easements and prescriptive rights visible and apparent on the ground, including easements, or claims of easements, which are not recorded in the public records;

Rights to oil, gas and other minerals of every kind and character in, on and under the property, together with the rights, privileges and immunities relating thereto.

To have and to hold the Property, together with all and singular the rights and appurtenances thereto in anywise belonging unto Grantee, its successors and assigns forever, and it does hereby bind itself, its successors and assigns, to warrant and forever defend, all and singular, the Property

unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming, or to claim the same, or any part thereof, by and through Grantor, but not otherwise.

Grantee further acknowledges and agrees that to the maximum extent permitted by law, the sale of the Property as is made "AS IS" AND WITH ALL FAULTS and Grantor has not made, does not make and specifically negates and disclaims any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied concerning or with respect to the Property regarding the Property's compliance with any environmental protection, pollution or land use laws, rules, regulations, orders or requirements, including the existence of hazardous substances in or on the Property, whether in the past or present.

Dated: _____, 2018.

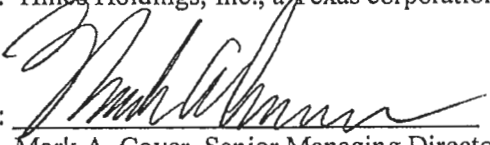
GRANTOR

HINES LAKE TRAVIS LAND II LIMITED PARTNERSHIP,
a Texas limited partnership

By: Hines Lake Travis II GP LLC, a Delaware limited
liability company, General Partner

By: Hines Interests Limited Partnership, a Delaware limited
partnership, sole member

By: Hines Holdings, Inc., a Texas corporation, General Partner

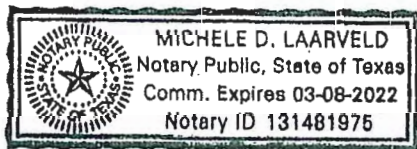
By: 
 Mark A. Cover, Senior Managing Director, CEO-Southwest Region

STATE OF TEXAS §

COUNTY OF HARRIS §

BEFORE ME, a Notary Public, on this day personally appeared Mark A. Cover, Senior Managing Director, CEO-Southwest Region, of Hines Holdings, Inc., a Texas corporation, on behalf of said corporation in its capacity as general partner of Hines Interests Limited Partnership, a Delaware limited partnership, on behalf of said limited partnership, in its capacity as sole member of Hines Lake Travis GP, LLC, a Delaware limited liability company, on behalf of said limited liability company, in its capacity as general partner of Hines Lake Travis Land Limited Partnership, a Texas limited partnership, on behalf of said limited partnership.

GIVEN UNDER MY HAND AND SEAL of office this 30 day of December 2018.



M. Laarveld
Notary Public, in and for the State of Texas

STATE OF TEXAS §

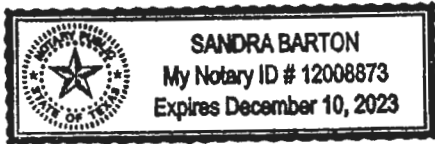
COUNTY OF TRAVIS §

The City of Lago Vista, Texas, a body politic and political subdivision of the State of Texas did at a regular meeting with a quorum being present, on February 20, ~~2018~~ 2020 vote to authorize the acceptance of this dedication of the Property as a public parkland.

Ed Tidwell
Ed Tidwell, Mayor

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on February 26, ²⁰²⁰~~2018~~ by Ed Tidwell,
in his capacity as Mayor of the City of Lago Vista, Texas.



Sandra Barton
Notary Public in and for
The State of Texas

After recording, please return to:
Sandra Barton,
City Secretary
City of Lago Vista, Texas
5803 thunderbird Drive
Lago Vista, Texas 78645

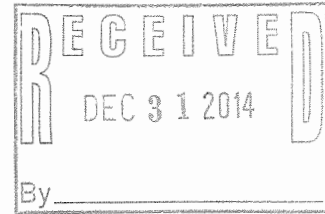
EXHIBIT A
DESCRIPTION OF PROPERTY

Lot 1-X, Block P and Lot 13-X, Block D, Tessera on Lake Travis, Phase 1A, according to the subdivision plat recorded in Document No. 201400071, Official Public Records of Travis County, Texas.



TRV
80 PGS

2014184192



**RESTATED DEVELOPMENT AGREEMENT
FOR
TESSERA ON LAKE TRAVIS**

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STATE OF TEXAS §

COUNTY OF TRAVIS §

RESTATED DEVELOPMENT AGREEMENT

FOR

TESSERA ON LAKE TRAVIS

This Restated Development Agreement for Tessera on Lake Travis is made by and among the **CITY OF LAGO VISTA, TEXAS**, a home rule city and municipal corporation (the “**City**”) and **HINES LAKE TRAVIS LAND LIMITED PARTNERSHIP**, a Texas limited partnership (the “**Hines Lake Travis**”) and **HINES LAKE TRAVIS LAND II LIMITED PARTNERSHIP**, a Texas limited partnership (the “**Hines Lake Travis II**”) collectively referred to as “**the Parties**”. Hines Lake Travis and Hines Lake Travis II are herein referred to collectively as “**Developers**.”

RECITALS

WHEREAS, in 2007, Hines Lake Travis purchased approximately 877 acres in Travis County, Texas, more particularly described in **Exhibit “A”** here attached and incorporated for all purposes (the “**Property**”) located in the extra-territorial jurisdiction of City (“ETJ”).

WHEREAS, on April 17, 2008, the City approved a Development and Annexation Agreement for Rodger’s Ranch (the “**Agreement**”).

WHEREAS, on May 7, 2009, City and Hines Lake Travis entered into the First Amendment to the Development Agreement for Rodgers Ranch” (“**First Amendment**”). The Agreement, as amended by the First Amendment, is referred to as the “**Amended Agreement**.”

WHEREAS, Hines Lake Travis and the City entered into the Agreement pursuant to State Law (defined below).

WHEREAS, pursuant to the Amended Agreement, the City Council annexed the Property into the corporate boundaries of the on November 19, 2009.

WHEREAS, on December 17, 2009, the City adopted Ordinance 09-12-17-01 which established a PDD Zoning District for the Property, as amended by Ordinance 12-07-19-01 (“**PDD Zoning Ordinance**”);

WHEREAS, on December 22, 2010, Hines Lake Travis conveyed to Hines Lake Travis II approximately 172.989 acres of the Property by that one certain Limited General

Warranty Deed recorded in Document No. 2010193060, Official Public Records of Travis County, Texas (“**Hines Lake Travis II Property**”);

WHEREAS, the City approved the form of the assignment of Hines Lake Travis’ rights and obligations under the Amended Agreement to the Hines Lake Travis Property to Hines Lake Travis II.

WHEREAS, on May 19, 2011 the City Council approved the Second Amended and Restated Development and Annexation Agreement for Rogers Ranch (“**Second Amended Agreement**”) which incorporated and replaced all prior agreements regarding the annexation and development of the Project.

WHEREAS, on May 11, 2012, Developers filed a petition with the City requesting the creation of the Tessera on Lake Travis Public Improvement District for the Project (“**PID**”);

WHEREAS, the Parties desire to amend the Second Amended Agreement to restate the Second Amended Agreement, hereinafter to be referred to as the “**Restated Agreement**.”

NOW, THEREFORE, for and in consideration of the above stated recitals, which are made a part of this Restated Agreement, the benefits described below, plus the mutual promises expressed herein, the sufficiency of which is hereby acknowledged by the Parties, the Parties hereby contract, covenant and agree as follows:

1. PURPOSES, TERM AND CONSIDERATION

1.01 **Purpose.** This Restated Agreement modifies, amends and replaces the Second Amended Agreement.

1.02 **Authority.** Authority for the Developers and the City to enter into this Restated Agreement exists under The City Charter of the City, Article III, Section 52-a of the Texas Constitution; *Chapt. 212, Subchapter G, Tex. Local Gov’t Code*, (“*Subchapter G*”); *Chapt. 43, Subchapter A, Tex. Local Gov’t Code*, (“*Chapter 43*”), *Chapt. 245, Tex. Local Gov’t Code*, (“*Chapter 245*”), *Chapter 395, Tex. Local Gov’t Code* (“*Chapter 395*”) and such other statutes as may be applicable.

1.03 **Municipal Planning.** The City is located in a rapidly growing metropolitan area for which new construction and land development can positively or negatively impact the future character and finances of the City. The City finds development agreements to promote master-planned communities, such as Tessera, are an appropriate way of establishing land use controls, providing for the construction of appropriate and necessary utility and roadway infrastructure, encouraging orderly economic growth, protecting the environment, and promoting the welfare of present and future citizens of the area. The Parties agree that the extension of centralized utilities to new developments provides superior environmental protections than those available from individual water wells and septic systems.

1.04 **Project Defined.** The Project established by the Agreement includes a master-planned, residential subdivision that may include single family lots, condominium sites, multi-family sites, amenity area(s) with recreational facilities, public parks, a day dock and a dry-stacked boat storage facility, space for civic uses and future commercial development sites along F.M. 1431. The Project, includes, the subdivision of the Property, the construction of off-site and on-site utility facilities and Subdivision Infrastructure (defined below) to be dedicated and conveyed to the City, the construction of intersection improvements on FM 1431 and other infrastructure adequate for the development of the Project consistent with this Restated Agreement and the Applicable Rules (“**Project**”). The Project may include multiple phases for platting and construction purposes. The Project also includes the Utility Facilities (defined below). The Development Plan attached to the Agreement, Amended Agreement and Second Amended Agreement were and are conceptual pictorial depictions of the Project; provided, however, that said depictions do not define the Project for purposes of Vesting. The Developers intend to develop the Property under the name *Tessera on Lake Travis* (“**Tessera**”) and when used in this Restated Agreement, *Tessera* shall mean and include the Project.

1.05 **Benefits.**

(a) The City desires to enter into this Restated Agreement to provide additional control to the development standards for the Property, to facilitate the development of the Project to enhance its tax base by the timely performance of the City’s obligations hereunder, and to address certain contingencies if the City Council approves the PID.

(b) This Restated Agreement provides: (i) for the uniform review and approval of plats and development permits for the Project; (ii) alternative standards under certain City ordinances for the benefit of the Project; (iii) the City’s commitment to provide water and wastewater service to Tessera; (iv) the terms for the financing and construction of Utility Facilities and Subdivision Infrastructure necessary for the development of the Project; and (v) judicially enforceable obligations of the City with respect to the City’s provision of water and wastewater service to the Property in accordance with the terms of this Restated Agreement. The City’s execution of this Restated Agreement constitutes a valid and binding obligation of the City under State Law. Developers’ execution of this Restated Agreement constitute a valid and binding obligation of Developers. The City acknowledges that Developers are, in making its decision to commit substantial resources and money to develop the Project, acting in reliance upon the City’s representation that the City has the legal authority under State law to enter into this Restated Agreement and perform the City’s obligations under this Restated Agreement and that City will timely perform its obligations under this Restated Agreement. The Developers also acknowledge the City is to committing substantial resources and financing to meet the City’s obligations under this Restated Agreement, including the timely provision of water and wastewater service to Tessera.

(c) The Developers, their grantees, successors and assigns, will benefit from the development certainty provided by this Restated Agreement, the substantial commitments of

the City with respect to financing and providing a potable water supply, and the certainty that municipal services, including adequate utility improvements and connections to the City utility system sufficient to serve the Project when requested by Developers.

(d) The Parties desire to simplify the operation and interaction among this Restated Agreement (including the Tessera Development Plan), the PDD Zoning Ordinance, the Applicable Rules and the City Rules.

1.06 **Consideration**. The benefits to the Parties set forth in the Recitals and herein, plus the mutual promises expressed herein, are good and valuable consideration for this Restated Agreement, the sufficiency of which is hereby acknowledged by the Parties.

1.07 **Term**. The term of this Restated Agreement will commence on the Effective Date and continue for twenty five (25) years thereafter, unless sooner terminated under this Restated Agreement as provided herein, (the "**Term**"). After the first Term, this Restated Agreement may be extended for successive five-year periods upon written agreement among the Developers and the City.

2. DEFINITIONS

2.01 **Agreement**. The Development and Annexation Agreement for Rodgers Ranch between the City and Developer approved by the City on April 17, 2008 and having an effective date of May 7, 2009.

2.02 **Applicable Rules**. City ordinances, rules, and regulations: a) in effect and made applicable to the Project as of May 7, 2009, limited only to the extent that such ordinances, rules, and regulations are subject to vesting under State Law; b) specifically modified in their application to the Project by this Restated Agreement; c) the PDD Development Plan; d) to the extent any City Rules are not Vested to May 7, 2009, City Rules as modified from time to time shall apply to the Project and Property; e) the LCRA Highland Lakes Water Quality Ordinance in effect on May 7, 2009; and (f) state and federal law.

2.03 **City**. The City of Lago Vista, Texas, a Texas home rule city with a Council/City Manager form of government.

2.04 **City Manager**. The city manager of Lago Vista, Texas.

2.05 **City Council**. The city council of Lago Vista, Texas.

2.06 **City Engineer**. The engineer for Lago Vista, Texas or an entity assigned to perform the duties thereof with respect to Tessera.

2.07 **City Improvements**. The additional water and wastewater treatment capacity and utility improvements, if any, that the City is obligated to construct for the City to provide

2,030 LUEs of water and wastewater service to the Property, in accordance with the terms of this Restated Agreement.

2.08 **City Rules.** The entirety of the City's ordinances, rules and duly adopted regulations, as amended from time to time.

2.09 **City Utility Service Plan.** See Section 6.06.

2.10 **Construct and Construction.** To form by combining materials or parts. To build. The way in which a thing is formed or constructed.

2.11 **Developer(s).** Hines Lake Travis Land Limited Partnership, a Texas limited partnership and Hines Lake Travis Land II Limited Partnership, a Texas limited partnership, and their respective grantees, successors and assigns.

2.12 **Developer Improvements.** The Utility Improvements described in Article 6 and the attached **Exhibit "C"** that Developers are obligated to construct and convey to the City at no cost and that are necessary for the City to deliver 2,030 LUEs of water and wastewater service to the Property.

2.13 **Effective Date.** August 16, 2012.

2.14 **Living Unit Equivalent or LUE.** Living Unit Equivalent or LUE shall have the meaning as defined in City Ordinance No. 09-06-04-01.

2.15 **Lot.** A parcel of land described by a subdivision plat recorded in the Official Public Records of Travis County, Texas

2.16 **Parties.** The City of Lago Vista, Hines Lake Travis Land Limited Partnership, a Texas limited partnership, and Hines Lake Travis Land II Limited Partnership, a Texas limited partnership.

2.17 **PDD Development Plan.** The development standards, permitted uses, regulations, limitations set forth in the PDD Zoning Ordinance and exhibits attached thereto adopted by the City Council on July 19, 2012 and as hereafter may be amended from time to time.

2.18 **PDD Map.** The map attached to and part of the PDD Development Plan.

2.19 **Permitted Uses.** Land uses and limitations thereon set forth in the PDD Development Plan.

2.20 **Planning and Zoning Commission.** The duly appointed Planning and Zoning Commission of the City.

2.21 **Pressure Plane.** One of the three water pressure planes (“Lower Pressure Plane” “Middle Pressure Plane” or “Upper Pressure Plane”) within Tessera described by elevation in the attached **Exhibit “C”.**

2.22 **Project Approvals.** All approvals, variances, and waivers by the City that are necessary or required for the development of the Project, including, the PDD Zoning Ordinance, preliminary plats, final plats, site plans, development permits, this Restated Agreement and other future regulatory approvals issued by the City.

2.23 **Project Phase 1.** A portion of the Property not to exceed 263 acres, more or less, as depicted in the attached **Exhibit “E.”**

2.24 **Property.** The 877 acres of land, more or less, in Travis County, Texas, described on the attached **Exhibit “A”.**

2.25 **Public Improvement District, or PID.** The Tessera on Lake Travis Public Improvement District that the City may approve as authorized by Chapter 372, Texas Local Government Code.

2.26 **State Law.** The laws of the State of Texas duly adopted, including but not limited to the City Charter of the City, *Chapter 245, Texas Local Government Code, Chapter 43, Texas Local Government Code, Chapter 212, Subchapter G, Texas Local Government Code, Chapter 395, Local Government Code, and Chapter 380, Texas Local Government Code.* In the event of a conflict between this Restated Agreement and State Law, State Law shall control. In the event of a conflict between this the City Charter and State Law, State Law shall control.

2.27 **Subdivision Infrastructure.** All streets, roads, sidewalks, drainage, water and wastewater lines and facilities and all other infrastructure within the Property to be constructed by Developers and dedicated and conveyed to the City at no cost to the City. The term includes the construction of intersection improvements on FM 1431, a portion of which will be owned and operated by the Texas Department of Transportation. The term does not include Developer Improvements described in Article 6.

2.28 **Tessera Development Plan.** The development standards, permitted uses, regulations, limitations set forth in the attached **Exhibit “B”**, which constitutes a plan for development under State Law.

2.29 **Tessera Development Plan Map.** The map attached to and part of the Tessera Development Plan that depicts a conceptual layout of the Project of the Property.

2.30 **Utility Facilities.** The water and wastewater improvements described in Article 6 and in the attached **Exhibit “C”.**

2.31 **Utility Facilities Phase or UF Phase.** The water and wastewater improvements grouped into a particular phase, as described in the attached **Exhibit “C”**.

2.32 **Utility Improvement.** A specific, individual water or wastewater improvement(s) associated with a particular Utility Facilities Phase, as described in the attached **Exhibit “C”**.

2.33 **Utility Services.** Sufficient water and wastewater services delivered to the Property to allow water meters and service connections for buildings located within the Property.

2.34 **Vest, Vested or Vested Rights.** Means the legal entitlements pursuant to State Law to develop the Project subject to the terms of this Restated Agreement and the Applicable Rules. Such entitlements shall, under no circumstances, extend to a purchaser or owner of a subdivided lot after the City has issued a certificate of occupancy to occupy a building on the subdivided lot.

2.35 **Vesting Date.** The Vesting Date for all purposes shall be the May 7, 2009.

3. REGULATORY CERTAINTY

3.01 **Applicable Rules.** During the Term of this Restated Agreement the Applicable Rules will apply to and govern the requirements for: (a) subdividing and recording final plats; (b) the Permitted Uses; (c) development of the Property; (d) amendments to the PDD Development Plan; and (e) replats. Except as otherwise provided in this Restated Agreement, no City regulations adopted after May 7, 2009 that amend, add to, or alter the Applicable Rules, whether by means of an ordinance, resolution, policy, order, or otherwise, will modify or amend the rights of the Developers to develop the Property as provided in this Restated Agreement, unless (a) mandated by State Law; (b) Developers elect, at their discretion, to have all or some of the Project become subject to a subsequently adopted change to an Applicable Rule; or (c) the application of the amended, added or altered Applicable Rules is agreed to, in writing, by Developers and the City. The City’s review and action upon permit applications by Developers with respect to plats and other Project Approvals, that are compliant with this Restated Agreement, will not be unreasonably conditioned, withheld or delayed. If there is any conflict between the Applicable Rules excluding the PDD Development Plan, and the specific terms of this Restated Agreement, the specific terms of this Restated Agreement will control as State Law allows. If there is a conflict between the terms of this Restated Agreement and, excluding the PDD Development Plan, any of the exhibits attached hereto, the terms of this Restated Agreement shall control. If the Developer(s) record a final plat of any phase or section of the Project, the rights, duties and obligations of the Developers pursuant to this Restated Agreement and the Applicable Rules shall, with respect to such section or phase, survive the termination of this Restated Agreement. Developer(s) reserve the right to make application for and, as appropriate, obtain approval to re-plate any portion of the Property without loss of Vested Rights, provided neither

State Law nor this Restated Agreement otherwise limits the right to re-plat. So long as this Restated Agreement remains in effect, re-platting complying with this Section shall be deemed controlled by the Applicable Rules as if the same were an original platting under the terms of this Restated Agreement.

3.02 **Tessera Development Plan.** The development plan attached hereto as **Exhibit “B”** and incorporated herein for all purposes was previously referred to as the Rodgers Ranch Development Plan and shall hereafter be referred to as the **“Tessera Development Plan”**. This Restated Agreement is a “development plan” under State Law. This stipulated protection for the Project, initially approved with the Agreement, is in addition to any subsequently acquired legal entitlements to Vest under State Law. The Parties further stipulate that the Project, as defined herein, constitutes a “project” under State Law. The total allowable level of development of the Property shall be limited by the number of Living Unit Equivalents as measured for water and wastewater service connections. Development within the Property shall not exceed 2,030 LUE’s, but shall not be restricted by the City to less than 2,030 LUE’s. The Parties further stipulate that so long as Developers do not increase the allowable total level of development, as measured by water and wastewater service connections, Developer may seek to amend the PDD Development Plan and may amend the layout of lots and on-site infrastructure to serve the Project in compliance with this Restated Agreement and the Applicable Rules without waiving or revoking any Vested Rights. Notwithstanding the foregoing or any other provision herein, the Vested Rights under this Restated Agreement shall terminate on a lot by lot basis for detached single family houses upon the issuance of a certificate of occupation for a building on such subdivided lot and shall terminate for development requiring a site plan upon the issuance of a certificate of occupancy for the last building shown on the site plan. Approved preliminary plats shall expire on the latter of the expiration of this Restated Agreement or the date established by the Applicable Rules. The Parties further stipulate and agree that: (a) the PDD Development Plan is the approved, agreed and accepted plan for the development of the Property; (b) the PDD Development Plan shall govern and control the development of the Property as provided in this Restated Agreement; and (c) if the City Council approves a modification or amendment of the PDD Development Plan that is not approved and consented to by the Developers, the Developers may give written notice to the City and proceed with development of the Property in compliance with the Tessera Development Plan and the Vested Rights.

3.03 **Interaction Between Tessera Development Plan and PDD Development Plan.** Since the City’s approval of the Agreement, the City acknowledges the Developers have expended substantial funds for the planning of the development of the Project and Developers’ proposed layout of roads, lots, open space and areas planned to be developed as a phase of Tessera have changed due to a variety of reasons, including, market conditions, engineering and topographic factors. The prior differences between the Rodgers Ranch [Tessera] Development Plan Map and the PDD Development Plan Map reflected, in part, the progression of the planning process for the Project. The Parties agree that repeatedly revising the Tessera Development Plan Map and the PDD Map would be inefficient and unnecessarily costly. The Parties stipulate that the Tessera Development Plan will only become applicable

and controlling if the PDD Development Plan is modified or amended without the approval and consent of the Developers. The Parties further stipulate that the PDD Development Plan is one of the regulatory documents or approvals that the City will use when issuing permits for the development of the Project. As of the Effective Date of this Restated Agreement, the Parties stipulate and agree the PDD Development Plan and the Tessera Development Plan do not conflict in any way that affects Developers' Vested Rights. Developers agree that development of the Project will comply with the PDD Development Plan. If Developers oppose a change to the PDD Development Plan or zoning regulations applicable to the Property, such change shall not waive or lessen Developers' entitlement to rely upon any Vested Rights. The Parties agree that if the detail of a preliminary plat or final plat, including, road alignment, generally comply with the PDD Development Plan, then neither this Restated Agreement nor the PDD Zoning Ordinance need to be amended to match the preliminary plat or final plat. Henceforth, the defined boundaries and locations of Areas 1, 2, and 3 shown on the Tessera Development Plan Map and PDD Map and the location of roads, open spaces and any other component shown on either development plan map will be established by the platting process. The boundaries for and between non-residential, multi-family, parks, single family developments must be shown on approved preliminary plats and approved final plats. The applicable zoning district standards must be referenced on an approved final plat. If Developers seek to change an allowed use within an Area, then a zoning change for the area to be changed must be filed by Developers and approved by the City. For example, a change to all or a portion of Area 2 to allow a commercial use will require a change in land use and zoning site development regulations that requires the approval of the City Council pursuant to the City's normal re-zoning procedures. The foregoing is intended to set forth the agreement of the Parties regarding the interpretation of the PDD Development Plan, this Restated Agreement and the Tessera Development Plan.

3.04 **Master Development Plan.** Notwithstanding any provision of the City's Plat and Subdivision Regulations, the master development plan for the Property shall be limited to the following elements: (a) the boundaries of approved preliminary plats; (b) within areas with an approved preliminary plats, the Master Development Plan will show roads, lot lines, drainage ways, Area boundaries, and water and wastewater lines to be dedicated to the City; (c) the boundaries of the pending preliminary plat application; (d) the approximate location of water and wastewater infrastructure and lines outside of the preliminary plat application area required to serve the development within the preliminary plat application area; (e) the approximate location of the street(s) that will connect the land within each preliminary plat application to FM 1431; (f) the approximate location of the street(s) that connect(s) one preliminary plat area to another preliminary plat area, if any, any; and (g) for phases or sections of the Project for which a final plat has been approved, the final location of all phase or section boundaries, the boundaries for and between non-residential, multi-family, parks, single family developments, lot lines, and the location of all roads and streets, drainage ways, water and wastewater lines within the phase or section. Land outside of area subject to an approved preliminary plat and preliminary plat applications may be identified on the Master Development Plan as "final platted development", "future development" or "future phases".

3.05 **Fiscal Required.** With respect to the recording of plat prior to the construction of the Subdivision Infrastructure for said plat, cash or a letter of credit in lieu of cash (such letter of credit to be in a standard form reasonably acceptable to the City shall be deposited with the City in an amount determined under the Applicable Rules. The security required by the Applicable Rules to be posted by Developers prior to recording a final plat for a parcel of land prior to construction and acceptance of the required infrastructure shall be decreased by the dollar amount of the PID funds, if any, held in trust pursuant to the terms and conditions of the trust agreement, financing agreement and related PID financing documents for the development and construction of said Subdivision Infrastructure required for the land included in the final plat. If cash is posted for the fiscal, the City will keep the funds in a separate trust account identified as fiscal for the specified Subdivision Infrastructure.

3.06 **Fast Track Construction Approval.** In conjunction with the submittal to City for the approval of construction plans (“**Plans**”) for Developer Improvements or Subdivision Infrastructure, Developers may include an request to begin clearing of vegetation and site work within the limits of construction prior to the approval of the Plans (“**Fast Track Request**”). Such request shall be considered a phase of construction and shall consist of additional sheets included in the construction plans application that describe the area in which clearing and preliminary site work will occur and the location of temporary storm water controls to be installed prior to beginning clearing activities and site work. Notwithstanding the timeframes set forth in Sections 6.17 or 5.01(c) regarding the City’s first set of review comments, the City shall approve or provide written comments regarding the Fast Track Request within twenty (20) calendar days of the submittal of the Plans. The time frames set forth in Sections 6.17 and 5.01(c) shall otherwise apply to all updates, resubmittal and reviews of the Fast Track Request.

4. DEVELOPER OBLIGATIONS

4.01 **Control of Development.** Subject to Section 4.02 below, Developers shall develop the Property in a manner which results in enhancing the tax base of the City; provided, however, the timing and sequencing of Developers’ development of the Property will be based on market demand and conditions and will be completed as and when Developer(s) determine it to be economically feasible. Subject to market constraints, Developers shall, at no cost to the City, cause the construction of Developer Improvements and Subdivision Infrastructure necessary for the development of the Property in compliance with the this Restated Agreement, the PDD Development Plan and the Applicable Rules; provided that timing and market constraints shall not constitute a force majeure to excuse the Developers from complying with the requirements of Section 4.02 or completing construction of any Utility Facility or Subdivision Infrastructure once construction is started, within the time allowed by, and in compliance with the Applicable Rules.

4.02 **Developer Performance Standards.**

(a) If the City creates the PID, authorizes the issuance of PID bonds, and sells the PID bonds for the proposed Area No. 1 and Major Improvements Area of the PID no later than October 15, 2012, Developers will develop the Project in compliance with the following schedule:

(i) Developers will fund the design, engineering and construction and then obtain City acceptance of the UF Phase 1 Developer Improvements or before July 1, 2015; and

(ii) On or before December 31, 2015, Developers shall record one or more final plats within Project Phase 1 containing at least 150 residential lots; and

(iii) On or before July 1, 2016, Developers shall complete the construction of and dedicate to the City all of the Developer Improvements and Subdivision Infrastructure necessary to have 150 fully constructed Lots upon which buildings may be constructed.

(b) If the PID bonds are not issued by the City in accordance with Section 4.02(a), Developers will develop the Property in compliance with the following schedule:

(i) Developers will fund the design, engineering and construction and then obtain City acceptance of the UF Phase 1 Developer Improvements or before July 1, 2017; and

(ii) On or before December 31, 2017, Developers shall record one or more final plats within Project Phase 1 containing at least 150 residential lots.

4.03 **Additional Developer Obligations.** In addition to the other obligations of the Developers set forth in this Restated Agreement, the following obligations shall apply to Developers:

(a) Prior to the recording of the first subdivision plat, Developers shall cause the formation of a Home Owners Association pursuant to Article 8 of this Restated Agreement.

(b) Developers shall provide for the design and engineering of all Subdivision Infrastructure pursuant to the City design criteria, or better;

(c) Developers shall provide for the construction of all Subdivision Infrastructure according to construction plans approved by the City;

(d) Developers shall obtain the City's final acceptance of all Subdivision Infrastructure and dedicate all Subdivision Infrastructure to the City at no cost to the City.

(e) Developers shall pay all fees, charges, and costs required by city ordinance to be paid for or with respect to the development, platting, and zoning of Property and post fiscal sureties, as required herein and by the Applicable Rules in a form approved by the City Attorney and in an amount approved by the City Engineer;

(f) Developers or their respective grantees, successors, purchasers or assigns shall pay water and wastewater impact fees and tap fees for each lot, tract, parcel, and building site developed within the Property. Such fees shall be paid by the Developer(s) or its grantees, successors, purchasers or assigns for each lot or site on the earlier of the date when a building permit application is made for the structure or building to be served, or, if building permits are not then required, the date when construction of the building or structure is first commenced. The impact and tap fees paid for each such lot or site shall be the fee, rate, and charge that is established from time to time by ordinance for the City and assessed in accordance with State Law;

(g) Developers shall pay to the City all reasonable costs and expenses incurred by the City for legal, inspection and engineering services with respect to this Agreement, and the legal and engineering expenses with respect to the Subdivision as provided in the City's Fee Ordinance; the parties agree that the City may utilize an in-house inspector for inspections subject to this Agreement, and may charge Developer for those services at the rate of \$35.00 per hour, subject to annual adjustments based on the Cost of Living Index for the Austin area, until and unless such services are covered by the City's fee ordinance;

(h) Developers shall obligate each grantee, successor and assign of all or part of the Property to connect to the City's water and wastewater system including construction and installation of all required water and wastewater lines, lift stations, storage, equipment, and facilities both on-site and off-site in compliance with City Rules and engineering plans and specifications approved by the City; and

(i) Developers shall obligate each grantee, successor and assign of all or part of the Property to pay, if for any reason the City fails to or is prevented from collecting Water or Wastewater Impact Fees within the Property, the City's established Capital Impact Fee per living unit equivalent ("LUE") for each lot or building site within the Property on the earlier of the application for a building permit or a request for water and wastewater service for the lot or site as the contribution to the costs of impact to the City's water and wastewater system, provided the City is providing water and wastewater service to the Property.

(j) The City shall have the option to terminate this Restated Agreement if Developers fail to fully comply with Section 4.02 above, or after beginning construction of buildings, Developers and homebuilders discontinue all construction within the Property for more than thirty-six (36) consecutive calendar months; and provided further, the City shall have the option to continue the development and build-out of any part or portion of the Developer Improvements or Subdivision Infrastructure that is abandoned by Developers if

funds for such improvements are available in a trust account established pursuant to the sale of bonds for the Public Improvement District.

(k) If the Developer(s) develop the Property in a manner inconsistent with this Restated Agreement, such action shall be a breach by the Developer(s).

(l) Developer(s) shall complete construction and obtain final acceptance of Subdivision Infrastructure for any section of Tessera within the time required by the Applicable Rules.

(m) With respect to any Developer Improvement, Subdivision Infrastructure or park improvement to be funded by proceeds from the sale of PID Bonds (“**PID Improvement**”), subject to the terms, conditions and provisions of the financing agreement and related documents approved and executed with respect to bonds issued by the PID, Developers shall procure bids from at least three (3) independent, competent contractors for the construction of the PID Improvement and provide copies of the bids to the City. The PID Improvements shall be bid based on the construction plans and specifications approved by the City, and contracts for construction shall be let based on bids approved by the City which approval shall not be unreasonably denied, delayed or conditioned. If the City Manager refuses to approve a bid, change order, form of the contract or any other aspect affecting the award of a construction contract for a PID Improvement, the Developer(s) may appeal such determination to the City Council. Such appeal shall be heard by the City Council no later than twenty (20) days after an appeal is submitted to the City. Developers may, at their sole discretion, not include a prevailing wage provisions in a construction contract for a PID Improvement.

(n) Regardless of whether the City approves the PID or the sale of the PID Bonds, Developers shall pay or reimburse to the City all costs associated with the formation of the PID and the issuance of PID Bonds.

4.04 **Open Space.** Developers will convey Open Space to a duly formed and funded Homeowners Association (the “**HOA**”) or other appropriate entity, at the discretion of the Developers, with a continuing obligation of owners of land within the Property to fund the operation and maintenance of the Open Space for the benefit of the residents within the Property.

4.05 **Public Parks.**

(a) Subject to Section 4.07 below, Developer(s) will dedicate not less than ten (10) acres of land within the Property to the City as parkland pursuant to the City’s Parkland Dedication Ordinance.

(b) As a condition to the City’s approval of the construction plans for improvements within a proposed public park, Developer(s) will enter into an agreement with the City under which the Developer(s) agree to pay all costs to construct, operate, and

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maintain all improvements constructed within the proposed public parks. Developer(s) will assign the obligations under said agreement to the HOA. The City shall have no obligation at any time to construct, operate or maintain such public parks. So long as the park improvements are constructed in compliance with the City approved construction plans, the Developer(s) shall dedicate the park and the park improvements to the City and City shall accept the park and park improvements for ownership purposes only.

4.06 **HOA Parks and Trails.** In addition to public parks, Developer(s) may establish and construct amenity centers, trails, and park facilities to be owned, operated and maintained by the HOA ("**HOA Parks**").

4.07 **City Parkland Dedication Ordinance.** Except as provided herein, Developer will dedicate public parkland or pay fees in lieu thereof in compliance with the City's Parkland Dedication requirements. Subject to the terms of this section, Developers shall receive credit toward the requirements of the City's Parkland Dedication Ordinance for land within the public parks dedicated to the City and for HOA Parks. The cumulative total of such credits shall not exceed the requirements under the City's Parkland Dedication Ordinance for 1,015 dwelling units. Notwithstanding the foregoing sentence, Developers will pay a fee in lieu in the amount of \$300 per dwelling unit to the City under the Parkland Dedication in the Project, not to exceed a total of \$500,000; provided, however, that the fee in lieu payment shall be made in accordance with the Parkland Dedication Ordinance beginning with the 301st dwelling unit or platted Lot.

5. CITY OBLIGATIONS

5.01 **City Obligations.** In order to facilitate the timely development of the Property:

(a) The City shall:

(i) Timely process and act upon the preliminary plat and final plats for the Property, as submitted;

(ii) Timely process and act upon all cut and fill variances on the Property administratively, provided the cut and fill slope is appropriately terraced to control erosion and sedimentation, without a requirement of a hearing or approval by the Planning and Zoning Commission or City Council;

(iii) Timely process and act upon issuance of any other permits required by the City to construct and operate the Project that comply with the Applicable Rules and this Restated Agreement; and

(iv) Timely comply with the requirements of Article 6.

(b) The City Council hereby ratifies the previously authorized and approved specific site development regulations and permitted uses for the Property as described in the PDD Development Plan.

(c) The City will timely review, process and act upon engineering and construction plans for Subdivision Infrastructure in accordance with the time frames and procedures set forth in Sections 6.17, 6.21, 6.22, 6.25, 6.26 and 6.27.

(d) The City will timely process and act upon the issuance of building permits for buildings to be constructed within a portion of the Property for which the City has approved a final plat. This authorization does not waive otherwise applicable requirements that the completed subdivision phase infrastructure be accepted by City prior to issuance of a certificate of occupancy.

(e) The City will process and act upon applications for the approval of preliminary plats and final plats, in a timely manner, if such plat complies with this Restated Agreement and the Applicable Rules.

(f) Notwithstanding any other provision of this Restated Agreement, an obligation on the part of the City to timely process and act in this Article 4 or Article 6 does not limit the City's regulatory authority to require the Developers to comply therewith.

(g) The Tessera Development Plan attached hereto as **Exhibit "B"** is approved as the concept plan for Tessera.

(h) The City will timely provide water and wastewater service to Lots within the Project, and will connect each residential unit, or building for another permitted use, to the City's water and wastewater system upon payment to the applicable fees and a Certificate of Occupancy being issued for the residential unit or building, and provide water and wastewater service for the residential unit or building on the same terms and conditions as provided to all other areas of the City.

5.02 **Landscaping in Public Right of Way.** The City agrees to enter into a "no fee" license agreement with Developers in the form attached hereto as **Exhibit "F"** for placement and maintenance of landscaping, including irrigation lines, within rights of ways dedicated to and accepted by the City; provided, however, that the City will have no obligation to maintain, repair, replace or remove landscaping and irrigation lines. Developer shall assign the license agreement and the obligation to maintain and operate the landscaping and irrigation system to the Home Owners Association.

6. UTILITY FACILITIES AND UTILITY SERVICES

6.01 **Intent of the Parties Regarding Utility Services.** As of the Effective Date, the City has sufficient water and wastewater treatment capacity to allow service connections for 490 LUEs water and wastewater service to Tessera; however, the City may not have

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sufficient utility treatment capacity to meet all of the City's utility service commitments for the full build out of Tessera and the full build out of all other proposed development projects within the corporate limits of the City. The City represents that the City has rights to sufficient raw water to meet the City's overall service obligations, including, providing 2,030 LUEs of water service to the Property in accordance with the terms of this Restated Agreement. The Parties acknowledge that Tessera will build out over a number of years and that the City may decide to incrementally construct additional treatment capacity over time. Developers acknowledge that it is the City's responsibility to determine if the City's utility system needs to be expanded and how the City will expand the City's utility system to enable the City to meet its utility service obligations under this Restated Agreement. Developers further acknowledge the City's desire to retain flexibility on deciding which City utility system improvements, if any, are necessary for the City to timely meet its utility service obligations under this Restated Agreement. The City acknowledges that Developers require certainty regarding the City's plans for meeting the City's utility service obligations under this Restated Agreement, including, if necessary, the expansion or enhancement of the City's water and wastewater utility systems for the purpose of the City meeting its Utility Service obligations, including the provision of Utility Service to Tessera in accordance with the terms of this Restated Agreement. The Parties acknowledge that the delivery of an operational Utility Improvement to the City can require two or more years of planning, engineering and construction. The Parties further acknowledge the delivery of an operational Utility Improvement requires a significant financial investment.

6.02 **Communications.** The Parties will communicate and consult on a regular basis (not less frequently than once a year) regarding (i) the Developers' best estimate of the Developers' schedule for filing future preliminary plat and final plat applications and requests for PID financing during each successive two year periods so that the City will have at least a two year planning horizon for the construction of City Improvements; and (ii) the City's Utility Service Plan.

6.03 **Utility Service Obligations Defined.** This Restated Agreement provides for three types of Utility Service commitments that the City can make:

(a) General commitment to provide 2,030 LUEs of Utility Service to the Property pursuant to the terms of this Restated Agreement;

(b) Specific service commitment to deliver a specific number of LUEs of Utility Service to the Property by a specific date so that Developers may record subdivision plats subject only to the construction of Subdivision Infrastructure for such plat; and

(c) Reservation of capacity within the City's utility system at the time a subdivision plat is recorded so that upon the City's acceptance of Subdivision Infrastructure for said subdivision plat, the City will sell utility connections for Lots within said subdivision plat area.

6.04 **General Service Commitment.** Subject to Developers' compliance with Section 4.02(a)(i) or 4.02(b)(i) and satisfaction of the terms and conditions of this Article 6, the City shall timely provide the Developers and subsequent owners of land within Tessera with water and wastewater service required for the development of Tessera and, upon payment to the City of the City's applicable tap fees and impact fees, allow connections to the City's system for each LUE of service requested. Notwithstanding the foregoing sentence, the City is not obligated to provide a total of more than 2,030 LUEs of water service and 2,030 LUEs of wastewater service to Tessera. This subsection constitutes the terms and conditions of the City's general commitment of Utility Service to the Property. The City makes no representation that 2,030 LUEs of water and wastewater service will be sufficient for the full development of Tessera if such development is more intense or is otherwise materially different from the development described in the Tessera Development Plan.

6.05 **First Specific Service Commitment.**

(a) This Restated Agreement constitutes the First Developer Request For Specific Commitment of Service in the amount of 490 LUEs of water and wastewater service.

(b) This Restated Agreement constitutes the City Response to the First Developer Request For Specific Service Commitment and constitutes the City's Specific Service Commitment for 490 LUEs of water and wastewater service connections within the Property so long as Developers are in compliance with Section 4.02(a)(i) or 4.02(b)(i).

6.06 **City Utility Service Plan.** No later than one year after the City's acceptance of all the UF Phase 1 Developer Improvements, the City shall adopt and, thereafter maintain at all times, the City's plan to meet the City's overall utility service obligations, including the City's general commitment of Utility Service to Tessera in accordance with the terms of this Restated Agreement. ("**City Utility Service Plan**"). The City Utility Service Plan will include one or more of the following: a) expansion of water treatment plant No.2; b) construction of Water Treatment Plant No. 3; or c) any other Utility System improvements or enhancements approved by the City. The City may amend or modify the City Utility Plan from time to time, including, in response to Developers failing to remain in compliance with Section 4.02.

6.07 **Second and Subsequent Specific Service Commitments.**

(a) Upon the recording of subdivision plats containing at least 300 Lots and the City having issued building permits within Tessera for buildings that would use not less than 200 LUEs of water and wastewater, then Developers may request that the City provide a second specific service commitment for additional Utility Service to Tessera; provided, however, that such request shall be for no more than 400 LUEs of additional service ("**Second Developer Service Request**"). The Second Developer's Service Request must provide a date by which Developers estimate the additional Utility Service will be required to be available to the Property for the development of Tessera; provided, however, that such future date will

provide the City at least two years advance notice of when the development of Tessera will require Utility Service connections using more than the initial 490 LUEs of Utility Service.

(b) After the Second Developer Service Request, Developers may make additional Developer Service Requests for Specific Service Commitments in accordance with this subsection 6.07(b) (“**Subsequent Developer Service Request**”). Developers may submit a Developer Service Request for the City to provide a new Specific Service Commitment for additional Utility Service to Tessera when the total number of LUEs subject to a Specific Service Commitment falls below 200 LUEs. Upon the recording of a subdivision plat, the LUEs attributed to each Lot in the subdivision plat will no longer be considered subject to a Specific Service Commitment and will be considered Reserved Capacity. Subsequent Developer Service Requests may not request more than 400 LUEs and may not set a date required for the delivery of additional Utility Service that is less than 2 years from the date of the Subsequent Developer Service Request. For purposes of providing an example regarding how this subsection 6.07(b) operates, if Developers request 400 LUEs in the Second Developer Service Request (total number LUEs subject to a Specific Service Commitment would be 890 LUEs) and Developers record subdivision plats containing a total of 700 Lots (Reserved Capacity), the remaining number of LUEs subject to a Specific Service Commitment would be 190 LUEs.

(c) The Parties shall consult, if requested by any Party, regarding the details and timing relating to the Second Developer Service Request or any Subsequent Developer Service Request. It is the Parties’ intent to act in good faith to work collaboratively to agree on the terms of the City’s response to a Developer Service Request. Notwithstanding the Parties entering into the consultation process described in the subsection 6.07(a), the City shall formally respond in writing to a Developer Service Request within 45 days of receipt of the Second Developer Service Request (“**City Response**”). A City Response shall include one or more of the following, as applicable: (i) the number of LUEs in the City’s existing utility systems that City commits to hold and allocate for use in Tessera; (ii) if the City does not commit to hold and allocate all of the LUEs requested by Developers within the City’s existing utility system, then the City Response shall describe the specific enhancements, expansions and new utility facilities that the City will complete to be able to deliver the LUEs requested in the Developer Service Request by the date additional services is required as set forth in the Developer Service Request (“**City Improvements**”); and (iii) the Developer Improvements described in the attached **Exhibit “C”**, if any, that must be constructed and operational for the City to deliver the additional Utility Service capacity to the Property; provided that, unless the City Response states that a required City Improvement may be delivered at an earlier date, no such City Improvement shall be required to be available within less than two years for the date of the Developer Service Request.

(d) Any City Response that identifies City Improvements to be constructed will describe each City Improvement by including the type of utility improvement and proposed capacity of the City Improvement. Additionally, the City’s Response will include the City’s good faith estimate for the date of the completion and operation of the City Improvement.

The description of the City Improvements shall be in reasonable detail so that, if necessary, Developers may have construction plans prepared to bid and construct the City Improvements pursuant to Article 7.

(e) The City Response shall constitute the City's determination of how the City will operationally provide the amount of water and wastewater services described in a Developer Service Request by the date additional services is required that is set forth in the Developer Service Request and shall constitute the terms and conditions of the City's Specific Service Commitment; provided, that absent agreement by the City, no date for which additional service is required in a Developer Service Request shall be less than two years from the date of said request. The City Response shall, upon delivery to Developers, be a binding and enforceable obligation of the City to (i) sell, upon request, utility connections for the number of LUEs that the City commits to hold and allocate in the City's existing utility system; and (ii) to construct and complete the City Improvements, if any, by the date additional service is required as set forth in the Developer Service Request. The City's performance of the obligations described in the preceding sentence shall be subject to Developers' compliance with Section 4.02 and this Article 6. The City acknowledges that Developers will rely on the City's Response in proceeding with the development of Tessera. The City further acknowledges that in identifying the City Improvements the City is obligated to complete the construction of the City Improvements or purchase the City Improvements pursuant to Article 7. Therefore, the City may not modify or change any aspect of the City Response without the prior notice to the Developers; provided that such changes or modifications do not extend or delay the delivery time required for a City Improvement.

(f) The City may, at any time and at the City's sole discretion, deliver to Developers a final Specific Service Commitment for the remaining number of LUEs subject to a general commitment, as described in Section 6.04. The final Specific Service Commitment shall identify the number of LUEs in the City's existing utility systems that City commits to hold and allocate for use in Tessera. Upon the issuance of the final Specific Service Commitment, Developers will not be required to submit any further Developer Service Requests.

6.08 **Update to City Response.** Based on the schedule included in the City Response, Developers may, from time to time, request the City to provide a written status report on the City's progress in completing the City Improvements, including, the design, engineering, land acquisition, funding, and construction ("**Developer Inquiry**"). The City shall provide to Developers a written response to a Developer Inquiry within ten (10) working days.

6.09 **City Non-Performance of A Specific Service Commitment.**

(a) So long as Developers are not in default under Section 4.02 and one of the following have occurred: (i) the City states in either a City Response described in Section 6.07 or an update response described in Subsection 6.08 that the City will not construct and

complete the City Improvements within the time required by Section 6.07(e); (ii) the City refuses to respond to a Developer Inquiry pursuant to Subsection 6.08 and City has not cured such breach after Developers have sent a Notice of Breach pursuant to Article 10; or (iii) the City has failed to initiate or complete one or more of the tasks described in the City Response so that the City cannot reasonably be expected to comply with the delivery date required for the number of LUEs of Utility Service requested in a Developer Service Request and City has not cured such breach after Developers have sent a Notice of Breach pursuant to Article 10, then, in addition to the pursuing any or all Article 10 remedies, Developers may notify the City of Developers' intention to construct the City Improvements pursuant to Article 7 ("**Developers' Notice of Intent to Construct City Improvements**").

(b) Within ninety (90) days of the City's receipt of the Developers Notice of Intent to Construct City Improvements, the City may notify Developers that the City has (i) revised the City Response to commit the City to hold and allocate all of the LUEs requested by Developers within the City's existing utility system, or (ii) decided to proceed with the construction of the City Improvements identified in the Developers' Notice of Intent to Construct City Improvements ("**City Notice to Proceed**"). A City Notice to Proceed is not effective unless it contains the following information: (i) the estimated date by which the City will award the construction contract; (ii) the estimated number of days to be included in the construction contract for the completion of the City Improvements; and (iii) the date by which the City intends to have the City Improvements operating. Upon the delivery to Developers of the City Notice to Proceed, the City Notice to Proceed shall replace and supersede the City Response; provided, however, the City Notice to Proceed shall not alter the number of LUE's or the required date for delivery established pursuant to Section 6.07. The schedules and commitments included in the City Notice to Proceed shall be deemed and shall constitute binding obligations of the City that Developers may enforce under this Restated Agreement.

(c) If the City does not deliver the City's Notice to Proceed in compliance with Subsection 6.09(b), then the City shall be deemed to have made the decision, at its sole discretion, to effectuate and be bound by the terms of Article 7 for the construction, use and acquisition of the City Improvements if Developers deliver to the City a notice that Developers will proceed with the design, engineering and/or construction of the City Improvements pursuant to the terms of Article 7 ("**Developer Notice to Proceed**").

(d) Neither the delivery of Developer's Notice To Proceed to the City nor the Developer's construction of the City Improvements ("Facilities" in Article 7) shall release the City of the City's obligations under this Restated Agreement to have funded and constructed such City Improvements or any future City Improvements identified by the City in any future City Response.

6.10 Utility Facilities Defined and Described. The Utility Facilities are the water and wastewater facilities listed and described in the attached **Exhibit "C"** that are grouped and sequenced into three phases ("**Utility Facilities Phase**"). A specific, individual water and wastewater improvement associated with a particular Utility Facilities Phase is referred to as a

“Utility Improvement.” The specific water improvements that must be accepted by the City before the City will allow water service connections to land within a particular pressure plane (**“Water Facilities Phase”**) are described in the attached **Exhibit “C”**. The three water pressure planes (**“Lower Pressure Plane”**, **“Middle Pressure Plane”** or **“Upper Pressure Plane”**) within Tessera are described by elevation in the attached **Exhibit “C”**. The Parties have negotiated the general alignment of water and wastewater lines and the location of other Utility Improvements, as shown on the map attached hereto as **Exhibit “D”**.

6.11 **Approval of Utility Improvement Design.** The City hereby approves the design, sizing, location and route of the Utility Facilities, as described in the attached **Exhibit “C”** and **Exhibit “D”**, as being adequate for the delivery of the number of water and wastewater LUEs for each Pressure Plane. The construction plans and specifications for the construction of a Developer Improvement shall be subject to approval by the City.

6.12 **Utility Improvement Construction Obligations.**

(a) **Developers.** The Utility Improvements that Developers shall construct (the **“Developer Improvements”**) are described in the attached **Exhibit “C”**. Upon the construction of all of the Developer Improvements described in Utility Facilities Phase 1 and Phase 2 in the attached **Exhibit “C”** and the City’s acceptance of said Developer Improvements, Developers’ rights to 2,030 LUEs of water and wastewater service shall be Vested under State Law. The Developer Improvements described as UF Phase 3 in the attached **Exhibit “C”** are necessary only for the distribution of utility services within the Property and for meeting fire flow requirements within the Property.

(b) **City.** Subject to Developers compliance with Section 4.02 and this Article 6, the City is obligated to construct the City Improvements in accordance with the terms of this Restated Agreement. The City shall be solely responsible for the construction and installation of the City Improvements.

6.13 **Phasing.** Developer Improvements, or a segment of a Developer Improvement within a particular Utility Facilities Phase, may be constructed separately and dedicated separately to the City for acceptance in accordance with the procedures set forth in this Restated Agreement.

6.14 **Service Units Defined.** The size of a water meter required for any particular residential or non-residential structure shall be determined according to the City’s applicable construction and plumbing standards in effect at the time that the building permit for that structure is approved, and the number of LUEs per meter to be accounted for hereunder shall be based on the City’s 2008 impact fee study which is incorporated into this Restated Agreement for the limited purposes set forth in this Article.

6.15 **General Conditions For Connections to the City Utility System.**

(a) The Parties acknowledge that the City cannot deliver water and wastewater services to a Lot within Tesslera unless the requisite Utility Improvements, as described in the attached **Exhibit “C”**, and requisite Subdivision Infrastructure are constructed in accordance with City approved plans and specifications, and then accepted by the City. The City acknowledges that Developers are, in proceeding with the construction of the UF Phase 1 Developer Improvements, relying on the City’s performance of the City’s obligation to timely provide 2,030 LUEs of water and wastewater service to the Property in accordance with the terms of this Restated Agreement,.

(b) The projected capacity of each Utility Facilities Phase have been calculated and determined by the City in consultation with the Developers and their respective consulting engineers. Notwithstanding any other provision in this Restated Agreement, the number of LUEs associated with a Pressure Plane defined in **Exhibit “C”** shall not limit the number of service connections within any Pressure Plane in the Property so long as (i) Developers have constructed all of the Developer Improvements, described as UF Phases 1 and 2 in the attached **Exhibit “C”** in accordance with the Approved Plans, (ii) Developers have constructed such Subdivision Infrastructure as necessary to meet the City’s applicable requirements for a service connection and (iii) the City has accepted such Developer Improvement. If the Developers’ reallocation of LUEs within the Property requires a modification to the Developer Improvements described in the attached **Exhibit “C”**, then Developers shall be solely responsible for the costs of designing, engineering and constructing the alternative Developer Improvements.

(c) If the City modifies: (i) the definition of a LUE as compared to the LUE definition incorporated into this Restated Agreement; (ii) water pressure requirements for a service connection to land within Tesslera; (iii) fire flow requirements; (iv) a Utility or Developer Improvement required for the City to provide water and wastewater service to a section of Tesslera; or (v) any other aspect of water and wastewater service standards, the City shall be responsible for the timely design and construction of any additional utility facilities that would be necessary for the City to meet its water and wastewater service obligations under this Restated Agreement, unless such modification by the City is in response to requests by the Developers. If the modifications described in the preceding sentence are required by federal or State Law or regulations, the Parties shall consult regarding a reasonable resolution to funding such modifications.

6.16 Engineering and Construction Plans. Developers shall be responsible for funding the preparation of construction plans and specifications for the Developer Improvements. The City shall be responsible for funding the preparation of construction plans and specifications for the City Improvements. City approval is required for all such plans and specifications.

6.17 Approval of Construction Plans. The City shall timely review, approve and sign, or disapprove and return with an explanation, as appropriate, construction plans for a Developer Improvement (the “**Plans**”). The City shall review and approve, or disapprove, on a

timely basis the Plans as they are submitted to the City. The term “timely basis” shall be interpreted in light of the development schedule, as presented to the City by Developers, provided that in no event shall the City have fewer than 30 calendar days and no more than 45 calendar days for the City’s initial review of submitted Plans. If the City disapproves any submitted Plans, the City shall provide a written explanation of the reasons for such disapproval so that if the Plans are revised in accordance with City’s comments, the Plans will comply with the Applicable Rules and can be approved. The City shall, on a timely basis, review and comment on updates to re-submitted Plans. The term “timely basis” in the preceding sentence shall be interpreted that in no event shall the City have fewer than 15 calendar days and no more than 25 calendar days for the City to review and provide comments to any set of Plans that have been revised or updated based on previous comments from the City. Construction plans approved by the City are referred to as the “Approved Plans.”

6.18 **Use of City Property and Easements.** The City hereby consents, at no cost to the Developers, to the use of any and all appropriate and available City rights-of-way, sites or easements that may be reasonably necessary to construct a Developer Improvement, or for the Developers to perform their respective obligations under this Restated Agreement; provided, however, that the City’s consent is subject to City approval of the location of a Utility Improvement within the right-of-ways and easements and avoidance of utility facilities existing in such rights of way and easements. The location of any Developer Improvements described in the attached **Exhibit “C”** on City property other than the City rights-of-way and easements shall be in the discretion of the City. Developers have secured the dedication to the City of the Public Utility Easement recorded in Document No. 2011176460, Official Public Records of Travis County, Texas (“**PUE**”). The City agrees that it will reserve and allocate sufficient space within the PUE for wet and dry utility lines necessary to serve Tessera, including, electric, telephone, gas, cable, water and wastewater. The City agrees to cooperate and support Developers’ acquisition of necessary easements from third parties.

6.19 **Easement Acquisition.** The Utility Facilities and related easements are necessary and required by the City for the City to provide water and wastewater service to Tessera, and for Developers to comply with the City Rules and obtain approval for the development of Tessera. The Developers shall pay costs of the acquisition (including the City’s costs of such acquisition by condemnation or conveyance in lieu thereof) of any easements or land necessary for the construction of the Developer Improvements. The City Council has found the development of Tessera in compliance with this Restated Agreement will serve a public purpose and benefit the economy of the City and the public welfare. Therefore, if Developers determine that it may be necessary for the City to use its eminent domain powers to acquire property or an interest in property to install a Utility Improvement required by the City pursuant to this Restated Agreement, Developers will make a request to the City to proceed with the acquisition of the easement in compliance with applicable law. In any such event, the City proceeding to acquire such easement shall be subject to a finding by the City Council that such easement is required by the City and is necessary to accomplish a public purpose. The Parties agree to work cooperatively toward allowing the initiation of construction on a Developer Improvement on an easement being acquired by the City at the

earliest time lawfully permitted. Developers shall be responsible for all costs incurred, and for security and deposits required by the City, for or with respect to any such acquisition; provided that to the extent provided by this Restated Agreement all such costs shall be included in the cost of any such Developer Improvement for which Developers are by this Restated Agreement entitled to rebates or reimbursement by the City.

6.20 **Eminent Domain.** The City Council of the City hereby declares that: (a) there exists a public necessity for the construction of the Utility Facilities; (b) subject to all of the terms and conditions of this Restated Agreement, the Utility Facilities will be accepted by the City for ownership, operation and maintenance; (c) the City agrees, if the City Council finds the easement is necessary and required to accomplish a public purpose, to use its power of eminent domain to acquire such lands or easements in the circumstances provided herein; provided, however, the City will not use the power of eminent domain until there has been a commercially reasonable effort by Developers to negotiate and acquire the necessary property rights. If Developers have failed to obtain such lands or easements, then Developers may request the City to use its power of eminent domain to acquire said property rights. The City will act on such a request within 60 calendar days. Developers shall pay all costs associated with any such eminent domain proceedings authorized by the City. In any event, if found appropriate by the City Council for accomplishment of a public purpose, the City will timely proceed with eminent domain proceedings in order to obtain the right of possession as quickly as possible. The City will use reasonable efforts to file eminent domain proceedings within thirty days of the City's decision to proceed with eminent domain. The City will use reasonable efforts to have a special commissioners hearing held and completed within the minimum time allowed under State Law for the filing of the eminent domain proceedings.

6.21 **Changes to Approved Plans; City Inspections.** The City shall timely review, approve and sign, or disapprove and return with specific comments, as appropriate, any requested changes to Approved Plans. For purposes of reviewing changes to Approved Plans, the term "timely" shall mean ten (10) calendar days. Developers shall cooperate with the City to assure the City is provided full opportunity to inspect the work and construction of the Developer Improvements, as construction progresses, the City shall timely inspect the construction of each Utility Improvement. For purposes of inspecting construction, the term "timely" shall mean no more than three (3) business days after the day on which a request for inspection is made. The City shall provide the contractor written notice within two (2) business days of any deficiency identified during an inspection.

6.22 **Fiscal Required.** If the Parties enter into a Financing Agreement in conjunction with the formation of the PID, then this provision shall be non-applicable to any Developer Improvement funded in whole or in part with funds from the PID. With respect to the construction of any of the Developer Improvements, cash or a letter of credit in lieu of cash (such letter of credit to be in a standard form reasonably acceptable to the City) shall be deposited with the City in an amount sufficient to fund the restoration of the area of construction to a safe, pre-construction condition, including, if necessary, removing or securing facilities or other improvements, filling trenches, revegetating, and capping lines. If

construction of a Developer Improvements is abandoned and disturbed areas are not restored within 30 days after demand by the City, then the City may draw upon the fiscal security to restore such areas. If cash is posted for the fiscal, the City will keep the funds in a separate trust account identified as fiscal for the construction project.

6.23 **City's Policies and Ordinances Apply to Service Within Tessera.** From and after the final acceptance by the City of all the Developer Improvements within a particular Utility Facilities Phase, the City will provide water and wastewater service to all customers within the section of Tessera served by said Phase on the same terms and conditions as provided to water and wastewater connections within the City and in accordance with the City's policies and ordinances regarding water and wastewater service, as amended from time to time, subject only to the terms and conditions stated in this Restated Agreement. There will be no wastewater service charge associated with a water meter used only for landscaping.

6.24 **Contract and Bid Requirements.** Except as provided by Sections 4.03(m), Developers shall be solely responsible for the selection of contractors, the negotiation of construction contracts and the management of the construction contracts for the Developer Improvements, and pay all applicable plan review and construction inspection fees required by City ordinance or this Restated Agreement. All construction contracts for Developer Improvements shall require the contractor to post standard payment and performance bonds and a two-year warranty/maintenance bond.

6.25 **Satisfactory Completion of Developer Improvements.** Upon completion of construction of each of the Developer Improvements, Developers shall provide the City with final "record" drawings of the Developer Improvements. Developers' engineer shall provide a certificate of completion to the City and the City shall conduct a final inspection of the Developer Improvements within three (3) business days of receipt of said certificate of completion. The City shall, within two (2) business of conducting the final inspection provide a list of deficiencies found in the inspection so that if the deficiencies are corrected, the Developer Improvements will meet the requirements for acceptance by the City for ownership, operation and maintenance. The Developers shall be responsible for having those deficiencies remedied. Upon request, the City shall then re-inspect the Developer Improvement within three (3) business days, and if all deficiencies have been remedied to the City's satisfaction, the City shall furnish a Letter of Satisfactory Completion to Developers stating that the Developer Improvement has been constructed in substantial compliance with the Approved Plans, meets all applicable testing requirements and otherwise complies with the requirements of the City to accept the Developer Improvement for ownership, operation and maintenance.

6.26 **City Acceptance of Developer Improvements.**

(a) As a precondition to the City's final acceptance of a Developer Improvement, the following shall be delivered to the City: executed all bills paid affidavits, bills of sale, assignments, or other instruments of transfer reasonably requested by the City, in a form and

content reasonably acceptable to the City and the City Attorney, to evidence the City's ownership of same. Contemporaneously therewith, all bonds, warranties, guarantees, and other assurances of performance, record drawings, easements, project manuals and all other documentation related to the Developer Improvement to be accepted will also be delivered to the City. Utility easements for water and wastewater lines and other utility facilities within the Property may be conveyed by plat dedication or separate agreement and must be conveyed or dedicated to the City prior to the City's acceptance of the Developer Improvement.

(b) Upon the City issuing a Letter of Satisfactory Completion, Developers shall dedicate the Developer Improvement to the City. The City shall accept each such completed Developer Improvement for ownership, operation and maintenance within fifteen (15) calendar days of Developer's dedication of the Developer Improvement to the City. The City shall not unreasonably deny, delay, or condition its acceptance of such Developer Improvement. The Developers shall obtain a two year maintenance bond from the contractor and assign said bond to the City as a condition of the City's acceptance of the said Developer Improvement.

6.27 **City to Own, Operate and Maintain Developer Improvements.** From and after the time of the City's final acceptance of a Developer Improvement, the City will own, operate, and maintain each Utility Improvement as part of the City's utility system and shall be responsible for all costs associated with same. Upon the City's acceptance of all the Utility Improvements within a particular Utility Facility Phase and the City's acceptance of water and wastewater service lines within a recorded final plat, Developers shall be allowed to connect to the accepted water and wastewater service lines in such a manner to serve lots within the recorded plat; provided that City's applicable utility and connection fees are paid and that such connections meet the City's ordinance and technical requirements. The City's maintenance obligations shall be subject to the warranty and maintenance bond posted by the contractor.

7. DEVELOPER CONSTRUCTION OF CITY IMPROVEMENTS

7.01 **Applicability.** The provisions of this Article 7 shall become applicable upon the delivery to the City of the Developer Notice to Proceed, as provided in Section 6.09. The provisions of this Article 7 shall apply to the City Improvements described in the Developer Notice to Proceed and shall control the construction of said City Improvements and the City's operation, use and acquisition of same. In no event shall a Developer Improvement described in the attached **Exhibit "C"** or any Subdivision Infrastructure be considered a City Improvement for purposes of Article 7. Said City Improvements are referred to as "**Facilities**" for purposes of Article 7. In the event of a conflict between the terms of this Article 7 and any other term or provision of this Restated Agreement, the terms of this Article 7 shall control. The provisions of this Article 7 shall constitute a contract for goods and services. The terms and binding obligations of this Article 7 shall survive the termination of the Restated Agreement for any Facilities built, to be built or under construction pursuant to a Developer Notice to Proceed delivered to the City prior to the termination of the Restated Agreement.

7.02 **Construction Process, Contracts.** The Developer will take all steps necessary for construction of the Facilities including, causing construction drawings and plans and specifications to be prepared, obtaining all necessary governmental approvals, publicly inviting and advertising for construction bids, and awarding a contract or contracts with payment and performance bonds and two-year maintenance bonds after completion. Sections 6.16 through 6.21, 6.25 and 6.26 of this Restated Agreement apply to Developer's activities pursuant to this Article 7 except that the term "Facilities" shall be substituted for the term "Developer Improvements;" provided, however, in no event shall this provision ever be interpreted to apply to Subdivision Infrastructure or a Developer Improvements.

7.03 **Plans and Specifications.** Upon the delivery of the Developer Notice to Proceed to the City, the City shall be deemed to have assigned to Developers the right to use and, if necessary, modify all engineering plans and specifications pertaining to the City Improvements as then owned or held by the City; provided, however, that Developers shall not assume or be deemed to have assumed financial responsibility for the payment of any fees due or owing with respect to said plans and specifications. The City shall cause the delivery of such plans, as the City may have or control, to Developers within ten (10) working days of Developers' request for said plans. If the City has no plans and specifications, Developers shall cause such plans and specifications to be prepared. The plans and specifications for the Facilities shall be prepared by either the City's engineers or a qualified, registered professional engineer. Plans and specifications for the Facilities are subject to the approval of the City and the City's Engineer, and such approval, which shall not be unreasonably withheld or delayed, is required to be obtained by Developers prior to construction.

7.04 **Payment for Construction of Facilities.** Developer shall make, in a timely fashion, all payments on the contracts awarded by it for the construction of the Facilities. Developer shall, prior to making any payment, provide copies of all invoices and certifications recommending payment to the City.

7.05 **City Acceptance of Facilities.** Upon the City issuing a Letter of Satisfactory Completion, Developers shall tender delivery of the Facilities to the City for control, operation and maintenance. The City shall accept each said Facility control, operation and maintenance within fifteen (15) calendar days of said tender of delivery to the City. The City shall not unreasonably deny, delay, or condition its acceptance of such Facilities. The Developers shall obtain a two year maintenance bond from the contractor and assign said bond to the City as a condition of the City's acceptance of the said Facility.

7.06 **Operation and Maintenance of Facilities.** The City shall, upon acceptance of the Facilities take possession of the Facilities and assume full responsibility for the operation and maintenance of such Facilities. However, the City shall not own the Facilities constructed by Developer until the Facilities have been purchased and conveyed to the City by Developer as provided herein. The City shall operate and maintain the Facilities in good order and condition and to the extent reasonably practical, in a manner that will not interfere with the delivery of utility services for new service connections. Until such time as the Facilities are

purchased by the City, the City shall maintain adequate insurance or self-insurance to repair or replace the Facility should they be damaged or injured by insurable casualty risks. All such insurance proceeds shall be used by the City to repair and restore the Facilities to maintain the delivery of the LUEs quantified in the Developer Service Request relating to the Facilities. The costs of such insurance shall be borne by the City. Until such time as the City has purchased the Facilities from the Developers, the City shall require the insurer to name Developers as “additional insureds” under all insurance policies relating to the Facilities.

7.07 **Purchase of Facilities by City.** Within thirty (30) days of the City’s acceptance of the Facilities pursuant to Section 7.05 Developers shall deliver notice to the City stating that the Developers are ready, able and willing to sell and convey the Facilities to the City pursuant to this Article 7. The City shall provide a written response to said notice stating whether the City is willing to proceed with the Purchase of the Facilities. Such purchase shall be made and close within one (1) year of Developers’ notice of being ready willing and able to sell and convey the Facilities. The purchase price shall be the Reimbursable Costs, as defined below. The City shall pay all closing costs.

7.08 **Limitation of Source of Payment.** The City’s obligation to purchase the Facilities under this Restated Agreement is limited to funds from water and wastewater rates, impact fees, other fees and other revenues collected by the City from the City’s water and wastewater utility systems, including, water and wastewater utility revenue bonds or obligations (collectively “**Utility Revenue**”). No obligation of the City created pursuant to this Article 7 shall be payable from taxes or other money of the City other than the Utility Revenues which are actually collected by the City; provided, however, the City may, in its sole discretion, use any source of funding it chooses. If the City issues utility revenue bonds after the delivery of the Developer Notice to Proceed, then such bonds will contain funds for the purpose of fully reimbursing the Reimbursable Costs to Developers.

7.09 **Conveyance of Facilities.** Concurrently with the purchase of the Facilities by the City, the Developer shall transfer and convey title to the Facilities to the City by special warranty deed or other appropriate instrument, free and clear of all liens, claims, encumbrances, options, charges, assessments, restrictions, limitations, and reservations, including liens for ad valorem taxes for past and current years, payments due to construction contractors, laborers, or materialmen. The Developer shall provide such proof of title and proof that no such liens, claims, and encumbrances exist as may reasonably be required by the City. The conveyance or conveyances shall include all easements where the collection, distribution, and drainage systems are located (where such easements have not been dedicated to the public) and which are necessary to own, operate, and maintain the Facilities, and fee simple title to any sites, together with the necessary right-of-way thereto, and all licenses, franchises, and permits for the Facilities. The Developer shall also assign in writing all of its contractors' and materialmen's warranties and guaranties relating to the Facilities, otherwise, the City shall accept the Facilities on an “as is where is” basis without any warranty from Developers.

7.10 **Reimbursable Costs.** “Reimbursable Costs” means the documented dollar amount actually expended for constructing the Facilities, provided the bids and change orders are approved in advance by the City Manager; provided, the City Manager shall not unreasonably deny, delay, or condition its acceptance of such Facilities. The Reimbursable Costs shall also include the reasonable, total cost of the following:

- (i) the surveying costs;
- (ii) the cost of soils and materials testing;
- (iii) the engineering fees relating to the Facilities;
- (iv) advertising and other costs associated with public bidding and award of construction contracts;
- (v) the documented cost of required easements, lots, sites and rights-of-way located outside of the Property, but not including any easement or right-of-way required on any land within the Property;
- (vi) Construction management fee equal to four percent (4%) of the total of the other components of the Reimbursable Costs; and
- (vii) any other necessary out-of-pocket costs expended in connection with constructing and installing the Facilities;

provided that all such sums and amounts shall be reasonably required for the Facilities and documented to and approved by the City Manager which approval may not be unreasonably denied, delayed or conditioned. If the City Manager does not approve of a cost, the City Manager shall provide a written explanation of the basis for not approving such cost within fifteen (15) calendar days of Developer’s submittal of said cost for approval. If the City Manager refuses to approve a bid, change order, or cost described above, Developers may appeal such determination to the City Council. The City will schedule a hearing on the appeal no later than the next regularly scheduled City Council meeting for which timely notice may be given. If the City and Developer do not agree upon the costs being appealed, then any Party may send a Notice of Breach and proceed with Article 10 remedies.

7.11 **Failure to Purchase by Initial Closing Date.** If the City does not purchase the Facilities within one (1) year of Developers’ notice to the City pursuant to Section 7.05, then Developers may pursue the remedies set forth in Article 10 of the Restated Agreement. Upon the City’s failure to purchase the Facilities within the one (1) year period, the Reimbursable Costs shall bear a per annum interest equal to the prime rate published in the Wall Street Journal plus 2.5%, accruing on a monthly basis. The initial rate shall be calculated based on the prime rate published in the Wall Street Journal on the 366th day following Developers’ notice pursuant to Section 7.05 or the first business thereafter. The interest rate will adjust on each subsequent anniversary date. Interest will accrue beginning on

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the 366th day following Developers' notice pursuant to Section 7.05. Interest shall accrue until title to the Facilities is conveyed to the City.

8. PARKS AND HOME OWNERS ASSOCIATION

8.01 **Home Owners Association To Be Established.** Developers will create one or more home owners associations for the Property (collectively the "**Association**"), and shall establish bylaws, rules, regulations and restrictive covenants (collectively the "**Association Regulations**") to assure the Association performs and accomplishes the duties and purposes required to be performed and accomplished by the Association pursuant to this Restated Agreement. The owner of each Lot within the Property shall be required to be a member of the Association, and unpaid dues or assessments shall be and constitute a lien on the lot for which they are assessed. The Association Regulations will establish periodic Association dues and assessments, to be charged and paid by the lot owners in within the Property, that are and will be sufficient to maintain (i) the private streets within the Property, if any, (the "**Private Streets**"); (ii) all landscaping, upgraded street lights, and enhanced signage within the right-of-way or median of any street or roadway ("**Street Landscaping**"); (iii) all greenbelts and natural buffer areas ("**Open Space**"); (iv) any part or portion of the Property that is dedicated to the Association (the "**Common Area**"); and (v) public parks established within the Property ("**Parks**"). The Association Regulations will require the periodic dues and assessments to be increased from time to time as necessary to provide the funds required for the maintenance of the Private Streets, Street Landscaping, Open Space, the Common Area and Parks, and to provide funds required for the management and operation of the Association.

8.02 **Dues and Assessments.** The Association dues and assessments required to be established, maintained and collected by the Association pursuant to this Restated Agreement shall be in addition to, and not in lieu of, any and all other taxes, fees, charges and assessments that will be applicable to the Property.

8.03 **City Approval of Documents and Covenants.** The Certificate of Formation and Association Regulations, and the applicable restrictive covenants for each Section of the Property shall require the Association to operate maintain, repair and refurbish the Private Streets, Street Landscaping, Open Space, the Common Area and Parks, and to assess and collect sufficient dues and fees to fund and pay the cost and expenses for the Association maintaining, cleaning, repairing and refurbishing each such areas. The articles of incorporation and bylaws for the Association and the restrictive covenants applicable to the each Section or Phase of the Property shall be subject to approval by the City, which approval shall not be unreasonably denied, delayed or conditioned and shall authorize the City to enforce the obligations of the Association to: (i) maintain, clean, repair and refurbish the Private Street, Landscaping, Open Space, the Common Area and Parks; and (ii) assess and collect sufficient fees and charges to fund such maintenance, cleaning, repair and refurbishment duties and responsibilities.

9. ASSIGNMENT OF COMMITMENTS AND OBLIGATIONS; SUCCESSORS

9.01 **Assignment of Developer Rights.** The Developer's rights and obligations under this Restated Agreement may be assigned in whole or part, to persons purchasing all of the Property or a part of the Property but not to an individual purchaser of lots within a recorded final plat. In the event Developer(s) assign all of their respective rights under this Restated Agreement in conjunction with the conveyance of any unplatted portion of the Property, a written assignment of developer status must be filed of record in the Official Public Records of Travis County, Texas in order to be effective. Any assignment of Developer's rights and obligations hereunder will not release Developer(s) of their respective obligations under this Restated Agreement for the assigned portion of the Property until the City has approved the written assignment; provided, however, the City shall not unreasonably deny, delay, or condition its approval of the assignment.

9.02 **Lot Conveyance Not an Assignment.** The mere conveyance of a lot or any portion of the Property without a written assignment of the rights of Developer shall not be sufficient to constitute an assignment of the rights or obligations of Developer hereunder, unless specifically provided herein. In order for any assignment to be effective, it shall be made in writing and filed of record in the Official Public Records of Travis County, Texas.

9.03 **Agreement Binding on Assigns.** This Restated Agreement shall be binding upon the Parties, their grantees, successors, assigns, or subsequent purchaser. In the event of an assignment of fee ownership, in whole or in part, of the Property by Developer, only the grantees and assignees and then current owners of any portion of the Property so assigned shall be liable under this Restated Agreement for any subsequent default occurring after the conveyance and affecting only the portion or portions of the Property so assigned. Any reference to Developers or City shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Restated Agreement shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

10. BREACH, DEFAULT, REMEDY, AND TERMINATION RIGHTS

10.01 **Default Generally.** If any Party breaches the terms of this Restated Agreement and fails to cure such breach after receipt of a Notice of Breach pursuant to Section 10.02, such breach shall be an event of default. In that event, the non-defaulting Party to this Restated Agreement may pursue the remedies described in Section 10.03; provided that, if Developers abandon the Project as provided in Section 4.03(j), the City may, in its sole discretion, give written notice of abandonment to Developers and this Restated Agreement shall be terminated. Abandonment shall not be subject to cure without the express written agreement of the City Council.

10.02 **Notice and Opportunity to Cure.**

(a) No Party shall be deemed to be in default hereunder until i) receipt from another party of a written notice of breach that specifies the nature of the breach, including the provision of the Restated Agreement that has been breached ("**Notice of Breach**"); and ii) the passage of thirty (30) days after receipt of the Notice of Breach without cure of the breach. If the cure of the breach requires more than thirty (30) days and the breaching Party has begun to cure the breach, then the breaching party shall be deemed to have cured the breach so long as the breaching party diligently, continuously and timely cures said breach. Upon the passage of thirty (30) days without cure of the breach, such Party shall be deemed to have defaulted for purposes of this Restated Agreement and the non-defaulting Party may pursue the remedies allowed under Article 6 or Section 10.03 of this Agreement. A Notice of Breach delivered to the City shall be deemed to fulfill the notice requirements set forth in Section 11.07 of the City Charter.

(b) In no event shall the preparation and delivery to Developers of any of the following ever be considered or deemed to require more than thirty days to cure: (i) the City Utility Plan, (ii) a City Response, (iii) a City Notice To Proceed, (iv) review comments for Plans submitted to the City pursuant to Section 6.17; (v) review comments for Approved Plans submitted to the City pursuant to Section 6.21; (vi) any City obligation described in Section 6.27, (vii) final inspection report pursuant to Section 6.25; (viii) City acceptance of a Developer Improvement pursuant to Section 6.26; (ix) City review, inspection or action relating to Subdivision Infrastructure pursuant to Section 5.01; (x) City review, inspection or action relating to a Facility pursuant to Sections 7.02, 7.03 and 7.05; and (xi) a payment due under Article 7.

10.03 **Remedies.**

(a) **City** If Developers fail to cure a breach after receiving a Notice of Breach from the City, the City may terminate this Restated Agreement or may pursue all available legal and equitable remedies regarding said default, including specific performance.

(b) **Developers.** If the City fails to cure a breach under any provision of this Restated Agreement, other than an Article 7 obligation, Developers may terminate this Restated Agreement and pursue all available legal and equitable remedies, including specific performance and mandamus regarding said default; provided, however, that legal actions shall not include the recovery of damages against the City. If the City fails to cure a breach under any provision of Article 7 after receiving Notice of Breach from another Party, then such non-defaulting party may terminate this Restated Agreement and pursue all available legal and equitable remedies, including specific performance and mandamus regarding said default; provided, however, that the recovery of damages shall be limited to the collection of money due and payable to Developer(s) pursuant to Article 7.

10.04 **Stipulations.**

(a) The Parties each waive all claims for special, consequential and exemplary damages. Developers further waive any and all claims for damages whatsoever, save and except only, for Reimbursable Costs that may become payable pursuant to Article 7. Subject to the limitation of the award of damages set forth in Section 10.03(b) above and this Section 10.04, the City waives its governmental immunity to suit with respect to any action relating to the interpretation and enforcement of this Restated Agreement. Nothing in this section shall waive any claims, defenses or immunities that the City may have with respect to suits filed by persons or entities other than a Party to this Agreement. The act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity or under this Restated Agreement.

(b) The Parties stipulate that (i) the City will provide water and wastewater service within Tessera; (ii) Developers waive any and all right to recover monetary damages caused by the City's default hereunder, save and except only the recovery of Reimbursable Costs that may be and become payable by the City under Article 7; and (iii) lacking such remedies at law, Developers will be irreparably harmed by the City's default. Therefore, the remedies of injunction or mandamus are necessary for the Developers to enforce the rights and obligations set out in Articles 5, 6 & 7 of this Restated Agreement, including those specifically identified in Subsection 10.02(b), because no adequate remedy at law exists. In the event of a default in the performance of any obligation identified in Subsection 10.02(b), it is agreed that an expedited hearing on the matter is appropriate and needed, and that in the event the Court is willing to issue an injunction, other equitable relief or a writ of mandamus, the bond amount required in connection with such injunction, equitable relief or writ of mandamus should not exceed \$1,000.00.

(c) Except as provided in this Section 10.04(c), the City shall not be liable to the Developers, or to any other person or legal entity, for any monetary award, damages or costs pursuant to this Restated Agreement. Developers waive any and all present or future claims for damages; save and except only that if Article 7 becomes applicable and Developers construct one or more of the Facilities, the City shall be liable to the Developers for the Reimbursable Costs.

10.05 **Material Agreement**. The following are material inducements to Developers for entering into this Restated Agreement: (i) the terms of this Article 10; (ii) the City's agreement that the City's obligations under Articles 5, 6 and 7, including those identified in Subsection 10.02(b), are enforceable as set out in Section 10.03; and (iii) the stipulations set forth in Section 10.04.

10.06 **Waiver**. Any failure by a Party to insist upon strict performance by another Party of any provision of this Restated Agreement will not, regardless of the length of time during which that failure continues, be deemed a waiver of that Party's right to insist upon strict compliance with all terms of this Restated Agreement. In order to be effective as to as to the Developers, any Developer waiver of a City breach or default under this Restated Agreement must be in writing and signed by an officer of the Developer and a written waiver

will only be effective as to the specific breach or default and as to the specific period of time set forth in the written waiver. In order to be effective as to the City, any City waiver of a Developer breach or default under this Restated Agreement must be in a writing and authorized by the City Council and signed by the City Manager or the Mayor, and a written waiver will only be effective as to the specific breach or default and as to the specific period of time set forth in the written waiver. A written waiver will not constitute a waiver of any subsequent breach or default, or of the right to require performance of any provision of this Restated Agreement in the future. Except as explicitly provided in this Restated Agreement, nothing in this Restated Agreement shall be deemed a waiver by the City of any applicable state and federal law.

10.07 **Attorney's Fees.** A Party shall not be liable to another Party for attorney fees or costs incurred in connection with litigation between the Parties, including, but not limited to, any action, process or proceeding in which a Party seeks to obtain a remedy from the other Party, including appeals and any post-judgment proceedings regarding any such matter; provided that Sections 4.03(g), 6.21, 6.22 and 11.07(d) shall be and remain in full force and effect.

10.08 **Post Termination Rights.**

(a) Upon the termination of this Restated Agreement, this Restated Agreement will be of no further force and effect, except that such termination will not affect the City's obligation to: (a) allow connections, subject to City Rules, to the City's systems within each pressure zone of Tessera for which (i) the Subdivision Infrastructure has been constructed and accepted by the City; and (ii) the respective phase of the Utility Facilities described in **Exhibit "C"** has been constructed and accepted by the City; and (b) provide water and wastewater service in the amount of up to 2,030 LUEs if Developers have constructed all of the UF Phase 1 and UF Phase 2 Developer Improvements and the City has accepted such Developer Improvements subject to compliance with the City Rules regarding connections to the City's utility system.

(b) For any portion of the Property having not received a final plat prior to the termination of this Restated Agreement or for which all Subdivision Infrastructure has not been constructed and installed by Developer and accepted by the City, the City shall have no obligation to complete the infrastructure and such obligation to install and construct infrastructure shall be the obligation of the person or person(s) requesting water or wastewater service according to the City Rules in effect at the time of the request. The City shall have no obligation to construct water or wastewater utilities within the Property; provided, however, the UF Phase 1 and UF Phase 2 Developer Improvements have been accepted by the City, then the City shall be obligated to complete all City Improvements identified in a City Response issued by the City prior to the termination of this Restated Agreement.

(c) Upon the expiration or termination of this Restated Agreement, this Restated Agreement will be of no further force and effect; except that such expiration or termination

will not affect any right or obligation arising (i) under State Law; (ii) from Project Approvals granted during the Term of this Restated Agreement; and (iii) for completion of infrastructure for approved final platted section(s).

10.09 **Termination By Agreement.** This Restated Agreement may be terminated or amended as to all of the Property at any time by mutual written consent of the City and Developers, or may be terminated or amended as to a portion of the Property by the mutual written consent of the City and the Developer, or Developer's grantees and assignee, as to that portion or portions of the Property affected by the amendment or termination provided that, in such event, the termination of this Restated Agreement shall not limit, lessen, impair or modify the obligations of the Parties pursuant to, or for or with respect, to the Tessera on Lake Travis Public Improvement District, Tessera on Lake Travis Public Improvement District Financing Agreement, or any lien, assessment, document or obligation created for or with respect to the PID Bonds.

11. MISCELLANEOUS PROVISIONS

11.01 **Force Majeure.**

(a) The term "force majeure" shall mean, without limitation, acts of God; strikes, lockouts, or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States, the State of Texas or any civil or military authority, including the City; insurrections, riots, epidemic, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people; civil disturbances; explosions, breakage, or accidents to machines, pipelines, or canals; or other causes not reasonably within the control of the party claiming such inability.

(b) If, by reason of force majeure, any party hereto shall be rendered wholly or partially unable to carry out its obligations under this Restated Agreement, then such party shall give written notice of the full particulars of such force majeure to the other party within thirty (30) days after the occurrence thereof. The obligations of the party giving such notice, to the extent effected by the force majeure, shall be suspended during the continuance of the inability claimed, except as hereinafter provided, but for no longer period, and the party shall endeavor to remove or overcome such inability with all reasonable dispatch. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require that the settlement be unfavorable in the judgment of the party having the difficulty.

11.02 **Notices.** Any notice required or permitted to be delivered hereunder shall be in writing and shall be deemed received on the earlier of (i) actual receipt by mail, Federal Express or other delivery service, fax or hand delivery; (ii) three (3) business days after being sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to Seller or Purchaser, as the case may be, at the address stated in Section I; or (iii) one business day after being sent by email.

Any notice mailed to the City shall be addressed:

City of Lago Vista
Attn: City Manager
P.O. Box 4727 (mail)
5803 Thunderbird (hand delivery)
Lago Vista, Texas 78645
Fax (512) 267-7070

With copy to:

McKamie & Krueger
223 W. Anderson Lane, Suite A105
Austin, Texas 78752
Telephone (512) 323-5778
Fax (512) 323-5773

Any notice mailed to the Developer and Phase I Developer shall be addressed:

Hines Interests Limited Partnership
Attention: Mark Cover
811 Main St, Suite 4100
Houston, Texas 77008
Telephone (713) 237-5660
Fax (713) 237-5657

with copies to:

Hines Interests Limited Partnership
Attention: Duke Kerrigan
515 Congress, Suite 1425
Austin, Texas 78701
Telephone (512) 652-0590
Fax (512) 652-0598

Hines Interests Limited Partnership
Attention: Rob Witte
2200 Ross, Suite 42W
Dallas, Texas 75201
Telephone (972) 716-2925
Fax (972) 934-1460

Munsch, Hardt Kopf & Harr, P.C.
Attn: Robert Kleeman
401 Congress Avenue, Suite 3050

Tessera on Lake Travis

Restated Development Agreement

Page 40

Austin, Texas 78701
Telephone (512) 391-6115
Fax (512) 482-8932

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

11.03 **Multiple Originals.** The Parties may execute this Agreement in one or more duplicate originals, each of equal dignity.

11.04 **Entire Agreement.** This Restated Agreement, together with any exhibits attached hereto, constitutes the entire agreement between Parties with respect to its subject matter, and may not be amended except by a writing signed by all Parties with authority to sign and dated subsequent to the date hereof. There are no other agreements, oral or written, except as expressly set forth herein.

11.05 **Recordation.** A Memorandum of Agreement for this Restated Agreement may be recorded in the Official Public Records of Travis County, Texas.

11.06 **Governing Law.** This Restated Agreement shall be governed by and construed in accordance with the laws of the State of Texas. In the event of partial invalidity, the balance of the Restated Agreement shall remain in full force and effect. This Restated Agreement is performable in Travis County, Texas.

11.07 **Cooperation and Third-Party Litigation.**

(a) The Parties agree to execute such further documents or instruments as may be necessary to evidence their agreements hereunder.

(b) In the event of any third party lawsuit or other claim relating to the validity of this Restated Agreement or any actions taken by the Parties hereunder, Developer and City 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 of their respective rights and obligations under this Restated Agreement. The filing of any third party lawsuit relating to this Restated Agreement or the development of the Property will not delay, stop or otherwise affect the development rights or the City's processing or issuance of any approvals or permits pursuant to this Restated Agreement, unless otherwise required by a court of competent jurisdiction.

(c) The City agrees to cooperate, as appropriate, at no cost to the City, with Developer(s) in connection with any waivers or approvals Developer(s) may be required to obtain from other governmental authorities in connection with the development of Tessera; provided, however, the City shall not be obligated to cooperate if Developer(s) is challenging the applicability or legality of the rule with regard to which the waiver or approval is sought.

(d) In the event of any third party lawsuit or other claim relating to the validity of this Agreement or any actions taken by the Parties pursuant to this Agreement, Developers and the City will cooperate in the defense of such suit or claim, and use their respective best efforts to resolve the suit or claim without diminution of their respective rights and obligations under this Agreement. The City's participation in the defense of such a lawsuit is expressly conditioned on the discretion of the City Council. The filing of any third party lawsuit relating to this Agreement or the development of Tessera will not delay, stop or otherwise affect the development of the Developer Improvements or the City Improvements, or the City's processing or issuance of any approvals for the Developer Improvements, unless otherwise required by a court order. Developers shall reimburse the City for any costs, expenses and fees reasonably incurred by the City by reason of any claim or litigation filed by a third person; provided, however, if the third party litigation alleges that the City did not properly authorize the execution of this Agreement, then Developers shall have no responsibility to reimburse the City for any costs, expenses or fees relating to such claim.

11.08 **Construction of Agreement.** All exhibits attached to this Restated Agreement are incorporated into and made a part of this Restated Agreement for all purposes. The paragraph headings contained in this Restated 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. Each of the Parties has been actively and equally involved in the negotiation of this Restated Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting Party will not be employed in interpreting this Restated Agreement or its exhibits. This Restated 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.

11.09 **Mortgagee Protection.**

(a) This Restated Agreement will not affect the right of Developer(s) to encumber all or any portion of the Property by mortgage, deed of trust, assessment lien or other instrument to secure financing for the Project. The City understands that a lender, prospective lender, bondholder or prospective bondholder providing financing for the Project (collectively "**Lender**") may require interpretations of or modifications to this Restated Agreement and agrees to cooperate with Developer(s) and its Lenders' representatives in connection with any reasonable requests for interpretations or modifications. The City agrees not to unreasonably condition, withhold or delay its action upon any requested interpretation or modification if the interpretation or modification is consistent with the intent and purposes of this Restated Agreement. The City agrees as follows:

(i) The City will, upon written request of a Lender given in compliance herewith, provide the Lender with a copy of any written notice of default given to Developer under this Restated Agreement within ten (10) days of the date such notice is given to Developer.

(ii) In the event of default by Developer under this Restated Agreement, a Lender may, but will not be obligated to, cure any default during any cure period extended to Developer, either under this Restated Agreement or under the notice of default.

(iii) Any Lender who comes into possession, control or ownership of any portion of the Property by foreclosure or deed in lieu of foreclosure will take such property subject to the terms of this Restated Agreement and the PID Bonds. Any person or entity who comes into possession, control or ownership of any portion of the Property by foreclosure or deed in lieu of foreclosure will take such property subject to the terms of this Restated Agreement and the PID Bonds; provided that, excluding assessments made pursuant to the PID Bonds, such Lender, person or entity will not be liable for any defaults or monetary obligations of Developer arising prior to the acquisition of title; provided further that such Lender, person or entity will not be entitled to obtain any permits or approvals with respect to that property until all delinquent fees and other obligations of Developer under this Restated Agreement that relate to the property in question have been paid and/or performed.

(b) Within thirty (30) days of written request by a Party given in accordance with this Restated Agreement, the non-requesting Parties will execute and deliver to the requesting Party a statement certifying that: (a) this Restated Agreement is unmodified and in full force and effect or, if there have been modifications, that this Restated Agreement is in full force and effect as modified and stating the date and nature of each modification; (b) there are no current uncured defaults under this Restated Agreement, or specifying the date and nature of each default; and (c) any other information that may be reasonably requested.

11.10 **Right to Continue Development.**

(a) In consideration of Developers' agreements hereunder, the City agrees that, during the term of this Restated Agreement, it will not impose or attempt to impose: (a) any moratorium on building or development within the Property, or (b) any land use or development regulation that limits the rate or timing of land use approvals, whether affecting preliminary plans, final plats, site plans, building permits, certificates of occupancy or other necessary approvals. No City-imposed moratorium, growth restriction, or other limitation affecting the rate, timing or sequencing of development or construction of all or any part of the Project will apply to the Land if such moratorium, restriction or other limitation conflicts with this Restated Agreement or would have the effect of increasing Developers' obligations or decreasing Developers' rights and benefits under this Restated Agreement. This Restated Agreement on the part of the City will not apply to temporary moratoriums uniformly imposed throughout the City and ETJ due to an emergency constituting an imminent threat to the public health or safety, provided that the temporary moratorium continues only during the duration of the emergency.

(b) Developers, their respective grantees, successors, assigns or subsequent purchasers obligation to complete infrastructure necessary to comply with this Restated Agreement and Applicable Rules shall be an obligation running with the land as more

particularly set forth herein which shall survive termination of this Restated Agreement and be enforceable at the discretion of the City.

11.11 **Severability, Equivalent Substitute Obligation.** If any provision of this Restated Agreement is held to be illegal, invalid, or unenforceable by a final judgment entered by a court of competent jurisdiction under present or future laws, then, and in that event, it is the intention of the Parties hereto that the remainder of this Restated Agreement shall not be affected thereby, and it is also the intention of the Parties that in lieu of each provision of this Restated Agreement that is illegal, invalid, or unenforceable, there be automatically added as a part of this Restated Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible, and be legal, valid, and enforceable that will most nearly preserve each Party's overall contractual benefit under this Restated Agreement. If any Party is unable to meet an obligation under this Restated Agreement due to a court order invalidating all or a portion of this Restated Agreement, preemptive state or federal law, an imminent and bona fide threat to public safety that prevents performance or requires different performance, or subsequent conditions that would legally excuse performance under this Restated Agreement, the Parties agree to revise this Restated Agreement to provide for an equivalent substitute right or obligation as similar in terms to the illegal, invalid, or unenforceable provision as is possible and is legal, valid and enforceable, or other additional or modified rights or obligations that will most nearly preserve each Party's overall contractual benefit under this Restated Agreement.

11.12 **Authorization.** The City certifies, represents, and warrants that the execution of this Restated Agreement has been duly authorized and that this Restated Agreement has been approved in conformity with City ordinances and other applicable legal requirements. Developers certify, represent and warrant that the execution of this Restated Agreement is duly authorized in conformity with their respective authority.

11.13 **Certificate of Compliance.**

(a) Within thirty (30) days of written request by any Party requesting a statement of compliance with this Restated Agreement, the other Party will execute and deliver to the requesting Party a statement certifying that:

(i) this Restated Agreement is unmodified and in full force and effect or, if there have been modifications, that this Restated Agreement is in full force and effect as modified and stating the date and nature of each modification;

(ii) there are no current uncured defaults under this Restated Agreement, or specifying the date and nature of each default; and

(b) Any other information that may be reasonably requested. The City Manager will be authorized to execute any requested statement on behalf of the City; provided such statement relates only to general information about Tessera or (i) and (ii) above.

11.14 **No Third Party Beneficiary.** The provisions of this Restated Agreement are and will be for the benefit of the Parties only and are not for the benefit of any third party and, accordingly, no third party shall have the right to enforce the provisions of this Restated Agreement.

11.15 **Exhibits.** All Exhibits and other documents attached to this Restated Agreement are incorporated into this Restated Agreement for all purposes. The exhibits to this Restated Agreement are as follows:

Exhibit A – Metes and Bounds Description of the Property
Exhibit B – Tessera Development Plan
Exhibit C – Description of Utility Facilities
Exhibit D – Map of water and wastewater lines and the location of other Utility Improvements
Exhibit E – Phase 1 Development Area and Description of the Initial Entrance Road
Exhibit F – Right of Way License Agreement Form

EXECUTED in multiple originals as of the date set out below and effective as of August 16, 2012.

CITY OF LAGO VISTA, TEXAS

Attest:

By: [Signature]
Name: Christina Buckner
Title: City Secretary
Date: 8/16/12

By: [Signature]
Name: _____
Title: Mayor
Date: 8/16/12

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 16th day of August, 2012, by Randy Kruger, the Mayor of the **CITY OF LAGO VISTA, TEXAS**, a home rule city, on behalf of said city.

[Signature]
NOTARY PUBLIC, State of Texas
My Commission Expires: 11-30-12

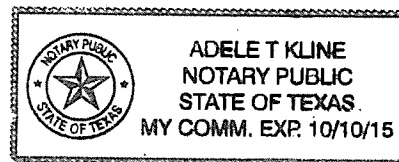


HINES LAKE TRAVIS LAND LIMITED PARTNERSHIP,
a Texas limited partnership

By: Hines Holdings, Inc., a Texas corporation,
its general partner

STATE OF TEXAS \$
 Harris \$
COUNTY OF DALLAS \$

Notary Public, State of Texas
My Commission Expires: 10-10-15

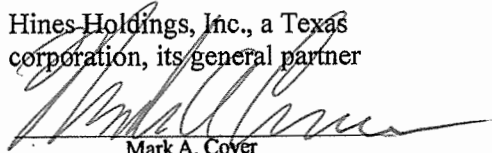


Hines Lake Travis Land II Limited Partnership
a Texas limited partnership

By: Hines Lake Travis GP, LLC, a Delaware limited liability company, its general partner

By: Hines Interests Limited Partnership, a Delaware limited partnership, its sole member

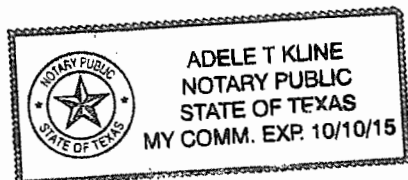
By: Hines Holdings, Inc., a Texas corporation, its general partner

By: 
Mark A. Cover
Senior Managing Director
CEO - Southwest Region

Date: _____

THE STATE OF TEXAS §
 §
COUNTY OF ~~DALLAS~~ *Harris* §

This instrument was acknowledged before me on August 10, 2012, by Mark A. Cover, Senior Managing Director, Hines Holdings, Inc., a Texas corporation, on behalf of said corporation in its capacity as general partner of Hines Interests Limited Partnership, a Delaware limited partnership, on behalf of said limited partnership, in its capacity as sole member of Hines Lake Travis GP LLC, a Delaware limited liability company, on behalf of said limited liability company, in its capacity as general partner of Hines Lake Travis Land Limited Partnership, a Texas limited partnership, on behalf of said limited partnership.



Adele T. Kline
NOTARY PUBLIC, State of Texas
My Commission Expires: 10/10/15

EXHIBIT "A"
TO RESTATED DEVELOPMENT AGREEMENT
METES AND BOUNDS DESCRIPTION OF THE PROPERTY

Recorders Memorandum-At the time of recording this instrument was found to be inadequate for the best reproduction, because of illegibility, carbon or photocopy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

LEGAL DESCRIPTION
877.263 ACRES

ALL THAT CERTAIN TRACT OR PARCEL OF LAND SITUATED IN THE J.S. PEACOCK SURVEY NO. 202, ABSTRACT NO. 2469, TEXAS-MEXICAN RAILWAY CO. SURVEY NO. 201, ABSTRACT NO. 2291, A. SYLVESTER SURVEY NO. 202, ABSTRACT NO. 2524, WILLIAM BRANDON SURVEY NO. 1, ABSTRACT NO. 47 AND F. F. FAUBION SURVEY NO. 97, ABSTRACT NO. 2541, TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN TRACT OR PARCEL OF LAND DESCRIBED IN A DEED TO HINES LAKE TRAVIS LAND LIMITED PARTNERSHIP, RECORDED IN DOCUMENT NUMBER 2007077705, OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2" REBAR WITH YELLOW PLASTIC CAP STAMPED "HAYNIE CONSULTING" FOUND AT THE NORTHEASTERLY CORNER OF SAID HINES LAKE TRAVIS LAND LIMITED PARTNERSHIP TRACT, SAID POINT BEING ON THE SOUTHERLY RIGHT OF WAY LINE OF F.M. ROAD NO. 1431;

THENCE ALONG THE EASTERLY LINE OF SAID HINES LAKE TRAVIS LAND LIMITED PARTNERSHIP TRACT THE FOLLOWING 40 COURSES:

1. SOUTH 33 DEGREES 12 MINUTES 06 SECONDS WEST A DISTANCE OF 618.10 FEET;
2. SOUTH 26 DEGREES 57 MINUTES 39 SECONDS EAST A DISTANCE OF 452.84 FEET;
3. SOUTH 16 DEGREES 52 MINUTES 30 SECONDS EAST A DISTANCE OF 366.98 FEET;
4. SOUTH 05 DEGREES 20 MINUTES 44 SECONDS EAST A DISTANCE OF 327.61 FEET;
5. SOUTH 16 DEGREES 44 MINUTES 09 SECONDS EAST A DISTANCE OF 387.91 FEET;
6. SOUTH 10 DEGREES 12 MINUTES 56 SECONDS WEST A DISTANCE OF 672.28 FEET;
7. SOUTH 35 DEGREES 14 MINUTES 57 SECONDS WEST A DISTANCE OF 659.99 FEET;
8. SOUTH 16 DEGREES 48 MINUTES 54 SECONDS WEST A DISTANCE OF 928.89 FEET;
9. SOUTH 53 DEGREES 47 MINUTES 38 SECONDS WEST A DISTANCE OF 531.05 FEET;
10. SOUTH 21 DEGREES 55 MINUTES 01 SECONDS WEST A DISTANCE OF 1249.64 FEET TO A 1/2" REBAR FOUND;
11. SOUTH 27 DEGREES 23 MINUTES 17 SECONDS WEST A DISTANCE OF 672.56 FEET TO A 1/2" REBAR FOUND;
12. SOUTH 27 DEGREES 14 MINUTES 59 SECONDS WEST A DISTANCE OF 192.63 FEET TO A 1" REBAR FOUND;
13. SOUTH 74 DEGREES 33 MINUTES 08 SECONDS WEST A DISTANCE OF 421.27 FEET;
14. NORTH 89 DEGREES 32 MINUTES 10 SECONDS WEST A DISTANCE OF 88.90 FEET;
15. SOUTH 73 DEGREES 51 MINUTES 05 SECONDS WEST A DISTANCE OF 76.77 FEET;
16. SOUTH 59 DEGREES 36 MINUTES 13 SECONDS WEST A DISTANCE OF 44.03 FEET;
17. SOUTH 67 DEGREES 22 MINUTES 07 SECONDS WEST A DISTANCE OF 82.77 FEET;
18. SOUTH 87 DEGREES 24 MINUTES 15 SECONDS WEST A DISTANCE OF 92.92 FEET;
19. NORTH 77 DEGREES 41 MINUTES 11 SECONDS WEST A DISTANCE OF 221.73 FEET;
20. SOUTH 70 DEGREES 06 MINUTES 50 SECONDS WEST A DISTANCE OF 79.91 FEET;
21. SOUTH 17 DEGREES 47 MINUTES 53 SECONDS WEST A DISTANCE OF 71.63 FEET;
22. SOUTH 20 DEGREES 22 MINUTES 04 SECONDS EAST A DISTANCE OF 68.81 FEET;
23. SOUTH 03 DEGREES 01 MINUTES 13 SECONDS WEST A DISTANCE OF 86.39 FEET;
24. SOUTH 14 DEGREES 13 MINUTES 11 SECONDS WEST A DISTANCE OF 103.23 FEET;
25. SOUTH 30 DEGREES 06 MINUTES 42 SECONDS WEST A DISTANCE OF 127.39 FEET;
26. SOUTH 30 DEGREES 38 MINUTES 30 SECONDS WEST A DISTANCE OF 220.08 FEET;
27. SOUTH 13 DEGREES 42 MINUTES 55 SECONDS WEST A DISTANCE OF 425.83 FEET;
28. SOUTH 24 DEGREES 16 MINUTES 13 SECONDS WEST A DISTANCE OF 222.75 FEET;
29. SOUTH 43 DEGREES 42 MINUTES 44 SECONDS WEST A DISTANCE OF 245.57 FEET;
30. SOUTH 38 DEGREES 48 MINUTES 26 SECONDS WEST A DISTANCE OF 287.20 FEET;
31. SOUTH 60 DEGREES 16 MINUTES 00 SECONDS WEST A DISTANCE OF 125.04 FEET;
32. SOUTH 84 DEGREES 04 MINUTES 35 SECONDS WEST A DISTANCE OF 89.08 FEET;
33. SOUTH 86 DEGREES 49 MINUTES 54 SECONDS WEST A DISTANCE OF 261.75 FEET;
34. NORTH 82 DEGREES 50 MINUTES 48 SECONDS WEST A DISTANCE OF 143.11 FEET;
35. NORTH 89 DEGREES 26 MINUTES 01 SECONDS WEST A DISTANCE OF 139.55 FEET;
36. SOUTH 46 DEGREES 42 MINUTES 48 SECONDS WEST A DISTANCE OF 192.93 FEET;
37. SOUTH 10 DEGREES 24 MINUTES 35 SECONDS WEST A DISTANCE OF 163.43 FEET;

JOB NO.: 09107S
DRAWN BY: SPA
SHEET 1 OF 6

TESSERA OVERALL PID TRACT
877.263 ACRES OUT OF THE

J.S. PEACOCK SURVEY NO. 202, ABSTRACT NO. 2469,
TEXAS-MEXICAN R.R. CO. SURVEY NO. 201, ABSTRACT NO. 2291,
A. SYLVESTER SURVEY NO. 202, ABSTRACT NO. 2524,
F.F. FAUBION SURVEY NO. 97, ABSTRACT NO. 2541 AND WILLIAM
BRANDON SURVEY NO. 1 ABSTRACT NO. 47, TRAVIS COUNTY, TEXAS

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LINE TABLE

Course	Bearing	Distance
L1	S 33°12'06" W	618.10'
L2	S 26°57'39" E	452.84'
L3	S 16°52'30" E	366.98'
L4	S 05°20'44" E	327.61'
L5	S 16°44'09" E	387.91'
L6	S 10°12'56" W	672.28'
L7	S 35°14'57" W	659.99'
L8	S 16°48'54" W	928.89'
L9	S 53°47'38" W	531.05'
L10	S 21°55'01" W	1249.64'
L11	S 27°23'17" W	572.56'
L12	S 27°14'59" W	192.63'
L13	S 74°33'08" W	421.27'
L14	N 89°32'10" W	88.90'
L15	S 73°51'05" W	78.77'
L16	S 59°36'13" W	44.03'
L17	S 67°22'07" W	82.77'
L18	S 87°24'15" W	92.92'
L19	N 77°41'11" W	221.73'
L20	S 70°06'50" W	79.91'
L21	S 17°47'53" W	71.63'
L22	S 20°22'04" E	68.81'
L23	S 03°01'13" W	86.39'
L24	S 14°13'11" W	103.23'
L25	S 30°06'42" W	127.39'
L26	S 30°38'30" W	220.08'
L27	S 13°42'55" W	425.83'
L28	S 24°16'13" W	222.75'
L29	S 43°42'44" W	245.57'
L30	S 38°48'26" W	287.20'
L31	S 60°16'00" W	125.04'
L32	S 84°04'35" W	89.08'
L33	S 86°49'54" W	261.75'
L34	N 82°50'48" W	143.11'
L35	N 89°26'01" W	139.55'
L36	S 46°42'48" W	192.93'
L37	S 10°24'35" W	163.43'
L38	S 00°25'24" W	190.86'
L39	S 16°45'37" W	278.70'
L40	S 16°45'37" W	90.87'
L41	N 29°27'53" W	2516.33'
L42	N 10°28'55" W	899.62'
L43	N 49°14'34" E	482.59'
L44	N 34°21'18" E	1859.21'
L45	N 26°36'16" E	1103.91'
L46	N 26°36'15" E	1140.35'
L47	N 07°14'41" W	1076.01'
L48	N 14°03'02" E	419.01'
L49	N 03°16'01" W	383.69'
L50	N 26°33'36" W	2054.45'
L51	R= 622.67' Tan: 740.35' Chd: N 69°27'22" E	L= 1085.34' CA: 99°52'08" 953.07'
L52	N 19°31'18" E	471.71'
L53	R= 523.04' Tan: 278.41' Chd: N 47°32'51" E	L= 511.68' CA: 56°03'05" 491.52'
L54	N 75°36'20" E	112.66'
L55	R= 771.98' Tan: 114.05' Chd: N 84°00'34" E	L= 226.46' CA: 16°48'28" 225.65'
L56	S 68°57'36" E	95.64'
L57	R= 745.81' Tan: 91.00' Chd: S 73°27'50" E	L= 181.11' CA: 13°54'49" 180.67'

LINE TABLE (CONTINUED)

Course	Bearing	Distance
L58	S 78°16'01" E	95.64'
L59	R= 771.07' Tan: 11.22' Chd: S 58°49'06" E	L= 22.44' CA: 1°40'03" 22.44'
L60	S 57°52'51" E	561.89'
L61	R= 1187.78' Tan: 226.46' Chd: S 68°40'31" E	L= 447.56' CA: 21°35'21" 444.91'
L62	S 79°19'54" E	80.75'
L63	R= 524.88' Tan: 231.96' Chd: S 55°28'24" E	L= 436.82' CA: 47°41'00" 424.32'
L64	S 31°31'57" E	114.91'
L65	R= 1008.61' Tan: 208.12' Chd: S 43°11'30" E	L= 410.49' CA: 23°19'06" 407.66'
L66	S 54°55'51" E	261.77'
L67	R= 666.13' Tan: 399.12' Chd: S 24°00'07" E	L= 719.16' CA: 61°51'27" 684.74'
L68	S 06°54'33" W	78.67'
L69	R= 621.27' Tan: 311.45' Chd: S 19°42'59" E	L= 577.41' CA: 53°15'03" 556.85'
L70	S 46°22'27" E	96.87'
L71	R= 1441.34' Tan: 127.95' Chd: S 41°18'04" E	L= 255.25' CA: 10°08'48" 254.92'

JOB NO.: 09107S
DRAWN BY: SPA
SHEET 6 OF 6

TESSERA OVERALL PID TRACT
877.263 ACRES OUT OF THE

J. S. PEACOCK SURVEY NO. 223, ABSTRACT NO. 2438,
TEXAS-MEDCO R.A. CO. SURVEY NO. 291, ABSTRACT NO. 2291,
A. SYLVESTER SURVEY NO. 221, ABSTRACT NO. 2534,
F.F. FAUBION SURVEY NO. 87, ABSTRACT NO. 3341 AND WILLIAM
BRANDON SURVEY NO. 1 ABSTRACT NO. 47, TRAVIS COUNTY, TEXAS

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EXHIBIT "B"

TESSERA DEVELOPMENT MAP

Recorders Memorandum-At the time of recordation this instrument was found to be inadequate for the best reproduction, because of illegibility, carbon or photocopy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

EXHIBIT “B”

DEVELOPMENT PLAN

The Property shown on the attached map (the “Tessera Development Plan Map”) shall be developed for uses permitted in the PDD Zoning Ordinance, pursuant to approved Preliminary Plans, Site Development Plans and Final Plats. A phase or section of Tessera on Lake Travis may have a mix of uses as provided in this Development Plan, provided the areas in which each such use is permitted in a phase or section and the relationship of each separate use or occupancy to a different use or occupancy shall be provided on the recorded final plat, and appropriate setbacks or buffers shall be included between commercial, retail, multifamily, and recreational uses and areas to be developed for single family, attached single family and townhouse occupancies.

1. Land Use. This Development Plan includes the map attached hereto and made a part hereof for all purposes (“Tessera Development Plan Map”).
 - A. Area 1 shown on the Tessera Development Plan Map may be developed for a mixed use and may include retail, commercial office, multifamily, townhome, condominiums, single family attached and single family detached uses and park type uses, as specifically provided below. Areas designated for commercial, retail, or office uses be limited to those uses which shall comply with the zoning requirements and development standards of commercial zoning classification “C-1A” except as hereinafter specifically modified. Townhome uses, attached single family units or multifamily are allowed and shall comply with the zoning requirements and development standards of residential zoning classification “R-4” except as hereinafter specifically modified.
 - B. Area 2 shown on the attached Tessera Development Plan Map shall be limited to residential, condominium and attached townhome uses as described herein, except as provided below.
 - C. The following uses are allowed in Area 3: residential and attached townhome uses as described herein, except as hereinafter specifically modified. Amenity centers with a swimming pool, tennis courts, basketball courts, baseball and soccer play fields, decks, parking, trailhead facilities and other similar support facilities, including restaurant, and retail uses. Buildings comprising amenity center(s), dry stack boat storage facilities, and other support facilities shall comply with parks zoning classification “P-1B” standards. Restaurants and retail in stand-alone buildings shall comply with the zoning requirements and development standards of commercial zoning classification “C-1A” except as hereinafter specifically modified. Swimming pools, tennis courts, basketball courts, baseball and soccer play fields, decks, parking, public parks and trailhead facilities shall comply with parks zoning classification “P-1A” standards. Drainage areas, open space and other environmentally sensitive areas shall comply with parks zoning classification “P-2” standards. Each of these uses shall comply with the stated zoning requirements and development standards except as herein specifically

modified. Appropriate buffering will be provided between the dry stack boat storage and residential uses.

- D. The single family residential lots for detached single family units shall comply with the zoning requirements and development standards for residential zoning classification “R-1G” (single family dwellings) except as hereinafter specifically modified. Attached single family units and attached townhome dwellings shall comply with the “R-4” zoning requirements and development standards, except as hereinafter specifically modified. Detached zero-lot line single family dwellings within shall comply with residential zoning classification “R-0” development standards.
 - E. Within Areas 1 and 2 the following uses are allowed: amenity centers with a swimming pool, tennis courts, basketball courts, baseball and soccer play fields, decks, parking, trailhead facilities and other similar support facilities. Buildings comprising amenity center(s), and other support facilities shall comply with parks zoning classification “P-1B” standards. Swimming pools, tennis courts, basketball courts, baseball and soccer play fields, decks, parking, public parks, and trailhead facilities shall comply with parks zoning classification “P-1A” standards. Drainage areas, open space and other environmentally sensitive areas shall comply with parks zoning classification “P-2” standards. Each of these uses shall comply with the stated zoning requirements and development standards except as herein specifically modified. Appropriate buffering will be provided between the dry stack boat storage and residential uses.
- 2. The City of Lago Vista shall have a public safety easement over all private streets and roadways which easement shall be described in subdivision plat or separate easement recorded in the Official Public Records of Travis County, Texas.
 - 3. Each developed lot within the Property shall be served by the City of Lago Vista water and wastewater utility services. Wastewater utilities located within the Property, after acceptance of the wastewater system within the phase, are public utilities up to the point of connection to each lot’s lot line. Water utilities, after acceptance of the water system within the phase, are part of the public system up to the point of connection to a private service meter.
 - 4. Sidewalks shall not be required for areas with residential lots within the Property with a density of less than 6.5 units per acre. Sidewalks shall be required for all multifamily, non-residential, and single or two-family development having a density greater than 6.5 units per acre unless otherwise varied by the City Council based on a pedestrian pathways plan for walks and bikeways.
 - 5. No street lights shall be required within this Property except for special lighting at critical locations and public gathering spaces to be designated by Developer. The Developer shall submit to the City Manager for approval a street light plan including light design and luminance specifications.

6. All site development must comply with the Highland Lakes Watershed Ordinance and City water quality regulations in effect on May 7, 2009.
7. Cut and/or fill slopes within the Property shall not exceed four feet (4') in height without a variance. All cut and fill variances in the Property may be approved administratively by the concurrence of the City Staff and City Engineer provided the cut and fill slopes greater than four feet (4') are appropriately sloped, terraced, or through installation of retaining walls to control erosion and sedimentation. All cut slopes must be stabilized in accordance with an approved geotechnical analyses provided to the City by a Professional Engineer. Site grading shall comply with accepted engineering practices, the Americans with Disability Act, and any other applicable federal, state, or regional regulations.
8. No oil drilling, extraction or removal of stone, gravel, caliche, minerals, earth or other natural material for commercial purposes shall be permitted.
9. No boats, recreational vehicles, or empty trailers may be parked outside on any residential lots within the Property.
10. No building or other structure, except a boat launch and boat docks necessary for access to Lake Travis, may be constructed within the Critical Water Quality Control zone of Lake Travis. Any access ramp necessary for boating operations into Lake Travis shall be approved, designed and constructed according to the standards of the Lower Colorado River Authority ("LCRA").
11. A maximum of 50% impervious coverage may exist on any detached single-family residential lot. This limit may be met on a lot basis or on a final plat basis. If computed on a final plat basis, the final plat shall contain no more than 50% impervious cover.
12. No single-family detached residence shall be constructed with less than 1,600 square feet of heated and cooled living area. No townhome or condominium unit shall be less than 1,200 square feet of heated and cooled living area. No apartment unit shall be less than 750 square feet. Off street parking for each detached single-family dwelling shall be consistent with city code requirements.
13. Maximum building height for any single family residential lot is thirty-five feet (35') above the highest point on the lot. Maximum building height for townhome lots is forty feet (40') above the highest point on the lot.
14. All residential and commercial structures shall have exterior facades constructed of a minimum 50% masonry.
15. Townhome development shall be restricted to a maximum 60% impervious cover limit. This limit may be met on a lot basis or a final plat basis. If computed on a final plat basis, the open space within the plat shall be common open space such that no more than 60% of the area within the townhome area plus the open space plat would be impervious cover.

16. The maximum building height for amenity center buildings within the Property shall not exceed two stories plus a daylight basement or a maximum of forty feet (40') above the highest point on the lot.
17. Within the Property, the following standards shall control over any contradictory requirements of the comprehensive zoning ordinance:
 - A. Minimum building setbacks for residential lots within Area 1, 2, and 3 required to meet residential zoning classification "R-1G" standards are as follows:
 - i. front yard setback is twenty feet (25');
 - ii. rear yard setback is twenty feet (20'), except where the rear lot line is adjacent to common open space, then the rear yard setback is ten feet (10'); and,
 - iii. side-yard setback is five feet (5'), except for zero lot line residential development.
 - B. Minimum building setbacks for residential lots within Area 1, 2 and 3 required to meet residential zoning classification "R-0" or "R-4" standards are as follows:
 - i. front yard setback is twenty feet (20'), provided the driveway is long enough for vehicles to park completely on the driveway without projecting into the street or other walking areas in the public right of way;
 - ii. rear yard setback is twenty feet (20'), except where the rear lot line is adjacent to common open space, then the rear yard setback is ten feet (10'); and,
 - iii. plats for or immediately adjacent to zero lot line development shall show a five foot (5') maintenance and drainage easement on the lot adjoining the "zero" side lot line, allowing for no less than ten feet (10') of area between dwellings in which no structure may be built.
18. For Areas 1 2 and 3, the lot requirements of the City's development standards shall apply, except for the following:
 - A. The maximum building height for office buildings in Area 1 shall be fifty feet (50') from the highest point on the lot. Other commercial buildings shall conform to the height restrictions specified in commercial zoning classification "C-1A." height.
 - B. The maximum building height for dry-stack boat storage facilities in Area 3 shall be forty feet (40') from the highest point on the lot. Reasonable efforts shall be made to minimize the visibility and profile of this facility using the natural terrain, natural architectural elements, and tree cover.

- C. The dry-stack boat storage facility shall be allowed to store boats and boating-related equipment, boat handling equipment and materials, fuel for the operation of boats in approved containment and dispensing facilities, and boat repair and maintenance equipment.
19. The City may require right-of-way (ROW) along FM 1431 be dedicated for expansion of FM 1431. The amount of ROW, if required, shall be determined in consultation with TxDOT prior to approval of any plat with access to or adjoining FM 1431.
20. Driveways and street intersections along arterials and FM 1431 shall be no closer than 250 feet unless a TIA required by existing regulations calls for a greater separation. Adjacent parking lots along an arterial and FM 1431 shall be interconnected.
21. The road connecting the first preliminary plat area of the Project to FM 1431 will include a four (4) lane section and a two (2) lane section as depicted in the Exhibit "E" attached to the Restated Agreement ("Initial Entrance Road"). Phase I Developer may, at its sole option, submit construction plans for the Initial Entrance Road without a subdivision plat dedicating the right of way for the Initial Entrance Road. As a condition of the City's approval of the construction plans for the Initial Entrance Road, Phase I Developer will, at its sole option, dedicate the right of way plans for the Initial Entrance Road by either a separate instrument in a form approved by the City or by recorded plat. The City shall timely accept the Initial Entrance Road for ownership and operation if the Initial Entrance Road has been constructed in substantial compliance with the approved construction plans. So long as equipment used to construct major infrastructure (public roads, wet utility lines, water quality ponds and detention ponds) uses the Initial Entrance Road for entrance to and from the Property, the Initial Entrance Road will be maintained by Developers. Until the City accepts the Initial Entrance Road for maintenance, Phase I Developer will repair damages to the Initial Entrance Road caused by equipment used to construct major infrastructure for the Project; provided, however, that the City will be responsible to repair damages caused by public use of the road. Equipment, machinery and traffic uses associated with home building and site development is deemed to not be equipment used to "construct major infrastructure," as defined above. Once equipment used to construct major infrastructure is no longer driven on the Initial Entrance Road, Phase I Developer may request that the City accept the Initial Entrance Road for maintenance. So long as the Initial Entrance Road is in substantial compliance with the approved construction plans, the City shall timely accept the Initial Entrance Road for maintenance. The Initial Entrance Road will be the only road connection to FM 1431 for all development within Phase I of the Project. Notwithstanding any other provision in the City Code, a second entrance from the Project onto FM 1431 shall only be required once the daily trip reaches 3,480 trips based on actual traffic counts measured south of the traffic circle shown on the attached Exhibit "E". The Initial Entrance Road and the Second Entrance Road shall be the only two required public roads connecting the Project to FM 1431.
22. Traffic Analyses. The Developer has provided the City a Traffic Impact Analysis that addresses the intersection of the Initial Entrance Road and FM 1431. The Developer has provided the City a Daily Traffic Analysis for Phase 1 of the Project. The City has

reviewed and approved the Daily Trip Analysis to be used in conjunction with Phase 1 of the Project. The Initial Entrance Road, as depicted in Exhibit “C”, has sufficient road capacity for the full build out of Phase I of the Project. The requirement to submit a traffic analyses with a preliminary plat application within Phase 1 of the Project has been satisfied. As a condition of the City’s approval of the first final plat out of Phase 1 of the Project, Developer shall deliver to the City funds in an amount specified in the April 22, 2010 letter agreement between the City and the Developer regarding the funding of the improvements described in a letter from Department of Transportation (“TxDOT”) to the City dated March 25, 2010. Developer shall fund one hundred percent of the costs of designing, engineering and constructing the improvements described in the AFA.

23. City Approval of Building Permits, Certificates of Occupancy, and Subdivision Plats.

- A. The City shall process and act upon an application for the approval of a preliminary Subdivision Plan, and Site Development Plans, if such applications substantially comply with the rules applicable to such application.
- B. The City will issue building permits for buildings to be constructed within a portion of the Property for which a final plat has been approved and recorded if the City has either accepted the completed subdivision infrastructure improvements for such phase, or the Developer has posted adequate fiscal surety for the subdivision infrastructure in a form approved by the City Manager of the City and Developer has begun construction of the subdivision infrastructure. The City will not issue a certificate of occupancy for any building until the City has accepted the subdivision infrastructure that serves the lot where the building is located. Model homes may be used for marketing purposes only prior to the issuance of a certificate of occupancy.

24. No building permits shall be issued on land for which a final plat has not been recorded, with the exception of construction and sales trailers or temporary facilities designed to prepare for, oversee, or manage the land planning, construction, or sales processes, which shall be removed upon or before the completion of the phase of development noted on an approved and recorded final plat.

25. Propane and Dry Utilities.

- A. Notwithstanding any other provision of the City Code, the City approves installation of a propane or natural gas distribution system to serve platted lots within the Property, subject to approval of construction plans and acceptance of the completed propane system, in phases, by the City Engineer, and any necessary state regulatory approvals. The owner and operator of the propane or natural gas distribution system shall be required to obtain a franchise from the City prior to the installation and operation of the propane or natural gas distribution system. The franchise shall provide standard terms and provisions and for the payment to the City of a City franchise fee.

- B. In areas where it may be inappropriate to cut the dry utility trench through rock, Developer shall provide the City plans for placing the dry utilities in an above-ground conduit covered by sufficient soil and vegetation to avoid exposure of the conduit. The City Manager or his designee may approve dry utilities at minimum depths per utility suppliers' standards, which approvals may include requirements to cap conduits in concrete.
26. The City tree preservation and landscape standards in effect as of May 7, 2009 shall apply to development within the Property.

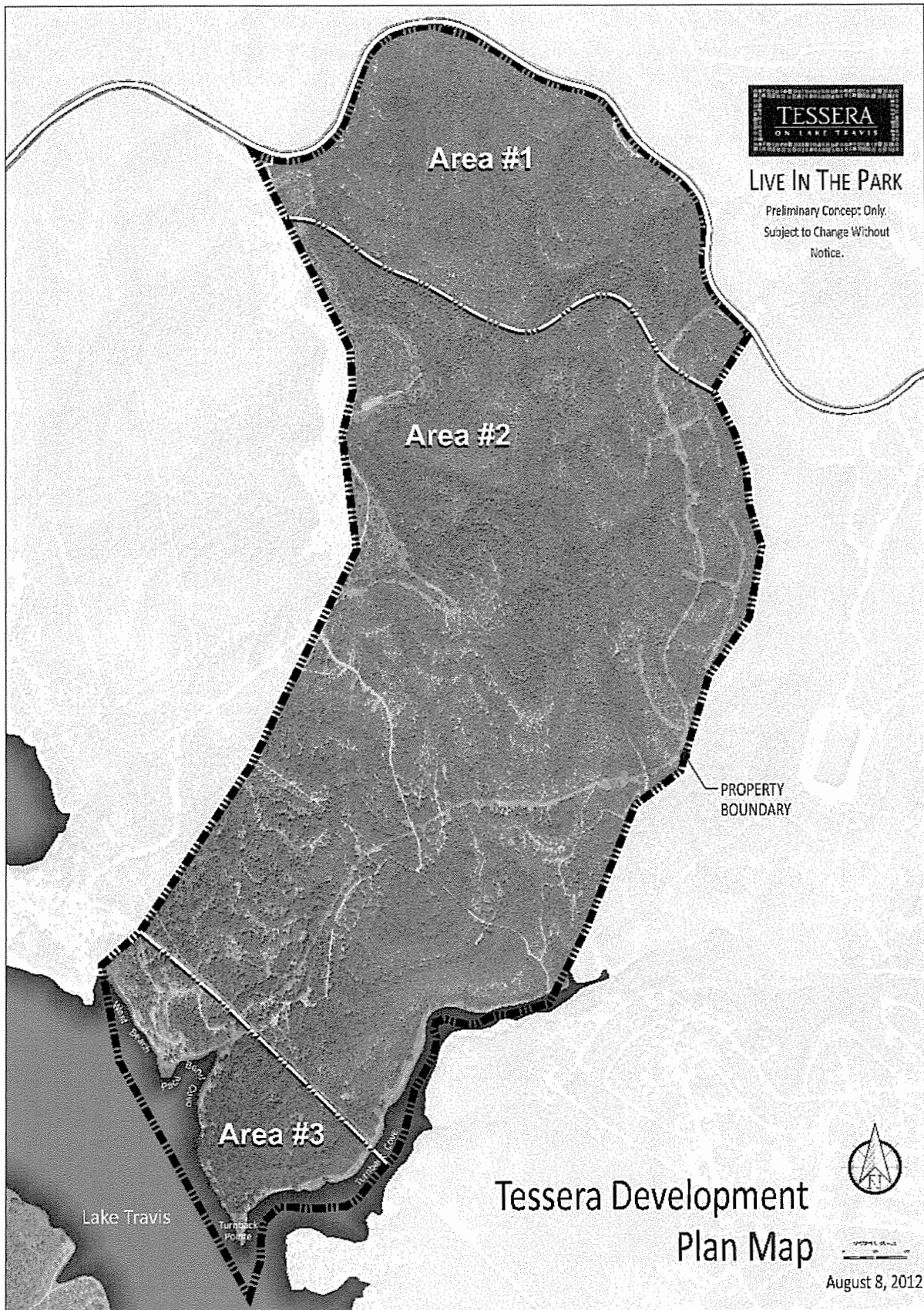


EXHIBIT "C"
DESCRIPTION OF UTILITY FACILITIES

Recorders Memorandum-At the time of recordation this instrument was found to be inadequate for the best reproduction, because of illegibility, carbon or photocopy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

“Exhibit C”
DESCRIPTION OF UTILITY FACILITIES

This exhibit will lay-out the water and wastewater facilities necessary to provide City water and wastewater service to Tessera on Lake Travis (“Tessera”). The Utility Construction will be phased. The Phase I water and wastewater improvements will provide 490 LUE’s of service to Tessera. As long as Developers construct the necessary off-site Utility Improvements and internal utility improvements necessary to serve platted lots, Developers may use the 2030 water and wastewater LUE’s in any part of the Property at any time. Except as otherwise noted, all items listed below are Developer Improvements.

Basic Assumption:

Tessera has requested service for 2,030 water and wastewater LUE’s from the City. Unless the City approves and authorizes additional LUE’s of utility services for Tessera, the Utility Facilities are limited to 2,030 water and wastewater LUE’s of service. The Tessera development will require 3 water pressure planes to provide acceptable pressure ranges within the Property. Except as otherwise noted, Developers are responsible for the construction of all other water and wastewater lines required to deliver service to individual lots within the Property.

Water Service Zones for Tessera Development

	MSL ¹ elevations	psi pressure
1. Lower Pressure Plane		
490 LUE’s		
Tank Overflow	943.5	
service zone	840	47
	700	102
2. Middle Pressure Plane		
510 LUE’s		
Tank Overflow	1079	
service zone	965	47
	840	101
3. Upper Pressure Plane		
1130 LUE’s		
Tank Overflow	1135	
service zone	1020	48
	920	90

¹ Mean Sea Level

Water Components

Phase I (490 LUE's)

The initial City service will be for 490 water and wastewater LUE's in lower water pressure plane.

Utility Improvements required to deliver water to the Phase I.

1. Construct + 9,000 L.F. of 12" High Density Poly Ethylene ("HDPE") transmission line from WTP No 1 to the street intersection of Brewer Lane and Deepwood Drive.
2. Construct + 8,000 L.F. of 14" HDPE transmission line from street intersection of Brewer Lane and Deepwood Drive to the south end of Tessera Parkway.
3. Inter-connect new pipelines described in 1. and 2. above to existing COLV water system to circulate flow to improve water quality to Tessera. Tie in point location is Bar-K Ranch Road and other tie-points at the City's discretion.
4. Construct + 4,100 L.F. of 12" HDPE transmission line from the south end of Tessera Parkway to the Tessera West Ground Storage Tank site.
5. Construct 125,000 gallon ground storage tank at the Tessera West GST site.

Recommend a standard 24-foot high tank, approximately 30 ft. diameter.

Design; Ground Storage Tank (GST)

Lower P.P treated as elevated	490 LUE's x 100 gals/LUE =	49,000
Fire Flow at 1,000 gpm for 1 hour		60,000
		109,000

Phase I 125,000 gallon tank

6. Add two pumps next to the existing booster pump building at WTP No. 1; minimum capacity of each pump is 500 gpm; add scada system and control valves at City WTP
No. 1. Pumps can be installed outside, next to the existing pump building.

Note. Initial low consumption will require re-circulations and re-chlorination at the Tessera West GST. Low flows will require the City to flush the transmission line once or twice a week until the Tessera Phase I Development has at least 80 to 100 water connections. With the City's concurrence, irrigation connections within the Tessera Development will be allowed. Also, the location of the initial connections (houses) will have an impact on the need of flushing. The City will bill the Developer the wholesale cost of the water flushed.

Phase II Middle P.P. (510 LUE's)

Service to the remainder of Tessera, including the Middle P.P. and Upper P.P. (1540 LUE's)* may require the completion of WTP No.3 Improvements to be constructed by the City. The City is responsible for initiating the construction of WTP No. 3. In conjunction with the construction of WTP No. 3, the City will construct the WTP No. 3 pumps and transmission line from the WTP No. 3 site to the Lohmans water tank shown on Exhibit B.

Developer Improvements required for water service to Middle P.P. and upper P.P.:

1. Construct + 8,000 L.F. of 16" HDPE transmission line from street intersection of Brewer Lane and Deepwood Drive to the south end of Tessera Parkway.
2. Construct + 5,400 L.F. of 14" and 16" HDPE transmission line from the south end of Tessera Parkway to the ground storage tank site (referred to as the Tessera East GST site).
3. Construct 2,000 L.F. of 16-inch water line from Lohmans tanks to the combination valve at the Cedar Ridge tank site.
4. Install a combination control valve for rate-of-flow and pressure reducing next to Cedar Ridge tank site.
5. Construct 1,500 L.F. of 16-inch water line from Cedar Ridge control valve west to the intersection of Brewer Lane and Deepwood Drive to tie into the 14-inch transmission line constructed in Phase I and the 16-inch water transmission line constructed with Phase II. Upon completion of the above described water lines and the combination control valve, Developers will have completed all off-site Developer Water Improvements for the delivery of 2030 LUE's to the Property.
6. The remaining Phase II Developer Improvements are required for delivery of water service within the Property.

Design; GST capacity required at East GST site.

Middle P.P.

hydro-pneumatic system

servicing 510 LUE's

Treated as ground storage

$$510 \text{ LUE's} \times 200 \text{ gals/LUE} = 120,000$$

Upper P.P.

pass through at

$$1030 \text{ LUE's} \times 50 \text{ gals/LUE} = 51,500$$

220,500

Fire flow at 1500 gpm for 2 hours (less 60,000 gals from Ph.1)

120,000

Phase II Storage Required

340,500 gals

7. Construct multiple GSTs for an additional 350,000 gallons at the East GST site.

8. Construct Hydro-pneumatic system to serve Tessera middle pressure plane. The Hydro system will take water from the east Tessera GST.

Design; Service to 510 LUE's:

Hydro pressure tank min. cap. @ 510 LUE's x 20 gals = 10,200 gals

The system may be phased with 2-tanks; 6,000 gals initially and 5,000 gals added.

Hydropump capacity; 2-pumps each at 550 gpm for domestic demands and a 3rd pump at 550 gpm to meet fire flow of 1500 gpm

Phase II, Upper P.P. (1130 LUE's)

Developer Improvements required for sufficient water pressure in the Upper P.P.

Construction required:

1. Construct Elevated Tank 300,000 gallon capacity.

Design; Elevated tank capacity:

Service: 1130 LUE's at 100 gals/LUE = 113,000 gals

Fireflow (serving commercial and multi-family):

1500 gpm for 2 hours	180,000 gals
	293,000 gals

2. 3,200 L.F. of 16-inch water line from the east Tessera GST to the Tessera Elevated Water Tank (EST).

3. Booster Pump Station pumping to EST, pumps located at Tessera (East) GST site

Design; Phase with 3-500 gpm pumps initially

Complete with 4 Pumps total with 3 pumps producing 1500 gpm for daily use

4th pump stand-by

Wastewater Components

The wastewater collection line design described below assumes that a) the wastewater system will also be developed in phases coinciding with the water pressure planes; and b) the number of LUE's per pressure plane. If Developers intend to reallocate the number of LUE's among the pressure planes, the sizing and location of the internal wastewater lines may need to be re-evaluated.

Off-site wastewater utilities necessary to service the Property: Phase I for 490 LUE's, Phase II Middle P.P. (510 LUE's) and Phase II Upper P.P. (1030 LUE's) for the Tessera Development

Wastewater Components

Tessera wastewater lines are sized to serve by pressure planes based on the above LUE's.

Phase I

1. Wastewater Treatment Plant improvements at plant headworks. Construct force main header to combine multiple force mains entering plant.
2. Cost participate in the amount of \$173,200 with City on over-sizing the force main from the Hollows, increase force main to 14-inch approximately 3,650 l.f. Phase II 12-inch force main will tie into this line at Dawn Drive and Valley View.
3. Utilize City's existing 12-inch wastewater force main from existing Bar-K Lift Station to Turner's Lift Station.
4. Upgrade existing Bar-K Wastewater Lift Station and the Turner Lift Station with increased pump capacity, add odor control and add scada control.
5. Utilize City existing 8-inch wastewater force main in Bar-K Ranch Road.
6. Force mains from Tessera development to the City's 8-inch force main in Bar-K Ranch Road. (Wastewater force main sizing and phasing to be verified by design engineer.)
The following sizes are based on an analysis of flow.
 - a) Phase I, Lower P.P. construct approximately 6,500 l.f. of 8-inch HDPE wastewater force main from Burnet Trail in the Tessera development to Bar-K Ranch Road.
7. Construct low pressure wastewater force main at Lake crossing 3-8" HDPE wastewater force main.
8. Construct 8-inch HDPE low pressure wastewater force main to Burnet Trail.

Phase II

9. Construct off-site lift station near the existing Bar-K Lift Station (L.S.)
 - a) Tessera L.S. will require new site. Recommend Lot 3095 Bar-K Section 3, next to existing L.S.
 - b) Wet well:
Design; Wet well capacity and elevations:
12-foot diameter
26-foot deep
Bottom elevation 697
Top elevation 723
Flowline in for existing gravity line (approx.) elev. 708
 - c) Lift Station pumps to be phased.
Require 3 pump layout.

Design; Pumps

- Initially install (2) high head pumps

Add 3rd pump based on build-out, to be determined by City.

- d) Details: Standby generator (size for 3 pumps), odor control, new electrical and scada controls, etc.
- e) Connect discharge to the new 12-inch force main from Bar-K L.S. pumping to the Dawn Drive, tie into over-sized (12") Hollows force main.

10. Force mains from Tessera development to off-site new Bar-K L.S. (Wastewater force main sizing and phasing to be verified by design engineer.)

The following sizes are based on an analysis of flow.

- a) Phase II, Lower P.P. construct 8-inch HDPE force main from Bar-K Lift Station to phase I 8-inch HDPE at Surrey Lane and Bar-K Ranch Road.
- b) Phase II, Middle P.P. construct 8-inch HDPE force main from Bar-K Lift Station to middle P.P.
- b) Phase II, Upper P.P. construct 8-inch HDPE force main from Bar-K Lift Station to upper P.P.

11. Wastewater Force Main (FM) from Bar-K Lift Station (LS) to Wastewater Treatment Plant (WWTP)

- a) New Bar-K Lift Station (wastewater component no. 9 above) shall be sized with high head pumps to pump all the way to the WWTP.
- b) Construct 12-inch force main from Bar-K Lift Station to Dawn Drive and tie into 12-inch over-sized force main constructed in Phase I for Hollow wastewater service.

12. Construct 8-inch wastewater force main from Surrey Lane to Bar-K Lift Station parallel to the existing City 8-inch wastewater force main at the same location.

Water System and Water Facilities

EXHIBIT “D”

Map of Water and Wastewater Lines and the Location of Other Utility Improvements

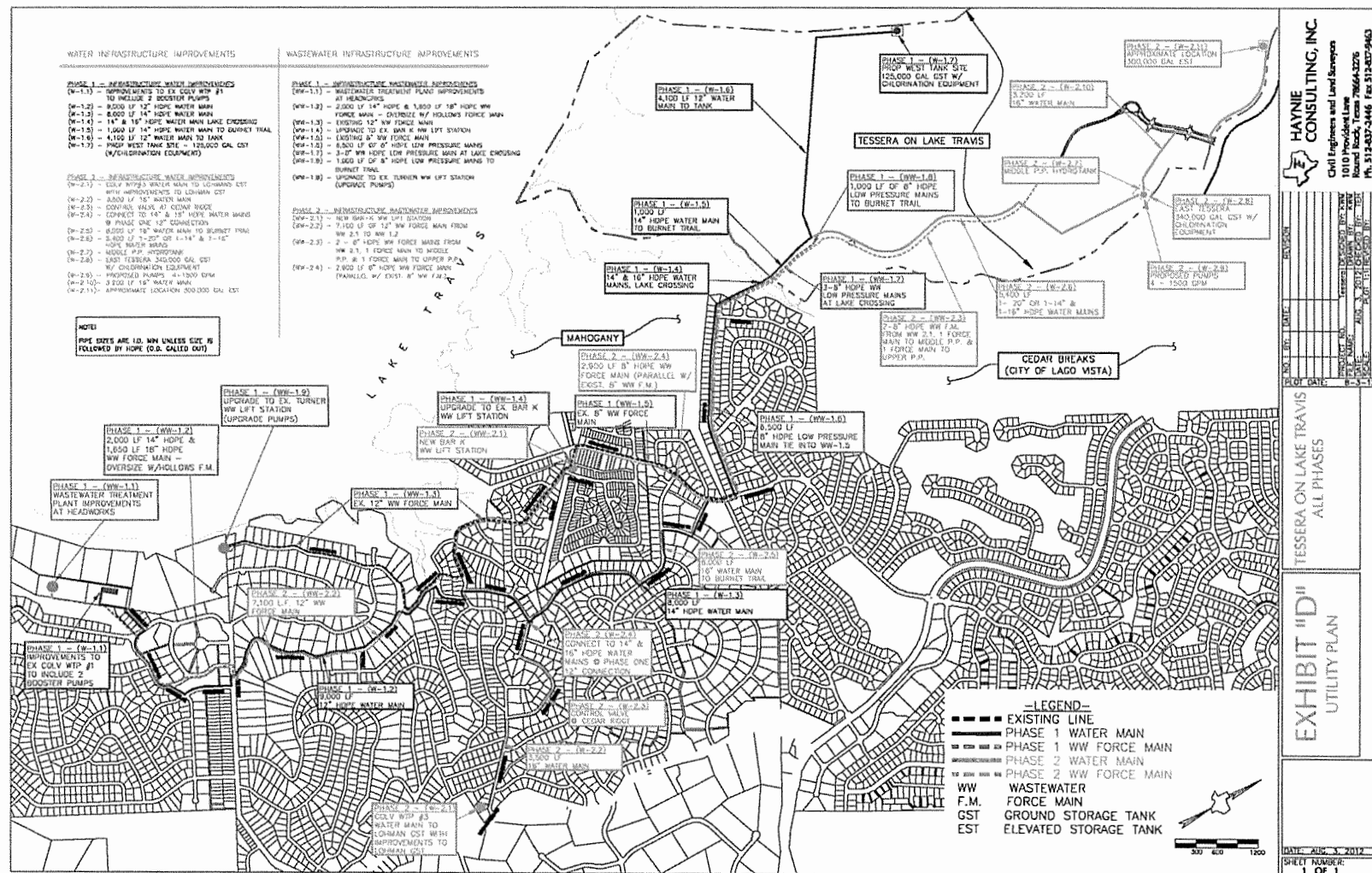


EXHIBIT "E"

Phase 1 Development Area and Description of the Initial Entrance Road

Recorders Memorandum-At the time of recordation this instrument was found to be inadequate for the best reproduction, because of illegibility, carbon or photocopy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

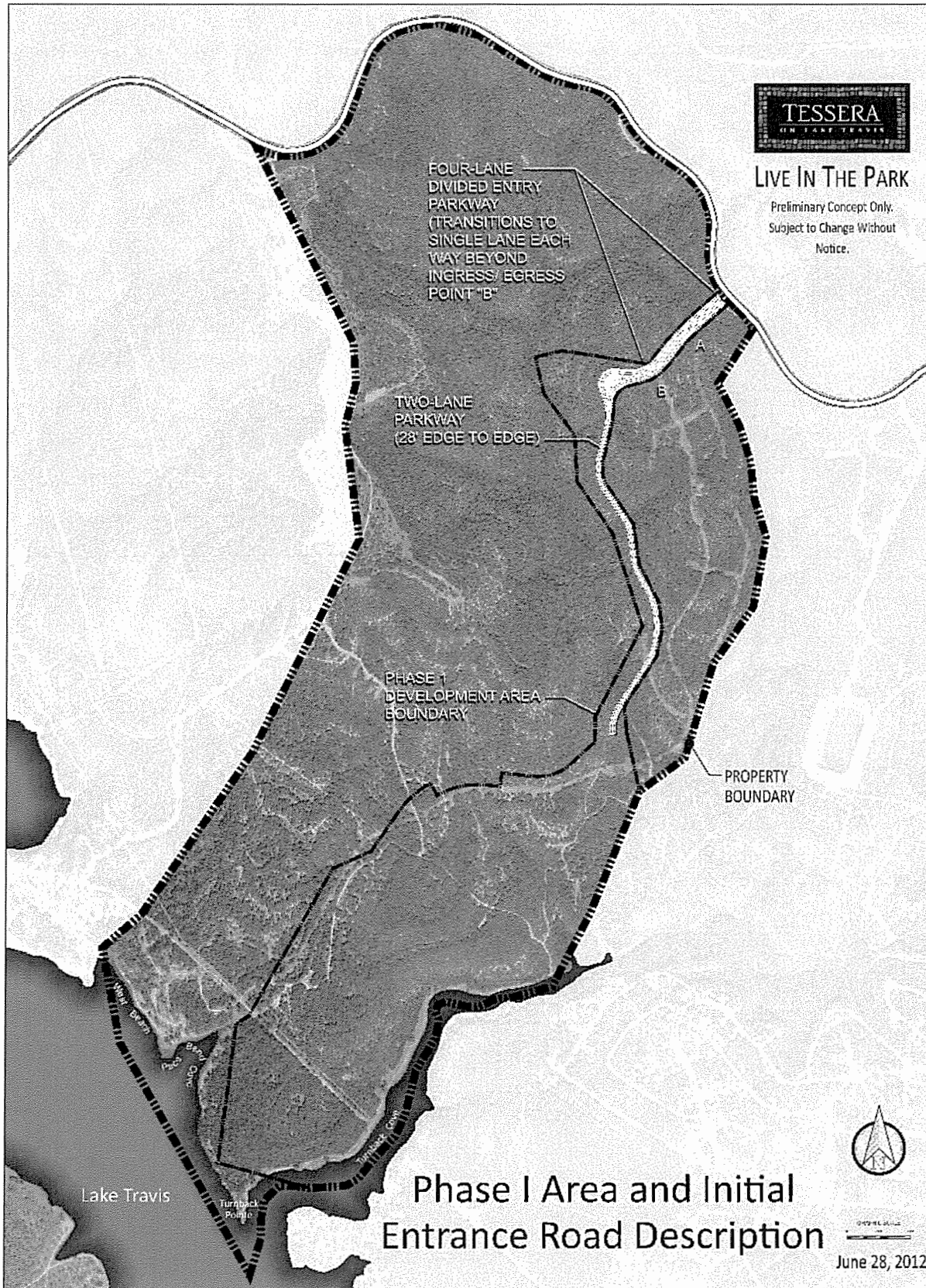


EXHIBIT "F"
Right of Way License Agreement

Recorders Memorandum-At the time of recordation this instrument was found to be inadequate for the best reproduction, because of illegibility, carbon or photocopy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

EXHIBIT "F"
LICENSE AGREEMENT

The City of Lago Vista, a Texas home-rule municipal corporation and political subdivision of the State of Texas situated in Travis County, Texas (the "**City**"), and _____ (the "**Licensee**"), enter into this License Agreement ("**Agreement**") on this the _____ day of _____, 20____, upon the terms and conditions set forth below.

PURPOSE OF LICENSE AGREEMENT. The City grants to Licensee permission to use the property, located within the right-of-way of public streets within or abutting the Tessera on Lake Travis Subdivision ("**Tessera**") at the location(s) shown on the map attached hereto as **Exhibit "A"** and incorporated herein for all purposes (the "**Licensed Property**"), for the following purposes only: (1) the installation and maintenance of a signs identifying Tessera and providing related information, _____ inches tall and _____ inches wide, located not less than _____ feet from the edge of the pavement (the "**Signs**"); (2) the installation of landscaping including approved hard scapes; (3) the installation of an irrigation system for the landscaping; and (4) the repair, maintenance and replacement of the Sign, landscaping and irrigation system, within right-of-way of public streets within or abutting Tessera at the location(s) shown on Exhibit "A" hereto. The Sign, landscaping and irrigation system are sometimes collectively referred to herein as the "**Improvements**" and it is specifically provided that Improvements may not be placed within the right-of-way of a State maintained road or street.

The City makes this grant solely to the extent of its right, title and interest in the Licensed Property, without any express or implied warranties.

Licensee agrees that all construction installation and maintenance permitted by this Agreement shall be done in compliance with plans and specifications approved in writing by the City Engineer and all applicable City, County, State and/or Federal laws, ordinances, regulations and policies now existing or later adopted.

Any provision herein to the contrary notwithstanding, Licensee shall be liable for, and shall indemnify and hold the City harmless from all damages, causes of action, and claims arising out of or in connection with Licensee's installation, operation, maintenance or removal of the Improvements permitted under this Agreement.

II. ANNUAL FEE. No annual fee shall be due in connection with this License Agreement.

III. CITY'S RIGHT TO LICENSED PROPERTY. This Agreement is expressly subject and subordinate to the present and future right of the City, its successors, assigns, lessees, grantees, and Licensee, to construct, install, establish, maintain, use,

operate, and renew any public utilities facilities, franchised public utilities, rights-of-way, roadways, or streets on, beneath, or above the surface of the Licensed Property. The uses of the Licensed Property are subject to the City's right to interfere with or destroy Licensee's use of the Licensed Property, or any property or the Improvements placed thereon or therein by Licensee, if such use or action is determined necessary by the City.

Notwithstanding any provision of this Agreement to the contrary, the City retains the right to enter upon the Licensed Property, upon fifteen (15) days' notice except in the event of an emergency, and assuming no obligation to Licensee, to remove any of the Improvements or alterations thereof whenever such removal is deemed necessary for: (a) exercising the City's rights or duties with respect to the Licensed Property; (b) protecting persons or property; or (c) the public health or safety.

IV. INSURANCE. Licensee shall, at its sole expense, provide a commercial general liability insurance policy, written by a company acceptable to the City and licensed to do business in Texas, with a combined single limit of not less than \$600,000.00, which coverage may be provided in the form of a rider and/or endorsement to a previously existing insurance policy. The City may require the Licensee to increase the combined single limit of such coverage from time to time in the discretion of the City. Such insurance coverage shall specifically name the City as an additional-insured. The insurance shall cover all perils arising from the activities of Licensee, its officers, employees, agents, or contractors, relative to this Agreement. Licensee shall be responsible for any deductibles stated in the policy. A true copy of each such policy shall be delivered to the City Manager of City on or before the Licensee's use or occupancy of the Licensed Property.

Licensee shall not cause any insurance to be canceled nor permit any insurance to lapse. All insurance certificates shall include a clause to the effect that the policy shall not be canceled, reduced, restricted or otherwise limited until forty-five (45) days after the City has received written notice as evidenced by a return receipt of registered or certified mail.

V. INDEMNIFICATION. Licensee shall indemnify, defend, and hold harmless the City and its officers, agents and employees against all claims, suits, demands, judgments, expenses, including attorney's fees, or other liability for personal injury, death, or damage to any person or property which arises from or is in any manner caused by the Licensee's construction, maintenance or use of the Licensed Property. This indemnification provision, however, shall not apply to any claims, suits, damage, costs, losses, or expenses (i) for which the City shall have been compensated by insurance provided under Paragraph IV, above, or (ii) arising solely from the negligent or willful acts of the City; provided that for the purposes of the foregoing, the City's entering into this Agreement shall not be deemed to be a "negligent or willful act."

VI. CONDITIONS:

A. Licensee's Responsibilities. Licensee will be responsible for any and all damage to or relocation of existing facilities. Further, Licensee shall reimburse the City for all costs of replacing or repairing any property of the City, or of others, that is damaged by or on behalf of Licensee as a result of activities under this Agreement.

B. Maintenance. Licensee shall maintain the Licensed Property by keeping the area free of debris and litter. Removal of dead or dying plants shall also be handled by Licensee at its expense. Further, the City may require Licensee to take action to maintain the Licensed Property including, but not limited to, the removal of dead or dying vegetation. Such removal shall be completed within thirty (30) days following receipt of a written request from the City.

C. Removal or Modification. Licensee agrees that removal or modification of any of the Improvements now existing or to be later placed on the Licensed Property shall be at Licensee's expense. Provided the City has given prior written approval of the plans and specifications for the Improvements, said removal or modification shall be at Licensee's sole discretion.

D. Default. In the event that Licensee fails to maintain the Licensed Property or otherwise comply with the terms or conditions as set forth herein, the City shall give Licensee written notice thereof, by registered or certified mail, return receipt requested, to the address set forth below. Licensee shall have thirty (30) days from the date of receipt of such notice to take action to remedy the failure complained of, and, if Licensee does not satisfactorily remedy the same within the thirty (30) day period, the City may perform the work or contract for the completion of the work. Licensee agrees to pay within thirty (30) days of written demand by the City, all reasonable costs expenses incurred by the City in completing the work.

City Address:

City of Lago Vista
Attn: City Manager
P. O. Box 4727
Lago Vista, Texas 77970-0178

with copy to:

McKamie Krueger, LLP
Attorneys at Law
223 West Anderson Lane, #A105
Austin, Texas 77852
Telephone: (512) 323-5778
Facsimile: (512) 323-5773
Email: attorneys@cityattorneytexas.com

Licensee's Address:

with copy to:

_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

VII. COMMENCEMENT AND TERMINATION BY ABANDONMENT. This Agreement shall begin with the effective date and continue thereafter for so long as the Licensed Property shall be used for the purposes set forth herein. If Licensee abandons the use of all or any part of the Licensed Property for the purposes set forth in this Agreement, this Agreement shall expire and terminate, as to the portion or portions abandoned, following thirty (30) days written notice by the City to the Licensee or by Licensee to the City. If all or a part of the Licensed Property is abandoned by Licensee, the City shall thereafter have the same complete title to the Licensed Property so abandoned as though this Agreement had never been made, and shall have the right to enter on the Licensed Property and terminate the rights of Licensee, its successors and assigns hereunder, to the abandoned part of the Licensed Property. All installations of Licensee on a portion of the Licensed Property that is abandoned shall be deemed property of the City unless removed with the consent of the City; provided, however, if subsequently, a new license agreement is executed, all such Improvements will be available for use by Licensee without fee or charge. This provision will survive the termination of this Agreement.

VIII. TERMINATION:

A. Termination by Licensee. This Agreement may be terminated by Licensee by delivering written notice of termination to the City not later than thirty (30) days before the effective date of termination. If Licensee terminates, then it shall remove all installations that it made from the Licensed Property within the thirty day notice period, at its sole cost and expense. Failure to do so shall constitute a breach of this Agreement.

B. Termination by City. Notwithstanding any other term, provision or condition of this Agreement, subject only to prior written thirty (30) days' notification to Licensee or its successor-in-interest, this Agreement is revocable by the City if:

1. The Improvements, or a portion of them, interfere with the City's right-of-way;
2. Use of the Licensed Property becomes necessary for a public purpose;

3. The Improvements, or a portion of them, constitute a danger to the public which the City deems not be remediable by alteration, repair or maintenance;
4. Despite thirty (30) days written notice to Licensee, maintenance or alteration necessary to alleviate a danger to the public has not been made; or
5. Licensee fails to comply with the terms and conditions of this Agreement including, but not limited to the insurance requirements specified herein.

If Licensee abandons or fails to maintain the Licensed Property, and the City receives no substantive response within thirty (30) days following written notification to Licensee, then the City may remove and/or replace all of the Improvements and collect from Licensee the City's actual expenses incurred in connection therewith.

IX. EMINENT DOMAIN. If eminent domain is exerted on the Licensed Property the City will, to the extent permitted by law, cooperate with Licensee to effect the removal of Licensee's affected installations and the Improvements thereon, at Licensee's sole expense. Licensee shall be entitled to retain all monies paid by the condemning authority to Licensee for Licensee's installations taken, if any.

X. INTERPRETATION. This Agreement shall, in the event of any dispute over its intent, meaning or application, shall be interpreted fairly and reasonably, and neither more strongly for or against either party.

XI. APPLICATION OF LAW. This Agreement shall be governed by the laws of the state of Texas. If the final judgment of a court of competent jurisdiction invalidates any part of this Agreement, then the remaining parts shall be enforced, to the extent possible, consistent with the intent of the parties as evidenced by this Agreement.

XII. VENUE. Venue for all lawsuits concerning this Agreement will be in Travis County, Texas.

XIII. COVENANT RUNNING WITH LAND; WAIVER OF DEFAULT. This Agreement and all of the covenants herein shall run with the land; therefore, the conditions set forth herein shall inure to and bind each party's successors and assigns. Either party may waive any default of the other at any time by written instrument, without affecting or impairing any right arising from any subsequent or other default.

XIV. ASSIGNMENT. It is anticipated this License Agreement will be assigned to a Home Owner's Association whose Articles of Incorporation and Bylaws have been approved by the City. However, Licensee shall not assign, sublet or transfer its interest

in this Agreement without the written consent of the City, which consent shall not be unreasonably withheld. Subject to the assignee's compliance with the insurance requirements set forth herein, if any, Licensee shall furnish to the City a copy of any such assignment or transfer of any of Licensee's rights in this Agreement, including the name, address, and contact person of the assignee, along with the date of assignment or transfer. The assignment shall not be or become effective until approved in writing by the City Manager of the City.

TERMS AND CONDITIONS ACCEPTED, this the ____ day of _____, 20__.

LICENSOR:

City of Lago Vista, Texas

By:

Name:

Title: City Manager

LICENSEE:

By:

Name:

Title:

THE STATE OF TEXAS

§

§

COUNTY OF TRAVIS

§

This instrument was acknowledged before me on this the ____ day of _____, 20__, by _____, City Manager, City of Lago Vista, Texas, on behalf of the City.

Notary Public, State of Texas

THE STATE OF TEXAS

§
§
§

COUNTY OF _____

This instrument was acknowledged before me on this the _____ day of _____, 20__, by _____ of _____, a _____, on behalf of said _____.

Notary Public, State of Texas

AFTER RECORDING RETURN TO:

City of Lago Vista
Attn: City Secretary
P. O. Box 4727
Lago Vista, Texas 77970-0178

78645

Recorders Memorandum-At the time of recordation this instrument was found to be inadequate for the best reproduction, because of illegibility, carbon or photocopy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

Dec 11, 2014 12:04 PM

CLINTONB: \$342.00

2014184192

Dana DeBeauvoir, County Clerk
Travis County TEXAS



Item Cover Page

CITY COUNCIL AGENDA ITEM REPORT

DATE: April 17, 2025

SUBMITTED BY: Councilor Benefield, City Council

SUBJECT: Discussion regarding the Irrigation System Sub-Committee Report.

BACKGROUND: The irrigation subcommittee met on April 10th and will be providing an update.

FINANCIAL IMPACT: None at this time.



Item Cover Page

CITY COUNCIL AGENDA ITEM REPORT

DATE: April 17, 2025

SUBMITTED BY: Taylor Whichard, City Manager

SUBJECT: Discussion regarding Council's wish-list and priority items for the 2025-2026 budget.

BACKGROUND:

As we prepare for the upcoming Fiscal Year [Insert Fiscal Year], staff is initiating the budget development process earlier than in previous years to allow more time for strategic planning, council engagement, and public input. By beginning this process now, we aim to create a more collaborative and transparent budget that reflects the priorities of the City Council and the needs of the community.

This agenda item is intended to open the discussion with Council and provide an opportunity to identify and share any preliminary goals, initiatives, or “wish list” items that members would like staff to consider as part of the upcoming budget. These may include infrastructure projects, staffing needs, program enhancements, equipment purchases, or new service initiatives.

Staff will use this early input to guide departmental budget requests, evaluate resource allocations, and prepare preliminary forecasts. Council feedback will also help shape the strategic direction of the budget as we move into the formal development and workshop phases over the coming months.

FINANCIAL IMPACT: n/a

RECOMMENDATION: Provide City staff with guidance on items that Council would like to be included in the budget.



Item Cover Page

CITY COUNCIL AGENDA ITEM REPORT

DATE:	April 17, 2025
SUBMITTED BY:	Eric DeLaCruz, Assistant City Secretary
SUBJECT:	Discussion on the possible adoption of an official newspaper for the City of Lago Vista.
BACKGROUND:	Texas Government Code Section 52.013(b) requires publication of ordinances in the municipality's official newspaper if the City's Charter does not provide another method for such publication.
FINANCIAL IMPACT:	TBD

Item Cover Page

CITY COUNCIL AGENDA ITEM REPORT

DATE: April 17, 2025

SUBMITTED BY: Councilor Benefield, City Council

SUBJECT: Discussion, regarding establishing an enhanced reporting requirements for the City Manager's Weekly Report.

BACKGROUND: The City Manager's Weekly Report serves as a critical tool for keeping the City Council informed on departmental activities, major projects, and emerging challenges. However, in its current format, the report lacks structured detail, clear accountability measures for department directors, and consistent tracking of key performance indicators.

To improve transparency, efficiency, and accountability, I propose the following enhancements:

1. Departmental Accountability: Each department head must submit a weekly report detailing:
 1. Top five accomplishments for the week.
 2. Ongoing high-priority projects, with progress updates.
 3. Barriers or challenges preventing project completion.
2. Standardized Data-Driven Reporting Across Departments:
 1. Example: The Police Department should provide weekly response times, traffic stops, citations vs. warnings, and Code Enforcement tracking by category (noise complaints, trash violations, STR infractions, etc.).
3. Rolling Status List of Major City Projects:
 1. Weekly updates on progress, milestones, delays, and corrective actions.
4. Inclusion of Emergency Services District (ESD) Updates:
 1. The ESD Chief should provide data on fire response times, service calls, and enforcement actions.

By implementing these measures, the City Council will have real-time insight into key initiatives, performance challenges, and department efficiency

FINANCIAL IMPACT:

Minimal. The changes will enhance transparency and accountability within existing reporting structures without placing an undue burden on city staff.

ATTACHMENTS:

[Resolution No. 25-2122___Establishing Enhanced Reporting of the City Manager's Weekly Report .pdf](#)

RESOLUTION NO. 25-2122

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGO VISTA, TEXAS, ESTABLISHING ENHANCED REPORTING REQUIREMENTS FOR THE CITY MANAGER’S WEEKLY REPORT; REQUIRING STRUCTURED UPDATES FROM ALL DEPARTMENT DIRECTORS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of Lago Vista recognizes the need for greater transparency, accountability, and efficiency in municipal operations; and

WHEREAS, the City Manager’s Weekly Report should serve as a data-driven accountability tool tracking key department metrics, ongoing projects, and operational challenges; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LAGO VISTA, TEXAS:

SECTION 1. ENHANCED WEEKLY REPORTING REQUIREMENTS

The City Manager shall compile and submit a Weekly Report incorporating structured updates from all City department directors, including:

- Top Five Accomplishments from the previous week.
- Ongoing High-Priority Projects, with specific updates on progress, actions taken, and estimated completion dates.
- Challenges and Barriers affecting project completion, including resource needs, staffing shortages, or policy constraints.
- Operational Metrics, where applicable, to provide measurable insights into departmental performance.

SECTION 2. MANDATED DEPARTMENT PARTICIPATION

Each department director shall provide a weekly written update to the City Manager, covering:

- City Manager’s Office – Key initiatives, intergovernmental relations, and administrative updates.
- Police Department – Calls for service, Response Times, Traffic Stops, Code Enforcement Actions, and Crime Trends.
- Development Services – Permitting Status, Zoning Applications, and Backlogs.
- Public Works/City Engineer – Infrastructure Project Updates, Roadwork Schedules, and Water Utility Improvements.
- Parks & Recreation – Facility maintenance, program participation, and upcoming events.

- Emergency Services District (ESD) – Fire Response Times, Code Enforcement, and EMS Incident Reports.

SECTION 3. ROLLING STATUS LIST OF MAJOR CITY PROJECTS

A dedicated section of the Weekly Report shall track major projects with:

- Week-over-week progress updates.
- Milestones achieved.
- Challenges delaying completion.

SECTION 4. IMPLEMENTATION AND REVIEW

The City Manager shall implement this enhanced reporting structure immediately. The City Council shall review its effectiveness after six months to determine if refinements are necessary.

SECTION 5. EFFECTIVE DATE

This Resolution shall take effect immediately upon passage by the City Council.

CITY OF LAGO VISTA, TEXAS

Kevin Sullivan, Mayor

ATTEST:

Maria Franco, City Secretary

On a motion by Councilor _____, seconded by Councilor _____
The above and foregoing resolution was passed and approved.



Item Cover Page

CITY COUNCIL AGENDA ITEM REPORT

DATE: April 17, 2025

SUBMITTED BY: Maria Franco, City Secretary

SUBJECT: Consider approval of April 9, 2025 Special Called City Council Meeting minutes.

FINANCIAL IMPACT: n/a

ATTACHMENTS:
[2025-0409 Draft Minutes Special Council Meeting .pdf](#)

MINUTES

City of Lago Vista
City Council Meeting
April 9, 2025
Page 1 of 2

These minutes have been prepared to satisfy the requirements of Section 551.021 of the Texas Government Code. Video recordings of most City meetings can be obtained at <https://www.lagovistatexas.gov/249/Watch-Meetings>

**City of Lago Vista, Texas
Special City Council Meeting
April 9, 2025
Meeting Duration: 12:30 PM to 4:54 PM**

BE IT REMEMBERED THAT on the **9th day of April A.D., 2025**, the City Council held a Special meeting at 12:30 PM in Police Station Conference Room, 5901 Municipal Complex Way, Lago Vista, Texas 78645, there being present and acting the following:

CALL TO ORDER, CALL OF ROLL**Members of City Council Present:**

Kevin Sullivan, Mayor
Shane R. Saum, Council Member; Place 1
Adam Benefield, Council Member; Place 2
Rob Durbin, Mayor Pro Tem; Place 3
Norma Owen, Council Member; Place 4
Paul Roberts, Council Member; Place 5
Paul Prince, Council Member; Place 6

Members of City Council Absent:

None

Mayor Sullivan called the meeting to order at 12:34 PM and announced that all Council Members are present.

City Staff Present: H.R. Director Tiffany Sparks

CITIZEN COMMENTS

No one signed up to speak.

EXECUTIVE SESSION

At 12:34 PM Council Convene into a closed Executive Session pursuant to:

- A. Consultation with Legal Counsel the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of an employee pursuant to Texas Government Code Section 551.074 – city manager interviews with potential candidates, and 551.071 – legal advice related thereto.

ACTION ON EXECUTIVE SESSION ITEMS (action and/or vote may be taken on the following agenda items):

At 4:54 PM Council Reconvene from Executive Session into open session to act as deemed appropriate in City Council's discretion regarding:

- A. Consultation with Legal Counsel the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of an employee pursuant to Texas Government Code

Section 551.074 – city manager interviews with potential candidates, and 551.071 – legal advice related thereto.

No action taken.

ADJOURNMENT

Mayor Sullivan adjourned the meeting at 4:54 PM.

Respectfully submitted,

CITY OF LAGO VISTA, TEXAS

ATTEST:

Maria Franco, City Secretary

Kevin Sullivan, Mayor

On a motion by Councilor _____, seconded by Councilor _____,
the above and foregoing instrument was passed and approved this **17th** day of **April 2025**.



Item Cover Page

CITY COUNCIL AGENDA ITEM REPORT

DATE: April 17, 2025

SUBMITTED BY: Maria Franco, City Secretary

SUBJECT: Consider approval of April 3, 2025 Regular City Council Meeting minutes.

FINANCIAL IMPACT: n/a

ATTACHMENTS:
[2025-0403 Draft Minutes Regular Council Meeting \(2\).pdf](#)

MINUTES

City of Lago Vista
City Council Meeting
April 3, 2025
Page 1 of 8

These minutes have been prepared to satisfy the requirements of Section 551.021 of the Texas Government Code. Video recordings of most City meetings can be obtained at <https://www.lagovistatexas.gov/249/Watch-Meetings>

City of Lago Vista, Texas
Regular City Council Meeting
April 3, 2025
Meeting Duration: 1:00 PM to 8:06 PM

BE IT REMEMBERED that on the **3rd day of April A.D., 2025**, the City Council held a Regular meeting at 1:00 PM in City Council Chambers, 5803 Thunderbird, Lago Vista, Texas 78645, and via videoconference, there being present and acting the following:

00:00-00:03

CALL TO ORDER, CALL OF ROLL

Members of City Council Present:

Kevin Sullivan, Mayor
Shane R. Saum, Council Member; Place 1
Adam Benefield, Council Member; Place 2
Rob Durbin, Mayor Pro Tem; Place 3
Norma Owen, Council Member; Place 4
Paul Roberts, Council Member; Place 5
Paul Prince, Council Member; Place 6

Members of City Council Absent:

None

Mayor Sullivan called the meeting to order at 1:00 PM and announced that all Council members are present.

City Staff Present: Interim City Manager, Taylor Whichard, City Attorney, Brad Bullock, Chief of Police Gary Boshears, City Secretary Maria Franco, Economic Development Director Eric Zeno, H.R. Director Tiffany Sparks, Parks & Recreation Asst. Director Katie Mikulak, I.T. Staff Stan Heston.

00:11-01:34

EXECUTIVE SESSION

At 1:01 PM the Council convened into a closed Executive Session pursuant to:

- A. Consultation with Legal Counsel concerning all regular meeting agenda items requiring confidential, attorney/client advice (as needed). (Texas Government Code Section 551.071).
- B. Consultation with Legal Counsel concerning legal questions and advice related to roadway impact fee assessments pursuant to Texas Government Code Section 551.071.
- C. Consultation with Legal Counsel concerning legal questions and advice related to dormant PDD's pursuant to Texas Government Code Section 551.071 - on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter.

- D. Consultation with Legal Counsel concerning legal questions and advice related to pending or contemplated litigation concerning employment-related claims of J. Bartholomew, pursuant to Texas Government Code Section 551.071.
- E. Consultation with Legal Counsel concerning legal questions and advice related to pending or contemplated litigation related to golf course irrigation contract with Duininck, Inc. d/b/a Duininck Golf pursuant to Texas Government Code Section 551.071.

01:34–08:31

ACTION ON EXECUTIVE SESSION ITEMS

(Action and/or vote may be taken on the following items):

AT **3:00** PM Council reconvened from Executive Session into Open Session to act as deemed appropriate in City Council's discretion regarding:

- A. Consultation with Legal Counsel concerning all regular meeting agenda items requiring confidential, attorney/client advice (as needed). (Texas Government Code Section 551.071).
No action taken.
- B. Consultation with Legal Counsel concerning legal questions and advice related to roadway impact fee assessments pursuant to Texas Government Code Section 551.071.
No action taken.
- C. Consultation with Legal Counsel concerning legal questions and advice related to dormant PDD's pursuant to Texas Government Code Section 551.071 - on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter.
No action taken.
- D. Consultation with Legal Counsel concerning legal questions and advice related to pending or contemplated litigation concerning employment-related claims of J. Bartholomew, pursuant to Texas Government Code Section 551.071.

MOTION: Councilor Durbin made a motion, seconded by Councilor Prince to direct City Attorney to basically, do as discussed in Executive Session. Motion carried unanimously seven (7) ayes to zero (0) nays.

- E. Consultation with Legal Counsel concerning legal questions and advice related to pending or contemplated litigation related to golf course irrigation contract with Duininck, Inc. d/b/a Duininck Golf pursuant to Texas Government Code Section 551.071.
No action taken.

PLEDGE OF ALLEGIANCE, PLEDGE TO THE TEXAS FLAG

Mayor Sullivan led the Pledge of Allegiance and the Pledge to the Texas Flag.

INVOCATION

Councilor Owen introduced Janet Robbins, a long-time resident and an epitome of service throughout her lifetime. Ms. Robbins gave the invocation.

08:31– 21:25

CITIZEN COMMENTS

Mayor Sullivan opened the citizens' comment period.

Mayor Sullivan recognized those that signed up to address the City Council:

- EBZ V. addressed the Council regarding their compliance with a construction issue.
- Steve Becker, a member of the Parks and Recreation Committee, thanked the Council for all they do and spoke concerning the Tree fund.
- Gene Harris addressed the Council concerning the timing of the public meeting notices.

21:25 – 26:19

ITEMS OF COMMUNITY INTEREST

Mayor Sullivan informed the public of the following:

1. City Manager Meet & Greet

The Lago Vista City Council will be conducting interviews for the City Manager position on **Wednesday, April 9th, from 1:00 PM to 5:00 PM**. Following the interviews, a **Meet & Greet Event** will take place at the **Public Library Meeting Room** from **5:30 to 7:00 PM**. We encourage the public to attend and meet the candidates, as well as ask any questions you may have.

2. The Green Center Hours

The Green Center will be open this **Saturday, April 5th** from **10am – 4pm**

Location: 21155 FM 1431 (1/4 mile west of Lago Vista Middle School).

Note: Please bring a copy of your City of Lago Vista utility bill and a photo ID for verification. For more details, check the City's website.

3. All City Facilities will be CLOSED on **Friday, April 18th** in Observance of the **Good Friday Holiday**.

4. Spring Texas Trash-Off

Join us for the **Spring Texas Trash-Off** on Saturday, **April 19th**, from **8:00 AM to 5:00 PM** at 5901 Municipal Court Way, next to the Police Station. For more information, visit the City's website.

5. Lago Fest 2025 is right around the corner!

Get ready for **Lago Fest 2025** on **Saturday, April 26th**, from **1:00 PM to 8:00 PM**. Enjoy the day with headliner **Roger Creager**, along with special guests **American Gypsy Band** and **Departure ATX**. For more details, visit www.lagofest.com. We look forward to seeing you there!

Mayor Sullivan noted that Interim City Manager Taylor Whichard will be one of the candidates that will be interviewed on April 9th, and he will also be at the meet and greet event.

Councilor Benefield noted that KLV B will have the City-Wide Clean-Up on April 12th

Councilor Owen bragged on the Lago Vista High School Students in particular Swayde Griffin winning the Texas Relays' 110-meter hurdles gold medal, and the Golf Course Boys team placing 1st and 2nd overall and to the Lady Viking Blue Team on their District 25-4A Championship.

Councilor Roberts announced that the Hope Center of Pediatrics Medical Clinic will officially launch on Saturday April 12, 2025.

26:19 – 1:02:30

STAFF AND COUNCIL LIAISON REPORTS

1. Routine Reports from City Staff.

Mr. Whichard announced that Amanda Harkins, City's Communications and Marketing Coordinator, received the Employee of the Month.

Mr. Whichard informed the Council that the City's End of year Financial Statement has been published on the City's Website.

Mr. Whichard stated that the Effluent Pump Project is scheduled to begin next week.

Human Resource Director Tiffany Sparks presented the 1st Quarterly Staffing Report.

Chief Boshears gave an update on Animal Control.

Finance Manager Nichole Navarro gave an update on the City's financial reports and explained concerning the delayed reports and stated that she is working hard to get those reports up to date. Ms. Navarro explained that she is currently working by herself and said the department is a staff of 3. The Council commended Ms. Navarro for doing a great job.

2. Routine Reports from City Council Liaison.

- Charter Review Committee. Councilmembers Saum & Prince
- Building and Standards Commission, Councilor Benefield Keep Lago Vista Beautiful, Councilor Benefield
- Lago Vista Starry Skies, Councilor Benefield Airport Advisory Board, Mayor Pro Tem Durbin
- Planning & Zoning Commission, Mayor Pro Tem Durbin
- Economic Development Advisory Committee, Councilor Owen
- Lago Vista Independent School District, Councilor Owen
- Lago Vista Property Owner's Association, Councilor Owen
- Turnback Canyon Trail Conservancy, Councilor Owen

- Golf Course Advisory Committee, Councilor Prince
- Library Advisory Board, Councilor Prince
- Parks & Recreation Advisory Committee, Councilor Prince
- Board of Adjustment, Councilor Roberts
- Governmental Affairs, Councilor Saum
- Water Issues; Lower Colorado River Authority Board, Texas
- Water Development Board, and other entities as appropriate, Councilor Saum
- Youth Advisory Committee, Mayor Sullivan
- Capital Area Council of Governments, Mayor Sullivan
- CapMetro, Mayor Sullivan
- Texas Department of Transportation, Mayor Sullivan

Mayor Sullivan moved up Item #8.

WORK SESSION

1:05:09– 1:43:33

3. Discussion, direction and Staff Evaluation regarding Safety Hazards at Pickleball Courts due to Driving Range.

The Council directed staff to move the Tee-Boxes farther down and to bring back to Council a sound solution to the issues discussed and a budget amendment.

No action taken.

Mayor Sullivan moved up Item #12.

2:41:08 – 3:07:50

4. Discussion regarding the Irrigation System Sub-Committee Report.

The Council directed the Sub-Committee to bring back to Council a formal agenda item and vote on the direction the Sub-Committee should take regarding the irrigation system.

No action taken.

3:07:50 – 3:27:53

5. Discussion, consideration and possible action on the Council comments listed on the Dashboard regarding the City's Work Plan.

The Council discussed the City's workplan and agreed to bring it back at the next City Council meeting on April 17, 2025, to formally adopt the workplan.

No action taken.

3:27:53 – 4:03:40

6. Discussion on analysis of speed limit inconsistencies by the Chief of Police.

The Council discussed the Speed limit changes on Lohman Ford and Boggy and concurred to bring the item back to the next Council meeting, April 17, 2025, for formal adoption of the speed limit change.

4:03:40 – 4:04:57

CONSENT AGENDA

The Consent Agenda Items Are Self-Explanatory by The City Council or Have Been Previously Discussed and Will Be Enacted with One Motion. There Will Be No Separate Discussion of These Items Unless a Council Member Requests. The Consent Agenda Is for Consideration by The City Council Only and Not Subject to Public Discussion.

7. Consider approval of the Minutes of March 20, 2025, Regular City Council Meeting.

Mayor Sullivan pulled item #7 from the consent agenda and noted a few corrections to the minutes.

MOTION: Mayor Sullivan made a motion seconded by Councilor Saum to approve the minutes of March 20, 2025 Regular City Council Meeting with modifications noted. The motion carried unanimously seven (7) ayes to zero (0) nays.

ACTION ITEM

2:50:49 - 3:12:36

8. Discussion, consideration and possible action regarding Keep Lago Vista Beautiful, Art in Public Places, proposed improvements to the wall located at the Police Department on 20413 Dawn Dr.

MOTION: Councilor Roberts made a motion seconded by Councilor Owen to approve the proposed improvements to the wall located at the Police Department on 20413 Dawn Dr. The motion carried unanimously seven (7) ayes to zero (0) nays.

4:04:57 – 3:20:13

9. Discussion, consideration, and possible action on raising the Pool Fee Schedule and adding Parties.

MOTION: Councilor Roberts made a motion seconded by Councilor Owen to approve raising the Pool fee by 50 cents, not to charge for the Aerobics class and to deny the closing of the Pool for parties. The motion carried six (6) ayes to one (1) nay. Councilor Saum being the dissenting vote.

4:31:18 – 4:43:24

10. Discussion, consideration and possible action regarding revisions to the Employee Handbook Pg. 73, Section 1: Rules Governing Holidays.

MOTION: Councilor Roberts made a motion seconded by Councilor Owen to approve final edits made to the Employee Handbook, pg. 73, Section1: Rules Governing Holidays, motion carried, unanimously seven (7) ayes to zero (0) nays.

4:43:24 – 4:46:40

11. Discussion regarding the Impact Fee CIP Evaluation and update process.

MOTION: Councilor Roberts made a motion to table Item No. 11 until the first Council meeting in May. Councilor Roberts amended his motion to table Item No. 11 until no later than the first meeting in May and welcome the City Manager to bring it back sooner, motion seconded by Councilor Prince, motion carried unanimously seven (7) ayes to zero (0) nays.

1:43:33 – 2:41:08

12. Discussion, consideration and possible action regarding a City of Lago Vista Policy to establish an Integrated Pest Management (IPM) Program.

Mayor Sullivan recognized those that signed up to speak on Item No. 12:

- Michelle Varela addressed the Council and asked the Council to approve the IPM Policy today.
- Christopher Ramos spoke in support of the IPM Policy.
- Kim Konte addressed the Council virtually and thanked the Council for taking action to protect the community and to limit the exposure to chemical pesticides as much as possible.
- Cheryl McLaurin addressed the Council virtually and stated she will provide data to make sure everyone recognizes the limitations and bonuses on whatever method the Council decides to go with as far as the IPM Policy.

Mayor Sullivan read comments submitted by citizens:

- Patrice Surley President of the Lago Vista Soccer Club wrote concerning the ants being terrible at Sunset last year and commanded the City for using a more effective solution this season and stated that there are zero complaints about the ants at Sunset so far this season.
- Jeff Hewgley wrote regarding his strong support for the proposed Integrated Pest Management policies and procedures.
- Letha Guy wrote in support of agenda Item No. 12 the Integrated Pest Management Program as developed and proposed by Councilor Saum.

MOTION: Councilor Saum made a motion seconded by Councilor Benefield to approve the Integrated Pest Management Program, while making sure that it is encapsulated in the policy that if Staff finds a situation where they need to go to a level 3 has the ability to but then it has to be reported as to why they went to a level 3 and respect the spirit of this policy to get back to the organics and to continuously review for other products and that Texas A&M be included, and ensure that the City Attorney reviews all the citations and state laws, and the permit number is either correct or removed. The motion carried unanimously seven (7) ayes to zero (0) nays.

4:46:40 – 4:49:57

13. Discussion, consideration, and possible action to refer a draft amendment to Chapter 14 (Zoning) of the Lago Vista Code of Ordinances to the Planning and Zoning Commission for review and recommendation pursuant to ordinance procedure.

MOTION: Councilor Roberts made a motion seconded by Councilor Saum to approve to refer Item No. 13

to the Planning & Zoning Commission as proposed. The motion carried unanimously seven (7) ayes to zero (0) nays.

4:49:57 – 5:08:30

14. Discussion, consideration, and possible action to refer a draft amendment to Chapter 14 (Zoning) of the Lago Vista Code of Ordinances establishing agenda eligibility and completeness requirements for Planning and Zoning Commission applications to the Planning and Zoning Commission for public hearing and recommendation.

MOTION: Councilor Roberts made a motion seconded by Councilor Owen to refer as drafted and also ask staff and City Attorney to confirm the newspaper of publication required for the City of Lago Vista notices and for staff to work with the Chair and P&Z Commission to have a Special Call Meeting to which will allow for these items to come forth to the City Council as soon as possible, ideally as soon as May 1st. The motion carried unanimously seven (7) ayes to zero (0) nays.

5:08:30

ADJOURNMENT

Mayor Sullivan adjourned the meeting at 8:06 PM.

Respectfully submitted,

ATTEST:

CITY OF LAGO VISTA, TEXAS

Maria Franco
City Secretary, TRMC

Kevin Sullivan, Mayor

On a motion by Councilor _____, seconded by Councilor _____, the above and foregoing instrument was passed and approved this 17th day of April 2025.



Item Cover Page

CITY COUNCIL AGENDA ITEM REPORT

DATE: April 17, 2025

SUBMITTED BY: Katie Mikulak, Parks and Recreation

SUBJECT: Consider approval of **Ordinance No. 25-04-17-01** amending the Fee Schedule for Public Pool Use.

BACKGROUND: City Council on April 03, 2025, approved the increase of city pool rates. The rate increase is \$.50 for residents and nonresidents.

FINDINGS: A \$.50 increase to adult, child and senior admission.

1. Daily rates for residents:
 1. Senior (55+ years): \$2.00.
 2. Adult (18–54 years): \$3.00.
 3. Child (4–17 years): \$2.00.
 4. Infant (0–3 years): \$0.00.
2. Daily rates for nonresidents:
 1. Senior (55+ years): \$3.50.
 2. Adult (18+ years): \$4.50.
 3. Child (4–17 years): \$3.50.
 4. Infant (0–3 years): \$0.00.

FINANCIAL IMPACT: This will nominally increase the Pool's revenue.

RECOMMENDATION: Approve.

ATTACHMENTS:
[25-04-17-01 Amended Pool Fees Ordinance.pdf](#)

ORDINANCE NO. 25-04-17-01

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGO VISTA, TEXAS, AMENDING APPENDIX A FEE SCHEDULE OF THE CODE OF ORDINANCES, ARTICLE 10.000, SEC 10.100 POOL FEES; PROVIDING CODIFICATION AND PUBLICATION, AN EFFECTIVE DATE, REPEALER, SEVERABILITY, PROPER NOTICE AND OPEN MEETINGS CLAUSES.

WHEREAS, The City of Lago Vista, Texas is a Home Rule City; and

WHEREAS, the City Council of Lago Vista, Texas, has determined that it is necessary to amend the fee schedule for the use of public swimming pools to maintain and improve the facilities and services offered to residents and visitors; and

WHEREAS, on April 03, 2025, the City Council of City of Lago Vista approved a pool fee increase in the amount of \$.50 for all daily rates; and

WHEREAS, it is necessary to amend the fee schedule to reflect the new rate for residents and nonresidents; and

WHEREAS, the City Council desires to amend Appendix A, Fee Schedule, as set out in the attached Exhibit "A"; and

WHEREAS, the City Council finds that it is necessary and proper for the purpose of promoting effective and efficient government of the City to adopt the proposed amendments to Appendix A, Fee Schedule of the City of Lago Vista Code of Ordinances.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAGO VISTA, TEXAS, THAT:

SECTION 1. FINDINGS OF FACT. All of the above and foregoing recitals are hereby found to be true and correct legislative findings of the City and are incorporated herein as findings of fact.

SECTION 2. AMENDMENT. The City Council of the City of Lago Vista, Texas, does hereby amend Article 10.000, Sec 10.100 Pool Fees, as shown in Exhibit "A". Underlined language shall be added and language to be deleted is signified by strike-through. All unedited Sections of the Code of Ordinances remain in effect as currently written:

- ****Current Rates:****

Daily rates for residents:

1. Senior (55+ years): \$1.50.
2. Adult (18–54 years): \$2.50.
3. Child (4–17 years): \$1.50.
4. Infant (0–3 years): \$0.00.

Daily rates for nonresidents:

5. Senior (55+ years): \$3.00.
6. Adult (18+ years): \$4.00.
7. Child (4–17 years): \$3.00.
8. Infant (0–3 years): \$0.00.

- **New Rates:**

Daily rates for residents:

1. Senior (55+ years): \$2.00.
2. Adult (18–54 years): \$3.00.
3. Child (4–17 years): \$2.00.
4. Infant (0–3 years): \$0.00.

Daily rates for nonresidents:

5. Senior (55+ years): \$3.50.
6. Adult (18+ years): \$4.50.
7. Child (4–17 years): \$3.50.
8. Infant (0–3 years): \$0.00.

SECTION 3. REPEALER. All ordinances, orders or resolutions heretofore passed and adopted by the City Council of the City of Lago Vista, Texas, are hereby repealed to the extent said ordinances, orders or resolutions or parts thereof are in conflict herewith.

SECTION 4. SEVERABILITY CLAUSE. If any section, subsection, article, paragraph, sentence, clause, phrase or word in this Ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

SECTION 5. CODIFICATION AND PUBLICATION. The City Secretary is hereby directed to record and publish the attached rules, regulations and policies in the City's Code of Ordinances as authorized by Section 52.013 of the Texas Local Government Code.

SECTION 6. EFFECTIVE DATE. This Ordinance shall take effect immediately upon its passage and publication in accordance with the Texas Local Government Code.

SECTION 7. OPEN MEETINGS. It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

AND, IT IS SO ORDERED.

PASSED AND APPROVED this 17th day of April, 2025 by a vote of the City Council of the City of Lago Vista, Texas.

Kevin Sullivan, Mayor

Maria Franco, City Secretary

On a motion by Councilor _____, seconded by Councilor
_____ the above and foregoing ordinance was passed and approved.

APPENDIX A

FEE SCHEDULE

ARTICLE 10.000 PARKS AND RECREATION FEES

Sec 10.100 Pool Fees

1. Daily rates for residents:
 1. Senior (55+ years): \$2.00.
 2. Adult (18–54 years): \$3.00.
 3. Child (4–17 years): \$2.00.
 4. Infant (0–3 years): \$0.00.
2. Daily rates for nonresidents:
 1. Senior (55+ years): \$3.50.
 2. Adult (18+ years): \$4.50.
 3. Child (4–17 years): \$3.50.
 4. Infant (0–3 years): \$0.00.
3. 10 visit pass for residents:
 1. Senior (55+ years): \$10.00.
 2. Adult (18+ years): \$20.00.
 3. Child (4–17 years): \$10.00.
4. 10 visit pass for nonresidents:
 1. Senior (55+ years): \$25.00.
 2. Adult (18+ years): \$35.00.
 3. Child (4–17 years): \$25.00.
5. Season pass for resident:
 1. Single: \$60.00.
 2. Family: \$100.00.
6. Season pass for nonresident:
 1. Single: \$100.00.
 2. Family: \$200.00.
7. Locker rentals per day: \$1.00.
8. Pavilion rental – 2 hour maximum (reservation required): \$20.00 for residents and \$40.00 for non-residents.
9. RESERVED
10. RESERVED
11. Free Pass for all active-duty military and veterans.

HISTORY

<i>Amended</i>	<i>by</i>	<i>Ord.</i>	<u>22-11-17-02</u>	<i>on</i>	11/17/2022
<i>Amended</i>	<i>by</i>	<i>Ord.</i>	<u>24-03-21-02</u>	<i>on</i>	3/21/2024
<i>Amended by Ord. <u>24-09-05-05</u> on 9/5/2024</i>					

CHANGES APPENDIX A

FEE SCHEDULE

ARTICLE 10.000 PARKS AND RECREATION FEES

Sec 10.100 Pool Fees

1. Daily rates for residents:
 1. Senior (55+ years): ~~\$1.50~~2.00.
 2. Adult (18–54 years): ~~\$2.50~~3.00.
 3. Child (4–17 years): ~~\$1.50~~2.00.
 4. Infant (0–3 years): \$0.00.
2. Daily rates for nonresidents:
 1. Senior (55+ years): ~~\$3.00~~3.50.
 2. Adult (18+ years): ~~\$4.00~~4.50.
 3. Child (4–17 years): ~~\$3.00~~3.50.
 4. Infant (0–3 years): \$0.00.
3. 10 visit pass for residents:
 1. Senior (55+ years): \$10.00.
 2. Adult (18+ years): \$20.00.
 3. Child (4–17 years): \$10.00.
4. 10 visit pass for nonresidents:
 1. Senior (55+ years): \$25.00.
 2. Adult (18+ years): \$35.00.
 3. Child (4–17 years): \$25.00.
5. Season pass for resident:
 1. Single: \$60.00.
 2. Family: \$100.00.
6. Season pass for nonresident:
 1. Single: \$100.00.
 2. Family: \$200.00.
7. Locker rentals per day: \$1.00.
8. Pavilion rental – 2 hour maximum (reservation required): \$20.00 for residents and \$40.00 for non-residents.
9. RESERVED
10. RESERVED
11. Free Pass for all active-duty military and veterans.

HISTORY

Amended	by	Ord.	<u>22-11-17-02</u>	on	11/17/2022
Amended	by	Ord.	<u>24-03-21-02</u>	on	3/21/2024
Amended by Ord. <u>24-09-05-05</u> on 9/5/2024					



Item Cover Page

CITY COUNCIL AGENDA ITEM REPORT

DATE: April 17, 2025

SUBMITTED BY: Taylor Whichard, City Manager

SUBJECT: Discussion, consideration and possible action on passing **Resolution No. 25-2123** formally adopting an updated City Council Work Plan.

BACKGROUND:

The City Council of Lago Vista has consistently emphasized the importance of strategic planning and organizational alignment with community priorities. The proposed 2025–2026 City Council Work Plan was developed collaboratively through a series of staff reviews, public input, and policy discussions held by Council during workshops and regular meetings.

On April 3, 2025, the City Council gave formal direction to staff to bring the draft Work Plan forward for adoption. The Work Plan outlines strategic goals, initiatives, and focus areas aimed at improving service delivery, advancing infrastructure projects, supporting economic development, enhancing quality of life, and promoting good governance.

This resolution formally adopts the Work Plan as the guiding document for city operations, programming, and budget development over the next two fiscal years.

- FINDINGS:**
- The Work Plan represents a unified vision and shared priorities of the City Council.
 - Adoption provides staff with direction and a framework to align departmental efforts.
 - The plan supports transparency, accountability, and progress tracking through regular updates to Council.
 - Formalizing the Work Plan now ensures it can be incorporated into early stages of FY 2025–2026 budget development.

FINANCIAL IMPACT: Unknown at this time.

RECOMMENDATION: Approve.

ATTACHMENTS:

[2025-04-10 _ Resolution No. 25-2123 _ City Council Work Plan.pdf](#)

CITY OF LAGO VISTA

RESOLUTION NO. 25-2123

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGO VISTA, TEXAS, ADOPTING A CITY COUNCIL WORK PLAN FOR 2025–2026; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR RELATED MATTERS.

WHEREAS, the City Council of the City of Lago Vista, Texas, is committed to transparency, accountability, and long-term strategic planning to meet the needs of the community; and

WHEREAS, the City Council Work Plan for 2025–2026 is a guiding document that outlines key goals, priorities, and initiatives to be undertaken by the City to improve service delivery, infrastructure, economic development, quality of life, and government operations; and

WHEREAS, the development of the Work Plan was informed by staff input, community feedback, and Council discussions during prior meetings and planning sessions; and

WHEREAS, on April 3, 2025, during a duly posted City Council meeting, the City Council provided direction to staff to bring the proposed City Council Work Plan forward for formal approval at the next regular meeting; and

WHEREAS, the City Council finds that formal adoption of the Work Plan will provide a clear and unified direction for the organization and will assist in guiding staff work programs and the preparation of the City’s annual budget.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LAGO VISTA, TEXAS, THAT:

1. The City Council Work Plan for Fiscal Years 2025–2026, attached hereto as **Exhibit A**, is hereby adopted as the guiding document for City initiatives and priorities during the specified time period.

2. City staff is hereby directed to implement the goals and objectives contained in the Work Plan and to provide regular updates on progress to the City Council.
3. This Resolution shall take effect immediately upon its passage.

PASSED AND APPROVED this ____ day of _____, 2025.

CITY OF LAGO VISTA, TEXAS

Kevin Sullivan, Mayor

ATTEST:

Maria Franco, City Secretary

EXHIBIT “A”
CITY COUNCIL WORK PLAN



City Council Work Plan

2025 – 2026

Prepared by

City Council

April 17th, 2025

City Council Vision Statement

To be a premier destination for businesses and residents, leveraging our unique location, natural beauty, rich culture, and strong educational opportunities while preserving the character and quality of life that make Lago Vista exceptional.

Goal #1: Quality of Life

Preserve and enhance the quality of life for Lago Vista residents by maintaining a safe, clean, and attractive community, ensuring responsible growth, and prioritizing conservation without compromising the city's unique character.

Top Priority Objectives:

1. Implement and review progress on the 2024-2029 Capital Improvement Plan.
 - a. The CM will execute on the approved CIP plan, with robust reporting as close to real time as possible. Variations from the approved CIP plan will be explained and justified to council routinely.
 - b. Update the 5 year CIP during the budget process to align with the Water and Wastewater Master Plans and the Traffic Safety Analysis
2. Complete and publish the updated Comprehensive Master Plan, including the Parks Master Plan and Future Land Use Map.
 - a. Begin aligning long term plans and projects, including updates as needed to the 5 year CIP and by defining a 10 year outlook for Capital Improvements
 - b. Define a prioritized long term plan for Parks, including large capital projects, Trails, and pocket parks
3. Maintain and improve major infrastructure
 - a. Begin actions to meet recommendations from the completed Traffic Safety Analysis. Large projects should be added to the 5 year CIP.
 - b. Conduct a comprehensive review of all water and wastewater infrastructure to ensure appropriate maintenance and identify future rehabilitation needs.
 - c. Complete and get approval on all plans necessary to begin an Impact Fee Review process and then execute on the process as expeditiously as possible

Additional Objectives

4. Implement recommendations from the completed Traffic Safety Analysis as part of ongoing department workplans where possible
5. Track and maintain a publicly available document showing current status of all Planned Development Districts.
6. Implement Citizen engagement activities such as the Civic Academy and Citizens' Police Academy.

Goal #2: Collaboration

Continue collaborative efforts with ESD, North Lake Travis Chamber of Commerce, Lago Vista ISD, Lago Vista Property Owners Association, Rusty Allen Airport Property Owners Association, and other state and federal entities

Top Priority Objectives:

1. Engage efficiently and effectively with key organizations including Travis County ESD, Lago Vista ISD, TxDOT, and others
 - a. Hold regularly scheduled coordination meetings as appropriate
 - b. Hold annual joint public meetings with appropriate organizations for public information and input.
 - c. Continue advocating for safety improvements on 1431 and explore potential joint initiatives with neighboring jurisdictions.
2. Build collaborative efforts and partnerships among area jurisdictions pertaining to water and wastewater operations and systems to share knowledge, experience, tools, and equipment when possible.

Additional Objectives

3. Collaborate with citizen advisory committees and boards to incorporate feedback and influence workplans of city staff
4. Support ad-hoc special committees as approved by City Council

Goal #3: Organization Effectiveness

Enhance efficiency and effectiveness of the organization through transparency and a quality workplace for employees

Top Priority Objectives:

1. Implement and improve activities to enhance staff productivity
 - a. Refine and expand Department Performance metrics to drive continuous improvement.
 - b. Increase effective use of AI by training staff members and incorporating into City tools and processes.
 - c. Replace computers that have reached the end of their life cycle and upgrade older systems to support the latest operating systems.
2. Implement and improve activities to improve staff working conditions
 - a. staff comradery initiatives.
 - b. Analyze trends from annual employee surveys and develop action plans to address key findings.
 - c. Evaluate and enhance the Employee Appreciation Program based on feedback and best practices.
3. Improve Communications to and from citizens
 - a. Continue to implement Customer Service Assessments for the public to provide feedback on staff performance
 - b. Release a usable public tool for visibility into city finance details. Either address limitations of OpenGov or replace it with a better solution.
 - c. Define the allowable content for the digital signage along Lohman Ford Road and 1431 to maximize its effectiveness and usefulness for local information.
 - d. Police Department will conduct at least 7 community events with varying themes, at different times, to reach a substantial portion of our community.

Additional Objectives

4. Complete Texas Police Chief's Association Accreditation Program.

Goal #4: Easy to work with

Make Lago Vista a great place to live and work for citizens

Top Priority Objectives:

1. Take the Home-Based Business Ordinance through the appropriate process and bring it forward to council to review
2. Enhance the city communications to include checklists and/or workflows for businesses, citizens and developers
 - a. Make it easier for businesses to understand the process for starting a business in our city.
 - b. Make it easier for citizens to understand how they can complete projects (fencing, accessory buildings, etc).
 - c. Make it easier for developers to understand the process to bring new projects to the city.

Additional Objectives

3. Analyze usage data of the "Notify Me" system and FAQ section on the city website to improve communication effectiveness.
4. Conduct a user satisfaction survey for the Camino software permitting and licensing system and implement improvements based on feedback.

Goal #5: Financial efficiency and transparency

Manage the City's financial activities with a commitment to transparency, accountability, and adherence to best practices.

Top Priority Objectives:

1. Financial Reporting Transparency:
 - a. Publish monthly financial reports detailing fund balances, departmental revenues, and expenditures within 30 calendar days following the end of each month.
 - b. Provide quarterly financial summaries to the City Council, comparing actual performance against the approved budget within 45 calendar days of quarter-

end. These reports should highlight any major variances along with explanations and recommended actions.

- c. Prepare and publish a post-mortem financial analysis of the prior fiscal year by February to support the annual budget development process.

2. Budget Accessibility and Public Engagement:

- a. Ensure the annual budget includes a summary in a format consistent with quarterly reports to facilitate year-over-year comparisons.
- b. Publish budget documents and financial reports in a searchable, analyzable format that is easy for both the City Council and the public to review during the budget development process.

3. Enhanced Public Access to Financial Information:

- a. Develop a centralized "City Overview" dashboard page accessible under the Government tab with links to all City dashboards as they are developed, including financials, infrastructure projects, and strategic initiatives to be completed by the end of March.
- b. Implement a Financial Transparency Dashboard on the City's website,
- c. The dashboard should consolidate key financial reports, including monthly, quarterly, and annual updates, allowing residents to easily track the city's financial position by August 2025.

4. Efficient and effective Budget development:

- a. Publish baseline budget no later than June.
- b. All departments should be no higher than 5% below the lower of the previous year's budget or the previous year's actual expense
- c. Develop and utilize a standard form to justify any department increases over the baseline budget.
- d. Develop and utilize a standard form to justify any individual expenses for Assets, Services, or Supplies in excess of \$30,000



Item Cover Page

CITY COUNCIL AGENDA ITEM REPORT

DATE:	April 17, 2025
SUBMITTED BY:	Eric DeLaCruz, Finance
SUBJECT:	Discussion, consideration, and possible action awarding Bennett Paving's bid for RFP 25-04 in the amount of \$2,917,882.45 to repave over 47 City streets and authorize the Interim City Manager to execute the contract.
BACKGROUND:	An RFP was issued February 13th, 2025 with a closing date of March, 13th 2025. A total of five (5) bids were received on March 13th and read aloud. The bidders were Bennett Paving, Lone Star Paving, Alpha Paving, Texas Materials, and Clark Construction. A comparison of all five bids can be found in the Bid Opening Sheet. Bennett Paving was the lowest responsible bidder at \$2,917,882.45. Their bid was under budget. They are a reputable contractor that has done work for the City in the past. This project is the continuation of the City's street rehabilitation program. There was \$12 million in Certificates of Obligation funds allocated for this program. Phase 1 is still in progress and currently under the \$3,825,269.26 budgeted amount. This bid is for the second tranche of roads as prescribed in the paving schedule posted on the City's CIP Dashboard. Included in this bid is an allowance for road base repair on an as needed basis. This is a simple milling of existing asphalt, and the installation of 2" of new asphalt.
FINDINGS:	A total of five (5) bids were received on March 13th and read aloud. The bidders were Bennett Paving, Lone Star Paving, Alpha Paving, Texas Materials, and Clark Construction. A comparison of all five bids can be found in the Bid Opening Sheet. Bennett Paving was the lowest responsible bidder at \$2,917,882.45. Their bid was under budget. They are a reputable contractor that has done work for the City in the past.

The notice of award will be sent the following Monday, and notice to proceed shortly after.

FINANCIAL IMPACT:

This project will be in the amount of \$2,917,882.45 that will be funded through our CO bond for our CIP street rehab project.

RECOMMENDATION:

Approve.

ATTACHMENTS:

[RFP 25-04 Bid Package.pdf](#)

[RFP 25-04 - Bid Opening Sheet.pdf](#)

[Bennett Paving Bid Proposal.pdf](#)

CONTRACTOR'S BID

FOR

2025 STREET RESURFACING – PHASE 2

RFP No. 25-04

BIDDER'S NAME

(PLEASE PRINT CLEARLY)

CHECKLIST OF ITEMS TO BE RETURNED

The following items shall be returned in order for the bid submittal to be considered acceptable:

- | | |
|--|--|
| ☐ Completed Bid Summary Sheet | ☐ Bid Security |
| ☐ Completed Unit Price Schedule | ☐ Acknowledgment of Addenda |
| ☐ Completed Bid Form | ☐ Completed Bidder's Qualification Form |

PREPARED FOR:



5803 Thunderbird Street
Lago Vista, Texas 78645

ADVERTISEMENT FOR SEALED PROPOSALS

Sealed competitive bids, in envelopes addressed to the City of Lago Vista, 5803 Thunderbird Street, Lago Vista, Texas 78645, for **RFP No. 25-04 Street Resurfacing Phase 2**, in the City of Lago Vista, Texas, will be received at the above-mentioned address until 1:00 P.M., March 13th, 2025 and then publicly opened and read aloud.

Submittals can be submitted in sealed envelopes and marked "RFP No. 25-04 Street Resurfacing Phase 2".

The Contract Documents and Specifications are available at the City of Lago Vista. Questions and requests for additional information shall be sent by email to: Victor.manzano@lagovistatexas.gov. For this project, all bidders will be **required** to accept Addenda and other pertinent information by email, as well as provide written acknowledgement of Addenda as prescribed in the Instructions to Bidders. **No questions or requests for additional information will be accepted later than 12:00 p.m., March 3rd, 2025.**

Bid packages will be available on the City's website at www.lagovistatexas.gov/Bids.aspx. Project general conditions and standard specifications manual can be found on the City's website at www.lagovistatexas.gov.

An optional pre-bid conference will be held on **February 27th, 2025**, at 1:00 P.M. at 5803 Thunderbird Street, Lago Vista, Texas 78645 in the City Council Conference Room.

A bid security of 5% of the bid amount must accompany each bid or proposal. A certified check or bank draft payable to the City of Lago Vista may be submitted in lieu of the Bid Bond.

After contract is awarded, the contractor will be required to furnish insurance, performance, and payment bonds.

The City of Lago Vista reserves the right to waive any informality that is not detrimental to any other bidder or potential bidder or to reject all bids or to accept the lowest responsible bidder that in the judgment of the City Council will be in the best interest of the City of Lago Vista.

No bidder may withdraw his bid within sixty (60) days after the actual date of opening thereof.

City of Lago Vista, Texas
Kevin Sullivan, Mayor

Newspaper ad published twice:

Thursday, February 13th, 2025
Thursday, February 20th, 2025

CITY HAS COPY OF AFFIDAVIT OF PUBLICATION.

If you have any questions, please e-mail Victor Manzano at:
Victor.manzano@lagovistatexas.gov.

SECTION 003

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003 ACKNOWLEDGMENT OF ADDENDA

Acknowledgement of Addenda:

All Addenda must be acknowledged below in the space provided. Alternatively, Addenda may be acknowledged on the outside of the sealed envelope submitted for bid next to the project name. Inclusion of the full text of any Addendum in this bid packet will also constitute the bidder's acknowledgement of that Addendum.

Bidder's Name: _____

(Fill in Bidder's Name exactly as it appears on pages 2 and 3 of the Bid Form)

I have received, acknowledge, and accept all of the following Addenda:

ADDENDUM NO.	SIGNATURE

Total Bid Amount in numbers:

Total bid in numbers (as tabulated on the Unit Price Schedule): \$ _____

The total bid in numbers above will be used to determine the apparent low bidder. The contract award will be based on bid amounts tabulated and verified by the Engineer.

PROPOSAL INSTRUCTIONS

Project general conditions and standard specifications manual can be found on the City's website at www.lagovistatexas.gov.

1. PROJECT

Objective of Request for the Competitive Sealed Bids process is to competitively procure services with a qualified contractor whose Proposal provides best value for Owner for the project description below:

RFP No. 25-04 Street Resurfacing Phase 2 in the City of Lago Vista, Texas

Base Bid: Milling of existing asphalt, and 2-inch Overlay of 46 different City streets which is approximately 185,000 square yards. Some of these streets require stop bar striping as noted in the documents. Installation of 3 inches of black base material on an as needed basis, as determined by the City Engineer and/or Street superintendent.

2. PROPOSAL EVALUATION

Proposals will be received, publicly opened, and names and monetary Proposals of each Bidder read aloud. Subsequently, Proposals will be ranked according to criteria described in this Document. Both cost and non-cost factors will be evaluated according to section 252 of the local government code.

Complete sets of Bid Documents must be used in preparing Proposals; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from use of incomplete sets of Bid Documents. Dates, locations, and times of the proposal submittal are outlined in the Advertisement for Proposal.

Owner and Engineer, in making copies of Bid Documents available on above noted terms, do so only for purpose of obtaining Proposals for Work and do not confer a license or grant for any other use.

3. SELECTION CRITERIA

Owner will consider several factors in selecting a winning bidder as noted in the section 252.043 of the of State of Texas Government Code, and other applicable state codes which allow and will provide best value to Owner. Bids will be evaluated using the following criteria and weighting:

1. Proposed Project Cost: Offeror's Proposed Cost of Performing Work shall be indicated in the Bid or Proposal Form.
2. The reputation of the bidder and of the bidder's goods or services: Provide general information about Bidder's organization and a Statement of Qualifications. Include information on similar Projects in which Bidder has had significant involvement in the last five (5) years, or that demonstrate experience with similar Projects. This list is to include name and a current telephone number of references for each of these Project assignments. Bidders are to include a list of current Project assignments for each of individuals proposed, anticipated completion date for this assignment and percentage of time they will have available to devote to this Project.
3. Experience/Qualifications of Sub-Contractor(s): Provide information on Sub-Contractor(s) who are to complete 25% or more of the project in terms of cost, qualifications, which includes information on similar Projects where Sub-Contractor(s) has been in charge of in the last five (5) years, or that demonstrate experience with similar Projects. This list is to include name and a current telephone number of references for each of these assignments. Subcontractor shall name a Superintendent who must be dedicated to this Project full time for duration of Project and may not be changed without written approval by the Director of Public Works. In the event that Contractor does not intend to outsource any work over 25%, then the evaluations criteria for the Contractor will be utilized to complete this portion of the evaluation.

4. Other Factors: Owner will consider other factors when evaluating Bids, including, but not limited to, the following:
- a. The bidder's past relationship with the municipality.
 - b. Any relevant criteria specifically listed in the request for bids as noted herein.
 - c. Ability to Meet Proposed Time for Construction: Provide information to demonstrate ability of Organization to complete Projects within budget and on time.
 - d. Quality of Work: Demonstrated quality of Work on completed Projects as determined by site visits or discussions with references for Projects. Quality considerations may include appearance of completed Work, amount of warranty or rework required, durability and maintainability of completed Project, and quality of documentation provided.
 - e. Safety: Demonstrated success in implementation of an on-site safety program.
 - f. Claims Experience and Litigation History: Provide a list of all claims or litigation involving construction Projects that have been filed by Bidder or Owner within the last five (5) years, or that are currently outstanding.
 - g. Other factors submitted such as Financial Standing, Superintendent Experience, proposals for changes to reduce cost, or any other factors the Contractor submits for consideration.
 - h. For projects over \$1.5MM the municipality will attempt to award project to lowest responsible bidder.

In order to determine the Contractors ability to perform the work, the Owner may consider the qualifications and experience of Subcontractors, Suppliers, and other persons and organizations proposed for those portions of Work as to which identity of Subcontractors, Suppliers, and other persons and organizations must be submitted as provided in General Conditions. Owner may also consider the operating costs, maintenance requirements, performance data and guarantees of major items of materials and equipment proposed for incorporation in Work when such data is required to be submitted prior to recommendation of award.

Owner may consider qualifications (Statement of Qualifications) of Bidders and Bidder's subcontractors and consultants, in addition to proposed cost(s) (Proposal Form) when evaluating Proposals to determine which Proposal offers best value to Owner. Owner will rank each of Bidder's Proposal based on criteria and criteria weighting described herein.

Evaluation and ranking of Proposals will be completed no later than 45th calendar day from date of Proposal opening. Bidders are requested not to withdraw their Proposals within 60 calendar days from date on which Proposals are opened. Proposal Security of highest-ranking firms will be held by Owner until contract negotiations are finalized.

4. OTHER PROCEDURES

Owner may conduct such investigations as Owner deems necessary to assist in evaluation of any Proposal and to establish the responsibility, qualifications and financial ability of Bidders, proposed Subcontractors, Suppliers and other persons and organizations to perform and furnish Work in accordance with Contract Documents to Owner's satisfaction within prescribed time.

Owner reserves right to adopt most advantageous interpretation of Proposals submitted in case of ambiguity or lack of clearness in stating Proposal Prices, to reject any or all Proposals, and/or waive informalities.

004 CONFLICT OF INTEREST QUESTIONNAIRE

004.1 INSTRUCTIONS

CONFLICT OF INTEREST
DISCLOSURE

IMPORTANT NOTICE TO VENDORS AND BIDDERS- NEW STATE LAW

Beginning January 1, 2006 a new state law (Chapter 176 of the Local Government Code) requires the filing of Conflict of Interest Questionnaires (CIQ) by certain individuals and businesses.

The questionnaires require disclosures describing certain business and gift giving relationships, if any, the filers may have with Local Government Officers or a member of a governing body of a local government entity.

The new law applies to:

- Businesses and individuals who contract with the city,
- Businesses and individuals who seek to contract with the City (regardless of whether a bidder is awarded the contract), and
- Agents who represent such businesses in their business dealing with the City

A copy of the required reporting form is attached. Form CIQ

As part of the contracting process with governmental entities, Section 2252.908 of the Texas Government Code requires that for certain types of contracts, you must fill out a conflict of interest form ("Disclosure of Interested Parties") at the time you submit your signed contract to the District. For further information please go to the Texas Ethics Commission website via the following link.

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

If you have any questions about compliance, please consult your own legal counsel. Compliance is the individual responsibility of each individual, business and agent who is subject to the law's filing requirement.

If you are required to file a Conflict of Interest Questionnaire, you should file it with the City's Secretary at 5803 Thunderbird Street, Lago Vista, Tx 78645.

004.2 CIQ FORM SAMPLE

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of person who has a business relationship with local governmental entity.

2 ☐ Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3 Name of local government officer with whom filer has employment or business relationship.

Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?

☐ Yes ☐ No

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

☐ Yes ☐ No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

☐ Yes ☐ No

D. Describe each employment or business relationship with the local government officer named in this section.

4

Signature of person doing business with the governmental entity

Date

Adopted 06/29/2007

004.3 FORM TGC 2270

Form TGC 2270
VERIFICATION REQUIRED BY TEXAS GOVERNMENT CODE CHAPTER 2270

Contract identifier: _____

Department: _____

By signing below, Company hereby verifies the following:

1. Company does not boycott Israel; and
2. Company will not boycott Israel during the term of the contract.

SIGNED BY: _____

Print Name of Person: _____
Signing, Title, and
Company _____

Date signed: _____

STATE OF TEXAS §
COUNTY OF _____ §

BEFORE ME, the undersigned Notary Public on this day personally appeared _____ (Name), on behalf of _____ (Company) who being duly sworn, stated under oath that he/she has read the foregoing verification required by Texas Government Code Section 2270.002 and said statements contained therein are true and correct..

SWORN AND SUBSCRIBED TO before me, this _____ day of _____, 20____.

NOTARY OF PUBLIC,
FOR THE STATE OF TEXAS

My Commission Expires:

Government Code § 2270.002. Provision Required in Contract

Effective: September 1, 2017

A governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

The following definitions apply:

(1) "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.

(2) "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

(3) "Governmental entity" means a state agency or political subdivision of this state.

State law requires verification from a Company for contracts involving goods or services (regardless of the amount) before the City can enter into the contract.

005 BID FORM

BID FORMPROJECT IDENTIFICATION: RFP No. 25-04 Street Resurfacing Phase 2PROJECT IDENTIFICATION NUMBER (PID): RFP No. 25-04

THIS BID IS SUBMITTED TO: Mr. Victor Manzano, CIP Manager, City of Lago Vista, Texas

1. The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an Agreement with OWNER in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Bid Price and within the Bid Times indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.
2. BIDDER accepts all of the terms and conditions of the Advertisement of Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for thirty-five days after the day of Bid opening. BIDDER will sign and deliver the required number of counterparts of the Agreement with the Bonds and other documents required by the Bidding Requirements within fifteen days after the date of OWNER'S Notice of Award.
3. In submitting this bid, BIDDER represents, as more fully set forth in the Agreement, that:

- (a) BIDDER has examined and carefully studied the Bidding Documents; including (but not limited to) the following:

BID PACKET – All portions of the Contractor's Bid Packet including the Instructions to Bidders, General Conditions, and any Special and /or Supplementary Conditions

DRAWINGS – Most current set of drawings

SPECIFICATIONS – Most current City of Lago Vista Technical Construction Standards, Specifications Manual, and any other as stated in the construction drawings.

ADDENDA - Acknowledged on the Bid Summary Sheet or on the sealed bid envelope

- (b) BIDDER has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance and furnishing of the Work;
- (c) BIDDER is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.
- (d) BIDDER has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in the General Conditions. BIDDER accepts the determination set forth in the Supplementary Conditions of the extent of the "technical data" contained in such reports and drawings upon which BIDDER is entitled to rely as provided in the General Conditions. BIDDER acknowledges that such reports and drawings are not Contract Documents and may not be complete for BIDDER'S purposes. BIDDER acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Bidding Documents with respect to Underground Facilities at or contiguous to the site. BIDDER has obtained and carefully studied (or assumes responsibility for having done so) all such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by BIDDER and safety precautions and programs incident thereof. BIDDER does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the determination of this Bid for performance and furnishing of the Work in accordance with the limes, price and other terms and conditions of the Contract Documents.
- (e) BIDDER is aware of the general nature of Work to be performed by OWNER and others at the site that relates to Work for which this Bid is submitted as indicated in the Contract Documents.
- (f) BIDDER has correlated the information known to BIDDER, information and observations obtained from visits to the site, reports and drawing identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.
- (g) BIDDER has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that BIDDER has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to BIDDER, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for

performing and furnishing the Work for which this Bid is submitted.

- (h) This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; BIDDER has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; BIDDER has not solicited or induced any person, firm or corporation to refrain from bidding; and BIDDER has not sought by collusion to obtain for itself any advantage over any other Bidder or over OWNER.
4. Measurement shall be based solely on Plan Quantities as listed in the Unit Price Schedule; no quantities shall be measured in the field for payment purposes. BIDDER will complete the Work in accordance with the Contract Documents for the Unit Prices and Quantities listed on the Unit Price Schedule for the total bid in numbers as entered on the Bid Summary Sheet.
 5. BIDDER agrees that the Work will be substantially complete, and completed and ready for final payment in accordance with the lines specified in Article 3 of the Standard Form of Agreement. BIDDER accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the lines specified in the Agreement.
 6. The following documents are required to be attached to be made a condition of this Bid:
(a) Required Bid Security in the form of certified check, cashier's check or corporate surety bond.
 7. Communications concerning this Bid shall be addressed to:

Mr. Victor Manzano
CIP Manager
City of Lago Vista
 5803 Thunderbird Street
 Lago Vista, Texas 78645
 Victor.manzano@lagovistatexas.gov

The address of BIDDER indicated below:

8. Terms used in this Bid which are defined in the General Conditions or Instructions will have the meanings indicated in the General Conditions or Instructions.
 9. SUBMITTED on _____, 20____.
- State Contractor License No. _____

If BIDDER is:

An Individual

By _____ (SEAL)
(Individual's Name)

doing business as _____

Business address: _____

Phone No.: _____

Email Address: _____

A Partnership

By _____ (SEAL)
(Firm Name)

(General Partner)

Business address: _____

Phone No.: _____

Email Address: _____

A Corporation

By _____ (SEAL)
(Corporation Name)

(State of Incorporation)

By _____ (SEAL)
(name of person authorized to sign)

(Corporate Seal) *(Title)*

Attest _____
(Secretary)

Business address: _____

Phone No.: _____

Email Address: _____

Date of Qualification to do business is _____

A Joint Venture

By _____(SEAL)
(Name)

(Address)

By _____ (SEAL)
(Name)

(Address)

Phone No.: _____

Email Address: _____

(Each joint venturer must sign. The manner of signing for each individual, partnership and corporation that is a party to the joint venture should be in the manner indicated above).

BID BOND

KNOW ALL BY THESE PRESENTS: that the undersigned Principal and Surety are firmly bound to the City of Lago Vista ("Lago Vista") in the penal sum of _____ Dollars (\$_____).

Now the condition of this bond is this: that, whereas the undersigned principal has submitted to Lago Vista a bid to enter into a certain contract whereupon principal undertakes to perform the following-described work of construction, alteration or repair:

City of Lago Vista RFP No. 25-04 Street Resurfacing Phase 2

NOW, THEREFORE, if the principal shall, within _____ (__) days following acceptance by the City Council of the City of Lago Vista of such bid and award by said Council to said principal of said contract, execute and return such further contract documents, together with such bonds and insurance documents as may be required by the terms of the bids accepted, then this obligation shall be null and void, otherwise it shall remain in full force and the amount hereof shall be paid to and retained by the City of Lago Vista as liquidated damages for principal's failure to do so.

IN WITNESS WHEREOF, the above bound parties have executed this instrument under their several seals this the ____ day of _____, 20__, the name and corporate seal of each corporate party being hereto affixed and by these presents duly signed by its undersigned representative, pursuant to the authority of its governing body.

Principal: _____

By: _____

Title: _____ Date: _____

Surety: _____

By: _____

Title: _____ Date: _____

(Attach Power of Attorney)

007 BIDDER QUALIFICATION FORM

Bidder Qualification Form - Construction*(Firm must prepare this statement in the form shown)*

The undersigned bidder certifies that the information herein is true, correct, complete and accurate. Elaboration on the following information or additional information deemed to be useful for evaluation of bidder's capabilities or to prevent misleading representations may be attached to this form. With exception to material and equipment suppliers, any subcontractor completing 25% or more of the project in terms of cost, is required to fill out this form.

Date: _____ Texas License Number: _____ Federal ID No.: _____

Bidder (Legal Name of Firm): _____

Address: _____ Phone Number: _____

_____ Fax Number: _____

City: _____ State: _____ Zip Code: _____ Email: _____

President (or Managing Partner, etc.): _____

Dun and Bradstreet Number (if any): _____

Years in Business Under Present Name: _____

List all other names under which your business has operated in the last 10 years:

Work Presently Under Contract (\$): _____

Work in place last year (\$): _____

Total Bonding Capacity (\$): _____

(Attach a letter from Bonding Co. evidencing bonding capacity)

Value of Work Presently Bonded (\$): _____

Bonding Company: _____

Bonding Agent: _____

Insurance Company: _____

Insurance Agent: _____

Phone: _____

Total Staff Employed by Firm *(Break down by Managers and Trades on separate sheet)*: _____

Contracting Specialty *(Indicate trades in which bidder performs)*: _____

Union Affiliations: ☐ Local ☐ National

Years Performing Work Specialty: _____ Percentage of Work Performed by Firm's Own Forces: _____

Is the Bidder in compliance with all applicable EEO requirements? ☐ Yes ☐ No
(If the answer is no, please attach summary of details on a separate sheet)

Bank References

Address: _____ Contact Name: _____

City: _____ State: _____ Zip Code: _____ Phone Number: _____

Has the firm or predecessor firm been involved in a bankruptcy or reorganization? ☐ Yes ☐ No
(If the answer is yes, please attach summary of details on a separate sheet)

Relevant Experience

Bidder should have successfully completed (substantially on-schedule, on-budget) at least three projects of similar size and nature for which they are submitting qualifications. List projects on a separate sheet with the following information on each and attach hereto:

Project *(Name, Location and Contact)*

Architect *(N/A if not applicable)*

Engineer

Contract Amount

Date Completed *(Month/Year)*

Scope of Work

List below any/all Contract(s) awarded to Bidder which it has failed to complete *(If applicable, attach a separate sheet)*:

Project *(Name and Location)*: _____

Contract with: _____

Brief Explanation of Cause and Resolution: _____

List on a sheet attached hereto all judgments, claims, arbitration proceedings, or suits pending or outstanding against bidder over the last five (5) years with amount of claim and brief description.

List on a sheet attached hereto all lawsuits or requested arbitration with regard to construction contracts which bidder has initiated within the last five (5) years and brief explanation of claim and outcome.

Attach to this form Bidder's current Financial Statement (assets/Liabilities), preferably audited.

Signature:_____

Name (Officer or Partner):_____

Title:_____

Date:_____

AFFIDAVIT OF AUTHENTICITY
Must be included with Bidder's Qualifications

STATE OF TEXAS :

COUNTY OF _____ :

ON THIS, the _____ day of _____, _____, before me, a Notary Public, the undersigned officer,
personally appeared _____, who acknowledged her/himself to be the
_____ of _____
[title] [Contractor's full name]

being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the said contractor by her/himself as such _____, executed the
[title]
foregoing instrument for the purposes therein contained by signing her/his name.

STATE OF TEXAS :

COUNTY OF _____ :

Sworn to and subscribed before me on the ____ day of _____, _____ (year), by _____.

(name of signer)

Notary Public's Signature

008 CONTRACT

STANDARD CONSTRUCTION CONTRACT

STATE OF TEXAS

§

§ KNOW ALL MEN BY THESE PRESENTS:

COUNTIES OF TRAVIS

§

THIS CONTRACT is made and entered into on this the _____ day of _____, 20__ by and between the CITY OF LAGO VISTA (hereinafter referred to as “**OWNER**”) and _____ (hereinafter referred to as “**CONTRACTOR**”). In consideration of the mutual covenants set forth, the OWNER and CONTRACTOR agree as follows:

Article I. Work

The CONTRACTOR shall perform all of the work as specified in the Contract Documents pertaining to this project. The work is generally described as follows:

RFP No. 25-04 Street Resurfacing Phase 2

ATTACHED ADDENDUM

Addenda numbers _____ to _____, inclusive.

Plans and Specification prepared by: The City of Lago Vista

CITY OF LAGO VISTA

All extra work shall be performed as specified or indicated in the Contract Documents; and, at the CONTRACTOR’s own cost and expense, the CONTRACTOR shall furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services as may be necessary in order to complete the construction, as described above and in accordance with the Contract Documents unless otherwise agreed to by the OWNER.

Article II. Contract Documents

The Contract Documents may only be altered, amended or modified as provided in the General Conditions. The Contract Documents consist of: this written agreement setting forth the work to be performed; advertisement, if any; instructions to bidders, if any; proposal; addendum; specifications, including the general, special, and technical conditions, provisions, plans, or working drawings; any supplemental changes or agreements pertaining to the work or materials therefore (Change Orders); maintenance, performance and payment bonds; insurance certificate the Construction Standard Specifications as provided for in the contract documents, or if not, then as published by the City of Lago Vista, as amended, and, any additional documents incorporated by reference. These form the Contract Documents and all are as fully a part of the Contract as if attached to this agreement or repeated herein.

Article III. Contract Time

The CONTRACTOR shall perform and complete all the items or work listed and referred to in the Contract Documents within 120 calendar days after the Notice to Proceed. All limitations of time set forth herein are material and are of the essence of this Contract.

Article IV. Contract Price

The OWNER shall pay the CONTRACTOR for completion of the work in accordance with the Contract Documents using current funds. Such payments shall be subject to the General and Special Conditions to the Contract, as contained in the Contract Documents. The Contract is a Unit Price Contract. Should CONTRACTOR need to exceed the price stated herein, CONTRACTOR shall submit a Change Order with proper documentation for written approval by the OWNER. Undertaking any work prior to receiving the approval on a Change Order shall be at CONTRACTOR'S risk and OWNER shall not be required to pay for any work undertaken unless and until such Change Order is approved by the OWNER.

Article V. Debts

The OWNER may, at its option, offset any amounts due and payable under this Contract against and debt (including taxes) lawfully due to OWNER from CONTRACTOR, regardless of whether the amount due arises pursuant to the terms of this Contract or otherwise and regardless of whether or not the debt due to OWNER has been reduced to judgment by a court.

Article VI. Miscellaneous Provisions

The terms used in this Contract shall have the same meaning as designated in the General Provisions of the Standard Specifications aforementioned, as amended. The Contract Documents, which constitute the entire agreement between the OWNER and CONTRACTOR, are listed in Article II. No assignment by either party hereto of any rights under or interests in the Contract Documents will be binding on the other party hereto without the written consent of the party sought to be bound. The OWNER reserves the right to select to build the project herein in whole or in part as needed to meet budget constraints, coordination with other project, or to better align with the needs of the OWNER. The OWNER and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives hereto to the covenants, agreements, and obligations contained in the Contract Documents.

IN WITNESS WHEREOF, the OWNER and CONTRACTOR have executed this Contract in duplicate and on the date aforementioned. All portions of the Contract Documents have been signed or identified by the OWNER and CONTRACTOR.

CONTRACTOR: NAME

CITY OF LAGO VISTA

Signature By: _____

Taylor M. Whichard

Name: _____

ATTEST:

ATTEST:

Name:

City Secretary, Maria Franco

Address for giving notices:

Address for giving notices:

5803 Thunderbird Street
Lago Vista, TX 78645

009 REQUEST FOR INFORMATION

Communications concerning this Bid shall be addressed to:

Mr. Victor Manzano
CIP Manager
CITY OF LAGO VISTA
5803 Thunderbird Street
Lago Vista, Texas 78645
Victor.manzano@lagovistatexas.gov

010 PERFORMANCE BOND & PAYMENT BOND

Performance Bond

STATE OF TEXAS

COUNTY OF _____

Bond No. _____

Project No. _____

Project Name _____

Know All Men By These Presents: That _____
of the City of _____, County of _____, and
State of _____, as Principal, and _____,
a solvent company authorized under laws of the State of Texas to act as Surety on bonds for principals, are held and
firmly bound unto _____ (Owner), in the penal sum of

_____ U.S. Dollars (\$ _____ U.S.) for payment
whereof, well and truly to be made, said Principal and Surety bind themselves and their heirs, administrators, executors, successors and
assigns, jointly and severally, by these presents:

Conditions of this Bond are such that, whereas, Principal has entered into a certain written contract with OWNER, dated
the _____ day of _____, _____, which Agreement is hereby referred to and made a part hereof as fully and to
the same extent as if copied at length herein.

Now, therefore, the condition of this obligation is such, that if said Principal shall faithfully perform said Agreement and shall in all respects
duly and faithfully observe and perform all and singular covenants, conditions and agreements in and by said contract agreed and covenanted
by Principal to be observed and performed, and according to true intent and meaning of said Agreement hereto annexed, then this obligation
shall be void; otherwise to remain in full force and effect.

Provided, however, that this bond is executed pursuant to provisions of Chapter 2253, Texas Government Code as amended and all liabilities
on this bond shall be determined in accordance with provisions of said Article to same extent as if it were copied at length herein.

Surety, for value received, stipulates and agrees that any change in Contract Time or Contract Sum shall not in anywise affect its obligation
on this bond, and it does hereby waive notice of any such change in Contract Time or Contract Sum.

In witness whereof, said Principal and Surety have signed and sealed this instrument this _____
day of _____, _____.

Principal
By _____
Title _____
Address _____

Surety
By _____
Title _____
Address _____

Telephone _____ Fax _____
E-Mail Address _____

Name and address of Resident Agent of Surety:

Note: Bond shall be issued by a solvent Surety company authorized to do business in Texas, and shall meet any other requirements
established by law or by Owner pursuant to applicable law. A copy of surety agent's "Power of Attorney" must be attached hereto.

Payment Bond

STATE OF TEXAS
COUNTY OF _____

Bond No.
Project No.
Project Name

Know All Men By These Presents: That _____
of the City of _____, County of _____ and State of Texas, as
Principal, and _____ a solvent corporation authorized
under laws of the State of Texas to act as Surety on bonds for principals, are held and firmly bound unto
_____ (Owner), and all Subcontractors,
workers, laborers, mechanics and suppliers as their interests may appear, all of whom shall have right to
sue upon this bond in the penal sum of _____ U.S.
Dollars (\$ _____ U.S.), for payment whereof, well and truly to be made, said
Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns,
jointly and severally, by these presents:

Conditions of this Bond are such that, whereas, Principal has entered into a certain written contract with
Owner; dated the _____ day of _____, _____ to which Agreement
is hereby referred to and made a part hereof as fully and to the same extent as if copied in length herein.

Now, therefore, condition of this obligation is such, that if the said Principal shall well and truly pay all
Subcontractors, workers, laborers, mechanics, and suppliers, all monies to them owing by said Principals
for subcontracts, work, labor, equipment, supplies and materials done and furnished for the construction
of improvement of said Agreement, then this obligation shall be and become null and void; otherwise to
remain in full force and effect.

Provided, however, that this bond is executed pursuant to provisions of Chapter 2253, Texas Government
Code as amended and all liabilities on bond shall be determined in accordance with provisions of said
Article to same extent as if it were copied at length herein.

Surety, for value received, stipulates and agrees that any change in Contract Time or Contract Sum shall
not in anywise affect its obligation on this bond, and it does hereby waive notice of any such change in
Contract Time or Contract Sum.

In witness whereof, said Principal and Surety have signed and sealed this instrument this _____
day of _____, _____.

Principal
By _____
Title _____
Address _____
Telephone _____
Fax _____
E-Mail Address _____

Surety
By _____
Title _____
Address _____
Telephone _____
Fax _____
E-Mail Address _____

Name and address of the Resident Agent of Surety:

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Contractor responsible for the validity, format, and formulas in file. PDF documents are official

PAY ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENDED PRICE
GENERAL CONDITIONS & PAVING					
1	MOBILIZATION, BONDS & INSURANCE	1	LS		\$ -
2	REMOVE & DISPOSE OF TRAFFIC BUTTONS	1	LS		\$ -
3	TRAFFIC CONTROL	1	LS		\$ -
4	3rd PARTY GEOTECHNICAL CORING & TESTING FOR COMPACTION & THICKNESS FOR EACH ROAD.	1	LS		\$ -
5	INSTALL 3" BLACK BASE AS DIRECT BY THE ENGINEER	10,000	SY		\$ -
Adobe Trail (Arena To End) (Approx 2800' X 24')					
6	MILLING AND DISPOSAL OF EXISTING PAVEMENT	8,064	SY		\$ -
7	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	8,064	SY		\$ -
Alta Vista Drive (Fawn To Paseo) (Approx 846' X 24')					
8	MILLING AND DISPOSAL OF EXISTING PAVEMENT	2,436	SY		\$ -
9	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	2,436	SY		\$ -
Bell Cove (Bell To End) (Approx 136' X 24')					
10	MILLING AND DISPOSAL OF EXISTING PAVEMENT	392	SY		\$ -
11	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	392	SY		\$ -
Bison Trail (Bar K Ranch To Rawhide) (Approx 1150' X 24')					
12	MILLING AND DISPOSAL OF EXISTING PAVEMENT	3,312	SY		\$ -
13	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	3,312	SY		\$ -
14	SOLID WHITE 24" x 12' THERMOPLASTIC MARKER (STOP BAR)	1	EA		\$ -
Bobcat Cove (Bronco To End) (Approx 144' X 28')					
15	MILLING AND DISPOSAL OF EXISTING PAVEMENT	484	SY		\$ -
16	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	484	SY		\$ -
Broken Arrow (Arrowhead To El Dorado) (Approx 1138' X 24')					
17	MILLING AND DISPOSAL OF EXISTING PAVEMENT	3,278	SY		\$ -
18	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	3,278	SY		\$ -
Buena Vista (Roundup To Lakeshore) (Approx 2044' X 24')					
19	MILLING AND DISPOSAL OF EXISTING PAVEMENT	5,887	SY		\$ -
20	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	5,887	SY		\$ -
21	SOLID WHITE 24" x 12' THERMOPLASTIC MARKER (STOP BAR)	1	EA		\$ -
Cardinal Ave (Azure To Emerald) (Approx 2600' X 24')					
22	MILLING AND DISPOSAL OF EXISTING PAVEMENT	7,488	SY		\$ -
23	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	7,488	SY		\$ -
Cedar Ridge Drive (Paseo To Deepwood) (Approx 1571' X 24')					
24	MILLING AND DISPOSAL OF EXISTING PAVEMENT	4,524	SY		\$ -
25	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	4,524	SY		\$ -
Chestnut Cove (Chantily To End) (Approx 1950' X 24')					
26	MILLING AND DISPOSAL OF EXISTING PAVEMENT	5,654	SY		\$ -
27	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	5,654	SY		\$ -
Clark Ave (Continental To Constitution) (Approx 700' X 24')					
28	MILLING AND DISPOSAL OF EXISTING PAVEMENT	2,016	SY		\$ -
29	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	2,016	SY		\$ -

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PAY ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENDED PRICE
Columbus Lane (Constitution Drive To Colonial Lane) (Approx 885' X 24')					
30	MILLING AND DISPOSAL OF EXISTING PAVEMENT	2,549	SY		\$ -
31	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	2,549	SY		\$ -
Congress Ave (Constitution To Colonial) (Approx 1506' X 24')					
32	MILLING AND DISPOSAL OF EXISTING PAVEMENT	4,337	SY		\$ -
33	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	4,337	SY		\$ -
Continental Drive (Clark To Constitution) (Approx 1628' X 24')					
34	MILLING AND DISPOSAL OF EXISTING PAVEMENT	4,688	SY		\$ -
35	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	4,688	SY		\$ -
Cooper Lane (Crockett To End) (Approx 1947' X 24')					
36	MILLING AND DISPOSAL OF EXISTING PAVEMENT	5,607	SY		\$ -
37	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	5,607	SY		\$ -
Deede Drive (Paseo De Vace To Avenida Ann) (Approx 2375' X 24')					
38	MILLING AND DISPOSAL OF EXISTING PAVEMENT	6,840	SY		\$ -
39	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	6,840	SY		\$ -
Emerald Road (Boggy To Blue Jay) (Approx 590' X 24')					
40	MILLING AND DISPOSAL OF EXISTING PAVEMENT	1,699	SY		\$ -
41	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	1,699	SY		\$ -
42	SOLID WHITE 24" x 12' THERMOPLASTIC MARKER (STOP BAR)	1	EA		\$ -
Emerald Road (Falcon To End) (Approx 2067' X 24')					
43	MILLING AND DISPOSAL OF EXISTING PAVEMENT	5,953	SY		\$ -
44	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	5,953	SY		\$ -
Folklore Circle (Sierra To Bar K Ranch Road) (Approx 1689' X 24')					
45	MILLING AND DISPOSAL OF EXISTING PAVEMENT	4,864	SY		\$ -
46	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	4,864	SY		\$ -
47	SOLID WHITE 24" x 12' THERMOPLASTIC MARKER (STOP BAR)	2	EA		\$ -
Hamilton Ave (Henry To Eisenhower) (Approx 1600' X 26')					
48	MILLING AND DISPOSAL OF EXISTING PAVEMENT	4,608	SY		\$ -
49	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	4,608	SY		\$ -
Hancock Ave (South of Highland To End) (Approx 1550' X 24')					
50	MILLING AND DISPOSAL OF EXISTING PAVEMENT	4,464	SY		\$ -
51	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	4,464	SY		\$ -
52	SOLID WHITE 24" x 12' THERMOPLASTIC MARKER (STOP BAR)	1	EA		\$ -
La Paloma Drive (Paseo To End) (Approx 768' X 24')					
53	MILLING AND DISPOSAL OF EXISTING PAVEMENT	2,212	SY		\$ -
54	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	2,212	SY		\$ -
Lee Lane (Liberty To Lindberg) (Approx 667' X 24')					
55	MILLING AND DISPOSAL OF EXISTING PAVEMENT	1,921	SY		\$ -
56	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	1,921	SY		\$ -
Liberty Lane (Boggy To End) (Approx 1890' X 26')					
57	MILLING AND DISPOSAL OF EXISTING PAVEMENT	5,897	SY		\$ -
58	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	5,897	SY		\$ -
59	SOLID WHITE 24" x 12' THERMOPLASTIC MARKER (STOP BAR)	1	EA		\$ -

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Marshall (Nimitz To Mount Vernon) (Approx 1670' X 24')					
60	MILLING AND DISPOSAL OF EXISTING PAVEMENT	4,809	SY		\$ -
61	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	4,809	SY		\$ -
Morgan Lane (Marshall To Mount Vernon) (Approx 973' X 24')					
62	MILLING AND DISPOSAL OF EXISTING PAVEMENT	2,803	SY		\$ -
63	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	2,803	SY		\$ -
Needles Cove (Norton To End) (Approx 458' X 24')					
64	MILLING AND DISPOSAL OF EXISTING PAVEMENT	1,319	SY		\$ -
65	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	1,319	SY		\$ -
Nobel Circle (Norton To Norton) (Approx 1500' X 24')					
66	MILLING AND DISPOSAL OF EXISTING PAVEMENT	4,320	SY		\$ -
67	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	4,320	SY		\$ -
Oregon Lane (Boggy To Crystal) (Approx 1591' X 24')					
68	MILLING AND DISPOSAL OF EXISTING PAVEMENT	4,582	SY		\$ -
69	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	4,582	SY		\$ -
70	SOLID WHITE 24" x 12' THERMOPLASTIC MARKER (STOP BAR)	1	EA		\$ -
Orlando Cove (Oregon To End) (Approx 470' X 24')					
71	MILLING AND DISPOSAL OF EXISTING PAVEMENT	1,523	SY		\$ -
72	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	1,523	SY		\$ -
Osage Lane (Patriot To Boggy) (Approx 1715' X 24')					
73	MILLING AND DISPOSAL OF EXISTING PAVEMENT	4,939	SY		\$ -
74	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	4,939	SY		\$ -
75	SOLID WHITE 24" x 12' THERMOPLASTIC MARKER (STOP BAR)	1	EA		\$ -
Oxford Drive (Boggy Ford road To Patriot Drive) (Approx 1384' X 24')					
76	MILLING AND DISPOSAL OF EXISTING PAVEMENT	3,986	SY		\$ -
77	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	3,686	SY		\$ -
78	SOLID WHITE 24" x 12' THERMOPLASTIC MARKER (STOP BAR)	1	EA		\$ -
Pokealong Path (Deer Run To Park) (Approx 1069' X 24')					
79	MILLING AND DISPOSAL OF EXISTING PAVEMENT	3,079	SY		\$ -
80	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	3,079	SY		\$ -
Polk Cove (American To End) (Approx 900' X 24')					
81	MILLING AND DISPOSAL OF EXISTING PAVEMENT	3,197	SY		\$ -
82	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	3,197	SY		\$ -
Park Drive (Deer Run To Valleyview) (Approx 2676' X 24')					
83	MILLING AND DISPOSAL OF EXISTING PAVEMENT	7,707	SY		\$ -
84	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	7,707	SY		\$ -
Red River Cove (Rawhide To End) (Approx 582' X 24')					
85	MILLING AND DISPOSAL OF EXISTING PAVEMENT	2,016	SY		\$ -
86	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	2,016	SY		\$ -
Santa Carlo Ave (American To End) (Approx 1976' X 24')					
87	MILLING AND DISPOSAL OF EXISTING PAVEMENT	5,691	SY		\$ -
88	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	5,691	SY		\$ -
89	SOLID WHITE 24" x 12' THERMOPLASTIC MARKER (STOP BAR)	1	EA		\$ -

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Santa Carlo Ave (Boggy To American) (Approx 1704' X 24')					
90	MILLING AND DISPOSAL OF EXISTING PAVEMENT	4,908	SY		\$ -
91	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	4,908	SY		\$ -
92	SOLID WHITE 24" x 12' THERMOPLASTIC MARKER (STOP BAR)	2	EA		\$ -
Santa Domingo Lane (Boggy To Santa Alto) (Approx 915' X 24')					
93	MILLING AND DISPOSAL OF EXISTING PAVEMENT	2,635	SY		\$ -
94	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	2,635	SY		\$ -
95	SOLID WHITE 24" x 12' THERMOPLASTIC MARKER (STOP BAR)	1	EA		\$ -
Santa Elena Circle (Santa Domingo To Santa Alto) (Approx 994' X 24')					
96	MILLING AND DISPOSAL OF EXISTING PAVEMENT	2,863	SY		\$ -
97	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	2,863	SY		\$ -
Santa Rosa Ave (Highlands lake Drive To American Drive) (Approx 2513' X 24')					
98	MILLING AND DISPOSAL OF EXISTING PAVEMENT	7,237	SY		\$ -
99	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	7,237	SY		\$ -
100	SOLID WHITE 24" x 12' THERMOPLASTIC MARKER (STOP BAR)	2	EA		\$ -
Sleepy Hollow Lane (Surry To Sierrea) (Approx 809' X 24')					
101	MILLING AND DISPOSAL OF EXISTING PAVEMENT	2,330	SY		\$ -
102	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	2,330	SY		\$ -
Stetson Cove (Surrey To End) (Approx 100' X 24')					
103	MILLING AND DISPOSAL OF EXISTING PAVEMENT	629	SY		\$ -
104	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	629	SY		\$ -
Stillwood Lane (Oak Dale To Outpost) (Approx 1183' X 24')					
105	MILLING AND DISPOSAL OF EXISTING PAVEMENT	3,407	SY		\$ -
106	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	3,407	SY		\$ -
Talon Circle (Bar K Ranch To Bar K Ranch) (Approx 1383' X 24')					
107	MILLING AND DISPOSAL OF EXISTING PAVEMENT	3,983	SY		\$ -
108	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	3,983	SY		\$ -
Tenderfoot Cove (Bar K Ranch To End) (Approx 260' X 26')					
109	MILLING AND DISPOSAL OF EXISTING PAVEMENT	811	SY		\$ -
110	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	811	SY		\$ -
Truman Drive (Redbird To Patriot) (Approx 2240' X 24')					
111	MILLING AND DISPOSAL OF EXISTING PAVEMENT	6,451	SY		\$ -
112	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	6,451	SY		\$ -
Buttons and Striping					
113	BLUE TRAFFIC BUTTON REFLECTORS	50	EA		\$ -
Total					\$ -

The total bid shall be entered in the space provided above, and shall also be entered in the space provided in the Bid Summary Sheet. All construction shall be completed per the City of Lago Vista's Technical Construction Standard Manual. Contractor will be required to provide insurance certificate and performance bonds per the specs.

Payment for all Items shall be based on **Plans Quantity**, as described in *Measurement and Payment*, unless otherwise noted.

BIDDER: _____

BY: _____

TITLE: _____

The Base Bid of the undersigned bidder based upon the quantities shown and the unit prices bid:

_____ Dollars, and _____ Cents

(\$ _____). All work bid will be substantially completed within 120 calendar days after the issuance of the notice to proceed. All work bid will be totally completed within 130 calendar days.

CITY OF LAGO VISTA STANDARD SPECIFICATIONS (1ST EDITION)

NOTICE TO BIDDERS

The CITY OF LAGO VISTA STANDARD SPECIFICATIONS are general in nature and may not include all requirements for any specific project.

Special Specifications, Special Provisions to Standard Specifications, and General Requirements may be included in the Project Manual for each specific project. Such Special Specifications, Special Provisions, and General Requirements that are included in the Project Manual for a specific project are hereby included as part of the construction specifications for that specific project.

It is the Bidder's sole responsibility to read, understand, and apply all other such Special Specifications, Special Provisions, and General Requirements included in the Project Manual.

PREPARED BY:
CITY ENGINEER, DPW



JANUARY 2019

FOREWORD

Outline of Specifications

Each specification is outlined by Articles and Sections. The basic Articles required for a specification are:

XXX.1. Description.

XXX.2. Materials.

XXX.3. Equipment.

XXX.4. Construction or Work Methods.

XXX.5. Measurement.

XXX.6. Payment.

Here “XXX” represents the Item number. Some Articles are not used in every Item. Measurement and Payment Articles are combined when the work described is subsidiary to bid items of the Contract.

Hierarchy of Organizational Elements

The hierarchy of organizational elements available below the Item level is as follows:

XXX.X. Article.

A. Section.

1. Section.

a. Section.

(1) Section.

(a) Section.

The term Section is used for all breaks below the Article.

SECTION 000
GENERAL PROVISIONS
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103 DEFINITIONS AND ABBREVIATIONS

103.1 SUMMARY

This section includes definitions and resolves potential conflicts between associated documents and notes included in the Contract Documents. Conformance to the terms of this section is a requirement that is subsidiary to all other items in this Contract, and no direct payment shall be allowed for any item referenced under this section.

103.2 DEFINITIONS

The following words and expressions, or pronouns used in their place, shall whenever they appear in this Contract be construed as follows, unless a different meaning is clear from the context:

Abbreviations: Wherever the abbreviation defined herein occur on the plans, in the specifications, contract, bonds, advertisement, bid or in any other document or instrument herein contemplated or to which the specifications apply or may apply, the intent and meaning shall be as shown in Abbreviations and Acronyms sections.

Addendum, Bulletin, or Letter of Clarification: Written changes, revisions, or any additional contract provisions issued by the owner or its representative, to the prospective bidders, to be acknowledged by the bidders prior to bid opening.

Advertisement: Legal publications pertaining to the work contemplated or under contract.

Approved, Directed, Required, and Words of like Import: Whenever they apply to the work being performed as directed by the contract, specifications, drawings, or written direction given by the owner or representative, shall imply the direction, requirements, permission or designation of the owner.

Air Temperature: The temperature measured in degrees Fahrenheit (°F) in the shade, not in the direct rays of the sun, and away from artificial heat.

Apparent Low Bidder: The Bidder determined to have the numerically lowest total bid as a result of the tabulation of bids by the Department.

Architect or Engineer of Record: A person registered as an architect/engineer or licensed as a landscape architect, in accordance with State law, exercising overall responsibility for the design or a significant portion of the design and performs certain Contract administration responsibilities as described in the Contract; or a firm employed by the City to provide professional architectural/engineering services.

Award: The City's acceptance of a Contractor's bid for a proposed Contract that authorizes the Department to enter into a Contract.

Backfill: Embedment and final backfill as indicated in specifications of standard drawings.

Base: a layer of specified material of plan thickness placed immediately below the pavement course surfacing.

Bid: The written statement or statements duly filed with the City office specified in the advertisement for bids of these specifications by the person, persona, partnership, company, firm, association, or corporation proposing to do the work contemplated, including the approved form on which the formal bids for the work are to be prepared.

Bid Bond: The security designated in the advertisement and bid, to be furnished by each BIDDER on all bids in excess of \$50,000, as a guaranty of good faith to enter into a contract with the OWNER and execute the required bonds for the work contemplated after the work is awarded to the BIDDER and payment of damages upon the BIDDER'S failure to enter into the contract.

Bidder: Any person, persons, partnership, company, firm, association, or corporation acting directly or through a duly authorized representative submitting a bid for the work contemplated.

Bidders Questionnaire: A prequalification form completed by a prospective Bidder reflecting a Bidder's financial data and experience.

Blast Cleaning: Using one of the blasting methods including, but not limited to, water blasting, low-pressure water blasting, high-pressure water blasting, abrasive blasting, water-abrasive blasting, shot blasting, slurry blasting, water injected abrasive blasting, and brush blasting.

Brush Blasting: Sweeping lightly with an abrasive blast to remove loose material.

Business Day: A Business Day for non-construction activities is defined as the time period in which the Lago Vista City Hall is open for public business between the days of Monday through Friday (inclusive) from 8 A.M. to 5 P.M. In general discussions, a "Business Day" should differ from a "Calendar Day" and should be properly and intentionally written as such.

Calendar Day: Any successive day of the week, month, or year, without regard to holidays, or any other day in particular.

City: The City of Lago Vista, Texas. At times this definition may include a representative authorized to act on behalf of the City. Responsibility for final enforcement of contracts involving the City is by Charter vested in the City Manager.

City Attorney: The City Attorney of the City of Lago Vista, Texas, or the City Attorney's duly authorized assistants or agents.

City Engineer: The OWNER'S Project Manager overseeing the administration of the CONTRACT and the CONTRACTOR'S performance thereunder. Unless otherwise specifically provided in the CONTRACT Documents, the OWNER'S Project Manager is an employee of City, and is not the Consulting Engineer.

Certificate of Insurance: A form approved by the City covering insurance requirements stated in the Contract.

Change Order: A written order to the contractor from the City of Lago Vista authorizing and directing an addition, deletion, or revision to the work within the scope of the contract documents, or authorizing an adjustment to the contract price or time.

Contract (Documents): Contract documents are all of the written, printed, or typed and drawn language that comprise and govern the performance of the contract (or agreement) between the Owner and the contractor or consultant. The Contract Documents include but are not limited to Bid Advertisement, Instruction to Bidders, Proposal, Addendums, Specifications, General and Special Conditions, Drawings, Bid Bond, Performance Bond, Insurance, and any supplemental changes pertaining to the work or materials constructed.

Contract Intent: The intent of the Contract is to describe the complete work to be performed. The Contractor shall furnish materials, supplies, tools, equipment, labor, and other incidentals necessary for the proper prosecution and completion of the work in accordance with the Contract Documents.

Contract Price: The total amount payable to the contractor as directed under the terms and conditions of the contract documents. At times the term may be used in the context of describing the unit price of an item.

Contract Time: The number of working days specified for completion of the work including authorized additional working days.

Contract Work: Everything required furnishing and completing by the contractor, as directed by any, or all, parts of the contract documents.

Contractor: The person(s), partnership, firm, or any combination thereof, as an independent contractor entering into the contract for the execution of the work, acting directly or through a duly authorized representative.

Control of Access: The condition in which the right to access of owners or occupants of abutting land or other persons in connection with a highway, roadway, or construction site, is fully or partially controlled by public authority.

Control Point: An established point shown on the plans to provide vertical and horizontal references for geometric control for construction.

Commencement of Construction: The initial disturbance of soils associated with clearing and grubbing, grading, or excavation activities, as well as other construction-related activities (e.g., stockpiling of fill material, demolition).

Consulting Engineer: The person, firm, or entity hired as an independent consultant by the OWNER to design the Project and represent the OWNER in the administration of the CONTRACT in whatever capacity the OWNER designates; the OWNER may, at its sole option, designate the Consulting Engineer to be the Engineer for purposes of administration of the CONTRACT. The Consulting Engineer shall be understood to be the Consulting Engineer of the OWNER, and nothing contained in the CONTRACT Documents shall be construed to make the Consulting Engineer an employee of the OWNER, nor shall they be construed to create any contractual or agency relationship between the Consulting Engineer and the CONTRACTOR. The term includes the officers, employees, associates, agents, and sub-consultants of Consulting Engineer, if any.

Date of Written Authorization: Date of the written work order authorizing the Contractor to begin work.

Drawing(s): Only those drawings specifically entitled as such and as specified in the contract, or in any bulletin, or any detailed drawing furnished by the OWNER, pertaining or supplemental thereto.

Easement: A real property right acquired by 1 party to use land belonging to another party for a specified purpose.

Embedment: Bedding and initial backfill.

Equal: Materials, articles or methods which are of equal or higher quality than those specified or shown on the drawings and as further defined in **Substitution of Materials** Section, as determined by the Engineer in his or her sole discretion.

Extra Work: Work other than that which is expressly or impliedly required by the Contract documents at the time of the execution of the Contract.

Final backfill: Material required filling the trench from the top of the initial backfill to ground elevation or subgrade of a street.

Hazardous Materials or Waste: Hazardous materials or waste include but are not limited to explosives, compressed gas, flammable liquids, flammable solids, combustible liquids, oxidizers, poisons, radioactive materials, corrosives, etiologic agents, and other material classified as hazardous by 40 CFR 261, or applicable City of Lago Vista, State of Texas, and federal regulations.

High-Pressure Water Blasting: Water blasting with pressures between 5,000 and 10,000 psi.

HS: Horseshoe shaped conduit, generally constructed of brick and mortar, usually older drainage systems. Newer systems are constructed of reinforced concrete.

Incentive/Disincentive Provisions: An adjustment to the Contract price of a predetermined amount for each day the work is completed ahead of or behind the specified milestone, phase, or Contract completion dates. The amount of the incentive/disincentive is determined based on estimated costs for engineering, traffic control, delays to the motorists, and other items involved in the Contract.

Initial backfill: Material that covers the utility line (usually 6-inches on all sides of the pipe or as directed by specs and drawings).

Inspector: Any representative of the OWNER or as specified in the contract documents designated to inspect the work.

Interpretation of Specifications: Throughout the Contract Documents, all declarative, imperative statements and phrases shall be interpreted as constituting specific instructions to the Contractor, unless specifically stated otherwise.

Joint venture: Any combination of individuals, partnerships, limited liability companies, or corporations submitting a single bid proposal.

Letter of Clarification: See Addendum.

Limits of Construction: An area with established boundaries, identified within the road right of way and easements, where the Contractor is permitted to perform the work.

Letting: The receipt, opening, tabulation, and determination of the apparent low Bidder.

Low-Pressure Water Blasting: Water blasting with pressures between 3,000 and 5,000 psi.

Maintenance Bond: A bond executed by a corporate surety in accordance with the contract documents and Article 7.19-1, Vernon's Texas Insurance Code, in the amount of the contract guaranteeing the prompt, full and faithful performance of the general guaranty and warranty contained in the Contract Documents.

Major Item: A major item is any line item of the work to be performed of the total contract amount, which amounts to 5 percent or more, or \$100,000, whichever is less.

Milestone Date: The date that a specific portion of the work is to be completed, before the completion date for all work under the Contract.

National Holiday: January 1, the last Monday in May, July 4, the first Monday in September, the fourth Thursday in November, December 24, or December 25.

Non-Site-Specific Contracts: Contracts in which a geographic region is specified for the work and for which work orders, with or without plans, further detail the limits and work to be performed.

Owner: The City of Lago Vista. The City may be represented by any of the Department Directors clearly identified in the contract documents as the principal contact person for each project.

Owner's Representative: The Engineer or other duly authorized assistant, agent, inspector or superintendent acting within the scope of the particular duties instructed to him or her by the City of Lago Vista.

Payment Bond: A bond executed by a corporate surety in accordance with Article 7.19-1, Texas Insurance Code and Chapter 2253, Texas Government Code, in the amount of the contract, solely for the

protection and use of payment bond beneficiaries who have a direct contractual relationship with the general CONTRACTOR or a subcontractor to supply public work labor or material.

Performance Bond: The approved form of security furnished by the CONTRACTOR and the CONTRACTOR'S Surety as a guarantee of good faith on the part of the CONTRACTOR to execute the work in strict accordance with the plans, specifications and terms of the contract, and that the CONTRACTOR will maintain the work constructed by him/her in good condition for the period of time required; said security shall be in accordance with the City of Lago Vista Specifications and individual contract documents.

Plan or Plans: The plans are the drawings, or reproductions therefrom, made by or approved by the OWNER showing in detail the location, dimension and position of the various elements of the project, including such profiles, typical cross-sections, layout diagrams, working drawings, preliminary drawings and such supplemental drawings as the OWNER may issue to clarify other drawings or for the purpose of showing changes in the work hereinafter authorized by the OWNER. The plans are usually bound separately from the other parts of the Contract Documents, but they are part of the Contract Documents just as though they were bound therein.

Prequalification Statement: The forms on which required information is furnished concerning the Contractor's ability to perform and finance the work.

Project Midpoint: For the purposes of this addendum, the Mid-point of a project is that point at which one-half of the CONTRACT amount, less retainage and extra work, has been paid to the CONTRACTOR for services rendered.

Proposal: The written and signed offer of the bidder, when submitted on approved proposal forms, to perform the contemplated work and furnish the necessary material and labor in accordance with the provisions of the plans and specifications, special and general provisions, and all contract documents.

Proposal Guaranty: The security designated in the proposal and furnished by the Bidder as a guarantee that the Bidder will enter into a Contract if awarded the work.

Quality Assurance (QA): Sampling, testing, inspection, and other activities conducted by the Engineer to determine payment and make acceptance decisions.

Quality Control (QC): Sampling, testing, and other process control activities conducted by the Contractor to monitor production and placement operations.

Sandblasting, Dry: Spraying blasts of pressurized air combined with sand.

Sandblasting, Wet: Spraying blasts of pressurized water combined with sand.

Saturated Surface Dry (SSD): Saturated Surface Dry (SSD) describes the condition of the aggregate in which the pores in each particle of the aggregate particle are filled with water and no excess water is on the particle surface. This allows the absorption and the specific gravity of the aggregate to be measured.

Shot Blasting: Spraying blasts of pressurized air combined with metal shot.

Site: The area upon or in which the CONTRACTOR'S operations are carried on, and such other areas adjacent thereto as may be designated as such by the OWNER.

Special Provisions: The special clauses of the contract, setting forth conditions or requirements peculiar to the specific project involved, supplementing the standard or general specifications and taking precedence over any conditions or requirements of the standard or general specifications with which they are in conflict. The term includes any and all addendums that expressly supplement and take precedence over the general or standard specifications, regardless of whether they are peculiar to a specific project or apply to all projects.

Specifications (Specs): The directions, provisions, and requirements contained herein, together with the special provisions supplemental hereto pertaining to the method and manner of performing the work or to the qualities or quantities of the materials to be furnished under the contract Specifications include all of the general, special and technical conditions or provisions, and all addendum or supplements thereto.

Standard Drawings: Drawings and sketches approved by the City Engineer to be used in conjunction with project drawings, special provisions, and general specifications.

Standard Details: Standard Details are drawings set up for use in multiple projects, and are set as a minimum requirement. They may be included as a separate bound set of drawings, or may be included in whole or in part in the Construction Drawings, or both. Standard Details will be referenced in the construction drawings with a callout corresponding to the number of the Standard Detail as shown on the Standard Detail drawing itself.

Storm Water Pollution Prevention Plan (SWPPP or SW3P): A document consisting of the following: evaluation of how and where pollutants may be mobilized by stormwater onsite, site plan for managing stormwater run-off, identification of appropriate erosion and sediment controls, maintenance and inspection schedule, record keeping process, and identification of stormwater discharge points from site.

Subcontract: The agreement between the Contractor and subcontractor establishing the obligations of the parties for furnishing of materials and performance of the work prescribed in the Contract documents.

Sub-Contractor: The person(s), partnership, firm, or any combination thereof, as an independent contractor entering into the contract with the principal contractor for the execution of the work, acting directly or through a duly authorized representative, as directed by the contractor under contractual obligations with the owner.

Subbase: Layer of specified material of plan thickness between a base and a subgrade.

Subgrade: That portion of the roadbed upon which the subbase, base or the pavement is to be placed. It includes 12-inches beyond the back of the curb for concrete paved streets.

Subsidiary: Materials, labor, or other elements that because of their nature or quantity have not been identified as a separate item and are included within the items on which they necessarily depend.

Superintendent: The representative of the Contractor who is available at all times and able to receive instructions from the Engineer or authorized representatives and to act for the Contractor.

Supplier: Any subcontractor contracting with the CONTRACTOR, or any of its subcontractors, to fabricate or deliver or who actually fabricates or delivers materials, supplies or equipment to be consumed or incorporated into the work.

Sureties: The corporate bodies which are bound by such bonds as are required with and for the CONTRACTOR. The sureties engaged to be responsible for the entire and satisfactory fulfillment of the Contract and for any and all requirements as set out in the specifications, Contract or plans. In order for a surety to be acceptable, the surety shall conform to the requirements of Article 7.19-1, Texas Insurance Code.

Unit Price: Where in the bid form a "Unit Price" is set forth, the "Unit Price" shall include the furnishing by the CONTRACTOR of all labor, tools, materials, machinery, appliances, water, heat, utilities, transportation, plant and equipment appurtenant to and necessary for the construction in every detail and the completion in a workmanlike manner of all the work to be done under these specifications. The "Unit Price" shall also include all permanent protection of overhead, surface and underground structures, cleaning up, finish, overhead expense, bond, insurance, patent fees, royalties, risk due to the elements, delay, profit, injuries, damages, claims and all other items not specifically mentioned that may be required to construct fully each item of the work, complete in place.

Water-Abrasive Blasting: Spraying blasts of pressurized water combined with abrasive media.

Water Blasting: Spraying blasts of pressurized water of at least 3,000 psi.

Water-Injected Abrasive Blasting: Abrasive blasting with water injected into the abrasive/air stream at the nozzle.

Work: All work including the furnishing of all labor, materials, tools, equipment, required submittals and incidentals to be performed by the CONTRACTOR under the terms of the contract.

Work Order, or Notice to Proceed: Written notice to the Contractor to begin the work. The work order may include the date on which work or time charges are to begin, the number of working days for specified work (for multiple work order Contracts), and plan sheets providing additional details specific to a location or to an item of work for non-site-specific work.

Work Day: A work (or working) day is defined as a calendar day not including Saturdays, Sundays, or legal holidays authorized in the list prepared by the City for contract purposes, in which weather or other conditions not under the control of the CONTRACTOR shall permit the performance of the principal units of work underway for a continuous period of not less than 7 hours between 7 A.M. and 6 P.M. A principle unit of work shall be that unit which controls completion time of the contract. Nothing in this definition shall be construed as prohibiting the CONTRACTOR from working on Saturdays, if the CONTRACTOR so desires and permission of the OWNER has been granted. Work on Sundays shall not be permitted except in cases with the written permission of the owner. If Saturday or Sunday work is permitted, working time shall be charged on the same basis as weekdays. Where the working time is expressed as calendar days or a specific date, the concept of working days shall no longer be relevant to the contract. Work at nighttime or outside the 7 A.M. and 6 P.M. shall not be permitted except in cases of extreme emergency and then only with the written permission of the owner.

Working Time, Completion Time or Contract Time: The time set forth in the contract for the performance and completion of the work contracted for. The time may be expressed as calendar days, working days or a specific date.

103.3 RESOLUTION OF CONFLICTS

Inclusion of specifications from multiple sources may lead to minor conflicts in terminology, dimensions, quantities, specifications, and requirements. Conflicts between any of the Contract Documents shall be resolved as follows:

1. Special Provisions in the Construction Contract shall take precedence over all other Contract Documents.
2. Requirements, quantities, and other information contained in the Specifications and Construction Drawings (including notes on the plans) shall take precedence over requirements contained in the Construction Contract. Conflicts between Specifications and Construction Drawings shall be resolved as detailed below.
3. Actual quantities measured in the field, installed and accepted, shall take precedence over quantities listed in any of the Contract Documents; however, payment for quantities may be by lump sum, unit price, plan quantity, or otherwise as described elsewhere in the Contract Documents.
4. In all cases where there are conflicts within the Contract Documents, the first Specification referenced on each line item on the Unit Price Schedule shall control for that line item, and shall determine the method of measurement for that line item.
5. Dimensions, quantities, specifications, and all other requirements that are included in a Project Manual (including requirements in the Unit Price Schedule) that has been prepared for a specific project, shall take precedence over dimensions, quantities, specifications, and all other requirements that are included in the Construction Drawings. Measurement units and item descriptions used in the Unit Price Schedule shall take precedence over measurement units and item descriptions included in the plans or specifications.
6. Dimensions, quantities, specifications (including notes) and all other requirements that are included in the Construction Drawings shall take precedence over conflicting data that is included in Standard Details, Standard Specifications, and Special Specifications.
7. Dimensions and quantities written in words or numbers shall take precedence over scaled measurements or quantities calculated from drawings, both in the Construction Drawings and Standard Details.
8. In all instances, written communications take precedence over any verbal understandings between any parties involved. Verbal instructions, submittals, and communications shall be for convenience only and shall not be binding on any party involved.
9. Any third-party reports, exhibits, documents, and / or recommendations that have been prepared by third parties, such as geotechnical reports and traffic studies that have been submitted to the design engineer for his use, may be made available or included in the Contract Documents for use as supporting data and for informational purposes only. The recommendations contained in such documents were made to the design engineer, and the design engineer may or may not have agreed with and followed those recommendations during final design. Therefore, all other Contract Documents shall take precedence over recommendations and requirements contained in such third-party reports.

10. All other conflicts shall be resolved by the Owner, and shall be resolved in a manner that is consistent with the Owner's best interest.

103.4 ABBREVIATIONS

Wherever the abbreviations defined herein occur on the plans, in the specifications, contract, bonds, advertisement, proposal, or in any other document or instrument herein contemplated, or to which the specifications apply or may apply, the intent and meaning shall be as follows:

%	Percent
'	Foot or Feet
"	Inch or Inches
#	Pound or pounds
AASHTO	American Association of State Highway and Transportation Officials
ABA	American Bankers Association
ACI	American Concrete Institute
am, a.m.	Before noon
ANSI	American National Standards Institute
Asph.	Asphalt
Assn.	Association
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
APWA	American Public Works Association
AWPA	American Wood-Preservers' Association
AWS	American Welding Society
AWWA	American Water Works Association
Be	Outside diameter of Pipe
Bd	Trench width
Blvd	Boulevard
c	Centigrade
cc	Cubic Centimeter
CFR	Code of Federal Regulations
cfs	Cubic feet per second
C.I.	Cast Iron
CL, C.L.	Center Line
cm	Centimeter
co	Cleanout
c.o.c.	Cleveland Open Cup
Conc.	Concrete
Cond.	Conduit
Corr.	Corrugated
cSt	Centistokes (Viscosity)
Cu.	Cubic
Culv.	Culvert
CY,C.Y.	Cubic Yard
D	Inside Diameter
D.I.	Ductile Iron
Dia.	Diameter
Dr.	Drive, or Driveway
Elev.	Elevation
F	Fahrenheit
FM	Factory Mutual
fps	Feet per second
Ft.	Foot or Feet

Gal.	Gallon
g, gm	Gram
HDPE	High Density Polyethylene
HP	Horsepower
Hr.	Hour
ID	Inside Diameter
in.	Inch or Inches
ISSA	International Slurry Surfacing Association
Kg or kg	Kilogram
kPa	Kilopascals
L	Liter
Lb.	Pound or Pounds
LDPE	Low Density Polyethylene
L.F.	Linear foot or feet
Lin.	Linear
LL	Liquid Limit
LLDPE	Linear Low Density Polyethylene
LMDPE	Linear Medium Density Polyethylene
LOI	Loss on Ignition
M	Meter
Max.	Maximum
MH	Manhole
Min.	Minimum or Minute
M.J.	Mechanical Joint
mm	Millimeter
Mod.	Modified
Mono.	Monolithic
mph	Miles per hour
MSS	Manufacturers Standardization Society of the Valve and Fittings Industry
MPa	Megapascal
MUTCD	(Texas) Manual on Uniform Traffic Control Devices
NACE	National Association of Corrosion Engineers
Nat' I	National
NEMA	National Electrical Manufacturers Association
No.	Number
N.P.T.	National Pipe Thread
NRMCA	National Ready-mixed Concrete
NSF	National Sanitation Foundation
o.d.,OD	Outside Diameter
OSHA	Occupational Safety and Health Administration
oz.	Ounce
Pa	Pascal
PI, P.I.	Plasticity Index
pm,p.m.	After noon
psi	Pounds per Square Inch
PVC	Polyvinyl Chloride
PVCO	Molecularly Oriented PVC
R	Radius
RAP	Recycled/Reclaimed Asphalt Pavement
RCP	Reinforced Concrete Pipe
RCRA	Resource Conservation and Recovery Act
Reinf.	Reinforced or reinforcing
Rem.	Remove

Rep.	Replace
R/W, ROW,	Right-of-Way
Sani., San.	Sanitary
Sec.	Second
S.F.	Square Feet
Sq.	Square
SSPC	The Society for Protective Coatings [formerly Steel Structures Painting Council]
St.	Street
Strm	Storm
Std.	Standard
Str.	Strength
SWPPP	Storm Water Pollution Prevention Plan
SY, S.Y.	Square Yard
TAC	Texas Administrative Code
Tex-###-X	Refer to TxDOT Manual of Testing Procedures
TCEQ	Texas Commission on Environmental Quality
TMUTCD	Texas Manual on Uniform Traffic Control Devices
TxDOT	Texas Department of Transportation
TxDOT	Refer to TxDOT Standard Specifications for Construction of Highways, Streets and Bridges
Item#	Underwriter's Laboratory
UL	Micrometers
Um, nm	United States
US, U.S.	United States Code
U.S.C.	United States Environmental Protection Agency
USEPA	Vertical
Vert.	Volume
Vol.	Weight
Wt.	Water
WT	Wastewater
WW	Yard
Yd.	

104 INSTRUCTIONS TO BIDDERS

104.1 INTRODUCTION

Instructions to the Contractor in these specifications are generally written in active voice, imperative mood. The subject of imperative sentences is understood to be "the Contractor." The City's responsibilities are generally written in passive voice, indicative mood. Phrases such as "as approved," "unless approved," "upon approval," "as directed," "as verified," "as ordered," and "as determined" refer to actions of the Engineer unless otherwise stated, and it is understood that the directions, orders, or instructions to which they relate are within the limitations of and authorized by the Contract.

104.2 PROPOSAL PREPARATION

The bidder shall submit its proposal on the forms furnished or approved by the OWNER. All blank spaces in the form shall be correctly filled in, the bidder shall state the prices, in both words, and numerals, for which it proposes to do the work, contemplated or furnish the material required. Such prices shall be written in ink distinctly and legibly. If an individual submits the proposal, that individual or duly authorized agent must sign the proposal. If an association or partnership submits the proposal, the name and address must be given and the proposal signed by a duly authorized member of the association or partnership. If a corporation submits the proposal, the corporate name and business address must be given and the proposal signed by a duly authorized corporate officer or agent. Powers of attorney authorizing agents to sign the proposal must be properly certified and must be in writing and submitted with the proposal. The proposal shall be executed in ink. The CONTRACTOR accepts all risks associated with bidding in this manner. It is understood and agreed that the proposal may not be withdrawn once the bid-opening process has begun.

104.2.A. Plan, Specs, and Site Examination

Bidders are advised that the plans, specifications and other documents on file as stated in the advertisement shall constitute all the information, which the OWNER shall furnish. Bidders are required, prior to submitting any proposal, to review the plans and read the specifications, proposal, Contract and bond forms carefully; to obtain and read the most current versions of all referenced State, Federal, and National standards; to visit the site of the work; to examine carefully local conditions; to inform themselves by their independent research, tests and investigations of the difficulties to be encountered and judge for themselves the accessibility of the work and all attending circumstances affecting the cost of doing the work or time required for its completion; and to obtain all information required to make a proposal. No information given by the OWNER or any official thereof, other than that shown on the plans and contained in the specifications, proposals and other Contract documents, shall be binding upon the OWNER. Bidders shall rely exclusively upon their own estimates, investigations, tests and other data, which are necessary for full and complete information upon which the proposal may be based. Any bidder, by submitting a bid, represents and warrants: that it has prepared the bid in accordance with the specifications, with full knowledge and understanding of the terms and provisions thereof; that it has done any inspection or test it deems appropriate; that it has reviewed, studied and examined its bid prior to the signing and submission of same; and that it was cognizant of the terms of its proposal, verified its calculations and found them to be correct and agrees to be bound thereby.

- 1. Availability of Lands for Work:** The lands upon which the work is to be performed, rights-of-way and easements for access thereto and other lands designated for use by Contractor in performing the Work are identified in the Contract Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment or storage of materials and equipment to be incorporated in the work are to be obtained and paid for by Contractor. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by Owner unless otherwise provided in the Contract Documents.
- 2. Copies of Bidding Documents:** Complete sets of Bidding Documents must be used in preparing Bids; neither Owner nor Engineer assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents. Owner and Engineer, in making copies of Bidding Documents available on the above terms do so only for the purpose of obtaining Bid for the Work and do not confer a license or grant for any other use.

3. **Bid Form:** The Bid Form is included with the Bidding Documents; additional copies may be obtained from Engineer (or the Issuing Officer). All blanks on the Bid Form must be completed by printing in black ink or by typewriter. Bids by corporations must be executed in the corporate name by the president or vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation must be shown below the signature. Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature.

104.2.B. Quantities in Proposal

The quantities of the work and materials set forth in the proposal form or on the plans approximately represent the work to be performed and materials to be furnished, and are for the purpose of comparing the bids on a uniform basis. Payment shall be made to the CONTRACTOR only for the actual quantities of work performed or materials furnished as measured in the field or otherwise determined by the Engineer in accordance with the plans and specifications; and it is understood that the quantities may be increased or decreased as hereinafter provided, without in any way invalidating the bid prices. If greater or lesser quantities are required than those quantities indicated in the Unit Price Schedule, the Contractor shall provide the required quantities. The method and amount of payment adjustments for quantities and changes, if any, will depend on whether the contract is Lump Sum, Plans Quantity, or Unit Price, and will be calculated accordingly.

104.2.C. Addenda

Bidders desiring further information, or interpretation of the Specifications, must make request for such information in writing to the City or Engineer, a minimum of 48-hours before the bid opening. Answers to all such requests will be given in writing to all bidders, in Addendum form, and all Addenda will be bound with, and made a part of, the Contract Documents. No other explanation or interpretation will be considered official or binding. Should a bidder find discrepancies in, or omissions from, the Specifications or other Contract Documents, or should he be in doubt as to their meaning, he should at once notify the Engineer in order that a written Addendum may be sent to all bidders. Any Addenda issued twenty-four (24) hours before the opening of bids will be mailed or delivered to each Contractor contemplating the submission of a proposal on this work. The proposal as submitted by the Contractor will be so constructed as to include any Addenda if such are issued by the City/Engineer twenty-four (24) hours before the opening of bids. The quantities of the work and materials set forth in the proposal form or on the plans approximately represent the work to be performed and materials to be furnished, and are for the purpose of comparing the bids on a uniform basis.

104.2.D. Statement of Qualification

No proposal shall be considered unless it has included a Bidders Statement of Qualifications (SOQ). A statement of Bidders Qualification form is to be filled and included in the proposal from all bidders. The City will award to contract to a qualified bidder; therefore an SOQ is required prior to award of contract. To demonstrate qualifications to perform the Work, each Bidder must be prepared to submit within five days after Bid opening detailed written evidence such as financial data, previous experience, present commitments and other such data as may be called for in the contract documents. Each bid must contain evidence of Bidder's qualification to do business in the state where the project is located or covenant to obtain such qualification prior to award of the contract.

104.2.E. Nonresponsive Proposal

No proposal shall be considered unless it is filed at the place and within the time limit for receiving proposals as stated in the advertisement and/or Notice to Bidders or any addendum. Each proposal shall be in a sealed envelope, plainly marked with the word "Proposal" and the name or description of the project as designated in the advertisement. A proposal that has one or more of the deficiencies listed below is nonresponsive and will not be considered.

1. Failure to sign the proposal.

2. The proposal is in a form other than the official proposal form issued to the Bidder or Bidders.
3. The proposal was not in the hands of the letting official at the time and location specified in the advertisement.
4. Proposal writing is illegible.
5. The Bidder fails to acknowledge or improperly acknowledges receipt of all addenda issued.
6. The Bidder modifies the proposal in a manner that alters the conditions or requirements for work as stated in the proposal form.
7. Any other items inconsistent with the requirements set for by the City.

104.2.F. Withdrawing the Proposal

Proposals filed with the OWNER can be withdrawn or modified and redeposit prior to the time set for opening proposals. Request for non-consideration of proposals must be made in writing addressed to the OWNER prior to the time set for opening proposals. After other proposals are opened and publicly read, the proposal for which non-consideration is properly requested will be returned unopened. The proposal may not be withdrawn after bid opening has commenced. The bidder, in submitting the same, warrants and represents that its bid has been carefully reviewed and checked and that it is in all things true and accurate and free of mistakes and that such bid shall not and cannot be withdrawn after opening because of any mistake committed by the bidder; provided, however, that any bidder may withdraw its bid 90 days after the actual date of opening thereof, should no award have been made to such bidder.

104.2.G. Bid Submission

Bids shall be submitted at the time and place indicated in the Advertisement of Invitation to Bid and shall be enclosed in an opaque sealed envelope, marked with the Project title and name and address of Bidder and accompanied by the Bid Security. If the Bid is sent through the mail or other delivery system the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face of it.

Each prospective Bidder is furnished one copy of the Bidding Documents with one separate unbound copy each of the Project Manual including the text "To be filled out and returned by bidder." The Bidding Documents may be retained by Bidder. The unbound copy of the Project Manual is to be completed and submitted in a sealed envelope labeled in the center of envelope with the project name. The bidder's full name and contact information shall be listed on the upper left hand corner of the envelope.

104.2.H. Opening and Consideration of Proposals

The proposals filed with the OWNER shall be opened at the time stated in the advertisement and/or in the Notice to Bidders, or any subsequently issued addendum, and publicly read aloud, and shall thereafter remain on file with the OWNER. No Contract shall be awarded based on such proposals until after at least two days have elapsed. Contract shall only be awarded after the City Council has made a decision to do so.

After proposals are opened, the proposals shall be tabulated for comparison on the basis of the bid prices and quantities shown in the proposal. Until final award of the Contract, the OWNER reserves the right to reject any or all proposals, to waive technicalities or irregularities at its option, to advertise for new proposals or proceed to do the work otherwise in the best interests of the OWNER. Each bidder shall be furnished a copy of the bid tabulation upon request.

104.2.I. Rejection of Proposals

Proposals shall be considered irregular if they show any omissions, alterations of form, additions, unbalanced values or conditions not called for, unauthorized alternate bids or other irregularities of any kind. The OWNER may reject any proposal containing any such irregularity. The OWNER, however, reserves the right to waive any irregularities and to make the award in the best interest of the OWNER.

The BIDDER or CONTRACTOR shall not take advantage of any error in the bidding or contract documents. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown in or mentioned in both. In the case of any apparent difference between the drawings and specifications, or any other apparent error which the BIDDER or

the CONTRACTOR may discover, the BIDDER or CONTRACTOR shall refer the matter to the OWNER, to which the decision of the OWNER shall govern and made known via the issuance of addenda. The OWNER shall have the right to correct any error discovered. Proposals may be rejected if they are found to be non-responsive or disqualified for other specific reasons.

104.2.J. Disqualification

Bidders may be disqualified and their proposals not considered for any, and not limited to, the following reasons:

1. Reasonable belief that collusion exists among the bidders.
2. Reasonable belief that any BIDDER is interested in more than one proposal for the work contemplated.
3. The BIDDER having a history of filing frequent, excessive and meritless claims, or fraudulent claims, against the OWNER, or against other contractors on a project of the OWNER.
4. The BIDDER or its Surety having defaulted on a previous Contract, or the BIDDER performing poorly on a previous Contract.
5. Lack of competency, skill, judgment, financial capability, integrity, reputation, reliability or responsibility to perform the work as revealed by the bid proposal, bid questionnaires, financial statement, performance history or other relevant information obtained by the OWNER.
6. Uncompleted work, which in the judgment of the OWNER shall prevent or hinder the prompt completion of additional work if awarded.
7. Failure of BIDDER to use OWNER'S form of bid bond in submitting its bid, or submission of a cashier's check drawn on a state or national bank not located in the OWNER'S jurisdictional area.
8. Unbalanced value of any bid items.
9. The BIDDER is currently a party to any litigation against the OWNER.

Other reasons not shown in these specifications shall be presented to City's Council. The last reserves the right to make final decision in disqualification situations not covered by these specifications.

104.2.K. Return of Proposal Guarantee

The OWNER shall normally return the proposal guaranties accompanying all proposals within 30 calendar days after bid opening except for the three apparent low proposals. The three apparent low proposal guaranties shall be retained by the OWNER until the required Contract and surety bonds have been executed, after which they shall be returned. The City may retain the remaining guaranties for up to 30 days after opening of bids if the one or more of the said are found to be within 3% of the lowest bid, or irregularities and other situations are found within the bids.

104.3 PROPOSAL GUARANTEE

No proposal shall be considered unless it is accompanied by a cashier's check on any state or national bank or acceptable bidder's surety bond, payable unconditionally to the OWNER. The cashier's check or bidder's surety bond shall be in the amount of not less than five (5) percent of the total amount of the bid. The type of check or money order must be indicated on the face of the instrument and the instrument must be no more than 90 days old. The proposal guaranty is required by the OWNER as evidence of good faith and as a guarantee that if awarded the Contract, the bidder shall execute the Contract and furnish the required bonds and evidence of insurance within 10 days after receipt of the awarded Contract or pay the damages as set forth below. The bidder's surety bond shall be conditioned that, if the proposal is withdrawn after the bids have been opened or the CONTRACTOR refuses to execute the Contract in accordance with its proposal and provide the required surety bonds, the CONTRACTOR and the surety shall become liable to the OWNER for the amount of the bidder's surety bond. In the event a cashier's check is submitted along with the proposal of the bidder, and the CONTRACTOR does not execute the Contract and provide the required surety bonds and evidence of insurance within 10 days after receipt of the awarded Contract, or withdraws its bid after bids have been opened, the OWNER shall be entitled to the proceeds of such check. Provided however, if the Contract price is less than \$100,000.00, the Bidder shall have the option of providing a Letter of Credit in lieu of a Performance Bond, said Letter of Credit to be in a form acceptable to City of Lago Vista.

104.4 CONFLICT OF INTEREST DISCLOSURE

The contractor shall fill out and submit a Conflict of Interest Disclosure form with bid documents. The questionnaires require disclosures describing certain business and gift giving relationships, if any, the filers may have with Local Government Officers or a member of a governing body of a local government entity.

This applies to:

- Businesses and individuals who contract with the City,
- Businesses and individuals who seek to contract with the City (regardless of whether a bidder is awarded the contract), and
- Agents who represent such businesses in their business dealing with the City

A copy of the required reporting form shall be included in the bid documents. Compliance is the individual responsibility of each individual, business and agent who is subject to the law's filing requirement.

If you are required to file a Conflict of Interest Questionnaire, you should file it with the Lago Vista City Secretary at 5803 Thunderbird Dr, Lago Vista, TX 78645.

105 CONTRACT AWARD AND EXECUTION

105.1 INTRODUCTION

The OWNER will attempt to award the Contract within 90 days after the opening of proposals. The award, if made, shall be to the lowest responsible bidder; but in no case shall the award be made until after investigations are made as to the responsibility of the bidder to whom it is proposed to award the Contract. The City will make decision based on physical location of the CONTRACTOR's business, whether bid amount falls within 3% of lowest bid, and including but not limited to contractors experience and financial accountability. If awarded the Contract, the bidder shall execute the Contract and furnish the required bonds and evidence of insurance within 10 calendar days after receipt of the awarded Contract.

105.2 CONTRACT AWARD

Owner reserves the right to reject any or all Bids, including without limitation the rights to reject any or all nonconforming, unresponsive, unbalanced or conditional Bids, and to reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the Bid is not responsive, or the Bidder is unqualified, or of doubtful financial ability, or fails to meet any other pertinent standard or criteria established by Owner. Owner also reserves the right to waive all informalities not involving price, time or changes in the Work and to negotiate contract terms other than price with the Successful Bidder.

In evaluating Bids, Owner will consider the qualifications of Bidders, whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.

Owner also may consider the operating costs, maintenance requirements, performance date and guarantees of major items of materials and equipment proposed for incorporation in the Work when such data is required to be submitted prior to the Notice of Award.

Owner may conduct such investigations as Owner deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of Bidders and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents to Owner's satisfaction within the prescribed time.

By submitting a bid for the project described in these Instructions to Bidders, each bidder agrees to the determination of the low bidder and payment procedures described in the contract documents and each bidder further agrees that he is not, and will not be disadvantaged in any way by these bid evaluation procedures and/or subsequent bid award and/or payment procedures.

When Owner gives a Notice of Award to the Successful Bidder, it will be accompanied by the required number of unsigned counterparts of the Agreement with all other written Contract Documents attached. Within fifteen days thereafter, Contractor will sign and deliver the required number of counterparts of the Agreement and attached documents to Owner with the required Bonds. If Owner does not request a specific number of counterparts, the Contractor will sign and deliver three (3) copies. Within ten days thereafter, Owner shall deliver one fully signed counterpart to Contractor. Each counterpart is to be accompanied by a complete set of the Drawings with appropriate identification.

105.3 CONTRACTOR'S WARRANTIES AND UNDERSTANDING

In consideration of, and to induce the award of this Contract to it, the CONTRACTOR represents and warrants:

1. That it is financially solvent, and sufficiently experienced and competent to perform the work.
2. That the facts stated in the proposal and the information given by it pursuant to the bidding documents is true and correct in all respects.
3. That has read, understood and complied with all the requirements set forth in the bidding documents.
4. That it is familiar with and understands all laws and regulations applicable to the work.
5. Unless otherwise specifically provided for in the Contract documents, the CONTRACTOR shall do all the work and shall furnish all the tools, equipment, machinery, materials, labor and appliances, except as herein otherwise specified, necessary or proper for performing and completing the work required by this Contract, in the manner and within the time herein prescribed.

105.3.A. Contractor Site Visit

By executing the Contract, the CONTRACTOR represents that it has visited the site of work, has fully familiarized itself with the local and on-site conditions under which the work is to be performed and has correlated its observation with the requirements of the Contract documents. In addition, the CONTRACTOR represents that it has satisfied itself as to subsurface conditions at the site of the work. Information, data and representations contained in the Contract documents pertaining to the conditions at the site, including subsurface conditions, are for information only and are not warranted or represented in any manner to accurately show the conditions at the site of the work. The CONTRACTOR agrees that it shall make no claims for damages; additional compensation or extension of time against the OWNER because of encountering actual conditions in the course of the work, which vary or differ from conditions or information, contained in the Contract documents. Except as provided in *Site Preparation* section, Existing Structures, Facilities and Appurtenances, all risks of differing subsurface conditions shall be borne solely by the CONTRACTOR.

105.3.B. Contractor Employee Wages

Contractor hereby acknowledges and agrees that Contractor and each subcontractor are responsible for complying with the applicable provisions of Chapter 2258 of the Texas Government Code regarding the payment of prevailing wage rates. Contractor and each subcontractor shall pay wages to persons performing labor in connection with this Contract in an amount that is not less than the applicable prevailing wage rates for such workers. The Contractor shall forfeit as a penalty to Owner sixty dollars (\$60.00) for each laborer, workman or mechanic employed for each calendar day, or portion thereof, such laborer, workman or mechanic is paid less than said stipulated rate for any work done under this Contract by the Contractor or by any subcontractor under Contractor. Owner may withhold additional funds as appropriate when confronted with wage rate violations.

105.4 BONDS

All Proposals shall be accompanied by a certified cashier's check (or BID BOND) upon a national or state bank in the amount of five percent (5%) of the Total Maximum Bid Price payable without recourse to City of Lago Vista, or a Bid Bond in the same amount from a reliable Surety company as a guarantee that Bidder will enter into a contract and execute Performance Bond within ten (10) days after Notice of Award of Contract to him.

If the Contract amount is greater than \$25,000 but less than or equal to \$100,000, only a Payment Bond in 100% of the Contract amount is mandatory; provided, however, that the bidder receiving the award may elect to furnish a Performance Bond in the same amount if the bidder so chooses. Provided however, if the Contract price is less than \$50,000.00, the Bidder shall have the option of providing a Letter of Credit in lieu of a Payment Bond, said Letter of Credit to be in a form acceptable to City of Lago Vista.

If the amount of the Contract, including OWNER-accepted alternates and allowances, if any, is greater than \$100,000, Performance and Payment Bonds in amount of 100% of the Contract amount are mandatory and shall be provided by the bidder receiving the award.

If the Contract amount is less than \$50,000, the bidder receiving the award may elect not to provide Performance and Payment Bonds, or a Letter of Credit; provided that in such event, no money will be paid to the CONTRACTOR until final completion and acceptance of all work by OWNER. If the bidder receiving the award elects to provide Performance and Payment Bonds in 100% of the Contract amount, progress payments will be disbursed in accordance with the applicable contract provisions. CONTRACTOR shall not begin any Work on this Project until all bonds and required insurance have been furnished by Contractor and approved by Owner. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents.

All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as

published in Circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

105.4.A. Surety Bonds

With the execution and delivery of the Contract, the CONTRACTOR shall furnish and file with the OWNER in the amounts herein required, the surety bonds specified hereunder. Without exception, the OWNER'S bond forms must be used, and exclusive venue for any lawsuit in connection with such bonds shall be specified as the county in which the OWNER's principal office is located. Such surety bonds shall be in accordance with the provisions of Texas Government Code, Chapter 2253, as amended, and Article 7.19-1 of the Insurance Code, as amended. These bonds shall automatically be increased by the amount of any change order or supplemental agreement which increases the Contract price with or without notice to the surety, but in no event shall a change which reduces the Contract amount reduce the penal amount of such bonds. If performance and payment bond forms are included in the bid documents, these forms shall be used with this Contract.

All sureties must be listed as approved sureties by the U.S. Department of Treasury. In the event any surety on the bonds becomes insolvent or is otherwise unable to perform its obligations under the bonds, the CONTRACTOR shall provide substitute bonds or equivalent security satisfactory to the OWNER to protect the interests of OWNER and of persons furnishing labor and materials in the prosecution of the Work.

105.4.B. Performance Bond

A good and sufficient bond in an amount not less than 100-percent of the approximate total amount of the Contract, as evidenced by the proposal tabulation, or, conditioned on the faithful performance of the work in accordance with the plans, specifications and Contract documents, including performance of any guarantees or warranties required by OWNER, and including any extensions thereof, for the protection of the OWNER. This bond shall provide for the repair and/or replacement of all defects due to faulty materials and workmanship that appear within a period of one year from the date of completion and acceptance of the improvement by the OWNER or such lesser or greater period as may be designated in the Contract documents.

105.4.C. Payment Bond

Bond shall be in an amount not less than 100-percent of the approximate total amount of the Contract, as evidenced by the proposal tabulation, or otherwise solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the prime CONTRACTOR, or a subcontractor to supply public work labor or material.

105.4.D. Maintenance Bonds

If required, Contractor shall provide a Maintenance Bond in the amount of 100 percent of the Contract Price. This Bond shall become effective on the date of Substantial Completion for all or any part of the project, and shall remain in effect for a period of two (2) years after the date of Substantial Completion for any roadway work, or any other work as indicated in the contractual documents, except as provided otherwise by Laws or Regulations. Surety for the Maintenance Bond shall meet the same requirements as for Performance and Payment Bonds set forth in this section. Specific requirements for this Maintenance Bond shall be as established in the Agreement.

105.4.E. Additional Bonds

If at any time the OWNER is, or becomes, dissatisfied with any surety on a performance, or payment bond, the CONTRACTOR shall, within five days after notice from the OWNER, substitute an acceptable bond (or bonds), or provide an additional bond, in such form and sum as requested, and signed by such other surety or sureties as may be satisfactory to the OWNER. The premiums on such bonds shall be paid by the CONTRACTOR without recourse to the OWNER. No further payments under the Contract shall be deemed due or payable until the substitute or additional bonds have been furnished to and accepted by the OWNER.

105.4.F. Developer Bonds

In order to insure that it might not incur liabilities, the City may require, before it gives approval of the plans for development, that the owner of said development shall provide sufficient surety bond(s) to guarantee that claims against such development, in the event of default, shall be satisfied. Such bonds shall be no less than 100-percent of the Developer-CONTRACTOR contract amount.

105.4.G. Sureties

No sureties shall be accepted by the OWNER who are now in default or delinquent on any bonds or who are interested in any litigation against the OWNER. All bonds shall meet the applicable requirements of Article 7.19-1, Texas Insurance Code and Chapter 2253, Texas Government Code, shall be made on forms furnished by the OWNER, and shall be executed by not less than one corporate surety authorized to do business in the State of Texas and acceptable to the OWNER. Each bond shall be executed by the CONTRACTOR and surety. Each surety shall designate on the bond the name, address and phone number of a representative for the surety located in a county of the State of Texas acceptable to the OWNER to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such surety. The OWNER reserves the right to reject any and all sureties.

105.5 INSURANCE

Any insurance policies required under this Item may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered or otherwise negatively impacted by doing so, nor may any of the requirements or special provisions of this Item be limited or circumvented by doing so.

105.5.A. Contractor's Insurance

Without limiting any of the other obligations or liabilities of the CONTRACTOR, during the term of the Contract the CONTRACTOR and each subcontractor at its own expense shall purchase and maintain the herein stipulated minimum insurance with companies duly approved to do business in the State of Texas and satisfactory to the OWNER. Certificates of each policy shall be delivered to the OWNER before any work is started, along with a written statement from the issuing company stating that said policy shall not be canceled, non-renewed or materially changed without 30 days advance written notice being given to the OWNER, except when the policy is being canceled for nonpayment of premium, in which case 10 days advance written notice is required. Prior to the effective date of cancellation, the CONTRACTOR must deliver to the OWNER a replacement certificate of insurance or proof of reinstatement. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the Owner to declare the Contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the Owner. Coverage shall be of the following types and not less than the specified amounts:

1. **Workers' Compensation** as required by Texas law, with the policy endorsed to provide a waiver of subrogation as to the OWNER; employer's liability insurance of not less than \$500,000 for each accident, \$100,000 disease - each employee, \$500,000 disease - policy limit.
Contractor hereby represents to the Owner that all employees of the Contractor who will provide services on the Project will be covered by worker's compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Texas Worker's Compensation Commission, Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

The policy shall contain the following endorsements in favor of Owner:

- a. Waiver of Subrogation, form WC 420304; and
- b. 30-day Notice of Cancellation, form WC 420601.

The following is the form of notice of worker's compensation coverage prescribed by the Texas Worker's Compensation Commission. Pursuant to Section 110.110(d)(7), this notice must be printed with a title in at least 30-point bold type, and text in at least 19-point normal type, and shall be in both English and Spanish and any other language common to the worker population.

The Contractor shall contractually require each person with whom it contracts to provide services on the Project to Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of the Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the Project. That person or entity shall provide prior to beginning work a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project. This section's intent is to apply all requirements set forth for Contractor to all subcontractors, whether entities or persons with whom the CONTRACTOR has entered into a contract.

REQUIRED WORKER'S COMPENSATION COVERAGE

"The law requires that each person working on this site or providing services related to this construction project must be covered by worker's compensation insurance. This includes persons providing, hauling, or delivering equipment or materials, or providing labor or transportation or other service related to the project, regardless of the identity of their employer or status as an employee." "Call the Texas Worker's Compensation Commission at (512) 440-3789 to receive further information on the legal requirement for coverage, to verify whether your employer has provided the required coverage, or to report an employer's failure to provide coverage."

2. **General liability insurance**, including independent CONTRACTOR'S liability, completed operations and contractual liability, covering, but not limited to, the liability assumed under the indemnification provisions of this Contract, fully insuring CONTRACTOR'S (or subcontractor's) liability for injury to or death of OWNER'S employees and third parties, extended to include personal injury liability coverage with damage to property of third parties, with minimum limits as set forth in the Contract Documents. Contractor's Liability Insurance shall also include completed operations and product liability coverage and eliminate the exclusion with respect to property under the care, custody and control of Contractor:
 - a. General Aggregate (Except Products -Completed Operations) of \$100,000;
 - b. Each Occurrence Bodily Injury of \$300,000;
 - c. Property Damage Each Occurrence of \$25,000. Property Damage liability insurance will provide Explosion, Collapse and Underground coverage where applicable.
 - d. OWNER listed as an additional insured, endorsement CG 2010.
 - e. 30-day notice of cancellation in favor of Owner, endorsement CG 0205.
 - f. Aggregate limits of insurance per project, endorsement CG 2503.
 - g. Waiver of Transfer of Recovery against Others in favor of Owner, endorsement CG 2404.
 - h. Independent Contractors coverage.
3. **Business Automobile Liability Insurance**, covering owned, hired, and non-owned vehicles, with a bodily injury (including death) minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability each accident. Such insurance shall include coverage for loading and unloading hazards. The policy shall contain the following endorsements in favor of Owner:
 - a. Waiver of Subrogation endorsement TE 2046A;
 - b. 30-day Notice of Cancellation endorsement TE 0202A; and
 - c. Additional Insured endorsement TE 9901 B, naming City of Lago Vista, its Aldermen, officers, officials and employees as additional insured.
4. **Owner's Liability Insurance**: CONTRACTOR shall obtain, pay for and maintain at all times during the prosecution of the work under this Contract an OWNER's protective liability insurance policy naming the OWNER and the Design Engineer as insures for property damage and bodily injury, which may arise in the prosecution of the work or CONTRACTOR'S operations under this Contract. Coverage shall be on an "occurrence" basis, and the policy shall be issued by the same insurance company that carries the

CONTRACTOR's liability insurance with a combined bodily injury and property damage minimum limit of \$600,000 per occurrence and \$1,000,000 aggregate.

5. **"Umbrella" Liability Insurance:** If required by OWNER, CONTRACTOR shall obtain, pay for and maintain umbrella liability insurance during the Contract term, insuring CONTRACTOR for an amount of not less than \$1,000,000 per occurrence combined limit for bodily injury and property damage that follows form and applies in excess of the primary liability coverage required hereinabove. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted. OWNER and Engineer shall be named as additional insurers.
6. **Railroad Protective Insurance:** When required in the Special Provisions, CONTRACTOR shall obtain, maintain and present evidence of railroad protective insurance (RPI). The policy shall be in the name of the railroad company having jurisdiction over the right-of-way involved. The minimum limit of coverage shall meet the specifications provided by the railroad company. The OWNER shall specify the amount of RPI necessary.

105.5.B. Insurance Requirements

Insurance to provide protection from claims set forth below which may arise out of or result from CONTRACTOR's performance and furnishing of the Work and CONTRACTOR's other obligations under the Contract Documents, whether it is to be performed or furnished by CONTRACTOR, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or by anyone for whose acts any of them may be liable. Insurance furnished by the CONTRACTOR shall be in accordance with the following requirements:

1. Any policy submitted shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements to be fulfilled by the CONTRACTOR. The OWNER'S decision thereon shall be final.
2. Policies are to be written through companies duly licensed to transact that class of insurance in the State of Texas.
3. All liability policies required herein shall be written with an "occurrence" basis coverage trigger.
4. Companies issuing the insurance policies and CONTRACTOR shall have no recourse against the OWNER for payment of any premiums or assessments for any deductibles, as all such premiums and deductibles are the sole responsibility and risk of the CONTRACTOR.
5. Approval, disapproval or failure to act by the OWNER regarding any insurance supplied by the CONTRACTOR (or any subcontractors) shall not relieve the CONTRACTOR of full responsibility or liability for damages and accidents as set forth in the Contract documents. Neither shall the bankruptcy, insolvency or denial of liability by the insurance company exonerate the CONTRACTOR from liability.
6. No special payments shall be made for any insurance that the CONTRACTOR and subcontractors are required to carry; all are included in the Contract price and the Contract unit prices.
7. The CONTRACTOR shall retain all required certificates of insurance for the duration of the project and for one year thereafter and shall have the responsibility of enforcing insurance requirements among its SUBCONTRACTORS. The CITY shall be entitled, upon request and without expense, to receive copies of these certificates.

105.5.C. Owner's Property Insurance

OWNER shall not be responsible for purchasing and maintaining any property insurance to protect the interests of CONTRACTOR, Subcontractors or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount, will be borne by CONTRACTOR, Subcontractor or others suffering any such loss and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

If CONTRACTOR requests in writing that other special insurance be included in the property insurance policies, OWNER shall, if possible, include such insurance, and the cost thereof will be charged to CONTRACTOR by appropriate Change Order or Written Amendment. Prior to commencement of the Work at the site, OWNER shall in writing, advise CONTRACTOR whether or not such other insurance has been procured by OWNER.

105.6 CONTRACT EXECUTION

The CONTRACTOR shall within 10 business days after receipt of the Contract sign the necessary agreements entering into the required Contract with the OWNER. The failure of the CONTRACTOR to execute the Contract or provide the required statutory surety bonds within 10 business days after the Contract is received shall constitute a breach of its proposal and the OWNER may annul the award and retain the proceeds of the bid security. In the event the OWNER should re-advertise for bids, the defaulting CONTRACTOR may not be eligible to bid.

105.6.A. Intent of Contract Documents

The intent of the documents, unless otherwise specifically provided, is to produce complete and finished work, which the CONTRACTOR undertakes to do in full compliance with the Contract documents. It is not intended to mention every item of work in the specifications that can be adequately shown on the drawings, nor is it to show on the drawings all items of work described or required by the specifications. All materials or labor for work shown on the drawings or reasonably inferable therefrom as being necessary to produce a finished job shall be provided by the CONTRACTOR whether or not same is expressly covered in the specifications. No verbal conversation, understanding or agreement with any officer or employee or agent of the OWNER, either before or after the execution of the Contract, shall affect or modify any of the terms, conditions or obligations contained in the Contract documents.

105.6.B. Notice to Proceed

Upon OWNER receipt of the executed Contract and the required insurance and surety bonds, a notice to proceed shall be issued by the OWNER indicating the date upon which the Contract time shall start and the projected date of completion. The OWNER will attempt to provide the work order within the time specified in the plans. The CONTRACTOR shall commence work within 10 days from the date specified in the written work order. No work shall commence before the notice to proceed has been issued. Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to ENGINEER any conflict, error, ambiguity or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any Work affected thereby; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents, unless CONTRACTOR knew or reasonably should have known thereof.

105.6.C. Delay of Contract

The CONTRACTOR shall not be entitled to any claim for damages due to delay in the award or work order. If the CONTRACTOR encounters any delay occasioned by the OWNER's failure or inability to obtain right-of-way or is delayed by the relocation or removal of any of the utilities or other installations of similar kind, the CONTRACTOR shall not be entitled to any claim for damages by virtue of any delay. Should the OWNER unreasonably delay the issuance of the work order through no fault of the CONTRACTOR, the CONTRACTOR shall be entitled only to an equitable extension of Contract time, the Contract amount to remain unchanged.

- 1. Force Majeure:** A delay in the completion of the Work that arises from one or more of the following events shall be considered an excused delay provided notice is given as provided herein: unforeseeable causes beyond the control and without the fault or negligence of the Contractor or its subcontractors or suppliers, including but not restricted to, acts of God, acts of the public enemy, acts of terrorism, acts of federal, state or local government in its sovereign capacity, acts of Owner, fires, floods, epidemics, quarantines, freight embargoes, unusually severe weather (excluding delays caused by above-average but not excessive rainfall), or delays of Owner as described in subsections below, delays of subcontractors or suppliers at any time arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or subcontractors or suppliers performing Work under this Contract (provided, however, that failure to order supplies, materials or equipment when shortages are known or expected, in time to perform the Work in accordance with the Contract Documents, is not excused.)

The Contractor, within a reasonable period of time, but in no event more than 14 days from the beginning of any such delay (unless Contracting Officer grants a further period of time), notifies Contracting Officer or OWNER in writing of the causes of delay to enable Owner to investigate and document the cause and duration of the delay. The Contractor shall submit with each application for payment a "Time Extension Request" form (provided by the Project Manager) documenting any requests for Contract time extension. The form shall be submitted even if no time extension is requested.

2. **Delay for Weather Conditions:** The Contract Time set out in the Contract Documents, including Substantial Completion Date and Final Completion Date, are deemed to include normal weather conditions at the Project site. The Contractor may be entitled to an excused delay due to unusual and severe weather conditions if the weather conditions are (a) excessive and severe for the period of time, (b) could not have been reasonably anticipated, (c) had an adverse effect on the scheduled construction, and (d) Contractor reasonably performed other Work on the Project in place of the scheduled work and still incurred a delay in the construction schedule. In order to be entitled to a delay on this basis, Contractor must provide OWNER with notice of the delay (as provided herein) and data substantiating the claim, including weather information issued by the National Oceanic and Atmospheric Administration ("NOAA") for the City in which the Project is located (or if such information is not available for the Project location, then for the closest City) which shows that the weather conditions were in excess of those that are normal for the site, and job logs that indicate impacted work and estimated effect of the weather. Unless the parties agree to a different method of determining weather conditions, weather information produced by NOAA will be used to determine normal and abnormal weather conditions at the Project site.

In order to be entitled to a Time extension due to weather conditions, Contractor must provide OWNER with notice of the adverse condition and its impact on the construction schedule as soon as Contractor becomes aware that a delay will or is likely to occur, to enable Owner to investigate and document the conditions. Such notice will be provided in writing as soon as reasonably possible but in no event later than 14 days after the date of the commencement of the weather condition giving rise to the claim for the delay.

3. **Delay Caused by Owner:** If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or by Engineers (other than an excused delay), or of a separate contractor employed by the Owner, then the Contractor shall promptly notify the OWNER, in writing, of such delay, to enable Owner and/or the Engineers to take action to reduce or eliminate the delay. Contractor must notify Owner and Project Manager as soon as possible after it becomes aware of the condition that it believes has caused or will be likely to cause a delay, but in no event less than 7 days after it becomes aware of such condition. Contractor's failure to do so will constitute a failure to mitigate damages and a waiver of Contractor's claim as provided under the terms of the Contract Documents. Owner's proper exercise of any of its remedies under the Contract Documents, including, but not limited to, remedies of suspension of the Work or requirement for correction or re-execution of any defective Work, shall not under any circumstances be construed as constituting a delay to Contractor's performance of the Work.

In the event of an excused delay under this Section, the Contractor shall submit with each application for payment a "Time Extension Request" form (provided by the OWNER) documenting any requests for Contract Time extension. The form shall be submitted even if no time extension is requested. Project Manager will provide Contractor with a reasonable period of extension of the Contract Time as may be equitable, provided that all conditions for obtaining an extension are met. The time extension will be set out in a Change Order. Any such extension of the Contract Time shall be net of any unexcused delays caused by or due to the fault of Contractor or anyone performing Work under the Contract.

Any provision of the Contract Documents to the contrary notwithstanding, it is expressly agreed that the extension of the Contract Time shall be Contractor's sole remedy for any delay unless the same shall have been

caused by acts constituting interference by the Owner which interfered with Contractor's performance of the work, and then only to the extent that such acts continue after Contractor's written notice to Owner of such interference. Owner's exercise of any of its rights or remedies under the contract documents, including the right to suspend the Work or to require correction or re-execution of any defective Work shall not under any circumstances be construed as interference with Contractor's performance of the Work.

105.6.D. Modification of Contract

The OWNER reserves the right to make changes in the quantities of the work, as may be considered necessary or desirable and such changes shall not be considered as waiving or invalidating any conditions or provisions of the Contract or bonds. The CONTRACTOR shall perform the work as altered, whether increased or decreased, and no allowances shall be made for anticipated profits.

1. **Increased or Decreased Quantities of Work:** The OWNER reserves the right to decrease the work under this Contract. Payment to the CONTRACTOR for the Contract items shall be made for the actual quantities of work performed and material furnished at the unit prices set forth in the Contract, except as provided below:
 - a. When the quantity of work to be done or of materials to be furnished under any major item of the Contract is more than 125 percent or less than 75 percent of the quantity stated in the Contract, then either party to the Contract, upon demand, shall be entitled to negotiate for revised consideration on the portion of work above 125 percent of the quantity stated in the Contract.
 - b. Any revised consideration shall be paid for as is hereinafter provided under Payment for Extra Work Item. The foregoing notwithstanding, the total original Contract amount shall not be increased more than 25 percent; the CONTRACTOR, by submission of a bid and execution of the Contract, is deemed to consent to the OWNER's right to reduce the total original Contract amount by more than 25 percent. This would not be applicable to the Additional Bid Items which are used on a per need basis. The OWNER may increase or decrease these items without reserve.
2. **Alteration of Plans and Specifications:** The OWNER reserves the right to make such changes in the plans and specifications and in the character of the work as may be necessary or desirable to insure completion in the most satisfactory manner, provided such changes do not materially alter the original plans and specifications or change the general nature of the work as a whole. Such changes shall not be considered as waiving or invalidating any condition or provision of the Contract and bonds. Such changes shall be issued by the Engineer.
3. **Extra Work:** When any work is necessary to the proper completion of the project and for which no prices are provided for in the proposal and Contract, the CONTRACTOR shall do such work, but only when and as ordered in writing by the Engineer. Extra Work is further explained in Item for Payment of Extra Work and Item for Disputed Work and Claims for Additional Compensation.
4. **Differing Site Conditions:** During the progress of the work, differing subsurface or latent physical conditions may be encountered at the site. The two types of differing site conditions are defined as: differ materially from those indicated in the Contract and unknown physical conditions of an unusual nature differing materially from those ordinarily encountered or not anticipated and generally recognized as inherent in the work provided for in the Contract. Engineer shall be notified if differing site conditions are encountered. Unless directed otherwise, suspend work on the affected items and leave the site undisturbed. The Engineer shall make a determination whether differing site conditions exist. CONTRACTOR has the right to investigate site, perform any form of exploratory search at own expense prior to bids opening, provided that such investigation does not constitute a nuisance to OWNER or public, interrupt routine operations, or cause adverse impact of any form. The OWNER, or its representative, has the right to reject any differing site conditions claim if such conditions could have been determined with prior investigation by the CONTRACTOR.

The Project Manager/Engineer will observe the Work for general compliance with the Contract Documents. The Project Manager/Engineer will initiate Change Order Requests and evaluate the Contractor's proposed cost and related time, and develop Construction Change Directives. The Contractor shall provide proposed costs and time for Change Order Requests as soon as possible, but not more than 20 days, after receipt of the Change Order request from the OWNER. The OWNER will conduct inspections to determine the date or dates of Substantial Completion and the date of Final

Completion. The Project Manager in conjunction with the Design Engineer will review, upon receipt from the Contractor, the as-built drawings, written warranties, owner's manuals and related documents required by the Contract.

5. **Finality of Change Orders:** In addition to the OWNER, the CONTRACTOR shall sign the Change Order Documents to verify the terms and conditions established by the Change Order; however, failure or refusal of the CONTRACTOR to sign a Change Order shall not relieve the CONTRACTOR of its obligation to execute the proposed changes in accordance with this Item and the other terms and provisions of this Contract. Each Change Order shall be specific and final as to prices and the extension of time, if any, and no reservations or other provisions allowing for future additional money or time as a result of the particular changes identified and fully compensated in the Change Order.

105.6.E. Change Orders

Owner and Contractor may at any time, without notice to or approval of the Surety, by written Change Order hereto, make changes in the Work, the Contract Amount, the Contract Time, or otherwise modify the Contract. If applicable unit prices are contained in the Agreement, the Owner may require the Contractor to proceed with the desired unit prices specified in the Contract; provided that in case of a unit price contract the net value of all changes does not increase the original total amount of the agreement by more than twenty-five percent (25%) or decrease the original total amount by eighteen percent (18%).

Any provision in the Contract Documents to the contrary notwithstanding, in the event Contractor receives an order, directive, instructions, or other communication regarding the Work from Owner or Engineers that Contractor believes will result in a change in the scope of Work, the Contract Time and/or the Contract Amount, Contractor shall promptly notify the person making the request, and the OWNER that the requested change will result in an increase in the Contract Time and/or Contract Amount before undertaking the Work. Contractor may not perform the Work unless and until it receives a written Change Directive from OWNER. Failure of CONTRACTOR to follow this requirement will constitute a waiver by Contractor of the right to obtain additional time or additional payment for the work. This provision shall not apply to instructions given by Owner or Engineer in an emergency situation to prevent or address an imminent threat of injury to persons or damage to property, or action taken by Contractor in accordance with Section for Emergencies.

105.7 EXTRA WORK CLAIMS

Except where otherwise provided in the Contract Documents, claims by the CONTRACTOR, whether for damages, additional compensation, additional time or other reasons must be made by written notice to the OWNER within fourteen days after occurrence of the event or events giving rise to the particular claim. Every claim, whether for damages, additional compensation, additional time or other reasons shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind the CONTRACTOR by his or her signature) of the CONTRACTOR, verifying the truth and accuracy of the claim. Such verification shall be a condition precedent to the acceptability of any claim asserted by the CONTRACTOR. The CONTRACTOR shall be deemed to have waived any claim not made strictly in accordance with the procedure and time limits set out in this paragraph.

105.7.A. Disputed Work Compensation Claims

If the CONTRACTOR is of the opinion that:

1. Certain work necessary or required to accomplish the result intended by this Contract or certain work ordered to be done as contract work by the OWNER is actually Extra Work and not CONTRACTOR work, or
2. any determination or order of the OWNER violates the terms and provisions of this Contract.

CONTRACTOR shall promptly, either before proceeding with such work or complying with such order or determination, notify the OWNER in writing of its contentions with respect thereto and request a final determination by the OWNER. Such determination of the OWNER shall be given in writing to the CONTRACTOR. If the OWNER determines that the work in question is Extra Work and not Contract work, or that the order complained of requires performance by the CONTRACTOR beyond that required by the Contract, or violates the

terms and provisions of the Contract, thereupon the OWNER shall cause either (a) the issuance of a written order covering the Extra Work as provided for Change or Modification of Contract hereof, or (b) the determination or order complained of to be rescinded or so modified so as to not require performance beyond that required by the terms and provisions of the Contract.

If written notice is not given, the Contractor waives the right to additional compensation unless the circumstances could have reasonably prevented the Contractor from knowing the cost impact before performing the work. Notice of the request and the documentation of the costs will not be construed as proof or substantiation of the validity of the request. Submittal of the request shall be in sufficient detail to enable the Engineer to determine the basis for entitlement, adjustment in the number of working days specified in the Contract, and compensation.

If the OWNER determines that the work in question is Contract work and not Extra Work, or that the determination or order complained of does not require performance by the CONTRACTOR beyond that required by the Contract or violate the terms and provisions of the Contract, the OWNER shall direct the CONTRACTOR to proceed, and the CONTRACTOR must promptly comply. In order to reserve its right to claim compensation for such work resulting from such compliance, however, the CONTRACTOR must, within fourteen (14) days after receiving the OWNER'S determination and direction, notify the OWNER in writing that the work is being performed, or that the determination and direction is being complied with. The CONTRACTOR must note on notice if the claimed Extra Work is still under protest or if the claim has been dropped by the CONTRACTOR. If the Extra Work claim has been dropped, the CONTRACTOR may not reinstate that same claim. Payment, if any is due, shall be made when the OWNER makes a final determination regarding the merit of the CONTRACTOR's protest.

If the CONTRACTOR fails to so appeal to the OWNER for a determination or, having so appealed, should the CONTRACTOR thus fail to notify the OWNER in writing of its protest, the CONTRACTOR shall be deemed to have waived any claim for extra compensation of damages therefore. No oral appeals or oral protests, no matter to whom made, shall be deemed even substantial compliance with the provisions of this item.

A delay of the CONTRACTOR due to a court order against the OWNER, or due to the OWNER's failure to secure right-of-way at the time required or because of a conflict of a utility with the work, shall not be cause for additional compensation for damages sustained by the CONTRACTOR, but may be a cause for extension of Contract working time only.

Unless the aforesaid requirements and conditions have been complied with by the CONTRACTOR, the OWNER shall be released from all claims arising under, relating to or by reason of this Contract, except for the sums to be due under the payment provisions of this Contract. It is further stipulated and agreed that no conduct on the part of the OWNER or any agent or employee of the OWNER shall ever be construed as a waiver of the requirements of this section, when such requirements constitute an absolute condition precedent to any approval of any claim for extra compensation, notwithstanding any other provisions of the Contract documents; and in any action against the OWNER to recover any sum in excess of the Contract amount, the CONTRACTOR must allege and prove strict compliance with the provisions of this section. The CONTRACTOR shall, upon notice from the OWNER, produce for examination and audit at the CONTRACTOR's office, by the representatives of the OWNER, all its books and records showing all of its acts and transactions in connection with contractual performance as well as relating to or arising by reason of the matter in dispute.

The cost for extra work performed by Contractor or Subcontractor will be determined by either: 1) an agreed lump sum, 2) an agreed unit price, or 3) an actual field cost as agreed to by the Owner.

The Contractor and Subcontractor will be allowed mark-up percentages for overhead and profit for changes in the Work as described below, unless the Agreement sets forth different provisions for determining overhead and profit. In the event of a conflict, the provisions of the Agreement shall control. The maximum allowable mark-up percentage of the actual cost of the Work will be 15% on the first \$20,000 and 10% on the balance over \$20,000.

If subcontracted work is involved, the Contractor will include with Contractor's cost proposal a detailed breakdown for the Subcontractor in accordance with the above requirements for the Contractor. The Subcontractor will be allowed the same mark-up percentages as provided above for the Contractor. The Contractor will be allowed the following mark-up on subcontracted work: a maximum of 8% on the first

\$30,000, and 5% on the balance over \$30,000. Under no circumstances will the OWNER be obligated to accept any change orders requested by the contractor.

If the scope of Work is reduced by the Owner such that the Contractor will not incur costs for deleted Work, the Contractor will credit those costs to the Owner and retain only Contractor's overhead and profit incurred prior to notification of Owner's reduction of the scope of the Work. If extra Work is requested by the Owner, the Contractor will be allowed to add to Contractor's actual costs a percentage as noted above to cover Contractor's overhead and profit. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

105.7.B. Additional or Extra Work Compensation Claims

While the CONTRACTOR or any subcontractor is performing Extra Work or complying with a determination or order under protest in accordance with Disputed Work and Claims for Additional Compensation Item (the cost of which shall also be determined by the method set out as aforementioned), the CONTRACTOR shall daily furnish the Engineer or other representative of the OWNER at the project site with three copies of verified statements showing:

1. The name and number of each worker, foreman, timekeeper, mechanic, or laborer employed on Extra Work or engaged in complying with such determination or order, the character of Extra Work each is doing and the wages paid to him or her, including the rate and amount of payroll taxes, contribution for insurance and federal social security.
2. The nature, cost and quantity of any materials, supplies, tools, plant or construction equipment furnished or used in connection with the performance of the Extra Work or in complying with such determination or order, and from whom purchased or rented.

A copy of such statements shall be signed by the OWNER's representative, noting thereon any items in question, and shall be returned to the CONTRACTOR within two working days after submission. This signature shall not be construed as the OWNER's agreement and acceptance of items not questioned since all items are subject to subsequent review and audit by OWNER representatives. The CONTRACTOR and its subcontractors, when required by the OWNER, must also produce for inspection and audit by designated OWNER representatives, any and all of their books, vouchers, records, daily job diaries and reports, canceled checks, etc. showing the nature and quantity of labor, materials and equipment actually used in the performance of the Extra Work; the amounts expended therefore; and the costs incurred for insurance premiums and other items of expense directly chargeable to such Extra Work. The CONTRACTOR must permit the OWNER'S representatives to make extracts there from or copies thereof as may be desired. Failure of the CONTRACTOR to comply strictly with these requirements shall constitute a waiver of any claim for extra compensation on account of the performance of such Extra Work. OWNER (or representative) may require the CONTRACTOR at that time to sign document that they are not willing to provide all required information.

105.7.C. Cleanup

Upon completion of the work, CONTRACTOR shall remove litter, debris, objectionable material, temporary structures, excess materials, and equipment from the work locations. Clean and restore property damaged by the Contractor's operations during the prosecution of the work. Leave the work locations in a neat and presentable condition. This work will not be paid for directly but will be considered subsidiary to Items of the Contract. Remove from the right of way cofferdams, construction buildings, material and fabrication plants, temporary structures, excess materials, and debris resulting from construction.

Where work is in a stream, remove debris to the ground line of the bed of the stream. Leave stream channels and rights of way in a neat and presentable condition. Clean structures to the flow line or the elevation of the outfall channel, whichever is higher. Dispose of all excess material in accordance with federal, state, and local regulations.

The Contractor shall remove all spillage and tracking arising from the performance of the Work from such areas, and shall establish a regular maintenance program of sweeping and hosing to minimize accumulation of dirt and dust upon such areas. Contractor's construction of the Work shall include removal of spatters and spills from materials and landscaping shall be neat and plants and grass installed as part of the Project shall be healthy and in good condition, and exterior surfaces shall be clean, neat, and free of debris. If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

The aforementioned site cleanup shall be done regardless whether there is a pending claim against the OWNER. The OWNER reserves the right to withhold a minimum payment of 10 (ten) percent of total contract price up to a maximum of 25 (twenty five) percent of total contract price from the contractor if OWNER has deemed the site improperly clean, safe, or fully finished per design drawings, general specifications, and special condition specifications.

106 CONTROL OF WORK

106.1 INTRODUCTION

This section shall be used in reference to coordination between different entities whether implicitly or explicitly involved or named into contractual documents. With exception to litigations and claims, the following nomenclature shall be used as a guide in general coordination with entities and peoples such as but not limited to the OWNER, inspectors, and franchise utility companies.

106.2 CONTRACT DOCUMENTS

106.2.A. Authority of Engineer

The Engineer has the authority to observe, test, inspect, approve, and accept the work. The Engineer decides all questions about the quality and acceptability of materials, work performed, work progress, Contract interpretations, and acceptable Contract fulfillment. The Engineer has the authority to enforce and make effective these decisions. The Engineer acts as a referee in all questions arising under the terms of the Contract. The Engineer's decisions will be final and binding.

The Project Manager does not have the authority to execute Change Orders or agree to changes in the Work which affect the Contract Amount or the Contract Time. These changes must be approved by the City Engineer or City Manager and in some cases the City Council. The City may delegate any part of his respective functions hereunder, but the Contractor will be notified in writing of any such delegation and the extent thereof.

106.2.B. Priority of Contract Documents

The Contract documents are complementary and what is called for by any one shall be as binding as if called for by all. In case of conflict between Contract documents, priority of interpretation shall be in the following order: OWNERS written changes, signed agreement (or Contract), performance and payment bonds, proposal, special provisions (or conditions), advertisement for bids (or invitation to bidders, or request for proposals), project (or Contract) drawings, Technical Construction Standard Specifications, and Standard Details.

106.2.C. Contract Documents and Specifications

The OWNER shall furnish the CONTRACTOR, without charge, a minimum of one copy of the Contract and any supplemental drawings and specifications reasonably necessary for the proper execution of the work. At least one copy of all drawings and specifications shall be accessible at all times to the OWNER at the job site.

The plans, the specifications, the proposal, special provisions and all supplementary documents are intended to describe a complete work and are essential parts of the Contract. All requirements occurring in any of them are binding. In cases of discrepancies, figured dimensions shall govern over scaled dimensions; plans shall govern over Standard Specifications, special provisions shall govern over both plans and Standard Specifications. All other provisions of the Standard Specifications shall remain in force.

106.2.D. Supplemental Drawings and Specifications

In order to carry out the intent of the Contract documents and to assist the CONTRACTOR in performing its work, the OWNER, after the execution of the Contract, may, by supplemental drawings, specifications or otherwise, furnish additional information or instructions as may be necessary for construction purposes.

All such supplemental drawings, specifications or instructions are intended to be consistent with the Contract documents and reasonably inferable therefrom. The OWNER, or design Engineer, may charge the CONTRACTOR for submittal of additional copies deemed not necessary to complete the work per the contractual documents. no The OWNER shall not charge extra costs on a claim that particular supplemental drawings, specifications or instructions differ from the requirements of the Contract documents, incurring extra costs, unless the CONTRACTOR has first brought the matter, in writing, to the OWNER'S attention for adjustment before proceeding with the work covered by such.

If the OWNER shall decide that there is no departure from the requirements of the Contract documents, the CONTRACTOR shall then proceed with the work as shown, specified or directed. If the OWNER shall decide that extra work is involved, OWNER shall so modify the supplemental drawings, specifications or instructions to

eliminate the extra work, or cause a written change order to be issued in accordance with Item for Change or Modification of Contract herein.

106.2.E. Referenced Standards

All referenced State, Federal, and National standards, their most current version in effect, unless specifically noted otherwise shall be followed unless they fall in direct contradiction to the standards written herein. In case of conflict the CONTRACTOR shall notify the OWNER and obtain guidance prior to proceeding with work. Referenced standards may include, but are not limited to, publications such as TxDOT Standard Specifications for Construction of Highways, Streets and Bridges, TxDOT Manual of Testing Procedures, Federal Specifications, ASTM designations, AWWA standards, and standards of other professional societies and associations.

106.2.F. Contract Document Errors and Corrections

The Engineer shall be permitted to make such corrections or interpretations as may be necessary for the fulfillment of the intent of the Contract documents. The CONTRACTOR shall not take advantage of any apparent errors, omissions or discrepancies in the drawings or specifications. In case of any errors, omissions or discrepancies in the drawings or specifications, the CONTRACTOR shall promptly submit the matter to the OWNER who, in turn, shall promptly make a determination and issue the necessary instructions in writing. Any adjustment by the CONTRACTOR without this determination and instructions shall be at the CONTRACTOR's own risk and expense. The work is to be made complete as intended by the Contract Documents.

106.2.G. Plans and Shop Drawings

The Engineer may provide working drawings to supplement the plans with all necessary details not included on the Contract plans. The CONTRACTOR shall be permitted also to provide working drawings (sometimes referred to as shop drawings) as directed in the Contract Documents to supplement the plans with all necessary details not included on the Contract plans. Working drawings shall be prepared and furnished in a timely manner and obtain approval, if required, before the beginning of the associated work. For all working drawing submittal requirements, the Engineer may allow electronic and other alternative submission procedures.

"Shop Drawings" or "working drawings" means drawings, diagrams, schedules, and other data, which are prepared for the Work by the Contractor or any Subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work. "Samples" means physical examples furnished by the Contractor to illustrate materials, equipment or workmanship, and to assist in the establishment of standards by which the Work will be judged.

Working drawings shall be submitted using United States standard measures and in the English language. The routing of submittals for review and approval will be established at the preconstruction conference. The Contractor is responsible for the accuracy, coordination, and conformity of the various components and details of the working drawings. Department approval of the Contractor's working drawings will not relieve the Contractor of any responsibility under the Contract. The work performed under this Article will not be measured or paid for directly, but will be subsidiary to pertinent Items.

- 1. Purpose:** The purpose of submittals by the CONTRACTOR is to demonstrate that the CONTRACTOR understands the design concept, and that it demonstrates its understanding by indicating which equipment and materials it intends to furnish and install, and by detailing the fabrication and installation methods it intends to use. The CONTRACTOR shall be responsible for dimensions that are to be confirmed and correlated at the job site, fabrication processes and techniques of construction, coordination of its work with that of other trades and satisfactory performance its work. The CONTRACTOR shall check and verify all measurements and review submittals prior to being submitted, and sign or initial a statement included with the submittal, which signifies compliance with plans, specifications, and dimensions suitable for the application. No portion of the work requiring submission of a shop drawing, product data or sample shall be commenced until the submittal has been approved by the Engineer. All such portions of the work shall be in accordance with approved submittals.

2. **Procedure:** With reasonable promptness and in such sequence as to cause no delay in the work or in the work of the OWNER or any separate contractor, CONTRACTOR shall submit two (2) copies of shop drawings, layouts, manufacturer's data and material schedules as may be required by the Engineer for his/her review. Submittals may be checked by and stamped with the approval of the CONTRACTOR and identified as the Engineer may require. Such review by the Engineer shall include checking for general conformance with the design concept of the project and general compliance with information given in the General Contract Documents. Indicated actions by the Engineer, which may result from his/her review, shall not constitute concurrence with any deviation from the plans and specifications unless such deviations are specifically identified by the method described below, and further shall not relieve the CONTRACTOR of responsibility for errors or omissions in the submitted data. Processed shop drawing submittals are not change orders.
3. **Shop Drawing Conflicts:** If deviations, discrepancies or conflicts between submittals and the design drawings and/or specifications are discovered, either prior to or after submittals are processed, the design drawings and specifications shall govern. Any deviation from the specified criteria shall be expressly stated in writing in the submittal. The CONTRACTOR shall not be relieved of responsibility for any deviation from the requirements of the Contract documents by the Engineer's approval of shop drawings, product data or samples unless the CONTRACTOR has specifically informed the Engineer in writing of such deviation at the time of submission and the Engineer has given written approval to the specific deviation.
4. **Shop Drawing Approval:** ENGINEER will review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals accepted by ENGINEER. ENGINEER's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. ENGINEER's review and approval will not extend to means, methods, techniques, sequences or procedures of construction (except where a particular means, method, technique, sequence or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. CONTRACTOR shall make corrections required by ENGINEER, and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by ENGINEER on previous submittals.
5. **Shop Drawing Rejection and Delays:** The CONTRACTOR shall be responsible for delays caused by rejection of the submittal of inadequate or incorrect shop drawings, product data or samples. The CONTRACTOR shall be responsible for providing all copies of approved shop drawings necessary for the construction operations. One (1) copy of the approved submittals shall be retained by the CONTRACTOR at the job site until completion of the project and shall be available per the request of the OWNER or representative.
6. **Continuation of Work:** Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submissions accepted by ENGINEER, any related Work performed prior to ENGINEER's review and approval of the pertinent submittal will be at the sole expense and responsibility of CONTRACTOR. CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by section under Claims, or as OWNER and CONTRACTOR may otherwise agree in writing.

106.3 WORKMANSHIP, WARRANTIES AND GUARANTEES

Unless otherwise expressly provided in the Contract drawings or specifications, the work shall be performed in accordance with the best modern practice with materials and workmanship of the highest quality and suitable for their purpose. The OWNER shall judge and determine the CONTRACTOR's compliance with these requirements.

106.3.A. Cooperation of Contractor

The CONTRACTOR shall cooperate with the Engineer, other Contractors, and utility and railroad companies. All work associated with fulfilling this requirement is subsidiary to the various Items of the Contract and no direct compensation will be made. Provide all information necessary to administer the Contract. Maintain at least one copy of the Contract at the work locations at all times.

Designate in writing a competent, English-speaking Superintendent employed by the Contractor. The Superintendent must be experienced with the work being performed and capable of reading and understanding the Contract. Ensure the Superintendent is available at all times and able to receive instructions from the Engineer or authorized representative and to act for the Contractor. The Engineer may suspend work if a Superintendent is not available or does not meet the above criteria.

1. **Cooperating with Utility Providers:** Use established safety practices when working near utilities. Consult with the appropriate utilities before beginning work. Notify the Engineer immediately of utility conflicts. The Engineer will decide whether to adjust utilities or adjust the work to eliminate or lessen the conflict. Unless otherwise shown on the plans, the Engineer will make necessary arrangements with the utility owner when utility adjustments are required. Use work procedures that protect utilities or appurtenances that remain in place during construction. Cooperate with utilities to remove and rearrange utilities to avoid service interruption or duplicate work by the utilities. Allow utilities access to the right of way. Immediately notify the appropriate utility of service interruptions resulting from damage due to construction activities. Cooperate with utilities until service is restored. Maintain access to fire hydrants when necessary.
2. **Cooperation between Contractors:** CONTRACTOR shall cooperate and coordinate with other Contractors working within the limits or adjacent to the limits. Cooperation shall be extended to sub-contractors, inspectors, or any other person(s) whether directly or indirectly related to the construction.
3. **Cooperating with Inspectors:** Inspectors are authorized representatives of the OWNER. Inspectors are authorized to examine all work performed and materials furnished, including preparation, fabrication, and material manufacture. Inspectors shall inform the Contractor of failures to meet Contract requirements. Inspectors may reject work or materials and may suspend work until any issues can be referred to and decided by the Engineer. Inspectors cannot alter, add, or waive Contract provisions, issue instructions contrary to the Contract, act as foremen for the Contractor, or interfere with the management of the work. Inspection or lack of inspection will not relieve the Contractor from obligation to provide materials or perform the work in accordance with the Contract. Contractor shall:
 - a. Provide safe access to all parts of the work and provide information and assistance to the Engineer to allow a complete and detailed inspection.
 - b. Give the Engineer sufficient notice to inspect the work. Work performed without suitable inspection, as determined by the Engineer, may be ordered removed and replaced at Contractor's expense.
 - c. Remove or uncover portions of finished but not inspected work as directed. Once inspected, restore work to Contract requirements. If the uncovered work is acceptable, the costs to uncover, remove, and replace or make good the parts removed will be paid for by the CONTRACTOR. If the work is unacceptable, assume all costs associated with repair or replacement, including the costs to uncover, remove, and replace or make good the parts removed. If the previously inspected and approved construction is modified or uncovered, the costs to uncover, remove, and replace or make good the parts removed will be paid for in accordance with Item for Changes in the Work.

106.3.B. Workmanship

If the OWNER notifies the CONTRACTOR in writing of defective work, the CONTRACTOR shall correct the deficiencies within fourteen (14) calendar days of the Notice at no additional cost to the OWNER. If the defective work is not corrected within fourteen (14) calendar days, or the CONTRACTOR is not making satisfactory progress (in the opinion of the OWNER) to correct the deficiencies, the OWNER may withhold future payments for All Work until the defective work has been corrected to the satisfaction of the OWNER.

106.3.C. General Warranty

CONTRACTOR warrants and guarantees to OWNER, ENGINEER and ENGINEER's Consultants that all Work will be in accordance with the Contract Documents and will not be defective. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by abuse, modification or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors or Suppliers; or normal wear and tear under normal usage.

CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents:

1. observations by ENGINEER;
2. recommendations of any progress or final payment by ENGINEER;
3. the issuance of a certificate of Substantial Completion or any payment by OWNER to CONTRACTOR under the Contract Documents;
4. use or occupancy of the Work or any part thereof by OWNER;
5. any acceptance by OWNER or any failure to do so;
6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by ENGINEER;
7. any inspection, test or approval by others; or
8. any correction of defective Work by OWNER.

Nothing written in these documents is intended to release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents. The warranty described herein binds the Contractor to repair or replace (at the option of Engineers or Owner) without cost to Owner, any Work discovered during the two year period to be out of compliance with the Contract Documents and any Work which during the two year period described herein exhibits defects in workmanship or materials or which malfunctions or fails to work correctly or in the manner intended.

The warranty provided herein will be extended by any work performed by the Contractor (or performed by the Owner or Surety in the event Contractor fails to perform its warranty obligations) in repairing or replacing non-complying or defective work or materials, so that all repaired or replaced work shall have a one year warranty from the date repairs or replacements are completed. In the event Contractor fails to comply with these provisions, Owner shall have, in addition to any other rights and remedies provided by law or the Contract Documents, the right to (1) perform the repair or replacement by its own employees or other contractor and demand reimbursement from Contractor for all amounts incurred by Owner, in which event Contractor shall pay said amounts to Owner within 30 days after demand, and/or (2) make demand on Surety to perform Contractor's obligations.

All warranties required by the Contract Documents shall include labor and materials and shall be signed by the manufacturer and/or Subcontractor as the case may be and countersigned by the Contractor. All warranties shall be delivered to the OWNER upon completion of the Work and before the submission of request for Final Payment. At the time of final completion of the Work, the Contractor agrees to assign to the Owner any and all manufacturers' warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturers' warranties.

106.3.D. Special Warranty

If within one year after final acceptance of the work by the OWNER, as evidenced by the final certificate of acceptance or within such longer or shorter period of time as may be prescribed by law or by the terms of any other applicable special warranty on designated equipment or portions of work as required by the Contract documents, any of the work is found to be defective or not in accordance with the Contract documents, the CONTRACTOR shall correct it promptly after receipt of a written notice from the OWNER to do so. This obligation shall survive termination of the Contract. The OWNER shall give such notice promptly after discovery of the condition.

The CONTRACTOR shall remove from the site all portions of the work which are defective or nonconforming and which have not been corrected unless removal is waived in writing by the OWNER.

All subcontractors', manufacturers' and suppliers' warranties and guarantees, express or implied, respecting any part of the work and any materials used therein, shall be obtained and enforced by the CONTRACTOR for the benefit of the OWNER without the necessity of separate transfer or assignment thereof, provided that if directed by the Engineer, the CONTRACTOR shall assign such warranties and guarantees in writing to the OWNER.

Any work repaired or replaced, pursuant to this section, shall be subject to the provisions of this section to the same extent as work originally performed.

106.3.E. Owner's Rights

The rights and remedies of the OWNER provided in this section are in addition to, and do not limit, any rights or remedies afforded to the OWNER by law or any other provision of the Contract documents, or in any way limit the OWNER's right to recovery of damage due to default under the Contract.

106.4 CONSTRUCTION STAKES

Unless otherwise expressly provided in the Contract drawings or specifications, the CONTRACTOR shall be responsible for all required Construction Staking associated with the project. When applicable, Costs for Construction Staking are paid under the appropriate bid item number included in the CONTRACT DOCUMENTS. In all other cases, Construction Staking is contingent to the rest of the project.

Copies of survey notes demonstrating third order level of accuracy shall be furnished to the OWNER within two weeks after the survey completion for final stakeout of the major project components. The furnished survey notes shall include the final vertical and horizontal stakeout notes for all drainage, street paving, structural, water, or sanitary sewer improvements. Alignments shall be tied to horizontal control with sufficient calls provided to delineate centerline or alignment. The location or monumentation of any real property boundaries or easements required for construction be performed by or under the direct supervision of a Registered Professional Land Surveyor in Texas as required by article 5282c of the Vernon's Texas Civil Statutes.

The CONTRACTOR is responsible for maintaining all survey control points and monuments in the construction area at all times and any costs for re-staking or re-establishing controls required shall be borne by the CONTRACTOR.

The OWNER will perform or confirm the initial and final measurement for payment and reserves the right to field verify any stakes placed, measurements for payment made and any work performed by the CONTRACTOR.

106.5 MEANS AND METHODS OF CONSTRUCTION

The OWNER'S approval of the CONTRACTOR'S means or methods of construction, or the OWNER's failure to exercise OWNER's right to prohibit such means or methods, shall not relieve the CONTRACTOR of its responsibility for the work or of its obligation to accomplish the result intended by the Contract documents; nor shall the exercise or non-exercise of such rights to prohibit create a cause of action for damages or provide a basis for any claim by the CONTRACTOR against the OWNER.

106.5.A. Drawings Conformity

All work shall conform to the lines, grades, cross-sections, and dimensions shown on the plans. Any deviation from the plans which may be required by the emergency needs of construction will be determined and authorized in writing by the OWNER.

106.5.B. Means and Methods

Unless otherwise expressly provided in the Contract drawings, specifications or bulletins, the means and methods of construction shall be such as the CONTRACTOR may choose; subject, however, to the OWNER's right to prohibit means and methods proposed by the CONTRACTOR which in the OWNER's judgment shall:

1. constitute a hazard to the work, or to persons or property, or shall violate express requirements of applicable laws or ordinances,

2. cause unnecessary or unreasonable inconvenience to the public,
3. not produce finished work in accordance with the requirements of the Contract documents,
4. not assure the work to be completed within the time allowed by the Contract.

Where the Contract drawings, specifications or bulletins do not require the use of specific means or methods of construction, sequencing of construction or a specific traffic control plan, the CONTRACTOR shall submit its proposed plan of procedure, sequencing or traffic control plan to the OWNER sufficiently in advance of the work affected to permit a reasonable time for review and comments. The sequence of construction and traffic control plan must be approved in advance by the OWNER before construction begins. Failure to submit the proposed plan within a reasonable time shall not create a claim for damages for resulting delay in the work or for damages, nor shall it be a cause for extension of working time to complete the work. CONTRACTOR further agrees to indemnify OWNER for any cause of action brought by any third party against the OWNER.

106.5.C. Construction Zone

CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by laws and Regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work. Should any claim be made by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law. CONTRACTOR shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants and anyone directly or indirectly employed by any of them from and against all claims, costs, losses and damages arising out of or resulting from any claim or action, legal or equitable, brought by any such owner or occupant against OWNER, ENGINEER or any other party indemnified hereunder to the extent caused by or based upon CONTRACTOR's performance of the Work.

1. During the progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as tools, appliances, construction equipment and machinery and surplus materials. CONTRACTOR shall leave the site clean and ready for occupancy by OWNER at Substantial Completion of the Work. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.
2. CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

106.5.D. Construction Safety

CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. All persons on the Work site or who may be affected by the Work.
2. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the site.
3. All other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation or replacement in the course of construction.

CONTRACTOR shall comply with all applicable Laws and Regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property.

All damage, injury or loss to any property, caused directly or indirectly, in whole or in part, by CONTRACT, Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER or ENGINEER or ENGINEER's Consultant or anyone employed by any of them or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR or any Subcontractor, Supplier or other person or organization directly or indirectly employed by any of them). CONTRACTOR's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and ENGINEER has issued a notice to OWNER and CONTRACTOR in accordance with section of Acceptance of Work that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion). OWNER may issue a stop work order if it has been observed that unsafe working conditions, methods, materials, etc. are occurring at the construction site.

106.5.E. Construction Emergencies

CONTRACTOR shall designate a qualified and experienced safety representative at the site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs. CONTRACTOR shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the site in accordance with laws or Regulations.

In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from OWNER or ENGINEER, is obligated to act to prevent threatened damage, injury or loss. CONTRACTOR shall give ENGINEER prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If ENGINEER determines that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, a Work Change Directive or Change Order will be issued to document the consequences of such action.

106.5.F. Construction Safety Plan

CONTRACTOR shall provide a Safety Plan for the Project which complies with, but is not limited to, the following guidelines. The Contractor is responsible for reviewing the specific requirements of the Contract, analyzing the planned methods of operation, and incorporating any additional specific or unique safety requirements in the written plan. The Contractor is responsible for ensuring that all applicable safety regulations are addressed as part of the Safety Plan. No Work shall commence on the Project site until the Safety Plan has been reviewed by Owner.

1. General Provisions: The Safety Plan shall include:

- a. An acknowledgement that the Contractor is totally responsible for compliance with OSHA requirements and relevant federal, state and local laws, rules and other regulations, which require a place of employment that is free of unsanitary or hazardous conditions that would harm an employee's health or safety or which establishes procedures or requirements for workplace safety.
- b. An emergency evacuation plan, and site evacuation plan as may be appropriate for the Scope of Work.
- c. The Contractor's proposal for compliance with the specific safety requirements, including the procedures for completing and forwarding to the Owner all on site accident and incident reports.
- d. A layout drawing of the site indicating access roads, fire and ambulance lanes, location of first aid stations, location or required danger alarm systems, location of offices, parking for private vehicles and equipment, and storage of all flammable and/or combustible liquids, gases or other hazardous materials, and the evacuation assembly area, as may be appropriate for the Scope of Work.
- e. Plans for providing medical service. A copy is to be posted at the work site first aid station and the following emergency numbers shall be included for the given work area: Lago Vista City Manager: 512-527-3526.

- f. The name of the Contractor's Safety Manager, Superintendent or (Contractor's Safety Supervisor), his/her qualifications and delineate his/her authority to direct work stoppage and expend funds to eliminate imminent hazardous conditions.
- g. A description of the following issues:
 - (1) The frequency at which safety inspections will be conducted by the Contractor's Safety Engineer, Contractor's Safety Supervisor or other assigned inspector.
 - (2) Construction areas that will be designated « Hard Hat Areas» and where warning signs will be posted at all entry points.
 - (3) The greatest number of employees to be working at any one time during peak construction periods.
 - (4) Contractor's policies for initial safety indoctrination of all employees.
 - (5) Contractor's plans for continued safety education for all employees, including weekly safety meetings.
 - (6) Contractor's housekeeping rules or regulations.
 - (7) Plans for providing adequate lighting, ventilation, noise control, and personal protective equipment.
 - (8) Plans for controlling access to prevent unauthorized persons from entering the construction area.
 - (9) Site Safety equipment provided by Contractor, with locations.
 - (10) Persons who are trained to administer First Aid.
 - (11) Procedures to be followed in case of emergency.
- 2. Special Provisions: Depending on the type of construction, additional items must be incorporated into the Contractor's Safety Plan. When applicable, these include the following:
 - a. Where the illustration of crane operation signals shall be posted on the Project site.
 - b. Traffic control and marking of hazards (i.e. haul roads, highways or other traffic intersections, utilities, prohibited areas).
 - c. Fire protection and security systems interruption which include automatic detection devices and alarms, automatic sprinkler systems, fire pumps, fire hydrants, applicable water supplies and reservoirs. Plans shall include measures and/or procedures to provide interim fire and security protection to facilities or areas affected by interruptions.
 - d. Excavations including slope protection, shoring, guarding, barricades, excavation access, and excavated material storage. Scaffolding, including planking size, cleats, guardrails, toe boards, anchor points, put-logs, section pins, and scaffold access.
 - e. Ladders, including types for specific uses and types of anchors to be utilized.
 - f. Use of cranes or derricks and the testing and inspection thereof, including hook latches, cables, boom stops, load tables, warning devices and fire extinguishers.
 - g. Testing and inspecting equipment, and the provision of backup alarms for tractors, backhoes, dozers, motor graders, etc.
 - h. Requirements for storage of flammable/combustible liquids for gases, including paints.
 - i. Submittal of false work (multi-story structures) and formwork drawings for review and approval. This item should also be indicated on the Contractor's progress schedule to prevent submittal delay which could hold up project.
 - j. Provision of toilets, including frequency at which toilets will be cleaned with soap and water, and sterilized.
 - k. Complete Blasting Plan, if applicable, which includes procedures for blasting, permits, explosives handling, explosive storage, explosive transportation, hole loading, blast signals, and blaster qualifications.
 - l. Checking and testing electrical tools and appliances for the required ground and installation of electrical circuits in accordance with the National Electric Code.
 - m. Use of safety nets in areas where the use of safety harnesses and life lines or scaffolds is not practical. Use of safety harnesses, lifelines and lanyards when necessary.
 - n. Providing welding protection, including shields, fire extinguishers, ventilation, hot work permits and fire watches.

106.5.G. Record Drawings

During the performance of Work under the Contract, the Contractor shall record and delineate accurately on one set of prints of the Drawings, which will be furnished to Contractor by the OWNER, all changes in such Work which constitute significant departures from the original Drawings. The set of Drawings thus corrected and changed shall show the Work as actually constructed ("As-Built Drawings" or "Record Drawings"). Such As-Built Drawings shall be delivered to the OWNER for review and approval at the earliest practicable date prior to completion of all Work under the Contract, in any event not later than the date of acceptance of the completed Work.

The Contractor shall review said As-Built Drawings on site with the Engineers at monthly intervals to verify proper recording of data and shall incorporate such revised Drawings as may be furnished by the Design Engineer as the job progresses. The As-Built Drawings shall show sufficient detail to convey, among other pertinent information, the following: 1. Physical dimensions, relation to existing conditions, and horizontal and vertical location of all underground or hidden installations; and 2. All modifications to the Work as recorded in Change Orders and Construction Change Directives.

106.6 COORDINATION

The OWNER and the CONTRACTOR shall designate an address and, if available, a facsimile number where all notices, directions or other communications may be delivered. If the OWNER and the CONTRACTOR agree, service of notice under this section may be accomplished by e-mail under the same provisions as notice by facsimile.

106.6.A. Local Access

The CONTRACTOR shall provide a telephone number, which will be answered by a representative during normal business hours and answered either live or electronically, outside normal business hours with said calls returned within one hour. The phone shall be accessible by direct dial without long distance charges for all citizens in the construction area and the City of Dallas personnel.

106.6.B. Service of Notices

Notices to the surety or sureties on Contract bonds shall be directed or delivered to the surety's home office or to the surety's designated agent for delivery of notices. Service by mail shall be presumed complete upon deposit of the paper, enclosed in a postpaid, properly addressed envelope, in a post office or official depository under the care and custody of the United States Postal Service. Service, by facsimile after 5:00 p.m. local time of the recipient, shall be deemed delivered on the following business day.

A party may change its designated address, facsimile number or e-mail address by delivering written notice of the new address, facsimile number or email address, properly signed, to all interested parties. Nothing herein contained shall be deemed to preclude hand delivery of any notice, direction or communication to a party mentioned above.

106.7 INSPECTION

It is the intent of the OWNER to inspect all work on this project. Some work may not require the presence of an inspector, and the CONTRACTOR should obtain written verification from the Engineer if an inspector is not needed before proceeding with that particular item of work. The CONTRACTOR must pay for all testing needed to determine acceptability for any work done without proper inspection, as directed by the Engineer.

The CONTRACTOR shall furnish the OWNER with every reasonable facility for ascertaining whether or not the work performed was in accordance with the requirements and intent of the plans and specifications. Any work done (except excavation) or materials used without suitable inspection by the OWNER may be ordered removed and replaced at the CONTRACTOR's expense.

106.7.A. Removal of Defective or Unauthorized Work

All work which has been rejected or condemned shall be repaired, or if it cannot be repaired satisfactorily, it shall be removed and replaced at the CONTRACTOR's expense. Defective materials shall be immediately removed from the site of the work. Work done without line and grade having been given, work done beyond the lines or not in conformity with the grades shown on the plans or as given, save as herein provided, work done without written authority and prior agreement in writing as to process, shall be done at the CONTRACTOR's risk and shall be considered unauthorized and at the option of the owner may not be measured and paid for and may be ordered removed at the CONTRACTOR's expense. Upon failure of the CONTRACTOR to repair satisfactorily or to remove and replace, if so directed, rejected, unauthorized or condemned work or materials immediately after receiving notice from the owner, the owner shall, after giving written notice to the CONTRACTOR, have the authority to cause defective work to be remedied or removed and replaced, or to cause unauthorized work to be removed and to deduct the cost thereof from any monies due or to become due the CONTRACTOR. Alternatively, the owner may, at its option, declare the CONTRACTOR in default, in which event the performance bond surety shall complete the Contract.

106.7.B. Final Inspection

Whenever the improvements provided for by the Contract shall have been completely performed on the part of the CONTRACTOR, the CONTRACTOR shall notify the OWNER that the improvement is ready for final inspection. If the work is not acceptable to the OWNER at the time of such inspection, OWNER shall inform CONTRACTOR as to the particular defects to be remedied before final acceptance shall be made. The OWNER shall make final inspection of all work included in the Contract as soon as practicable after remedies have been made and the work is ready for acceptance.

106.7.C. Notice for Inspection

The scheduled start of construction for each location shall be coordinated with the Department of Public Works a minimum of ten (10) days prior to the requested start date. Inspection of work associated with Department of Public Works projects will be done by the OWNER's appointed engineer, construction manager, or inspector. Inspections shall be requested through the appropriate appointed contract, a minimum of 24 hours prior to the need for inspection. The CONTRACTOR shall assure that the OWNER is aware of any work being performed on the project prior to the work taking place, and the CONTRACTOR should obtain written verification from the OWNER if an inspection is not needed before proceeding with any particular item of work.

106.7.D. Owner Site Visits

OWNER, ENGINEER, or its representative, will make visits to the site at intervals appropriate to the various stages of construction as OWNER deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, ENGINEER will endeavor for the benefit of OWNER to determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. ENGINEER's efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and on-site observations, ENGINEER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defective Work. ENGINEER's visits and on-site observations are subject to all the limitations on ENGINEER's authority, responsibility, and particularly but without limitation, during or as a result of ENGINEER's on-site visits or observations of CONTRACTOR's Work ENGINEER will not supervise, direct, control or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of the Work.

106.7.E. Overtime Inspection

Project inspectors must be paid at one and one-half their regular salary rates for all time spent on project inspection which exceeds 40 hours per week Monday through Friday and for time during legal Holidays declared by the OWNER. The OWNER will provide one inspector who will be available for this project during an eight-hour period on working days between the hours of 7:30 a.m. and 4:30 p.m., (Monday through Friday, except on legal Holidays,) for the duration of this project at no charge to the CONTRACTOR. All inspection performed on this project in excess of eight hours a day on working days, (Monday through Friday,) or before the hour of 7:30 a.m. or after the hour of 4:30 p.m., or performed on weekends or on legal Holidays may be considered overtime inspection.

The CONTRACTOR will be required to reimburse the OWNER for the cost of all inspection overtime, which may be necessary for the successful and expeditious prosecution of the work included in this CONTRACT. Inspection overtime will not be charged if the OWNER required the CONTRACTOR to work during overtime periods because of restrictions for water main tie-ins, traffic requirements, or other periods that inspection would normally be charged as determined by the OWNER. The OWNER's decision shall be final.

Except in an emergency situation, the CONTRACTOR shall be required to furnish in writing to the OWNER, not less than 36 hours in advance, a request to work overtime on Saturday, Sunday, Holiday, or any day on which the City Offices are closed for normal business. A written request is not required for overtime work on a weekday. Overtime will be scheduled at the discretion of the OWNER. The CONTRACTOR is not guaranteed that overtime will be accommodated.

Unless otherwise specified in the CONTRACT, inspection overtime will be charged to the CONTRACTOR, with the number of Inspectors to be determined by the OWNER under the following overtime conditions:

1. Weekdays between the hours of Midnight to 7:30 a.m. and between 4:30 p.m. to Midnight, at a rate of \$50.00 per hour per Inspector.
2. Saturdays, Sundays and Holidays between midnight to midnight with a minimum of four (4) hours, at rate of \$50.00 per hour per Inspector and a minimum of \$200 per day per Inspector.

Inspection fees will be accumulated during the monthly estimate period. A statement of charges for the estimate period will be provided to the CONTRACTOR. The statement of charges must be paid prior to the OWNER processing the next submitted estimate. PAYMENT IS DUE WITHIN TEN (10) DAYS AFTER THE DATE OF THE INVOICE. If payment is not made as due, the OWNER reserves the right to deduct or withhold amounts due from the monthly progress payment or final payment.

106.8 ACCEPTANCE

Once the work is satisfactory to the OWNER and in accordance with the specifications and CONTRACT documents, the CONTRACTOR shall be issued a certificate of acceptance. The Certificate of Acceptance will not be issued until all work required by contract, including all water and wastewater appurtenances have been adjusted to their final position.

106.8.A. Termination of Contract

The contract will be considered fulfilled, save as provided in any maintenance stipulations, bond, or by law, when all the work has been completed, the final inspection, and final acceptance made by the OWNER, and final payment made by the OWNER.

106.8.B. Guarantee after Completion

Unless otherwise specified in the technical section of these specifications, the CONTRACTOR shall, after test and acceptance, and for a period of one year from date of final written acceptance by the OWNER or within such longer or shorter period of time as may be prescribed by law or by the terms of any other applicable special warranty on designated equipment or portions of work as required by the contract documents, rebuild, repair, or replace any and all items which have proven defective due to unsatisfactory material and / or workmanship. Upon written notice from the OWNER, the CONTRACTOR shall immediately make any repairs that may be ordered, or such repairs will be made by the City of Lago Vista at the expense of the CONTRACTOR or the CONTRACTOR'S Surety. In case of an emergency where delay would cause serious loss or damage, the City of Lago Vista may undertake to have the defects repaired without previous notice. The expense of all repairs,

including all emergency repairs, shall be borne by the CONTRACTOR or the CONTRACTOR'S Surety, at no cost to the OWNER. This obligation shall survive termination of the contract.

106.8.C. Final Payment

Whenever the work provided for by the contract shall have been completely performed on the part of the CONTRACTOR, the CONTRACTOR shall notify the OWNER that the work is ready for final inspection. The OWNER will then make such final inspection and if the work is satisfactory and in accordance with the specifications and contract documents, the OWNER shall issue a certificate of acceptance to the CONTRACTOR and submit a request to accept the work performed by the CONTRACTOR and payment of a final estimate under the terms of which the OWNER will release 100% of the retainage, plus the unpaid portions of the final estimate as the OWNER deems advisable. All prior estimates upon which payments have been made are subject to necessary corrections or revisions in the final payment.

The amount of this final estimate, less any sums that have been previously paid, deducted or retained under the provisions of the contract, shall be paid the CONTRACTOR within 30 days after the final acceptance by the OWNER, provided the CONTRACTOR has furnished to the OWNER a consent of Surety and satisfactory evidence that all indebtedness connected with the work and all sums of money due for any labor, materials, apparatus, fixtures, or machinery furnished for and used in the performance of the work have been paid or otherwise satisfied, or that the person or persons to whom the same may respectively be due have consented to such final payment. The acceptance by the CONTRACTOR of the final payment as aforesaid shall operate as and shall be a release to the OWNER from all claims or liabilities under the contract, including all subcontractor claims, for anything done or furnished or relating to the work under the contract or for any act or neglect of said OWNER relating to or connected with the contract.

106.8.D. Audits

By execution of the Contract, CONTRACTOR grants the OWNER the right to audit, at City's election, all of CONTRACTOR'S records and billings relating to the performance of the Work under the Contract. CONTRACTOR agrees to retain such records for a minimum of three (3) years following completion of the Work under this Contract. OWNER agrees that it will exercise the right to audit only at reasonable hours.

107 CONTROL OF MATERIALS

107.1 INTRODUCTION

This section shall be used in reference to material quality, storage, sampling, and source. The specifications for materials set out the minimum standard of quality that the OWNER believes necessary to procure a satisfactory project. Use only materials that meet Contract requirements. Unless otherwise specified or approved, use new materials for the work. Contractor may suggest in writing to the OWNER of less expensive material. In such cases the payment to the contractor shall be reduced accordingly based on the agreed price between the OWNER and CONTRACTOR. Contractor may suggest in writing to the OWNER of higher quality material. In such cases these shall be no additional accrued cost to the OWNER unless the OWNER agrees in writing to the cost and installation of higher quality materials.

107.2 SUBSTITUTION OF MATERIALS

No substitutions will be permitted until the CONTRACTOR has received written permission of the Engineer to make a substitution for the material that has been specified. The Owner reserves the right to refuse to accept substitutions of materials or equipment. Requests for substitution shall be made prior to the date of the preconstruction conference. Where the term "or equal," or "or approved equal" is used, it is understood that if a material, product, or piece of equipment bearing the name so used is furnished it will be approvable, as the particular trade name was used for the purpose of establishing a standard of quality acceptable to the OWNER. If a product of any other name is proposed for use, the Engineer's approval thereof must be obtained before the CONTRACTOR procures the proposed substitute.

Where the term "or equal," or "or approved equal" is not used in the specifications, this does not necessarily exclude alternative items or material or equipment which may accomplish the intended purpose. However, the CONTRACTOR shall have the full responsibility of proving that the proposed substitution is, in fact, equal, and the Engineer, as the representative of the OWNER, shall be the sole judge of the acceptability of substitutions. The provisions of this sub-section as related to "Substitutions" shall be applicable to all sections of these specifications.

Should an authorized substitution require redesign of a portion of the work or alterations to the plans or specifications in order for the materials or articles which are to be substituted to properly fit or in other ways to be satisfactory, the Engineer shall accomplish such redesigns and alterations. The CONTRACTOR shall bear all reasonable costs associated with redesign and alteration efforts performed by the Engineer.

Owner may, in its discretion, agree to accept substitutions of materials or equipment after the Contract has been signed for good cause shown. The Contractor may make substitutions of materials or equipment only with the prior written consent of Owner after evaluation and approval by the applicable Engineer and in accordance with a Change Order. A request for substitution constitutes a representation by Contractor that Contractor:

- a) has investigated the proposed product and determined that it is equal or superior in all respects to the specified product;
- b) shall provide identical warranties as those required for the specified product or any extended warranties required by Owner as a condition for approval of the substitution;
- c) shall coordinate installation and make changes to other Work which may be required at no cost to Owner;
- d) waives claims for additional costs or time extension which may subsequently become apparent;
- e) certifies that the proposed product will not affect or delay the approved Construction Schedule; and

107.2.A. Salvageable Materials

All salvageable material shall be designated by and remain the property of the OWNER. Any designated salvageable material that is destroyed or damaged due to negligence of the CONTRACTOR shall be replaced with new material by the CONTRACTOR at no expense to the OWNER. Salvage material, unless designated for reuse, shall be returned to a location designated by the OWNER.

107.2.B. Source of Materials

The CONTRACTOR shall be free to obtain the approved materials, equipment and articles from sources of its own selection. However, if the OWNER finds that the work shall be delayed or adversely affected in any way because a selected source of supply cannot furnish a uniform product in sufficient quantity and at the time required and a suitable source does exist, or the product is not suitable for the work, the OWNER shall have the right to require the original source of supply changed by the CONTRACTOR. The CONTRACTOR shall have no claim for extra cost or damage because of this requirement.

107.2.C. Quality of Materials

The CONTRACTOR warrants to the OWNER that all materials and equipment furnished under this Contract shall be new unless otherwise specified in the Contract documents and that same shall be of good quality and workmanship, free from faults and defects and in conformance with the Contract documents. All materials and equipment not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective and shall be promptly repaired or replaced by the CONTRACTOR at the CONTRACTOR's sole cost upon demand of the OWNER. If required by the OWNER, the CONTRACTOR shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

The Contractor shall furnish to the OWNER for its approval the name of the manufacturer, the model number, and other identifying data and information respecting the performance, capacity, nature, and rating of the machinery and mechanical and other equipment that the Contractor contemplates incorporating into the Work. When required by the Contract or when called for by the OWNER, the Contractor shall furnish the OWNER for approval, full information concerning the material or articles the Contractor contemplates incorporating into the Work.

No lead based paint and no materials containing asbestos shall be incorporated into the Project. Coal tar sealants shall not be used on the Project. Contractor, subcontractors, and suppliers may be required to certify that these materials were not provided or installed as part of this Contract.

107.3 OFF-SITE STORAGE

Payment for costs incurred in storage of materials or equipment away from the project site will not be made by the OWNER unless:

1. The OWNER has approved off-site storage in writing; and
2. The materials or equipment are stored in a bonded warehouse located in the County approved by the OWNER and identified with the project for which they are stored as evidenced by warehouse receipts and appropriate documents of title.

Storage in facilities of the manufacturer or CONTRACTOR will not be permitted or paid for, unless such storage is expressly approved in writing by the OWNER.

107.3.A. Surplus Materials

Surplus materials shall be disposed of by the CONTRACTOR at his expense. Surplus excavation materials shall be removed from the site unless specified otherwise under the performance specifications.

107.4 MATERIAL SAMPLING AND TESTING

Unless otherwise stipulated in the Contract documents, initial testing of all materials, construction items or products incorporated in the work shall be performed at the direction and expense of the OWNER, including initial compaction and density tests deemed necessary. In the event materials, construction items or products incorporated in the work fail to satisfy the minimum requirements of the initial test, appropriate prove out test shall be made as directed by the OWNER to determine the extent of the failure and to verify that the corrective measures have brought the item up to specification requirements. The cost of all testing necessary to determine the extent of the failure and the adequacy of the corrective measures shall be the responsibility of the CONTRACTOR.

The failure of the OWNER to make any tests of materials shall in no way relieve the CONTRACTOR of its responsibility of furnishing materials conforming to the Contract documents.

Tests, unless otherwise specified, shall be made in accordance with the latest methods of the American Society for Testing and Materials (ASTM). The CONTRACTOR shall provide such facilities as the OWNER may require for collecting and forwarding samples and shall not use the materials represented by the samples until tests have been made. The CONTRACTOR shall furnish adequate samples without charge. Test materials and samples shall be stored so as to ensure the preservation of their quality and fitness for the Work. If directed by the Engineer, they shall be placed on wooden platforms or other hard, clean surfaces and shall be placed under cover if directed. Stored materials shall be placed and located so as to facilitate prompt inspection.

The CONTRACTOR shall furnish without additional cost to the OWNER such materials for testing as may be reasonably necessary. Retesting after failure to pass tests shall be at the expense of the CONTRACTOR. Should the percentage of rejected material or equipment be unreasonably large, the additional cost of such inspection and tests resulting therefrom shall be borne by the CONTRACTOR. The OWNER shall judge what is extra inspection and shall determine the additional cost incurred thereby and payable by the CONTRACTOR.

108 LEGAL AND CONTRACT RESPONSIBILITIES

108.1 INTRODUCTION

This section shall be used in reference to the legal relations and contract responsibilities between the OWNER and CONTRACTOR. This Contract is between the OWNER and the CONTRACTOR only. No person or entity may claim third-party beneficiary status under this Contract or any of its provisions, nor may any non-party sue for personal injuries or property damage under this Contract.

108.2 CONTRACTOR INDEPENDENCE

While engaged in carrying out and complying with the terms and conditions of this Contract the CONTRACTOR is, and shall be, an independent CONTRACTOR and shall not, with respect to its acts or omissions, be deemed an officer, employee or agent of the OWNER. The CONTRACTOR shall not at any time or in any manner represent that it or any of its agents or employees are in any manner agents or employees of the OWNER.

The fact that the OWNER or the Engineer shall have the right to inspect or observe CONTRACTOR's work during performance and to exercise the other rights and prerogatives expressly reserved to the OWNER or the Engineer under this Contract is not intended to, and shall not at any time, change or affect the status of the CONTRACTOR as an independent CONTRACTOR with respect to the OWNER, the CONTRACTOR's own employees or any other person, firm or corporation. Nothing contained in the Contract documents shall create any contractual or agency relationship between the Engineer and the CONTRACTOR.

108.3 INDEMNIFICATION

CONTRACTOR COVENANTS AND AGREES TO AND DOES HEREBY INDEMNIFY, HOLD HARMLESS AND DEFEND, AT ITS OWN EXPENSE, THE OWNER, ITS OFFICERS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS FOR PROPERTY LOSS OR DAMAGE AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, OF WHATSOEVER KIND OR CHARACTER, WHETHER REAL OR ASSERTED, ARISING OUT OF THE WORK AND SERVICES TO BE PERFORMED HEREUNDER BY CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES OR INVITEES, WHETHER OR NOT CAUSED, IN WHOLE OR IN PART, BY THE ALLEGED NEGLIGENCE OF THE OFFICERS, EMPLOYEES, OF THE OWNER. CONTRACTOR LIKEWISE COVENANTS AND AGREES TO, AND DOES HEREBY, INDEMNIFY AND HOLD HARMLESS OWNER FROM AND AGAINST ANY AND ALL INJURIES, DAMAGE, LOSS OR DESTRUCTION TO PROPERTY OF OWNER DURING THE PERFORMANCE OF ANY OF THE TERMS AND CONDITIONS OF THIS CONTRACT, WHETHER ARISING OUT OF IN WHOLE OR IN PART, ANY AND ALL ALLEGED ACTS OR OMISSIONS OF OFFICERS, SERVANTS, OR EMPLOYEES OF OWNER.

THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

The provisions of this indemnification and all other Indemnification obligations set out in the Contract Documents, shall survive the termination of this Contract, howsoever caused, as to events occurring prior to such termination, and no payment, partial payment, nor issuance of a certificate of Substantial Completion nor a certificate of final completion nor acceptance or occupancy in whole or in part of the Work shall waive or release any of the provisions of this section or of any other indemnification contained in the Contract Documents.

108.4 CLAIM AGAINST OWNER

No claim whatsoever shall be made by the CONTRACTOR or Sub-CONTRACTOR against any officer, servant, employee or agent of the OWNER for or on account of, anything done or omitted to be done in connection with this Contract.

108.4.A. Financial Interest

CONTRACTOR is hereby advised to comply with the OWNER's financial interest or comparable policy. If OWNER does not implement a financial interest or comparable policy of its own, provisions of this Item shall govern matters of financial interest.

No officer, servant, employee or agent of the OWNER shall have a financial interest, direct or indirect, in any contract with the OWNER or be financially interested, directly or indirectly, in the sale to the OWNER of any land, materials, supplies or services, except on behalf of the OWNER as an officer or employee. Any violation of this article with the knowledge, expressed or implied, of the persons, partnership, company, firm, association or corporation contracting with the OWNER shall render the Contract involved voidable by the OWNER.

108.4.B. Claim Venue

The parties herein agree that this Contract shall be performed in the county in which the OWNER'S principal office is located, and if legal action is necessary in connection therewith, exclusive venue shall lie in this county. The terms and provisions of the Contract documents shall be construed in accordance with the laws and court decisions of the State of Texas. The Contract shall be governed by and interpreted in accordance with the laws of the State of Texas. Venue for any action brought in connection with the Contract Documents shall lie in courts of competent jurisdiction in Burnet County, Texas. If any provision or part of the Contract Documents is held to be void or unenforceable under any Law or Regulation, all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

In the event of any suit or action arising out of or relating to the Contract, the prevailing party in such proceeding shall be entitled to recover reasonable attorney fees and court costs. Reference is made to Section 271.159 of the Texas Local Government Code in connection with the recovery of attorney's fees. The parties agree to mediate any dispute arising in connection with the Contract Documents in good faith prior to filing suit for damages. The parties agree to mediate any dispute in good faith prior to filing suit for relief other than injunctive relief.

108.5 NO WAIVER OF LEGAL RIGHTS

Inspection by the Engineer; any order, measurement, quantity or certificate by the Engineer; any order by the OWNER for payment of money; any payment for or acceptance of any work; or any extension of time or any possession taken by the OWNER shall not operate as a waiver of any provisions of the Contract or any power therein reserved to the OWNER of any rights or damages therein provided. Any waiver of any breach of Contract shall not be held to be a waiver of any other or subsequent breach. The OWNER reserves the right to correct any error that may be discovered in any estimate that may have been paid and to adjust the same to meet the requirements of the Contract documents. The OWNER reserves the right to recover by process of law sums as may be sufficient to correct any error or make good any deficiency in the work resulting from such error, dishonesty or collusion by the CONTRACTOR or its agents and the Engineer or assistants, discovered in the work before or after the final payment has been made.

108.5.A. Faulty or Uncompleted Work

Neither final acceptance of the work, nor final payment, shall relieve the CONTRACTOR of responsibility for faulty materials or workmanship. The CONTRACTOR shall promptly remedy any defects due thereto and pay for any damage to other work resulting therefrom. Likewise, neither final acceptance nor final payment, nor partial or entire use or occupancy of the work by the OWNER shall constitute acceptance of work not done in accordance with the Contract documents or relieve CONTRACTOR of liability with respect to any expressed or implied warranties or responsibility for faulty materials or workmanship, whether same be patently or latently defective.

The OWNER, or any officer or agent thereof, shall not be precluded at any time, either before or after final completion and acceptance of the work and final payment therefrom:

1. Showing the true and correct amount, classifications, quality and character of the work done and materials furnished by the CONTRACTOR or any other person under this Contract.
2. From showing at any time that any determination, return, decision, approval, order, letter, payment or certification is untrue and incorrect or improperly made in any particular, or
3. The work or the materials or any parts thereof do not in fact conform to the Contract requirements.

4. Demanding the recovery from the CONTRACTOR of any overpayments made to it, or such damages as the OWNER may sustain by reason of the CONTRACTOR's failure to perform each and every part of this Contract in strict accordance with its terms; or both.

108.5.B. Compensation of Acknowledged Work

The CONTRACTOR shall receive and accept compensation, as herein provided, as full payment for furnishing all labor, tools, material, equipment and incidentals; for performing all work contemplated and embraced under the contract; for all loss or damage arising out of the nature of the work, or from the action of the elements; for any unforeseen defects or obstruction which may arise or be encountered during the prosecution of the work and before its final acceptance by the OWNER; for all risks of whatever description connected with the prosecution of the work; for all expense incurred by or in consequence of suspension or discontinuance of such prosecution of the work as herein specified; for any infringement of patents, trademarks or copyrights; and for completing the work in an acceptable manner according to the plans and specifications.

Unless otherwise provided in the Contract documents, the CONTRACTOR shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for the proper execution and completion of the work, whether temporary or permanent and whether or not incorporated or to be incorporated into the work.

108.5.C. Severability

In the event a term, condition, or provision in this Contract is determined to be void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition or provision, shall be deleted and the remainder of the Contract shall remain in full force and effect.

108.5.D. Successors and Assigns

Subject to the limitations upon assignment and transfer herein contained, this Contract shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns.

108.6 OBLIGATION AND WORK PERFORMANCE

Any failure or neglect on the part of OWNER, Engineer or inspectors to enforce provisions herein dealing with supervision, control, inspection, testing or acceptance and approval of the work shall never operate to relieve CONTRACTOR from full compliance with the Contract documents nor render owner liable to CONTRACTOR for money damages, extensions of time or increased compensation of any kind.

In addition to those matters elsewhere expressly made the responsibility of the CONTRACTOR, the CONTRACTOR shall have the full and direct responsibility for the performance and completion of the work under this Contract and for any act or neglect of the CONTRACTOR, its agents, employees or subcontractors. CONTRACTOR shall bear all losses, if any, resulting on account of the amount and character of the work, or because the conditions under which the work must be done are different from what CONTRACTOR estimated or anticipated, or because of weather, floods, elements or other causes.

108.7 EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this Contract the CONTRACTOR agrees to nondiscrimination of employment practices.

108.7.A. Nondiscrimination Toward Employees

The CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age or national origin. The CONTRACTOR shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment without regard to their race, color, sex, religion, age or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees or applicants for employment,

notices to be provided setting forth the provisions of this nondiscrimination clause. The CONTRACTOR shall, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR; state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, national origin or age. The CONTRACTOR shall include the provisions of this section in all subcontracts pertaining to the work.

108.7.B. Labor Unions

The CONTRACTOR shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided, advising the said labor union or workers' representatives of the CONTRACTOR'S commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

108.8 STATE AND LOCAL SALES TAXES

The OWNER qualifies for exemption from the state and local sales and use taxes, pursuant to the provisions of the Texas Limited Sales, Excise and Use Tax Act. Therefore, the CONTRACTOR shall not pay such taxes which would otherwise be payable in connection with the performance of this Contract.

The CONTRACTOR shall issue an exemption certificate in lieu of the tax on the purchase of all materials, supplies, equipment and other tangible personal property incorporated into the real property being improved; and all materials, supplies and other tangible personal property, other than machinery, or equipment and its accessories, and repair and replacement parts, necessary and essential for the performance of the Contract with the OWNER which is to be completely consumed at the job site.

Tangible personal property necessary and essential for the performance of the Contract includes only such materials, tools and supplies specifically needed and directly used to incorporate tangible personal property into the real estate being improved under the Contract. Overhead supplies and supplies used indirectly or only incidental to the performance of the Contract with the OWNER are not included in the exemption. Tangible personal property is "completely consumed" if after being used once for its intended purpose it is used up or destroyed. Any exemption certificate issued by the CONTRACTOR is subject to the existing rules and interpretation governing the exemption issued by the Comptroller of Public Accounts of the State of Texas. The OWNER will not make interpretations of the extent or applicability of the exemption in a particular case; if the CONTRACTOR, or any subcontractor or supplier of the CONTRACTOR, has any questions about the extent or applicability of the exemption in specific circumstances, guidance should be sought from the State Comptroller's Office. Under "reasons said purchaser is claiming this exemption" in the exemption certificate, the CONTRACTOR must name the OWNER and the project for which the equipment, material and supplies are being purchased, leased or rented.

The Contract Amount shall be final and be deemed to include all taxes payable (unless exempt as indicated above) in connection with the Work. CONTRACTOR may not issue a separate amount to OWNER indicating this to be the correct amount including all taxes and/or fees.

108.9 PATENTS

The CONTRACTOR shall pay all royalties and license fees and shall provide, by suitable legal agreement with the patentee or OWNER, for the use of any design, device, material or process covered by letters, patent or any copyright. The CONTRACTOR shall indemnify, defend, hold and save the OWNER and its officers, employees and agents harmless from all liability and claims for infringement of any patent or copyright. In the event that any claims, suit or action at law or in equity of any kind whatsoever is brought against the OWNER, or its officers, employees or agents involving any such patents, copyrights or license rights, then the OWNER shall have the right to and may retain from any money due or to become due to the CONTRACTOR such sum deemed necessary by the OWNER for its protection until such claim or suit shall have been settled and satisfactory evidence to that effect shall have been furnished the OWNER.

108.10 COMPLIANCE WITH LAWS

The CONTRACTOR shall fully comply with all local, state and federal laws, including all codes, ordinances and regulations applicable to this Contract and the work to be done thereunder, which exist or which may be enacted later by governmental bodies having jurisdiction or authority for such enactment.

108.10.A. Permits

The CONTRACTOR shall secure and pay for all permits and licenses necessary for the execution of the work and shall fully comply with all their terms and conditions. All work required under this Contract shall comply with all requirements of law, regulation, permit or license. If the CONTRACTOR finds that there is a variance, it shall immediately report this to the OWNER for resolution.

108.10.B. Pleas of Misunderstanding

No pleas of misunderstanding or ignorance thereof will be considered. The CONTRACTOR and the CONTRACTOR's Sureties shall indemnify and save harmless the OWNER against any claims or liability arising from or based on the violation of any such law, ordinance, regulation or order whether by the CONTRACTOR, employees, or Subcontractors. The OWNER shall not be liable for interest on any progress or final payment to be made under this Contract, except as may be provided by the applicable provisions of the Prompt Payment Act, Chapter 2251, Texas Government Code.

108.10.C. Jobsite Notice

Contractor shall post at the Project site, in a conspicuous place, any notices required by law to be posted there, and any notices required by the Owner in writing to be posted there, including the following notices required to be posted by Owner:

1. Workers' Compensation Notice:

NOTICE OF REQUIRED WORKERS' COMPENSATION COVERAGE
(Contractor Must Post at Project Site)

REQUIRED WORKERS' COMPENSATION COVERAGE

"The law requires that each person working on this site or providing services related to this construction project must be covered by workers' compensation insurance. This includes persons providing, hauling, or delivering equipment or materials, or providing labor or transportation or other service related to the project, regardless of the identity of their employer or status as an employee."

"Call the Texas Workers' Compensation Commission at 512-440-3789 to receive information on the legal requirement for coverage, to verify whether your employer has provided the required coverage, or to report an employer's failure to provide coverage."

REQUISITOS SOBRE COBERTURA DE COMPENSACIÓN

"La ley requiere que todas las personas que trabajan en esta localidad o proporcionan servicios relacionados con este proyecto de construcción estén cubiertos por seguro de compensación. Esto incluye personas que proporcionan, transportan, o entregan equipo o materiales, o proporcionan trabajo o transportación y otros servicios relacionados a el proyecto, cualquiera que sea la identidad de su patrón o su situación como empleado."

"Llame a la Comisión Tejana de Compensación a Trabajadores (Texas Workers' Compensation Commission), marcando el 512-440-3789 para recibir información de los requisitos legales sobre cobertura de seguros, para verificar si su patrón ha proporcionado la cobertura requerida, o para reportarlo, sin no lo ha hecho."

2. Notice of City of Lago Vista Safety Rules:

CITY OF LAGO VISTA SAFETY RULES

The following City of LAGO VISTA safety rules must be followed at all times:

1. The possession or use of tobacco products, alcoholic beverages, illegal drugs, and firearms or weapons on Owner's property is prohibited at all times, twenty-four hours a day. There shall be zero tolerance for violations of this provision.
2. Contractor, subcontractors and all other persons performing Work at the Project site shall use only such access to the site and facilities as are designated by Owner, and shall comply with all other rules and requirements established by Owner for use or occupancy of the Project site. In addition, Contractor, and subcontractors shall be aware that there are construction and access easements existing on the Owner's property and upon the adjacent properties that govern coordination of construction activities. Contractor and subcontractors shall perform the Work in compliance with these easements at all times.
3. Owner shall have the right to require the immediate removal from the Project site of any person performing Work who violates the provisions of these Safety Rules or who fails to comply with all other rules or requirements established by the City of Lago Vista for use or occupancy of the Project site. Owner may prohibit such person from being allowed to perform Work at the Project site in the future.

108.11 PROTECTION OF WORK AND OF PERSONS AND PROPERTY

The CONTRACTOR shall have the responsibility to provide and maintain all safety measures and take all precautionary measures required by law or otherwise to protect persons and property while said persons or property are approaching, leaving or within the work site or any area adjacent to said work site.

It shall be the duty and responsibility of the Contractor and all of its subcontractors to be familiar with and comply with all requirements of Public Law 91-596, 29 U.S.C. §§ 651 et. seq., the Occupational Safety and Health Act of 1970, (OSHA) and all amendments thereto, and to enforce and comply with all applicable provisions of OSHA.

108.11.A. Sanitary Provisions

The CONTRACTOR shall establish and enforce among its employees such regulations in regard to cleanliness and disposal of garbage and waste as shall tend to prevent the inception and spread of infectious or contagious diseases and to prevent effectively the creation of a nuisance about the work on any property either public or private, and such regulations as are required by the OWNER shall be put into immediate force and effect by the CONTRACTOR. The necessary sanitary conveniences for the use of laborers on the work, properly secluded from public observation, shall be constructed and maintained by the CONTRACTOR in such a manner and at such points as shall be approved by the OWNER, and their use shall be strictly enforced by the CONTRACTOR. All sanitary laws and regulations of the State of Texas and the OWNER's jurisdiction shall be strictly complied with.

108.11.B. Public Convenience

Materials stored about the work site shall be so placed, and the work shall at all times be so conducted, as to cause no greater obstruction to the traveling public than is considered necessary by the OWNER. The CONTRACTOR shall make provisions by bridges or otherwise at all cross streets, highways, sidewalks and private driveways for the free passage of pedestrians and vehicles, provided that where bridging is impracticable or unnecessary, in the opinion of the OWNER, the CONTRACTOR may make arrangements satisfactory to the OWNER for the diversion of traffic and shall, at its own expense, provide all material and perform all work necessary for the construction and maintenance of roadways and bridges for the diversion of traffic. Sidewalks must not be obstructed except by special permission of the OWNER. The materials excavated, and the construction materials or plant used in the construction of the work, shall be placed so as not to

endanger the work or prevent free access to all fire hydrants, water valves, gas valves, manholes for the telephone, telegraph signal or electric conduits, sanitary sewers and fire alarm or police call boxes in the vicinity.

1. **Notice:** The OWNER reserves the right to remedy any neglect on the part of the CONTRACTOR as regards to the public convenience and safety which may come to its attention, after 24 hours' notice in writing to the CONTRACTOR, save in cases of emergency, when it shall have the right to remedy any neglect without notice; and in either case, the cost of such work done by the OWNER shall be deducted from the monies due or to become due the CONTRACTOR. The CONTRACTOR shall notify the OWNER when any street is to be closed or obstructed; such notice shall in the case of major thoroughfares or streets upon which transit lines operate be made 48 hours in advance. The CONTRACTOR shall, when directed by the OWNER, keep any street or streets in condition for unobstructed use by emergency services. Where the CONTRACTOR is required to construct temporary bridges or to make other arrangements for crossing over ditches or streams, its responsibility for accidents shall include the roadway approaches as well as the structures of such crossings.
2. **Right of Way:** Where the work passes over or through private property, the OWNER shall provide such right-of-way. The CONTRACTOR shall notify the proper representatives of any public utility, corporation, any company or individual, not less than 48 hours in advance of any work which might damage or interfere with the operation of property along or adjacent to the work. The CONTRACTOR shall be responsible for all damage or injury to property of any character (except such as may be required by the provisions of the Contract documents or caused by agents or employees of the OWNER) by reason of any negligent act or omission on the part of the CONTRACTOR, its employees, agents or subcontractors, or at any time due to defective work or materials, or due to its failure to reasonably or properly prosecute the work, and said responsibility shall not be released by the fact that the work shall have been completed and accepted.

108.11.C. Protection of Work

During performance and up to date of final acceptance, the CONTRACTOR shall be under the absolute obligation to protect the finished work against any damage, loss or injury. In the event of such damage, loss or injury, the CONTRACTOR shall promptly replace or repair such work, whichever the OWNER shall determine to be preferable. The obligation to deliver finished work in strict accordance with the Contract prior to final acceptance shall be absolute and shall not be affected by the OWNER's approval of or failure to prohibit means and methods of construction used by the CONTRACTOR. All risk of loss or damage to the work shall be borne solely by the CONTRACTOR until final completion and acceptance of all work by the OWNER, as evidenced by the OWNER's issuance of a certificate of acceptance.

108.11.D. Protection of Persons

The CONTRACTOR shall have the responsibility to provide and maintain all warning devices and take all precautionary measures required by law or otherwise to protect persons and property while said persons or property are approaching, leaving or within the work site or any area adjacent to said work site. Compensation shall be paid to the CONTRACTOR for the installation or maintenance of any warning devices, barricades, lights, signs or any other precautionary measures required by law or otherwise for the protection of persons or property according to item for Barriers and Warning and or Detour Signs.

The CONTRACTOR shall assume all duties owed by the OWNER to the general public in connection with the general public's immediate approach to and travel through the work site and the area adjacent to said work site. Where the work is carried on, in or adjacent to any street, alley, sidewalk, public right-of-way or public place, the CONTRACTOR shall at its own cost and expense provide such flagmen and watchmen in addition to its responsibility to furnish, erect and maintain such warning devices, barricades, lights, signs, and other precautionary measures for the protection of persons or property as are required by law.

During periods when schools are in session, the CONTRACTOR will be required during the construction of the Work to maintain a suitable all-weather footpath across the Work at all designated school crosswalks and to move and reinstall pedestrian crossing warning signs as construction and routing of traffic lanes require.

The CONTRACTOR's responsibility for providing and maintaining flagmen, watchmen, warning devices, barricades, signs, and lights, and other precautionary measures shall not cease until directed in

writing by the OWNER or until final payment, whichever occurs first. If the OWNER discovers that the CONTRACTOR has failed to comply with the applicable federal and state law by failing to furnish the necessary flagmen, warning devices, barricades, lights, signs or other precautionary measures for the protection of persons or property, the OWNER may order such additional precautionary measures as required by law to be taken to protect persons and property. The CONTRACTOR shall reimburse the OWNER for any expense incurred by the OWNER in taking any additional precautionary measures as a result of the CONTRACTOR's failure to do so.

108.11.E. Protection of Property

The CONTRACTOR will be held responsible for all damage to the work and other public or private property due to the failure of warning devices, barricades, signs, lights, or other precautionary measures in protecting said property, and whenever evidence is found of such damage, the Engineer may order the damaged portion immediately removed and replaced by and at the cost and expense of the CONTRACTOR. Minimum standards for safeguarding pedestrian and vehicular traffic are contained in the current Texas Manual of Uniform Traffic Control Devices, as amended, Texas Department of Transportation. Signage, barricades and other traffic control devices for detouring and maintenance of traffic on this Contract shall be as provided in above said manual and as directed by the Engineer. Costs associated with the acquisition and removal of required traffic control devices shall be considered incidental to the Work.

108.11.F. Trench Safety Regulations

The CONTRACTOR shall be responsible for complying with state laws and federal regulations relating to trench safety, including those which may be enacted during the performance under this Contract. The CONTRACTOR is advised that Federal Regulations 29 C.F.R. 1926.650-1926.652 have been, in their most recent version as amended, in effect since January 2, 1990. THE CONTRACTOR SHALL FULLY COMPLY WITH THE U. S. DEPARTMENT OF LABOR OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA) REGULATIONS PERTAINING TO EXCAVATIONS, TRENCHING, AND SHORING AND SHALL PROVIDE AND FAMILIARIZE ITS EMPLOYEES INVOLVED IN EXCAVATION AND TRENCHING WITH THE PROVISIONS IN OSHA PAMPHLET NUMBER 2226, EXCAVATING AND TRENCHING OPERATIONS.

1. **Indemnification:** CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD OWNER, ITS OFFICERS, SERVANTS, AGENTS AND EMPLOYEES, COMPLETELY HARMLESS FROM ANY CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES (INCLUDING ATTORNEY'S FEES, IF ANY) FOR ANY PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT (INCLUDING ANY INJURY, DEATH OR DAMAGE SUFFERED BY THE CONTRACTOR'S OWN EMPLOYEES) ARISING OUT OF OR OCCASIONED BY THE USE OF ANY TRENCH EXCAVATION PLANS, REGARDLESS OF THEIR ORIGIN, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, STRICTLY LIABLE OR INTENTIONAL ACT OF THE CONTRACTOR, A SUBCONTRACTOR OR ANY INDIVIDUAL EMPLOYEE OR LABORER (WHETHER OR NOT AN EMPLOYEE OF THE CONTRACTOR OR A SUBCONTRACTOR) IN THE PERFORMANCE OR SUPERVISION OF ACTUAL TRENCH EXCAVATION UNDER THE CONTRACT. THIS INDEMNITY APPLIES REGARDLESS OF WHETHER OWNER'S OR CONSULTING ENGINEER'S NEGLIGENCE OR FAULT IN THE ADMINISTRATION OF THIS CONTRACT OR IN THE PREPARATION, REVIEW OR APPROVAL OF THE OWNER'S OR CONTRACTOR'S TRENCH EXCAVATION PLAN CONTRIBUTED TO THE INJURY, DEATH OR DAMAGE. OWNER ACCEPTS NO LIABILITY WHATSOEVER AS A RESULT OF ITS PREPARATION, REVIEW OR APPROVAL OF ANY TRENCH EXCAVATION PLAN UNDER THIS CONTRACT. OWNER MAKES NO WARRANTY, EXPRESS OR IMPLIED, CONCERNING THE ADEQUACY OR CORRECTNESS OF ANY TRENCH EXCAVATION PLAN. (THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES TO THE CONTRACT AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. THIS PARAGRAPH SHALL NOT BE CONSTRUED TO WAIVE ANY GOVERNMENTAL IMMUNITY OF THE OWNER. THIS PARAGRAPH CONTROLS IN THE EVENT OF A CONFLICT WITH ANY OTHER INDEMNITY OR OWNER-WARRANTY PROVISION IN THE SPECIFICATIONS).
2. **Trench Safety Plan:** CONTRACTOR shall be responsible for providing to the OWNER an acceptable trench safety plan signed and sealed by a Professional Engineer qualified to do such work and

licensed/registered in the State of Texas. The CONTRACTOR shall be responsible for selecting an appropriate method of providing trench safety after due consideration of the job conditions, location of utilities, pavement conditions and other relevant factors. Slope-back methods which may result in unnecessary displacement of utilities and/or destruction of pavement shall not be used without permission from the OWNER. Plans for devices used to provide trench safety such as trench shields and shoring systems will be likewise certified by professional engineers licensed/registered in the State of Texas or by a professional engineer licensed/registered in the state of manufacture of the shield or shoring system.

3. **Explosives:** When required by the plans, or as requested, CONTRACTOR shall provide a written blasting plan. The OWNER retains the right to reject the blasting plan. CONTRACTOR shall store all explosives securely and clearly mark all storage places with "DANGER – EXPLOSIVES." Store, handle, and use explosives and highly flammable material in compliance with federal, state, and local laws, ordinances, and regulations. Assume liability for property damage, injury, or death resulting from the use of explosives. Contractor shall give at least a 48-hr. advance notice to the appropriate Roadmaster before doing any blasting work involving the use of electric blasting caps within 200 ft. of any railroad track.

108.11.G. Shoring and Sheeting

The sides of all excavation shall be supported in accordance with the trench safety plan. Where bracing or sheeting and shoring are used, the trench width shall be increased accordingly, shall be considered as incidental work, and shall not be paid for as a separate item. All sheeting, shoring, and bracing shall have sufficient strength and rigidity to withstand the pressure exerted, to maintain the sides of the excavation properly in place, and to protect all persons or property from injury or damage. When excavations are made adjacent to existing buildings or other structures or in paved streets, particular care shall be taken to adequately sheet, shore, and brace the sides of the excavation to prevent undermining of or settlement beneath the structures or pavement. Underpinning of adjacent structures or pavement shall be done at the CONTRACTOR'S own cost and expense and in a manner satisfactory to the OWNER, or, when required by the OWNER, the pavement shall be removed, the void(s) satisfactorily filled, compacted, and the pavement replaced by the CONTRACTOR. The entire expense of such removal and subsequent replacement thereof shall be borne by the CONTRACTOR. Wooden sheeting, shoring, and bracing shall be left in place where it is adjacent to the pipe embedment for the initial lift of backfill, if directed by the OWNER.

The removal of all sheeting, shoring, and bracing shall be done in such manner as not to endanger or damage either new or existing structure, or private or public properties, and so as to avoid cave-ins or sliding of the banks. All holes or voids left by the removal of the sheeting, shoring, or bracing shall be immediately and completely filled and compacted with suitable materials. If, for any reason, the CONTRACTOR, with the approval of the OWNER, elects to leave in place the sheeting, shoring or bracing, no payment shall be allowed for such material left in place.

108.11.H. Trenching Inspection

The CONTRACTOR shall cause all shoring or bracing to be inspected by an OSHA competent person. According to OSHA regulations, a competent person is defined as one who is capable of identifying existing and predictable hazards in the surroundings, or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

108.11.I. Payment of Special Trenching

Payment for trench safety shall be by the lineal feet (L.F.) of trench exceeding a depth of 5-ft. unless otherwise specified in the Contract. Excavation for slope-back methods shall be subsidiary to the trench safety pay item including replacement and re-compaction. Excess excavation for other trench safety methods is also subsidiary to the trench safety pay item. Costs relating to the preparation of the trench safety plan including geotechnical investigation, testing and report preparation fees are all subsidiary to the pay item for trench safety. Should trench safety measures be required during Contract performance where no pay item has been provided, then the CONTRACTOR shall immediately notify the OWNER and, if directed to do so, provide trench safety under the

provisions of Item for Extra Work and/or Item for Payment of Extra Work. Should the OWNER fail to authorize the work as provided for in aforementioned items, then the CONTRACTOR shall proceed under the provisions of item for Claims for Additional Compensation, and item for Performance of Extra or Disputed Work. Trench safety requirements are mandatory and shall not be waived. Payment for special shoring, if any, shall be based on the square feet (S.F.) of shoring used.

108.11.J. Soil Borings

Soil Borings are to be used for information only and are not warranted accurate in any way. The OWNER accepts no responsibility for any deviation from or variance in soil types and/or depths shown on the borings.

108.12 WORKING AREA

The CONTRACTOR shall confine its equipment, storage of materials and construction operations to the area shown on the Contract drawings or stated in the specifications, prescribed by ordinance, laws, or permits or as may be directed by the OWNER, and shall not unreasonably encumber the site or public right-of-way with its construction equipment, plant or materials. Such area shall not be deemed for the exclusive use of the CONTRACTOR. Other contractors of the OWNER may enter upon and use such portions of the area and for such items as determined by the OWNER are necessary for all purposes required by its contracts. The CONTRACTOR shall give to such other contractors all reasonable facilities and assistance to the end that the work on this and other contracts shall not be unduly or unreasonably delayed. Any additional areas desired by the CONTRACTOR for its use shall be provided at its own effort, cost and expense.

108.12.A. Project Signs

Project signs shall be furnished, constructed, and erected by the CONTRACTOR as directed by the OWNER. Signs shall be placed in a location selected by the OWNER and maintained in good condition until the completion of the project. Project signs shall be removed by the CONTRACTOR upon the completion and acceptance of the project by the OWNER.

108.12.B. Railway Crossings

Where the work encroaches upon any right-of-way of any railway, the OWNER shall secure the necessary easement for the work. Where railway tracks are to be crossed, the CONTRACTOR shall observe all the regulations and instructions of the railway company as to methods of doing the work or precautions for safety of property and the public. All negotiations with the railway company, except for right-of-way, shall be made by the CONTRACTOR. The railway company shall be notified by the CONTRACTOR not less than five days prior to commencing the work. The CONTRACTOR shall not be paid separate compensation for such railway crossing but shall receive only the compensation as set out in the proposal. Prior to crossing or working on Railroad Right-of-Way, the CONTRACTOR will be required to contact the railroad company, or companies, and to execute CONTRACTOR's Agreements as may be required by each railroad company involved. No work shall be permitted where railroads are involved until the Engineer is furnished sufficient correspondence from the railroad company involved to ascertain that either the agreement has been executed and a certified copy of the insurance policy furnished, or that no such action is required.

108.13 EXISTING STRUCTURES AND APPURTENANCES

This item addresses only matters arising from certain existing, man-made surface and subsurface structures, facilities and appurtenances, not naturally occurring conditions. AS PROVIDED IN ITEM FOR CONTRACTOR'S WARRANTIES AND UNDERSTANDING, THE OWNER SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY CLAIM ARISING FROM A DIFFERING, NATURALLY OCCURRING SURFACE OR SUBSURFACE CONDITION, OR FROM ANY MAN-MADE CONDITION THAT IS NOT A SURFACE OR SUBSURFACE STRUCTURE, FACILITY OR APPURTENANCE. The OWNER'S responsibility for any claim arising from existing, man-made surface and subsurface structures, facilities and appurtenances is governed solely by this item., and any situation involving a differing subsurface condition not included herein shall be governed solely by Item for Contractor's Warranties and Understanding.

108.13.A. Locations

The plans show the general locations of all known, existing man-made surface and subsurface structures, facilities and appurtenances. The locations of many gas mains, water and wastewater mains, storm sewers, drains, culverts, conduits and other man-made utility structures, facilities and appurtenances, however, are unknown. Notwithstanding any other provisions of the Contract, the Contractor shall be solely responsible for location and protection of any and all public lines and utility customer service lines in the Work area. Failure of a utility to be indicated does not relieve the Contractor of responsibility to protect utility lines encountered. The Contractor shall notify "One Call" (1-800-344-8377, or 811), and exercise due care to locate and to mark, uncover or otherwise protect all such lines within the limits of construction and any of the Contractor's work or storage areas.

THE OWNER DOES NOT WARRANT THE PLANS TO SHOW THE EXACT LOCATIONS OF ANY AND ALL KNOWN, EXISTING MAN-MADE SURFACE AND SUBSURFACE STRUCTURES, FACILITIES AND APPURTENANCES, AND DOES NOT WARRANT THAT IT KNOWS OF THE EXISTENCE OF ALL POSSIBLE EXISTING MAN-MADE SURFACE AND SUBSURFACE STRUCTURES, FACILITIES AND APPURTENANCES. The OWNER assumes no responsibility, except as provided below, for any failure to show any or all of these structures on the plans or to show them in their exact locations.

The OWNER may conduct certain test borings to be made on the site and indicated on the plans such information, or any information pertaining to the character or depth of materials is found from observations, records or otherwise. The action of the OWNER in revealing such information shall not in any manner be construed as a warranty on the part of the OWNER of the exact nature of the subsurface conditions that shall be encountered during construction of the work. Although the information is shown as accurately as possible, the OWNER does not guarantee that any materials to be encountered at any point or points are even approximately the same, either in character or elevations, as those shown on the plans. The information thus furnished by the OWNER is intended only as a guide to the CONTRACTOR's own investigations preliminary to submitting a bid for the work.

108.13.B. Conditions for to Work or Payment Increases

The CONTRACTOR and OWNER mutually, expressly agree that the failure of the OWNER to show any existing, man-made surface or subsurface structure, facility or appurtenance on the plans, or the failure to show them on the plans in their exact locations, shall not be considered as a basis of a claim for Extra Work, damages or other compensation of any kind, nor shall it be considered as a basis for increasing the quantities of work or unit prices on any bid item, unless:

1. The CONTRACTOR could not have discovered the existing, man-made surface or subsurface structure, facility or appurtenance by a reasonable review of the plans and specifications and a reasonable, careful inspection of the work site prior to bid opening or award of the Contract.
2. The existing, man-made surface or subsurface structure, facility or appurtenance is in a location that necessitates a substantial change in the alignment, depth or hydraulic gradient of the work to be constructed under the Contract because the CONTRACTOR cannot, by the use of reasonable skill or care, place the work in accordance with the original alignment, depth or hydraulic gradient.
3. The existing surface or subsurface structure, facility or appurtenance requires the construction of a special structure, facility, appurtenance or other special work, provisions for which are not already made in the plans and specifications, to protect the existing man-made surface or subsurface structure, facility or appurtenance, or the work to be constructed under the Contract from damage.

If either of the above elements occurs, the provisions of the specifications regarding claims for Extra Work apply. Otherwise, the condition is considered part of the Contract work and OWNER shall not be liable for extra compensation. Provided, however, that the OWNER will not be liable for payment of Extra Work claims under this subsection that are not timely filed in accordance with other provisions of the specifications, nor shall the OWNER be liable to pay for any additional work or additional costs arising solely from a decision of the CONTRACTOR to change the original means or methods of construction chosen because an existing, man-made surface or subsurface structure, facility or appurtenance is encountered.

108.13.C. Utility Coordination and Protection

It is the intention of the OWNER that all known conflicts between utility-owned facilities and the proposed construction will be cleared prior to the issuance of the work order. Utility information shown on the plans must be confirmed by actual field check in advance of construction. It will be the CONTRACTOR'S responsibility to locate and report all utility conflicts to the Engineer promptly in order to avoid unnecessary delays, and the CONTRACTOR will cooperate with utility owners in making the adjustment(s). Conflicts that are found during construction will be resolved as expeditiously as possible. The CONTRACTOR will be required to protect adequately all utility-owned facilities from damage or displacement by its operations.

The adjustment or location of any utility-owned facility which the CONTRACTOR may desire for its own convenience or ease of construction will be its responsibility to coordinate and will be at its own expense.

108.13.D. Hazardous Materials

OWNER shall be responsible for any Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material uncovered or revealed at the site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of Work and which may present a substantial danger to persons or property exposed thereto in connection with the Work at the site. OWNER shall not be responsible for any such materials brought to the site by CONTRACTOR, Subcontractor, Suppliers or anyone else for whom CONTRACTOR is responsible. Contractor agrees that it shall not transport to, use, generate, dispose of or install at the Project site any hazardous substance (as defined herein), except in accordance with applicable Environmental Laws. Further, in performing the Work, the Contractor shall not cause any release of hazardous substances into, or contamination of, the environment, including the soil, the atmosphere, any water course or ground water, except in accordance with applicable Environmental Laws.

Upon uncovering any such materials the CONTRACTOR shall immediately:

1. Stop all Work in connection with such hazardous condition and in any area affected thereby (except in an emergency as required by paragraph 6.23),
2. Notify OWNER and ENGINEER (and thereafter confirm such notice in writing). OWNER shall promptly consult with ENGINEER concerning the necessity for OWNER to retain a qualified expert to evaluate such hazardous condition or take corrective action, if any. CONTRACTOR shall not be required to resume Work in connection with such hazardous condition or in any such affected area until after OWNER has obtained any required permits related thereto and delivered to CONTRACTOR special written notice specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or specifying any special conditions under which such Work may be resumed safely.

If OWNER and CONTRACTOR cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of such Work stoppage or such special conditions under which Work is agreed by CONTRACTOR to be resumed, either party may make a claim therefore as provided in the Contract Documents. If after receipt of such special written notice CONTRACTOR does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then OWNER may order such portion of the Work that is in connection with such hazardous condition or in such affected area to be deleted from the Work. If OWNER and CONTRACTOR cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a claim therefor as provided in the Claims Section of these provisions. OWNER may have such deleted portion of the Work performed by OWNER's own forces or others.

108.14 PROJECT CLEAN-UP

The CONTRACTOR shall be aware that keeping the project site in a neat and orderly condition is considered an integral part of the contracted work and as such shall be considered subsidiary to the appropriate bid items.

Clean up work shall be done as directed by the Engineer as the work progresses or as needed. If, in the opinion of the Engineer it is necessary, clean-up shall be done on a daily basis. Clean up work shall include, but not be limited to removing the trash, paper, rubbish and debris resulting from operations, sweeping streets clean of

dirt or debris, alleviating any dust nuisance in the work area, storing excess material in appropriate and organized manner and keeping trash of any kind off of residents' property.

If the Engineer does not feel that the jobsite has been kept in an orderly condition, on the next estimate payment (and all subsequent payments until completed) of the appropriate bid item(s) will be reduced by 25%. Upon completion of the work and before final acceptance and final payment shall be made, the CONTRACTOR shall completely clean and remove from the site of the work all equipment, construction materials, surplus and discarded materials, temporary structures and debris of every kind. CONTRACTOR shall leave the site of the work in a neat and orderly condition equal to that which originally existed, or as called for in the Contract documents. Surplus and waste materials removed from the site of the work shall be disposed of at locations satisfactory to the Engineer, and at the CONTRACTOR's sole cost.

108.14.A. Disposal of Materials

Surplus excavation and other materials removed as a part of the construction may be deposited at a legal disposal site in accordance with all applicable federal, state and local laws and regulations. In addition, if the materials are disposed of within private property, a release from the property owner must be obtained before final acceptance of the Work. Surplus excavation and other materials must not be deposited in areas designated as flood plain or along natural drainage ways. Material so deposited will be required to be removed at the CONTRACTOR'S expense and the area restored to its natural condition. Failure to comply promptly with the requirements of this special provision will result in withholding of payments due.

108.14.B. Restoration of Property

When and where any damage or injury is done to public or private property on the part of the CONTRACTOR, it shall restore or have restored at its own cost and expense such property to a condition equal (or improved) to that existing before such damage was done by repairing, rebuilding or otherwise restoring as may be directed, or it shall make good such damage or injury in a manner acceptable to the property owner or the Engineer. Replacement of previously constructed items, such as curb, gutter, sidewalks, driveways, paving, etc., shall conform to the specifications for new construction, unless directed otherwise by the OWNER. In case of failure on the part of the CONTRACTOR to restore such property or make good such damage or injury, the OWNER may, upon 48 hours' written notice, under ordinary circumstances, and without notice when a nuisance or hazardous condition results, proceed to repair, rebuild or otherwise restore such property as may be determined necessary, and the cost thereof shall be deducted from any monies due or to become due the CONTRACTOR under its Contract; or where sufficient Contract funds are unavailable for this purpose the CONTRACTOR or its surety shall reimburse the OWNER for all such costs.

109 PROSECUTION AND PROGRESS

109.1 INTRODUCTION

Before starting work, CONTRACTOR shall schedule and attend a preconstruction conference with the Engineer. Failure to schedule and attend a preconstruction conference is not grounds for delaying the beginning of working.

Unless otherwise shown in the Contract, begin work within 30 calendar days (7 calendar days for routine maintenance Contracts) after the authorization date to begin work as shown on the work order. It is the intent of this specification to provide a continuous construction operation without delay except as occasioned by unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, and it shall be the CONTRACTOR'S responsibility to execute the work in the most expeditious manner.

109.2 CONSTRUCTION SCHEDULE

The CONTRACTOR must submit to the OWNER, within ten days after the Effective Date of the Agreement, a detailed Construction Schedule outlining the major items of work on the project. This schedule must be approved as to form by the OWNER prior to CONTRACTOR starting work on the project. The schedule must be updated on a monthly basis. CONTRACTOR shall submit a preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

If the schedule submitted is not to the OWNER's satisfaction, the CONTRACTOR shall have an additional five days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to CONTRACTOR until the schedules are submitted to and acceptable to ENGINEER as provided below. The progress schedule will be acceptable to ENGINEER as providing an orderly progression of the Work to completion within any specified Milestones and the Contract Times, but such acceptance will neither impose on ENGINEER responsibility for the sequencing, scheduling or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR's full responsibility therefor. CONTRACTOR's schedule of Shop Drawing and Sample submissions will be made acceptable to ENGINEER as providing a workable arrangement for reviewing and processing the required submittals. CONTRACTOR's schedule of values will be acceptable to ENGINEER as to form and substance.

109.2.A. Stop Work

The OWNER has the authority to stop work on the project if the CONTRACTOR fails to provide an updated schedule as requested. The OWNER shall not be responsible for any delay as a result of the CONTRACTOR'S failure to submit the schedule in a timely manner.

109.2.B. Preconstruction Conference

Within twenty days after the Contract Times start to run, but before any Work at the site is started, OWNER shall schedule a conference attended by CONTRACTOR, ENGINEER and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules, procedures for handling Shop Drawings and other submittals, processing Applications for Payment and maintaining required records.

109.3 PROSECUTION OF THE WORK

The CONTRACTOR shall begin the work to be performed under this Contract not later than 10 days from the date specified in the work order and shall conduct the work in such a manner and with sufficient equipment, material, and labor as is necessary to insure its completion within the working time.

Should the prosecution of the work be discontinued by the CONTRACTOR, the CONTRACTOR shall notify the OWNER at least twenty-four hours in advance of resuming operations. Work shall be done only during the hours between 7:00 am and 6:00 pm unless the OWNER approves other hours. Nighttime work is allowed only when shown on the plans or directed or allowed by the Engineer. Nighttime work is defined as work

performed from 30 min. after sunset to 30 min. before sunrise. CONTRACTOR may work on Saturdays if so desires and permission of the OWNER has been granted. Work on Sundays shall be permitted only with the written permission of the OWNER. If Saturday or Sunday work is permitted, working time shall be charged on the same basis as weekdays. Where the working time is expressed as calendar days or a specific date, the concept of working days shall no longer be relevant to the Contract. Work requiring inspection will not be permitted on a legal City holiday except by special written permission of the OWNER. Any work done without proper inspection is subject to removal and replacement at the direction of the OWNER.

109.4 OBLIGATION TO COOPERATE WITH OTHER CONTRACTORS

The OWNER may award other contracts for additional work on this project, and the CONTRACTOR shall fully cooperate with such other contractors and shall coordinate and fit its work to be done hereunder to such additional work as may be contracted by the OWNER. At the time of bidding, prospective bidders shall be advised of other planned contract work, which is expected to affect the work area. The CONTRACTOR shall not commit or permit any act, which shall interfere with the performance of work by any other contractor.

Upon receiving written notice from the CONTRACTOR that another contractor is failing to coordinate its work with the work under this Contract as directed by the OWNER, the OWNER shall promptly investigate the charge and take such necessary action as the situation may require.

However, the OWNER shall not be liable to the CONTRACTOR for damages suffered by the CONTRACTOR due to the fault or negligence of another contractor or through failure of another contractor to carry out the directions of the OWNER. Should any interference occur between contractors, the Engineer may furnish the CONTRACTOR with written instructions designating priority of effort or change in methods, whereupon the CONTRACTOR shall immediately comply with such direction. In such event, the CONTRACTOR shall be entitled to an extension of working time only for unavoidable delays verified by the Engineer; however, no increase in the Contract price shall be due the CONTRACTOR.

109.5 EMPLOYEES

The CONTRACTOR shall employ only competent, efficient workpeople and shall not use on the work any unfit person or one not skilled in the work assigned to him or her and shall at all times maintain good order among its employees. Whenever the OWNER shall inform the CONTRACTOR in writing that, in its opinion, any employee is unfit, unskilled, disobedient, or is disrupting the orderly progress of the work, such employee shall be removed from the work and shall not again be employed on it.

Under urgent circumstances, the OWNER may orally require immediate removal of an employee for cause, to be followed by written confirmation.

109.6 SUBCONTRACTS

The CONTRACTOR shall not make any subcontract for performing any portion of the work included in the CONTRACT without written notice to the OWNER. This CONTRACT having been made pursuant to the bid submitted by the CONTRACTOR and in reliance with the CONTRACTOR'S personal qualifications and responsibility, the OWNER reserves the right to withhold approval of any SUBCONTRACTOR, which the OWNER may deem would not be in the OWNER'S best interest.

The CONTRACTOR shall, as soon as practicable after signing the CONTRACT, submit a separate written notice to the OWNER identifying each proposed SUBCONTRACTOR. Upon request of the OWNER, the CONTRACTOR shall promptly furnish additional information tending to establish that any proposed SUBCONTRACTOR has the necessary facilities, skill, integrity, past experience and financial resources to perform the work in accordance with the terms and conditions of this CONTRACT.

Nothing contained in the Contract Documents shall create any contractual relation between Owner and any Subcontractor or supplier or any party with whom Owner or any of its Subcontractors or suppliers contracts.

Each subcontract agreement for a portion of the Work is hereby assigned by the Contractor to the Owner and the Surety; provided, however, that such assignment shall be effective as to Owner only after Owner's written

termination of the Contract or Contractor's right to proceed under terms of the Contract, and acceptance in writing by Owner of the particular subcontract.

109.5.A. Approval of Subcontractor

The CONTRACTOR must submit, with the request for approval of a SUBCONTRACTOR, the location, within the Highland Lakes area, of at least three contracts where the SUBCONTRACTOR has performed construction similar to the construction outlined in the CONTRACT. If required by the OWNER, the SUBCONTRACTOR'S representative will accompany the OWNER'S representative on examination of the referenced work. The CONTRACTOR must also submit to the OWNER a revised Schedule of Work and SUBCONTRACTOR/SUPPLIER Payment form anytime there is a change in the SUBCONTRACTOR/SUPPLIER participation on the CONTRACT.

109.5.B. Subcontractor Replacement

If the OWNER determines that any proposed SUBCONTRACTOR is unacceptable, it shall so notify the CONTRACTOR, who may thereupon submit another proposed SUBCONTRACTOR unless the CONTRACTOR decides to do the work itself. Disapproval by the OWNER of any proposed SUBCONTRACTOR shall not provide a basis for any time extension claim or additional compensation of any nature, including but not limited to anticipated profit, overhead, or delay, by the CONTRACTOR. If an approved SUBCONTRACTOR fails to perform properly the work undertaken, it shall be removed from the job upon request of the OWNER, following notification to the CONTRACTOR in writing of the request for removal and the reasons therefore. Each subcontract entered into shall provide that the provisions of this CONTRACT shall apply to all SUBCONTRACTORS and their officers and employees in all respects as if they were employees of the CONTRACTOR. The OWNER'S decision not to disapprove of any subcontract shall not relieve the CONTRACTOR of any of its responsibilities, duties, and liabilities hereunder. The CONTRACTOR shall be solely responsible for the acts, omissions, negligence, or defaults of its SUBCONTRACTORS and of such SUBCONTRACTOR'S officers, agents and employees, each of whom shall, for this purpose, be deemed to be the agent or employee of the CONTRACTOR to the extent of its subcontract.

The CONTRACTOR agrees to bind each SUBCONTRACTOR and each SUBCONTRACTOR agrees to be bound by the terms of the CONTRACT documents insofar as applicable to its respective work. The CONTRACTOR and each SUBCONTRACTOR jointly and severally agree that nothing in the CONTRACT documents or otherwise shall create or be deemed to create any rights in favor of a SUBCONTRACTOR against the OWNER; nor shall be deemed or construed to impose upon the OWNER any obligation, liability or duty to a SUBCONTRACTOR; or to create any contractual relation whatsoever between a SUBCONTRACTOR and the OWNER.

The provisions contained herein shall likewise apply to any sub-subcontracts.

109.5.C. Sub-Contractual Relations

The CONTRACTOR is solely responsible for making payments properly to his SUBCONTRACTORS and SUPPLIERS on the Project. During construction of the Project, the CONTRACTOR shall submit each month a CONTRACTOR'S Report of SUBCONTRACTOR/SUPPLIER Payment (the "Report"). The Report shall show all payments made to date by the CONTRACTOR (plus existing retainage) to each SUBCONTRACTOR and SUPPLIER involved in the Project. The Report shall be made on a form approved and supplied by the OWNER. As an alternative to the Report, the CONTRACTOR may furnish Affidavits of Payment Received, which affidavits shall be executed by each SUBCONTRACTOR and SUPPLIER owed money and paid during the previous progress payment period for work or materials furnished on the Project. If, for any reason, the CONTRACTOR is withholding payment to a SUBCONTRACTOR or SUPPLIER due to a dispute or other problem with performance, the CONTRACTOR shall note on the Report form the amount withheld and that payment is in dispute. The OWNER may require the CONTRACTOR to document and verify the dispute or other problem in question. Receipt by the OWNER of the Report or Affidavits of Payment Received shall be a condition precedent to payment on any invoice or estimate.

The OWNER reserves the right in its sole discretion to withhold payment to the CONTRACTOR should it appear from the Report or other information furnished to the OWNER that the Report has not been properly completed.

109.5.D. Sub-Contractual Claims

When submitting a bid proposal, the CONTRACTOR thereby assigns to the City any and all claims for overcharges associated with this contract or any subcontracts directly or indirectly related to the work, which overcharges may arise under the Anti-Trust Laws of the United States, 15 U.S.C.A., Section 1, et seq (1973). The CONTRACTOR shall include in all his subcontracts a clause that requires his SUBCONTRACTORS to assign to the City all claims for overcharges on purchases and supplies, which may arise under the Anti-Trust Laws of the United States, 15 U.S.C.A., Section 1 et seq (1973). The CONTRACTOR shall require his SUBCONTRACTORS to execute a notarized assignment on or before the date of the City's approval of the respective SUBCONTRACTORS for the work, which assignment shall become a part of the prime contract and made a part hereof for all purposes.

The CONTRACTOR agrees to thoroughly review and analyze any claim for additional time, additional compensation, or other damages filed by a SUBCONTRACTOR, in good faith, as to its merits and amount. CONTRACTOR also agrees that it will not present or pass the claim through to the OWNER as if it were the CONTRACTOR'S claim, if the claim is subject to any valid legal or equitable defenses available to either OWNER or CONTRACTOR under the CONTRACT documents, the terms of the Subcontract, or applicable statutory or case law, which defenses include, but are not limited to, any and all notice and claim defenses arising under the Subcontract or the CONTRACT documents. If the SUBCONTRACTOR'S claim is subject to any valid legal or equitable defense under the CONTRACT documents, the Subcontract, or applicable statutory or case law, CONTRACTOR shall, as a condition precedent to the filing of any claim against the OWNER by virtue or any derivative liability of the OWNER under the CONTRACT documents or applicable law, defend against the invalid SUBCONTRACTOR claim in a court of competent jurisdiction, at CONTRACTOR'S sole cost and expense. Failure of CONTRACTOR to defend against invalid SUBCONTRACTOR claims as required in this paragraph shall constitute a complete and unequivocal waiver of any right of CONTRACTOR to seek reimbursement from OWNER. Further, if the CONTRACTOR fails to provide the defense required above, CONTRACTOR shall be obligated to indemnify and reimburse OWNER for all expenses and costs, including but not limited to attorney's fees and expert witness costs, incurred by OWNER in defending any lawsuit based upon a SUBCONTRACTOR claim, in which lawsuit a valid legal or equitable defense was available under the CONTRACT documents, the Subcontract or applicable statutory or case law.

109.6 ASSIGNMENTS

The CONTRACTOR shall not assign, transfer, convey, or otherwise dispose of this Contract, or its right to execute it, or its right, title or interest in it or any part thereof without the previous written consent of the Surety Company and the written approval of the OWNER. The CONTRACTOR shall not assign, either legally or equitably, by power of attorney or otherwise, any of the monies due or to become due under this Contract or its claim thereto without the prior written consent of the Surety company and the written approval of the OWNER. Nothing in this paragraph is intended to conflict with Texas Business and Commerce Code.

The approval of the OWNER of a particular assignment, transfer or conveyance shall not dispense with such approval to any further or other assignments. The approval by the OWNER of any assignment, transfer or conveyance shall not operate to release the CONTRACTOR or Surety hereunder from any of the Contract and bond obligations, and the CONTRACTOR shall be and remain fully responsible and liable for the defaults, negligent acts and omissions of its assignees, its agents and employees, as if they were its own. Should the prosecution of the work be discontinued by the CONTRACTOR, the CONTRACTOR shall notify the OWNER at least twenty-four hours in advance of resuming operations.

If the CONTRACTOR does, without the consent of the OWNER, assign, transfer, convey, or otherwise dispose of the contract or of the CONTRACTOR'S right, title or interest therein, or any part thereof to any person or persons, partnership, company, firm or corporation, or by bankruptcy, voluntary or involuntary, or by assignment under the insolvency laws of any state, attempt to dispose of the contract or make default in or abandon said contract, then the contract may, at the option of the OWNER, be revoked and annulled, unless the sureties shall successfully complete said contract, and any monies due or to become due under this contract shall be retained by the OWNER as liquidated damages for the reason that it would be Impracticable and difficult to fix the actual damage.

109.7 TEMPORARY WORK SUSPENSION

The OWNER shall have the right by written order to suspend the work temporarily, in whole or in part, whenever, in the judgment of the OWNER, such temporary suspension is required.

109.7.A. Reasons for Suspension

1. Because it is in the interest of the OWNER generally;
2. Due to government or judicial controls or orders which make performance of this CONTRACT temporarily impossible or illegal;
3. To coordinate the work of separate contractors at the job site;
4. To expedite the completion of a separate contract even though the completion of this particular CONTRACT may be thereby delayed;
5. Because of weather conditions unsuitable for performance of the work, including of designated ozone alerts as determined by the National Weather Bureau or other authorized agency; or
6. Because the CONTRACTOR is proceeding contrary to CONTRACT provisions or has failed to correct conditions considered unsafe for workers.
7. Because of certain events and activities occurring in proximity to the construction where it would be in the best interest of the public and the CONTRACTOR for such work to be suspended.

The written order of the OWNER to the CONTRACTOR shall state the reasons for suspending the work and the anticipated periods for such suspension. Upon receipt of the OWNER'S written order, the CONTRACTOR shall suspend the work covered by the order and shall take such means and precautions as may be necessary to properly protect the finished and partially finished work, the unused materials and uninstalled equipment, including the provision of suitable drainage about the work and the erection of temporary structures where necessary. The CONTRACTOR shall not suspend the work without written order from the OWNER and shall proceed with the work promptly when notified by the OWNER to resume operations.

109.7.B. No Additional Compensation

No additional compensation shall be paid to the CONTRACTOR for any suspension under Item for Reasons for Suspension, above or otherwise where same is caused by the fault of the CONTRACTOR. Where such temporary suspension is not due to the fault of the CONTRACTOR, or as a result of a designated Ozone Alert Period, it shall be entitled to:

1. an equitable extension of working time for the completion of the work, not to exceed the delay caused by such temporary suspension, as determined by the OWNER; and
2. the actual and necessary costs of properly protecting the finished and partially finished work, unused materials and uninstalled equipment during the period of the ordered suspension as determined by the OWNER as being beyond the CONTRACT requirements, such costs, if any, to be determined on the basis set forth in Item for Payment for Extra Work, herein; and
3. where the CONTRACTOR elects to move equipment from the job site and then return it to the site when the work is ordered resumed, the actual and necessary costs of these moves, in an amount determined by the OWNER under the provisions of Item of Payment for Extra Work; provided, however, no compensation shall be allowed if the equipment is moved to another construction project for the OWNER.
4. Where such temporary suspension is not due to the fault of the CONTRACTOR and is the result of a designated Ozone Alert Period, the CONTRACTOR shall be entitled to additional time as provided above, but is not entitled to additional compensation.

Other than the additional time and compensation stated above, CONTRACTOR shall not be entitled to any other time extension related to the suspension, nor any additional compensation in any way related to such suspension.

109.7.C. Emergency Contract Termination Clause

Whenever, because of a national emergency, so declared by the President of the United States, or other lawful authority, it shall be impossible for the CONTRACTOR to obtain all labor, materials, and equipment necessary for the prosecution of the work with reasonable continuity, the CONTRACTOR shall notify the OWNER. If the

OWNER cannot, after a reasonable time, help obtain priorities for the materials and equipment within a reasonable effort, then the Contract shall be considered as terminated, and the CONTRACTOR shall be entitled to payment for work performed that is acceptable to OWNER based upon unit prices contained in the bid or, if the Contract is lump sum, then based upon the schedule of values submitted by the CONTRACTOR. CONTRACTOR shall not be entitled to any compensation for anticipated profit, overhead, delay damages or any other compensation for work that has not been performed.

109.8 DELAYS AND LIQUIDATED DAMAGES

The CONTRACTOR may be entitled to an extension of working time under this CONTRACT only when all details supporting the claims for such extension are submitted to the OWNER in writing by the CONTRACTOR within fourteen (14) days from and after the time when any alleged cause of delay shall occur, and then only when such time is approved by the OWNER. The CONTRACTOR shall notify the OWNER immediately upon encountering any condition that the CONTRACTOR believes may cause a claim for a time extension. In adjusting the CONTRACT time for the completion of the project, unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, including but not restricted to inability to obtain supplies and materials when orders for such supplies and materials were timely made and materials are not available from other sources, acts of God or the public enemy, acts of the OWNER, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather conditions, ozone alerts as determined by the National Weather Bureau or other authorized agency, or delays of SUBCONTRACTORS due to such causes beyond their control shall be taken into consideration.

If the satisfactory execution and completion of the CONTRACT should require work and materials in greater amounts or quantities than those set forth in the CONTRACT, requiring more time for completion than the anticipated time, then the CONTRACT time may be equitably increased, but not more than in the same proportion as the cost of the additional work bears to the cost of the original work contracted for. No allowances shall be made for delays or suspension of the performance of the work due to the fault of the CONTRACTOR.

109.8.A. Delays

No adjustment of the CONTRACT time shall be made if, concurrently with the equitable cause for delay, hindrance, disruption, force majeure, impact, or interference, there existed a cause for delay due to the fault or negligence of the CONTRACTOR or CONTRACTOR'S agents, employees or SUBCONTRACTORS. Notwithstanding any other provisions of the CONTRACT Documents, including the General and Special Provisions, no adjustment shall be made to the CONTRACT price and the CONTRACTOR may not be entitled to claim or receive any additional compensation as a result of or arising out of any delay, hindrance, disruption, force majeure, impact or interference, foreseen or unforeseen, resulting in adjustment of the CONTRACT time, including but not limited to those caused in whole or in part by the acts, omissions, failures, negligence or fault of the OWNER, its officers, servants or employees. Delays; Extension of Time; Liquidated Damages, and no act of the OWNER shall be deemed a waiver or entitlement of such extension.

109.8.B. Liquidated Damages

For each day that any work shall remain uncompleted after the time specified in the proposal and the Contract, or the increased time granted by the OWNER, or as equitably increased by additional work or materials ordered after the Contract is signed, the sum per day given in the Schedule 009.8.B.1 **Liquidated Damages**, unless otherwise specified in the special provisions, shall be deducted from the monies due the CONTRACTOR.

Schedule 109.8.B.1 Liquidated Damages

Amount of Contract (\$)	Amount of Liquidated Damages (\$)
Less than 25,000	100 Per Day
25,000 to 99,999.99	160 Per Day
100,000 to 999,999.99	240 Per Day
1,000,000 or More	500 Per Day

The sum of money thus deducted for such delay, failure or non-completion is not to be considered as a penalty, but shall be deemed, taken and treated as reasonable liquidated damages, per day that the CONTRACTOR shall be in default after the time stipulated in the Contract for completing the work. The said amounts are fixed and agreed upon by and between OWNER and CONTRACTOR because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the OWNER in such event would sustain; and said amounts are agreed to be the amount of damages which the OWNER would sustain and which shall be retained from the monies due, or that may become due, the CONTRACTOR under this Contract; and if said monies be insufficient to cover the amount owing, then the CONTRACTOR or its surety shall pay any additional amounts due. In the event that the actual damages incurred by the OWNER exceed the amount of liquidated damages, OWNER shall be entitled to recover its actual damages.

109.9 CONTRACTOR DEFAULT

The work or any portion of the work under this Contract shall be suspended immediately on written order of the OWNER declaring the CONTRACTOR to be in default. A copy of such notice shall be served on the CONTRACTOR's surety. The Contract may be terminated by the OWNER for any good cause or causes, among others of which special reference is made to either the following:

1. Failure of the CONTRACTOR to start the work within 10 days from date specified in the written work order issued by the OWNER to begin the work.
2. Substantial evidence that the progress of the work being made by the CONTRACTOR is insufficient to complete the work within the specified working time.
3. Failure of the CONTRACTOR to provide sufficient and proper equipment, materials or construction forces for properly executing the work.
4. Substantial evidence that the CONTRACTOR has abandoned the work or discontinued the performance of the work or any part thereof and failure to resume performance within a reasonable time after notice to do so.
5. Substantial evidence that the CONTRACTOR has become insolvent or bankrupt, or otherwise financially unable to carry on the work.
6. Deliberate failure on the part of the CONTRACTOR to observe any requirements of the Contract Documents or to comply with any orders given by the Engineer as provided for in the Contract Documents.
7. Failure of the CONTRACTOR to promptly make good any defects in materials or workmanship, or any defects of any nature, the correction of which has been directed in writing by the OWNER.
8. Substantial evidence of collusion for the purpose of illegally procuring a contract or perpetrating fraud on the OWNER in the construction of work under Contract.
9. Repeated and flagrant violations of safe working procedures.
10. The filing by the CONTRACTOR of litigation against the OWNER prior to final completion of the work.

When the work is suspended for any of the causes itemized above, or for any other cause or causes, the CONTRACTOR shall discontinue the work or such part thereof as the OWNER shall designate, whereupon the surety may either at its option assume the Contract or that portion thereof which the OWNER has ordered the CONTRACTOR to discontinue and perform the same or, with the written consent of the OWNER, sublet the same, provided, however, that the surety shall exercise its option within two weeks after the written notice to discontinue the work has been served upon the CONTRACTOR and upon the surety or its authorized agents. The surety in such event shall assume the CONTRACTOR's place in all respects and shall be paid by the OWNER for all work performed by it in accordance with the terms of the Contract, but in no event shall such payments exceed the Contract amount, regardless of the cost to the surety to complete the work.

109.9.A. Surety Compensation

All monies remaining due the CONTRACTOR at the time of its default shall thereupon become due and payable to the surety as the work progresses, subject to all terms of the Contract. In case the surety does not, within the hereinabove specified time, exercise its obligation to assume the Contract or that portion thereof which the OWNER has ordered the CONTRACTOR to discontinue, then the OWNER shall have the power to complete by contract or otherwise, as it may determine, the work herein described or such part thereof as it may deem necessary; and the CONTRACTOR hereto agrees that the OWNER shall have the right to take possession of or use

any or all of the materials, plant, tools, equipment, supplies and property of every kind provided by the CONTRACTOR for the purpose of its work and to procure other tools, equipment and materials for the completion of the same and to charge to the account of the CONTRACTOR the expense of said contract for labor, materials, tools, equipment and expenses incident thereto. The expense so charged shall be deducted by the OWNER out of such monies as may be due or may at any time thereafter become due the CONTRACTOR under and by virtue of the Contract or any part thereof.

109.9.B. New Contractor Selection

The OWNER shall not be required to obtain the lowest bid for the work of completing the contract, but the expenses to be deducted shall be the actual cost of such work. In case such expense is less than the sum which would have been payable under the Contract if the same had been completed by the CONTRACTOR, then in such case the OWNER may pay the CONTRACTOR the difference in the cost, provided that the CONTRACTOR shall not be entitled to any claim for damages or for loss of anticipated profits.

In case such expense shall exceed the amount which would have been payable under the Contract if the same had been completed by the CONTRACTOR, the CONTRACTOR and its surety shall pay the amount of the excess to the OWNER on notice from the OWNER for excess due including any costs incurred by the OWNER, such as inspection, legal fees and liquidated damages. When any particular part of the work is being carried on by the OWNER by contract or otherwise under the provisions of this section, the CONTRACTOR shall continue the remainder of the work in conformity with the terms of the Contract and in such manner as not to hinder or interfere with the performance of workmen employed as above provided by the OWNER or surety.

109.10 TERMINATION AND SUSPENSION

The performance of the work under this Contract may be terminated by the OWNER in whole or from time to time in part, in accordance with this section, whenever the OWNER shall determine that such termination is in the best interest of the OWNER.

109.10.A. Court Ordered Suspension

The CONTRACTOR shall suspend such part or parts of the work pursuant to a court order issued against the OWNER and shall not be entitled to additional compensation for anticipated profits, overhead, delay damage or any other form of compensation by virtue of such court order; neither shall the CONTRACTOR be liable to the OWNER in the event the work is suspended by such court order, unless such suspension is due to the fault or negligence of the CONTRACTOR.

109.10.B. Notice of Termination for Convenience

Any such termination shall be effected by serving a notice of termination to the CONTRACTOR specifying the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective. Further, it shall be deemed conclusively presumed and established that such termination is made with just cause as therein stated; and no proof in any claim, demand or suit shall be required of the OWNER regarding such discretionary action.

After receipt of a Notice of Termination, the Contractor shall cooperate fully with Owner in minimizing the cost to Owner of such termination and shall, as directed by the Contracting Officer, protect the Work accomplished and properties acquired for performance of the Work, terminate or cancel incomplete subcontracts and purchase orders, and dispose of surplus materials and other properties.

In the event of such a termination, the Contract Amount shall be equitably adjusted to a sum which shall fairly compensate the Contractor for all Work completed and for all costs incurred (net of salvage) in part performance of the incomplete portions of the Work and for all costs incurred in connection with the termination, but exclusive of profit on the incomplete portions of the Work. In no event shall such sum be less than the portion of the Contract Amount allotted to the completed portion of the Work.

109.10.C. Contractor Action

After receipt of a notice of termination, and except as otherwise directed by the OWNER, the CONTRACTOR shall:

1. **Stop Work:** Stop work under the CONTRACT on the date and to the extent specified in the notice of termination.
2. **No Further Orders:** Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion the work under the CONTRACT as is not terminated.
3. **Deliver and Assign to OWNER:** At the OWNER'S written request, deliver and assign to OWNER, or any person or entity acting on the OWNER'S behalf, any or all subcontracts, purchase orders and options made by CONTRACTOR in the performance of the work, and deliver to the OWNER true and correct originals and copies of such CONTRACT Documents.
4. **Transfer Title to OWNER:** Transfer title to the OWNER and deliver in the manner, at the times, and to the extent, if any, directed by the OWNER:
 - a. **Deliver Fabricated or Un-fabricated Parts:** The fabricated or un-fabricated parts, work in process, completed work, supplies and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the notice of termination; and
 - b. **Deliver Completed or Partially Completed Plans:** The completed or partially completed plans, drawings, information, and other property which, if the CONTRACT had been completed, would have been required to be furnished to the OWNER.
5. **Complete Performance:** Complete performance of such part of the work as shall not have been terminated by the notice of termination.
6. **Protect and Preserve Property:** Take such action as may be necessary, or as the OWNER may direct, for the protection and preservation of the property related to its CONTRACT which is in the possession of the CONTRACTOR and in which the OWNER has or may acquire an interest.

At a time not later than thirty (30) Calendar Days after the termination date specified in the notice of termination, the CONTRACTOR may submit to the OWNER a list, certified as to the quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the OWNER. Not later than fifteen (15) Calendar Days thereafter, the OWNER shall accept title to such items and remove them or enter into a storage agreement covering the same, provided that the list submitted shall be subject to verification by the OWNER upon removal of the items, or, if the items are stored, within forty-five (45) Calendar Days from the date of submission of the list, and provided that any necessary adjustments to correct the list as submitted shall be made prior to final settlement.

109.10.D. Termination Claim

Within 60 days after notice of termination, the CONTRACTOR shall submit its termination claim to the Engineer in the form and with the certification prescribed by the Engineer. Unless one or more extensions in writing are granted by the Engineer upon request of the CONTRACTOR, made in writing within such 60-day period or authorized extension thereof, any and all such claims shall be conclusively deemed waived.

109.10.E. Claim and Action Against Owner

No claim against the OWNER under the Contract or for breach of the Contract or additional compensation for extra or disputed work shall be made or asserted against the OWNER under the Contract or in any court action except pursuant to the provisions of Item for Payment of Extra Work, Item for Disputed Work and Claims for Additional Compensation, and Item for Performance of Extra or Disputed Work, and unless the CONTRACTOR shall have strictly complied with all requirements relating to the giving of notice and information with respect to such claim as required under said sections.

109.10.F. Termination Compensation

Subject to the provisions of Item for Termination Claim, the CONTRACTOR and OWNER may agree upon the whole or any part of the amount or amounts to be paid to the CONTRACTOR by reason of the total or partial termination of work pursuant hereto, provided that such agreed amount or amounts shall never exceed the total

Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated. The Contract shall be amended accordingly, and the CONTRACTOR shall be paid the agreed amount. No amount shall be due for lost or anticipated profits. Nothing in Item for Failure to Agree hereunder, prescribing the amount to be paid to the CONTRACTOR in the event of failure of the CONTRACTOR and the OWNER to agree upon the whole amount to be paid to the CONTRACTOR by reason of the termination of work pursuant to this section, shall be deemed to limit, restrict or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the CONTRACTOR pursuant to this paragraph.

109.10.G. Failure to Agree

In the event of the failure of the CONTRACTOR and the OWNER to agree, as provided in Item for Termination Compensation, upon the whole amount to be paid to the CONTRACTOR by reason of the termination of work pursuant to this section, the OWNER shall determine, on the basis of information available to it, the amount, if any, due to the CONTRACTOR by reason of the termination and shall pay to the CONTRACTOR the amounts determined. No amount shall be due for lost or anticipated profits.

109.10.H. Deductions

In arriving at the amount due the CONTRACTOR under this section, there shall be deducted:

1. All unliquidated advance or other payments on account theretofore made to the CONTRACTOR, applicable to the terminated portion of this Contract.
2. Any claim which the OWNER may have against the CONTRACTOR in connection with this Contract
3. The agreed price for or the proceeds of sale of any materials, supplies or other things kept by the CONTRACTOR or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the OWNER.

109.10.I. Adjustment

If the termination hereunder be partial prior to the settlement of the terminated portion of this Contract, the CONTRACTOR may file with the Engineer a request in writing for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the notice of termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices; nothing contained herein, however, shall limit the right of the OWNER and the CONTRACTOR to agree upon the amount or amounts to be paid to the CONTRACTOR for the completion of the continued portion of the Contract when said Contract does not contain an established Contract price for such continued portion.

109.10.J. No Limitation of Rights

Nothing contained in this section shall limit or alter the rights, which the OWNER may have for termination of this Contract or any other right which OWNER may have for default or breach of Contract by CONTRACTOR.

109.11 USE OF COMPLETED PORTIONS OF WORK

The OWNER may, after written notice to the CONTRACTOR, and without incurring any liability for increased compensation to the CONTRACTOR, take over and use any completed portion of the work prior to the final completion and acceptance of the entire work included in the Contract, and notwithstanding that the time allowed for final completion has not expired. The CONTRACTOR shall not object to, nor interfere in any way with, such occupancy or use after receipt of the OWNER'S written notice. Immediately prior to such occupancy and use, the OWNER shall inspect such portion of the work to be taken over and shall furnish the CONTRACTOR a written statement of the work, if any, still to be done on such part. The CONTRACTOR shall promptly thereafter complete such unfinished work to permit occupancy and use on the date specified in the OWNER'S written order, unless the OWNER shall permit specific items of work to be finished after the occupancy and use by the OWNER.

The provisions in the paragraph above shall not apply to portions of roads, streets, bridges or detours upon which traffic is diverted to enable the continuation of the Contract work. Neither such usage, as performed under this section, nor the written statement of work still to be done shall be held in any way an acceptance of

said work or structure or any part thereof, nor as a waiver of any of the provisions of these specifications or other Contract Documents pending final completion and acceptance of the work; all necessary repairs and removals of any section of the work so put into use, due to the defective materials or workmanship or to operations of the CONTRACTOR, shall be performed by the CONTRACTOR at its own expense. In the event the CONTRACTOR is unreasonably delayed by the OWNER exercising its rights under this section, the CONTRACTOR may submit a request for an extension of time under Item for Delays; Extension of Time; Liquidated Damages; no additional compensation or delay damages will be paid.

110 MEASUREMENT AND PAYMENT

110.1 INTRODUCTION

The Engineer will measure all completed work using United States standard measures, unless otherwise specified.

110.2 PAYMENT FOR LABOR AND MATERIAL

The CONTRACTOR shall furnish payrolls and personnel records, which pertain to current construction contracts with the OWNER for the purpose of ascertaining compliance with minimum wage rates published by the OWNER. Monthly and final estimates for payment will not be processed unless the CONTRACTOR complies with this requirement in a timely manner.

The CONTRACTOR for itself or any of its SUBCONTRACTORS shall pay all indebtedness, which may become due to any person, firm, or corporation having furnished labor, material or both in the performance of this CONTRACT. It shall be the responsibility of each person, firm or corporation claiming to have furnished labor, materials or both, in connection with this CONTRACT, to protect its interest in the manner prescribed by applicable laws of the State of Texas, provided, however, that as this Contract provides for a public works project, no lien of any kind shall ever exist or be placed against the work or any portion thereof, or any public funds or retainage held by the OWNER; and any SUBCONTRACTOR shall look solely to the CONTRACTOR and the payment bond surety, and not the OWNER, for payment of any outstanding amounts due for labor, materials or any other indebtedness in connection with the work. However, the OWNER may, at any time prior to making final payment, require the CONTRACTOR to furnish a Consent of Surety to any payment due the CONTRACTOR for completed work and may, at the discretion of the OWNER or the request of the Surety, make the check jointly payable to the CONTRACTOR and the Surety.

110.2.A. Payment for Materials

1. **Materials On-Hand:** Materials purchased and stored more than 30 days before use shall be considered materials on-hand. Payment for such materials shall be made as materials are consumed.
2. **Materials Stored Off-Site:** Off-site storage of such materials and payment for off-site storage shall be accomplished according to Item for Off-Site Storage.

110.2.B. Payment for Extra Work

Extra Work done by the CONTRACTOR, as authorized and approved by the OWNER, shall be compensated for in the manner described in this Item. The compensation provided for Extra Work done constitutes full and final payment for the cost of the Extra Work, which cost is limited to: all reasonable costs of labor, materials, supplies, tools, equipment or machinery rental, power, fuel, lubricants, water and other similar operation expenses (but only for the time that such of the above things are employed or used on such Extra Work) incurred in the performance of the Extra Work, and a ratable proportion of premium expenses for all bonds and insurance required under the Contract, to the extent that the Extra Work would cause an increase in such bond or insurance premiums; and a markup amount of not-to-exceed 15-percent of the above mentioned costs to cover and compensate the CONTRACTOR for profit, overhead, profit-and-overhead markups charged to CONTRACTOR by other subcontractors and suppliers, general supervision, field office expense and all other elements of cost and expense not embraced within the cost of the Extra Work. No cost of off-site storage shall be included in the above description of cost unless off-site storage has been approved and directed by the OWNER in writing. No other claims or reservations of right as to additional costs, prices, markups, costs not permitted to be included under this paragraph, disallowed costs or other future additional money or time shall be accepted; each change order shall be specific and final.

1. **Distinguishing Extra Work:** For purposes of this Item or any other provision of the Contract documents that allows a claim for Extra Work, the term "Extra Work" means work that is not reasonably within the scope of the Contract Documents and not otherwise incidental or necessary to performance of the Contract. The term does not include any change by the CONTRACTOR in the means and methods of performing the Work from that anticipated or bid (even if such change in means or methods is requested or directed by the OWNER), whether or not the change is due to foreseeable or

unforeseeable events or conditions, if the intended result or scope of the Work is not expanded or increased. The OWNER shall not be liable for any claim due to a change in the means or methods of construction by the CONTRACTOR, resulting in additional costs, if the OWNER has not changed the plans or specifications and if the intended result and scope of the work required by and reasonably inferred from the Contract Documents remains the same. The OWNER shall also not be liable for any claim for work required in performance of the Contract, without which the Contract could not be completed, notwithstanding that the CONTRACTOR did not contemplate or foresee the degree or amount of work that would be necessary or required to complete the Contract and notwithstanding that it cost the CONTRACTOR more to complete the Contract work than the original Contract price.

2. **Method of Determination:** The method of determination and payment of cost, or credit to the OWNER, for any Extra Work shall be one of the following:
 - a. Unit prices agreed on in writing by the Engineer and approved by the OWNER and executed by the OWNER and CONTRACTOR before the Extra Work is commenced or unit prices already included in the Contract documents, subject to all other conditions of the Contract. Mutual acceptance of a not-to-exceed lump sum properly itemized and supported by sufficient substantiating data to permit evaluation before the Extra Work is commenced, subject to all other conditions of the Contract.
 - b. A not-to-exceed cost to be determined in a manner agreed upon by the parties plus a mutually acceptable fixed or percentage fee, agreed upon before the Extra Work is commenced and subject to all other conditions of the Contract.
 - c. The force account method provided in Item for Force Account Work.
3. **Force Account Work:** If the CONTRACTOR and the OWNER cannot agree to one of the methods of calculating cost provided in Item for Method of Determination above, or if the parties agree to a method but cannot agree to a final dollar figure, or if the CONTRACTOR for whatever reason fails or refuses to sign the Change Order in question, the CONTRACTOR, provided it receives a written order signed by the OWNER, shall promptly proceed with the work involved. Nothing in this paragraph shall be construed to relieve the CONTRACTOR of any obligations it has under the disputed work provisions of Item for Disputed Work and Claims for Additional Compensation, and Item for Performance of Extra or Disputed Work, and where applicable the CONTRACTOR is still obligated to abide with those Items as well as this Item for Force Account Work. The cost of the work involved shall then be calculated on a force account basis, on the basis of the actual, reasonable field cost of the work attributable to the changes, plus a reasonable allowance for overhead, profit, markups of other subcontractors and suppliers, general supervision, field office expense and other elements of cost not embraced within the actual field cost as specified herein, such allowance in any case never to exceed 15%. In such case, the CONTRACTOR shall keep a detailed itemized account of the work involved and the actual field cost incurred, in a format acceptable to the Engineer and with such appropriate supporting data as the Engineer or the OWNER may prescribe. Sworn copies of the itemized accounting shall be directed to the Engineer each day during the performance of the force account work. Failure of the CONTRACTOR to submit the sworn-to itemized accounting daily as required herein shall constitute a waiver by the CONTRACTOR of any right to dispute the OWNER'S determination of the amount due the CONTRACTOR for force account work. Actual, reasonable field cost of the work to be charged under this Item of Force Account Work for force account work is limited to the following:
 - a. The reasonable wages of all workmen, foremen, timekeepers, mechanics and laborers, plus costs of social security, old age and unemployment insurance, fringe benefits required by agreement or custom (excluding employee or executive bonuses), and worker's compensation insurance, for the time such labor is actually employed or used on force account work.
 - b. Reasonable costs of materials, tools, supplies and equipment (but not to include off-site storage unless so approved and directed in writing by the OWNER), whether incorporated or consumed into the force account work.
 - c. Reasonable rental costs of machinery and equipment, exclusive of hand tools, only for the time actually employed or used on force account work, whether rented from the CONTRACTOR or others.

- d. A pro rata portion of premium expenses for all bonds and insurance to the extent force account work would cause an increase in such bond or insurance premiums.

Pending final determination of the cost to the OWNER, payment of undisputed amounts on force account shall be included on the monthly estimate as work is completed unless otherwise expressly provided in the written order signed by the OWNER to perform the work. Nothing in this Item for Force Account Work shall be construed as directing the CONTRACTOR's means and methods of performing the work in question.

110.3 PAYMENT WITHHELD

In addition to express provisions elsewhere contained in the Contract, the OWNER may withhold or nullify from any payment otherwise due the CONTRACTOR such amount as determined necessary to protect the OWNER'S interest, or, if it so elects, may withhold or retain all or a portion of any payment or refund payment on account of either of the following:

1. Unsatisfactory progress of the work not caused by conditions beyond the CONTRACTOR'S control.
2. Defective work or not corrected defective work.
3. CONTRACTOR'S failure to carry out instructions or orders of the OWNER or its representative.
4. Reasonable doubt that the Contract can be completed for the balance then unpaid.
5. Work or execution thereof not in accordance with the Contract documents.
6. Claim filed by or against the CONTRACTOR or reasonable evidence indicating probable filing of claims.
7. Failure of the CONTRACTOR to make payments to any subcontractor or suppliers for material or labor used in the performance of the Work.
8. Damage to another CONTRACTOR.
9. Unsafe working conditions allowed persisting by the CONTRACTOR.
10. Failure of the CONTRACTOR to provide work schedules as required by the OWNER.
11. Use of subcontractors without the Engineer's approval.
12. Failure of the CONTRACTOR to keep current as-built record drawings at the job site or to turn same over in completed form to the OWNER.

When the grounds for withholding payment are removed, payment shall be made for amounts withheld because of them, and OWNER shall never be liable for interest on any delayed or late payment. To the greatest extent permitted by applicable law, Owner shall not be deemed to be in breach of the Contract Documents by reason of the withholding of any payment which Owner is entitled to withhold pursuant to, or which it withholds in good faith in reliance on, any provision of the Contract Documents, and no interest shall accrue in connection with the withheld payment(s) determined to have been properly withheld. In determining whether amounts claimed for payment by Contractor, or any subcontractor, are in dispute, Owner shall have the right to consider amounts withheld under this provision, due to Contractor fault or in an attempt to protect the public from loss or overpayment of public funds, to be amounts in dispute. Nothing in this Section or in the Contract Documents shall limit or reduce any right of the Owner to offset amounts owed to Contractor by amounts owed to Owner by Contractor, or to exercise any other rights or remedies provided by law or equity.

110.4 MONTHLY ESTIMATES AND PAYMENTS

This Item is not intended to contradict previous sections pertaining to MONTHLY ESTIMATE, PARTIAL PAYMENTS, RETAINAGE, FINAL INSPECTION, ACCEPTANCE AND FINAL PAYMENTS.

110.4.A. Monthly Estimates

Between the 25th day and the last day of each month, the OWNER shall make an approximate estimate of the value of the work done during the month under the specifications. Whenever the said estimate or estimates of work done since the last previous estimate exceeds \$100 in amount, a percentage of such estimated sum shall be paid the CONTRACTOR on the next following month. Payment of the monthly estimate is determined at the Contract Item prices less any withholdings or deductions in accordance with the Contract. The monthly estimate may include acceptable nonperishable materials delivered to the work; such payment shall be allowed on the

same percentage basis of the net invoice value as provided hereinafter. The percent retained by the owner shall normally be up to the amount noted under the Item for Retainage, unless otherwise stated elsewhere in the contract documents. At the midpoint, or at any subsequent time, if the owner determines that the progress on the Contract is satisfactory in all respects, it may at its discretion cease to retain additional funds until the completion of the project, or until progress ceases to be satisfactory. The owner shall make the sole determination in this matter.

Except as otherwise provided by the Contract, between the 25th day and the last day of each month the CONTRACTOR shall make an estimate of the value of work done during this month under the specifications. The CONTRACTOR shall prepare the estimate on a form approved by the Engineer. The CONTRACTOR shall forward the estimate required above to the OWNER by not later than the last day of the month. The monthly estimate may include acceptable nonperishable materials delivered to and stored at the work site or a storage facility accessible to the OWNER; payment for such stored materials shall be allowed on the same percentage basis of the value as provided hereinafter. The monthly estimate shall also provide such supporting documentation as the Engineer or the other applicable provisions of the specifications may require. The OWNER shall verify that the CONTRACTOR's estimate matches the total value of work done and acceptable non-perishable materials delivered to the work site or storage facility, based upon the bid proposal prices and quantities measured or verified by OWNER. In the event of a discrepancy between quantities of work as shown in the CONTRACTOR'S estimate and measured quantities as shown in the OWNER'S verification, the OWNER's determination or measurement shall be final, and the CONTRACTOR's estimate shall be adjusted to reflect the quantities of work as shown by the OWNER'S verification. Payment shall be made by OWNER about thirty (30) days after receipt of the estimate from CONTRACTOR. OWNER shall not be liable for interest on any late or delayed payment caused by any claim or dispute, any discrepancy in quantities as described above, any failure to provide supporting documentation or other information required with the estimate or as a precondition to payment under the Contract, or due to any payment the OWNER has a right to withhold under the Contract. Measurement and payment shall be done per the design documents as designed by the Engineer.

The CONTRACTOR shall complete installation proposed improvements as shown on the drawings. Payment each month shall be done for a percentage complete of such items as measured in Square Yards, Cubic Yards, and Linear Feet of the total amount installed. All items paid per EACH will be paid per each individual item installed. Any approved deviation from the design documents will be paid per individual unit price shown. The OWNER provided unit measurements take into account small discrepancies up to 10% for all volume and weight measurements, 7% for all area measurements, and 5% for all linear measurements, compared to what may be found in the field. If CONTRACTOR notices considerable change then a change proposal request may be submitted for approval as noted herein.

The CONTRACTOR shall submit to the Engineer a Schedule of Values for each Lump Sum item of work for review and approval 20 days before the work is scheduled to be performed. The CONTRACTOR shall itemize in the Schedule of Values the actual costs to the CONTRACTOR to perform the various parts of the Lump Sum item work which shall include a reasonable overhead and profit cost item. Partial payment for Lump Sum items shall be made based on the value and percentage of the work in the bid item completed, as approved by the OWNER and as reflected in the Schedule of Values. The CONTRACTOR shall furnish to the OWNER such detailed information as OWNER may request to assist in the preparation of monthly estimates. It is understood that the monthly estimates shall be approximate only, and all monthly estimates and partial payments shall be subject to correction in the estimate rendered following the discovery of an error in any previous estimate, and such estimate shall not in any respect be taken as an admission of the OWNER of the amount of work done or of its quality or sufficiency nor as an acceptance of the work or the release of the CONTRACTOR of any of its responsibility under the Contract.

Owner shall not be obligated to make any progress payment or the final payment if the Surety objects to such payment or refuses to consent to such payment, or withdraws its consent to such payment. If requested by the Surety, or if Owner determines that it is advisable to do so, Owner shall have the right to make payments jointly to Contractor and Surety, or to Contractor and any subcontractor, supplier, or other person claiming payment for labor or materials. In the event of a dispute between Contractor and/or the Surety or persons

performing labor or supplying materials, as to whom payment of amounts held by Owner should be made, Owner shall have the right to interplead the funds held by it in the registry of a court having appropriate jurisdiction, and to withhold from the amounts held by it all attorney's fees and other costs incurred by Owner in connection with such dispute.

110.4.B. Retainage

As security for the faithful completion of the work by the CONTRACTOR, the OWNER shall retain 15-percent of the total dollar amount of work done on all contracts \$25,000 and less; 10 a-percent of the total dollar amount of work done on all contracts in excess of \$25,000 and less than \$400,000; five-percent of the total dollar amount of work done on all contracts of \$400,000 or more. On all contracts in excess of \$400,000, either of the following shall apply:

1. On all contracts in excess when work progress is 80-percent complete, retainage may, at the OWNER'S option, be reduced to two percent of the dollar value of all work satisfactorily completed to date (not to include material on hand), provided that the CONTRACTOR is making satisfactory progress and there is no cause of greater retainage as determined by the Engineer.
2. When work progress is substantially complete, the retainage may be further reduced to only that amount necessary to assure completion as determined by the Engineer.
3. If the OWNER determines that the CONTRACTOR is not making satisfactory progress or if there is other specific cause, the OWNER may, at its discretion, reinstate up to the five percent retainage.

110.4.C. Final Contractor's Report

The final CONTRACTOR'S Report of SUBCONTRACTOR / SUPPLIER Payment, evidencing that all indebtedness connected with the work and all sums of money due for any labor, materials, apparatus, fixtures or machinery furnished for or used in the performance of the work have been paid or otherwise satisfied, or that the person or persons to whom the same may be respectively due have consented to final payment. The OWNER may reasonably require other documentation, including but not limited to, additional affidavits, lien waivers, and other such documentation needed to protect the OWNER'S interest. In addition, the CONTRACTOR shall be required to execute the OWNER'S standard Affidavit of Final Payment and Release as a precondition to receipt of final payment. The acceptance by the CONTRACTOR of the final payment as aforesaid shall operate as and shall be a release to the OWNER from all claims or liabilities under the CONTRACT, including all SUBCONTRACTOR claims, for anything done or furnished or relating to the work under the CONTRACT or for any act or neglect of said OWNER relating to or connected with the CONTRACT. All warranties and guarantees shall commence from the date of the certificate of acceptance. No interest shall be due the CONTRACTOR on any partial or final payment or on the retainage.

110.4.D. Acceptance

The Contractor shall notify the ENGINEER when the list of outstanding items and Work are complete, and the Project Manager will arrange a final inspection with the Contractor and the Owner. If work completed is to the OWNER's satisfaction, then OWNER shall issue a letter or certificate of acceptance to the CONTRACTOR.

Upon completion of the Work in full and strict conformity to the Contract Documents and within 30 days after final acceptance of the Work by a Contracting Officer and Contractor's satisfaction of its obligations for final payment, Owner shall pay the unpaid balance of the Contract Amount less any sum that may be necessary to settle any claim Owner may have against the Contractor or that may be necessary to settle any outstanding obligations of the Contractor or of its Subcontractors arising out of or incident to the performance of the Contract or which is otherwise withheld pursuant to the terms of the Contract Documents.

Neither the Certificate of Substantial Completion, nor final acceptance payment, nor any other provisions in the Contract Documents, shall relieve the Contractor of its obligations under the Contract Documents or under any warranty.

110.4.E. Final Payment

Whenever the improvements provided for by the Contract shall have been completely performed on the part of the CONTRACTOR, as evidenced in the certificate of acceptance obtained according to Item of Acceptance, and all required submissions provided to the OWNER, a final estimate showing the value of the work shall be prepared by the Engineer as soon as the necessary measurements and computations can be made. All prior estimates upon which payments have been made are subject to necessary corrections or revisions in the final payment. The amount of the final estimate, less any sums that have been previously paid, deducted or retained under the provisions of this Contract, shall be paid to the CONTRACTOR within a reasonable period of time after final acceptance, provided that the CONTRACTOR has first furnished the OWNER:

1. Consent of surety to final payment.
2. The final CONTRACTOR's notarized Report of Subcontractor/Supplier Payment, evidencing that all indebtedness connected with the work and all sums of money due for any labor, materials, apparatus, fixtures or machinery furnished for or used in the performance of the work have been paid or otherwise satisfied, or that the person or persons to whom the same may be respectively due have consented to final payment.
3. Other affidavits, lien waivers and other documentation as the OWNER may reasonably require protecting its interests.
4. All warranties, instructions, documents and other submittals required by the Contract Documents, or otherwise required by Owner.
5. Furnish a release of all claims against Owner, in form satisfactory to Owner, whether of Contractor, Subcontractors or of others, arising under and by virtue of the Contract.
6. Deliver to Owner all As-Built Drawings and three Owner's Manuals containing all Contractor and Subcontractor names, addresses and phone numbers; all plumbing, electrical, and communication equipment/fixture product data; all special equipment product data; and all parts lists and operating, maintenance, and service manuals.
7. The Contractor shall arrange for a reasonable amount of instruction for the Owner's employees and representatives to insure proper operation of all equipment furnished. The Contractor shall not assume that the Owner's employees possess special expertise or have had any previous experience whatsoever in the operation and maintenance of equipment installed as part of the Project.

In addition, the CONTRACTOR shall be required to execute the OWNER's standard Affidavit of Final Payment and Release as a precondition to receipt of final payment. The acceptance by the CONTRACTOR of the final payment as aforesaid shall operate as and shall be a release to the OWNER from all claims or liabilities under the Contract, including all subcontractor claims, for anything done or furnished or relating to the work under the Contract or for any act or neglect of said OWNER relating to or connected with the Contract.

All warranties and guarantees shall commence from the date of the certificate of acceptance. No interest shall be due the CONTRACTOR on any partial or final payment or on the retainage.

110.4.F. Wire Transfer Payments

Payments to the CONTRACTOR may, at the discretion of the OWNER, be made by wire transfer to a bank of the CONTRACTOR'S choice. The CONTRACTOR must furnish the following information:

1. The ABA number of the bank.
2. The CONTRACTOR'S account number.

The request must be on the CONTRACTOR'S letterhead and signed by an authorized representative of the CONTRACTOR (cannot be a copy).

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401 INTRODUCTION

This Section shall govern the replacement, rehabilitation, or new construction of roadways, including items such as structures, signage, and other items not applicable to other sections.

402 SUBGRADE PREPARATION

402.1 DESCRIPTION

Subgrade is that portion of the roadbed upon which the subbase, base or the pavement is to be placed. It includes 12-in. beyond the back of the curb for streets, which are to be paved with concrete.

This item shall consist of scarifying, blading and rolling the subgrade to obtain a uniform texture and provide as nearly as practicable a uniform density for the top 6-in of the subgrade, or other depths as may be called out in the plans or the bid form. These specifications shall govern for the preparation of the subgrade except as otherwise provided or specified.

402.2 EQUIPMENT

All equipment necessary for the construction of this item shall be on the project and shall be approved by the OWNER as to condition before the CONTRACTOR shall be permitted to begin construction operations on which the equipment is to be used. Any equipment that achieves the desired results in the time frame allowed is acceptable. Compaction equipment shall conform to the requirements of Item for Proof Rolling.

In lieu of the subgrade equipment specified, the CONTRACTOR may, upon written permission from the OWNER, operate other subgrade equipment that will produce equivalent results in the same period of time as the specified equipment. If the substituted subgrade equipment fails to produce the desired results within the same period of time as would be expected of the specified equipment, as determined by the OWNER, its use shall be discontinued.

402.3 CONSTRUCTION METHODS

After the excavation of embankment has been substantially completed, the subgrade shall be shaped so that after rolling as specified in Item for Proof Rolling and subsequent finishing operations, it shall conform to the correct alignment, cross section and elevation. Rolling and sprinkling, as needed, shall be performed when and to the extent directed and the roadbed shall be completed to or above the plane of the typical section shown on the plans and the lines and grades established by the OWNER. All preparing of the right of way and/or clearing and grubbing and removal of concrete curbs, all organics (i.e., roots, trees, grass, and other humus materials) and any other deleterious materials, shall be complete before starting the subgrade preparation. All unsuitable material shall be removed and replaced with approved material. All foundations, walls or other objectionable material shall be removed to a minimum depth of 18 inches under all structures and 12 inches under areas to be vegetated. Subgrade shall be scarified at least 6 inches of the cut soil subgrade, and re-compacted to standard as shown below.

In the event that fill material is required to be placed over the subgrade to achieve required grades, approved material shall be placed in 8-inch loose lifts and compacted and tested in accordance with Section for Embankment requirements.

After completion of the compaction and immediately before the application of subbase, base or pavement, the subgrade preparation equipment shall be operated using approved methods in a manner to finish the subgrade to the required section. The subgrade shall then be tested with the approved template, operated and maintained by the CONTRACTOR. All irregularities which develop in excess of ½-in. in a length of 10-ft. measured longitudinally shall be corrected by loosening, adding or removing material; reshaping; and re-compacting by sprinkling and rolling. The completed subgrade shall have a uniform density of not less than 95-percent Standard Proctor density (ASTM D 698). Density tests shall also be performed on any utility trench backfill

beneath the proposed roadway to verify that adequate compaction levels have been achieved. Moisture content shall be within -2 to +4 of optimum.

The Contractor will be required to set blue tops for the subgrade and any required fill material on centerline, at quarter points and curb lines or crown lines at intervals not exceeding 50 feet. Subgrade shall be prepared and tested at a rate of one test per 500 feet per lane prior to placement of embankment or select fill material.

The subgrade shall be maintained in a smooth, compacted condition, in conformity with the required section and established grade, until the subbase, base or pavement is placed, and shall be kept wetted down sufficiently in advance of placing any subbase, base or pavement to insure its being in a firm and moist condition for at least 2-in. below surface of the prepared subgrade. Only such subgrade as is necessary for the satisfactory execution of the work shall be completed ahead of the placement of base or pavement. Hauling or operating of unnecessary equipment on the completed subgrade shall be kept to a minimum. If equipment is operated on recent work, the OWNER may inspect and require subgrade replacement for such defects as fractures, rutting, or any other failure. Complete drainage of the subgrade shall be provided at all times. Finishing of the subgrade by other methods shall be permitted on pavement widening projects, on sections where the pavement width is not uniform, at intersections and elsewhere where the operation of certain equipment would not be practical. Subgrade finished by hand or other methods shall conform to the requirements above specified.

402.4 MEASUREMENT AND PAYMENT

Unless otherwise noted in the contract documents the preparation of subgrade shall not be measured for payment as a separate contract pay item. This item shall be considered subsidiary to other paving items. Item shall furnishing of all labor, tools, materials, equipment and incidentals necessary to complete the work, including disposal or surplus material, all in accordance with the plans and these specifications.

If required the preparation of subgrade shall be measured by the square yard (SY) regardless of the required depth of preparation; and cost thereof shall be included in such contract items as are provided, which pay items shall be the total compensation for the furnishing of all labor, tools, materials, equipment and incidentals necessary to complete the work, including disposal or surplus material, all in accordance with the plans and these specifications.

403 FLEXIBLE BASE OR SUBBASE PREPARATION

403.1 DESCRIPTION

Subbase is that layer of specified material of plan thickness between a base and a subgrade. Base is that layer of specified material of plan thickness placed immediately below the pavement course surfacing, flexible base or subbase includes 12-in. beyond the back of the curb for streets, which are to be paved with concrete.

This item shall consist of scarifying, blading and rolling the subgrade to obtain a uniform texture and provide as nearly as practicable a uniform density for a minimum of 6-inches, or other depths as may be called out in the plans or the bid form. The base layer shall be constructed as herein specified in one course for depths less than 6" and two courses for depths greater than 6", in conformity with the typical sections and to the lines and grades as indicated or as established by the OWNER.

These specifications shall govern for the preparation of the subbase except as otherwise provided or specified. This item shall consist of a foundation course for a surface course or for other subbase or base courses; shall be constructed as herein specified in one or more courses in conformity with the typical section shown on the plans and to the lines and grades as established by the OWNER.

403.2 EQUIPMENT

All equipment necessary for the construction of this item shall be on the project and shall be approved by the OWNER as to condition before the CONTRACTOR shall be permitted to begin construction operations on which the equipment is to be used. Any equipment that achieves the desired results in the time frame allowed is acceptable.

In lieu of the subgrade equipment specified, the CONTRACTOR may, upon written permission from the OWNER, operate other subgrade equipment that will produce equivalent results in the same period of time as the specified equipment. If the substituted subgrade equipment fails to produce the desired results within the same period of time as would be expected of the specified equipment, as determined by the OWNER, its use shall be discontinued.

403.3 MATERIALS

The flexible base delivered shall be free of all foreign material or debris (i.e. reinforcement steel, dirt, plastic, trash). Material shall consist of durable particles of crushed limestone or crushed concrete and shall be free of thin, laminated, or elongated pieces, or an excess of shale, dirt, organic matter or other materials that would be harmful to the production of a homogenous base coarse. Should the CONTRACTOR elect to produce the material from local pits, the material shall be secured from sources approved by the OWNER. The pits as utilized shall be opened up in such a manner as to immediately expose the vertical faces of all the strata of acceptable material in the depth mined. Unless otherwise directed, the material shall be secured in successive vertical cuts extending through all of the exposed strata, in order that a uniform mixed material shall be secured.

Aggregate that fails to meet the requirements of these specifications may be rejected by the OWNER. Such rejection shall incur no cost to the OWNER. Aggregate sources from which materials are delivered with properties not meeting these specifications may be rejected as further supply sources to the project by the OWNER.

403.3.A. Testing

Tests base materials shall be in accordance with the following TxDOT standard laboratory test procedures:

- | | |
|--|---------------------|
| 1. Preparation for Soil Constants and Sieve Analysis | Tex-101-E |
| 2. Liquid Limit | Tex-104-E |
| 3. Plastic Limit | Tex-105-E |
| 4. Plasticity Index | Tex-106-E |
| 5. Sieve Analysis | Tex-110-E |
| 6. Wet Ball Mill | Tex-116-E |
| 7. Triaxial Test | Tex-117-E (Part II) |

When a magnesium soundness value is shown on the plans the material shall be tested in accordance with Test Method Tex-411-A Soundness of Aggregate Using Sodium Sulfate or Magnesium Sulfate.

Base material will be stockpiled after crushing, tested by the testing agency designated by the Owner and reviewed by the Owner prior to being hauled to the project site.

403.3.B. Gradation

Gradation shall meet the requirements in Table 403.3.B.1 Flexible Base or Subbase Gradation, according to specified grade and properties according to Table 403.3.B.2.

Table 403.3.B.1 Flexible Base or Subbase Gradation

Sieve Size	Percent Retained
2 ½ inch	0
1¾ inch	0-10
No. 4	45-75
No. 40	60-85

Table 403.3.B.2 Physical Properties

Physical Property	Max. Percentage
Liquid Limit (LL)	35
Plasticity Index (PI)	4 - 12
Wet Ball Mill	50
Increase in passing No. 40 sieve	20

* Tests shall be made in accordance with A.S.T.M. latest methods and Texas State Highway Department testing. Minimum compressive strength when subjected to the triaxial test: 35 psi at 0 psi lateral pressure and 175 psi at 15 psi lateral pressure, unless otherwise indicated.

403.3.C. Material Storage

Prior to stockpiling of aggregates, the area shall be cleaned of trash, weeds and grass and be relatively smooth. Stockpiles should be constructed to between 20,000 and 40,000 cubic yards in size. The size should be limited to the ability of the available equipment to construct, mix and test the pile. The stockpile shall be constructed utilizing equipment such as a scraper, a bottom dump or other acceptable equipment that allows spreading when dumped without re-handling. The stockpile shall be constructed to allow dump spreading in 1 direction only. Height of stockpile shall not exceed the capabilities of available machinery to make a full cut (bottom to top) on any of the 4 sides.

The Contractor will furnish tests on a completed stockpile. Tests shall be performed by a qualified provider of material testing services. The stockpile shall not be added to after it has been tested.

403.4 CONSTRUCTION METHODS

After the excavation of embankment has been substantially completed and the subgrade operations have been completed per specifications set forth herein, the subbase and/or base layer shall be shaped and shall conform to the correct alignment, cross section and elevation.

403.4.A. Placing

Immediately before placing the subbase or base course material, the subgrade shall be checked as to conformity with grade and section. A minimum of 2 inches of depth of the existing base material shall be uniformly scarified and mixed with the first course of base prior to compaction.

The material shall be delivered in vehicles of a uniform capacity. It shall be the charge of the CONTRACTOR that the required amount of specified material shall be delivered to secure the proper thickness of the completed subbase or base course.

Material deposited on the subgrade shall be spread and shaped the same day. All material shall be moved at least once from the original position in which it is deposited. In the event of inclement weather or other unforeseen circumstances which render impracticable the spreading of the material during the first 24-hour period, the material shall be scarified and spread as directed by the OWNER. The material shall be sprinkled, if directed, and shall then be bladed, dragged and shaped to conform to the typical section as shown on the plans.

All areas and "nests" of segregated coarse or fine material shall be corrected or removed and replaced with well-graded material as directed by the OWNER. If additional binder is considered desirable or necessary after the material is spread and shaped, it shall be furnished and fully incorporated with the material in place by

scarifying, harrowing, brooming or by other approved methods. The course shall be sprinkled as required and compacted to the extent necessary to provide not less than the percent density as specified in Item for Density. In addition to the requirements specified for density, the full depth of flexible subbase or base shown on the plans shall be compacted to the extent necessary to remain firm and stable under construction equipment. After each course is completed, tests as necessary shall be made by the OWNER unless otherwise specified in the special provisions or in the plans. If the material fails to meet the density requirements, it shall be reworked as necessary to meet these requirements.

Throughout the entire operation, the shape of the course shall be maintained by blading. The surface, upon completion, shall be smooth and in conformity with the typical sections shown on the plans to the established lines and grades. On the surface on which pavement is to be placed, any deviation in excess of $\frac{1}{4}$ -in. in cross section in a length of 16-ft. measured longitudinally shall be corrected by loosening, adding or removing material, reshaping and re-compacting by sprinkling and rolling. All fractures, settlement, or segregation that develops shall be corrected immediately by scarifying the areas affected, adding suitable material as required, reshaping and re-compacting by sprinkling and rolling. Should the subbase or base course, due to any reason or cause, lose the required stability, density and finish before the surfacing is complete, it shall be re-compacted and refinished at the sole expense of the CONTRACTOR.

403.4.B. Courses

Non full depth asphalt pavements, paving types with flexible base under the curb and gutter shall be placed and compacted at the same time and in the same operation as the flexible base under the pavement. Where the subbase or base course exceeds 6-in. in thickness, it shall be constructed in two or more courses of equal thickness as indicated on the typical section. Course depth shall be a minimum of 3-in. and maximum of 6-in. The first course shall be placed and compacted under the curb and gutter and under the pavement. The curb and gutter shall then be built upon the first course. The final course of the flexible base shall be placed following the curing time as specified in Item for Concrete Curb and Gutter.

In addition to the requirements specified for density, the full depth of flexible base shall be compacted to the extent necessary to remain firm and stable under construction equipment. After each section of flexible base is completed, tests as necessary will be made by the Contractor. If the material fails to meet the density requirements, it shall be reworked as necessary to meet these requirements. Should the base course, due to any reason or cause, lose the required stability, density and finish before the surfacing is complete, it shall be re-compacted and refinished at the sole expense of the Contractor.

403.4.C. Density

Each course of flexible base shall be compacted to not less than 95 percent of optimum density, as determined by TxDOT test method Tex-114, in accordance with ASTM D2167 Nuclear Test Method. In no case shall the base be worked at more than 2 percent above or below optimum moisture. Field density determinations shall be made in accordance with approved methods. Tests shall be performed at intervals not exceeding 500 feet at random points on the roadway cross section.

403.5 MEASUREMENT AND PAYMENT

Preparation of base and subbase shall be measured by the square yard (SY) regardless of the required depth of preparation.

1. For flexible base paid as measured in place, the quantity shall be computed by the average end area method based on cross sections taken before beginning of any construction operations, and equivalent cross sections taken after completion and acceptance of the flexible base. The contractor shall be required to provide cross sections of the existing topography before beginning of any construction operations, and shall be required to provide cross sections immediately following completion and acceptance of the flexible base. The manner, location, and level of detail of the cross sections shall be as approved by the OWNER. The contractor shall calculate the total flexible base volume and submit both sets of cross sections and the calculations to the OWNER for review and approval.

2. For flexible base paid as a plans quantity item, no field measurement shall be made, and payment shall be at the unit price bid for the quantity shown on the plans. No adjustment of quantities shall be made except in the instance of design changes by the OWNER.
3. Where no curb and gutter is in place or is to be constructed in connection with the base, measurement shall be made to the lines shown on the plans or established as the edge of the base to be constructed.
4. Where curb and gutter is in place or is proposed to be constructed in connection with the placing of the base material, measurement shall be made to 12-in beyond the back of curb. Material placed under the curb and gutter or behind the curb shall not be measured separately but in conjunction with the rest of the roadway base material.

Preparation of the base and/or subbase shall be paid for as a separate contract pay item; and cost thereof shall be included in such contract items as are provided, which pay items shall be the total compensation for the furnishing of all labor, tools, materials, equipment and incidentals necessary to complete the work, including disposal or surplus material, all in accordance with the plans and these specifications. Price shall be full compensation for preparation of subgrade, furnishing of material, hauling, blading, sprinkling, compacting and furnishing all of labor and equipment necessary to complete the work.

404 ROLLING OF EMBANKMENT, SUBGRADE OR FLEXIBLE BASE

404.1 DESCRIPTION

Rolling shall consist of the compaction of embankment, subgrade, subbase, or flexible base by the operation of approved power rollers, as herein specified and as directed by the OWNER. The embankment, subgrade or base course shall be sprinkled as directed by the OWNER. Rolling patterns and speeds shall be established per project and indicated on the plans. Any soft or compressible areas detected during the proof rolling process shall be undercut to firm soil and backfilled as required by the OWNER with acceptable soil to make the final grade.

404.2 EQUIPMENT

All equipment necessary for the construction of this item shall be on the project and shall be approved by the OWNER as to condition before the CONTRACTOR shall be permitted to begin construction operations on which the equipment is to be used. Any equipment that achieves the desired results in the time frame allowed is acceptable. Sufficient rollers shall be provided to compact the material in a manner satisfactory to the OWNER. When operations are so isolated from one another that one roller unit cannot perform the required compaction satisfactorily, the CONTRACTOR shall provide additional roller units.

If equipment fails to produce the desired result within the required time frame, its use shall be discontinued and the CONTRACTOR will be required to furnish equipment, as determined by the OWNER, at no additional cost to the OWNER.

In lieu of the equipment specified, the CONTRACTOR may, upon written permission from the OWNER, operate other compaction equipment that will produce equivalent results in the same period of time as the specified equipment. If the substituted equipment fails to produce the desired results within the same period of time as would be expected of the specified equipment, as determined by the OWNER, its use shall be discontinued.

404.3 MEASUREMENT AND PAYMENT

This item shall be considered subsidiary to other paving items; and shall be the total compensation for all labor, materials, tools, machinery, equipment and incidentals necessary to complete the work in accordance with the plans and this specification.

If included in the contract documents as a separate contract pay item, rolling shall be measured for payment by the actual hours the roller is in operation (Hrs), as ordered by the OWNER. Rolling provided in the proposal and the contract, as a separate pay item, shall be paid for in accordance with the contract unit price.

405 PAVEMENT SECTION TREATMENT

This item shall consist of treating embankment, subgrade, subbase, and base courses by addition of lime, cement, or asphalt; mixing and compacting the material to the required density.

405.1 LIME TREATMENT

This item shall consist of treating subgrade, subbase, and base courses by the pulverization, addition of lime, mixing and compacting the mixed material to the required density. This item applies to natural ground, embankment, or pulverized recycled asphalt pavement base or subbase courses placed under this contract, which shall be constructed as specified herein and in conformity with the typical section, lines and grades as shown on the plans.

405.1.A. Materials

Materials for Lime Treatment shall consist of Hydrated Lime (Slurry) and Quicklime.

405.1.A.1. Hydrated Lime (Slurry): Hydrated lime slurry shall be a pumpable suspension of solids in water. The solids portion of the mixture, when considered on the basis of "solids content," shall consist principally of hydrated lime of a quality and fineness sufficient to meet the following requirements as to chemical composition and residue.

405.1.A.1.a. Gradation: The "solids content" of the lime slurry shall have a hydrate alkalinity Ca(OH)_2 of not less than 90-percent by weight. The percent by weight of residue retained in the "solid content" of lime slurry shall conform to the requirements in Table 405.1.A.1.a.(1) Hydrated Lime Residue.

Table 405.1.A.1.a.(1) Hydrated Lime Residue

Sieve Size	Residue Retained by Weight
No. 6	None
No. 10	Max.1.0%
No. 30	Max. 2.5%

Slurry shall be Type B, commercial lime slurry, shall conform to one of the following three grades:

Grade 1: The "dry solids contents" shall be at least 31-percent by weight of the slurry.

Grade 2: The "dry solids contents" shall be at least 35-percent by weight of the slurry.

Grade 3: The "dry solids contents" shall be at least 46-percent by weight of the slurry.

When Type B, commercial lime slurry, is specified, the CONTRACTOR shall select, prior to construction, the grade to be used and shall notify the OWNER in writing before changing from one grade to another.

405.1.A.2. Quicklime: Quicklime is a dry material consisting essentially of calcium oxide. It shall be furnished either in "pebble" gradation suitable for dry placing and slurry placing, or as a dry powder suitable only for slurry placing. Powdered quicklime is restricted to slurry placing, as the possibility of appreciable amounts of finely divided powdered quicklime makes it unsuitable for dry placing.

CAUTION: HANDLING AND USE OF QUICKLIME CAN BE DANGEROUS. QUICKLIME SHOULD BE PRESCRIBED BY A REGISTERED PROFESSIONAL OWNER FAMILIAR WITH ITS USE.

Quicklime shall conform to the chemical requirements of ASTM C977 Quicklime and Hydrated Lime for Soil Stabilization. Water shall conform to the requirements of section for Water under Item for Portland Cement Concrete Pavement.

405.1.A.3. Testing: If the minimum design strength or percent lime to be used is specified, it shall be determined by preliminary laboratory tests at the OWNER's expense. Optimum lime addition percentage shall

be determined by Tex-112-E Admixing Lime to Reduce Plasticity Index of Soils (Atterberg Limits Soil-Lime Series) and/or by ASTM 06276 Test Method for using pH to Estimate the Soil-Lime Proportion Requirement for Soil Stabilization (pH Soil-Lime Series).

405.1.A.4. Delivery and Storage: If hydrated lime is furnished in bags, each bag shall bear the manufacturer's certified weight. Bags varying more than 5-percent by weight may be rejected; the average weight of the bags in any shipment, as shown by weighing 50 bags taken at random, shall not be less than the manufacturer's certified weight. If lime is furnished in trucks, each truck shall bear the weight of lime measured on certified scales, or the CONTRACTOR shall place a set of standard platform truck scales or hopper scales at a location approved by the OWNER.

Hydrated lime and quicklime shall be stored and handled in closed, weatherproof containers until immediately before distribution on the road. If storage bins are used, they shall be completely enclosed. Hydrated lime bags shall be stored in weatherproof buildings with adequate protection from ground dampness. Quicklime, when permitted, shall be shipped only in bulk; bagged material shall not be acceptable.

Any materials that do not conform to the requirements of this specification shall be rejected.

405.1.B. Equipment

Machinery, tools and equipment necessary for proper performance of the work shall be on the project and approved by the OWNER prior to the beginning of construction operations. When permitted, quicklime shall be slurred in agitated slurry tanks. The distributor truck used for slurry placing need not necessarily be equipped with an agitator. However, the slurry at the time of distribution must meet the consistency requirements specified.

All machinery, tools and equipment used shall be maintained in a satisfactory and workmanlike manner.

405.1.C. Construction Methods

It is a primary requirement of this specification to secure a completed course of treated material containing a uniform lime mixture, free from loose or segregated areas, or uniform density and moisture content, well bound for its full depth, and with a smooth surface and suitable for placing subsequent courses. It shall be the responsibility of the CONTRACTOR to regulate the sequence of work, to use the proper amount of lime, maintain the work and rework the courses as necessary to meet the above requirements.

Prior to beginning any lime treatment, the roadbed shall be constructed and shaped to conform to the typical sections, lines and grades as shown on the plans or as established by the OWNER.

In cases where groundwater is present, application of lime for stabilization shall be evaluated by the OWNER.

Mixing procedure shall be the same for "dry placing" or "slurry placing" as hereinafter described.

405.1.C.1. Treatment for Materials in Place: Materials to be treated shall be excavated to the secondary grade (proposed bottom of lime treatment) and removed or windrowed to expose the secondary grade. Any wet or unstable material below the secondary grade shall be corrected by scarifying, adding lime and compacting until it is of uniform stability. The excavated material shall then be spread to the desired cross section.

If the CONTRACTOR elects to use a cutting or pulverizing machine that shall remove the subgrade material accurately to the secondary grade and to pulverize the material at the same time, CONTRACTOR shall not be required to expose the secondary grade or windrow the material. However, the CONTRACTOR shall be required to roll the subgrade before using the pulverizing machine and correct any soft areas that this rolling may reveal. This method shall be permitted only where a machine is provided which shall insure that the material is cut uniformly to the proper depth and which has cutters that shall place the secondary grade to a smooth surface over the entire width of the cut. The machine shall be of such design that a visible indication is given at all times that the machine is cutting to the proper depth.

405.1.C.1.a. Mixing: Mixing procedure shall be the same for "dry placing" or "slurry placing" as hereinafter described.

Material and lime shall be thoroughly mixed by approved road mixers or other approved equipment and the mixing continued until a homogeneous, friable mixture of material and lime is obtained, free from all clods or lumps. Materials containing plastic clay or other materials which shall not readily mix with lime shall be mixed as thoroughly as possible at the time of the lime application, brought to the proper moisture content, sealed with a pneumatic roller, and left to cure 1- to 4-days as directed by the OWNER. During the curing period, the material shall be kept moist. After the required curing time, the material shall be uniformly mixed by approved methods. If the soil binder lime mixture contains clods, they shall be reduced in size by raking, blading, discing, harrowing, scarifying or the use of other approved pulverization methods so that when all non-slaking aggregates obtained on the No. 4 sieve are removed, the remainder of the material shall meet the requirements of Table 405.1.C.4.a.(1) Mixing Lime Treated Materials-In-Place when tested dry by laboratory sieves.

Table 405.1.C.4.a.(1) Mixing Lime Treated Materials In Place

Sieve Size	Minimum Passing
1 3/4-in	100%
No. 4	60%

1. Recycled asphalt pavement shall be pulverized so that 100% shall pass a 2-in. sieve.

During the interval of time between application and mixing, hydrated lime that has been exposed to the open air for a period of 6-hours or more, or to excessive loss due to washing or blowing, shall not be accepted for payment.

In addition to the above, when pebble quicklime is used, the material and lime shall be mixed as thoroughly as possible at the time of application. Sufficient moisture shall be added during the mixing to hydrate the quicklime. After mixing, and prior to compaction, the mixture of material, quicklime and water shall be moist cured for 2- to 7-days, as approved by the OWNER. After curing, mixing shall continue until the pulverization requirements are met.

405.1.C.2. Treatment for New Materials: The base and subbase materials, as provided in the governing specifications, shall be delivered, placed and spread in the required amount per station. The material shall be manipulated as specified and thoroughly mixed prior to the addition of the lime.

405.1.C.2.a. Mixing: Mixing procedure shall be the same for "dry placing" or "slurry placing" as hereinafter described. The base or subbase material, lime and required water shall be thoroughly mixed and blended by approved road mixers or other approved equipment and the mixing continued until a homogeneous, friable mixture is obtained. When lime is placed as a slurry and mixed by the use of blades, the material shall be bladed as the lime water mixture is applied; after the total amount has been placed, the mixture shall be thoroughly blended to the satisfaction of the OWNER.

During the interval of time between application and mixing, hydrated lime that has been exposed to the open air for a period of 6-hours or more, or to excessive loss due to washing or blowing, shall not be accepted for payment.

405.1.C.3. Lime Application: Lime shall be spread only on that area where the first mixing operation can be completed in the same working day, except that quicklime shall be mixed at the time of application. The application and mixing of lime with the materials shall be accomplished by the methods hereinafter described unless otherwise approved by the OWNER.

405.1.C.3.a. Dry Placing: Quicklime may be placed dry if it is in pebble form. A spreader or motor grader shall be used to spread pebble Quicklime.

405.1.C.3.b. Hydrated Lime: Lime shall be mixed with water and applied as a thin water suspension or slurry. Type B, commercial lime slurry shall be applied with a lime percentage not less than that applicable for the grade used. The distribution of lime at the rate shown on the plans shall be attained by

successive passes over a measured surface of roadway until the proper moisture and lime content have been achieved.

405.1.C.3.c. Quicklime: When Quicklime is applied as a slurry, the amount of dry quicklime shall be 80% of the amount shown on the plans. The residue from the Quicklime slurring procedure shall be spread uniformly over the length of the roadway currently being processed unless otherwise approved by the OWNER. This residue is primarily inert material with little stabilizing value, but may contain a small amount of Quicklime particles that slake slowly. A concentration of these particles could cause the compacted stabilized material to swell during slaking.

405.1.C.4. Compaction: Compaction of the mixture shall begin immediately after final mixing and in no case later than three (3) days after final mixing. The material shall be aerated or sprinkled as necessary to provide optimum moisture. Compaction shall begin at the bottom and shall continue until the entire depth of the mixture is uniformly compacted as shown on the plans or specified by the OWNER. The compacted mixture shall have a uniform density of not less than 98-percent of the maximum density as determined by ASTM D 698. Moisture content shall be within minus 2 to plus 4 percent of optimum. After each section is completed, such tests as are necessary shall be made by the OWNER. If any portion fails to meet the density specified, it shall be reworked as necessary to obtain the specified density. After the mixture has been compacted, the surface shall be shaped to the required line, grades, and cross sections and then thoroughly rolled sufficiently lightly to prevent hairline cracking.

405.1.C.5. Maintenance: The CONTRACTOR shall be required to maintain the completed soil lime base within the limits of its contract in good condition, satisfactory to the OWNER as to grade, crown, and cross section until such time as the surface course is constructed. Only lime treated soil shall be used for fine grading proposed street pavement subgrade where lime treatment has been specified. The subgrade of low areas shall be lightly scarified to a depth of from two to 3 inches before fine grading is performed to insure the resulting subgrade is a homogeneous, monolithic layer throughout. Use of sand or sandy soil for fine grading beneath proposed street pavement areas is strictly prohibited.

The surface of the compacted layer shall be kept moist until covered by other base or paving material or application of a curing seal of emulsified asphalt conforming to requirements of Item for Emulsions. If a curing seal is used, it should be applied as soon as possible after completion of final rolling, at a rate of between 0.10- and 0.20-gallons-per-square-yard, the exact rate to be determined by the OWNER. No equipment or traffic shall be permitted on lime treated material for 72-hours after curing seal is applied, unless otherwise permitted by the OWNER. In cases where subgrade treatment or subbase sets up sufficiently to prevent objectionable damage from traffic, such layers may be opened to traffic 2-days after compaction. The CONTRACTOR shall immediately repair all irregularities or other defects that may occur at the CONTRACTOR'S expense. Repairs are to be made as directed by the OWNER and in a manner to insure restoration of a uniform surface and durability of the portion repaired.

405.1.D. Measurement and Payment

Lime treatment shall be measured for payment in square-yards (SY) for the thickness shown in the plans for the surface area of completed and accepted work.

The measurement for lime shall be by the ton (2000-pounds) of dry weight. The measured tonnage of (dry) quicklime shall be multiplied by the conversion factor 1.25 to give the equivalent quantity of hydrated lime (dry) which shall be the basis of payment.

Lime treatment shall be paid for at the contract unit price per square-yard (SY), as provided in the proposal and contract.

The contract unit price shall be the total compensation for preparing the roadbed; for loosening, pulverizing, application of lime, water content in the slurry mixture and the mixing water; mixing, shaping, sprinkling, compacting, finishing, curing and maintaining; for manipulations required; and for all labor, equipment, fuels, tools and incidentals necessary to complete the work, all in accordance with the plans and specifications.

Lime material measured as provided in the this item shall be paid for at the unit price bid for "lime material" which price shall be full compensation for furnishing the material; for all freight involved; for all unloading, storing and handling; and for all labor, equipment, fuels, tools and incidentals necessary to complete the work.

405.2 PORTLAND CEMENT TREATMENT

This item shall consist of the treatment of the subgrade, subbase or base course which is to be composed of a compacted mixture of soil, and/or pulverized recycled asphalt pavement, Portland cement and water and shall be constructed as herein specified and in conformity to the cross sections, lines and grades as established by the OWNER. In the event new materials are placed, rather than using in-situ soils, the subbase or base shall be constructed as herein specified and in conformity with the items governing the base or subbase courses.

405.2.A. Materials

Materials for Portland Cement Treatment involve Portland Cement, Water, and Soil or Base Material. All cement shall be sampled and tested in accordance with the current Standard Methods of Sampling and Testing Portland Cement of the ASTM Designation C-183, C-184, C-188, C-190 and C-191.

1. Cement shall be ASTM C150 Type I, II, III, or IP and conform to the requirements of Item for Portland Cement Pavement.
2. Water shall conform to the requirements of Item for Portland Cement Pavement.
3. The soil shall consist of the in-situ soil or approved soil, free from vegetation, roots, or other objectionable matter. It may be either the material encountered in the existing section, material secured from approved sources shown on the plans or as designated by the OWNER, or a combination of existing and additional soil from approved sources, as shown on the plans, or as directed by the OWNER.
4. Base Material shall conform to the requirements of Item for Flexible Base or Subbase Preparation.

Portland Cement shall meet the requirements of the current Standard Specifications for Portland Cement of the ASTM Designation C-150, Type I, for Normal Portland Cement, Type III for High Early Strength Portland Cement and Type II will have a maximum of five (5) percent tricalcium aluminate for exposure to sewage.

405.2.B. Equipment

All equipment necessary to properly prosecute, perform and complete the work within the contract time shall be on the project and shall be approved by the OWNER as to type and condition before the CONTRACTOR shall be permitted to begin construction operations on which the equipment is to be used. The cement-modified soil layer may be constructed with any machine or combination of machines and auxiliary equipment that shall produce the results meeting the requirements for soil pulverization, cement application, water application, mixing, incorporating of materials, compaction, finishing and curing as specified herein. The CONTRACTOR shall at all times provide sufficient equipment to enable continuous performance of the work and its completion in the required number of working days.

405.2.C. Construction Methods

The primary requirement of this specification is to secure a complete course of treated material containing a uniform Portland cement mixture, free from loose or segregated areas, of uniform density and moisture content, well bound and compacted for its full depth with a smooth surface suitable for placing additional subbase, base or surface courses. It shall be the responsibility of the CONTRACTOR to regulate the sequence of work, to process a sufficient quantity of material so as to provide full depth as shown on plans, to use the proper amount of Portland cement, maintain the work and to rework the courses as necessary to meet the foregoing requirements.

Cement stabilized base shall not be mixed or placed when the air temperature is below 40°F and falling, but may be mixed or placed with the air temperature is above 35°F and rising, the temperature being taken in the shade and away from artificial heat, and with the further provisions that cement stabilized base shall be mixed or placed only when weather conditions, in the opinion of the OWNER, are suitable.

405.2.C.1. Treatment for Materials in Place: Before other construction operations are begun, the roadbed shall be graded and shaped as required to construct the Portland cement treatment for material in place in conformance with the lines, grades, thickness and typical cross sections shown on the plans. Unsuitable soil or material shall be removed and replaced with acceptable soil. The subgrade shall be firm and able to support without displacement the construction equipment and achieve the compaction herein specified. Soft or yielding subgrade shall be corrected and made stable before construction proceeds. The soil and/or recycled asphalt pavement shall be so pulverized that at the completion of moist-mixing, it meets the gradation in Table 405.2.C.1.a. Cement Treated Materials in Place.

Table 405.2.C.1.a. Cement Treated Materials in Place

Sieve Size	Minimum Passing
1-in	100%
No. 4	80%

1. Recycled asphalt pavement shall be pulverized so that 100% shall pass a 2-in. sieve.
2. Exclusive of gravel or stone retained on these sieves.

405.2.C.1.b. Application: Portland cement shall be spread by an approved dry or slurry method uniformly on the soil at the rate specified on the plans or as determined by preliminary laboratory tests. If a bulk cement spreader is used, it shall be positioned by string lines or other approved method during spreading to insure a uniform distribution of cement. Cement shall be applied only to such an area that all the operations can be continuous and completed in daylight within 6-hours of such application.

The percentage of moisture in the soil at the time of cement application shall not exceed the quantity that shall permit uniform and intimate mixture of soil and cement during dry-mixing operations, and it shall not exceed the specified optimum moisture content for the soil and cement mixture. In the event of high soil-moisture contents, cement may be applied at one-half the specified rate when approved by the OWNER. The remainder of the application rate of cement shall be applied the following day(s), not to exceed 48-hours. The usual construction sequence shall then be resumed.

No equipment, except that used in the spreading and mixing, shall be allowed to pass over the freshly spread cement until it is mixed with the soil or base material.

Any mixing method used to achieve the specified results is acceptable. Mixing shall continue until a homogeneous, friable mixture of the material and cement is obtained, free from all clods or lumps. The mixture shall be kept within moisture tolerances throughout the operation.

405.2.C.1.c. Compaction: Compaction shall begin after mixing and after gradation and moisture requirements have been met. The material shall be compacted to at least 95-percent of the maximum density as determined by ASTM D698. At the start of compaction, the percentage of moisture in the mixture and in un-pulverized soil lumps, based on oven-dry weights, shall be within 2-percentage points of the specified optimum moisture content and shall be less than the quantity which shall cause the soil-cement mixture to become unstable during compaction and finishing. When the un-compacted soil-cement mixture is wetted by rain so that the average moisture content exceeds the tolerance given at the time of final compaction, the entire section shall be reconstructed in accordance with this specification at the sole expense of the CONTRACTOR. The specified optimum moisture content and density shall be determined in the field on the representative samples of soil-cement mixture obtained from the area being processed. Final moisture content shall be within -2 to +4 of optimum.

Prior to the beginning of compaction, the mixture shall be in a loose condition for its full depth. Compaction shall begin at the bottom and shall continue until the entire depth of the mixture is uniformly compacted. The loose mixture shall then be uniformly compacted to the specified density within 2-hours. After the soil and cement mixture, except the top mulch, is compacted, water shall be uniformly applied as needed and thoroughly mixed in. The surface shall then be reshaped to the required lines, grades and cross section and then lightly scarified to loosen any imprint left by the compacting or shaping equipment.

The resulting surface shall be thoroughly rolled with a pneumatic tire roller and "clipped," "skinned," and "tight-bladed" by a power grader to a depth of approximately ¼-in., moving all loosened soil and cement from the section. The surface shall then be thoroughly compacted with the pneumatic roller, adding small increments of moisture as needed during rolling. When directed by the OWNER, surface finishing methods may be varied from this procedure, provided a dense, uniform surface, free of surface material, is maintained at its specified optimum during all finishing operations. Surface compaction and finishing shall proceed in such a manner as to produce, in not more than 2-hours, a smooth, closely knit surface, free of cracks, ridges or loose material, conforming to the drawn grade and line shown on the plans.

OWNER shall conduct In-place density tests shall as outlined in ASTM D2922 in Place by Nuclear Methods (Shallow Depth). In-place density tests shall be performed at the rate of one-per-300-linear-ft. of paving for two lanes. The suitability of the modification shall be confirmed by Atterberg Limit testing at the rate of one-test-per-2,500-cubic-yards of processed material.

In addition to the requirements specified for density, the full depth of the material shown on the plans shall be compacted to the extent necessary to remain firm and stable under construction equipment. After each section is completed, tests as necessary will be made by the OWNER. If the material fails to meet the density requirements, it shall be reworked as necessary to meet these requirements. Throughout this entire operation the shape of the course shall be maintained by blading, and the surface upon completion shall be smooth and in conformity with the typical section shown on the plans and to the established lines and grades. Should the material, due to any reason or cause, lose the stability, density and finish before the next course is placed or the work is accepted, it shall be re-compacted and refinished at the sole expense of the CONTRACTOR.

405.2.C.2. Plant Mixed Material: Cement Treated Base (CTB) shall consist of aggregate, cement and water uniformly mixed in a central plant, transported to the project, spread, compacted, shaped, finished, and cured in accordance with these specifications. It shall conform to the lines, grades, thicknesses, and typical cross-section shown on the plans.

Unsuitable subgrade soil or material shall be removed and replaced with acceptable soil. The subgrade shall be firm and able to support without displacement of the construction equipment and compaction. Soft or yielding subgrade shall be corrected and made stable before construction proceeds.

405.2.C.2.a. Mixing: The aggregate, cement and water shall be mixed in a pug mill as approved by the OWNER. The plant shall be equipped with feeding and metering devices that add the aggregate, cement and water into the mixer in the specified quantities to produce a mixture that meets or exceeds the mix design criteria. Aggregate and cement shall be mixed sufficiently to prevent cement balls from forming when the mix water is added. Mixing time shall be sufficient to assure an intimate, uniform mixture of aggregate, cement and water. The percentage of moisture in the aggregate, at the time of cement application shall be the amount that assures a uniform and intimate mixture of aggregate and cement during mixing operations. It shall not exceed the specified moisture content required for adequate compaction.

Free access to the plant shall be provided to the OWNER for construction quality control. The mixture shall be hauled to the paving area in trucks having beds cleaned of deleterious material.

405.2.C.2.a.(1) Aggregate: The aggregate may be any granular material or combinations of aggregates that will, when mixed with adequate amounts of cement and water, produce laboratory mix design Unconfined Compression Test strengths as specified in the paragraph below in accordance with ASTM D1632. The preceding tests will utilize the Moisture-Density Relation as determined by ASTM D558: AASHTO T134. The maximum size of aggregate shall pass a 2-inch sieve.

405.2.C.2.a.(2) Mix Design: The CONTRACTOR shall submit a mix design for the proposed CTB to the OWNER for approval in advance of the proposed work. Unconfined compression strength test results shall be submitted with the mix design by the SUPPLIER of the Cement Treated Base (CTB) material. Work shall not begin until the mix design is approved by the OWNER.

405.2.C.2.b. Placement: The mixture shall be placed on a moistened subgrade in a uniform layer by any approved method of spreading that will deposit the required quantity per lineal foot, without segregation, to produce a uniformly compacted base conforming to the grade and cross-section. Not more than 30-minutes shall elapse between placement of cement treated base in adjacent lanes at any location except at longitudinal and transverse construction joints.

Compaction shall start as soon as possible after spreading. Elapsed time between the addition of water to the cement treated base mixture and the start of compaction shall not exceed 60-minutes under normal conditions. The OWNER may alter this time if environmental conditions, such as temperature, humidity or wind conditions would justify such a change. Laboratory tests may be required to verify changes in compaction time limits.

405.2.C.2.c. Compaction: At the start of compaction, the percentage of moisture in the mixture shall not be more than 1% below or 2% above the specified optimum moisture content, and shall be less than that quantity which will cause the cement treated base mixture to become unstable during compaction and finishing. The specified optimum moisture content and density shall be determined in the field by a Moisture-Density Test AASHTO T134 or ASTM D558, on representative samples of cement treated base mixture obtained from the area prior to compaction. Prior to compaction, the mixture shall be in a loose condition for its full depth. The loose mixture shall then be compacted uniformly to the specified density.

During compaction operations, initial shaping may be required to obtain uniform compaction and required grade and cross-section. When initial compaction is completed, the surface of the cement treated base shall be shaped to the required lines, grades and cross-section. The moisture content of the surface material shall be maintained at not less than its specified optimum moisture content during finishing operations. If any reshaping of the surface is necessary, it shall be lightly scarified to remove any compaction planes, scales or smooth surfaces left by equipment. Final compaction shall then be continued until uniform and adequate density is obtained. Cement treated base shall be uniformly compacted to a minimum of 95-percent of maximum density. Compaction and finishing shall be done in such a manner as to produce, in not longer than two-hours, a smooth, dense surface free of compaction planes, cracks, ridges, or loose material.

405.2.C.3. Finishing: After the final layer or course of the cement modified soil has been compacted, it shall be brought to the required lines and grades in accordance with the typical sections. The completed section shall then be finished by rolling as directed with a pneumatic tire or other suitable roller sufficiently light to prevent hair cracking. Preparation for final surfacing may begin immediately.

405.2.C.3.a. Protection and Cover: After the roadway has been finished as specified herein, it shall be immediately protected against rapid drying by applying a curing seal of emulsified asphalt at the rate of 0.2-gallon per square yard. The curing seal shall consist of emulsified asphalt conforming to requirements of Item for Emulsions (PCE). Immediately prior to application of the curing seal, the section shall be wetted by the use of pressure water distributors so that all voids in the soil-cement surface are filled with water, but without free water standing on the surface. The curing seal shall be applied while this moisture condition exists so that undue asphalt penetration of the soil-cement surface shall be prevented; and at the same time aided in complete coverage by the curing seal.

Should it be necessary for construction equipment or other traffic vehicles to pass over the section before the curing seal has dried sufficiently to prevent pickup, it shall be the responsibility of the CONTRACTOR to dust or sand the surface before such use. The CONTRACTOR shall also maintain the curing cover for 7-days so that all of the soil-cement base course shall be covered effectively with curing seal during this period. The curing seal shall remain in place for the additional asphalt-wearing surface.

405.2.C.3.b. Usage: The CONTRACTOR shall not be permitted to drive heavy equipment over completed portions. Pneumatic-tired equipment required for hauling cement and water may be permitted to drive over after the surface has hardened sufficiently to prevent the equipment from marring the surface, provided that protection and cover are not impaired. The soil-cement course may be opened to local traffic as soon as the curing seal has been applied and dusted or sanded as necessary to prevent it from being picked up by traffic. Completed portions may be opened to all traffic after 7-days.

405.2.C.3.b. Maintenance: The CONTRACTOR shall be required within the limits of its contract to maintain the soil-cement treatment in good condition from the time it first starts work until all work shall have been completed. Maintenance shall include immediate repairs of any defect that may occur after the cement is applied. Such maintenance work shall be done by the CONTRACTOR at the CONTRACTOR'S expense and repeated as often as necessary to keep the area continuously intact. Repairs are to be made in such a manner as to insure restoration of a uniform surface for the full depth of treatment. Any low area of treated subgrade shall be remedied by scarifying the surface to a depth of at least 2-in., filling the area with treated material and compacting. Any low area of subbase or base shall be remedied by replacing the material for the full depth of subbase or base treatment rather than adding a thin layer of stabilized material to the completed work.

405.2.D. Measurement and Payment

Portland cement treatment shall be measured by the square-yard (SY) of completed and accepted cement treated course. Measurement for cement shall be by the ton (2000-pounds) of dry weight, as determined by certified weight tickets. No allowance shall be made for any materials used or work done outside the limits as established by the OWNER.

The work performed and material furnished as prescribed by this item and measured as provided in this item shall be paid for at the unit price bid for soil-cement treated subgrade, subbase, or base course, which price shall be full compensation for pulverizing or providing the soil material; handling, hauling and spreading dry or slurry cement, mixing the cement with the soil either in-place or in a mixing plant; furnishing, hauling and mixing water with the soil-cement mixture; spreading and shaping the mixture; compacting the mixture, including all rolling required for this compaction; surface finishing; curing; and for all manipulation, labor, equipment, appliances, tools and incidentals necessary to complete the work and carry out the maintenance provisions in this specification.

Cement material measured as provided in this item shall be paid for at the unit price bid for cement material, which price shall be compensation for furnishing the material, for all freight involved, for all unloading and storing, and for all labor, equipment, fuels, tools and incidentals necessary to complete the work, all in accordance with the plans and these specifications.

406 ASPHALT PAVEMENT

This Item establishes the requirements for asphalt construction. This item shall consist of a surface course to be composed of a compacted mixture of mineral aggregate and asphaltic material. The pavement shall be constructed on the previously completed and approved base in accordance with the detail indicated.

406.1 HOT MIX ASPHALT (HMAC)

This item shall consist of a surface course to be composed of a compacted mixture of mineral aggregate and asphaltic material. The pavement shall be constructed on the previously completed and approved base in accordance with the detail indicated.

406.1.A. Materials

The Contractor shall furnish materials to the project meeting the following requirements and such that the final mixture, prior to being placed, shall be as specified herein. The Contractor shall be solely responsible for the quality and control of his materials.

406.1.A. Aggregates: Aggregates for Surface Treatments shall be provided in accordance with TxDOT Item 302 in conformance to the type, grade, and surface aggregate classification (SAC) shown on the plans.

406.1.B.1. Asphalts, Oils, and Emulsions: Asphaltic Material shall be provided in accordance with TxDOT Item 300 and as shown on the plans.

406.1.B.1.a Prime Coat: If a prime coat is indicated use cutback (MC-30 or MC-70) or emulsion asphalt. Cutback asphalt shall be applied at a rate of 0.35 gal/sy, and emulsified asphalts shall be applied at a rate of 0.2 gal/sy conforming to materials and methods of TxDOT Item 310 "Prime Coat".

406.1.C.1. Mixtures: Mixture Design shall be performed in accordance with TxDOT Item 340 to satisfy Materials and Type specified on the plans.

The paving mixture shall consist of a uniform mixture of coarse aggregate, fine aggregate, asphaltic material and mineral filler, if required. When properly proportioned, the mineral aggregate shall produce a gradation which will conform to the limitations for the type specified. The gradation will be determined in accordance with TxDOT Test Method Tex-200-F (Dry Sieve Analysis) and shall be based on aggregate only. The amount of asphaltic material shall conform to the limitations shown for the paving type specified and materials and mixture design specified in TxDOT Item 340.

406.1.B. Construction Methods

Design, produce, store, transport, place, and compact the specified paving mixture in accordance with the requirements of TxDOT Item 340.

406.1.B.1. Testing: The OWNER may require the performance of random tests to determine if the materials and the construction procedures produce a product which meets the specifications. The primary sampling point by the testing laboratory will be at the project site at the paving machine ahead of all rollers. Other testing may be at the job site, plant or in the trucks as determined by the OWNER.

The OWNER will determine the sampling schedules for random testing. Gradation and stability samples will be taken at the plant or on the project site as determined by the OWNER. A minimum of 3 samples may be obtained for each project. Field density shall be determined by taking either 6 inch cores or sections of asphaltic pavement at locations selected by the OWNER of completed asphaltic pavement lifts for approximately every 2,000 square yards or part thereof. Acceptability will be based on the mean of the job values.

Any sampling and testing, as required by the OWNER or OWNER, of in place asphalt concrete will be at the cost of the Contractor.

406.1.B.1.a. Surface Tests: The surface of the pavement, after compaction, shall be smooth and true to the established line, grade and cross section, and when tested with a 10 foot straightedge placed parallel to the centerline of the roadway or tested by other equivalent and acceptable means, except as provided herein, the maximum deviation shall not exceed 1/8 inch in 10 feet and any point in the surface not meeting this requirement shall be corrected. The completed surface shall meet the approval of the OWNER for riding surface, finish and appearance.

406.1.B.2. Compaction: The mix shall be thoroughly compressed and uniformly compacted immediately after placing to the required density. All vibratory and flat wheel compaction rolling shall be complete before the mat cools below 175° F. Pneumatic tire rolling may be undertaken on the mat below 175° F.

All rollers must be in good mechanical condition. Necessary precautions shall be taken to prevent the dropping of gasoline, oil, grease or other foreign matter on the pavement, either when the rollers are in operation or when standing.

It is the intent of this specification that the material be placed and compacted to between 91 and 95 percent of the maximum theoretical density as determined by TxDOT Tex-227-F. The OWNER may secure 6 inch core

samples or sections of completed asphaltic pavements lifts for approximately every 2,000 square yards or part thereof, of asphaltic concrete pavement placed. The in place density at the sampled locations shall be determined by the following equation:

$$\text{Percent in place Density} = (GA \times 100)/GT$$

Where GA = Bulk specific gravity of core when tested in accordance with Tex-207-F

GT = Maximum theoretical specific gravity of combined cores when tested in accordance with Tex-277-F

The Contractor shall patch the surface where specimens are taken with no extra payment being made for this work. The OWNER may remove the asphaltic concrete pavement specimen on the day following placement or as soon as practicable thereafter. Other methods of determining in place density which correlate satisfactorily with those results obtained by cores or sections may be used.

406.1.C. Measurement and Payment

Asphaltic concrete pavement will be measured by the square yard (SY) of the specified total thickness, or per Ton (2000-lbs), of the type actually used in the completed and accepted work in accordance with the plans and specifications.

The work performed and materials furnished as prescribed by this item and measured as provided under "Measurement and Payment" will be paid for at the unit prices bid or the pay adjusted unit price for "Hot Mix Asphaltic Concrete" of the type and lift specified, which prices shall be full compensation for furnishing all materials, freight involved; for all heating, mixing, hauling, cleaning the existing base course or pavement, saw cutting, placing asphaltic concrete mixture, rolling and finishing, for all manipulations, labor, tools, equipment, temporary pavement markings and incidentals necessary to complete the work. Correcting defective work and the subsequent retesting shall be considered subsidiary to Item for Asphalt Pavement.

The prime coat, or tack coat, when required, will not be measured or paid for directly but shall be considered subsidiary to Item for Asphalt Pavement.

All templates, straightedges, scales and other weighing and measuring devices necessary for the proper construction, measuring and checking of the work shall be furnished, operated and maintained by the Contractor at his expense.

When not included as a specific payment item, installation of all items under this section shall be subsidiary to other items in the contract. Payment, when included as a specific pay item, for work meeting the requirements of this section shall be made either per square yard (SY) or per Ton (2000 lbs) of material installed in place.

406.2 TWO COURSE ASPHALT PAVEMENT

This item shall consist of a wearing surface composed of one or more applications of asphaltic material, each covered with aggregate constructed on the prepared base course herein specified and in accordance with the Contract Documents.

406.2.A. Description

All specifications in this item shall be in conformance with the TxDOT Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges 2004, herein referred to as TxDOT 2004 Highway Standards.

Two course surface treatment shall not be applied when the air temperature is below 60° F and is falling, but it may be applied when the air temperature is above 50°F and is rising. Air temperature shall be taken in the shade and away from artificial heat. Asphaltic material shall not be placed when general weather conditions, in the opinion of the OWNER, are not suitable.

406.2.B. Materials

406.2.B.1. Aggregates: Aggregates to be composed of sound and durable particles of gravel, crushed gravel, crushed stone, crushed slag, burned clay, burned shale or natural limestone rock asphalt. These materials shall contain no more than 1 percent (1%) by weight of organic matter (other than native bitumen), clays, loam or pebbles coated therewith and shall contain no more than 5 percent (5%) by weight of any one combination of slate, shale, or soft particles of sandstone when tested in accordance with Test Method TEX-217-F. The percent of wear on natural limestone rock asphalt aggregate as determined by Test Method TEX-410-A shall be made on that portion of the material retained on the #4 sieve, having naturally impregnated asphalt content of less than 1 percent (1%). When tested by Test Method TEX-200-F the percent by weight shall be as follows:

Table 406.2.B.1.a. Gradation (Grade 4)

Sieve Size	Percent Retained
5/8"	0
1/2"	0-5
3/8"	20-40
No. 4	95-100
No. 8	98-100

Application Rate - Min. 1 CY covers 90 SY, max. 1 CY covers 110 SY, 1-110.

406.2.B.2. Asphalts, Oils, and Emulsions: Unless specified otherwise on the Construction Plans, asphaltic materials shall be AC-5 Asphaltic Cement or EA-HVRS, Anionic Emulsion, as specified by TxDOT Item 300 of TxDOT 2004 Highway Standards. Application Temperature for AC-5 shall be between 275 - 375°F and for EA-HVRS shall be between 110 - 150°F. Rate of Application shall be 0.35 - 0.45 gal. per square yard for the first course and 0.25 - 0.35 gal. per square yard for the second course.

If AC-5 Asphaltic Cement is used, it shall contain a Latex Additive as specified in the above mentioned TxDOT Item 300. The base shall be prime coated in accordance with TxDOT Item 310 at a rate of 0.10 gal. per square yard min. prior to application of the paving.

406.2.C. Construction Methods

406.2.C.1. Chip Seal: Chip Seal shall be installed as follows: the area to be treated shall be cleaned of dirt, dust, or other deleterious matter by sweeping or other approved methods. If it is found necessary by the OWNER, the surface shall be lightly sprinkled just prior to the first application of asphaltic material.

Asphaltic material, as specified above, shall be applied on the clean surface by an approved type of self-propelled pressure distributor so operated as to distribute the material in the quantity specified, evenly, smoothly, under a pressure necessary for proper distribution. The Contractor shall provide all necessary facilities for determining the temperature of the asphaltic material in all of the heating equipment and in the distributor, for determining the rate at which it is applied, and for securing uniformity at the junction of two distributor loads. The distributor shall have been recently calibrated and the OWNER shall be furnished an accurate and satisfactory record of such calibration. After beginning work, if the yield of the asphaltic material appears to be in error, the distributor shall be recalibrated in a manner satisfactory to the OWNER before proceeding with the work.

Asphaltic material for each course may be applied for the full width of the surface treatment in one application, unless the width exceeds twenty-six feet (26'). No traffic or hauling will be permitted over the freshly applied asphaltic material. Asphaltic material shall not be applied until immediate covering is assured.

Aggregate, of the type and grade shown on the plans for the first course, shall be immediately and uniformly applied and spread by an approved self-propelled continuous feed aggregate spreader, unless otherwise shown on the plans or authorized by the OWNER in writing. The aggregate shall be applied at the approximate rates

indicated on the plans and as directed by the OWNER. The Contractor shall be responsible for the maintenance of the surface of the first course until the second course is applied.

The entire surface shall then be broomed, bladed or raked as required by the OWNER and shall be thoroughly rolled with power rollers of the three-wheel or tandem, self-propelled type, weighing not less than 3 tons nor more than 6 tons. All wheels shall be flat.

In lieu of the rolling equipment specified, the Contractor may, upon written permission from the OWNER, operate the other compacting equipment that will produce equivalent relative compaction in the same period of time as the specified equipment. If the substituted compaction equipment fails to produce the desired compaction within the same period as would be expected of the specified equipment, as determined by the OWNER, its use shall be discontinued.

Rollers shall be maintained in good repair and operating condition and shall be approved by the OWNER.

406.2.C.2. Two Course Surface Treatment: Two Course Surface Treatment shall consist of an initial installation of Chip Seal as detailed in the preceding paragraph, followed by installation of a second course as follows: the second course shall consist of asphaltic material and aggregate of the type and grade indicated on the plans for the second course. The asphaltic material and aggregate for this second course shall be applied and covered in the manner specified for the first application. The surface shall then be broomed, bladed or raked as required by the Engineer, and thoroughly rolled as specified for the first course. Asphaltic materials and aggregates for both courses shall be applied at the approximate rates indicated on the plans and as directed by the Engineer.

The Contractor shall be responsible for the maintenance of the surface until the work is accepted by the Engineer and regulatory agency. The Contractor shall be responsible for the proper preparation of all stockpile areas before aggregates are placed thereon, including leveling of the aggregate to prevent any contamination thereof.

All storage tanks, piping, retorts, booster tanks and distributors used in storing or handling asphaltic materials shall be kept clean and in good operating condition at all times and they shall be operated in such manner that there will be no contamination of the asphaltic material with foreign material. It shall be the responsibility of the Contractor to provide and maintain in good working order a recording thermometer at the storage heating unit at all times.

The Engineer will select the temperature of application based on the temperature-viscosity relationship that will permit application of the asphalt within the limits recommended in TxDOT Item 300, "Asphalts, Oils, Emulsions." The recommended range for the viscosity of the asphalt is 50 seconds to 60 seconds, Saybolt Furol. The Contractor shall apply the asphalt at a temperature within 15°F of the temperature selected.

406.2.D. Measurement and Payment

All acceptable Chip Seal or Two Course Surface Treatment will be measured by the square yard (SY) for completed and accepted work in accordance with the plans and specifications.

The work performed and materials furnished as prescribed by this item will be paid for at the unit price bid or the pay adjusted unit price for "Chip Seal" or "Two Course Surface Treatment" of the type and lift specified, which prices shall be full compensation for furnishing all materials, freight involved; for all heating, mixing, hauling, cleaning the existing base course or pavement, saw cutting, placing asphaltic concrete mixture, rolling and finishing; for all manipulations, labor, tools equipment, temporary pavement markings and incidentals necessary to complete the work. Correction of defective work and the subsequent retesting shall be included at CONTRACTORS expense; no separate pay item shall be provided.

The prime coat, when required, will not be measured or paid for directly but shall be considered subsidiary to this Section.

All templates, straightedges, scales and other weighing and measuring devices necessary for the proper construction, measuring and checking of the work shall be furnished, operated and maintained by the Contractor at his expense.

407 CONCRETE PAVEMENT

This item shall consist of finished pavement constructed of Portland cement concrete on the prepared subgrade or other base course, in conformity with the plans, as herein specified and as supplemented and/or amended by special provisions and to the lines and grades as established by the OWNER. Concrete shall be considered of satisfactory quality and made of materials acceptable to the job and these specifications, in the proportions approved by the OWNER; and mixed, placed, finished and cured in accordance with the requirements of these specifications and any special provisions.

407.1 MATERIALS

Concrete shall be composed of Normal Portland Cement or High Early Strength Cement, coarse aggregate, fine aggregate and water proportioned and mixed as hereinafter provided in these specifications.

407.1.A. Aggregates

Aggregates for Portland cement concrete shall conform to the requirements contained in this Item and shall be approved by the OWNER prior to use. Aggregates shall be of such character that it shall be possible to produce workable concrete within the limits contained in this specification.

407.1.A.1. Storage: The manner of handling and storage of aggregates shall be such as to prevent intrusion of foreign materials and segregation of sizes. If materials are stored on the ground, the stockpile sites shall be grubbed, cleaned of all vegetation and leveled. In this case, the bottom six-in. layer of aggregate shall not be disturbed and shall not be used in the work.

Where two or more sizes or types of aggregates are delivered to the job, each size or type shall be stored separately. Aggregates shall be stockpiled on the job or at a central batching plant for a minimum of 24-hours prior to use in the project. At the plant, the aggregate shall be wetted to a uniform moisture content of not less than three-percent below saturated surface dry condition before or while being loaded for shipment. Care shall be exercised to maintain this uniformity of moisture until the aggregates are used in the mix. Wetting of stockpiles to maintain the required percent moisture shall be performed at least 12-hours prior to use. At the time of use, the aggregates shall be free from frozen material and foreign matter. All grass, wood, sticks, burlap, paper or other material which may have become mixed with the aggregates while stockpiled or in handling must be removed.

407.1.A.2. Measurement: Fine and coarse aggregates shall be measured loose and separately. Aggregate weighing equipment shall conform to the requirements of ASTM C94 Standard Specification for Ready-Mixed Concrete and shall be approved by the OWNER prior to use.

The volume measuring equipment shall consist of approved boxes, pans or mechanical devices, which, while in operation, shall give the required volumes of the different kinds of aggregates required for the several classes of concrete. Equipment shall also be so marked and designed that the OWNER can accurately and conveniently check the quantities of each aggregate being used. Concrete made by continuous mixing shall conform to ASTM C685 Concrete Made by Volumetric Batching and Continuous Mixing.

407.1.A.3. Testing: All fine and coarse aggregates testing shall be done per TxDOT Item 360 "Concrete Pavement."

407.1.A.4. Gradation: The fine aggregate shall be well graded from fine to coarse and shall meet the requirements of Table 407.1.A.4.a. Fine Aggregates Gradation Requirements. Fine aggregate shall consist of natural sand, manufactured sand, or a combination thereof, conforming to the current ASTM Specification C-33. Stone dust or crushed sand may be added as mineral filler, if so directed by the OWNER. Amounts of mineral filler shall not exceed 5-percent of the fine aggregate to improve the workability or quality specified for fine or coarse aggregates. Aggregates shall be free from injurious amounts of salt, alkali, vegetable matter, or other objectionable material either free or as an adherent coating. At the time of their use, aggregates shall be free from frozen and/or all foreign material that may have become mixed with them in the stockpile.

Table 407.1.A.4.a. Fine Aggregates Gradation Requirements

Sieve Size	Percent Retained
3/8"	0
No. 4	0-5
No. 8	0-20
No. 16	15-30
No. 30	35-75
No. 50	70-90
No. 100	90-100
No. 200	97-100

When subjected to the color test for organic impurities, TxDOT Test Method Tex-408-A, the fine aggregate shall not show a color darker than standard.

Coarse aggregate shall consist of gravel or crushed stone meeting the requirements of the current ASTM Specifications C-33. Coarse aggregate shall consist of durable particles of gravel, crushed blast furnace slag and/or crushed stone of reasonably uniform quality throughout, free from injurious amounts of salt, alkali, vegetable matter or other objectionable material, either free or as an adherent coating on the aggregate. It shall not contain more than 0.25 percent by weight of clay lumps nor more than 1.0 percent by weight of shale nor more than 5.0 percent by weight of laminated and/or friable particles when tested in accordance with TxDOT Test Method Tex-413-A.

Coarse aggregate shall have a wear of not more than 45 percent when tested according to TxDOT Test Method Tex-410-A and when tested by standard laboratory methods shall meet the requirements of Table 407.1.A.4.b. Coarse Aggregates Gradation Requirements.

Table 407.1.A.4.b. Coarse Aggregates Gradation Requirements

Aggregate Grade No.1	Nominal Size	Percent Passing on Each Sieve								
		2-1/2"	2"	1-1/2"	1"	3/4"	1/2"	3/8"	No. 4	No. 8
1	2"	100	80-100	50-85		20-40			0-5	
2(467)	1-1/2"		100	95-100		35-70		10-30	0-5	
3	1-1/2"		100	95-100		60-90	25-60		0-5	
4(57)	1"			100	95-100		25-60		0-10	0-5
5(67)	3/4"				100	90-100		20-55	0-10	0-5
6(7)	1/2"					100	90-100	40-70	0-15	0-5
7	3/8"						100	70-95	0-25	
8	3/8"						100	95-100	20-65	0-10

1. Corresponding ASTM C 33 gradation shown in parentheses.

Loss by Decantation per TxDOT Test Method Tex-406-A. 1.0% Maximum. In the case of aggregate made primarily from crushing of stone. If the material finer than the 200 sieve is definitely established to be the dust

of fracture essentially free from clay or shale as established by Part III of TxDOT Test Method Tex-406-A, the percent may be increased to 1.5.

Aggregates which fail to meet the requirements of these specifications may be rejected by the OWNER. Such rejection shall incur no cost to the OWNER. Coarse aggregate sources, from which materials with properties not meeting these specifications are delivered, may be rejected as further supply sources to the project by the OWNER. Such rejection shall incur no cost to the OWNER.

407.1.B. Portland Cement

Portland cement shall be in accordance with Item 405.2 for Portland Cement Treatment. Only one brand of cement shall be used in any one (1) structure, except by written permission of the Engineer. When such permission is granted and more than one (1) brand is used in one (1) structure, the resulting concrete shall be uniform in color.

407.1.C. Admixtures

Unless otherwise provided in the plans or special provisions, approved types of chemical admixtures to minimize segregation, to improve workability or to reduce the amount of mixing water may be used in the rate of dosage specified by the OWNER and in accordance with the manufacturer's recommendations.

407.1.C.1. Chemical Admixtures: Chemical admixtures shall conform to ASTM C494 Chemical Admixtures for Concrete, Types "A", "D", "F" and "G" for concrete dosages in accordance with manufacturers' recommendations as specified by the OWNER.

Water-reducing admixtures conforming to ASTM C494, Types "A" and "F", shall be used to improve quality of concrete by obtaining specified strength at tower cement content and to increase slump without increasing water-cement ratio and may also be utilized in improving properties of concrete containing aggregates that are harsh or poorly graded.

Water-reducing, set retarding admixtures, conforming to ASTM C494, Type "D" and "G", may be used during hot weather concrete placement, so as to keep concrete workable during the entire placing period, in order that succeeding placements may be made without development of cold joints or discontinuities in the structural unit.

Air Entraining Admixture shall be used where specified or directed to improve workability and increase resistance to freeze and thawing, and scaling. The admixture shall comply with ASTM C 260 and shall be used in accordance with manufacturer's recommendations. Products shall be Air-Tite by Gifford Hill; Daravair by W.R. Grace; MB-VR by Master Builders, or approved equal.

The total air content of the concrete shall be three percent to six (6) percent.

407.1.C.2. Mineral Admixtures: Fly ash shall conform to the requirements of ASTM C618 Coal Fly Ash and Raw or Calcined Natural Pozzolan for Use as a Mineral Admixture in Concrete, with the exception that the "Loss on Ignition" requirements shall be a maximum of 3-percent. Fly ash shall be sampled and tested at a frequency schedule in accordance with the requirements of ASTM C311 Test Methods for Sampling and Testing Fly Ash or Natural Pozzolans for Use as a Mineral Admixture in Portland-Cement Concrete. All sources of fly ash for use in Portland cement concrete shall conform to the requirements of Texas Department of Transportation (TxDOT) Material Specification DMS-8900 Fly Ash.

407.1.C.3. Fiber: At the OWNER'S option, fibrous reinforcement in concrete may be used unless otherwise shown on the plans or in the contract documents. Fibrous reinforcement shall not be used as a replacement for any reinforcement required for structural purposes. Add steel or polypropylene fibers only when called for on the plans or approved by the Engineer.

407.1.C.3.a. Polypropylene Fiber: Ratio shall be 1.5 pounds of fiber per cubic yard of concrete. Acceptable Manufacturer: W. R. Grace Company, Fibermesh, or approved equal.

Physical Properties:

1. Material: Polypropylene.
2. Length: 3/4 inch.
3. Specific Gravity: 0.91.
4. Absorption: None.
5. Tensile Strength: 70-110 Ksi.
6. Modulus of Elasticity: 500 Ksi.
7. Melt Point: 140 degrees F (60 degrees C).
8. Flash Point: 932 degrees F (500 degrees C).
9. Density: 3.pounds/cubic yard.

407.1.C.3.b. Steel Fiber: Steel fiber shall comply with applicable provisions of ACI 544 and ASTM A820. Ratio shall be 50 to 200 pounds of fiber per cubic yard of concrete.

Physical Properties:

1. Material: Steel.
2. Aspect Ratio (for fiber lengths of 0.5 to 2.5 inch, length divided by diameter or equivalent diameter): 30:1 to 100:1.
3. Specific Gravity: 7.8.
4. Tensile Strength: 40-400 ksi.
5. Young's Modulus: 29,000 ksi.
6. Minimum Average Tensile Strength: 50,000 psi.
7. Bending Requirements: Withstand bending around 0.125-inch diameter mandrel to an angle of 90 degrees, at temperatures not less than 60 degrees F, without breaking.

Fibrous reinforcement or fiber-reinforced concrete may be rejected for failure to meet any of the requirements of this specification or ASTM C1116.

407.1.D. Water

Water for use in concrete shall be reasonably clean and free of oil, acid, alkali, organic matter or other deleterious substances. Water which is suitable for drinking or ordinary household uses may be accepted for use without being tested. Water used shall meet the requirements of ASTM C94

If the water is of questionable quality, it shall be tested in accordance with the standard Method of Test of Quality of Water to be used in concrete, AASHTO T26. Water for use with cement may be rejected for failure to meet any of the requirements of this specification and replaced at CONTRACTORS expense.

407.1.E. Formwork

Formwork shall be clean and in good condition, free from dents and rust, grease or other foreign material that tend to disfigure or discolor concrete in a gage and condition capable of supporting concrete and construction loads without significant distortion. Form Ties shall be metal or fiberglass of approved type with tie holes not larger than 7/8 inch in diameter. Wire ties will not be allowed.

407.1.E.1. Lumber and Plywood: Materials shall be seasoned and of good quality, free from loose or unsound knots, knot holes, twists, shakes, decay and other imperfections which would affect strength or impair the finished surface of concrete. Forms for bottoms of caps: At least 2-inch (nominal) lumber or 3/4-inch form plywood backed adequately to prevent misalignment and distortion. General use: Provide lumber of 1-inch nominal thickness or form plywood of approved thickness.

407.1.E.2. Rubbed Finish Exposed Concrete: Form or form-lining surfaces free of irregularities; plywood of 3/4-inch minimum thickness, preferably oiled at the mill.

407.1.E.3. Chamfer Strips: Materials shall be redwood, cypress or pine that will not split when nailed and which can be maintained to true line. Use mill-cut molding dressed on all faces.

407.1.E.4. Metal Forms: Clean and in good condition, free from dents and rust, grease or other foreign material that tend to disfigure or discolor concrete in a gage and condition capable of supporting concrete and construction loads without significant distortion. Countersink bolt and rivet heads on facing sides. Use only metal forms which present a smooth surface and which line up properly.

407.1.F. Reinforcing

Concrete reinforcement is the metal (rods or fabric) imbedded in concrete in such a manner that the reinforcement and concrete act together in resisting forces.

407.1.E.1. Steel Reinforcement: Unless otherwise specified or designated on the plans, the metal for all bar reinforcement shall meet following:

All bar reinforcement shall be open hearth new billet steel of structural, intermediate, or hard grade. New billet steel shall conform to the requirements of the latest Standard Specification for Billet-Steel Concrete Reinforcement Bars, ASTM Designation A615, A767 or A775, grade 40 or grade 60.

Unless otherwise shown on the plans, all reinforcing bars shall be deformed bars. Twisted bars are not considered as deformed bars and will not be used. The form of deformed bars shall be such as to provide a net sectional area at all points equivalent to that of the plain round bars of equal nominal size.

Reinforcement bars shall be bent cold to the shapes indicated on the plans. All bending of hard grade new billet steel shall be done in the shop. Bends shall be true to the shapes indicated, and irregularities shall be cause for rejection. Unless otherwise shown on the plans, bends for stirrups and ties shall be made around a pin having a diameter not less than two times the minimum thickness of the bar. Other bends shall be made according to the latest code of Standard Practice of the Reinforcing Steel Institute.

Reinforcement shall be stored above the ground surface upon skids, platforms or other supports, and shall be protected from mechanical injury and surface deterioration caused by exposure to the conditions producing rust. When placed in the work, the reinforcement shall be free from dirt, loose rust, scale, painting, oil or other foreign material.

Reinforcement may be rejected for failure to meet any of the requirements of this specification.

407.1.E.2. Steel Wire: At the OWNER's option the use of welded wire fabric may be used in lieu of deformed reinforcement bars unless otherwise shown on the plans or in the contract specifications. Welded wire fabric shall be delivered to the job site in sheets. Rolls of wire fabric shall not be permitted. The size of welded wire fabric shall be 12 x 12- W4 x W4. Wire for fabric reinforcement shall be cold-drawn from rods hot rolled from open hearth billets. Wire shall conform to the requirements of the latest Standard Specification for Drawn Wire for Concrete Reinforcement, ASTM Designation A-185 or A884.

Reinforcement shall be stored above the ground surface upon skids, platforms or other supports, and shall be protected from mechanical injury and surface deterioration caused by exposure to the conditions producing rust. When placed in the work, the reinforcement shall be free from dirt, loose rust, scale, paint, oil or other foreign materials.

Reinforcement may be rejected for failure to meet any of the requirements of this specification.

407.1.E.3. Tie Wire: Tie wire shall be per ASTM A82. Use 16½ gauge minimum for tie wire, unless otherwise indicated.

407.1.E.4. Reinforcement Bar Chairs: Reinforcement bar chairs or supports shall be of adequate strength (if specified) to support the reinforcement bars and shall not bend or break under the weight of the reinforcement bars or CONTRACTOR'S personnel walking on the reinforcing bars.

Bar chairs may be made of metal (free of rust), precast mortar or concrete blocks or plastic. Pre-cast mortar or concrete blocks must be approved by the OWNER; and the CONTRACTOR shall supply test data showing the strength of the mortar or concrete blocks. For approval of plastic chairs, representative samples of the plastic shall show no visible indications of deterioration after immersion in a 5-percent solution of sodium hydroxide for 120-hours.

407.1.E.5. Dowel Bars: Dowel and tie bars shall be either straight or bent, smooth or deformed, as shown on the plans and shall conform to the requirements of Item for Steel Reinforcement. The dowel bars shall be coated with either hot asphalt or an alternate coating, as designated on the plans, to the extent shown on the plans.

Load Transmission Devices for Expansion and Contraction Joints, when indicated, shall meet the requirements specified herein:

Smooth steel bar dowels, used when indicated, shall be of the size and type indicated and shall be open-hearth, basic oxygen or electric-furnace steel conforming to the properties specified for grade 60 in ASTM A-615. The free end of dowel bars shall be smooth and free of shearing burrs.

When indicated, one end of each dowel bar shall be encased in an approved cap. The dowel caps and dowel bars shall be held securely in place by bar ties as indicated on the drawings. Mechanical methods of implanting dowel bars in the plastic concrete may be used when approved by the Engineer or designated representative.

Where required, dowel bars shall be coated with a plastic material meeting the requirements indicated. Where red lead and oil bar coating is indicated, the red lead may be of any standard commercial grade and the oil shall be clean and no lighter than Standard No. 30 SAE grade. Approved thinner and dryer may be added to the red lead, but the material upon application shall be of such consistency that will provide a uniform and heavy coating on the bar. Where asphalt bar coating is indicated, the material may be any standard grade of oil asphalt and shall be applied hot. Cutback asphalt will not be permitted for bar coating.

Caps for slip dowel bars shall be of the length shown on the plans and shall have an internal diameter sufficient to permit the cap to freely slip over the bar. In no case shall the internal diameter exceed the bar diameter by more than 1/8"-in., and one end of the cap shall be rightly closed. The cap shall be installed to allow the bar to move not less than 1-1/4"-in. in either direction.

407.1.G. Joints

Joint filler is the material placed in concrete pavement and concrete structures to allow for the expansion and contraction of the concrete. Visible joint material shall have the color gray. Pre-molded Expansion Joint Filler shall conform to the requirements of ASTM Designation D-994 or other as approved by City Engineer.

Grout shall be non-shrink and shall conform to ASTM C 1107, Packaged, Dry, Hydraulic Cement Grout (Non-shrink), Grade C. Grout shall be packaged with mixed ingredients requiring the addition of water only.

407.1.G.1. Preformed Asphalt Board: Preformed asphalt board formed from cane or other suitable fibers of a cellular nature securely bound together and uniformly impregnated with a suitable asphaltic binder and meeting the requirements of the Standard Specifications for Preformed Expansion Joint Filler for Concrete Paving and Structural Construction, ASTM D 1751.

407.1.G.2. Preformed Non-bituminous Fiber Material: Preformed non-bituminous fiber material shall meet the requirements of the Standard Specifications for the Preformed Expansion Joint Filler for Concrete Paving and Structural Construction, ASTM D 1751, except that the requirements pertaining to bitumen content, density and water absorption shall be voided.

407.1.G.3. Boards: Boards obtained from Redwood timber, of sound heartwood, free from sapwood, knots, clustered birdseye, checks and splits. Occasional sound or hollow birdseye, when not in clusters, will be permitted provided the board is free from any other defects that will impair its usefulness as a joint filler.

407.1.G.4. Backer Rod: Backer Rod shall be expanded closed cell polyethylene foam compatible with sealant. No bond or reaction shall occur between rod and sealant. Backer Rod shall be of sufficient width to be in compression after placement and shall be used with joint sealer.

407.1.G.5. Joint Sealer: This material shall be a one-part low modulus silicone especially designed to cure at ambient temperatures by reacting with moisture in the air. The sealant material shall have the following properties:

Table 407.1.G.5.a. Joint Sealer Supplied Properties

Description	Property
Color	Gray
Flow, MIL-2-8802D Sec. 4.8.4	0.2 Max.
Working Time	10 min.
Tack-Free Time at 77 F±2 F Min. MIL-2-8802D Sec.4.8.7	60
Cure time, at 77 F	7-14 Days
Full Adhesion Time	14-21 Days
As Cured-after 7 days at 77 F (25 C) and 40% RH	90-100
No. 200	97-100

Table 407.1.G.5.b. Joint Sealer Cured Properties

Description	Property
Elongation	1200% Min.
Durometer Hardness, Shore A, ASTM D 2240	15 Min.
Joint movement capability	+100/50 Percent
Tensile Strength, elongation	100% Max.
Peal strength	25-psi (172-kPa)

Properties are As Cured-after 7 days at 77 F (25 C) and 40% RH

The joint sealer shall adhere to the sides of the concrete joint or crack and shall be an effective seal against infiltration of water and incompressible. A backer rod shall be required which will be compatible with the sealant. No bond or reaction shall occur between the rod and sealant. The sealant shall adhere to the sides of the concrete joint. It shall not crack or break when exposed to temperatures below 32°F (0°C).

Asphalt, Redwood board or other materials used shall extend the full depth of the concrete and shall be perpendicular to the exposed face. All joints shall be shaped to conform to the contour of the finished section in which they are installed. All material shall be a minimum of ½ inch thick or as indicated. Wood materials shall be anchored to the adjacent concrete to permanently hold them in place. Joint sealer shall be installed in accordance with the manufacturer's recommendations.

The material used for sidewalk expansion joints, shall conform to Item for Boards above, unless otherwise indicated.

The material used for curb and gutter expansion joints filler shall conform to any of the above, except when placed adjacent to concrete pavement, the joint material shall match the pavement joint material.

407.1.H. Concrete Properties

Concrete shall be composed of cementitious materials, fine aggregate, coarse aggregate, mineral filler and/or admixture if used and water, mixed in the proportions designated by the approved Mix Design and in the manner set forth in this specification. On the basis of job and laboratory investigations of the proposed materials, the Contractor will fix proportions by weight of water, coarse aggregate, fine aggregate, cementitious materials, admixture and mineral filler where required, in order to produce concrete of the specified strength and workability for the actual delivery time and site conditions to be encountered.

Concrete shall be proportioned- as detailed in the approved mix design. The total volume of materials in the concrete mixture shall be so regulated that the cement content per cubic yard of concrete shall not be less than the minimum specified for that class of concrete.

It shall be the responsibility of the Contractor to furnish the mix design, using a Coarse Aggregate Factor acceptable to the City, for the class of concrete specified. The mix shall be designed by a certified testing laboratory to conform with the requirements contained herein and in accordance with ASTM C1077. The Contractor shall perform, at his own expense, the work required to substantiate the design, and testing of concrete strength. Complete concrete design data shall be submitted to the Engineer for approval.

407.1.H.1. Concrete Classes: The concrete shall be uniform and workable and the minimum cement content, maximum water content, for the various classes of mixes shall conform to the following table. The concrete mix will be designed with the intention of producing concrete which will have compressive or flexural strength equal to or greater than the following when using current ASTM Designation C-39 and C-293:

Table 407.1.H.1.a. Concrete Classes

Class of Concrete ¹	Min. Cementitious (lb/CY)	28 Day Min. Compressive Strength ² (psi)	28 Day Min. Beam Strength ² (psi)	Max. Water/Cementitious Ratio	Max. Coarse Aggregate Size ⁴
A ⁵	470	3000	500	0.58	1 ½"
C	564	3600	600	0.53	1 ½"
P1 ⁵	517	4000	N/A	0.49	1 ½"
P2	564	4500	N/A	0.45	1 ½"
M	As Directed by OWNER				

1. All exposed horizontal concrete shall have entrained - air.
2. Minimum Strength Required by OWNER [Compressive or Flexural]
3. ASTM C78 (Third-Point); Reduce by 10% when Type II Cement is Used
4. Smaller nominal maximum size aggregate may be used if strength requirement is satisfied
5. Sidewalks, separate curb and gutter, and 4-inch thick median pavement
6. Machine Finished
7. Hand Finished

407.1.H.2. Slump: Slump requirements for pavement and related concrete shall be as specified in Table 407.1.H.2.a. Slump Requirements. No concrete shall be permitted with slump in excess of the maximums shown. Any concrete mix failing to meet the above consistency requirements, although meeting the slump requirements, shall be considered unsatisfactory, and the mix shall be changed to correct such unsatisfactory conditions.

Table 407.1.H.2.a. Slump Requirements

Concrete Designation	Recommended Slump (in.)	Maximum Acceptable Placement Slump (in.)
Drilled shafts	5-7	8
Thin walled section (9 in. or less)	4	6-1/2
Approach slabs, concrete overlays, caps, columns, piers, wall sections (over 9 in.)	3	5
Bridge slabs	4	5-1/2
Prestressed concrete members	4	6-1/2
Concrete traffic barrier, concrete bridge railing	4	6-1/2
Dense concrete overlay	3/4	2
Latex-modified conc. for bridge deck overlays	3	7-1/2
Concrete placed underwater	6	8-1/2
Concrete pavement (slip-formed)	1-1/2	3
Concrete pavement (formed)	4	6-1/2
Riprap, curb, gutter, slip-formed, and extruded concrete	As approved	As approved

407.1.I. Submittals

The proposed methods, materials, installations, and other details in the submittals shall be modified as required to obtain the Engineer's approval before beginning of construction. Prior to beginning construction, for each class of concrete to be used, the Contractor shall submit to the Engineer for approval the following items:

1. A concrete mix design that has been prepared by a certified testing laboratory to conform to the requirements contained in this Section. The submittal shall address all mixing and handling requirements as specified in this section.
2. A forming plan showing the forms to be used, the types of ties and bracing to be used, any construction joints that are proposed, pour rates, and other critical data. The form design is the complete responsibility of the Contractor, and the Contractor shall be required to obtain professional engineering assistance at his sole expense where appropriate for proper design.
3. A reinforcing schedule showing the size, type, grade, lengths, installation details, proposed supports, ties, and any other pertinent information related to the proposed reinforcing and its installation.

407.2 EQUIPMENT

All equipment necessary for the construction of this item shall be on the project and shall be approved by the OWNER as to condition before the CONTRACTOR shall be permitted to begin construction operations on which the equipment is to be used.

407.2.A. Forms

The side forms shall be metal, of approved cross section and bracing, of a height not less than the prescribed edge thickness of the concrete section and a minimum of 10-ft. in length for each individual form. Forms shall be

of ample strength and shall be provided with adequate devices for secure setting so that when in place they shall withstand the impact and vibration of equipment imposed thereupon without appreciable springing or settlement. In no case shall the base width be less than 8-in. for a form 8-in. or more in height. The forms shall be free from warps, bends or kinks and shall show no variation from the true plane for face or top. Each 10-ft. length of forms shall be provided with at least 3 pins for securely staking in position. Sufficient forms shall be provided for satisfactory prosecution of the work. 10-ft. metal form sections shall be used in forming curves with a 250-ft., and larger radius. For curves with a radius of less than 250-ft., acceptable flexible metal forms, or wood forms, may be used upon approval by the OWNER.

Slip form paving equipment shall be provided with traveling side forms of sufficient dimensions, shape and strength so as to support the concrete laterally for a sufficient length of time during placement to produce pavement of the required cross section. The equipment shall spread, consolidate, screed and float-finish the freshly placed concrete in such a manner as to provide a dense and homogeneous pavement.

407.2.B. Vibratory Equipment

All concrete placed as Machine Finish class concrete shall be consolidated by approved mechanical vibrators attached to the machine, operated ahead of the transverse finishing screen, and designed to vibrate the concrete internally. Unless otherwise shown on the plans, vibrators of the surface-pan type may also be used for full-depth placement provided that internal vibrators fixed to the machine are also used for vibrating the concrete internally. Vibratory members shall extend across the pavement practically to, but shall not come in contact with, the side forms. Mechanically-operated vibrators shall be mounted in such manner as not to interfere with the transverse or longitudinal joints.

The internal-type vibrators shall be spaced at not more than 24-in. and shall be equipped with synchronized vibratory units. Separate Vibratory units shall be spaced at sufficiently close intervals to provide uniform vibration and consolidation to the entire width of the pavement. The frequency in air of the internal spud-type Vibratory units shall be not less than 8,000-cycles-per-minute and not less than 5,000-cycles-per-minute for tube types. The method of operation shall be as directed by the OWNER. The CONTRACTOR shall have a satisfactory tachometer available for checking the vibratory elements.

The pavement vibrators shall not be used to level or spread the concrete but shall be used only for purposes of consolidation. The vibrators shall not be operated where the surface of the concrete, as spread, is below the elevation of the finished surface of the pavement, except for the first lift of concrete where the double strike-off method of placement is employed. The vibrators shall not be operated for more than 15-seconds while the machine upon which they are installed is still.

The pan-type vibrator units shall apply the vibrating impulses directly to the surface of the concrete. The operating frequency shall not be less than 3,500-cycles- nor more than 4,200-cycles-per-minute in air. The CONTRACTOR shall have a satisfactory tachometer available for checking the speed of the vibratory elements. Approved hand manipulated mechanical vibrators shall be furnished in the number required for provision of proper consolidation of the concrete along the forms, at joints and in areas not covered by mechanically controlled vibrators. These vibrators shall be sufficiently rigid to insure control of the operating position of the vibrating head.

407.2.C. Miscellaneous Equipment

The CONTRACTOR shall furnish a broom of the push broom type not less than 18-in. in width with stiff bristles for the final surface finish of concrete base or as the OWNER directs.

The CONTRACTOR shall furnish a sufficient number of bridges equipped to ride on the forms and span the pavement for finishing operations and for the installation and finishing of joints. The CONTRACTOR shall furnish, operate and maintain at least two standard 10-ft. (3m) steel straightedges and all necessary finishing and edging tools as may be required to complete the pavement in accordance with the plans and specifications.

407.2.C.1. Transverse Finishing Machine: The transverse finishing machine may be used for Machine Finish class concrete placement for pavement provided that internal vibrators fixed to the machine are also used for vibrating the concrete internally. The requirements for fixed internal vibrators given in part Item for

Vibratory Equipment, shall apply. The transverse finishing machine shall be provided with two screeds accurately adjusted to the crown of the pavement, shall be power driven, and mounted in a substantial frame equipped to ride on the forms. The machine shall be so designed and operated as to strike off and consolidate the concrete internally with internal-type vibrators as required in part Item for Vibratory Equipment.

Finishing machines shall be maintained in a tight and good operating condition, accurately adjusted to the required crown or profile and free from deflection, wobble, or vibration tending to affect the surface finish. Machines failing to meet these requirements shall be rejected by the OWNER, and the CONTRACTOR shall provide approved equipment.

407.2.C.2. Vibrating Screed: The mechanically vibrated screed shall be provided with a template adjusted to the crown of the concrete section. The template shall be power vibrated, adjustable in height and mounted to ride on the forms. The mechanical vibration of one of the screeds on the transverse finishing machine specified in Item for Transverse Finishing Machine shall be acceptable.

407.2.C.3. Hauling Equipment: Batch hauling equipment for the transportation of measured materials from the batching plant to the mixer shall be equipped with tight covers, which shall be used to prevent excessive evaporation of moisture or any loss of material.

If a central mixer is used, concrete may be transported to the point of delivery in truck agitators or non-agitating trucks.

If a truck mounted paving mixer is used, it may be used to transport the concrete after mixing is complete.

If non-agitator trucks are used they shall conform to the following requirements:

The bed of non-agitating hauling equipment shall be a smooth, mortar-tight, metal container. The hauling equipment shall be capable of delivering the concrete to the work site in a thoroughly mixed and uniform mass and capable of discharging the concrete at a satisfactory controlled rate without segregation. If in the opinion of the Engineer any appreciable segregation or accumulation of excess water and/or mortar occurs on the surface of the concrete, this may be cause for rejection and this method of transporting the concrete to the point of delivery shall be suspended as directed by the Engineer.

407.3 CONSTRUCTION METHODS

407.3.A. Mix Design

The Contractor shall perform at the Contractor's own expense and be responsible for the design of the concrete mix. The mix design shall be prepared and sealed by a person qualified and experienced in such work. Establish proportions on the basis either of laboratory trial batches or of field experience with the materials to be employed.

When ice is used to lower the concrete temperature during hot weather, the addition of ice shall not exceed 50 percent of the total mix water weight.

The consistency of the concrete as placed should allow the completion of all finishing operations without the addition of water to the surface. When field conditions are such that additional moisture is needed for the final concrete surface finishing operation, the required water shall be applied to the surface by fog spray only; and shall be held to a minimum amount. The concrete shall be workable, cohesive, possess satisfactory finishing qualities and be of the stiffest consistency that can be placed and vibrated into a homogeneous mass. Excessive bleeding shall be avoided.

If the strength or consistency required for the class of concrete being produced is not secured with the minimum cement specified or without exceeding the maximum water/cement ratio, the CONTRACTOR may use, or the OWNER may require, an approved cement dispersing agent {water reducer}; or the CONTRACTOR shall furnish additional aggregates, or aggregates with different characteristics, or the CONTRACTOR may use additional cement in order to produce the required results. The additional cement may be permitted as a temporary

measure, until aggregates are changed and designs checked with the different aggregates or cement dispersing agent.

The CONTRACTOR is solely responsible for the quality of the concrete produced. The OWNER reserves the right to independently verify the quality of the concrete through inspection of the batch plant, testing of the various materials used in the concrete and by casting and testing concrete cylinders or beams on the concrete actually incorporated in the pavement.

At least 10-days prior to the start of concrete paving operations, the CONTRACTOR shall submit to the OWNER a design of the concrete mix it proposes to use together with samples, if requested, of all materials to be incorporated into the mix and a full description of the source of supply of each material component.

The design of the concrete mix shall produce a quality concrete complying with these specifications and meet the requirements of ACI 318 (1992) - PART 3 Construction Requirements, CHAPTER 5, Concrete Quality, except as amended by these provisions. The concrete mix design shall include the following information:

1. Design Requirements and Design Summary
2. Material source
3. Dry weight of cement/cu. yd. and type
4. Dry weight of fly ash/cu. yd. and type, if used
5. Saturated surface dry weight of fine and coarse aggregates/cu. yd.
6. Design water/cu. yd.
7. Quantities, type, and name of admixtures with manufacturer's data sheets
8. Current strength tests or strength tests in accordance with ACI 318
9. Current Sieve Analysis and -200 Decantation of fine and coarse aggregates and date of tests
10. Fineness modulus of fine aggregate
11. Specific Gravity and Absorption Values of fine and coarse aggregates
12. L.A. Abrasion of coarse aggregates

All material samples submitted to the OWNER shall be sufficiently large to permit laboratory batching for the construction of test specimens to check the adequacy of the design. When the OWNER has approved the design mix, there shall be no change or deviation from the proportions thereof or sources of supply except as hereinafter provided. No concrete may be placed on the job site until the mix design has been approved by the OWNER in writing to the CONTRACTOR.

407.3.A.1. Testing: The Contractor shall prepare a minimum of four concrete test cylinders of each mix design, cure and test two each at the age of 7 and 28 days. From these preliminary tests the water-cement ratio required to produce concrete of the specified strength will be selected by the Contractor for approval by the Engineer or designated representative. The Contractor may at any time present in writing a suggested mix design and if the Engineer or designated representative concurs with the suggested design, the Contractor shall conduct trial batches necessary to determine its acceptability under these specification requirements.

The Contractor shall furnish and operate the mixer approved for use on this project unless the concrete is to be furnished from a transit mix (ready-mix) plant. For mixing the concrete to be used in making the preliminary test specimens, a minimum 1 cubic yard batch shall be mixed or a batch of sufficient size to afford proper mixing, whichever is the greater. In lieu of the above mixer and procedure, the Contractor may furnish a portable mixer of sufficient rated capacity to mix a minimum 3-sack batch; in which case, the batch mixed for the preliminary test not to be less than the rated capacity of the mixer furnished. A coating batch will be mixed prior to mixing for test cylinders.

Test beams or cylinders shall be required for each fifty (50) cubic yards or portion thereof, placed each day. The Engineer shall take test cylinders for compressive strength values on a random basis. The comparative results shall consist of the average of 2 cylinders each at 7 and 28 days for regular concrete, high early strength concrete and high range water reducing admixture concrete.

After the mix proportions and water-cement ratio required to produce concrete of the specified strength have been determined, placing of the concrete may be started. The strength of the concrete in the completed pavement will be determined by a minimum of four compressive strength test specimens made, cured with a minimum of two each tested at 7 and 28 days as provided in TxDOT Bulletin C-11. Modifications of the mix design may be requested by the Contractor on basis of conformity of the strength of these test specimens with the requirements and intent of this specification.

Changes in the water-cement ratio and the mix design, including an increase in cement factor if necessary, will be made when the average 7 day and/or 28 day compressive strength of the concrete, as indicated by the last 10 compressive strength values obtained from tests of cylinders made from concrete of the same water-cement ratio, departs from the desired minimum average strength by more than 4 percent.

Additional tests may be taken as determined by the concrete placement conditions or for adequately determining the strength of concrete where the early opening of the pavement to traffic is dependent upon concrete strength tests. No extra compensation will be allowed for materials and work involved in fulfilling these requirements.

407.3.A.2. Batching and Mixing: All batching and mixing of concrete materials shall conform to ACI 304-73 "Recommended Practice for Measuring, Mixing and Placing Concrete". All materials shall be measured separately and accurately and batches shall be uniform. The coarse and fine aggregate shall be measured or weighed, loose and separately.

When transit mix concrete is used, the delivery of concrete shall be continuous at regular and uniform intervals, without stoppages or interruptions. Transit mix concrete shall not be placed in the job after a period of forty-five (45) minutes after the cement has been placed in the mixer.

407.3.A.3. Delivery: The rate of delivery of transit mixed concrete shall be so arranged that a cold joint is not allowed to form between loads. Concrete shall be hauled in vehicles so constructed and operated to provide constant agitation during transportation. Concrete improperly mixed shall not be placed in the structure.

The transit mixer shall be of an approved revolving drum or revolving blade type so constructed as to produce a thoroughly mixed concrete with a uniform distribution of the materials throughout the mass and shall be equipped with a discharge mechanism which will insure the discharging of the mixed concrete without segregation.

The mixer drum shall be water-tight when closed and shall be equipped-with a locking device which will automatically prevent the discharging of the mixer prior to receiving the required number of revolutions.

The rate of delivery of the mixed concrete shall be such that the interval between loads shall not exceed 10-minutes. The concrete shall be delivered to the site of the work and discharged from the mixer before the drum has been revolved 300 revolutions, after the introduction of the mixing water with the dry materials.

The entire quantity of mixing water shall be accurately measured and controlled. Each batch shall be mixed to the consistency as described in the approved mix design. Any additional mixing shall be done at a slower speed specified by the manufacturer for agitation and shall be continuous until the batch is discharged.

407.3.A.3. Consistency: In general, the consistency of concrete mixtures shall be such that:

- a. The mortar will cling to the coarse aggregate.
- b. The aggregate will not segregate in the concrete when it is transported to the place of deposit.
- c. The concrete and mortar will show no free water when removed from the mixer.
- d. The surface of the finished concrete will be free from a surface film of "laitance".

Any concrete mix failing to meet the above outlined consistency requirements, although meeting the slump requirements will be considered unsatisfactory, and the mix shall be changed to correct such unsatisfactory conditions.

407.3.B. Placing Concrete

The Contractor shall give the Engineer at least twenty-four (24) hours advance notice that he intends to pour concrete in any unit of the structure. Prior to starting work the Contractor shall inform the Engineer as to the methods of construction and the amount and character of equipment he proposes to use, the adequacy of which shall be subject to the approval of the Engineer. The mixing of concrete and placing of same in the forms shall not be commenced until the Engineer has given his approval. No concrete shall be placed in any unit prior to completion of the form work and the placement of the reinforcing and other steel.

407.3.B.1. Subgrade Preparation: When manipulation or treatment of subgrade is required on the plans, the work shall be performed in proper sequence with the preparation of the subgrade for pavement. Subgrade shall be prepared as indicated in Items 402, 403, 404, and 405. Density tests must be taken no more than 72-hours prior to placement of concrete. After the specified moisture and density are achieved, the CONTRACTOR shall maintain the subgrade moisture and density in accordance with Item for Subgrade Preparation until the pavement is placed. In the event that rain or other conditions may have adversely affected the condition of the subgrade or base, additional tests may be required as directed by the OWNER.

407.3.B.2. Forms: Facing of $\frac{3}{4}$ " grade B plywood will be permitted for general use on the various portions of structures, if backed by a sufficient number of studs and wales. Forms shall be mortar tight, and of sufficient strength to prevent bulging between supports. Forms shall be maintained to the lines designated until the concrete is sufficiently hardened to permit form removal and until the minimum time for forms to remain in place has elapsed in accordance with ACI Standard 318-71 "Building Code Requirements for Reinforced Concrete (ACI318-71)". Where corners occur, suitable chamfer strips shall be placed at the angle of the forms to round off or level them. All forms shall be constructed so as to permit removal without injuring the concrete. At the time of placing concrete, the forms shall be clean and entirely free of all chips, dirt, sawdust, and other extraneous matter.

For thin wall sections and other locations where access to the bottom of the forms by other methods would be cumbersome and inadequate, clean-out opening shall be provided.

Only spreaders approved by the Engineer shall be used.

Form ties of an approved type shall be used to hold forms in place. Such ties shall be of a type especially designed for use in connection with concrete work, and they shall have provision to permit ease of removal of the metal as hereinafter specified. The use of metal form ties of types that are encased in paper or other materials to allow the removal of the complete tie, leaving a hole through the concrete structure, will not be permitted. Metal ties shall be held in place by devices attached to walls. Each device shall be capable of developing the strength of the tie.

All cavities produced by the removal of metal ties shall be carefully cleaned and completely filled with re-tempered sand cement mortar mixed in proportion of one to three, and the concrete shall be left smooth and even. Forms shall remain in place until the concrete has taken its final set. At the time the forms are removed, earth shall be banked against the sides of the slab and immediately and thoroughly wetted.

When forms settle over 1/8-in. under finishing operations, paving operations shall be stopped, the forms reset to line and grade and the pavement then brought to the required section and thickness.

Forms shall be thoroughly cleaned after each use and well-oiled before reuse.

407.3.B.3. Placing Reinforcing: Reinforcing steel, welded wire mesh, tie bars, dowels, etc., shall be placed as shown on the plans. All reinforcing shall be clean, free from rust in the form of loose or objectionable scale, and of the type, size and dimensions shown on the plans. Reinforcing bars shall be securely wired together at the alternate intersections and all splices and shall be securely wired to each intersection dowel and load-transmission unit intersected. All bars shall be installed in their required position as shown on the plans. The storing of reinforcing or structural steel on completed roadway slabs generally shall be avoided and, where permitted, such storage shall be limited to quantities and distribution that shall not induce excessive stresses.

Dowel bars shall be accurately installed in joint assemblies as indicated on the drawings, each parallel to the pavement surface and to the center line of the pavement and shall be rigidly secured in the required position by such means as indicated that will prevent their displacement during placing and finishing of the concrete.

All reinforcing bars and bar mats shall be installed in the slab at the required depth below the finished surface and supported by and securely attached to bar chairs installed on prescribed longitudinal and transverse centers as shown by sectional and detailed drawings on the plans. After the reinforcing steel is securely installed above the subgrade, as specifically required by plans and as herein prescribed, there shall be no loading imposed upon (or walking upon) the bar mats or individual bars before or during the placing or finishing of the concrete.

When welded wire fabric is selected, the Contractor shall pour the lower half of the slab; place the welded wire fabric and then place the remaining concrete. Tie bars shall be installed in the required position by the method and device indicated. Bar coating indicated and of material specified, shall be completed and the bars and coating shall be free of dirt or other foreign matter at the time of installation in the concrete. Dowel bars shall be accurately installed in joint assemblies as indicated on the drawings, each parallel to the pavement surface and to the center line of the pavement and shall be rigidly secured in the required position by such means as indicated that will prevent their displacement during placing and finishing of the concrete.

407.3.B.4. Joints: Expansion joints or dummy joints which may require an assembly of parts supported by special devices shall be completely assembled and rigidly supported in the correct position well in advance of the placing of concrete.

407.3.B.4.a. Joint Dimensions: The width of the joint shall be shown on the plans, creating the joint sealant reservoir. The depth of the joint shall be shown on the plans. Dimensions of the sealant reservoir shall be in accordance with manufacturer's recommendations. Normal width/depth ratios are 1 to 1, not to exceed 1 to 1½. After curing, the joint sealant shall be 1/8-in. to 1/4-in. below the pavement surface at the center of the joint. Expansion joints shall be installed perpendicularly to the surface and to the centerline of the pavement at the locations shown on the plans.

When no transverse joints are indicated, joints shall not exceed 40 feet. Such stakes, braces, brackets or other devices shall be used as necessary to keep the entire joint assembly in true vertical and horizontal position. Where concrete base is overlaid by asphaltic concrete, the joints to be prepared as specified herein, but joint sealing will not be required unless indicated.

407.3.B.4.b. Joint Materials: Board joint material with less than 25-percent of moisture at the time of installation shall be thoroughly wetted on the job. Green lumber of much higher moisture content is desirable and acceptable. The joint filler shall be appropriately drilled to admit the dowel bars when required. The bottom edge of the filler shall extend to or slightly below the bottom of the slab. The top edge shall be held approximately 1/2-in. below the finished surface of the pavement in order to allow the finishing operations to be continuous.

Where the joint filler is of a pre-molded asphaltic type, the top edge shall be protected, while the concrete is being placed and finished, by a metal cap of at least 10 gauge material having flanges not less than 1½-in. in depth. The channel cap may remain in place during the joint finishing operations to serve as a guide for tooling the edges of the joint. After the removal of the side forms, the ends of the joints at the edges of the slab shall be carefully opened for the entire depth of the slab.

Routine pavement joints shall be filled to a depth of 1½-in. Materials shall generally be handled and applied according to the manufacturer's recommendations, with additional requirements as stated herein.

Dowel bars, where required on the plans, shall be installed through the predrilled joint filler and rigidly supported in true horizontal and vertical positions by an assembly of bar chairs and dowel holders welded to

transverse bars extending across the slab and placed on each side of the joint. The chair assembly shall be similar and equal to that shown on the plans and shall be approved by the OWNER prior to extensive fabrication.

407.3.B.4.c. Contraction Joints: Contraction or dummy joints shall be installed at the locations and at the intervals shown on the plans in accordance with this section and Item for Sawing. The joints shall be constructed by sawing to a 1/4-in. width and to a depth of 1/4 of the pavement thickness, or deeper if so indicated on the plans. Unless otherwise specified on the plans, joints shall be sawed into the completed pavement surface as soon as sawing can be accomplished without damage to the pavement and before 24 hours after the concrete has been placed, so that some raveling of the green concrete is observed in order for the sawing process to prevent uncontrolled shrinkage cracking. If sharp edge joints are being obtained, the sawing process shall be sped up to the point where some raveling is observed. Damage by blade action to the slab surface and to the concrete immediately adjacent to the joint shall be minimized. Any portion of the curing membrane which has been disturbed by sawing operations shall be restored by spraying the areas with additional curing compound. The sawed groove shall immediately be thoroughly cleaned for the full depth and width of the joint and filled. The type of equipment and method for performing this work shall be approved by the OWNER.

407.3.B.4.d. Construction Joints: Construction joints formed at the close of each day's work or when the placing of concrete has been stopped for 30-minutes or longer shall be constructed by use of metal or wooden bulkheads cut true to the section of the finished pavement and cleaned and oiled.

Asphalt, Redwood board or other materials used shall extend the full depth of the concrete and shall be perpendicular to the exposed face. All joints shall be shaped to conform to the contour of the finished section in which they are installed. All material shall be a minimum of 1/2 inch thick or as indicated in contract documents. Wood materials shall be anchored to the adjacent concrete to permanently hold them in place. Joint sealer shall be installed in accordance with the manufacturer's recommendations.

Wooden bulkheads shall have a thickness of not less than 1 1/2-in. Longitudinal bars shall be held securely in place in a plane perpendicular to the surface and at right angles to the centerline of the pavement. Edges shall be rounded to 1/4-in. radius. Any surplus concrete on the subgrade shall be removed upon the resumption of the work. In no case shall an emergency construction joint be placed within 8-ft. following a regular installation of expansion or contraction joint. If the emergency construction joint should fall within this limitation, the concrete shall be removed back to the previously installed joint.

Longitudinal construction joints shall be of the type shown on the plans. Longitudinal joints shall be constructed accurately to required lines in order to coincide with traffic lane lines. No width between longitudinal construction joints shall exceed 24-ft., unless specifically authorized or directed by the OWNER in writing.

407.3.B.4.e. Expansion Joints: Transverse expansion joints shall be formed perpendicular to the centerline and surface of pavement and shall be constructed in accordance with the sequence of operations indicated on the drawings. After the transverse finishing machine and before the longitudinal finishing machine have passed over the joint, the Contractor shall test the joint filler for correctness of position and make any required adjustment in the position of the filler and shall install the joint seal space form as indicated on the drawings. After removal of the joint seal form as indicated on the drawings, the joint seal space above the joint filler shall be thoroughly sandblasted or machine routed to remove all projecting concrete, laitance, dirt or foreign matter. The concrete faces of the joint seal space shall be left true to line and section throughout the entire length of the joint. On completion of curing of the pavement, the joint sealing filler of the type specified shall be placed as indicated. The faces of the joint seal space shall be clean and surface dry at the time joint sealing filler is placed. On completion of the joint seal, the pavement adjacent to the joint shall be left free of joint sealing material. The joint seal space shall be exactly above and not narrower than the joint filler with no concrete over-hangings.

407.3.B.5. Pouring: The Contractor shall give the Engineer at least twenty-four (24) hours advance notice that he intends to pour concrete in any unit of the structure. The mixing of concrete and placing of same in the forms shall not be commenced until the Engineer has given his approval. No concrete shall be placed in any unit prior to completion of the form work and the placement of the reinforcing and other steel.

Unless otherwise shown on the plans, the concrete shall be placed using either forms or slipform paver. The concrete shall be rapidly deposited on the subgrade in successive batches and shall be distributed to the required depth and for the entire width of the pavement by shoveling or other approved methods. Any concrete not placed as herein prescribed within the time limits specified in Table 407.3.B.5.a. Concrete Temperature-Time Requirements will be rejected.

Table 407.3.B.5.a. Concrete Temperature-Time Requirements

Concrete Temp (at point of placement)	Max Time - (min) (no retarding agent)	Max Time - (min) (no retarding agent)¹
Non-Agitated Concrete All Temps	30	45
Agitated Concrete		
Above 90°F	45	75
Above 75°F thru 90°F	60	90
75°F and Below	90	120

1. Normal dosage of retarder.

Where the Contractor's operations involve the placing of concrete from above directly into an excavated area or through the completion of forms, all concrete so placed shall be deposited through a vertical sheet metal or other approved pipe or tremie not less than six (6) inches nor more than ten (10) inches in diameter. The pipe shall be made in sections so that the outlet may be adjusted to proper heights during placing operations.

Concrete shall be placed in continuous horizontal layers approximately (12) inches in thickness. The rate of delivery shall be so arranged that a cold joint is not allowed to form between loads. The Contractor shall avoid unauthorized construction joints by placing required portions of abutments, paving, piers, walls, floors, slabs columns or superstructures in one continuous operation. If required by specific jobsite conditions, openings in the forms shall be provided for the removal of laitance and other foreign material. At the end of the day, or in case of unavoidable interruption or delay of more than 30-minutes, a transverse construction joint shall be placed.

Concrete shall not be placed before the time of sunrise and shall not be placed later than shall permit the finishing of the pavement during sufficient natural light.

Any concrete not placed as herein prescribed within 30 minutes after mixing shall be rejected and disposed of as directed except as provided otherwise herein. If in the opinion of the Engineer or designated representative, the temperature, wind and/or humidity conditions are such that the quality of concrete will not be adversely affected, the specified placing time may be extended by a maximum of 45 minutes.

407.3.B.5.b. Compaction: All concrete shall be well compacted and the mortar flushed to the surface of the forms by continuous working with concrete spading implements and mechanical vibrators of an approved type. Vibrators of the type which operate by attachment to forms or reinforcement will not be permitted. The vibrators shall be applied to the concrete immediately after deposit and shall be moved throughout the mass, thoroughly working the concrete around the reinforcement, embedded fixtures, and into the corners and angles of the forms until it has been reduced to a plastic mass. The mechanical vibrator shall not be operated so that it will penetrate or disturb layers placed previously which have become partially set or hardened. The vibration shall be of sufficient duration to accomplish thorough compaction and complete embedment of reinforcement and fixtures, but shall not be done to an extent that will cause segregation. Vibration shall be supplemented by hand spading to insure the flushing of mortar to the surface of all forms.

Special care shall be taken in placing and spading the concrete against the forms and at all joints and assemblies so as to prevent honeycombing. Excessive voids and honeycombing in the edge of the pavement, revealed by the removal of the side forms, may be cause for rejection of the section of slab in which the defect occurs.

The use of rakes will not be permitted. Workers will not be permitted to walk in the concrete with any earth or foreign material on their boots or shoes.

407.3.B.5.c. Weather Conditions: Except by specific written authorization of the OWNER, no concrete shall be placed when the air temperature is less than 40°F and falling but may be placed when the air temperature is above 35°F and rising. The temperature shall be taken in the shade away from artificial heat. When and if such permission is granted, the CONTRACTOR shall furnish sufficient protective material and devices (canvas and frame work or other type of housing) to enclose and protect the fresh concrete in such a way as to maintain the temperature of the air surrounding the fresh concrete at not less than 50°F for a period of at least 5-days. Sufficient heating apparatus such as stoves, salamanders, or steam equipment and fuel to furnish all required heat shall be supplied. It is to be distinctly understood that the CONTRACTOR is responsible for the quality and strength of the concrete placed under any weather conditions. No concrete shall be placed on a frozen subgrade. The Contractor shall be responsible for the quality and strength of concrete under cold weather conditions and any concrete damaged by freezing shall be removed and replaced at the Contractor's expense.

Concrete shall not be placed when it's temperature is greater than 95°F. During hot weather placement additional steps shall be taken to insure proper curing, including, but not limited to, the use of ice in the batch process, white pigmented curing compound, dampening of forms, steel, and subgrade beneath concrete. Additionally, placement of wet burlap on the surface of concrete, fogging or wet curing may be used and maintained for a minimum of 7 days.

407.3.B.6. Finishing: As soon as concrete placing operations have been completed for a slab section of sufficient width to permit finishing operations, the concrete shall be approximately leveled and then struck, off, tamped, and screeded using a longitudinal screed. The screed shall be of a design adaptable to the use intended, shall have provisions for vertical adjustment, and shall be sufficiently rigid to hold true to shape during use.

Finishing shall be done on all exposed surfaces up to 1-ft below finished grade.

Tamping and screeding operations shall be continued until the concrete is properly consolidated and the surface voids are eliminated. The surface shall then be brought to a smooth true alignment by means of longitudinal screeding, floating, betting, and/or other methods approved by the Engineer. When templates are used, they shall be of such design as to permit early removal in order to avoid construction joints and to permit satisfactory finishing at and adjacent to the site of the template.

While the concrete is still workable, it shall be tested for irregularities with a 10-ft. metal straightedge placed parallel to the centerline of the pavement so as to bridge depressions and to touch all high spots. Ordinates measured from the face of the straightedge to the surface of the pavement shall at no place exceed 1/16 inch-per-foot from the nearest point of contact. In no case shall the maximum ordinate to a 10-ft. straightedge be greater than 1/8-in. Any surface not within the tolerance limits shall be reworked and refinished.

The edges of slabs and all joints requiring edging shall be carefully tooled with an edger of the radius required by the plans at the time the concrete begins to take its "set" and becomes non-workable. All such work shall be left smooth and true to lines.

407.3.B.6.a. Texturing: After completion of the straightedge operation, as soon as construction operations permit, texture shall be applied with 1/8 inch wide metal tines with clear spacing between the tines being not less than 1/4 inch nor more than 1/2 inch. If approved by the Engineer or designated representative, other equipment and methods may be used, provided that a surface texture meeting the specified requirements is obtained. The texture shall be applied transversely.

It is the intent that the average depth resulting from the number of tests directed by the Engineer or designated representative shall not be less than 0.060 inch with a minimum texture depth of 0.050 inch for any one test when tested in accordance with TxDOT Test Method Tex-436-A. Should the texture depth fall below that intended, the finishing procedures shall be revised to produce the desired texture.

The Contractor shall have available at all times hand rakes with tines for the purpose of providing textures in the event of equipment breakdown. The Contractor also shall have available a conventional garden spray type can, containing a commercially available monomolecular film compound. This shall be applied in the case of equipment breakdown or other emergencies to prevent the pavement from drying too rapidly. The use of this product will give the Contractor additional time to provide adequate texturing.

After completion of texturing and about the time the concrete becomes hard, the edge of the slab and joints shall be carefully finished with an edger and the pavement shall be left smooth and true to line.

407.3.B.6.b. Stamping: All concrete including curbs, curb with gutter, sidewalks, alleys, driveways and other structures shall be marked by means of a substantial stamp or die so designed to make an impression in the finish of the concrete. The stamp or die shall designate the firm name or CONTRACTOR and the month and year in which the work was done. The design of the stamp or die shall be approved by the Engineer.

407.3.B.6.c. Hand Finishing: Hand finishing shall be permitted only in intersections and areas inaccessible to a finishing machine. The addition of one-sack of cement per cubic-yard shall be required for all hand finish concrete.

When the hand method of striking off and consolidating is permitted, the concrete, as soon as placed, shall be approximately leveled and then struck off and screeded to such elevation above grade that, when consolidated and finished, the surface of the pavement shall be at the grade elevation shown on the plans. The entire surface shall then be tamped and the concrete consolidated so as to insure maximum compaction and a minimum of voids. For the strike off and consolidation, both a strike template and tamping template shall be provided on the work. In operation the strike template shall be moved forward with a combined longitudinal and transverse motion and so manipulated that neither end of the template is raised from the forms during the striking off process. A slight excess of material shall be kept in front of the cutting edge at all times. The straightedge and joint finishing shall be as hereinabove prescribed.

407.3.C. Curing Concrete

All concrete pavements shall be cured by protecting it against loss of moisture for a period of not less than 72 hours from the beginning of the curing operations. Immediately after finishing operations have been completed, the entire surface of the newly laid concrete shall be covered and cured in accordance with the requirements specified for whichever of the following methods the Contractor may elect. The curing method as herein specified does not preclude the use of any of the other commonly used methods of curing, and the OWNER may approve another method of curing if so requested by the CONTRACTOR. If any selected method of curing does not afford the desired results, the OWNER shall have the right to order that another method of curing be instituted.

The curing of concrete pavement shall be thorough and continuous throughout the entire curing period. Failure to provide proper curing as herein prescribed shall be considered as sufficient cause for immediate suspension of the paving operations.

Immediately after removal of the side and end forms of non-exposed surfaces, and after required finishing of exposed surfaces, the formed surfaces of all concrete shall receive a like coating. The solution shall be applied under pressure with a spray nozzle in such a manner as to cover the entire exposed surface thoroughly and completely with a uniform film.

The rate of application shall be such as to insure complete coverage, but the area covered shall not exceed two hundred (200) square feet per gallon of curing compound. The coating shall be sufficiently transparent and free

from permanent color to result in no pronounced change in color from that of the natural concrete at the conclusion of the curing period. It shall, however, contain a fugitive dye of color strength to render the film distinctly visible on the concrete for a period of at least four (4) hours after application.

Under normal conditions, the curing compound, after application, shall dry to touch within one (1) hour and shall dry thoroughly and completely within four (4) hours. When thoroughly dry, it shall provide a continuous flexible membrane free from cracks or pinholes and will not disintegrate, check, peel, or crack during the required curing period. If for any reason the seal is broken during the curing period, it shall be immediately repaired with additional sealing solution.

All concrete shall be cured and sealed with a continuous acrylic membrane-forming compound meeting the requirements of ASTM C-309. Products shall be Sealco 309 by Gifford-Hill; Horn Clear Seal by W.R. Grace and Company, or an approved equal.

Bonding agent shall be a liquid polymer latex compound such as Daraweld-C manufactured by W.R. Grace and Company or an approved equal.

407.3.D. Opening to Traffic

All traffic shall be excluded from the pavement for a period of not less than 14-days or until field cured test specimens indicate concrete meets at least 75% of design strength, or as otherwise approved by the OWNER. In all cases the pavement shall be cleaned and joints shall be filled and trimmed before being opened to traffic.

When it is necessary to provide for traffic across the pavement, the CONTRACTOR shall, at its own expense, construct suitable and substantial crossings over the concrete which shall be adequate for the traffic using same.

Opening pavement to traffic shall not relieve the CONTRACTOR of responsibility for the work and shall not in any way affect the time charge on the entire project. The number of days stated in the contract shall govern for the completion of the entire work covered by the contract.

407.3.E. Testing and Evaluation

All testing shall be in accordance with applicable ASTM Standards and concrete testing technician must be ACI certified or equivalent.

During the progress of the work, the CONTRACTOR shall cast test cylinders, in accordance with ASTM C31 Standard Practice for Making and Curing Concrete Test Specimens in the Field, to maintain a check on the compressive strengths of the concrete being placed. In accordance with ASTM C31 and ASTM C172 Standard Practice for Sampling Freshly Mixed Concrete, four test cylinders shall be taken from a representative portion of the concrete being placed for every 150-cubic yards of concrete pavement placed, but in no case shall less than 2 sets of cylinders be taken from any one day's placement.

After the cylinders have been cast, they shall remain on the job site and then transported, moist cured, and tested by the OWNER in accordance with ASTM C31 and ASTM C39 Standard Test Method for Compressive Strength of Cylindrical Concrete Specimens. In each set, one of the cylinders shall be tested at 7-days, two cylinders shall be tested at 28-days, and one cylinder shall be held or tested at 56-days, if necessary.

407.3.E.1. Deficient Pavement: The adjustment in unit prices provided for in this item will apply only when measurement for payment is by the square yard. It is the intent of this specification that the pavement be constructed in strict conformity with the thickness, strength and typical sections indicated on the drawings. Where any pavement is found not so constructed, the following rules relative to adjustment of payment for acceptable pavement and to replacement of faulty pavement shall govern.

The pavement will be core drilled after any grinding operations have been completed for surface corrections prior to final acceptance. Locations of core tests may be selected by the Engineer or designated representative; however, spacing interval for core tests, as specified herein, shall be maintained. The

thickness of the pavement will be determined by measurement of the cores in accordance with TxDOT Test Method Tex-424-A.

One core will be taken at the location selected by the Engineer or designated representative or at random in each unit. If the measurement deficiency of the core is less 0.2-in from the plan thickness, full payment will be made. When the measurement of the core is deficient more than 0.2 inch but less than 0.75 inch from the plan thickness, 2 additional cores (at directed locations) will be taken from the unit and the average of the 3 cores determined. The 2 additional cores from any 1,000-foot unit will be taken at intervals of not less than 300 feet. The 2 additional cores from any 1,000 square yard unit will be taken at locations such that the pavement in the unit will be well represented. If the average measurement of these 3 cores is not deficient more than 0.2 inches from the plan thickness, full payment will be made. If the average thickness of the 3 cores is deficient by more than 0.2 inch but not more than 0.75 inch from the indicated thickness, an adjusted unit price as provided below will be paid for the areas represented by these cores.

After any grinding or milling operations have been completed to meet the surface-testing requirement of this specification, if average thickness of pavement is deficient in thickness by more than 0.2 inch, but not more than 0.75 inch, payment will be made at an adjusted price as specified in the following table:

Table 407.3.E.1.a. Concrete Pavement Thickness Deficiency

Thickness Deficiency (in)	Contract Price Allowed (%)
0.00 to 0.20	100
0.21 to 0.30	80
0.31 to 0.40	72
0.41 to 0.50	68
0.51 to 0.75	57

Any area of pavement found deficient in thickness by more than 0.75 inch but not more than 1 inch or 1/8 of the indicated thickness, whichever is greater, shall be evaluated by the Engineer. If, in the judgment of the Engineer, the area of such deficiency should not be removed and replaced, there will be no payment for the area retained. If, in the judgment of the Engineer, the area of such deficiency warrants removal, the area shall be removed and replaced at the Contractor's entire expense, with concrete of the thickness indicated on the drawings.

If the average compressive strength based on concrete test cylinders at 28 days is less than the specified minimum strength of the concrete, then payment will be made at an adjusted price as specified in the following table. The Ratio shall be that of the Average Strength from Test Cylinders to Specified Minimum Compressive Strength both at 28 Days.

Table 407.3.E.1.b. Concrete Pavement Strength Deficiency

Ratio of Average Strength	Contract Price Allowed (%)
0.95-1.00	100
0.90-0.95	85
0.85-0.90	70
0.80-0.85	60
Less than 0.80	0 or Remove and Replace

When, in the opinion of the Engineer or designated representative, the compressive strength test results appear unrepresentative, additional testing of field cores may be authorized. To be considered acceptable for consideration the field cores shall be acquired, properly handled and tested in accordance with ASTM C 42/C 42M, "Standard Test Method for Obtaining and Testing Drilled Cores and Sawed Beams of Concrete" within 45 days of the original concrete placement date. The retesting will be at the expense of the Contractor and the results of the retesting shall be averaged with the results of the original testing. If the results of retesting indicate that the original test results were erroneous by more than 15% in the opinion of the Engineer or designated representative, the original test results will be discarded. In the instance of erroneous original test results the subsequent first set of retests will be at the expense of the Owner.

When, in the opinion of the Engineer or designated representative, the concrete compressive strength is deemed unacceptable for the intended use of the pavement, the concrete shall be removed and replaced to the limits indicated by test results.

407.3.E.2. Pavement Cracks: Random drying shrinkage cracks or stress cracks of widths greater than 0.025-inches in recently placed reinforced Portland cement concrete pavement placed on stabilized subbase or slabs on grade are subject to being removed and replaced at the discretion of the OWNER.

Random drying shrinkage cracks or stress cracks of any nature in recently placed non-reinforced Portland cement concrete pavement placed on non-stabilized subbase or slabs on grade are subject to being removed and replaced at the discretion of the OWNER. Recently placed concrete pavement or slabs on grade are those for which the one-year maintenance bond has not expired. Routing, by any means, and sealing random cracks will not be permitted.

When Portland cement concrete pavement or slabs on grade must be removed and replaced, the area of removal must extend from the nearest contraction or dummy joint or construction joint a minimum distance of 10-feet, measured parallel to the longitudinal axis of the pavement, and include that portion of the concrete pavement or slab on grade containing the random crack. A sawed dummy joint will be required to be sawed across the opposing, non-damaged, slab in line with the saw cut made for the removal of the damaged slab. The area of removal and replacement of slabs containing longitudinal random cracks will be determined by the OWNER or its representative. Randomly cracked Portland cement concrete sidewalks will require removal and replacement of only the five-foot long section or sections containing random cracks.

407.4 MEASUREMENT AND PAYMENT

When specifically included on the bid form as a pay item, concrete placed under this Section shall be measured complete in place by physically measuring the completed concrete structure after removal of forms and all required finishing has been completed. Length and width (or depth) shall be measured, and the constructed volume of the placed concrete shall be computed in square yards (SY). When not specifically included on the bid form as a pay item, there shall be no direct measurement of installed concrete, and all installed concrete not included in a specific bid item shall be paid as a subsidiary item to other bid items in the contract.

Concrete Pavement, if included in the bid, shall be measured as specified above and paid for at the contract unit price bid for "Concrete Pavement" which price shall be full compensation for shaping and fine grading the roadbed, including furnishing and applying all water required; for furnishing, loading and unloading, storing, hauling and handling all concrete ingredients, including all freight and royalty involved; for placing and adjusting forms, including supporting material or preparing track grade; for mixing, placing, finishing, sawing, cleaning and sealing joints and curing all concrete; for furnishing and installing all reinforcing steel; for furnishing all materials for sealing joints and placing longitudinal, expansion and weakened plane joints, including all steel dowel caps and load transmission devices required and wire and devices for placing, holding and supporting steel bars, load transmission devices and joint filler material in proper position, for coating steel bars, all other materials and methods, equipment, tools, testing, labor, and incidentals necessary to complete the work.

408 SIDEWALKS, DRIVEWAYS, RAMPS, AND VALLEY GUTTERS

This item includes sidewalk, concrete driveway approaches, barrier free access ramps, and valley gutter construction within public right-of-way. All sidewalks, drive approaches, barrier free access ramps, and valley gutters shall conform to the standard plans and details appended to these Standard Specifications.

408.1 MATERIALS

Materials for the various features of work under this item of these specifications shall meet the following requirements:

- A. Concrete shall conform to the requirements of Item 407, "Concrete Pavement".
- B. Flexible Base Material shall conform to the requirements of Item 403, "Flexible Base".

408.1.A. Reinforcing: Driveway approaches and walk reinforcing, when required, shall be No. 3 bars on 24-in. centers or No. 4 on 30-in. centers. No. 6 gauge, 6-in. x 6-in. wire fabric conforming to Item 407.1.F. Reinforcing may be used only as approved by the OWNER.

Sidewalk reinforcing (except in driveway approach) may be No.3 bars on 24-in. centers or No. 10, 6-in. x 6-in.

All excavation, construction of fills or embankments and grading within the, public right-of-way shall conform to the appropriate section(s) of the standard specifications.

408.2 CONSTRUCTION METHODS

Construction of concrete valley gutters, sidewalks, barrier free access ramps, and concrete driveway approaches shall conform to the following requirements. Concrete shall be Class A as specified under Item 407, "Concrete Pavement", of these Standard Specifications. No concrete shall be placed until the forms have been checked and approved by the City Inspector. Dimensions and conformation shall comply with the details in the approved plans or Standard Details appended to these specifications. Grades, alignment, and tolerances shall be as specified.

Forms shall be of wood or metal, of a section satisfactory to the Engineer, straight, free of warp and of a depth equal to the depth of the concrete face. They shall be securely staked to line and grade, and maintained in a true position during the depositing of concrete. Thin plywood, steel, or other similar material may be used to form short radius curb returns at concrete driveway approaches. The reinforcing steel shall be placed in position as shown on the details in the approved plans. Care shall be exercised to keep all steel in its proper location during concrete placement.

Concrete surface shall be floated with a steel trowel to provide a smooth, burnished surface. After floating and before the finish has set, the surfaces shall be lightly brushed with a fine brush to remove the surface. After the surface has become firm, the surface shall be given a single floating with a wood float to provide a uniform surface.

The CONTRACTOR shall do all necessary filling, leveling and fine grading required to bring the subgrade to the exact grades specified and compacted to at least 90-percent of maximum density as determined by ASTM 0698 Test Methods, from -2 to +4 of optimum.

408.2.A. Valley Gutters

Concrete Valley Gutters shall be constructed in accordance with details in the approved plans or Standard Details and to the grades indicated on-the plans. Transitions to and from the standard curb and gutter sections at each end shall be such that water will not be trapped in the gutter section. The structure shall be monolithic with the curb and gutter at either end. Valleys shall have a wood float finish with transverse tooled joints as shown in the details. Steel reinforcement shall be provided as shown.

408.2.B. Sidewalks, Driveways, and Ramps

Sidewalks, barrier free access ramps, and Concrete Driveway Approach shall conform to the details in the approved plans or Standard Details appended to these specifications. The subgrade shall be compacted uniformly to the approximate density of the surrounding undisturbed material, and a one (1) inch sand cushion provided on the subgrade. Wire mesh reinforcement shall be provided in both sidewalks and concrete driveway approach. Reinforcing shall conform to the details in the approved plans or Standard Details appended to these

specifications. Expansion joints shall be installed at the intersection of drives and walks as indicated on Item 407, where cold joints occur, and where walks or drives abut other concrete structures. Walks and drives shall have a light brush finish as specified under Item 407, of these specifications. The edges shall be tooled with a one-quarter (1/4) inch radius edging tool, and walks shall also be tooled transversely at five (5) foot intervals. This pattern shall be continued through the concrete driveway approach apron. Curing compound shall be applied to the surface immediately after finishing is completed.

408.2.B.1. Sidewalks: Concrete sidewalks shall have a minimum thickness of 4-in., except sidewalks constructed in driveway approach sections shall have a minimum thickness equal to that of driveway approach or as called for by plans and specifications within the limits of the driveway approach. Standard slope for walks shall be 1/4-in. per-ft. in the direction of the curb or perpendicular to sidewalk direction, with a tolerance of 1/8-in. per-ft. When sidewalk is against the curb, expansion joints and tooled grooves shall match those in the curb.

408.2.B.2. Ramps: Ramps shall comply with provisions of Texas Accessibility Standards including location, slope, width, shapes, texture and coloring. At the locations shown on the plans or at locations designated by the OWNER, the separate curb, integral curb, or curb and gutter shall be laid down to a uniform width of not less than the specified height of the curb from the back of the curb line for access to future driveways. The return radii and partial curb return shall be built from the face of the curb to the back of the curb lay-down.

408.2.B.2. Driveways: Where a driveway approach or ramp is to be constructed at a location where there exists a separate curb and gutter, said curb and gutter shall be removed for the full width of the gutter to the nearest joint or to a sawed point at the point of radius. On concrete pavement with monolithic curb, the breakout line shall be 12-in. from the face of the curb line and shall be parallel to it and form a right angle with the concrete surface. The breakout line shall be a sawed groove in accordance with the requirements of Item for Sawing. Alternately, the OWNER may approve use of equipment designed to cut concrete curbs. All faces and edges exposed as a result of cutting shall be smoothed.

408.3 MEASUREMENT AND PAYMENT

All Concrete Valley Gutters, Sidewalks, and Concrete Driveway Approach will be measured per square yard (SY) complete in place.

All barrier free access ramps will be measured per Each (EA) complete in place.

Price of Concrete Valley Gutter, Sidewalks, ramps, and Concrete Driveway Approach if included in the bid, shall be measured as specified above, which price shall be full compensation for all work herein specified, including the furnishing of all materials, equipment, tools, labor, and incidentals necessary to complete the work.

409 CONCRETE CURB AND GUTTER

This item shall consist of Portland Cement concrete curb or curb and gutter with reinforcing steel as required, constructed on an approved subgrade and base in accordance with this specification and in conformity with the lines, grades, section and details indicated or as established by the Engineer.

409.1 MATERIALS

Materials for the various features of work under this item of these specifications shall meet the following requirements:

- A. Concrete and reinforcing shall conform to the requirements of Item 407, "Concrete Pavement".
- B. Flexible Base Material shall conform to the requirements of Item 403, "Flexible Base".
- C. Reinforcing steel shall conform to Item 407, "Concrete Pavement". All bars shall be wired at their intersections and at all laps or splices. All bars at splices shall be lapped a minimum of 20-diameters of the bar or 12-in., whichever is greater.
- D. Expansion joint materials shall conform to Item 407, "Concrete Pavement".

409.2 CONSTRUCTION METHODS

This section is intended to comply with section 402, 403, and 407. If anything in this section appears to contradict the above sections then the CONTRACTOR shall bring it to the attention of the OWNER for further guidance. Subgrade for curb and gutter shall be excavated and prepared to required depth and width including a minimum of 12 inches behind the curb, unless a greater width is indicated, to construct the work to grades and dimensions indicated. If dry, the subgrade shall be sprinkled with water lightly before concrete is deposited thereon.

The reinforcing steel shall be placed in position as shown on the typical section. Care shall be taken to keep all steel in its proper location.

409.2.A. Joints: Expansion joint material, ½-in thickness, shall be provided at intervals not to exceed 40 feet and at intersection returns and other rigid structures, or matching abutting sidewalk joints and pavement joints, or as otherwise specified by the OWNER. The expansion joints in concrete pavement shall coincide with the expansion joints in the curb and gutter and sidewalk. Joints shall extend the full width and depth of the concrete.

Longitudinal dowels, across the expansion joints in the curb and gutter, shall be required. There shall be three No. 4, round, smooth bars for dowels at each expansion joint. Dowels shall be spaced in accordance with standard reinforcement steel specifications. The dowel shall be a minimum of 24-in. in length. One-half of the dowel shall be coated with asphalt and terminated with an expansion cap. The cap shall provide a minimum of 1-in free expansion. Dowels shall be supported by an approved method to provide a true horizontal and longitudinal alignment.

Weakened plane joints or tooled joints shall be made ¾ inch deep at 10-foot intervals or matching abutting sidewalk joints and pavement joints. All joint headers shall be braced perpendicular and at right angles to the curb.

Two round smooth dowel bars, ½ inch in diameter and 24 inches in length, shall be installed at each expansion joint. Sixteen inches of one end of each dowel shall be thoroughly coated with hot oil, asphalt or red lead, so that it will not bond to the concrete. The dowels shall be installed with a dowel sleeve on the coated end as indicated or equivalent as directed by the Engineer.

409.2.A. Forms: All forms shall be of well-seasoned wood or steel, straight, free of warp and framed, braced or staked in a substantial and approved manner so as to insure perfect alignment and grade. The length of the forms shall be not less than 10 feet. Flexible or curved forms shall be used for curves of 100-foot radius or less. Wood forms for straight sections shall be not less than 2 inches in thickness. Forms shall be clean, straight, free from warp and oiled with a light form oil. All forms shall be securely staked to line and grade and maintained in a true position during the depositing of concrete.

409.2.B. Workmanship: Concrete shall be placed in the forms, rodded and tamped to exclude all air and honeycomb. Not more than 1 hour after the concrete has been placed, a thin coating not more than ½ inch nor less than ¼ inch thick of finish mortar, composed of 1 part Portland Cement to 2 parts fine aggregate, shall be worked into the exposed faces of the curb and gutter by means of a "mule." After the concrete has become sufficiently set, the exposed edges shall be rounded by the use of an edging tool to the radii indicated. The entire exposed surface of the curb and gutter shall be floated to a uniform smooth surface, then finished with a camel hair brush to a gritty texture. The forms shall remain in place a minimum of 24 hours unless approved otherwise by the Engineer. After removal of the forms, any minor honeycombed surfaces shall be plastered with a mortar mix as described above. Excessively honeycombed curb and gutter, as determined by the Engineer, shall be completely removed and replaced when directed.

409.2.A. Finishing: After the concrete has been struck off and while it is still plastic, the exposed surfaces may be plastered with 1/4-in. mortar topping. The mortar topping shall be applied with a steel "mule," or a finishing tool or method which produces results equivalent to that obtained with the mule. All exposed surfaces shall then be floated or troweled and lightly brushed as required by the OWNER to produce a smooth and uniform finish. Excess working of the surfaces shall be avoided. Excess water, laitance and inert materials shall be removed from the surfaces.

The top of all the work and the face of all curbs shall be checked for irregularities as soon as the surface is finished, using a 10-ft. straightedge, and the maximum distance from the straightedge to the concrete shall not exceed 1/4-in. All variations greater than specified shall be immediately corrected. All honeycombed areas disclosed by removal of forms shall be immediately chipped out and patched with Portland cement mortar.

After a minimum of 3 days curing and before placing the final course base, the curb shall be backfilled to the full height of the concrete, tamped and sloped as directed by the Engineer. The top 4 inches of backfill shall be of clean topsoil, free of stones and debris.

409.3 MEASUREMENT AND PAYMENT

Accepted work as prescribed by this item will be measured by the linear foot (LF) of concrete curb and gutter, complete in place. The work, when direct payment is provided for in the Bid, performed as prescribed by this item will be paid for at the unit price bid per linear foot for "Concrete Curb and Gutter" and / or "Concrete Curb," which price shall be full compensation for all work for excavation, preparing the subgrade, for furnishing and placing all base material, reinforcing steel, dowels, expansion joint material, backfilling and for all other materials, manipulations, labor, tools, equipment and incidentals necessary to complete the work.

410 MEDIANS

This item shall consist of concrete medians and headers in accordance with these specifications and in conformance with the lines and grades established by the OWNER and details shown on the plans.

410.1 MATERIALS

All material requirements for constructing concrete medians shall conform to the requirements of Item for Concrete Curb and Gutter. Where a monolithic concrete median is indicated, concrete and reinforcement shall match the adjacent pavement. Concrete material requirements shall be the same as those for Item for Concrete Paving.

410.2 CONSTRUCTION METHODS

Excavation and fine grading shall be done according to Item for Unclassified Street Excavation, and shall be subsidiary to the item. Forms and concrete placement shall conform to the requirements of Item for Concrete Curb and Gutter and shall be of a depth equal to the depth of the required section. Forms shall be securely staked to line and grade and maintained in a true position during the depositing of concrete.

The surface shall be finished with a float and lightly brushed to obtain a uniform finish. Tooled joints shall be placed longitudinally and transversely at intervals not to exceed 6-ft. center to center, as shown on the plans, or as directed by the OWNER. Joints in the median shall coincide with joints in curb and gutter. Expansion joint material shall be placed between the median and the back of curb and around all obstructions protruding through the concrete median.

Concrete header shall be constructed at the location(s) shown on the plans and shall be constructed as shown on the plans in accordance with Item for Concrete Pavement.

410.3 MEASUREMENT AND PAYMENT

Concrete median shall be measured by the square-yard (SY) complete in place.

Concrete header shall be paid per each (EA) complete in place.

The work performed and materials furnished as prescribed by this item, measured as provided for in this item, shall be paid for at the contract unit price bid for "concrete median," and "concrete header," which price shall be full compensation for constructing concrete median, concrete header, necessary excavation, and for preparing the subgrade; furnishing and placing all materials, reinforcing steel, including sand cushion, reinforcement and expansion materials; and for all manipulation, labor, tools, equipment and incidentals necessary to complete the work.

411 PAVEMENT REPAIR

No interference with traffic flow on the thoroughfares and collectors shall be permitted during the hours of 6:30 a.m. to 9:30 a.m. and 3:30 p.m. to 6:30 p.m., Monday through Friday, unless directed otherwise by the OWNER. A traffic lane shall be considered satisfactorily open if it is paved with hot-mix or cold mix asphalt paving, or paved with another suitable material approved by the OWNER, or covered.

If the cut is to be covered, the CONTRACTOR shall use steel plates of sufficient strength and thickness to support all the traffic. A transition of hot-mix or cold-mix asphalt conforming to the requirements of Item for Asphalt Pavement shall be constructed from the top of the steel plate to the existing pavement to create a smooth riding surface. Exceptions to these specifications must be approved by the OWNER.

411.1 REPAIR DIMENSIONS

Exact pavement removal locations must be approved by the OWNER prior to construction. If multiple repairs are closer than 10-ft. apart from edge of one repair to the edge of a second repair, a continuous section shall be replaced.

411.1.A. Concrete Repairs

Sidewalks shall be removed and replaced to the nearest existing joint. No sidewalk or driveway section to be replaced shall be smaller than 30-in. in either length or width unless otherwise approved by the OWNER.

A gutter of at least 12-in. may remain, provided that the curb and gutter is not damaged by the construction activity. Damaged curbs shall be replaced at the expense of the CONTRACTOR.

In a concrete paved street or alley, no horizontal dimension of any cut along the street path shall be less than 3-ft. or no less than 1-ft. from the edge of the trench on each end, whichever is greater. Where saw-cut locations coincide with or fall within 3-ft. of the present location of dummy joints, cold joint, construction joints, expansion joints, or edge, removal shall be to the existing joint or edge. If the trench edge or point repair is located greater than 1-ft. from a lane line on the side of the line closest to the curb, pavement shall be removed and replaced from the curb to the lane line. If the edge of a trench or point repair is located less than 1-ft. from a lane line on the side of the line closest to the curb, pavement shall be removed and replaced from the curb to the 2nd lane line beyond the trench edge or point repair.

411.1.B. Asphalt Repairs

In an asphalt paved street or alley, no horizontal dimension of any cut along the street path shall be less than 4-ft. or no less than 2-ft. from the edge of the trench on each end, whichever is greater.

If the edge of a trench or point repair is located less than or equal to $\frac{1}{2}$ lane width but greater than 2-ft. from a lane line, the lane-width of pavement shall be removed and replaced. If the edge of a trench or point repair is located less than 2-ft. from a lane line, the pavement shall be removed and replaced to $\frac{1}{2}$ lane width on each

side. In the lane along the curb, if the trench edge or point repair plus 2-ft. toward the lane line is less than ½ lane width, pavement shall be removed and replaced from the curb to ½ lane width.

411.2 SAWING

This item shall apply in the removal of bituminous or concrete pavement, curb, gutter, sidewalk or driveways. This item shall also govern for the sawing of weakened plane joints (contraction joints). Sawing shall be in accordance with the requirements of this item unless otherwise shown on the plans or in the special provisions. The removal and replacement of portions of permanent pavement (Portland cement concrete or hot-mix asphalt), drives, slabs, sidewalks, etc. shall require a full-depth cut to be sawed by the use of an approved power driven concrete saw in accordance with this specification or as directed by the OWNER.

Sawing shall be considered subsidiary to the items requiring sawing if no pay item exists in the Contract.

411.2.A. Equipment

The saw shall be power driven, shall be manufactured especially for the purpose of sawing pavement, shall be suitable for the work to be performed including dust control and shall be maintained in good operating condition.

Saw blades shall make a clean, smooth cut, producing a groove 1/8-in. to 1/4-in. wide and to the full depth required by these specifications or as shown on the plans. The saw, with its control devices, shall be mounted on a sturdy frame supported on rubber-tired wheels.

411.2.B. Construction Methods

Dust and residues from sawing shall be prevented from entering the atmosphere or storm drain. The edge of pavements, curb, gutter, sidewalk and/or driveways shall be neatly sawed. Saw cuts shall be made perpendicularly to the surface to full pavement depth or as directed by the OWNER. The edges of pavement and appurtenances damaged subsequent to sawing shall again be saw cut to neat straight lines for the purpose of removing the damaged areas. Such saw cuts shall be parallel to the original saw cut. Concrete sidewalk or driveway to be removed shall be neatly sawed in straight lines either parallel to the curb or at right angles to the alignment of the sidewalk.

For repairs due to trench excavations the existing pavement shall be precut, sawed or scored so as to result in an even, straight cut. After completion of the trench backfill, and upon approval of the Engineer, on all paved streets other than gravel streets, the Contractor shall cut and excavate the surface and base of the streets back on each side of the trench to form a shoulder for the new base and surfacing. The base material shall then be replaced in three (3) inch layers tamped in place. Replaced base material shall comply with Item for Flexible Base, and in no case be less than 8 inches thick. On gravel streets, six (6) inches of road gravel shall be rolled in place to serve as a wearing surface. All cutbacks shall be to a neat, straight line, and the paving cut shall be made with a concrete saw and shall be parallel to the center line of the pipe. Removal of excess surfacing beyond the nominal limits of the ditch shall be kept to a minimum, and such areas shall be outlined with straight saw-cuts and included in areas to be repaired as described above. Base material shall be compacted to ninety-five (95) percent of maximum density as determined by TxDOT Test Method TX-113/114. The replaced surface course shall consist with Item for Hot Mix Asphaltic Concrete.

In all paved streets the trench shall be finished in a workmanlike manner consistent with the same type of roadway which was removed so that the underlying courses, as well as the wearing surface, shall conform to the remainder of the roadway and shall be equal in every respect to the improvements existing prior to excavation.

411.3 MICRO-SURFACING AND SLURRY SEAL

This item shall apply to all the specified work for pavement repair or rehabilitation via the use of Micro-Surfacing or Slurry Seal. The work covered by this specification includes testing, construction, and quality control required for the proper application of micro-surfacing and slurry seal treatment services. Both the Micro-Surfacing and the Slurry Seal shall consist of a mixture of an approved emulsified asphalt, mineral

aggregate, mineral filler, and water and specified additives, proportioned, mixed and uniformly spread over a properly prepared surface. The completed micro-surface shall leave a homogenous mat, adhere firmly to the prepared surface and have a skid resistant surface texture.

Micro-Surfacing: This blend is used to give maximum skid resistance and an improved wearing surface. An example would be on pavements which have high traffic volume. Rate of application: 20 pounds per square yard for residential streets and 25 to 28 pounds per square yard collectors and larger streets as indicated in the design documents.

Slurry Sealing: TYPE IIA: This blend is used to give maximum skid resistance and an improved wearing surface. An example would be on pavements which have highly textured surfaced and require this size aggregate to fill in the voids and provides an improved wearing surface. Rate of application: 20 to 22 pounds per square yard.

411.3.A. Materials

Before work commences, the CONTRACTOR shall submit a signed original of a mix design containing the test results and proportioning of the specific materials to be used on the project. This design shall have been performed by a qualified laboratory. Previous lab reports covering the exact materials to be used may be accepted provided they were made during the calendar year. This initial mix design will be done at the CONTRACTOR's expense. Upon receipt of the original mix design, an independent qualified laboratory selected by the City will perform tests using the same materials as used in the initial mix design for verification of the results. This testing will be done at the City's expense. No work will begin until all materials and/or mix design proportions have met the specifications as required. Once the materials are approved, no substitutions will be permitted unless first tested and approved by the methods stated above.

411.3.A.1. Aggregates: The mineral aggregate shall consist of a natural or manufactured crushed stone such as granite, slag, limestone or other high quality aggregates or a combination thereof that conforms to the quality requirement of ASTM Specification D1073 and shall be free of dirt, organic matter, clay balls, and adherent films of clay, dust or other objectionable material. The aggregate shall contain no free water.

Micro-Surfacing: Application Rate Lb. Sq. Yd. 25-Lbs to 28-lbs. One hundred percent (100%) crushed material from a single source is required. The gradation of the aggregate shall be per the table below:

Table 411.3.A.1.a. Micro-Surfacing Aggregates Gradation Requirements

Sieve Size	Percent Passing
3/8"	99-100
No. 4	86-94
No. 8	45-65
No. 16	25-46
No. 30	15-35
No. 50	10-25
No. 100	7-18
No. 200	5-15

Slurry Seal: Smooth textured sands of less than 1.25 % water absorption shall not exceed 50% of the total aggregate blend. Type IIA is a modification of ISSA Type II gradation to provide a coarser mix. The CONTRACTOR shall be required to utilize a screening plant at the stockpile site and all aggregate loaded for use shall first pass thru the screening plant to remove any oversized material. The size of the screen opening on the screening plant shall be appropriate for the gradation approved by the City. Residual Asphalt Content, 8% to 12% % Weight of Dry Aggregate; Application Rate Lb. Sq. Yd. 20-Lbs to 22-lbs. Based on Weight of Total Mix the gradation of the aggregate shall be per the table below:

Table 411.3.A.1.b. Slurry Seal Aggregates Gradation Requirements

Sieve Size	Percent Passing
3/8"	100
No. 4	85-100
No. 8	55-80
No. 16	35-60
No. 30	25-45
No. 50	18-30
No. 100	10-21
No. 200	5-15

Table 411.3.A.1.c. Alternative Slurry Seal Aggregates Gradation Requirements

Sieve Size	Percent Passing
3/8"	100
No. 4	85-100
No. 8	53-80
No. 16	30-60
No. 30	20-45
No. 50	15-30
No. 100	10-21
No. 200	5-15

411.3.A.2. Mineral Filler: The mineral filler shall be a recognized brand of Type I and II Portland cement with no entrained air that meets the requirements of ASTM D 242 if required by the mix design. 0.5% to 2% by dry weight of aggregate will be the range of mineral filler in the mix design. The mineral filler shall be considered as part of the dry aggregate.

411.3.A.3. Water: All water shall be potable and compatible with the micro-surfacing and slurry seal mix. Compatibility shall be ensured by the CONTRACTOR. The percent of water in the mix design shall produce proper mix consistency.

411.3.A.4. Emulsified Asphalt: The asphalt emulsion shall be homogeneous and show no separation after mixing.

Micro-Surfacing: The emulsified asphalt shall be a quick-set polymer modified cationic type CSS-1P, CQS-1HLM, or CSS-1EP (E-Flex or approved equal) emulsion and conform to the requirements specified in AASHTO M 208 and ASTM D 2397. It shall pass all applicable storage and settlement test. The polymer material shall be milled into the emulsion or blended into the asphalt cement prior to the emulsification process. The cement mixing test shall be waived.

411.3.A.4.a. Alternate E-FLEX Emulsified Asphalt: When specified, E-FLEX, CQS-1EP and shall meet the requirements shown in Table below. Asphalt emulsion delivered to the project shall be accompanied by a laboratory certification of analysis.

After recovering the residue from AASHTO R-78, the sample may be annealed prior to testing to remove any excess moisture and provide for a consistent sample. The annealing can be accomplished by placing 20 grams of residue in a 6 oz. metal container (approx. 3-inch diameter) and heating to 163 °C for no more than 15 minutes. The sample should be stirred with a spatula every 5 minutes. The sample can then be poured directly into a 25mm DSR silicone mold for evaluation.

Perform the mixture design using an AASHTO-accredited laboratory experienced in the design of microsurfacing systems. Provide the Engineer with representative samples of all component materials for verification of the mixture design, unless otherwise directed. Identify additives used to control mixture set times and cohesion, as determined by design testing, and provide acceptable limits. The Construction Division will verify the mixture design to ensure it meets the minimum requirements for wet track abrasion as recommended by manufacturer.

Table 411.3.A.4.b. Polymer-Modified Cationic Emulsified Asphalt

Property	Test Procedure	Emulsion	
		CSS-1EP	
		Min	Max
Asphalt Base Properties			
Original DSR, kPa ($G^*/\sin\delta$, 10 rad./sec) @ 76°C	T 315	1.00	
Emulsion Properties			
Viscosity, Saybolt-Furol, @ 122°F, SFS	T 59	15	150
Sieve Test, %	T 59		0.1
Storage Stability, 1 day, %	T59		1
Distillation test			
Residue by distillation, % by weight	T 59	62	
Oil distillate, % by volume of emulsion			0.5
Tests on Residue Properties from Low Temp Evaporation (AASHTO R-78 ¹):			
MSCR @ 70°C, Recovery @ 3.2 kPa,%	T 350	80	
MSCR @ 70°C, J _{nr} @ 3.2, 1/kPa	T 350		0.50
ODSR, kPa ($G^*/\sin \delta$, 10 rad./sec) @ 76°C	T 315	1	
ODSR, deg (phase angle δ , 10 rad./sec) @ 76°C			60

Slurry Seal: Typically grade CSQS-1EP, CSSQS-1HLM (Quick Set Low Viscosity, Hard Penetration Latex Modified) shall be used. Alternatives with prior approval from the City. As directed by the City, the grade of emulsion shall conform to the requirements specified in ASTM D 2397 for Cationic Emulsions. (Quick Set). The emulsion used shall be modified with latex (SBR) which shall be milled into the emulsion or blended into the asphalt cement prior to the emulsification process. It shall pass all applicable storage and settlement tests. The cement mixing testing shall be waived. Asphalt emulsion, type CSSQS-1HLM (Quick Set) shall be specified on all city streets to minimize the amount of time the street will be closed.

411.3.A.5. Latex Modifier: A 3% latex content based on bitumen weight, certified by the emulsion supplier, shall be milled into the asphalt emulsion. The Latex Modifier shall be certified from the emulsion supplier, along with special quick setting emulsifier agents, shall be milled into the asphalt emulsion. The emulsified asphalt shall be so formulated that when the paving mixture is applied with the relative humidity at no more than 50% and ambient air temperature of at least 75 degrees Fahrenheit, it will cure sufficiently such that uniformly moving traffic can be allowed on completed travel lanes within 1 hour after placement with no damage to the surface. If determined necessary by the City, the mixture properties shall be adjusted according to humidity conditions and ambient air temperatures to allow uniformly moving traffic on completed travel lanes within 1 hour after placement with no damage to the surface.

Any additive used to accelerate or retard the break-set of the slurry seal shall be approved by the mix design laboratory as part of the mix design. The amount and type of additive (if needed) will be shown in the mix design.

411.3.A.6. Material Testing: All materials which first meet all quality test specifications shall be shown in the mix design by type of material and recommended proportions of said material.

411.3.A.6.a. Aggregate Testing: All aggregate material testing shall be done per the chart below:

TEST	TEST METHOD		SPECIFICATION
	AASHTO	ASTM	
Gradation Analysis	T-27	C-136	See Gradation Chart
Sand Equivalent	T-176	D-2419	45% Min
Soundness	T-104	C-88	Sodium Sulfate: 15% max loss Magnesium Sulfate: 20%
Hardness	T-96	C-131	35% Max
Unit Weight	T-19	C-29	Lb/cu.ft

411.3.A.6.b. Emulsion Testing: All emulsion testing shall be done per the chart below:

TEST	TEST METHOD		SPECIFICATION
	AASHTO	ASTM	
Particle Charge		D-244	
Distillation Residue	T-59	D-244	Weight 62% Min
Saybolt Furol Viscosity @ 77°F SSF, sec	T-59	D-88	15-50
Sieve Test, Retained on 20 Mesh Sieve	T-59	D-244	0.1% Max
24-hr Storage Stability	T-59	D-244	1% Max
5-Day Settlement Test	T-59	D-244	5% Max

411.3.A.6.c. Distillation Residue Testing: All Distillation Residue testing shall be done per the chart below:

TEST	TEST METHOD		SPECIFICATION
	AASHTO	ASTM	
Penetration@77°F, 100g, 5-sec	T-49	D-243	40-90
Solubility in Trichloroethylene	T-44	D-2042	97.5% Min
Ductility, 77°F, cm	T-44	D-113	40 Min
Softening Point, degrees F (Ring and Ball)		D-2398	140°F Min.

411.3.A.6.d. Micro-Surfacing Mixture Testing: All material mixture testing shall be done per the chart below:

TEST	TEST METHOD		SPECIFICATION
	AASHTO	ASTM	
Set Time		D-3910	12-hrs Max
Cure Time		D-3910	24-hrs Max
Wet Stripping Test, % Coating	TB-114		80% Max
Wet Track Abrasion		D-3910	75 grams/sf Max

Set Time 30-min Blotter	TB-102		No Brown Strain
Displacement	TB-102		No Displacement
Water Resistance at 30-Min	TB-102		No Discoloration

411.3.A.6.e. Slurry Seal Mixture Testing: All material mixture testing shall be done per the chart below:

TEST	TEST METHOD		SPECIFICATION
	AASHTO	ASTM	
Consistency Test		D-3910	2-3 cm flow
Set Time		D-3910	12-hrs Max
Cure Time		D-3910	24-hrs Max
Wet Stripping Test, % Coating	TB-114		80% Max
Wet Track Abrasion		D-3910	75 grams/sf Max

411.3.A.7. Material Storage: The CONTRACTOR shall provide a suitable storage facility for all equipment and materials needed to perform the work. This site should be located as close as possible to the area of work being done to reduce turnaround time and ensure an acceptable rate of work. Any site selected shall be subjected to final approval by the City. Erosion control measures shall be implemented as needed to comply with applicable laws.

Precautions shall be taken to ensure the aggregate does not become contaminated with oversized rock, clay, silt or excessive amount of moisture. The stockpile shall be kept in areas that have good drainage. Segregation of aggregates proposed for use and as supplied to the mixing plant shall be uniform.

411.3.B. Equipment

All methods and equipment employed in performing the work shall be subject to the approval of the City before work is started and whenever found unsatisfactory, they shall be changed and improved as required. All equipment shall be maintained in a satisfactory condition.

411.3.B.1. Mixing Equipment: The mixing machine shall be equipped with a water pressure system and nozzle type spray bar to provide a water spray immediately ahead of and outside the spreader box with 0.05 to 0.15 gallons per square yard immediately ahead of the spreader box. The equipment shall adhere to the requirements below:

411.3.B.1.a. Micro-Surfacing: The material shall be mixed by a self-propelled micro surfacing mixing machine which shall be a continuous flow mixing unit able to accurately deliver and proportion the aggregate, emulsified asphalt, mineral filler and water to a revolving multi-blade mixer and discharge the mixed product on a continuous flow basis. The machine shall have enough storage capacity for aggregate, emulsified asphalt, mineral filler and water to maintain an adequate supply to the proportioning controls. The machine shall be equipped with self-loading devices which provide for the loading of all materials while continuing to lay micro-surfacing, thereby minimizing construction joints. Individual volume or weight controls for proportioning each material to be added to the mix shall be provided. Each material control device shall be calibrated and properly marked.

The aggregate feed to the mixer shall be equipped with a revolution counter or similar device so the amount of aggregate used may be determined at any time.

The emulsion pump shall be a positive displacement type and shall be equipped with a revolution counter or similar device so that the amount of emulsion used may be determined at any time.

The mixing machine shall be equipped with an approved fines feeder that shall provide a uniform, accurately metered, predetermined amount of specified mineral filler.

411.3.B.1.b. Slurry Seal: The slurry seal mixing equipment shall be a continuous flow mixing unit or continuous-run design machines as to give a uniform and complete circulation of the batch in the mixer, so as not to segregate the aggregate, but will provide a thorough and uniform free flowing mix with the asphalt and water. The units shall be equipped with approved devices so that the machine can be accurately calibrated and the quantities of material used can be determined.

The CONTRACTOR shall have a minimum of 1 Slurry Seal machines at the project site in good working condition each having a capacity of at least 8 cubic yards to assure enough production capability.

411.3.B.2. Spreading Equipment: The equipment shall adhere to the requirements below:

411.3.B.2.a. Micro-Surfacing: The surface mixture shall be spread uniformed by means of a mechanical type spreader box attached to the mixer, equipped with paddles to agitate and spread the materials throughout the box. A front seal shall be provided to ensure no loss of the mixture at the road contact point. The rear seal shall act as final strike off and shall be adjustable. The mixture shall be spread to fill cracks and minor surface irregularities and leave a uniform skid resistant application of material on the pavement, the longitudinal joint where two passes join shall be neat appearing, uniform and lapped. All excess material shall be removed from the job site prior to opening the road. The spreader box shall have suitable means provided to side shift the box to compensate for variations in pavement geometry.

411.3.B.2.b. Slurry Seal: The spreader box shall be equipped to prevent loss of slurry seal from all sides and with a flexible rear strike-off capable of being adjusted. It shall suitable means for side tracking to compensate for deviation in pavement geometry. The box shall be kept free of built-up asphalt and aggregate. The strike-off drag shall always be kept completely flexible.

411.3.B.3. Auxiliary Equipment: Suitable crack and pavement cleaning equipment, hand tools and any support equipment will be provided by the CONTRACTOR as necessary to perform the work. The CONTRACTOR shall use a vacuum equipped street sweeper to remove all swept debris. Sweeping of debris into the gutter shall not be permitted.

411.3.B.4. Testing & Equipment Calibration: Each Slurry unit to be used shall be calibrated in the presence of the City prior to construction. Previous calibration documentation covering the exact materials to be used may be accepted provided they were made during the calendar year. No machine shall be allowed to work on the project until the calibrations have been completed and/or accepted.

CONTRACTOR shall lay Test strips (location to be determined by the City) before construction begins. The City will observe the test strip for verification or rejection according to the specifications. Upon failure of any of the test, additional test strips will be laid at no cost to the City. The square yards of the first test strip will be measured and paid for at the contract unit price. (Keeping proper consistency is a major concern. A wet mix will cause an asphalt rich surface. Consistency can be checked in the field by making a line through the slurry-surface immediately behind the spreader box. If the line stays, the slurry is at a proper consistency level. If the line fills up, the slurry is too wet.)

411.3.C. Construction Methods

The CONTRACTOR shall notify all homeowners and businesses affected by the construction a minimum of 24-hrs in advance of the surfacing. Should the work not occur on the specified day, new notification will be distributed as required. Complete street closures are allowed when approved by the City in consultation with the City Engineer. In general, complete street closures are allowed on residential streets for more efficient and effective completion and for reduction of the project duration impact to the neighborhood.

All Micro-Surfacing/Slurry Seal will be applied between March 1 and December 1 unless otherwise approved by the City. The Micro-Surfacing/Slurry Seal will be placed on the location and within the time limits as specified by the City. The Slurry Seal shall be applied only when the air and pavement temperature is 50°F and rising. No Slurry Seal shall be applied when:

1. In the period following precipitation with water remaining on the surface to be coated.
2. In foggy conditions.
3. If there is a threat of rain before the slurry seal can fully cure.
4. If there is danger that the finished product will freeze within 24-hrs after application.
5. If weather conditions prolong opening to traffic beyond the time specified by the City.
6. Any base failures, severe pavement defects, or similar conditions which are present will be properly repaired by the City to ensure correct application and performance of the pavement material. CONTRACTOR shall notify the City if there are any such defects present and shall not proceed until they have been corrected.

411.3.C.1. Temporary Markings: Whenever the work causes obliteration of existing pavement markings or delineation, temporary markings or delineation shall be in place prior to opening the traveled way to public traffic. Lane line and centerline pavement delineation shall be provided at all times for traveled ways open to public traffic. Other markings such as crosswalks, stop bars, and pavement arrows shall be delineated prior to opening the roadway to public traffic if directed by the City.

All work necessary to establish satisfactory temporary marking and lane delineation shall be performed by the CONTRACTOR. Surfaces on which temporary marking and lane delineation is to be applied shall be cleaned of all dirt and loose material, and shall be dry when it is applied. Temporary markings and lane delineation shall be maintained until replaced with permanent markings.

Temporary lane delineation shall consist of either a 4-inch by 4-inch square stripe or a 4-inch reflectorized tab, as directed by the City. Temporary lane delineators shall be placed on lane lines and centerlines at longitudinal intervals of not more than 24 feet apart, or 12 feet apart on radii. The temporary markings and lane delineators shall be the same color as the lane line, centerline, or pavement marking being replaced.

Unless noted otherwise, temporary markings and lane delineation shall not be paid for as a separate pay item and shall be considered subsidiary to the contract unit price per square yard of Slurry Seal or Micro-Surfacing, which pay item shall be the total compensation for the furnishing of all labor, materials, tools, equipment, and incidentals necessary to locate, install, and maintain the temporary markings and lane delineation.

411.3.C.2. Surface Preparation: Immediately prior to applying the slurry seal, the pavement shall be thoroughly cleaned of all loose materials, vegetation, soil and other objectionable material. Any breakdowns, base failures, or other defects will be properly repaired by the city before application of the slurry seal begins. Manholes, valve boxes, grate inlet, and other designated objects shall be covered by the CONTRACTOR to ensure their integrity. After completion of slurry placement, the CONTRACTOR shall remove said covers so the objects protected will remain fully functional. Any objects damaged by the CONTRACTOR shall be repaired or replaced at no cost to the City.

If conditions require, the pavement shall be pre-wetted by fogging ahead of the spreader box. Water used in fogging the surface shall be applied so that the entire surface is damp with no flowing water in front of the box. Rate of spray: 0.05 to 0.15 gal/sq. yd. (or as directed by the City); no streaks, lumps, balls, or unmixed aggregated shall be permitted.

411.3.C.3. Application: The slurry shall be sufficiently stable during the spreading period so that the emulsion does not break, there is no segregation of the fines from the coarser aggregate and the liquid of the mix does not float to the surface.

No excessive buildup or unsightly appearance shall be permitted on longitudinal or transverse joint. An excessive overlap will not be permitted on longitudinal joints. The CONTRACTOR shall provide suitable width

spreading equipment to produce a minimum number of longitudinal joints throughout the project. Longitudinal joints shall be placed on lane lines when possible. If half passes are used, they shall not be the last pass of any paved area.

In areas where the spreader box cannot be used, the slurry shall be applied by hand squeegees to provide complete and uniform coverage. Any joint or cracks not filled by the slurry shall be corrected by use of hand squeegees. Hand work shall be completed during the machine applying process. Due to difficulty in hand working micro-surfacing material due to the quickset nature of the emulsion, hand work areas should be kept to a minimum.

Straight lines along curb gutters and shoulder will be required. No runoff on these areas will be permitted. Lines at intersections shall be kept straight to provide a good appearance. Slurry shall be placed at the lip of the gutter or at a distance from the face of the curb as directed by the City.

All objects covered (manhole covers, valve covers, grate inlets, etc.) shall be restored to their original integrity. The CONTRACTOR shall remove all unused material and debris from the site prior to final acceptance.

411.3.C.4. Curing: All traffic shall be kept off the slurry until it has cured to a firm condition that will prevent damage to the Micro-Surfacing or Slurry. Any uncured slurry damaged will be repaired to the satisfaction of the City at the CONTRACTOR's expense.

For Micro-Surfacing the emulsified asphalt shall be so formulated that when the paving mixture is applied with the relative humidity at no more than 50% and ambient air temperature of at least 75°F, it will cure sufficiently such that uniformly moving traffic can be allowed on completed travel lanes within 1 hour after placement with no damage to the surface. Failure to comply with this requirement may result in cessation of all work until such time that the CONTRACTOR provides the proper adjustments in his operations. If determined necessary by the City, the mixture properties shall be adjusted according to humidity conditions and ambient air temperatures to allow uniformly moving traffic on completed travel lanes within 1 hour after placement with no damage to the surface. Failure to comply with this requirement may result in cessation of all work until such time that the CONTRACTOR provides the proper adjustments in his operations. Protect other locations subject to sharp turning or stopping and starting traffic for longer periods when necessary. Any uncured micro damaged will be repaired to the satisfaction of the City at the CONTRACTOR's expense.

411.4 FOG SEAL

This item shall apply to all the specified work for pavement repair or rehabilitation via the use of Fog Sealing. The work covered by this specification includes testing, construction, and quality control required for the proper application of treatment services.

411.4.A. Materials

Before work commences, the CONTRACTOR shall submit a signed original of a mix design containing the test results of the mix. The emulsion mix shall be a polymer-modified, fiber reinforced asphalt emulsion coating that is job-mixed with specially graded aggregate and applied to pavement surfaces. The result should be a durable, slip-resistant surface treatment that greatly extends pavement service life. Mix should meet ASTM D8099/D8099M-17 Standard Specifications for Asphalt Emulsion Pavement Sealer. Approved brands are Jennite AE and Liquid Road. All other materials must be re-approved by the City.

Pre-approved material color shall be satin black color.

411.4.A.1. Aggregates: The mineral aggregate shall consist of a natural or manufactured crushed stone such as granite, slag, limestone or other high-quality aggregates or a combination thereof that conforms to the quality requirement of ASTM Specifications and shall be free of dirt, organic matter, clay balls, and adherent

films of clay, dust or other objectionable material. The aggregate shall contain no free water. Sand or Aggregate shall have a typical AFS of 11-15 Mesh.

The gradation of the aggregate shall be per the table below:

Table 411.3.A.1.a. Fog Seal Aggregates Gradation Requirements

Sieve Size	Percent Passing
3/8"	100
No. 4	100
No. 8	100
No. 10	95-100
No. 12	90-98
No. 16	40-70
No. 20	50-80
No. 30	90-98
No. 50	95-99
No. 100	7-18
No. 200	95-100

411.4.A.2. Storage: In the liquid state, the mixture must be protected from freezing. Do not store in direct sunlight or where temperature exceeds 120°F.

411.4.A.3. Testing: The emulsion mixture is to meet the composition and performance standards listed below when tested according to the following ASTM methods:

- a. D140: Sampling of Bituminous Materials
- b. D244: Standard Test Methods for Emulsified Asphalts
- c. D529: Testing of Bituminous Materials
- d. D2939: Standard Test Methods for Emulsified Bitumen used as Protective Coatings

In the liquid state, the mixture must meet the following requirements when tested according to ASTM D2939:

Table 411.4.A.3.a. Testing Result Requirements

Requirement	Maximum	Minimum
Non-Volatiles	52%	50%
Water	50%	46%
Ash of Non-Volatiles	38%	34%
Specific Gravity	-	1.15

The cured coating should be a water-based material and to show no tendency to flash or ignite. The cured coating exhibits no penetration, blistering, loss of adhesion, nor tendency to re-emulsify after immersion for 24 hours. The emulsion mixture is to be considered nonhazardous when tested according to the EPA's TCLP.

The manufactures to provide the City a 2-yr written warranty prior to installation.

411.4.B. Construction Methods

The CONTRACTOR shall notify all homeowners and businesses affected by the construction a minimum of 24-hrs in advance of the surfacing. Should the work not occur on the specified day, new notification will be distributed as required. Complete street closures are allowed when approved by the City in consultation with the City Engineer. In general, complete street closures are allowed on residential streets for more efficient and

effective completion and for reduction of the project duration impact to the neighborhood. Night-time application is not allowed.

411.4.B.1. Surface Preparation: Surface must be clean and free from loose material and dirt. Cracks should be filled with Sealant Filler. On extremely weathered and oxidized pavement surfaces, tack coating (priming) may be beneficial. Material shall not be applied when temperature (surface and ambient) is expected to drop below 50°F during application and for a period of at least 24 hours after application. Both surface and ambient temperature shall be a minimum of 50°F and rising during application.

411.4.B.2. Application: Properly mix mixture and apply one gallon of the mixture to cover approximately 36-45 square feet (4-5 square yards) per coat, or as recommended by the manufacturer. Application shall be done as recommended by the manufacturer assuming high traffic areas.

Apply first squeegee/brush coat of mixed at a rate of 30-40 square feet (3.3 to 4.4 square yards) per gallon. Allow first coat to dry thoroughly before applying second coat. Apply second squeegee/brush coat of mixed at a rate of 30- 40 square feet (3.3 to 4.4 square yards) per gallon. Allow second coat to dry thoroughly before opening to traffic.

Use 100% Acrylic Traffic paint for line striping and traffic markings.

When tested according to ASTM D2939, "set to touch" in 1 hour, exhibit "final set" in less than 8 hours.

411.5 JOINT AND CRACK SEALING

This item shall govern the cleaning and/or sealing of joints and cracks that are (typically 1/16 inch or greater) in asphaltic concrete pavement, with HOT POURED Sealant, in conformity to the lines, grades and details indicated on the Drawings or as established by the Engineer or designated representative. This specification is applicable for projects or work involving either inch-pound or SI units.

411.5.A. Materials

Joints and/or cracks shall be sealed with the materials indicated on the Drawings.

411.5.A.1. Submittals: The submittal requirements of this specification item include:

- a. Sealant Type (Polymer Modified Emulsion, Rubber-Asphalt or Self-Leveling Low Silicone) and method of application (crack sealing, joint sealing, squeegee, etc),
- b. Manufacturer certification that the product to be supplied meets or exceeds the specification requirements,
- c. Manufacturer recommended procedures for preparation, dispensing, application, curing etc. of the sealant, and
- d. Listing of the equipment proposed for the Work.

Fine aggregate used to cover the crack-sealing compound shall meet with the approval of the Engineer or designated representative. The sealing compound shall be delivered in the manufacturer's original sealed containers. Each container shall be legibly marked with the name of the manufacturer, the trade name of the sealer, the manufacturer's batch number or lot, the pouring temperature, and the safe heating temperature.

411.5.A.2. Equipment: Equipment, tools and machinery necessary for proper prosecution of the Work shall be on the project and shall be approved by the Engineer or designated representative prior to the initiation of the joint and crack cleaning and sealing operations:

411.5.A.2.a. Polymer Emulsified Emulsion: Polymer Emulsified Emulsion may be heated in a conventional asphalt distributor or in an asphalt heater equipped with an agitator to ensure that the emulsified

asphalt is circulated during the heating process and achieves a uniform temperature rise. Temperature gauges shall be provided at strategic locations to enable the operator to accurately control the temperature of the emulsion to avoid overheating the material. The unit shall be equipped with a gear-driven asphalt pump with adequate pressure to dispense the emulsion in joints and cracks.

411.5.A.2.b. Rubber-Asphalt Crack Sealing Compound: The sealant shall be heated in a double jacketed heater using a heat transfer oil so that no direct flame is in contact with the shell of the vessel containing the sealing compound. The heater reservoir shall be equipped with an agitator to ensure that the sealing compound is circulated during the heating process to achieve a uniform temperature rise and to maintain the desired temperature. Accurate temperature gauges and positive temperature controls shall be provided to monitor the temperature of the vessel contents and prevent overheating the material. The heater shall be equipped with a gear-driven asphalt pump with adequate pressure to dispense the rubber-asphalt crack sealing compound. The material should be maintained between 350°F and 375°F

411.5.A.2.c. Self-Leveling Low Modulus Silicone: The sealant shall be prepared and dispensed using the manufacturer's recommended equipment.

411.5.A.2.d. Joint and Crack Cleaning Equipment: All equipment used in cleaning joints and cracks shall be capable of delivering a enough volume of filtered air, free of oil, water or other contaminants, to insure the removal of all loose debris from the joints or cracks to be sealed. When specified on the Drawings, joints shall be routed. The router shall be of enough size to rout the joints to the widths and depths shown on the Drawings.

411.5.B. Construction Methods

The Contractor may propose a different method of construction other than detailed herein for approval. No work shall commence using different construction methods unless the City Engineer approves said method.

Pavement and cracks shall be dry, and the ambient temperature shall be no less than 45°F and rising or 50°F and falling. No sealing of any joints or cracks shall be done when the joints or cracks are damp, unless drying of the joints and cracks with compressed air can be demonstrated and meets with the approval of the Engineer or designated representative.

Crack sealing should generally be done during the winter months when the cracks are open; and thus, sealant can more easily penetrate the crack.

411.5.B.1. Crack Cleaning: The bonding surface of cracks and joints shall be cleaned of infiltrated material with compressed air or other methods approved by the Engineer or designated representative to a depth at least twice the joint or crack width. When routing of the joints is indicated on the Drawings, the joints shall be routed and blown clean with filtered compressed air. Airflow should be free of oil and moisture and the compressed air should have a minimum pressure of 100-lb/in² and minimum blast flow of 150 ft³/min. These blasting operations are to always be directed away from passing traffic.

All material removed from joints and cracks shall be removed from the paved surface of the roadway. If dry mud or other organic material is visible inside the crack, then Contractor shall use a metallic brush and attempt to remove such material before sealant can be placed. For drying, a hot air lance shall be used. Sealant should be placed immediately after crack cleaning.

411.5.B.2. Sealant Application: The joint or crack sealing material shall be Hot Poured and applied using a pressure nozzle. Polymer modified emulsion and rubber- asphalt crack sealing compound shall penetrate and completely fill each crack and/or joint. All cracks and/or joints filled with these materials shall be squeegeed. The amount of sealing compound used shall be limited so that after the squeegee has been applied, the finished band shall be no more than 1-1/2 inches (38 mm) wide and shall not exceed a depth of 1/8 in. (3.2 mm) above the pavement surface. The squeegee should be kept over the center of the crack channel and as close

as possible to the applicator wand so that the sealant is fluid and workable. It is critical that the squeegee work be completed immediately after the sealant is placed and before it cools.

Excess sealant should be removed before hardening occurs. An over-band should be formed during, or immediately after, sealant application. The over-band should not be more than 3 inches wide.

When the number of cracks is so great that crack sealing in the manner described previously is impractical, the area shall be squeegee sealed. Areas to be squeegee sealed shall be indicated on the Drawings or established by the Engineer or designated representative. When all cracks in the area have been cleaned, the crack sealing material shall be applied, and the excess shall be squeegeed over the area between the cracks. All polymer modified emulsion or hot poured rubber squeegee sealed areas shall be covered immediately after application with a light coating of fine aggregate.

411.5.B.3. Sand Aggregate Application: A light coating of fine aggregate shall be applied to the cracks and joints before opening to traffic to prevent tracking. The fine aggregate (or sand), shall cover the entire area that has been affected by the sealant. The aggregate shall be dry, no larger than 1/16 inch, and applied immediately after the sealant has been leveled.

If the cracks are greater than 1/4" in diameter, or there are indicators of forming alligator cracks, the contractor shall apply angular crushed rock 1/8"-1/4" in diameter to the treated area, prior to opening to traffic.

411.5.B.4. Safety: During the sealing procedure, the materials and the equipment involved can present safety hazards to both workers and the traveling public. All safety precautions regarding material handling and the operation of the equipment should be strictly adhered to. Additionally, construction workers to wear safety apparel such as long sleeved shirts, leather gloves, steel toed boots, hard hats, and adequate eye protection.

411.5.B.5. Traffic Control: In order to ensure the safety of all workers and the traffic traveling near the work area, proper traffic control devices should be installed. The Texas Manual of Uniform Traffic Control Devices (MUTCD) provides guidance to use in implementing the traffic control plan. Contractor to consider the traffic volume and the curing time (or time between placement of sealant and removal of the traffic control devices) of the sealant selected for a work location. After application, CONTRACTOR shall open the treated section to the traffic within 30-min of application, but no sooner than 15-mi., allowing for cure time

411.6 MEASUREMENT AND PAYMENT

If provided, the pavement repair shall be measured by the square-yard (SY) complete in place. If not provided in the contract documents, Pavement Repair shall be considered subsidiary to the items requiring repair if no pay item exists in the Contract.

If provided, the pavement crack sealing shall be measured by the square-yard (SY) of the entire pavement, regardless of the length and width of longitudinal cracks treated, complete in place.

The work performed, and materials furnished as prescribed by this item, measured as provided for in this item, shall be paid for at the contract unit price bid for "pavement repair," which price shall be full compensation for constructing pavement, necessary removal and excavation, saw cutting, temporary striping, traffic control, and for preparing the subgrade; furnishing and placing all materials, reinforcing steel, including sand cushion, reinforcement and expansion materials; and for all manipulation, labor, tools, equipment and incidentals necessary to complete the work.

412 ROCK RIPRAP

This item shall include the construction of all Rock Riprap, and all of the materials, labor, and other incidentals required to complete the work at location specified by the Engineer.

412.1 MATERIALS

All Rock Riprap materials and construction shall conform to the Contract Documents.

- A. Geotextile Fabric – 6 OZ non-woven needle punch geotextile or as approved by Engineer.
- B. Clean native rock, size as indicated in the Contract Documents - as approved by Engineer.
- C. Grout – As indicated in item 405 and 407 with the use of only fine aggregates.

412.2 CONSTRUCTION METHODS

All Rock Riprap construction shall conform to the Contract Documents. Geotextile shall be placed in such manner that edge of geotextile is 12-in. from edge of rock riprap. Geotextile is not required if riprap is grouted. When geotextile is required, rock size shall be 6" min as measured on shortest axis.

412.3 MEASUREMENT AND PAYMENT

All Rock Riprap shall be measured by the square-yard (SY) complete in place.

Rock Riprap, if included in the bid, shall be measured as specified above and paid as described above, which price shall be full compensation for all work herein specified, including the furnishing of all materials, equipment, tools and labor and incidentals necessary to complete the work.

413 HIKE AND BIKE TRAIL

This item shall govern the furnishing and installation of hike and bike trails of the type and depth specified on a prepared surface to the typical sections and to the lines and grades indicated.

413.1 MATERIALS

Subgrade Preparation shall conform to Section for "Subgrade Preparation," except that compaction requirements may be evaluated by either proof rolling or density testing, as established by the Owner. Any material necessary to establish the required grade shall conform to Item for Borrow.

Flexible Base shall conform to Item for "Flexible Base." Concrete shall conform to Item for "Concrete Pavement." Concrete Curb shall conform Item for "Concrete Curb and Gutter."

Hot Mix Asphaltic Concrete shall conform to Item for "Hot Mix Asphaltic." All Hot Mix used for Hike and Bike Trails shall be Type D with a minimum thickness of 1.5".

Reinforcing steel and fiber reinforcing shall conform to Item for "Concrete Pavement."

413.1.A. Granite Gravel

The material shall be Texas decomposed unwashed granite aggregate and clay fines meeting the requirements hereinafter specified and shall be screened to the required particle size. The material shall be from approved sources.

Testing of granite gravel materials shall be in accordance with the following TxDOT standard laboratory test procedures:

1) Preparation for Soil Constants and Sieve Analysis	Tex-101-E
2) Liquid Limit	Tex-104-E
3) Plastic Limit	Tex-105-E
4) Plasticity Index	Tex-106-E
5) Sieve Analysis	Tex-110-E

Granite gravel material will be stockpiled and tested by the testing agency designated by the Owner and reviewed by the Owner prior to being hauled to the project site.

The material shall be well graded and when properly tested, shall meet the following requirements:

Table 413.1.A.1. Granite Gravel Gradation Requirements

Sieve Size	Percent Passing
5/8"	100
No. 40	40-45
No. 200	15-25
Properties	
Liquid Limit	35 Max.
Plasticity Index	12-18

413.1.B. Submittals

Prior to beginning construction, the Contractor shall submit to the Engineer for approval the following items:

1. Concrete: Concrete submittals shall be in accordance with Section 300 "Concrete."
2. Hot Mix Asphaltic Concrete: Hot Mix Asphaltic Concrete submittals shall be in accordance with Section 410 "Hot Mix Asphaltic Concrete."
3. Flexible Base: Flexible Base submittals shall be in accordance with Section 240 "Flexible Base."
4. Fiber Reinforcing: Fiber type, supplier, and product properties. Submit fiber documentation for compliance with this specification and ASTM C-1116.
5. Granite Gravel: Prior to construction, a sealed laboratory report shall be provided to verify compliance with the material requirements for granite gravel.

413.2 CONSTRUCTION METHODS

Granite gravel shall be compacted to not less than 92 percent of optimum density, as determined by TxDOT test method Tex-114, in accordance with ASTM D2167 Nuclear Test Method. Field density determinations shall be made in accordance with approved methods. Tests shall be performed at intervals not exceeding 500 feet at random points on the Hike and Bike Trail cross section.

When granite gravel is utilized as the finished surface for a Hike and Bike Trail, both sides shall be protected throughout the length of the trail by a concrete ribbon curb six inches in width, and shall match the depth of the granite gravel material. Alternatively, tightly fitted or mortared cut limestone blocks may be used, provided that no gaps larger than 1/4 of an inch are present between blocks. In addition, any areas with steep topography, or that may be subject to erosion potential, shall be required to have a concrete surface a minimum of four inches in depth.

412.3 MEASUREMENT AND PAYMENT

Hike and Bike Trail will be measured by the square yard (SY) of gravel area, complete in place regardless of depth required.

Concrete curbs, as prescribed by this item will be measured by the linear foot (LF), complete in place.

"Hike and Bike Trail," if included in the bid, shall be measured as specified above and paid for at the contract unit price bid for "Hike and Bike Trail" which price shall be full compensation for all work herein specified, including the furnishing of all materials, compacting, excavation, embankment, equipment, tools, labor, water for

sprinkling, proof rolling and incidentals necessary to complete the work. Payment for "Concrete," "Concrete Curb and Gutter," "Class B Borrow," "Reinforcing Steel," "Flexible Base," "Hot Mix," and "Subgrade Preparation" necessary constructing "Hike and Bike Trail" in accordance with this specification, shall be subsidiary to payment for "Hike and Bike Trail."

414 PAVEMENT MARKINGS

This item shall govern for the type, quality and application of paint or appropriate coatings for pavement surfaces. Such applications include liquid coatings and galvanizing. Items to receive applications may include, but are not limited to, bridges, barriers, concrete pavement, and asphalt pavement.

414.1 DESCRIPTION

Painting, coating and other protective treatments shall include, unless otherwise provided in the contract, the preparation of the surfaces; the application, protection and drying of the paint, coating(s) or treatments; the protection of all traffic upon, underneath, or near the structure, material or pavement; the protection of all parts of the structure, material or pavement against disfigurement by any and all painting operations; and the supplying of all tools, tackle, scaffolding, labor, workmanship, paint, coating and/or other materials necessary for the completion of the entire work in accordance with the plans and these specifications.

The intent of the design herein specified is to procure the paints, coatings or treatments on surfaces so that the durability and protective value of these designs shall be realized in service. Accordingly, the best quality materials and workmanship are implied throughout. Surface conditions and application requirements are specified with the intent to obtain full adhesion of paint, coatings or treatments to clean, dry, firm surfaces. This shall require careful attention to preparation of surface, to the prevention of contamination and marring of the coating during and after drying, and to uniform, skilled application.

Fire Lanes shall be installed in accordance with the International Fire Code (IFC), as well as the requirements set forth in the construction documents or referenced in the local governing authority's regulations and/or ordinances.

414.1.A. Safety

Some paints are harmful to the health. All paints shall be handled according to the information contained on the paint safety data sheet. The CONTRACTOR shall be responsible for safety during all cleaning and painting operations.

Unless shown otherwise on the plans, the CONTRACTOR shall be responsible for necessary precautions to contain refuse, dust and paint overspray generated during cleaning and painting operations. Containment shall be such that all falling material is contained and collected for disposal. Non-containment of airborne particles is permissible provided they are not visible over 100-feet from the actual cleaning or painting operation. A skimmer shall be used when cleaning and painting is over bodies of water. Disposal of collected refuse shall be in accordance with Federal, State and Local rules and regulations.

If spray application is used, workers shall be adequately protected with respirators, and provisions shall be made to prevent infliction of harm upon all other humans and/or animals that might be exposed to the fumes or might eat food upon which the fumes have deposited. This warning shall absolve the OWNER from blame in the event of harm to persons or property from the named cause, and full responsibility for any such harm shall rest upon the CONTRACTOR.

414.2 MATERIALS

All materials used in the painting and marking herein specified shall conform to the material and composition requirements of the applicable TxDOT Material Specification Item 666, Item 667, Item 672, Item 677, and Item 678.

414.2.A. Striping

Pavement Striping shall comply with:

- DMS-8200 Traffic Paint - Type II Marking Materials,
- DMS-8220 Hot Applied Thermoplastic - Type II Marking Materials,
- DMS-8240, Prefabricated Pavement Markings – Permanent,
- DMS-8241, Prefabricated Pavement Markings – Removable,
- DMS-8242, Temporary Flexible-Reflective Roadway Marker Tabs,
- DMS-8290 Glass Traffic Beads

Including any official TxDOT amendment or modification of these specifications, where reference to TxDOT or its representatives shall mean the OWNER. The CONTRACTOR shall certify to the OWNER that paint or coatings provided meet TxDOT material requirements.

414.2.B. Raised Pavement Markers

Raised Pavement Markers shall comply with TxDOT Item 672 and Specifications:

- DMS-4100, Jiggle Bar Tile,
- DMS-4200, Pavement Markers (Reflectorized),
- DMS-4300, Traffic Buttons,
- DMS-4210, Pavement Markers (Plowable Reflectorized),
- DMS-6100, Epoxies and Adhesives,
- DMS-6130, Bituminous Adhesive for Pavement Markers

The inspector will sample in accordance with Tex-729-I.

414.2.C. Testing

All paint and paint materials shall be sampled and tested prior to use. All tests shall be conducted in accordance with the methods specified by ASTM or methods set forth in Federal Standard FEDSTD-141 C/GEN Paint, Varnish, Lacquer, and Related Materials: Methods of Inspection, Sampling, and Testing. In the absence of any such methods, other suitable methods may be designated and utilized by the OWNER.

Raw materials and finished products that fail to meet any requirements of these specifications shall be subject to rejection. Final acceptance or rejection shall be based on results of tests on samples of raw materials and finishes as soon as practicable after their arrival at the shipping destination. Approval of materials, as a result of preliminary testing prior to manufacture into finished coatings, shall not be binding upon final approval or rejection. The judgment of the OWNER shall be final in all questions relative to conformance with the provisions of these specifications.

414.3 EQUIPMENT

Use equipment that is maintained in satisfactory condition, meets or exceeds the requirements of the National Board of Fire Underwriters and the RRC for this application, uses an automatic bead dispenser attached to the pavement marking equipment, and can provide continuous mixing and agitation of the pavement marking material. Provide a hand-held thermometer capable of measuring the temperature of the marking material when applying Type I material.

414.4 CONSTRUCTION METHODS

Throughout paint application, including shop and field painting, no paint shall be applied over a surface that evidences a loose or scaly condition. Every effort shall be made by means of the most effective and practical methods to remove all loose mill scale, rust, dirt, oil and grease, as well as all other foreign surfaces which would be deleterious to the procurement of the firm paint coating. Markings shall be applied only when the pavement surface is dry and clean, which may be accomplished with machinery specialized to prepare pavement in front of the marking operation. The CONTRACTOR shall comply with all environmental condition restrictions recommended by the manufacturer of pavement paints or other markings. Glass beads or other refractive material and application rates shall be as identified on the plans.

Temporary markings shall be thoroughly removed to the satisfaction of the OWNER using an approved method prior to the application of permanent markings.

When the CONTRACTOR is responsible for marking pavements, as identified in the plans, cleaning and marking shall conform to these specifications and the Texas Manual on Uniform Traffic Control Devices. Place markings before opening to traffic unless short term or work zone markings are allowed.

On roadways already open to traffic, place markings with minimal interference to the operations of that roadway. Use traffic control as shown on the plans or as approved. Protect all markings placed under open-traffic conditions from traffic damage and disfigurement.

414.4.A. Surface Preparation

Unless otherwise shown on the plans, prepare surfaces in accordance with this section. When existing pavement markings are present, remove loose and flaking material. Ensure that the bond surfaces are free of dirt, curing compound, grease, oil, moisture, loose or unsound pavement markings, and any other material that would adversely affect the adhesive bond. Approved pavement surface preparation methods are sweeping, air blasting, flail milling, and blast cleaning unless otherwise specified on the plans.

414.4.A.1. New Pavement Surfaces: Air-blast or broom the pavement surface to remove loose material, unless otherwise shown on the plans. A sealer for Type I markings is not required unless otherwise shown on the plans.

Furnish raised pavement markers for each class from the same manufacturer. Place raised pavement markers on the new asphaltic concrete surface or surface treatment only after the new surface has aged at least 14 days. Surface shall be prepared in accordance with TxDOT Item 678.

414.4.A.2. Old Pavement Surfaces: For old surfaces and all concrete surfaces, clean in accordance with TxDOT Item 678, "Pavement Surface Preparation for Markings," to remove curing membrane, dirt, grease, loose and flaking existing construction markings, and other forms of contamination.

414.4.A.3. Sealer for Type I Markings: For old surfaces and all concrete surfaces, apply a pavement sealer before placing Type I markings on locations that do not have existing markings, unless otherwise approved. The pavement sealer may be either a Type II marking or an acrylic or epoxy sealer unless otherwise shown on the plans. Follow the manufacturer's directions for application of acrylic or epoxy sealers. When the sealer becomes dirty after placement, clean by washing as directed. Place the sealer in the same configuration and color (unless clear) as the Type I markings unless otherwise shown on the plans.

Apply markings on pavement that is completely dry and passes the following tests:

414.4.A.4. Type I Marking Test: Place a sample of Type I marking material on a piece of tarpaper placed on the pavement. Allow the material to cool to ambient temperature, and then inspect the underside of the tarpaper in contact with the pavement. Pavement will be considered dry if there is no condensation on the tarpaper.

414.4.A.5. Type II Marking Test: Place a 1-sf piece of clear plastic on the pavement, and weight down the edges. The pavement is considered dry if, when inspected after 15 min., no condensation has occurred on the underside of the plastic.

414.4.B. Application

Establish guides to mark the lateral location of pavement markings as shown on the plans or as directed, and have guide locations verified. Use material for guides that will not leave a permanent mark on the roadway. Apply markings that meet the requirements of Tex-828-B, using information as shown on plans. Alignment must not deviate than 1 in. per 200 ft. of roadway or more than 2 in. max. Markings shall be clean and reflectorized.

414.4.B.1. Weather Conditions: Apply markings during good weather unless otherwise directed. If markings are placed at Contractor option when inclement weather is impending and the markings are damaged

by subsequent precipitation, the Contractor is responsible for all costs associated with replacing the markings if required. As a general rule if the material manufacturer does not establish temperature requirements, do not place material if the pavement temperature is below 60°F or above 120°F.

414.4.B.1.a. Type I Markings: Place the Type I marking after the sealer cures, and within the temperature limits recommended by the material manufacturer. If during a spray application, operations cease for 5 min. or longer, flush the spray head by spraying marking material into a pan or similar container until the material being applied is at the recommended temperature. Apply on clean, dry pavements passing the moisture test described above, and with a surface temperature above 50°F when measured in accordance with Tex-829-B.

414.4.B.1.b. Type II Markings: Apply on surfaces with a minimum surface temperature of 50°F and within temperature limits recommended by the material manufacturer.

414.4.B.2. Application: Apply markings and install markers as shown on plans. Do not make permanent marks on the roadway for the guides.

414.4.B.2.a. Type I Markings: Apply TY-I markings with a minimum thickness of 0.1-in. for new markings and retracing water based markings and 0.06-in. for retracing on thermoplastic pavement markings, or 0.09-in. for all other Type I markings. The maximum thickness for Type I markings should not exceed 0.18-in. as measured in accordance with Tex-854-B using the tape method.

414.4.B.2.b. Type II Markings: Apply TY-II markings at least 20 gal. per mile on concrete and asphalt surfaces for a solid 4-in. line. Adjust application rates proportionally for other widths. When Type II markings are used as a sealer for Type I markings, apply at least 15 gal. per mile using Type II drop-on beads.

414.4.B.2.c. Beads: Bead Application for Type I and Type II markings shall be provided with a uniform distribution of beads across the surface of the stripe, with 40% to 60% bead embedment.

414.4.B.2.d. Raised Markers: Epoxy adhesive and bituminous adhesive will be used for jiggle bar tile and reflectorized pavement markers. For traffic buttons on hydraulic cement concrete pavements and for plowable reflectorized pavement markers use only epoxy adhesive. For traffic buttons on bituminous pavements use only bituminous adhesive.

Apply adhesives in sufficient quantity to ensure that 100% of the bonding area of raised pavement markers is in contact with the adhesive. Do not heat bituminous adhesive above 400°F. Agitate bituminous adhesive to ensure even heat distribution. Place raised pavement markers immediately after the adhesive is applied and ensure proper bonding. Do not use adhesives or any other material that impairs the functional retro-reflectivity of the raised pavement markers.

414.4.C. Testing

All markings and replacement markings must meet the requirements of Tex-828-B for at least 30 calendar days after installation. Markings should not lift, shift, smear, spread, flow, or tear by traffic action. Markings that fail these requirements within 30-days shall be removed and replaced according to this Item at CONTRACTOR's expense.

414.5 MEASUREMENT AND PAYMENT

Linear pavement markings shall be measured per Linear Foot (LF) of installed marking as measured along the centerline of stripe. Other markings and raised pavement markers shall be measured either per Each (EA) or per Lump Sum (LS).

Payment shall be made per unit described above and shall include any type, color specified and the shape, width, size, and thickness, all types of paint (TY-I, TY-II, Beads, Sealer), surface preparation, testing, and furnishing and placing all materials, tools, labor, for removing existing markers and markings; furnishing and installing raised pavement markers; and equipment, materials, labor, tools, and incidentals to complete the work.

415 TRAFFIC CONTROL

This item shall consist of furnishing, installing and removing all temporary traffic control devices necessary to meet the requirements of the latest version of the Texas Manual on Uniform Traffic Control Devices (TMUTCD), and the requirements set in the traffic control plan.

415.1 INSTALLATION

Temporary traffic control devices shall be installed as required before the beginning of any construction adjacent to active traffic lanes. Temporary traffic controls shall be modified as required at the beginning of each construction phase to comply with the construction phasing and actual traffic patterns to be accommodated. If at any time during the project, the temporary traffic controls are not installed or maintained in a manner consistent with the Contract Documents and the TMUTCD, the Engineer shall have the authority to order all work stopped until the temporary traffic controls are brought into full compliance. No additional contract time or extra pay shall be allowed for such shutdown periods.

Temporary striping shall be as denoted on the plans and shall conform to TxDOT Item 662 for Type II work-zone pavement markings.

415.2 MEASUREMENT AND PAYMENT

Temporary traffic control devices will be measured by Lump Sum (LS), Per Month (Mo), or Per Each (EA), which shall include all maintenance, revisions, removal, and relocations.

Payment for all items and tasks described in this Specification Item shall include the cost of materials, labor and all incidental and subsidiary materials and work necessary to complete installation and meet all requirements as indicated.

			CITY OF LAGO VISTA, TEXAS 5803 Thunderbird St Lago Vista, Texas 78645			Bid Date: Thursday, March 13, 2025 @ 1:00 PM Calendar Days: 120 Substantial - 130 Final	
			BID SUMMARY RFP No. 25-04 Street Resurfacing Phase 2 Thursday, March 13, 2025 @ 1:00 PM			RFP No. 25-04 Street Resurfacing Phase 2 If handwritten, please write legibly	
#	Name of Bidder / Company	Bid Bond Enclosed	Acknowledge Addenda	Base Bid Amount	Alt. 1 Amount	Alt. 2 Amount	Total Bid (Alt Incl.)
1	Lonestar Paving	Y	Y	\$3,175,564.80	\$-	\$-	\$3,175,564.80
2	Alpha Paving	Y	Y	\$3,322,166.64	\$-	\$-	\$3,322,166.64
3	Texas Materials	Y	Y	\$4,082,621.15	\$-	\$-	\$4,082,621.15
4	Bennett Paving	Y	Y	\$2,917,882.45	\$-	\$-	\$2,917,882.45
5	Clark Construction	Y	Y	\$6,313,819.34	\$-	\$-	\$6,313,819.34
6							
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14							

CONTRACTOR'S BID

FOR

2025 STREET RESURFACING – PHASE 2

RFP No. 25-04

BIDDER'S NAME

Bennett Paving, Inc.

(PLEASE PRINT CLEARLY)

CHECKLIST OF ITEMS TO BE RETURNED

The following items shall be returned in order for the bid submittal to be considered acceptable:

- | | |
|---|---|
| ☒ Completed Bid Summary Sheet | ☒ Bid Security |
| ☒ Completed Unit Price Schedule | ☒ Acknowledgment of Addenda |
| ☒ Completed Bid Form | ☒ Completed Bidder's Qualification Form |

PREPARED FOR:



5803 Thunderbird Street
Lago Vista, Texas 78645

Bond No. IB000033

BID BOND

KNOW ALL BY THESE PRESENTS: that the undersigned Principal and Surety are firmly bound to the City of Lago Vista ("Lago Vista") in the penal sum of Five Percent of Bid Amount (5% of bid amount) Dollars (\$ XXX).

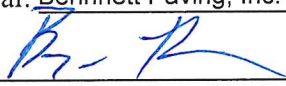
Now the condition of this bond is this: that, whereas the undersigned principal has submitted to Lago Vista a bid to enter into a certain contract whereupon principal undertakes to perform the following-described work of construction, alteration or repair:

City of Lago Vista RFP No. 25-04 Street Resurfacing Phase 2

NOW, THEREFORE, if the principal shall, within Sixty (60) days following acceptance by the City Council of the City of Lago Vista of such bid and award by said Council to said principal of said contract, execute and return such further contract documents, together with such bonds and insurance documents as may be required by the terms of the bids accepted, then this obligation shall be null and void, otherwise it shall remain in full force and the amount hereof shall be paid to and retained by the City of Lago Vista as liquidated damages for principal's failure to do so.

IN WITNESS WHEREOF, the above bound parties have executed this instrument under their several seals this the 20th day of February, 2025, the name and corporate seal of each corporate party being hereto affixed and by these presents duly signed by its undersigned representative, pursuant to the authority of its governing body.

Principal: Bennnett Paving, Inc.

By: 

Title: Bryan Bennett, President Date: 3/13/25

Surety: Old Republic Insurance Company

By: 

Title: Troy Staples, Attorney-in-Fact Date: 2/20/25

(Attach Power of Attorney)

ACKNOWLEDGMENT OF PRINCIPAL (Individual)

State of _____)
 County of _____)

On this _____ day of _____, in the year _____, before me personally come(s) _____, to me known and known to me to be the person(s) who (is) (are) described in and executed the foregoing instrument and acknowledge(s) to me that he/she executed the same.

 Notary Public

ACKNOWLEDGMENT OF PRINCIPAL (Partnership)

State of _____)
 County of _____)

On this _____ day of _____, in the year _____, before me personally come(s) _____, a member of the co-partnership of _____, to me known and known to me to be the person who is described in and executed the foregoing instrument and acknowledges to me that he/she executed the same as for the act and deed of the said co-partnership.

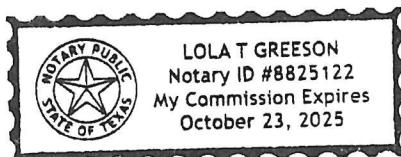
 Notary Public

ACKNOWLEDGMENT OF PRINCIPAL (Corporation)

State of Texas)
 County of Travis)

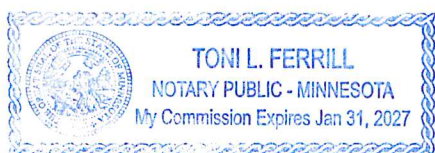
On this 13th day of March, in the year 2025, before me personally come(s) Bryan Bennett, to me known, who, being duly sworn, deposes and says that he/she is the President of the Bennett Paving, Inc. the corporation described in and which executed the foregoing instrument; that he/she knows the seal of the said corporation; the seal affixed to the said instrument is such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that he/she signed his/her name thereto by like order.

Lola J. Greeson
 Notary Public

ACKNOWLEDGMENT OF SURETY

State of Minnesota)
 County of Dakota)

On this 20th day of February, in the year 2025, before me personally come(s) Troy Staples, Attorney(s)-in-Fact of Old Republic Insurance Company with whom I am personally acquainted, and who, being by me duly sworn, says that he/she is (are) the Attorney(s)-in-Fact of Old Republic Insurance Company company described in and which executed the within instrument; that he/she know(s) the corporate seal of such company; and that seal affixed to the within instrument is such corporate seal and that it was affixed by order of the Board of Directors of said company, and that he/she signed said instrument as Attorney(s)-in-Fact of the said company by like order.



Toni Ferrill
 Notary Public

**POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That OLD REPUBLIC INSURANCE COMPANY, a Pennsylvania stock insurance corporation, does make, constitute and appoint:

JENNIFER M. BOYLES, NICHOLAS HOCHBAN, THOMAS M. LAHL, TROY STAPLES, ZACHARY PATE, THOMAS GEORGE KEMP

of WEST ST PAUL, MN

its true and lawful Attorney(s)-in-Fact, with full power and authority for and on behalf of the Company as surety, to execute and deliver and affix the seal of the Company thereto (if a seal is required), bonds, undertakings, recognizances or other written obligations in the nature thereof, (other than self-insurance workers compensation bonds guaranteeing payment of benefits, or black lung bonds), as follows:

ALL WRITTEN INSTRUMENTS

and to bind OLD REPUBLIC INSURANCE COMPANY thereby, and all of the acts of said Attorneys-in-Fact, pursuant to these presents, are ratified and confirmed. This appointment is made under and by authority of the board of directors at a meeting held on December 10, 2019. This Power of Attorney is signed and sealed by facsimile under and by the authority of the following resolutions adopted by the board of directors of the OLD REPUBLIC INSURANCE COMPANY on December 10, 2019.

RESOLVED FURTHER, that the chairman, president or any vice president of the Company's surety division, in conjunction with the secretary or any assistant secretary of the Company, be and hereby are authorized and directed to execute and deliver, to such persons as such officers of the Company may deem appropriate, Powers of Attorney in the form presented to and attached to the minutes of this meeting, authorizing such persons to execute and deliver and affix the seal of the Company to bonds, undertakings, recognizances, and suretyship obligations of all kinds, other than bail bonds, bank depository bonds, mortgage deficiency bonds, mortgage guaranty bonds, guarantees of installment paper and not guaranty bonds. The said officers may revoke any Power of Attorney previously granted to any such person.

RESOLVED FURTHER that any bond, undertaking, recognizance, or suretyship obligation shall be valid and binding upon the Company

- (i) when signed by chairmen, president or any vice president of the Company's surety division and attested and sealed (if a seal be required) by any secretary or assistant secretary; or
- (ii) when signed by a duly authorized Attorney-in-Fact and sealed with the seal of the Company (if a seal be required).

RESOLVED FURTHER, that the signature of any officer designated above, and the seal of the Company, may be affixed by facsimile to any Power of Attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually affixed.

IN WITNESS WHEREOF, OLD REPUBLIC INSURANCE COMPANY has caused these presents to be signed by its proper officer, and its corporate seal to be affixed this 9th day of February, 2023.

Karen J. Haffner
Assistant Secretary



OLD REPUBLIC INSURANCE COMPANY

Alan Pavlic
Vice President

STATE OF WISCONSIN, COUNTY OF WAUKESHA - SS

On this 9th day of February, 2023, personally came before me, Alan Pavlic and Karen J. Haffner, to me known to be the individuals and officers of the OLD REPUBLIC INSURANCE COMPANY who executed the above instrument, and they each acknowledged the execution of the same, and being by me duly sworn, did severally depose and say: that they are the said officers of the corporation aforesaid, and that the seal affixed to the above instrument is the seal of the corporation, and that said corporate seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority of the board of directors of said organization.



Kathryn R. Pearson
Notary Public

My Commission Expires: September 28, 2026

CERTIFICATE

(Expiration of notary's commission does not invalidate this instrument)

I, the undersigned, assistant secretary of the OLD REPUBLIC INSURANCE COMPANY, a Pennsylvania corporation, CERTIFY that the foregoing and attached Power of Attorney remains in full force and has not been revoked; and furthermore, that the Resolutions of the board of directors set forth in the Power of Attorney, are now in force.



40-0375

Signed and sealed at the City of Brookfield, WI this 20th day of February, 2025.

Karen J. Haffner
Assistant Secretary

ORSC 11008 (6-93)

PATE BONDING, INC.

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PAY ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENDED PRICE
GENERAL CONDITIONS & PAVING					
1	MOBILIZATION, BONDS & INSURANCE	1	LS	\$ 45,000.00	\$ 45,000.00
2	REMOVE & DISPOSE OF TRAFFIC BUTTONS	1	LS	\$ 1.00	\$ 1.00
3	TRAFFIC CONTROL	1	LS	\$ 45,000.00	\$ 45,000.00
4	3rd PARTY GEOTECHNICAL CORING & TESTING FOR COMPACTION & THICKNESS FOR EACH ROAD.	1	LS	\$ 47,000.00	\$ 47,000.00
5	INSTALL 3" BLACK BASE AS DIRECT BY THE ENGINEER	10,000	SY	\$ 23.50	\$ 235,000.00
Adobe Trail (Arena To End) (Approx 2800' X 24')					
6	MILLING AND DISPOSAL OF EXISTING PAVEMENT	8,064	SY	\$ 0.75	\$ 6,048.00
7	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	8,064	SY	\$ 13.00	\$ 104,832.00
Alta Vista Drive (Fawn To Paseo) (Approx 846' X 24')					
8	MILLING AND DISPOSAL OF EXISTING PAVEMENT	2,436	SY	\$ 0.75	\$ 1,827.00
9	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	2,436	SY	\$ 13.00	\$ 31,668.00
Bell Cove (Bell To End) (Approx 136' X 24')					
10	MILLING AND DISPOSAL OF EXISTING PAVEMENT	392	SY	\$ 0.75	\$ 294.00
11	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	392	SY	\$ 13.00	\$ 5,096.00
Bison Trail (Bar K Ranch To Rawhide) (Approx 1150' X 24')					
12	MILLING AND DISPOSAL OF EXISTING PAVEMENT	3,312	SY	\$ 0.75	\$ 2,484.00
13	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	3,312	SY	\$ 13.00	\$ 43,056.00
14	SOLID WHITE 24" x 12' THERMOPLASTIC MARKER (STOP BAR)	1	EA	\$ 500.00	\$ 500.00
Bobcat Cove (Bronco To End) (Approx 144' X 28')					
15	MILLING AND DISPOSAL OF EXISTING PAVEMENT	484	SY	\$ 0.75	\$ 363.00
16	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	484	SY	\$ 13.00	\$ 6,292.00
Broken Arrow (Arrowhead To El Dorado) (Approx 1138' X 24')					
17	MILLING AND DISPOSAL OF EXISTING PAVEMENT	3,278	SY	\$ 0.75	\$ 2,458.50
18	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	3,278	SY	\$ 13.00	\$ 42,614.00
Buena Vista (Roundup To Lakeshore) (Approx 2044' X 24')					
19	MILLING AND DISPOSAL OF EXISTING PAVEMENT	5,887	SY	\$ 0.75	\$ 4,415.25
20	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	5,887	SY	\$ 13.00	\$ 76,531.00
21	SOLID WHITE 24" x 12' THERMOPLASTIC MARKER (STOP BAR)	1	EA	\$ 500.00	\$ 500.00
Cardinal Ave (Azure To Emerald) (Approx 2600' X 24')					
22	MILLING AND DISPOSAL OF EXISTING PAVEMENT	7,488	SY	\$ 0.75	\$ 5,616.00
23	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	7,488	SY	\$ 13.00	\$ 97,344.00
Cedar Ridge Drive (Paseo To Deepwood) (Approx 1571' X 24')					
24	MILLING AND DISPOSAL OF EXISTING PAVEMENT	4,524	SY	\$ 0.75	\$ 3,393.00
25	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	4,524	SY	\$ 13.00	\$ 58,812.00
Chestnut Cove (Chantily To End) (Approx 1950' X 24')					
26	MILLING AND DISPOSAL OF EXISTING PAVEMENT	5,654	SY	\$ 0.75	\$ 4,240.50
27	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	5,654	SY	\$ 13.00	\$ 73,502.00
Clark Ave (Continental To Constitution) (Approx 700' X 24')					
28	MILLING AND DISPOSAL OF EXISTING PAVEMENT	2,016	SY	\$ 0.75	\$ 1,512.00
29	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	2,016	SY	\$ 13.00	\$ 26,208.00

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PAY ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENDED PRICE
Columbus Lane (Constitution Drive To Colonial Lane) (Approx 885' X 24')					
30	MILLING AND DISPOSAL OF EXISTING PAVEMENT	2,549	SY	\$ 0.75	\$ 1,911.75
31	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	2,549	SY	\$ 13.00	\$ 33,137.00
Congress Ave (Constitution To Colonial) (Approx 1506' X 24')					
32	MILLING AND DISPOSAL OF EXISTING PAVEMENT	4,337	SY	\$ 0.75	\$ 3,252.75
33	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	4,337	SY	\$ 13.00	\$ 56,381.00
Continental Drive (Clark To Constitution) (Approx 1628' X 24')					
34	MILLING AND DISPOSAL OF EXISTING PAVEMENT	4,688	SY	\$ 0.75	\$ 3,516.00
35	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	4,688	SY	\$ 13.00	\$ 60,944.00
Cooper Lane (Crockett To End) (Approx 1947' X 24')					
36	MILLING AND DISPOSAL OF EXISTING PAVEMENT	5,607	SY	\$ 0.75	\$ 4,205.25
37	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	5,607	SY	\$ 13.00	\$ 72,891.00
Deede Drive (Paseo De Vace To Avenida Ann) (Approx 2375' X 24')					
38	MILLING AND DISPOSAL OF EXISTING PAVEMENT	6,840	SY	\$ 0.75	\$ 5,130.00
39	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	6,840	SY	\$ 13.00	\$ 88,920.00
Emerald Road (Boggy To Blue Jay) (Approx 590' X 24')					
40	MILLING AND DISPOSAL OF EXISTING PAVEMENT	1,699	SY	\$ 0.75	\$ 1,274.25
41	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	1,699	SY	\$ 13.00	\$ 22,087.00
42	SOLID WHITE 24" x 12' THERMOPLASTIC MARKER (STOP BAR)	1	EA	\$ 500.00	\$ 500.00
Emerald Road (Falcon To End) (Approx 2067' X 24')					
43	MILLING AND DISPOSAL OF EXISTING PAVEMENT	5,953	SY	\$ 0.75	\$ 4,464.75
44	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	5,953	SY	\$ 13.00	\$ 77,389.00
Folklore Circle (Sierra To Bar K Ranch Road) (Approx 1689' X 24')					
45	MILLING AND DISPOSAL OF EXISTING PAVEMENT	4,864	SY	\$ 0.75	\$ 3,648.00
46	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	4,864	SY	\$ 13.00	\$ 63,232.00
47	SOLID WHITE 24" x 12' THERMOPLASTIC MARKER (STOP BAR)	2	EA	\$ 500.00	\$ 1,000.00
Hamilton Ave (Henry To Eisenhower) (Approx 1600' X 26')					
48	MILLING AND DISPOSAL OF EXISTING PAVEMENT	4,608	SY	\$ 0.75	\$ 3,456.00
49	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	4,608	SY	\$ 13.00	\$ 59,904.00
Hancock Ave (South of Highland To End) (Approx 1550' X 24')					
50	MILLING AND DISPOSAL OF EXISTING PAVEMENT	4,464	SY	\$ 0.75	\$ 3,348.00
51	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	4,464	SY	\$ 13.00	\$ 58,032.00
52	SOLID WHITE 24" x 12' THERMOPLASTIC MARKER (STOP BAR)	1	EA	\$ 500.00	\$ 500.00
La Paloma Drive (Paseo To End) (Approx 768' X 24')					
53	MILLING AND DISPOSAL OF EXISTING PAVEMENT	2,212	SY	\$ 0.75	\$ 1,659.00
54	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	2,212	SY	\$ 13.00	\$ 28,756.00
Lee Lane (Liberty To Lindberg) (Approx 667' X 24')					
55	MILLING AND DISPOSAL OF EXISTING PAVEMENT	1,921	SY	\$ 0.75	\$ 1,440.75
56	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	1,921	SY	\$ 13.00	\$ 24,973.00
Liberty Lane (Boggy To End) (Approx 1890' X 26')					
57	MILLING AND DISPOSAL OF EXISTING PAVEMENT	5,897	SY	\$ 0.75	\$ 4,422.75
58	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	5,897	SY	\$ 13.00	\$ 76,661.00
59	SOLID WHITE 24" x 12' THERMOPLASTIC MARKER (STOP BAR)	1	EA	\$ 500.00	\$ 500.00

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PAY ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENDED PRICE
Marshall (Nimitz To Mount Vernon) (Approx 1670' X 24')					
60	MILLING AND DISPOSAL OF EXISTING PAVEMENT	4,809	SY	\$ 0.75	\$ 3,606.75
61	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	4,809	SY	\$ 13.00	\$ 62,517.00
Morgan Lane (Marshall To Mount Vernon) (Approx 973' X 24')					
62	MILLING AND DISPOSAL OF EXISTING PAVEMENT	2,803	SY	\$ 0.75	\$ 2,102.25
63	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	2,803	SY	\$ 13.00	\$ 36,439.00
Needles Cove (Norton To End) (Approx 458' X 24')					
64	MILLING AND DISPOSAL OF EXISTING PAVEMENT	1,319	SY	\$ 0.75	\$ 989.25
65	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	1,319	SY	\$ 13.00	\$ 17,147.00
Nobel Circle (Norton To Norton) (Approx 1500' X 24')					
66	MILLING AND DISPOSAL OF EXISTING PAVEMENT	4,320	SY	\$ 0.75	\$ 3,240.00
67	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	4,320	SY	\$ 13.00	\$ 56,160.00
Oregon Lane (Boggy To Crystal) (Approx 1591' X 24')					
68	MILLING AND DISPOSAL OF EXISTING PAVEMENT	4,582	SY	\$ 0.75	\$ 3,436.50
69	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	4,582	SY	\$ 13.00	\$ 59,566.00
70	SOLID WHITE 24" x 12' THERMOPLASTIC MARKER (STOP BAR)	1	EA	\$ 500.00	\$ 500.00
Orlando Cove (Oregon To End) (Approx 470' X 24')					
71	MILLING AND DISPOSAL OF EXISTING PAVEMENT	1,523	SY	\$ 0.75	\$ 1,142.25
72	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	1,523	SY	\$ 13.00	\$ 19,799.00
Osage Lane (Patriot To Boggy) (Approx 1715' X 24')					
73	MILLING AND DISPOSAL OF EXISTING PAVEMENT	4,939	SY	\$ 0.75	\$ 3,704.25
74	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	4,939	SY	\$ 13.00	\$ 64,207.00
75	SOLID WHITE 24" x 12' THERMOPLASTIC MARKER (STOP BAR)	1	EA	\$ 500.00	\$ 500.00
Oxford Drive (Boggy Ford road To Patriot Drive) (Approx 1384' X 24')					
76	MILLING AND DISPOSAL OF EXISTING PAVEMENT	3,986	SY	\$ 0.75	\$ 2,989.50
77	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	3,986	SY	\$ 13.00	\$ 51,818.00
78	SOLID WHITE 24" x 12' THERMOPLASTIC MARKER (STOP BAR)	1	EA	\$ 500.00	\$ 500.00
Pokealong Path (Deer Run To Park) (Approx 1069' X 24')					
79	MILLING AND DISPOSAL OF EXISTING PAVEMENT	3,079	SY	\$ 0.75	\$ 2,309.25
80	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	3,079	SY	\$ 13.00	\$ 40,027.00
Polk Cove (American To End) (Approx 900' X 24')					
81	MILLING AND DISPOSAL OF EXISTING PAVEMENT	3,197	SY	\$ 0.75	\$ 2,397.75
82	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	3,197	SY	\$ 13.00	\$ 41,561.00
Park Drive (Deer Run To Valleyview) (Approx 2676' X 24')					
83	MILLING AND DISPOSAL OF EXISTING PAVEMENT	7,707	SY	\$ 0.75	\$ 5,780.25
84	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	7,707	SY	\$ 13.00	\$ 100,191.00
Red River Cove (Rawhide To End) (Approx 582' X 24')					
85	MILLING AND DISPOSAL OF EXISTING PAVEMENT	2,016	SY	\$ 0.75	\$ 1,512.00
86	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	2,016	SY	\$ 13.00	\$ 26,208.00
Santa Carlo Ave (American To End) (Approx 1976' X 24')					
87	MILLING AND DISPOSAL OF EXISTING PAVEMENT	5,691	SY	\$ 0.75	\$ 4,268.25
88	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	5,691	SY	\$ 13.00	\$ 73,983.00
89	SOLID WHITE 24" x 12' THERMOPLASTIC MARKER (STOP BAR)	1	EA	\$ 500.00	\$ 500.00

CONSTRUCTION COST FOR: RFP No. 25-04 Street Resurfacing - Phase 2

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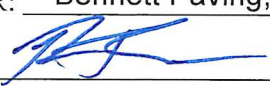
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PAY ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENDED PRICE
Santa Carlo Ave (Boggy To American) (Approx 1704' X 24')					
90	MILLING AND DISPOSAL OF EXISTING PAVEMENT	4,908	SY	\$ 0.75	\$ 3,681.00
91	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	4,908	SY	\$ 13.00	\$ 63,804.00
92	SOLID WHITE 24" x 12' THERMOPLASTIC MARKER (STOP BAR)	2	EA	\$ 500.00	\$ 1,000.00
Santa Domingo Lane (Boggy To Santa Alto) (Approx 915' X 24')					
93	MILLING AND DISPOSAL OF EXISTING PAVEMENT	2,635	SY	\$ 0.75	\$ 1,976.25
94	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	2,635	SY	\$ 13.00	\$ 34,255.00
95	SOLID WHITE 24" x 12' THERMOPLASTIC MARKER (STOP BAR)	1	EA	\$ 500.00	\$ 500.00
Santa Elena Circle (Santa Domingo To Santa Alto) (Approx 994' X 24')					
96	MILLING AND DISPOSAL OF EXISTING PAVEMENT	2,863	SY	\$ 2.15	\$ 6,155.45
97	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	2,863	SY	\$ 12.00	\$ 34,356.00
Santa Rosa Ave (Highlands lake Drive To American Drive) (Approx 2513' X 24')					
98	MILLING AND DISPOSAL OF EXISTING PAVEMENT	7,237	SY	\$ 0.75	\$ 5,427.75
99	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	7,237	SY	\$ 13.00	\$ 94,081.00
100	SOLID WHITE 24" x 12' THERMOPLASTIC MARKER (STOP BAR)	2	EA	\$ 500.00	\$ 1,000.00
Sleepy Hollow Lane (Surrey To Sierrea) (Approx 809' X 24')					
101	MILLING AND DISPOSAL OF EXISTING PAVEMENT	2,330	SY	\$ 0.75	\$ 1,747.50
102	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	2,330	SY	\$ 13.00	\$ 30,290.00
Stetson Cove (Surrey To End) (Approx 100' X 24')					
103	MILLING AND DISPOSAL OF EXISTING PAVEMENT	629	SY	\$ 0.75	\$ 471.75
104	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	629	SY	\$ 13.00	\$ 8,177.00
Stillwood Lane (Oak Dale To Outpost) (Approx 1183' X 24')					
105	MILLING AND DISPOSAL OF EXISTING PAVEMENT	3,407	SY	\$ 0.75	\$ 2,555.25
106	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	3,407	SY	\$ 13.00	\$ 44,291.00
Talon Circle (Bar K Ranch To Bar K Ranch) (Approx 1383' X 24')					
107	MILLING AND DISPOSAL OF EXISTING PAVEMENT	3,983	SY	\$ 0.75	\$ 2,987.25
108	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	3,983	SY	\$ 13.00	\$ 51,779.00
Tenderfoot Cove (Bar K Ranch To End) (Approx 260' X 26')					
109	MILLING AND DISPOSAL OF EXISTING PAVEMENT	811	SY	\$ 0.75	\$ 608.25
110	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	811	SY	\$ 13.00	\$ 10,543.00
Truman Drive (Redbird To Patriot) (Approx 2240' X 24')					
111	MILLING AND DISPOSAL OF EXISTING PAVEMENT	6,451	SY	\$ 0.75	\$ 4,838.25
112	PAVEMENT 2" HMAC TYPE "D" AND TIE INTO EXISTING PAVEMENT	6,451	SY	\$ 13.00	\$ 83,863.00
Buttons and Striping					
113	BLUE TRAFFIC BUTTON REFLECTORS	50	EA	\$ 25.00	\$ 1,250.00
Total					\$ 2,917,882.45

The total bid shall be entered in the space provided above, and shall also be entered in the space provided in the Bid Summary Sheet. All construction shall be completed per the City of Lago Vista's Technical Construction Standard Manual. Contractor will be required to provide insurance certificate and performance bonds per the specs.

Payment for all Items shall be based on **Plans Quantity**, as described in *Measurement and Payment*, unless otherwise noted.

BIDDER: Bennett Paving, Inc.

BY: 

TITLE: Bryan Bennett, President

The Base Bid of the undersigned bidder based upon the quantities shown and the unit prices bid:

Two million nine hundred seventeen thousand eight hundred eighty two Dollars, and Forty five Cents

(\$ 2,917,882.45). All work bid will be substantially completed within 120 calendar days after the issuance of the notice to proceed. All work bid will be totally completed within 130 calendar days.

003 ACKNOWLEDGMENT OF ADDENDA

Acknowledgement of Addenda:

All Addenda must be acknowledged below in the space provided. Alternatively, Addenda may be acknowledged on the outside of the sealed envelope submitted for bid next to the project name. Inclusion of the full text of any Addendum in this bid packet will also constitute the bidder's acknowledgement of that Addendum.

Bidder's Name: Bennett Paving, Inc.
(Fill in Bidder's Name exactly as it appears on pages 2 and 3 of the Bid Form)

I have received, acknowledge, and accept all of the following Addenda:

ADDENDUM NO.	SIGNATURE
1	

Total Bid Amount in numbers: \$2,917,882.45

Total bid in numbers (as tabulated on the Unit Price Schedule): \$ 2,917,882.45

The total bid in numbers above will be used to determine the apparent low bidder. The contract award will be based on bid amounts tabulated and verified by the Engineer.



February 19, 2024

Addendum #1

25-04 Street Resurfacing Phase 2

The following changes have been made to the original RFP 25-04 Street Resurfacing Phase 2 Bid Tab.

1. Page 3, item 77 Quantity is to in the amount of 3,986 from 3,686.
 - a. This correction has been made and new Amended RFP 25-04 Street Resurfacing Phase 2 Bid Tab has been attached.

CONFLICT OF INTEREST QUESTIONNAIRE**FORM CIQ****For vendor doing business with local governmental entity**

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

Bennett Paving, Inc.

2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

N/A

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

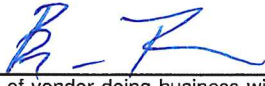
☐ Yes☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes☐ No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

 Signature of vendor doing business with the governmental entity

3/13/2025

Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;

or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

Form TGC 2270

VERIFICATION REQUIRED BY TEXAS GOVERNMENT CODE CHAPTER 2270

Contract identifier: _____

Department: _____

By signing below, Company hereby verifies the following:

1. Company does not boycott Israel; and
2. Company will not boycott Israel during the term of the contract.

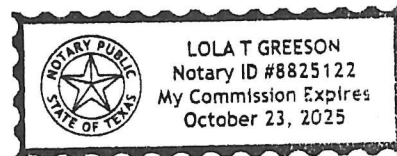
SIGNED BY: _____

Print Name of Person: Bryan Bennett, PresidentSigning, Title, and
CompanyBennett Paving, Inc.Date signed: 3/13/2025STATE OF TEXAS §
COUNTY OF Travis §

BEFORE ME, the undersigned Notary Public on this day personally appeared Bryan Bennett (Name), on behalf of Bennett Paving, Inc. (Company) who being duly sworn, stated under oath that he/she has read the foregoing verification required by Texas Government Code Section 2270.002 and said statements contained therein are true and correct..

SWORN AND SUBSCRIBED TO before me, this 13th day of March, 2025.

Lola T. Greeson
NOTARY OF PUBLIC,
FOR THE STATE OF TEXAS

My Commission Expires:
10/23/2025

Government Code § 2270.002. Provision Required in Contract
Effective: September 1, 2017

A governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

The following definitions apply:

(1) "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.

(2) "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

(3) "Governmental entity" means a state agency or political subdivision of this state.

State law requires verification from a Company for contracts involving goods or services (regardless of the amount) before the City can enter into the contract.

BID FORMPROJECT IDENTIFICATION: RFP No. 25-04 Street Resurfacing Phase 2PROJECT IDENTIFICATION NUMBER (PID): RFP No. 25-04

THIS BID IS SUBMITTED TO: Mr. Victor Manzano, CIP Manager, City of Lago Vista, Texas

1. The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an Agreement with OWNER in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Bid Price and within the Bid Times indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.
2. BIDDER accepts all of the terms and conditions of the Advertisement of Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for thirty-five days after the day of Bid opening. BIDDER will sign and deliver the required number of counterparts of the Agreement with the Bonds and other documents required by the Bidding Requirements within fifteen days after the date of OWNER'S Notice of Award.
3. In submitting this bid, BIDDER represents, as more fully set forth in the Agreement, that:

- (a) BIDDER has examined and carefully studied the Bidding Documents; including (but not limited to) the following:

BID PACKET – All portions of the Contractor's Bid Packet including the Instructions to Bidders, General Conditions, and any Special and /or Supplementary Conditions

DRAWINGS – Most current set of drawings

SPECIFICATIONS – Most current City of Lago Vista Technical Construction Standards, Specifications Manual, and any other as stated in the construction drawings.

ADDENDA - Acknowledged on the Bid Summary Sheet or on the sealed bid envelope

- (b) BIDDER has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance and furnishing of the Work;
- (c) BIDDER is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.
- (d) BIDDER has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in the General Conditions. BIDDER accepts the determination set forth in the Supplementary Conditions of the extent of the "technical data" contained in such reports and drawings upon which BIDDER is entitled to rely as provided in the General Conditions. BIDDER acknowledges that such reports and drawings are not Contract Documents and may not be complete for BIDDER'S purposes. BIDDER acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Bidding Documents with respect to Underground Facilities at or contiguous to the site. BIDDER has obtained and carefully studied (or assumes responsibility for having done so) all such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by BIDDER and safety precautions and programs incident thereof. BIDDER does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the determination of this Bid for performance and furnishing of the Work in accordance with the limes, price and other terms and conditions of the Contract Documents.
- (e) BIDDER is aware of the general nature of Work to be performed by OWNER and others at the site that relates to Work for which this Bid is submitted as indicated in the Contract Documents.
- (f) BIDDER has correlated the information known to BIDDER, information and observations obtained from visits to the site, reports and drawing identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.
- (g) BIDDER has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that BIDDER has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to BIDDER, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for

performing and furnishing the Work for which this Bid is submitted.

- (h) This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; BIDDER has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; BIDDER has not solicited or induced any person, firm or corporation to refrain from bidding; and BIDDER has not sought by collusion to obtain for itself any advantage over any other Bidder or over OWNER.
4. Measurement shall be based solely on Plan Quantities as listed in the Unit Price Schedule; no quantities shall be measured in the field for payment purposes. BIDDER will complete the Work in accordance with the Contract Documents for the Unit Prices and Quantities listed on the Unit Price Schedule for the total bid in numbers as entered on the Bid Summary Sheet.
 5. BIDDER agrees that the Work will be substantially complete, and completed and ready for final payment in accordance with the lines specified in Article 3 of the Standard Form of Agreement. BIDDER accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the lines specified in the Agreement.
 6. The following documents are required to be attached to be made a condition of this Bid:
(a) Required Bid Security in the form of certified check, cashier's check or corporate surety bond.
 7. Communications concerning this Bid shall be addressed to:

Mr. Victor Manzano
CIP Manager
City of Lago Vista
5803 Thunderbird Street
Lago Vista, Texas 78645
Victor.manzano@lagovistatexas.gov

The address of BIDDER indicated below:

8. Terms used in this Bid which are defined in the General Conditions or Instructions will have the meanings indicated in the General Conditions or Instructions.
9. SUBMITTED on March 13th, 2025.
State Contractor License No. N/A

If BIDDER is:

An Individual

By _____ (SEAL)
(Individual's Name)

doing business as _____

Business address: _____

Phone No.: _____

Email Address: _____

A Partnership

By _____ (SEAL)
(Firm Name)

(General Partner)

Business address: _____

Phone No.: _____

Email Address: _____

A Corporation

By Bennett Paving, Inc. (SEAL)
(Corporation Name)

Texas

(State of Incorporation)

By B. R. (State of Incorporation) (SEAL)
(name of person authorized to sign)

Bryan Bennett, President
(Corporate Seal) (Title)

(Corporate Seal) _____ (Title)
Attest  _____
(Secretary)

Business address: P.O. Box 2309
Leander, TX 78646

Phone No.: (512) 740-8603

Email Address: adam@bennettpavingtx.com

Date of Qualification to do business is 5/19/2009

A Joint Venture

By _____ (SEAL)
(Name)

(Address)

By _____ (SEAL)
(Name)

(Address)

Phone No.: _____

Email Address: _____

(Each joint venturer must sign. The manner of signing for each individual, partnership and corporation that is a party to the joint venture should be in the manner indicated above).

Resolution of Corporate Authority

Action by unanimous consent of the Board of Directors of Bennett Paving, Inc. ("Corporation").

The Board of Directors have certified that Bennett Paving, Inc. is duly organized and existing under the laws of the State of Texas.

Resolved, that Bryan Bennett the President of Bennett Paving, Inc., is empowered to sign any and all documents, to take such steps, and to do such other acts and things, on behalf of said Corporation, as in his judgment may be necessary, appropriate or desirable including but not limited to submitting estimates and bids on services that are to be performed by the Corporation.

Resolved, that a Company Seal is not utilized by the Corporation, and that a signature by Bryan Bennett on behalf of the Corporation shall have the effect of full ratification by the Board of Directors and Corporation, to serve as an official action by the Corporation as though a seal had been affixed to the document.

Resolved, that Bryan Bennett has the authority to bind the Corporation on all matters.

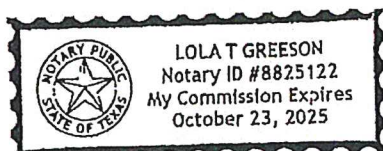
Resolved, that all transactions entered into by Bryan Bennett, in the Corporation's name and for its account, prior to the adoption of these resolutions, are hereby ratified and approved for all purposes.

Date February 1, 2024.

Bryan Bennett, President and Secretary
Bennett Paving, Inc.

Subscribed and sworn to before me by the Bryan Bennett, witness, on February 1, 2024.

Notary Public, State of Texas



Bidder Qualification Form - Construction*(Firm must prepare this statement in the form shown)*

The undersigned bidder certifies that the information herein is true, correct, complete and accurate. Elaboration on the following information or additional information deemed to be useful for evaluation of bidder's capabilities or to prevent misleading representations may be attached to this form. With exception to material and equipment suppliers, any subcontractor completing 25% or more of the project in terms of cost, is required to fill out this form.

Date: 3/13/2025 Texas License Number: N/A Federal ID No.: 27-0205699

Bidder (Legal Name of Firm): Bennett Paving, Inc.

Address: P.O. Box 2309 Phone Number: (512) 740-8603

Fax Number: (512) 355-4193

City: Leander State: TX Zip Code: 78646 Email: adam@bennettpavingtx.com

President (or Managing Partner, etc.): Bryan Bennett

Dun and Bradstreet Number (if any): 836673421

Years in Business Under Present Name: 16

List all other names under which your business has operated in the last 10 years:

N/A

Work Presently Under Contract (\$): \$5,000,000.00

Work in place last year (\$): \$34,000,000.00

Total Bonding Capacity (\$): \$40,000,000.00

(Attach a letter from Bonding Co. evidencing bonding capacity)

Value of Work Presently Bonded (\$): \$5,000,000.00

Bonding Company: Pate Bonding Inc.

Bonding Agent: Zachary Pate

Insurance Company: Federated Insurance

Insurance Agent: Connor Kempston Phone: (952) 687-7426

Total Staff Employed by Firm (Break down by Managers and Trades on separate sheet): 101

Contracting Specialty (Indicate trades in which bidder performs): Asphalt paving, concrete, sealcoat, crack seal, striping

Union Affiliations: ☐ Local ☐ National

Years Performing Work Specialty: 16 Percentage of Work Performed by Firm's Own Forces: 95%

Is the Bidder in compliance with all applicable EEO requirements? ☒ Yes ☐ No
(If the answer is no, please attach summary of details on a separate sheet)

Bank References

Address: First Texas Bank - 1901 Bagdad Rd. Contact Name: Christina Grado

City: Cedar Park State: TX Zip Code: 78613 Phone Number: (512) 259-2443

Has the firm or predecessor firm been involved in a bankruptcy or reorganization? ☐ Yes ☒ No
(If the answer is yes, please attach summary of details on a separate sheet)

Relevant Experience

Bidder should have successfully completed (substantially on-schedule, on-budget) at least three projects of similar size and nature for which they are submitting qualifications. List projects on a separate sheet with the following information on each and attach hereto:

Project (Name, Location and Contact)

Architect (N/A if not applicable)

Engineer

Contract Amount

Date Completed (Month/Year)

Scope of Work

See attached

List below any/all Contract(s) awarded to Bidder which it has failed to complete (If applicable, attach a separate sheet):

Project (Name and Location): N/A

Contract with: _____

Brief Explanation of Cause and Resolution: _____

List on a sheet attached hereto all judgments, claims, arbitration proceedings, or suits pending or outstanding against bidder over the last five (5) years with amount of claim and brief description.

List on a sheet attached hereto all lawsuits or requested arbitration with regard to construction contracts which bidder has initiated within the last five (5) years and brief explanation of claim and outcome.

Attach to this form Bidder's current Financial Statement (assets/Liabilities), preferably audited.

Signature: _____

Name (Officer or Partner): Bryan Bennett

Title: President

Date: 3/13/2025

AFFIDAVIT OF AUTHENTICITY
Must be included with Bidder's Qualifications

STATE OF TEXAS :

COUNTY OF Travis :

ON THIS, the 13th day of March, 2025, before me, a Notary Public, the undersigned officer,
personally appeared Bryan Bennett, who acknowledged her/himself to be the
President of Bennett Paving, Inc.
[title] [Contractor's full name]

being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the said contractor by her/himself as such _____ President _____, executed the
[title]
foregoing instrument for the purposes therein contained by signing her/his name.

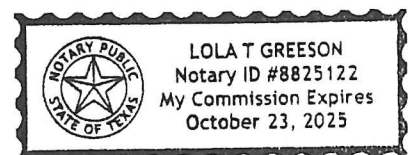
B-R

STATE OF TEXAS :

COUNTY OF Travis :

Sworn to and subscribed before me on the 13th day of March, 2025 (year), by Bryan Bennett.
(name of signer)

Lola J. Greeson
Notary Public's Signature





**PATE
BONDING
INC.**

1276 So. Robert St. • West St. Paul, MN 55118 • Phone: (651) 457-6842 • Fax: (651) 457-7531 • Web Site: www.patebonding.com

June 25, 2024

RE: Bennett Paving, Inc.
Leander, TX

To Whom It May Concern,

We are writing to you at the request of Bennett Paving, Inc. Pate Bonding, Inc. is the bonding agent and Old Republic Surety Company (A.M. Best Rating A +) is the Surety Company. Bennett Paving, Inc. has managed their bonded project in an extremely professional manner.

Bennett Paving, Inc. has a current bond program of \$20,000,000 Single and \$40,000,000 Aggregate. Larger projects would be considered on a bond-by-bond basis.

If a contract is awarded to Bennett Paving, Inc. it is our present intention to become Surety on the Performance and Payment Bonds required by the contract. This is contingent upon our satisfaction with the contract documents and Bennett Paving, Inc. continuing to satisfy other underwriting considerations.

Any arrangement for Bonds required by the contract is a matter between Bennett Paving, Inc. and the Surety and we assume no liability to you or your third parties, if for any reason we do not execute these Bonds.

Please feel free to contact me should you require any additional information regarding Bennett Paving, Inc. current bond program.

Sincerely,

Zachary Pate

Employee	Role
Acuna, Francisco	Labor
Aguillon Balderas, Martin	Labor
Alejo, Marcos	Labor
Arellano, Ricardo E	Mechanic
Barraera Lopez, Luis A	Labor
Barrientos, Manuel	Driver
Barron, Manuel	Labor
Bennett, Bryan P	President
Bennett, Johnathon W	Driver
Bennett, William L	Estimator
Berrey, Lucien B	Driver
Bickham, Michael C	Driver
Brooks, Antonio M	Driver
Brown, Michael W	Driver
Buteaux, Randy	Driver
Calk, Daniel P	Driver
Calzada Guadalupe, Jorge	Driver
Castellanos, Maykel	Driver
Castillo, Jorge L	Driver
Colclasure, Brandon R.	Driver
Coleman, Alex D.	Driver
Conerly, Milton D	Driver
Connally, Tyler B	Driver
Cooper, Drevaun W	Driver
Deary, Xzaviar L	Driver
Dingey, Robert	Estimator
Durant, Oscar F	Driver
Edwards, Cotten W.	Driver
Enciso, Javier	Labor
Ervin, Freddie L	Driver
Escobar, Rocio	Clerical
Flores, Martin M	Driver
Galan, Carlos R	Driver
Gallegos Alvarado, Edson	Labor
Garcia Garcia, Guillermo	Driver
Garcia Vargas, Ramon	Labor
Gilmore Jr., Gilbert W	Driver
Gonzalez Reyes, Rigoberto	Driver
Greeson, Lola	Clerical
Hernandez Jaimes, Nelso Alberto	Mechanic
Hernandez, Fernando	Driver
Hewitt, Jerrel M	Driver
Hicks, Cornelius D	Driver
Hopp, Brandon M	Driver
Huff Jr., Randy L.	Labor
Johnson, Deshaun T	Driver
Johnson, Eric J	Driver
Johnson, LeAnte T	Driver
Johnson, Samuel	Driver
Khamisi, Tofigh	Driver
Leiva Martinez, Fermin	Labor
Leonard, Michael E.	Driver
Lozano Muro, Juan A.	Labor
Martinez, Eleazar	Labor
Matos Doce, Gabriel	Driver
McIntyre, Brian D	Driver
McKenna, Gabriel I	Driver
Merino, Adrian	Labor
Moncada Benavides, Julio C	Labor
Mondragon-Aviles, Jose S	Mechanic
Moran Munoz, Francisco	Labor
Muro, Adrian L	Labor
Nunez, Benito	Labor
Ortega, Walter	Driver
Ouda, Adam I	Clerical
Pastrana Diaz, Jose	Driver
Pellam, Marquis D	Driver
Perez Aviles, Jesus	Mechanic
Perez, Delia	Mechanic
Perez, Gilberto	Mechanic
Quinto Aguillon, Gildardo	Labor
Rhodes, Sean M.	Driver
Rivera, Josue	Driver
Rivera, Roberto C.	Driver
Robinson, Robert III	Driver
Robledo, Juan R	Driver
Rodriguez, Antonio	Labor
Rodriguez, Jose Abel	Labor
Rodriguez, Oscar	Labor
Romo, Saul	Driver
Salazar Torres, Juan	Project Manager
Salazar, Jose L	Labor
Salgado Pimentel, Vicente	Labor
Salgado, Carlos	Labor
Servin, Rodolfo	Labor
Sierra Ramirez, Raul	Labor
Siluentes, Alberto	Labor
Smith, George A	Driver
Stansfield, William	Driver
Suarez Rebollar, Martin	Labor
Suarez Rebollar, Ruben	Labor
Terbay, Robert J.	Superintendent
Terry, David	Foreman
Terry, Sarajo	Clerical
Tinsley, Anthony T	Driver
Torres Ramirez, Javier	Foreman
Torres Ramirez, Melchor	Foreman
Torres, Jose Roman	Labor
Vega Gonzales, Rene	Labor
Vera, David	Mechanic
Williams, Terry E	Driver

BENNETT PAVING

Bennett Paving, Inc.

Recent Completed Project List

Project Name: Retama Springs and Retama Ridge Mill and Overlay Project

Location: Selma, TX

Contact: Gary Freeland; (830) 377-4555 gfreeland@freelandturk.com

Contract Amount: \$3,399,921.25

Date Completed: April 2024

Scope of Work: Asphalt Paving

Project Name: 2024 Street Maintenance Project

Location: Belton, TX

Contact: Scott Hodde, (254) 933-5823, shodde@beltontexas.gov

Contract Amount: \$1,293,103.50

Date Completed: September 2024

Scope of Work: Asphalt Paving

Project Name: Downtown Street Maintenance Program

Location: Round Rock, TX

Contact: Matt Bushak, (512) 341-3318, mbushak@roundrocktexas.gov

Contract Amount: \$3,457,142.10

Date Completed: August 2023

Scope of Work: Asphalt Paving

Project Name: Roadway Rehabilitation FY 2023

Location: Leander, TX

Contact: Roman Poudyal, (512) 259-2640, rpoudyal@leandertx.gov

Contract Amount: \$2,421,313.37

Date Completed: July 2023

Scope of Work: Asphalt Paving

Project Name: McCoy's Building Supply

Location: League City

Contact: Carlos Garcia – (512) 753-6358, cgarcia@mccoys.com

Contract Amount: \$2,570,496.60

Date Completed: May, 2023

Scope of Work: Asphalt paving, Seal Coat, Striping, Wheel Stops



BENNETT PAVING, INC.
Combined Financial Statements
(With Independent Accountants' Review Report)
December 31, 2023 and 2022



Supplementary Information

The supplementary information included in Schedules I, II and III are presented for purposes of additional analysis and are not a required part of the basic combined financial statements. Such information is the responsibility of management and was derived from, and relates directly to, the underlying accounting and other records used to prepare the combined financial statements. The supplementary information has been subjected to the review procedures and applies in our review of the basic combined financial statements. We are not aware of any material modifications that should be made to the supplementary information. We have not audited the supplementary information and do not express an opinion on such information.

Bauer & Company, LLC

BAUER & COMPANY, LLC

Austin, Texas

June 10, 2024

BENNETT PAVING, INC.
Combined Statements of Operations
For the Years Ended December 31, 2023 and 2022
(unaudited)

	<u>2023</u>	<u>2022</u>
Contract Revenues	\$ 34,568,082	\$ 16,091,378
Cost of sales		
Materials	7,919,762	4,142,612
Transportation and equipment related	1,998,821	2,479,028
Payroll and contractors	17,344,844	4,944,874
Total Cost of sales	<u>27,263,427</u>	<u>11,566,514</u>
Gross profit	7,304,655	4,524,864
Operating expenses		
Insurance and benefits expense	950,013	575,194
Salaries - officers	612,594	193,792
Salaries - other	578,152	102,257
Office expense	130,348	82,259
Taxes and licenses	157,513	80,498
Depreciation expense	871,398	653,829
Bad debt expense	98,779	6,721
Professional fees	85,983	57,271
Telephone	36,054	36,446
Advertising and business promotion	43,780	25,989
Repairs and maintenance	23,457	21,758
Utilities	21,801	15,987
Uniforms	15,987	11,951
Information technology consulting	5,837	11,308
Miscellaneous expenses	9,427	6,802
Total general and administrative expenses	<u>3,641,123</u>	<u>1,882,062</u>
Income from operations	<u>3,663,532</u>	<u>2,642,802</u>
Other income (expense)		
Interest income	-	30,946
Interest expense	(217,734)	(92,589)
Other sales	60,147	23,192
Total other expense, net	<u>(157,587)</u>	<u>(38,451)</u>
Income before income taxes	3,505,945	2,604,351
Income tax expense	<u>43,200</u>	<u>10,082</u>
Net income	<u>\$ 3,462,745</u>	<u>\$ 2,594,269</u>

See notes and independent accountants' review report.

BENNETT PAVING, INC.
Combined Statements of Cash Flows
For the Years Ended December 31, 2023 and 2022
(unaudited)

	<u>2023</u>	<u>2022</u>
Cash flows from operating activities:		
Net income	\$ 3,462,745	\$ 2,594,269
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	871,398	653,829
Bad debt expense	98,779	6,721
Changes in assets and liabilities:		
Accounts receivables	(433,394)	(164,356)
Unbilled revenue	122,561	(122,561)
Other assets	4,050	(3,550)
Deposit of un-started contract	(189,896)	189,896
Accounts payable	427,723	209,698
Accrued expenses	(191,927)	70,578
Other current liabilities	(48,766)	225,373
State income taxes payable	38,076	5,124
Net cash provided by operating activities	<u>4,161,349</u>	<u>3,665,021</u>
Cash flows from investing activities:		
Purchase of property and equipment	(3,629,196)	(2,858,746)
Proceeds from notes receivable	-	47,454
Net cash used in investing activities	<u>(3,629,196)</u>	<u>(2,811,292)</u>
Cash flows from financing activities:		
Proceeds received from notes payable	3,416,815	2,016,052
Distributions to stockholder and LLC member	(1,577,610)	(275,179)
Repayment of debt	(1,312,939)	(661,116)
Repayment of line of credit	-	(100,000)
Net cash provided by financing activities	<u>526,266</u>	<u>979,757</u>
Net change in cash	1,058,419	1,833,486
Cash and cash equivalents at beginning of year	2,331,364	497,878
Cash and cash equivalents at end of year	<u>\$ 3,389,783</u>	<u>\$ 2,331,364</u>
Income taxes paid	<u>\$ 5,124</u>	<u>\$ 4,958</u>
Interest paid	<u>\$ 217,734</u>	<u>\$ 92,589</u>

See notes and independent accountants' review report.

BENNETT PAVING, INC.
Notes to the Combined Financial Statements
December 31, 2023 and 2022
(unaudited)

Note 2 - Significant Accounting Policies (continued)

When payment of the retainage is contingent upon the Company fulfilling its obligations under the contract it does not meet the criteria to be included in retainage receivable and remains in the contract's respective unbilled revenue or contracts in process liability, determined on a contract-by-contract basis. Retainage for which the Company has an unconditional right to payment that is only subject to the passage of time are included in retainage receivable.

The Company provides an allowance for doubtful accounts, which is based upon a review of outstanding receivables, historical collection information and existing economic conditions. The allowance for doubtful accounts is the Company's best estimate of the amount of probable credit losses in our existing accounts receivable. Delinquent receivables are written off based on individual credit evaluation and specific circumstances of the customer. There was no allowance for doubtful accounts as of December 31, 2023 and 2022, respectively.

As of December 31, 2023 and 2022, accounts receivable consisted of the following:

	2023	2022
Accounts receivable	\$ 1,110,472	\$ 775,857
Allowance for doubtful accounts	-	-
Total	\$ <u>1,110,472</u>	\$ <u>775,857</u>

Revenue Recognition

The Company performs the following five steps on contracts with customers: (1) identify the contract(s) with a customer; (2) identify the performance obligations in the contract; (3) determine the transaction price; (4) allocate the transaction price to the performance obligations in the contract; and (5) recognize revenue when (or as) the entity satisfies a performance obligation.

Performance Obligations and Recognition Method

The Company evaluates whether two or more contracts should be combined and accounted for as one single performance obligation and whether a single contract should be accounted for as more than one performance obligation. A performance obligation is a contractual promise to transfer a distinct good or service to a customer. A contract's transaction price is allocated to each distinct performance obligation and recognized as revenue when, or as, the performance obligation is satisfied. The Company's evaluation requires significant judgment and the decision to combine a group of contracts or separate a contract into multiple performance obligations could change the amount of revenue and profit recorded in a given period. The majority of the Company's contracts have a single performance obligation, as the promise to transfer the individual goods or services is not separately identifiable from other promises in the contract and, therefore, is not distinct. However, occasionally the Company has contracts with multiple performance obligations.

For contracts with multiple performance obligations, the Company allocates the contract's transaction price to each performance obligation using the observable stand-alone selling price, if available, or alternatively the best estimate of the stand-alone selling price of each distinct performance obligation in the contract. The primary method used to estimate stand-alone selling price is the expected cost plus a margin approach for each performance obligation.

BENNETT PAVING, INC.
Notes to the Combined Financial Statements
December 31, 2023 and 2022
(unaudited)

Note 2 - Significant Accounting Policies (continued)

The Company's contracts may include retention provisions to provide assurance to customers that the Company will perform in accordance with the contract terms. The retention provisions are not considered a significant financing component. The balances billed but not paid by customers pursuant to these provisions generally become due upon completion and acceptance of the project by the customer. The Company has determined that there are no significant financing components included in construction contracts as of December 31, 2023 and 2022.

Contract Estimates including Claims, Unapproved Change Orders and Variable Consideration

Accounting for long-term contracts with customers involves the use of various techniques to estimate total transaction price, total estimated costs at completion, and progress toward satisfaction of performance obligations which are used to recognize revenue earned. Unforeseen events and circumstances can alter the estimate of the costs associated with a particular contract. Total estimated costs at completion, can be impacted by changes in productivity, scheduling, the unit cost of labor, subcontracts, materials, and equipment. Additionally, external factors such as weather, customer needs, customer delays in providing permits and approvals, labor availability, governmental regulation and politics may affect the progress of a project's completion, and thus the timing and amount of revenue recognition. To the extent that original cost estimates are modified, estimated costs to complete increase, delivery schedules are delayed, or progress under a contract is otherwise impeded, cash flow, revenue recognition, and profitability from a particular contract may be adversely affected.

The nature of the Company's contracts gives rise to several types of variable consideration, including contract modifications (unapproved change orders and claims), liquidated damages, performance bonuses, incentive fees, and other terms that can either increase or decrease the transaction price. Transaction price for contracts is required to include evaluation of variable consideration to which the Company has an enforceable right to compensation or obligation for a reduction (as for liquidated damages), which can result in increases or decreases to a contract's transaction price. The Company estimates variable consideration as the most likely amount to which it expects to be entitled. The Company includes variable consideration in the estimated transaction price to the extent it is probable that a significant reversal of cumulative revenue recognized will not occur when the uncertainty associated with the variable consideration is resolved. The estimates of variable consideration and determination of whether to include estimated amounts in the transaction price are based largely on an assessment of the anticipated performance and all information (historic, current, and forecasted) that is reasonably available to the Company. The effect of a change in variable consideration on the transaction price of a performance obligation is recognized as an adjustment to revenue on a cumulative catch-up basis.

Contract modifications can result from changes in contract specifications or requirements that either creates new or changes existing enforceable rights and obligations of the parties to the contract. The Company considers unapproved change orders to be contract modifications for which customers have agreed to changes in the scope of the contract but have not agreed to the price.

The Company considers claims to be contract modifications for which the Company has sought, or will seek, to collect from customers, or others, for customer-caused changes in contract specifications or design, or other customer-related causes of unanticipated additional contract costs on which there is no contractual agreement with the customer for changes in either the scope or price of the contract. Claims can also be caused by non-customer-caused changes, such as weather delays, work stoppages or other unanticipated events.

BENNETT PAVING, INC.
Notes to the Combined Financial Statements
December 31, 2023 and 2022
(unaudited)

Note 2 - Significant Accounting Policies (continued)

Property and Equipment

Property and equipment are stated at cost. Depreciation of property and equipment is determined by utilizing the straight-line method over the estimated useful lives of the respective classes of assets, which currently range from five (5) to thirty-nine (39) years.

Expenditures for maintenance and repairs are charged to expense as incurred. Major expenditures for additions, replacements and betterments are capitalized. When assets are sold, retired or fully depreciated the cost, reduced by the related amount of accumulated depreciation, is removed from the accounts and any resulting gain or loss is recognized as income or expense.

Long-lived assets, including property and equipment, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of an asset exceeds its estimated undiscounted future cash flows, an impairment charge is recognized to the extent the carrying amount of the asset exceeds its fair value. Fixed assets held for sale, if any, would be separately presented in the balance sheet and reported at the lower of the carrying amount or fair value, less disposal costs. As of December 31, 2023 and 2022, there were no circumstances that indicated the need to adjust the carrying value of any property or equipment, nor did the Company have any fixed assets held for sale.

Income Taxes

The Company has elected to be taxed under the provisions of Subchapter S of the Internal Revenue Code. Under those provisions, the Company does not pay federal corporate income taxes on its taxable income. Instead, the stockholder is liable for individual federal income taxes on his taxable net income.

The Company regularly assesses uncertain tax positions in each of the tax jurisdictions in which it has operations and accounts for the related financial statement implications. Unrecognized tax benefits are reported using the two-step approach under which tax effects of a position are recognized only if it is "more-likely-than-not" to be sustained and the amount of the tax benefit recognized is equal to the largest tax benefit that is greater than fifty percent likely of being realized upon ultimate settlement of the tax position. Determining the appropriate level of unrecognized tax benefits requires the Company to exercise judgment regarding the uncertain application of tax law. The amount of unrecognized tax benefits is adjusted when information becomes available or when an event occurs indicating a change is appropriate. Future changes in unrecognized tax benefits requirements could have a material impact on the results of operations.

The Company is subject to Texas franchise tax. The tax is based on taxable margin, as defined under the law, rather than being based on federal taxable income. For the years ended December 31, 2023 and 2022, the Company has recorded Texas franchise tax expense of \$43,200 and \$10,082, respectively. As of December 31, 2023 and 2022, Texas franchise tax payable was \$43,200 and \$5,124, respectively, which is recorded in State income tax payable in the accompanying balance sheets.

BENNETT PAVING, INC.
Notes to the Combined Financial Statements
December 31, 2023 and 2022
(unaudited)

Note 3 – Property and Equipment

At December 31, 2023 and 2022, property and equipment consisted of the following:

	2023	2022
Furniture & Equipment	\$ 4,872,098	\$ 4,225,209
Vehicles	5,993,345	3,011,038
Land	345,502	345,502
Building	87,039	87,039
Storage	24,458	24,458
Leasehold Improvements	18,430	18,430
Subtotal	11,340,872	7,711,676
Accumulated depreciation	(4,695,054)	(3,823,656)
Total	\$ 6,645,818	\$ 3,888,020

Depreciation expense for the years ended December 31, 2023 and 2022, was \$871,398 and \$653,829, respectively.

Note 4 – Unbilled Revenue and Contracts in Progress Liabilities

Unbilled revenue and contracts in progress liabilities consists of the following as of December 31, 2023 and 2022:

	2023	2022
Costs incurred on uncompleted contracts	\$ -	\$ 1,039,286
Estimated earnings thereon	-	481,021
Subtotal	-	1,520,307
Billings to date	-	(1,397,746)
Unbilled revenue	\$ -	\$ 122,561

There was no unbilled revenue and contracts in progress liabilities as of December 31, 2023.

Note 5 – Backlog

The following schedule summarizes the changes in backlog on contracts during the year ended December 31, 2023. Backlog represents the amount of revenue the Company expects to realize from work to be performed on uncompleted contracts in progress at year end from contractual agreements on which work has not yet begun.

Backlog balance at December 31, 2022	\$ 554,332
New contracts and additions	34,031,750
Less: contract revenue earned	(34,586,082)
Backlog balance at December 31, 2023	\$ -

The Company has entered into additional contracts for \$24,155,168, during the period January 1, 2024 through June 10, 2024, the date the combined financial statements were available to be issued.

BENNETT PAVING, INC.
Notes to the Combined Financial Statements
December 31, 2023 and 2022
(unaudited)

Note 8 – Commitments and Contingencies

Litigation

The Company from time to time may be involved in litigation relating to claims arising out of its ordinary course of business. Management believes that there are no claims or actions pending or threatened against the Company, the ultimate disposition of which would have a material impact on the Company's financial position, results of operations or cash flows.

Risk Management

The Company is subject to various claims and liabilities in the ordinary course of business. The Company maintains various forms of insurance that the Company's management believes are adequate to reduce the exposure to these risks to an acceptable level.

Note 9 – Concentrations

The Company has a variety of customers, and in any given year a single customer can account for a significant portion of revenues. As of and for the year ended December 31, 2023, revenue and accounts receivable, including retainage, in excess of 10% as follows:

	Percentage of Revenues	Percentage of Accounts Receivable
Customer A	44%	6%
Customer B	10%	0%
Customer C	6%	2%
Customer D	4%	6%
Customer E	0%	0%
Customer F	1%	44%
Customer G	1%	30%
Customer H	1%	0%
Customer I	0%	0%

BENNETT PAVING, INC.
Schedule I - Analysis of Contracts in Progress
12/31/2023
(unaudited)

There are no contracts in progress as of December 31, 2023.

The accompanying notes to the financial statements are an integral part of these financial statements.

BENNETT PAVING, INC.
Schedule III - Combining Statement of Operations
For the Year Ended December 31, 2023
(unaudited)

	Bennett Paving, Inc.	Bennett Brothers Enterprises, LLC	Eliminations	Combined 2023
Contract Revenues	\$ 34,568,082	\$ 100,379	\$ (100,379)	\$ 34,568,082
Cost of sales				
Materials	7,919,762	-	-	7,919,762
Transportation and equipment related	1,998,821	-	-	1,998,821
Payroll and contractors	17,344,844	-	-	17,344,844
Total Cost of sales	<u>27,263,427</u>	<u>-</u>	<u>-</u>	<u>27,263,427</u>
Gross profit	7,304,655	100,379	(100,379)	7,304,655
Operating expenses				
Insurance and benefits expense	950,013	-	-	950,013
Salaries - officers	612,594	-	-	612,594
Salaries - other	578,152	-	-	578,152
Office expense	130,348	-	-	130,348
Taxes and licenses	157,513	-	-	157,513
Depreciation expense	868,497	2,901	-	871,398
Bad debt expense	98,779	-	-	98,779
Professional fees	85,983	-	-	85,983
Telephone	36,054	-	-	36,054
Advertising and business promotion	43,780	-	-	43,780
Repairs and maintenance	23,457	-	-	23,457
Utilities	21,801	-	-	21,801
Uniforms	15,987	-	-	15,987
Information technology consulting	5,837	-	-	5,837
Miscellaneous expenses	109,806	-	(100,379)	9,427
Total general and administrative expenses	<u>3,738,601</u>	<u>2,901</u>	<u>(100,379)</u>	<u>3,641,123</u>
Income from operations	<u>3,566,054</u>	<u>97,478</u>	<u>-</u>	<u>3,663,532</u>
Other income (expense)				
Interest income	-	-	-	-
Interest expense	(208,141)	(9,593)	-	(217,734)
Other sales	60,147	-	-	60,147
Total other expense, net	<u>(147,994)</u>	<u>(9,593)</u>	<u>-</u>	<u>(157,587)</u>
Income before income taxes	3,418,060	87,885	-	3,505,945
Income tax expense	<u>43,200</u>	<u>-</u>	<u>-</u>	<u>43,200</u>
Net income	<u>\$ 3,374,860</u>	<u>\$ 87,885</u>	<u>\$ -</u>	<u>\$ 3,462,745</u>

See notes and independent accountants' review report.



Item Cover Page

CITY COUNCIL AGENDA ITEM REPORT

DATE:	April 17, 2025
SUBMITTED BY:	Councilor Benefield, City Council
SUBJECT:	Discussion, consideration, and possible action to approve an alternate art piece for Keep Lago Vista Beautiful.
BACKGROUND:	During a previous Council meeting, the City approved a specific art piece for the Lago Vista Public Library, sponsored by Keep Lago Vista Beautiful (KLVB). Unfortunately, the originally approved piece became unavailable. KLVb has since sourced an alternative bronze sculpture depicting two children reading on a log, which aligns with the original theme and purpose of the project. This replacement statue has already been ordered to meet the installation schedule. KLVb now seeks Council's formal approval of the alternate to proceed with this revised piece. If not approved, the artwork will be returned.
FINANCIAL IMPACT:	n/a
RECOMMENDATION:	Recommended: Approve the replacement art piece for installation at the Lago Vista Public Library to avoid delays and allow KLVb to proceed with the project as planned.
ATTACHMENTS:	KLVB_Art_Piece_Reapproval_Request.pdf

City Council Agenda Item: KLVB Art Piece Re-Approval

Submitted by: Councilor Benefield

Agenda Item: Discussion, Consideration, and Possible Action to Re-Approve Updated Art Piece for Keep Lago Vista Beautiful

Background:

BACKGROUND:

During a previous Council meeting, the City approved a specific art piece for the Lago Vista Public Library, sponsored by Keep Lago Vista Beautiful (KLVB). Unfortunately, the originally approved piece became unavailable. KLVB has since sourced an alternative bronze sculpture depicting two children reading on a log, which aligns with the original theme and purpose of the project. This replacement statue has already been ordered to meet the installation schedule. KLVB now seeks Council's formal re-approval to proceed with this revised piece. If not approved, the artwork will be returned.

Recommendation:

RECOMMENDATION:

Approve the replacement art piece for installation at the Lago Vista Public Library to avoid delays and allow KLVB to proceed with the project as planned.





Item Cover Page

CITY COUNCIL AGENDA ITEM REPORT

DATE: April 17, 2025

SUBMITTED BY: Paul Prince, City Council

SUBJECT: Discussion, consideration and possible action on approving the City Facility Naming/Renaming application submitted by the Friends of the Library to re-name the greenspace as "Friends of the Library Park".

BACKGROUND: This agenda item was originally presented at the March, 20th City Council meeting. The Council voted to table this item until the April 17th City Council meeting so the Friends of the Library and KLV B could discuss this matter in greater detail.

FINDINGS: Once a name has been agreed upon, the City Council can direct staff to create a resolution to formalize the renaming of the greenspace.

FINANCIAL IMPACT: n/a

ATTACHMENTS:
[FOL_name_application.pdf](#)

Appendix B



CITY OF
LAGO VISTA
TEXAS

City Facility Naming/Renaming Application

Applicant Information

Full Name: Lago Vista Friends of the Library Date: March 14, 2025
Last First M.I.

Address: 5803 Thunderbird, Ste 40
Street Address Apartment/Unit #
Lago Vista Texas 78645
City State ZIP Code

Phone: _____ Email: _____

Proposed Name: Friends of the Library Park

Current Name: _____

Request type

Naming of a newly constructed facility	YES ☒	NO ☐
Naming of an existing facility previously unnamed	YES ☐	NO ☒
Renaming of an existing facility ☐	YES ☐	NO ☒
Renaming of an existing program or activity	YES ☐	NO ☒

Facility Type to be Named or Renamed

Building or facility:	YES ☐	NO ☒
Park, playground, trail or recreation space:	YES ☒	NO ☐

:

Other facility, program or activity: _____

Lago Vista Naming Application
Page 2

Please complete in as much detail as possible the following questions.

Background Information – Why are you seeking this name or name change. (Explain)

Lago Vista Friends of the Library, at the behest of Keep Lago Vista Beautiful, worked with a local contractor, civic groups + volunteers to develop the greenspace between library + city hall into a park.

Civic Involvement or Significant Contributions (Explain)

Friends of the Library has invested \$14,188 to date on the park, along with significant investment of time + effort to plan, coordinate + execute the project

Connection to the City staff or City Council, if any. (Explain)

FOL + KLVB got park plan approved by Library Advisory Board + City Council prior to development.

Reason for Nomination (**Required**) Please be specific. Feel free to attach separate supporting information.

The park is intended to be an outdoor extension of the Library + as such "Library" should be included in the name. "Friends of the Library" will recognize the FOL's contributions in making the park a reality.

Additional Comments (Additional information may be attached).

Signature: _____ Date: _____

For Official Use

Date Received by City Manager's Office _____

Name of Recipient _____

Item Cover Page

CITY COUNCIL AGENDA ITEM REPORT

DATE: April 17, 2025

SUBMITTED BY: Councilor Roberts, City Council

SUBJECT: Discussion, consideration and possible action on the development of a policy framework for reviewing and evaluating Dormant Planned Development Districts (PDDs).

BACKGROUND: Throughout the years, the City of Lago Vista has approved multiple Planned Development Districts (PDDs), some of which have remained inactive or undeveloped for an extended period. These "dormant" entitlements raise questions regarding land use alignment, infrastructure commitments, vested rights, community impact, and the City's long-range planning goals.

At the direction of the City Council, staff has prepared, and attached a list of these dormant PDDs for potential review. The purpose of this agenda item is to facilitate an open session discussion, consistent with the Texas Open Meetings Act (TOMA), to allow Council to explore policy-level considerations related to:

- Criteria for identifying and classifying PDDs as "dormant"
- Potential approaches for engagement with property owners
- Triggers or thresholds for initiating reconsideration or rezoning
- Legal boundaries and risks related to vested rights and takings
- Process and structure for reviewing dormant PDDs one-by-one

While sensitive legal matters may arise during this conversation, the City Attorney has advised that general policy deliberation should occur in open session. If needed, Council may retire into Executive Session (ES) mid-topic to address specific legal concerns, with an ES agenda item already

posted for that purpose.

FINDINGS:

- Several PDDs previously approved by the City remain inactive, potentially affecting land use planning, public expectations, and development patterns.
- No current policy exists for evaluating or managing dormant PDDs systematically.
- Establishing a framework for identifying, reviewing, and addressing dormant PDDs will support transparency, orderly growth, and legal defensibility.
- Legal counsel has indicated that while policy should be discussed in open session, Executive Session may be warranted for specific legal matters.
- Council has requested this item be placed on the agenda to allow open dialogue and potential direction to staff regarding next steps, including further legal or planning analysis.

Attached is a list of potentially dormant PDD's and a map showing each one's location.

FINANCIAL IMPACT:

n/a

RECOMMENDATION:

Staff requests input and direction from the City Council regarding potential policy development and process design for evaluating dormant PDDs.

ATTACHMENTS:

[Dormant Entitlements.pdf](#)

[Dormant_Entitlements_Map_4_10_25.pdf](#)

Potentially Dormant or Partially Dormant Entitlements

Description	Latest Ordinance Date	Last Activity Date	Last Activity Description	Current Zoning	Ordinance Number	FLUM	Address or Location	Maximum Number of Dwellings
Lot 8 - The Island	4/27/1998	4/27/1998	Original LV Zoning Ordinance Designation	R-4 / R1S (15C)	98-04-27-03	POA Park	3904 Lake Park Cove ¹	n/a
Emerald Pointe subdivision	5/20/2010	7/6/2023	Vacate access and public utility easements	R-1S (18C)	10-05-20-02	City Park	Patriot Drive north of Azure Avenue	alleged plans pending ²
Highland Lake Drive at Canary Way	10/21/2021	10/21/2021	Zoning Change (no legal access to property)	R-1S (18C)	21-10-21-02	Low-Density Residential	Highland Lake Drive ³	no exist. subdivision
Common Area: Village III at Highland Lake	6/15/2000	6/15/2000	CR approval without required development plan	CR	00-06-15-02	Low-Density Residential	Waterside Drive at Santa Anna Cove	no exist. subdivision or approval
Former England Property	2/6/2020	2/6/2020	Zoning Change (no subsequent subdivision)	R-1S (18A)	20-02-06-02	Varies ⁴	5315 Lohman Ford Road	no exist. subdivision
Former Highland Lakes Golf Course	4/27/1998	4/27/1998	Original LV Zoning Ordinance Designation	G-1	98-04-27-03	POA Park	20406 Earhart Lane	0
Former Executive Golf Course	4/27/1998	10/13/2022	Preliminary Plat Approval (19 residential lots)	G-1	98-04-27-03	POA Park	8116 Chestnut Cove	19 (vested prior to ordinance amendment)
Marshalls Vista / Shoreline Ranch	10/18/2007	8/3/2023	Failed FLUM Amendment Request	PDD	07-10-18-01	Varies ⁵	Shoreline Ranch Drive east of LVHS	568 (single-family & multifamily)
Montechino (currently undergoing re-branding effort)	10/17/2019	8/10/2023	Preliminary Plat approved	PDD	15-11-19-01 ⁶	Varies ⁷	SE Corner of Lohman Ford Road at Shoreline Ranch Drive	195 single-family lots + 2 commercial lots + retirement center ⁴
The Falls	6/16/2022	6/16/2022	Zoning Change	PDD	22-06-16-02	Varies ⁸	SE Corner of Lohman Ford Road at Sylvester Ford Road	729 + 200 townhomes + 55 acres of hotel / mixed use
Vista Villas	11/18/2004	8/28/2023	Application (Pool renewal)	PDD	04-11-18-01	Medium-Density Residential	2006 American Drive (Amenity Center)	62 (18 built) + amenity center (built)
Lohman Ford Heights / 6601 Panorama Ridge PDD ⁹	9/6/2018	11/29/2023	Site Development Plan Review for expansion	C-2	18-09-06-03	Regional Retail/Office/Commercial	6706 Lohman Ford Road	n/a
Highland Lakes Clubhouse Expansion PDD	9/19/2013	8/13/2021	Failed Fire Inspection (Grill at Highland Lake)	PDD	13-09-19-01	Regional Retail/Office/Commercial	20552 Highland Lake Drive	add hotel, pavilion, and new cart barn
Marshalls Harbor (Resort Hotel/Commercial only)	6/8/2006	2/6/2020	Failed Zoning Change Request	PDD	06-06-08-02	Rural Residential	4800-5100 Shoreline Ranch Road	min. 100 guest rooms / amenities + 1,000 sf conference center
Marshalls Harbor (condominium only)	11/3/2005	2/6/2020	Failed Zoning Change Request	PDD	05-11-03-01	Rural Residential	5424 Mira Lago Drive (Lot 49A before resubdivision)	56 (condominium units)
Marshalls Harbor (marina only)	1/18/2001	2/6/2020	Failed Zoning Change Request	PDD	01-01-18-01	Rural Residential	5424 Mira Lago Drive (Lot 49B before resubdivision)	"private" marina
Peninsula	8/21/2008	9/1/2022	Withdrawn Application	PDD	08-08-21-02	Low-Density Residential	1900 American Drive	225 (condominium units) + marina / amenities
Turnback Ranch	9/21/2023	current	PDD Amendment	PDD	23-09-21-01	Varies ¹⁰	7602 Bar-K Ranch Road (Dodge Trail Extension)	349
Tusikanni / Firefly Cove	9/2/2021	current	Subdivision Construction Plans	PDD	21-09-02-01	Varies ¹¹	19304 Treat Trail	325 (includes 45 estate lots) + amenities
Lakeshore Boulevard PDD	4/16/2020	4/16/2020	Zoning Change (waterfront access issues)	PDD	20-04-16-02	Rural Residential	5619 Lakeshore Boulevard	70 (condominium units)
The Majestic	6/19/2008	6/19/2008	C-1 to PDD (housing with commercial outparcel)	PDD	08-06-19-01	POA Park	Boggy Ford Road west of Poe Cove	78 + 1 commercial lot
Villas at Keegans Crossing	6/19/2006	6/19/2006	Original Approval	PDD	08-06-19-02	Regional Retail/Office/Commercial	Lohman Ford Road north of Rancho Cielo	154 +5 commerical Lots

¹Lot 8 of the Island was omitted from the PDD and is being marketed along with this single-family residential lot as alledged access.

²Application to vacate existing subdivision was never completed, but the existing final plat was approved for 182 single-family lots.

³The unimproved dedication referred to as Canary Way on an existing plat does not meet the subdivision regulations or minimum industry standards for safety and additional property is required for legal access.

⁴Regional Retail/Office/Commercial; Neighborhood Retail/Office/Commercial; Low-Density Residential

⁵Rural Residentail; POA Park

⁶Ordinance 19-03-07-01 and 19-10-17-01 displaced 67 single-family lots and 2 commerical lots, but added 130 assisted living apartments, 100 independent living townhomes, and a new amenity center.

⁷Low-Density Residential; Regional Retail/Office/Commercial

⁸Low-Density Residential; Medium-Density Residential; Regional Retail/Office/Commercial

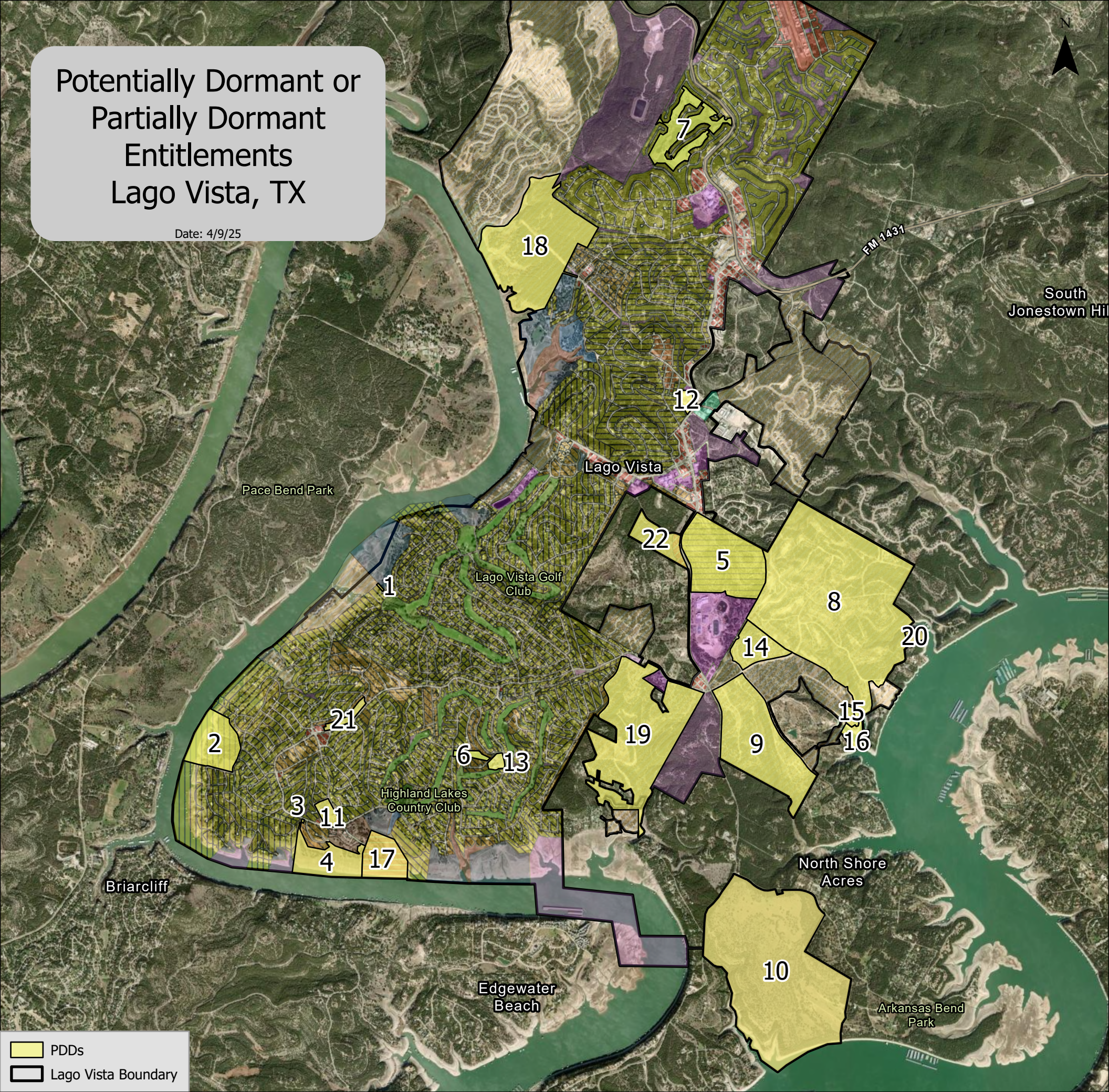
⁹Because of the multiple and inconsistent addresses, the PDD approved in Ordinance No. 96-06-20-01 was inadvertently included despite being displaced by Vistago Print (C-2) in Ordinance No. 18-09-06-03.

¹⁰High-Density Residential; Regional Retail/Office/Commercial; City Park

¹¹High-Density Residential; Low-Density Residential; Mixed-Use; City Park

Potentially Dormant or Partially Dormant Entitlements
Lago Vista, TX

Date: 4/9/25



Potentially Dormant or Partially Dormant Entitlements									
PDD #	Description	Latest Ordinance Date	Last Activity Date	Last Activity Description	Current Zoning	Ordinance Number	FLUM	Address or Location	Maximum Number of Dwellings
1	Lot 8 - The Island	4/27/1998	4/27/1998	Original LV Zoning Ordinance Designation	R-4 / R1S (15C)	98-04-27-03	POA Park	3904 Lake Park Cove ¹	n/a
2	Emerald Pointe subdivision	5/20/2010	7/6/2023	Vacate access and public utility easements	R-1S (18C)	10-05-20-02	City Park	Patriot Drive north of Azure Avenue	alleged plans pending ²
3	Highland Lake Drive at Canary Way	10/21/2021	10/21/2021	Zoning Change (no legal access to property)	R-1S (18C)	21-10-21-02	Low-Density Residential	Highland Lake Drive ³	no exist. subdivision
4	Common Area: Village III at Highland Lake	6/15/2000	6/15/2000	CR approval without required development plan	CR	00-06-15-02	Low-Density Residential	Waterside Drive at Santa Anna Cove	no exist. subdivision or approval
5	Former England Property	2/6/2020	2/6/2020	Zoning Change (no subsequent subdivision)	R-1S (18A)	20-02-06-02	Varies ⁴	5315 Lohman Ford Road	no exist. subdivision
6	Former Highland Lakes Golf Course	4/27/1998	4/27/1998	Original LV Zoning Ordinance Designation	G-1	98-04-27-03	POA Park	20406 Earhart Lane	0
7	Former Executive Golf Course	4/27/1998	10/13/2022	Preliminary Plat Approval (19 residential lots)	G-1	98-04-27-03	POA Park	8116 Chestnut Cove	19 (vested prior to ordinance amendment)
8	Marshall's Vista / Shoreline Ranch	10/18/2007	8/3/2023	Failed FLUM Amendment Request	PDD	07-10-18-01	Varies ⁵	Shoreline Ranch Drive east of LVHS	568 (single-family & multifamily)
9	Montecchio (currently undergoing re-branding effort)	10/17/2019	8/10/2023	Preliminary Plat approved	PDD	15-11-19-01 ⁶	Varies ⁷	SE Corner of Lohman Ford Road at Shoreline Ranch Drive	195 single-family lots + 2 commercial lots + retirement center ⁴
10	The Falls	6/16/2022	6/16/2022	Zoning Change	PDD	22-06-16-02	Varies ⁸	SE Corner of Lohman Ford Road at Sylvester Ford Road	729 + 200 townhomes + 55 acres of hotel / mixed use
11	Vista Villas	11/18/2004	8/28/2023	Application (Pool renewal)	PDD	04-11-18-01	Medium-Density Residential	2006 American Drive (Amenity Center)	62 (18 built) + amenity center (built)
12	Lohman Ford Heights / 6601 Panorama Ridge PDD ⁹	9/6/2018	11/29/2023	Site Development Plan Review for expansion	C-2	18-09-06-03	Regional Retail/Office/Commercial	6706 Lohman Ford Road	n/a
13	Highland Lakes Clubhouse Expansion PDD	9/19/2013	8/13/2021	Failed Fire Inspection (Grill at Highland Lake)	PDD	13-09-19-01	Regional Retail/Office/Commercial	20552 Highland Lake Drive	add hotel, pavilion, and new cart barn
14	Marshall's Harbor (Resort Hotel/Commercial only)	6/8/2006	2/6/2020	Failed Zoning Change Request	PDD	06-06-08-02	Rural Residential	4800-5100 Shoreline Ranch Road	min. 100 guest rooms / amenities + 1,000 sf conference center
15	Marshall's Harbor (condominium only)	11/3/2005	2/6/2020	Failed Zoning Change Request	PDD	05-11-03-01	Rural Residential	5424 Mira Lago Drive (Lot 49A before resubdivision)	56 (condominium units)
16	Marshall's Harbor (marina only)	1/18/2001	2/6/2020	Failed Zoning Change Request	PDD	01-01-18-01	Rural Residential	5424 Mira Lago Drive (Lot 49B before resubdivision)	"private" marina
17	Peninsula	8/21/2008	9/1/2022	Withdrawn Application	PDD	08-08-21-02	Low-Density Residential	1900 American Drive	225 (condominium units) + marina / amenities
18	Turnback Ranch	9/21/2023	current	PDD Amendment	PDD	23-09-21-01	Varies ¹⁰	7602 Bar-K Ranch Road (Dodge Trail Extension)	349
19	Tusikanni / Firefly Cove	9/2/2021	current	Subdivision Construction Plans	PDD	21-09-02-01	Varies ¹¹	19304 Treat Trail	325 (includes 45 estate lots) + amenities
20	Lakeshore Boulevard PDD	4/16/2020	4/16/2020	Zoning Change (waterfront access issues)	PDD	20-04-16-02	Rural Residential	5619 Lakeshore Boulevard	70 (condominium units)
21	The Majestic	6/19/2008	6/19/2008	C-1 to PDD (housing with commercial outparcel)	PDD	08-06-19-01	POA Park	Boggy Ford Road west of Poe Cove	78 + 1 commercial lot
22	Villas at Keegans Crossing	6/19/2006	6/19/2006	Original Approval	PDD	08-06-19-02	Regional Retail/Office/Commercial	Lohman Ford Road north of Rancho Cielo	154 +5 commercial Lots



Item Cover Page

CITY COUNCIL AGENDA ITEM REPORT

DATE: April 17, 2025

SUBMITTED BY: Gary Bosherars, Police Department

SUBJECT: Discussion, consideration, and possible action on **Ordinance No. 25-04-17-02** amending the speed limit on Lohman Ford Rd.

BACKGROUND: At the April 3, 2025 meeting of the City Council, after discussion on speed limits on Lohman Ford Road, the City Council expressed their desire to amend the speed limit on Lohman Ford Road to 45 miles per hour (MPH), maintaining a section of a 35 MPH speed limit that is currently in place near the intersection of Lohman Ford Road and FM 1431.

FINDINGS: The attached ordinance and exhibit amends the City of Lago Vista City Code to correspond with the speed limits which were requested by the City Council.

FINANCIAL IMPACT: Minor cost for changing out speed limit signs.

RECOMMENDATION: Approve Ordinance No. 25-04-17-02 as presented.

ATTACHMENTS:
[Lohman Speed Ordinance.pdf](#)
[Lohman Ford Exhibit A Red Line.pdf](#)
[Lohman Ford Exhibit B Clean.pdf](#)

ORDINANCE NO. 25-04-17-0 🍌

AN ORDINANCE OF THE CITY COUNCIL OF LAGO VISTA, TEXAS, AMENDING SECTIONS 12.711 OF CHAPTER 12 OF THE LAGO VISTA CODE OF ORDINANCES REGARDING THE MOTOR VEHICLE SPEED LIMIT ON BOGGY FORD FROM ITS INTERSECTION WITH AMERICAN DRIVE TO HIGHLAND LAKE DRIVE WITHIN THE CORPORATE LIMITS OF THE CITY OF LAGO VISTA, TEXAS; AND PROVIDING FOR THE FOLLOWING: SAVINGS, SEVERABILITY, REPEALER, EFFECTIVE DATE, AND PROPER NOTICE AND MEETING.

WHEREAS, Texas Transportation Code Section 545.356 authorizes the City Council to designate speed limits and zones on public streets, highways, and thoroughfares within the corporate limits of the City; and

WHEREAS, Texas Transportation Code Section 545.356 (b-1) authorizes the governing body of a municipality, based on the results of an engineering and traffic investigation to declare a speed limit of not less than 25 miles per hour on a highway or street which is open to the public for vehicular traffic that is not an officially designated or marked highway or roadway of the state highway system, if the governing body determines that the prima facie speed limit on the highway or street is unreasonable or unsafe; and

WHEREAS, the City Council believes it would serve the interests of the public health, safety, and welfare to establish a speed zone with a maximum speed limit of forty-five (45) miles per hour on Lohman Forward Road from it's intersection with Northland Drive and proceeding south; and

WHEREAS, the City Council seeks to provide for the enforcement of its municipal ordinances in order to protect the public health, safety, and welfare; and

WHEREAS, the City Council desires to amend the Lago Vista Code of Ordinances as described below.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAGO VISTA, TEXAS, THAT:

SECTION 1. FINDINGS OF FACT. All of the above recitals are hereby found to be true and correct legislative and factual findings of the City Council and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

SECTION 2. AMENDMENT. The City Council of the City of Lago Vista, Texas does hereby amend Chapter 12 Section 12.710 of the Lago Vista Code of Ordinances as shown in **Exhibit "A,"** and **Exhibit "B."**

SECTION 3. SAVINGS. The repeal of any ordinance or part of ordinances effectuated

by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as effecting any rights of the City under any section or provisions of any ordinances at the time of passage of this Ordinance.

SECTION 4. SEVERABILITY. Should any sentence, paragraph, subdivision, clause, phrase, or section of this Ordinance be adjusted or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of this Ordinance in whole or any part of provision thereof, other than the part so declared to be invalid, illegal, or unconstitutional.

SECTION 5. REPEALER. The provisions of this Ordinance shall be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent or in conflict with any of the provisions of this Ordinance are hereby expressly repealed to the extent that such inconsistency is apparent. This Ordinance shall not be construed to require or allow any act that is prohibited by any other ordinance.

SECTION 6. EFFECTIVE DATE. This Ordinance shall take effect immediately from and after its passage and publication as may be required by law.

SECTION 7. PROPER NOTICE AND MEETING. It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the *Texas Government Code*.

PASSED AND APPROVED this _____ day of _____ 2025.

Kevin Sullivan, Mayor

ATTEST:

Maria Franco, City Secretary

On a motion by Councilman _____, seconded by Councilman _____, the above and foregoing ordinance was passed and approved.

EXHIBIT A

Sec 12.710 Lohman Ford

- (a) It is hereby determined upon the basis of a traffic investigation that the prima facie maximum speed limit of 35 m.p.h. on Lohman Ford Road from the intersection of FM 1431 and Lohman Ford Road and proceeding along Lohman Ford Road in a southerly direction ~~for a distance of 1,650 linear feet to the intersection of Northland Dr.~~; which prima facie maximum speed limit shall be effective at all times and signs will be erected giving notice of the maximum speed limit so declared to wit.
- ~~(b)~~ The following street is identified as having a 35 m.p.h. maximum speed limit: Lohman Ford Road beginning at the intersection of FM 1431 and Lohman Ford Road and proceeding along Lohman Ford Road in a southerly direction ~~for a distance of 1,650 linear feet as shown on Exhibit "A" to the intersection of Northland Dr.~~
- ~~(c)~~ ~~It is hereby determined upon the basis of a traffic investigation that the prima facie maximum speed limit of 45 m.p.h. on Lohman Ford Road from the intersection of Lohman Ford Road and Northland Dr. and proceeding along Lohman Ford Road in a southerly direction to the City Limits of the City of Lago Vista; which prima facie maximum speed limit shall be effective at all times and signs will be erected giving notice of the maximum speed limit so declared to wit.~~
- ~~(b)~~(d) The following street is identified as having a 45 m.p.h. maximum speed limit: Lohman Ford Road beginning at the intersection of Lohman Ford Road and Northland Dr. and proceeding along Lohman Ford Road in a southerly direction to the City Limits of the City of Lago Vista.
- ~~(c)~~(e) All of the streets of this city, and all portions of any such streets, are hereby declared to be public streets and that the driving or operating of any motor vehicle on or along any portion of any street of this city at a rate of speed that is greater than the maximum rate of speed for said portion of said street, as fixed by this article shall be guilty of a misdemeanor, which is named "The Offense of Speeding," and that the said offense is punishable by fine in accordance with the general penalty provision set forth in Section 1.109 of this code. That the use of the word "speeding" shall be sufficient to designate the said offense, and shall mean that a motor vehicle has been driven upon a public street at a greater rate of speed than that fixed by city ordinance for the street and for the zone thereof, that such motor vehicle was so being driven upon, if zoned.
- ~~(d)~~(f) In prosecutions under this article, for the offense of speeding, the complaint, if in other respects sufficient in form, shall as to the portion thereof seeking to

acknowledge the offense, be sufficient if it in substance alleges that the defendant did while driving a motor vehicle in said city commit the offense of “speeding.”

EXHIBIT B

Sec 12.710 Lohman Ford

- (a) It is hereby determined upon the basis of a traffic investigation that the prima facie maximum speed limit of 35 m.p.h. on Lohman Ford Road from the intersection of FM 1431 and Lohman Ford Road and proceeding along Lohman Ford Road in a southerly direction to the intersection of Northland Dr.; which prima facie maximum speed limit shall be effective at all times and signs will be erected giving notice of the maximum speed limit so declared to wit.
- (b) The following street is identified as having a 35 m.p.h. maximum speed limit:
Lohman Ford Road beginning at the intersection of FM 1431 and Lohman Ford Road and proceeding along Lohman Ford Road in a southerly direction to the intersection of Northland Dr.
- (c) It is hereby determined upon the basis of a traffic investigation that the prima facie maximum speed limit of 45 m.p.h. on Lohman Ford Road from the intersection of Lohman Ford Road and Northland Dr. and proceeding along Lohman Ford Road in a southerly direction to the City Limits of the City of Lago Vista; which prima facie maximum speed limit shall be effective at all times and signs will be erected giving notice of the maximum speed limit so declared to wit.
- (d) The following street is identified as having a 45 m.p.h. maximum speed limit:
Lohman Ford Road beginning at the intersection of Lohman Ford Road and Northland Dr. and proceeding along Lohman Ford Road in a southerly direction to the City Limits of the City of Lago Vista.
- (e) All of the streets of this city, and all portions of any such streets, are hereby declared to be public streets and that the driving or operating of any motor vehicle on or along any portion of any street of this city at a rate of speed that is greater than the maximum rate of speed for said portion of said street, as fixed by this article shall be guilty of a misdemeanor, which is named "The Offense of Speeding," and that the said offense is punishable by fine in accordance with the general penalty provision set forth in Section 1.109 of this code. That the use of the word "speeding" shall be sufficient to designate the said offense, and shall mean that a motor vehicle has been driven upon a public street at a greater rate of speed than that fixed by city ordinance for the street and for the zone thereof, that such motor vehicle was so being driven upon, if zoned.
- (f) In prosecutions under this article, for the offense of speeding, the complaint, if in other respects sufficient in form, shall as to the portion thereof seeking to

acknowledge the offense, be sufficient if it in substance alleges that the defendant did while driving a motor vehicle in said city commit the offense of “speeding.”



Item Cover Page

CITY COUNCIL AGENDA ITEM REPORT

DATE: April 17, 2025

SUBMITTED BY: Gary Bosherars, Police Department

SUBJECT: Discussion, consideration, and possible action on **Ordinance No. 25-04-17-03** amending the speed limit on Boggy Ford Rd.

BACKGROUND: At the April 3, 2025 meeting of the City Council, after discussion on speed limits on Boggy Ford Road, the City Council expressed wanting to amend the speed limit on Boggy Ford Road to 35 miles per hour (MPH) for the entirety of the roadway. Currently, the speed limit changes from 35 MPH to 30 MPH near the intersection of Boggy Ford and American Dr.

FINDINGS: The attached ordinance and exhibit amends the City of Lago Vista City Code to correspond with the speed limits which were requested by the City Council.

FINANCIAL IMPACT: Minor cost for changing out speed limit signs.

RECOMMENDATION: Approve Ordinance No. 25-04-17-03 as presented.

ATTACHMENTS:
[Boggy Ford Speed Ordinance.pdf](#)
[Boggy Ford Exhibit A Red Line.pdf](#)
[Boggy Ford Exhibit B Clean.pdf](#)

ORDINANCE NO. 25-04-17-0 🍌

AN ORDINANCE OF THE CITY COUNCIL OF LAGO VISTA, TEXAS, AMENDING SECTIONS 12.711 OF CHAPTER 12 OF THE LAGO VISTA CODE OF ORDINANCES REGARDING THE MOTOR VEHICLE SPEED LIMIT ON BOGGY FORD FROM ITS INTERSECTION WITH AMERICAN DRIVE TO HIGHLAND LAKE DRIVE WITHIN THE CORPORATE LIMITS OF THE CITY OF LAGO VISTA, TEXAS; AND PROVIDING FOR THE FOLLOWING: SAVINGS, SEVERABILITY, REPEALER, EFFECTIVE DATE, AND PROPER NOTICE AND MEETING.

WHEREAS, Texas Transportation Code Section 545.356 authorizes the City Council to designate speed limits and zones on public streets, highways, and thoroughfares within the corporate limits of the City; and

WHEREAS, Texas Transportation Code Section 545.356 (b-1) authorizes the governing body of a municipality, based on the results of an engineering and traffic investigation to declare a speed limit of not less than 25 miles per hour on a highway or street which is open to the public for vehicular traffic that is not an officially designated or marked highway or roadway of the state highway system, if the governing body determines that the prima facie speed limit on the highway or street is unreasonable or unsafe; and

WHEREAS, the City Council believes it would serve the interests of the public health, safety, and welfare to establish a speed zone with a maximum speed limit of thirty-five (35) miles per hour on Boggy Ford Road from its intersection with American Drive to Highland Lakes Drive; and

WHEREAS, the City Council seeks to provide for the enforcement of its municipal ordinances in order to protect the public health, safety, and welfare; and

WHEREAS, the City Council desires to amend the Lago Vista Code of Ordinances as described below.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAGO VISTA, TEXAS, THAT:

SECTION 1. FINDINGS OF FACT. All of the above recitals are hereby found to be true and correct legislative and factual findings of the City Council and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

SECTION 2. AMENDMENT. The City Council of the City of Lago Vista, Texas does hereby amend Chapter 12 Section 12.711 of the Lago Vista Code of Ordinances as shown in **Exhibit “A,”** and **Exhibit “B.”**

SECTION 3. SAVINGS. The repeal of any ordinance or part of ordinances effectuated

by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as effecting any rights of the City under any section or provisions of any ordinances at the time of passage of this Ordinance.

SECTION 4. SEVERABILITY. Should any sentence, paragraph, subdivision, clause, phrase, or section of this Ordinance be adjusted or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of this Ordinance in whole or any part of provision thereof, other than the part so declared to be invalid, illegal, or unconstitutional.

SECTION 5. REPEALER. The provisions of this Ordinance shall be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent or in conflict with any of the provisions of this Ordinance are hereby expressly repealed to the extent that such inconsistency is apparent. This Ordinance shall not be construed to require or allow any act that is prohibited by any other ordinance.

SECTION 6. EFFECTIVE DATE. This Ordinance shall take effect immediately from and after its passage and publication as may be required by law.

SECTION 7. PROPER NOTICE AND MEETING. It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the *Texas Government Code*.

PASSED AND APPROVED this _____ day of _____ 2025.

Kevin Sullivan, Mayor

ATTEST:

Maria Franco, City Secretary

On a motion by Councilman _____, seconded by Councilman _____, the above and foregoing ordinance was passed and approved.

EXHIBIT A

Sec 12.711 Boggy Ford Road And Highland Lake Drive From American Drive On Boggy Ford Road To American Drive On Highland Lake Drive

(a) It is hereby determined upon the basis of a traffic investigation that the prima facie maximum speed limit of ~~35~~6 mph on Boggy Ford Road from the intersection of American Drive and Boggy Ford Road and proceeding along Boggy Ford Road in a southeasterly direction to Highland Lake Drive; which prima facie maximum speed limit shall be effective at all times and signs will be erected giving notice of the maximum speed limit so declared to wit.

~~(a)(b)~~ It is hereby determined upon the basis of a traffic investigation that the prima facie maximum speed limit of 30 MPH ~~and along~~ on Highland Lake Drive to its intersection with American Drive for a distance of about 5,668 linear feet; which prima facie maximum speed limit shall be effective at all times and signs will be erected giving notice of the maximum speed limit so declared to wit.

~~(b)(c)~~ The following street is identified as having a 30 mph maximum speed limit:

Boggy Ford Road from the intersection of American Drive and Boggy Ford Road and proceeding along Boggy Ford Road in a southeasterly direction to Highland Lake Drive and along Highland Lake Drive to its intersection with American Drive for a distance of about 5,668 linear feet as shown on Exhibit 1 to Ordinance 09-07-16-01.

~~(c)(d)~~ All of the streets of this city, and all portions of any such streets, are hereby declared to be public streets and that the driving or operating of any motor vehicle on or along any portion of any street of this city at a rate of speed that is greater than the maximum rate of speed for said portion of said street, as fixed by this article shall be guilty of a misdemeanor, which is named "the offense of speeding," and that the said offense is punishable by fine in any sum not to exceed two hundred dollars (\$200.00). That the use of the word speeding shall be sufficient to designate the said offense, and shall mean that a motor vehicle has been driven upon a public street at a greater rate of speed than that fixed by city ordinance for the street and for the zone thereof, that such motor vehicle was so being driven upon, if zoned.

~~(d)(e)~~ In prosecutions under this article, for the offense of speeding, the complaint, if in other respects sufficient in form, shall as to the portion thereof seeking to acknowledge the offense, be sufficient if it in substance alleges that the defendant did while driving a motor vehicle in said city commit the offense of speeding.

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EXHIBIT B

Sec 12.711 Boggy Ford Road And Highland Lake Drive From American Drive On Boggy Ford Road To American Drive On Highland Lake Drive

- (a) It is hereby determined upon the basis of a traffic investigation that the prima facie maximum speed limit of 35 mph on Boggy Ford Road from the intersection of American Drive and Boggy Ford Road and proceeding along Boggy Ford Road in a southeasterly direction to Highland Lake Drive; which prima facie maximum speed limit shall be effective at all times and signs will be erected giving notice of the maximum speed limit so declared to wit.
- (b) It is hereby determined upon the basis of a traffic investigation that the prima facie maximum speed limit of 30 MPH on Highland Lake Drive to its intersection with American Drive for a distance of about 5,668 linear feet; which prima facie maximum speed limit shall be effective at all times and signs will be erected giving notice of the maximum speed limit so declared to wit.
- (c) The following street is identified as having a 30 mph maximum speed limit:

Boggy Ford Road from the intersection of American Drive and Boggy Ford Road and proceeding along Boggy Ford Road in a southeasterly direction to Highland Lake Drive and along Highland Lake Drive to its intersection with American Drive for a distance of about 5,668 linear feet as shown on Exhibit 1 to Ordinance 09-07-16-01.
- (d) All of the streets of this city, and all portions of any such streets, are hereby declared to be public streets and that the driving or operating of any motor vehicle on or along any portion of any street of this city at a rate of speed that is greater than the maximum rate of speed for said portion of said street, as fixed by this article shall be guilty of a misdemeanor, which is named "the offense of speeding," and that the said offense is punishable by fine in any sum not to exceed two hundred dollars (\$200.00). That the use of the word speeding shall be sufficient to designate the said offense, and shall mean that a motor vehicle has been driven upon a public street at a greater rate of speed than that fixed by city ordinance for the street and for the zone thereof, that such motor vehicle was so being driven upon, if zoned.
- (e) In prosecutions under this article, for the offense of speeding, the complaint, if in other respects sufficient in form, shall as to the portion thereof seeking to acknowledge the offense, be sufficient if it in substance alleges that the defendant did while driving a motor vehicle in said city commit the offense of speeding.

Item Cover Page

CITY COUNCIL AGENDA ITEM REPORT

DATE: April 17, 2025

SUBMITTED BY: Councilor Benefield, City Council

SUBJECT: Discussion, consideration and possible action on approving the installation of a third stop sign at the intersection of Boggy Ford Rd, Highland Lakes Drive, and Emerald Drive.

BACKGROUND: The intersection of southbound Boggy Ford Road with Highland Lake Drive and Emerald Road currently lacks a stop sign for Boggy Ford traffic. Only Highland and Emerald traffic are currently controlled. This creates confusion, especially for park and lake visitors unfamiliar with the area, who often assume it is a 3-way stop. This has led to numerous near-miss accidents and raised safety concerns among residents.

A majority of residents favor raising the speed limit on Boggy Ford to 35 MPH, but several noted that without a stop sign at this intersection, higher speeds could result in dangerous roll-throughs and worsen safety issues. This ordinance proposes a 3-way stop to improve safety and clearly delineate where speed zones shift.

FINDINGS:

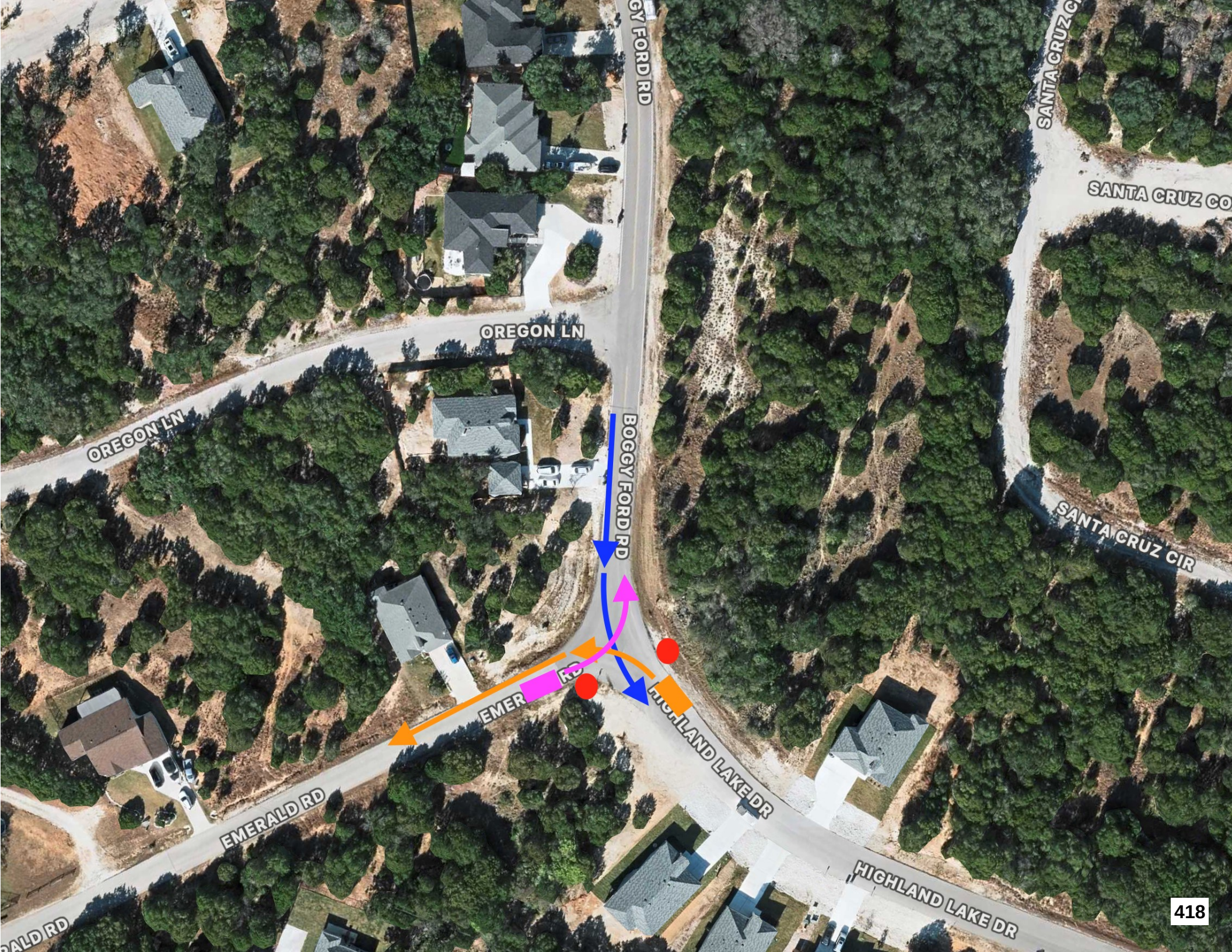
- The current intersection configuration causes driver confusion and contributes to unsafe traffic patterns.
- Visitors unfamiliar with the roadway assume a 3-way stop exists, leading to frequent near-miss incidents.
- Increasing the speed limit without intersection control increases the likelihood of accidents.
- A stop sign would provide a natural transition point between speed zones and calm traffic in a high-conflict area.

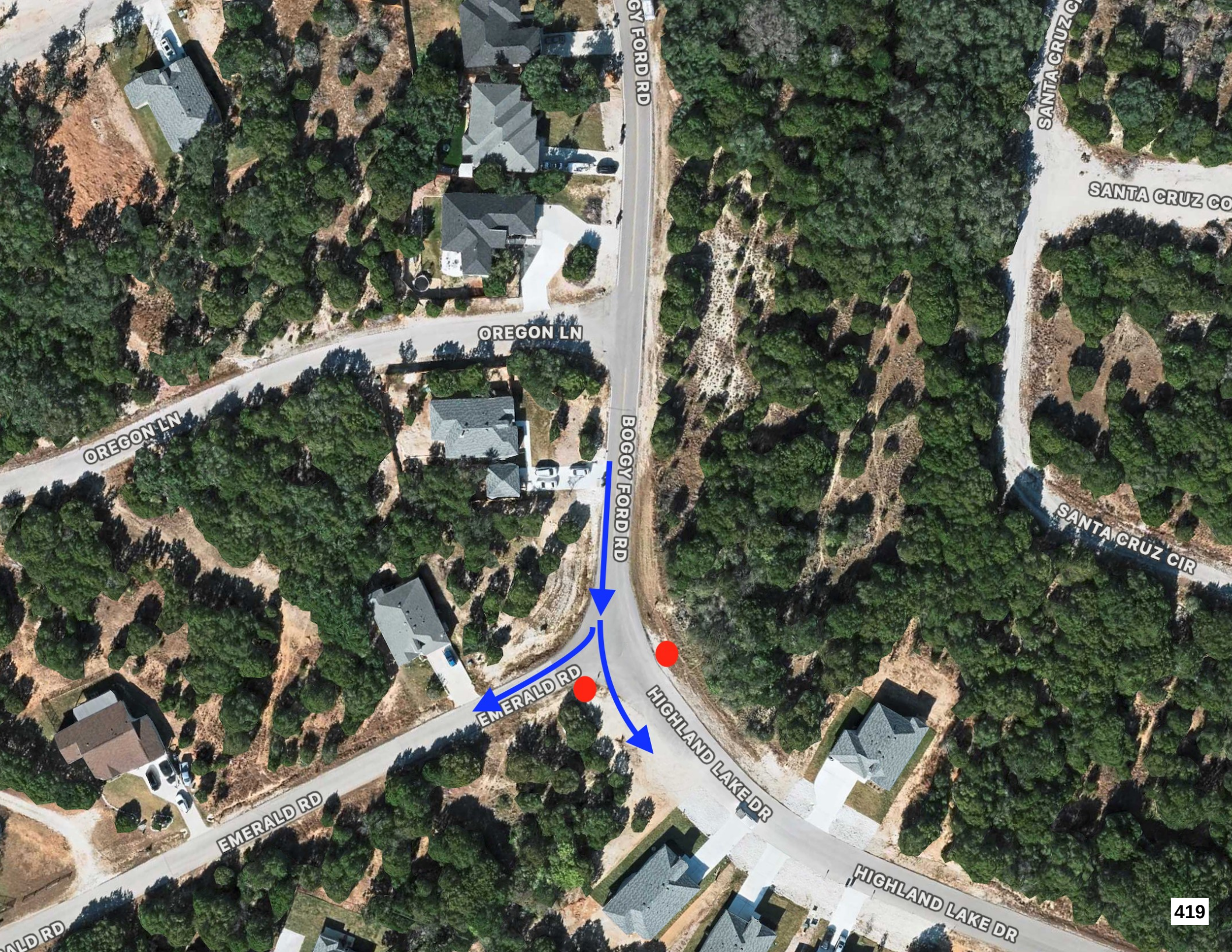
Prior to the meeting, the Police Department and Director of Public Works will evaluate the intersection's safety, and provide feedback to Council.

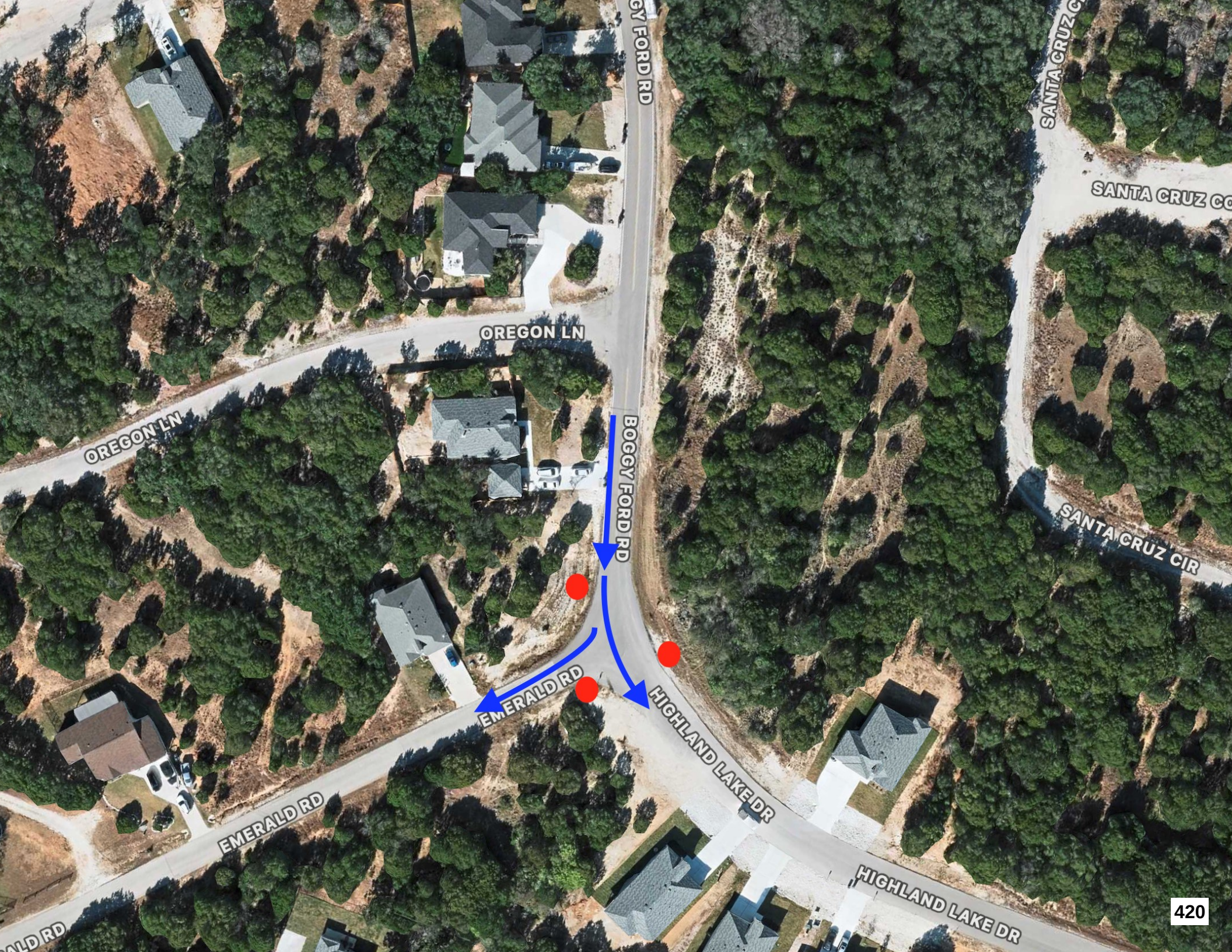
FINANCIAL IMPACT: The purchase and installation of an additional stop sign and pole.

ATTACHMENTS:
[2025-04-07 _ Image 1.pdf](#)

2025-04-07 _ Image 2.pdf
2025-04-07 _ Image 3.pdf







BOGGY FORD RD

SANTA CRUZ C

SANTA CRUZ CO

OREGON LN

OREGON LN

BOGGY FORD RD

SANTA CRUZ CIR

EMERALD RD

HIGHLAND LAKE DR

EMERALD RD

HIGHLAND LAKE DR



Item Cover Page

CITY COUNCIL AGENDA ITEM REPORT

DATE:	April 17, 2025
SUBMITTED BY:	Councilor Saum, City Council
SUBJECT:	Discussion, consideration and possible action on passing Resolution 25-2124 adopting the City of Lago Vista Sunshine Policy.
BACKGROUND:	The Texas Public Information Act (TPIA) guarantees citizens access to information but also allows cities to invoke exceptions. Over time, excessive reliance on discretionary exceptions has created inefficiencies, legal costs, and public frustration. The proposed Sunshine Policy affirms the City's commitment to transparency and outlines steps to reduce AG referrals, proactively publish non-confidential records, and adopt a more robust open portal.
FINDINGS:	Establishes that discretionary exceptions will be avoided unless the City Council explicitly votes to assert them (e.g., attorney-client privilege). Creates a searchable online portal using existing resources, similar to the current Municipal Courts Online Record Search portal. If internal resources are not available, explore open-source resources like CKAN, an open-source data platform. Directs staff to publish frequently requested records with redactions for mandatory exceptions. Formalizes compliance responsibilities for staff.
FINANCIAL IMPACT:	TBD
ATTACHMENTS:	2025-04-10 _ Resolution No 25-2124 _ Sunshine Policy.pdf What is the Lago Vista Sunshine Policy (002).pdf

CITY OF LAGO VISTA

RESOLUTION NO. 25-2124

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGO VISTA, TEXAS, ADOPTING THE “SUNSHINE POLICY” TO ENHANCE GOVERNMENT TRANSPARENCY, STREAMLINE PUBLIC RECORDS ACCESS, REDUCE LEGAL COSTS, AND SUPPORT CITIZEN ENGAGEMENT; PROVIDING FOR IMPLEMENTATION AND AN EFFECTIVE DATE.

WHEREAS, the Texas Public Information Act (TPIA), Chapter 552 of the Texas Government Code, affirms the right of the people to access public information and requires government bodies to disclose records not specifically exempted by law; and

WHEREAS, the City Council recognizes that while the TPIA permits governmental bodies to assert both mandatory and discretionary exceptions to disclosure, excessive use of discretionary exceptions may hinder transparency, delay access, and increase legal and administrative costs; and

WHEREAS, the City Council desires to affirm the City of Lago Vista’s commitment to openness, accountability, and public service by implementing a proactive disclosure policy that goes beyond the minimum requirements of state law; and

WHEREAS, the proposed “Sunshine Policy” outlines a framework for improved transparency by limiting the use of discretionary exceptions unless explicitly authorized by City Council action, and by increasing the volume and accessibility of proactively published documents; and

WHEREAS, the policy establishes new practices such as:

- Creation of a searchable public records portal for frequently requested documents;
- Designation of the City Secretary’s Office as the point of responsibility for portal management and compliance reporting;
- Formalization of procedures for managing redactions and clarifying open records requests;
- Establishment of a voluntary email transparency program for Council Members and designated staff to publicly share selected non-confidential communications; and

WHEREAS, implementation of this policy will modernize the City’s approach to public records, reduce the volume of Attorney General referrals, and promote timely, cost-effective responses to public information requests; and

WHEREAS, the City Council finds that adopting this policy is in the best interest of the citizens of Lago Vista and will position the City as a leader in open government practices within the State of Texas.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LAGO VISTA, TEXAS, THAT:

SECTION 1: The City of Lago Vista “Sunshine Policy,” attached hereto as *Exhibit A*, is hereby adopted in full.

SECTION 2: City staff, under the direction of the City Manager and City Secretary, shall implement the Sunshine Policy in phases as outlined in Exhibit A, beginning with the proactive publication of development records and other frequently requested public documents.

SECTION 3: Discretionary exceptions to the release of public records—such as attorney-client privilege—shall not be asserted by staff or legal counsel unless explicitly authorized by formal vote of the City Council.

SECTION 4: The City Attorney and City Secretary are hereby directed to assist in the implementation, training, and ongoing legal compliance of the policy and to provide quarterly updates to the City Council on its status.

SECTION 5: This Resolution shall become effective immediately upon its passage.

PASSED AND APPROVED this ____ day of _____, 2025.

CITY OF LAGO VISTA, TEXAS

Kevin Sullivan, Mayor

ATTEST:

Maria Franco, City Secretary

EXHIBIT “A”
SUNSHINE POLICY



City of Lago Vista Sunshine Policy

Purpose:

To increase transparency, reduce the burden of Public Information Act (PIA) requests, and ensure public records are made more accessible to citizens, this Sunshine Policy outlines a proactive and responsible strategy for managing and releasing public information.

Section 1: Presumption of Openness

1. Mandatory vs. Discretionary Exceptions

- The City will always comply with mandatory legal exceptions and withhold information when required by statute (e.g., juvenile records, personal ID numbers, peace officer addresses, etc.).
- Discretionary exceptions, such as attorney-client privilege, will not be asserted unless the Council has taken formal action to do so.

2. Attorney-Client Privilege

- The privilege belongs to the City Council. The City Attorney and staff may not waive it.
- If a requestor refuses redactions or requests privileged material, an AG opinion must be sought.
- Council may vote to release attorney-client records if it chooses.

3. Clarification Requests

- If a request is unclear or omits permission to redact, staff will reach out to clarify.
- If permission is denied, mandatory withholding and/or AG opinion will follow.

4. Previously Released Information

- The City will maintain and publish a searchable "Previously Released Public Records Index" to avoid reasserting discretionary exceptions on similar content.
-

Section 2: Proactive Publication

1. The City will proactively publish commonly requested documents, including:
 - Approved development plans and MUD agreements
 - Budgets, audits, and expenditure reports
 - City Council meeting minutes and agendas
 - Contracts and bid documents
 2. The City Secretary's Office, as the City's designated PIO, will be responsible for maintaining this repository.
-

Section 3: Police Records Transparency

1. The City will publish only legally releasable basic police report information.
 2. All police records will be reviewed and redacted as required.
 3. Juvenile data, confidential informant info, or ongoing investigation material will not be posted.
-

Section 4: Open Records Request Form Revisions

1. The form will explicitly clarify:
 - Whether redactions are permitted
 - What redactions will be required by law
 - That refusal to permit redactions may result in delay via AG opinion request
 2. The form will include a link to the City's searchable records portal, once launched.
-

Section 5: Open Records Portal Implementation

- If a portal cannot be created with internal resources then IT staff is to explore Open Source & Cost-Saving options. Below are initial options.

Platform:

- CKAN (<https://ckan.org>) is recommended.

Step-by-Step Deployment:

1. **Host:** Internal server or low-cost cloud provider (\$10–20/month)
2. **Install CKAN** via open documentation
3. **Configure Permissions** and Upload:
 - Examples: Development services, Finance, Public Works, Council records
4. **Public Interface:** Linked from city homepage with search features
5. **Maintenance:** Monthly updates, quarterly transparency digest

Format Note:

- Native format (.pst) email files will not be posted. Email Records will be converted to PDF or readable formats unless otherwise directed. All other documents should be kept in their native format.

Section 6: Staff Compliance

- City Secretary's Office will track compliance.
- A quarterly report will be shared with Council and the public.

Section 7: Voluntary Email Transparency Program

1. **Voluntary Participation:**
 - Council members and designated staff (e.g., City Manager, City Secretary, Development Director, Procurement Officer) may opt in to share selected non-confidential email communications for public review.
2. **How It Works:**
 - Participants may tag emails with "#PublicRecord" or forward selected messages to a designated address (e.g., publicrecords@lagovistatexas.gov).
 - Only non-privileged, non-confidential communications may be shared.
 - Shared emails will be posted monthly to a public transparency folder on the Sunshine Portal.
3. **Encouraged Categories for Disclosure:**
 - Communications with developers, engineers, or contractors

- Bid-related vendor inquiries or clarifications
- Constituent questions on city services, contracts, utilities, and general inquiries
- Outreach from parties potentially affecting public policy

4. Legal Safeguards:

- Confidential communications (e.g., legal, personnel, juvenile, or security-related) are not eligible.
- Participants must sign a voluntary waiver agreeing to guidelines.
- The City Attorney retains discretion to flag or remove any submission before posting.

Effective Date: This policy becomes effective upon Council approval and will be implemented in phases, starting with development records.

Support: Staff and the City Attorney's Office stand ready to implement this policy with the understanding that it reduces legal costs, streamlines staff workload, and fulfills the City's duty to its citizens.

What is the Lago Vista Sunshine Policy?

The City of Lago Vista has adopted a **Sunshine Policy** to give CITIZENS better access to their government. We're making it easier to find information, request records, and see how your city works — without delays or legal runarounds.

Here's what's changing:

✓ **More public documents available online**

Including development permits, city budgets, council minutes, contracts, and more — all in one place. Uploaded automatically without the requirement of a PIA request.

✓ **Faster Public Records Requests**

We're limiting how often we ask the Attorney General for permission to withhold information. Unless it's required by law (like confidential police or legal records), we'll share it. Also listing previously released requests to better follow state law requirements.

✓ **Continue Clear Redaction Rules**

Continue our current practice allowed on the request form for citizens to pre-approve redactions up front — meaning faster responses, fewer delays.

✓ **Email Transparency**

Council members and key staff can voluntarily share select email conversations — like questions from developers, vendors, or residents — to give you a window into city work.

✓ **Searchable Portal Coming Soon**

Our new online records site will let you browse key public records on your own, 24/7 — like the Municipal Court portal already does.

Why it matters: Transparency builds trust. This policy saves taxpayer dollars, reduces unnecessary legal costs, and puts Lago Vista at the forefront of open government in Texas.

Want to see more? Follow along at [City website placeholder] or email sunshine@lago-vista.org to submit your ideas!



Item Cover Page

CITY COUNCIL AGENDA ITEM REPORT

DATE:	April 17, 2025
SUBMITTED BY:	Maria Franco, City Secretary
SUBJECT:	Discussion, consideration and possible action to reschedule the June 19, 2025 Regular City Council Meeting due to City Hall being closed in observance of the Juneteenth holiday.
BACKGROUND:	In observance of the Juneteenth National Holiday, City Hall will be closed on June 19, 2025.
FINDINGS:	Some suggested dates where no other meetings are taking place at City Hall are as follows: • June 26th, Thursday • June 25th, Wednesday • June 23rd, Monday
FINANCIAL IMPACT:	n/a
RECOMMENDATION:	Provide staff a date to reschedule the 2nd City Council in June.