11

From: Rick Schroder
Sent: Wednesday, September 6, 2023 6:46 PM
To: Hugo Elizondo, Jr., P.E.
Cc: Alan M. Moon PE; David Coleman; Chris Elizondo; Odalys C. Johnson PE; James A Carter; Gabriella Elizondo
Subject: Re: 12" Waterline

If it is to stay within property in a dedicated easement, we will have to place this item on the september 19 agenda for cc approval prior to creating easement dedication and survey.

Best,

Rick A. Schroder

On Sep 6, 2023, at 11:57 AM, Hugo Elizondo, Jr., P.E. <hugo@cuatroconsultants.com> wrote:

Thanks, Rick.

Yes, we are.

Alan: As discussed last week, the WL alignment will stay within private property along the frontage of the Hill Country Springs tract.

Thus, TXDOT can continue to process the permit.

Let us know if you have questions on this matter.

On other items:

1. We are also working on finalizing the offsite gravity wastewater main construction drawings for submittal and review.
2. Update on Site Plan is also in the queue to provide City Engineer.

Thank you,

Hugo Elizondo, Jr., P.E., C.F.M.

<image004.png>
Manager
Firm Registration No. F-3524
120 Riverwalk Drive, Suite 208
San Marcos, Texas 78666
(512) 312-5040 ext. 1 (work)

From: Rick Schroder <rschroder@johnsoncitytx.org>
Sent: Wednesday, September 6, 2023 10:35 AM
To: Alan M. Moon PE; David Coleman;Hugo Elizondo, Jr., P.E.; Chris Elizondo; Odalys C. Johnson PE; James A Carter
Subject: RE: 12" Waterline

My apologies for the second email, but I wanted to resend the email below dated May 16th to make sure we are all on the same page with regard to progress of the development and requirements.

Best,

<image005.png>

From: Rick Schroder
Sent: Tuesday, May 16, 2023 2:41 PM
To: James A Carter; Jeff Carter
Cc: Hugo Elizondo, Jr., P.E.; Brent J Sultemeier; Larry Bible; Odalys Johnson; Alan Moon, PE; Elizabeth Elleson; Justin Luna; Scott Anderson; Accounting Urban Tree;
Subject: Development Agreement

Mr. Carter –

I have attached the final, executed Development Agreement between the parties, and I wanted to flesh out the general steps / requirements below. Should you or your engineer have any questions, please do not hesitate to let me know.

Building Construction –

1. Prior to annexation, a Professional Engineer shall inspect the buildings for structural soundness and weight bearing components. The inspection report shall be signed and sealed and submitted to the City.
2. After annexation, but prior to occupancy, the Developer shall submit Certificate of Occupancy applications and associated fees for each building. The Building Official will inspect and approve each building for occupancy. Deficiencies must be corrected prior to occupancy.
3. After annexation, Building Permit applications and associated fees must be submitted for each additional building (Phase II and greater).
4. Prior to and after annexation, the Developer shall register the project with TDLR for ADA and accessibility purposes. The project shall be inspected for State compliance by a Registered Accessibility Specialist.
5. All buildings shall be built in accordance with the 2021 International Fire Code, including the Blanco Co. requirement that buildings be sprinkled.

6. All outdoor lighting of buildings, etc. must be in accordance with the City's Outdoor Lighting Code – ie all lighting shall be full cutoff / nighttime sky friendly. The Developer can submit cut sheets to the City for approval prior to purchase / installation.

Utility Infrastructure –

1. Developer shall submit to the City for review and approval water / sewer construction documents. The construction documents shall include all offsite improvements and the onsite lift station and force main.

    1. Utility infrastructure shall be designed in accordance with the City's Design Standards, Federal, State and local laws, and TxDOT Utility Accommodation Rules.
    2. Moreover, plan set and construction shall be in accordance with the following:

    § 10.02.272 Construction procedures.
    (a) Costs. The applicant is responsible for and shall bear all costs of construction of improvements. Costs for off-site improvements, acquisitions of rights-of-way for improvements, extension of existing city utilities, or other improvements necessary to serve the subdivision shall be at the applicant's expense.
    (b) Oversized improvements. The city may participate in the costs of oversized improvements with the applicant. Cost-sharing shall be agreed to in writing in an oversized improvement costs share agreement approved by the city council.
    (c) Permits. Construction shall begin on approval of the construction plans and on issuance of all appropriate construction permits by the city and other appropriate entities or agencies.
    (d) Site preparation. No excavation, grading, tree removal, or site clearing activities shall occur prior to approval of the construction plans, unless approved by the city engineer, or similar.
    (e) Plan on site. A full set of the approved construction plans marked as approved must be available for inspection on the job site at all times.
    (f) Drainage plan. The drainage plan of the construction plan shall be made available to each builder within the proposed subdivision. All builders shall comply with the drainage plan.
    (g) Stop-work order. A stop-work order may issue if the CAO, city engineer, public works director, or code enforcement officer determines that construction is not proceeding in compliance with the approved construction plan, construction permit, or other applicable city construction standards.
    (h) Model home. A conditional construction permit for a model home may be issued once the streets to the subdivision have been constructed to sub-grade and water service and a fire hydrant are located within 500 feet of the lot on which the model home is located. The city shall note on the permit that the

applicant accepts all responsibility for commencing construction prior to completion of the public improvements and city acceptance of the subdivision. A certificate of occupancy for the model home will not be issued until the subdivision and all public improvements have been accepted by the city, a final plat has been filed and recorded, and all utilities are connected to the home.

§ 10.02.273 Completion of construction.

(a) Completion. After completion of construction, the applicant shall deliver to the city:

(1) As-built construction documents indicating all improvements, new construction, and upgrades, including the location of all improvements above-and-below ground;

(2) Certification from a licensed professional engineer that all improvements have been installed and constructed in accordance with the approved construction plan; and

(3) Fiscal security for a two-year maintenance warranty.

(b) Engineer approval. Within fifteen (15) business days of receipt of the documents, the city engineer, or similar, shall review the constructed improvements and determine whether all public improvements have been constructed in compliance with the construction plans.

(1) On a determination of noncompliance, the city engineer, or similar, shall notify the applicant about outstanding issues for resolution by the applicant. The city engineer, or similar, shall be contacted to reinspect the site once these issues have been resolved.

(2) On a determination of compliance, the city engineer shall issue a letter to the city with findings of satisfactory completion and full compliance for submission by the applicant with the final plat application, or with the application for acceptance of improvements where fiscal security had been previously issued.

3. The City Engineer and Developer's Engineer shall submit the offsite construction documents to TxDOT for approval through TxDOT's Utility Installation Request (UIR) for those improvements in TxDOT right of way.
4. Following approval of the construction documents by the City Engineer and TxDOT, but prior to construction, the Developer shall submit payment and performance bonds, a trust agreement, or a letter of credit to the City. The security documents must be approved by the City Attorney and must be in accordance with the following:

(b) One of the following guarantees of performance must filed with the city within two (2) years after the plat has been approved by the city:

(1) Performance bond.

(A) A performance bond will be executed by a surety company licensed to do business in the state and AAA rated by the Texas Department of Insurance, or successor agency, in an amount equal to the cost estimate, as approved by the city engineer, of all uncompleted and unaccepted improvements required by these regulations, with the condition that the applicant shall complete such improvements and have them accepted by the city council within two (2) years from the date of plat approval. The bond shall meet the requirements outlined in section 10.02.331(g)(4) and (5) of the ordinance.
(B) The CAO is authorized to sign the bond instrument on behalf of the city and the city attorney shall approve the same as to form.

(2) Trust agreement. The applicant shall cause to be placed in a trust account on deposit in a bank or trust company or with a qualified escrow agent selected by the applicant and approved by the city attorney, a sum of money equal to the cost estimate, as approved by the city engineer, of all uncompleted and unaccepted site improvements required by these regulations. The CAO is authorized to sign the trust account agreement on behalf of the city and the city attorney shall approve the same as to form.
(3) Letter of credit. The applicant shall provide an irrevocable letter of credit in an amount equal to the cost estimate, as approved by the city engineer, of all uncompleted and unaccepted site improvements required by these regulations. The CAO is authorized to sign the letter of credit on behalf of the city and the city attorney shall approve the same as to form. The letter of credit shall meet the requirements outlined in section 10.02.331(g)(6) of the ordinance.
(4) Cash or cashier's check. The applicant shall provide to the city cash or a cashier's check in an amount equal to the cost estimate, as approved by the city engineer, of all uncompleted and unaccepted site improvements required by these regulations. Upon completion of the required site improvements and their acceptance by the city council, the amount, minus the amount of accrued interest, will be refunded to the applicant by the city.

5. Prior to construction, the Developer / Contractor shall submit general liability/etc. insurance documents to the City. The City shall be listed as additional insured. Construction must be started within 365 days of Development Agreement execution – ie May 8, 2023.
6. During construction, the Developer shall schedule required inspections of improvements with the City Engineer and Utility Department.
7. At construction completion, the City Engineer and Utility Department shall be responsible for project approval.

8. At construction completion, the Developer shall submit a 2-year maintenance bond for offsite improvements. The bond must be in accordance with the following:

§ 10.02.331 Requirements.

(a) Purpose. Fiscal security, e.g., a maintenance bond, shall bind the applicant to correct any defects in materials, workmanship, including utility backfills or design inadequacies, or damages in an improvement which may be discovered within the two (2) year maintenance period described below.

(b) Required. An applicant shall submit a maintenance bond or other acceptable fiscal security upon completion and certification of construction of the improvements. A maintenance warranty is required for acceptance of improvements.

(c) Term. The fiscal security shall be for a period of two years. The maintenance period shall begin on the date of written acceptance of the improvements by the city council and shall remain in place during the maintenance period.

(d) Extension for street maintenance. In the event of the maintenance or repair of a defect in a roadway or street improvement during the initial guarantee period, the applicant shall provide a one-year extended maintenance guarantee in favor of the city for the entire station(s) of the defect area. Such one-year extension period shall commence upon completion of the subject maintenance or repair. Such extended maintenance guarantee procedure shall be repeated until the defect with the affected station(s) has been remedied.

(e) Amount. The amount of fiscal security by an applicant shall be 100% equivalent to the estimated cost of construction. Estimates shall be provided by the applicant and shall be approved by the city engineer. Costs shall be based on current costs plus 10% for such work.

(f) Types of security. The fiscal security may be posted as a:

(1) Cash deposit to be held in an escrow account by the city;
(2) Maintenance bond; or
(3) Letter of credit.

(g) Components. The fiscal security submitted by the applicant must:

(1) Be made payable to the city;
(2) Shall be in an amount approved by the city;
(3) Be signed by an agent and accompanied by a certified copy of the authority for him or her to act;
(4) For a maintenance bond, be obtained from surety or insurance company that is duly licensed, authorized, and AAA rated by the Texas Department of Insurance, or successor agency, in the state to issue maintenance bonds for the limits and coverage required and approved. The maintenance bond must 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, as amended, by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury;

(5) For a maintenance bond, provide that should it be deemed unenforceable as a statutory bond, the applicant will be bound by the contract as a common law obligation;

(6) For a letter of credit,

(A) Be irrevocable;

(B) Be for a term sufficient to cover the completion, maintenance, and warranty periods, but in no event less than two (2) years; and

(C) Require only that the city present the issuer with a sight draft and a certificate signed by an authorized representative of the city certifying the city's right to draw funds under the letter of credit; and

(D) Be issued from a commercial bank rated in the highest category by at least two of Fitch Ratings Ltd., Moody's Investors Service, Inc., and Standard & Poor's Ratings Services or their respective successors.

(h) Insolvency of surety. If the surety on any fiscal security furnished by the applicant is declared bankrupt, becomes insolvent, its right to do business is terminated in the state, or the surety ceases to meet the requirements listed in U.S. Treasury Circular 570, the applicant shall, within twenty (20) days thereafter, substitute another maintenance bond and surety, both of which must be acceptable to and approved by the city.

(i) Certification of surety for acceptance. The CAO shall issue a letter certifying the receipt and sufficiency of the fiscal security.

9. City acceptance of improvements must be made in accordance with the following:

§ 10.02.362 Acceptance of improvements by city council.

(a) Formal acceptance. Acceptance of formal offers for the dedication of streets, public areas, easements, parks, or other improvements shall be by action of the city council.

(b) Improvements for acceptance. Public improvements that are required for acceptance by the city include, but are not limited to, those required dedications listed in section 10.02.182 of this article.

(c) Acceptance of improvements constructed and completed on submission of final plat. Where improvements have been constructed and completed prior to approval of a final plat by the city council, approval by the city council of a final plat application shall constitute acceptance by the city of the dedicated

public improvements shown on the final plat. The final plat shall be endorsed with appropriate notes indicating acceptance.
(d) Acceptance of improvements on completion of construction (fiscal security and improvement performance agreement previously posted).

(1) Where an applicant has posted fiscal security and executed an improvement performance agreement in accordance with section 10.02.301 of this article, approval of a final plat application shall not constitute or imply the acceptance by the city of an improvement shown on the plat. A final plat shall be endorsed with appropriate notes to this effect.
(2) Upon completion of construction of the improvements, an applicant shall apply for acceptance of the improvements and shall submit maintenance security as provided in section 10.02.331 of this article. The application shall be considered for approval and formal acceptance by the city council within 30 days after the application is received by the city.
(3) On approval by the city council, the city shall issue a certificate of completion and acceptance of improvements with plat notations. The applicant shall file and record the certificate with the county records.

(e) Disapproval of improvements. Disapproval of a final plat by the city council shall be deemed a refusal by the city to accept the offered improvement dedications shown on the plat.
(f) City title and use. On acceptance of improvements, the city is authorized to:

(1) Receive title to the improvements by a warranty deed or grant of right-of-way, as applicable. A deed shall have an adequate description of streets and roads, either by reference to the plat or by field notes prepared by a registered professional engineer or surveyor from a survey made on the ground;
(2) Use the improvements; and
(3) Assume any duty regarding the maintenance of the improvements.

10. At this point, the City will authorize the Developer to connect to the City's water / wastewater infrastructure.
11. If additional impact fees are owed by the Developer to the City, the Developer will be required to pay the difference to the City at this time.

TxDOT –

1. The Developer shall provide TxDOT approval of driveway locations and other related matters to the City prior to voluntary annexation.

Signage –

1. The Developer shall submit for approval a Sign Permit Application for each exterior sign placed at the entrance or within the Project.

Stormwater Detention and Drainage –

1. The Project's stormwater detention and drainage infrastructure must be built in accordance with City Code.
2. The Developer shall submit a report to the City Engineer for review and approval. Following City Engineer approval, the report / recommendation must be submitted to the City Council for final approval.

Tree Preservation and Landscaping –

1. The Developer shall submit tree preservation and landscaping / irrigation plans to the City Arborist for review and approval.
2. Tree preservation and landscaping / irrigation plans must be in accordance with City Code.
3. City Arborist contact information:

   Scott Anderson
   Urban Tree Company
   ISA Certified Arborist
   210-240-6249
   www.urbantreecompany.com

Existing / Future Wells –

1. The Development Agreement includes provisions disallowing the use of private wells (either existing or future) within the project site. After annexation and connection to the City's water / wastewater infrastructure, the Developer's Engineer shall submit a letter to the City certifying that all wells have been capped / abandoned / or the like.

Rainwater Collection System –

1. The Development Agreement includes a provision requiring the construction of a 50,000-gallon rainwater collection system tank and related irrigation accessories. This should be included in the tree preservation and landscaping plans submitted to the City Arborist.

Fencing –

1. The Development Agreement includes a provision requiring the following fencing:

1. 8 ft. privacy fencing surrounding Troy and Rebecca Danz' property; and
2. Deer proof fencing surrounding remaining portions of the property.

Parkland Dedication –

1. The Development Agreement includes a provision requiring:

    1. 1,900' of 6' wide hike and bike trails;
    2. 10 benches;
    3. 5 picnic tables;
    4. 5 covered picnic tables; and
    5. 5 BBQ pits.

Annexation –

1. The Development Agreement requires that the Developer submit an Annexation Petition approx. 60 days prior to water / wastewater connection.
2. A Rezoning Application will be filed and process contemporaneously with the annexation petition.

From: Rick Schroder
Sent: Wednesday, September 6, 2023 10:28 AM
To: Alan M. Moon PE; David Coleman; Hugo Elizondo; Chris Elizondo; Odalys C. Johnson PE; James A Carter
Subject: RE: 12" Waterline

All –

I drove by the site yesterday and noted the following:

1. Trenching and install for the 12" water main INSIDE the property line has already started. Again, the issues noted below must be corrected ASAP and/or taken to City Council for a decision on the on-site easement.
2. Signage – there is a metal sign being erected at the intersection of Flat Creek Road and US Hwy. 290. This property is located within the City's ETJ and, therefore, subject to the City's sign regulations. I have NOT received a sign application for this sign. Please do so ASAP, as I believe this sign will require variances given its height, etc.

Best,

<image005.png>

From: Alan M. Moon PE
Sent: Thursday, August 17, 2023 5:34 PM
To: Rick Schroder; David Coleman; Hugo Elizondo; Chris Elizondo; Odalys C. Johnson PE; James A Carter
Subject: RE: 12" Waterline

Work on the off-site 12" waterline and 8" sanitary sewer within TxDOT ROW cannot begin until TxDOT has approved the plans for utilities within their ROW. The waterline along Avenue Q could technically begin without this permit. Rick is correct, the development agreement states the 12" waterline should be within TxDOT ROW and not within easements. Hugo – could your team provide updated plans showing the waterline across the property within TxDOT ROW rather than within the easement?

The TxDOT RULIS application submitted last week included both the offsite waterline and sewer. We will need to amend the application to include the full waterline within TxDOT ROW.

Thanks,

--

Alan M. Moon PE
Senior Project Manager

Email: amoon@quiddity.com
T: (713) 353-7231

From: Rick Schroder
Sent: Thursday, August 17, 2023 4:44 PM
To: David Coleman; Hugo Elizondo; Chris Elizondo; Odalys C. Johnson PE; Alan M. Moon PE; James A Carter
Subject: 12" Waterline

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

All –

David Coleman, cc'd onto this email, with Diamond X Contracting contacted me regarding whether they could proceed with the planned 12" water line along US Hwy. 290. I advised him that I would forward the question to the City Engineer's Office for review / comment.

On a related question, I looked at the latest plan set and the 12" water main is contained within a proposed Public Utility Easement on Mr. Carter's private property. This conflicts with the Development Agreement that states that the water line will be wholly contained within TxDOT ROW. Can someone please review this matter and provide clarity? We specifically excluded public utilities within easements on private property so that the property would not need to be platted...

Did the UIR submittal to TxDOT include the 12" water main and sewer main within TxDOT ROW?

Thanks,

<image005.png>

RESOLUTION NO. R23-100

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF JOHNSON CITY APPROVING A DEVELOPMENT AGREEMENT AND AN IMPACT FEE CREDIT AGREEMENT BETWEEN THE CITY OF JOHNSON CITY AND TX-290-1031, LLC FOR 50.48 ACRES OF LAND LOCATED IN THE EXTRATERRITORIAL JURISDICTION OF THE CITY ON THE SOUTH SIDE OF U.S. HIGHWAY 290 W., AND 70 MILES WEST OF N. NUGENT AVE; AUTHORIZING THE CHIEF ADMINISTRATIVE OFFICER TO EXECUTE ALL NECESSARY DOCUMENTS; AND PROVIDING FOR AN EFFECTIVE DATE

RECITALS

WHEREAS, Section 212.172 of the Texas Local Government Code authorizes the City of Johnson City ("City") to enter into a development agreement with TX-290-1031 Owner ("Owner" or "Developer") for development of Owner's property of 50.48 acres of land located on the South side of U.S. Highway 290 W. approximately 0.70 miles west of N. Nugent Ave., and within the City's extraterritorial jurisdiction ("Property") and its subsequent annexation by the City; and

WHEREAS, Owner, or its successors, will develop the Property ("Project") as provided in the Development Agreement, attached hereto as "*Attachment A*" and incorporated fully herein; and

WHEREAS, Owner's property is not currently served by water or wastewater and the City is the exclusive provider of water and wastewater service to the Property; and

WHEREAS, the City's Capital Improvements Plan and Impact Fee Study (July 2022) ("Study") provides for the extension and construction of utility lines resulting from development and growth in the City, and

WHEREAS, Texas Local Government Code Section 395.019 and Section 13.07.004(f) of Chapter 13 *Utilities* of the City's Code of Ordinances authorizes the City to enter into the Impact Fee Credit Agreement, attached hereto as "*Attachment A*", whereby Owner/Developer will construct capital improvements or facility expansions identified within the Study, and the costs incurred by the Developer will be credited against the balance of the total impact fees otherwise due the City from the new development; and

WHEREAS, the Study provides for modifications to the routing and placement of utility service lines to accommodate construction and for operational efficiency, and adjustments for the construction and layout of the utility lines for the Project have been made and identified in the Development Agreement; and

WHEREAS, the City Council and Owner/Developer desire to enter into the Development Agreement and Impact Fee Credit Agreement for the development and annexation of the Property in accordance with the terms and conditions outlined therein.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Johnson City that:

SECTION 1. FINDINGS OF FACT

The foregoing recitals are adopted as facts and are incorporated fully herein.

SECTION 2. APPROVAL OF AGREEMENTS

A. The City Council of the City of Johnson City hereby approves the Development Agreement as outlined and contained in Attachment A.

B. The City Council of the City of Johnson City hereby approves the Impact Fee Credit Agreement as outlined and contained in Attachment A.

C. The City Council authorizes the Mayor to execute the Agreements on behalf of the City and to deliver copies of this Resolution to the Owner/Developer for recording at Blanco County Records.

SECTION 3. REPEALER AND SEVERABILITY

A. REPEALER: All resolutions, or parts thereof, that are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters regulated, herein.

B. SEVERABILITY: Should any of the clauses, sentences, paragraphs, sections or parts of this Resolution be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Resolution.

SECTION 4. EFFECTIVE DATE

This Resolution shall be effective immediately upon approval and adoption by the City Council.

DULY RESOLVED, APPROVED, AND ADOPTED by the City Council of the City of Johnson City, Texas on the 18th day of April, 2023.

APPROVED:

Rhonda Stell, Mayor

ATTEST:

Whitney Walston, City Secretary

Attachment A

DEVELOPMENT AGREEMENT AND

IMPACT FEE CREDIT AGREEMENT

BETWEEN

THE CITY OF JOHNSON CITY

AND

TX-290-1031, LLC

Date: April 18, 2023

STATE OF TEXAS §
§
COUNTY OF BLANCO §

DEVELOPMENT AGREEMENT BETWEEN
THE CITY OF JOHNSON CITY AND TX-290-1031, LLC

This Development Agreement ("Agreement") is made and entered into by and between the City of Johnson City, Texas, a Type A General Law municipal corporation ("City"), and TX-290-1031, LLC, a Texas limited partnership ("Owner"; "Developer"), individually referred to as the "Party" and, collectively, as the "Parties".

RECITALS

WHEREAS, Section 212.172 of the Texas Local Government Code authorizes the City to enter into a development agreement with an owner of property within the City's extraterritorial jurisdiction to provide for a development plan under which certain general uses and the development of the land are authorized before and after annexation, to provide for infrastructure for the land, and to provide for the annexation of the land, if annexation is agreed to by the Parties; and

WHEREAS, the Developer owns approximately 50.48 acres of land located on the South side of U.S. Highway 290 W. approximately 0.70 miles west of N. Nugent Ave., as more particularly described and shown in Exhibit "A", "Property Legal Description and Survey", attached hereto and incorporated fully herein ("Property"); and

WHEREAS, the Property is located within the currently existing extraterritorial jurisdiction of the City and is to be annexed into the City limits following submission of a petition for voluntary annexation and approval by the City Council; and

WHEREAS, prior to annexation, the Developer proposes to develop, in part, a mixed-use development consisting of multifamily residential units and related amenities, commercial/retail development, and self-storage facilities ("Project"); and

WHEREAS, Texas Local Government Code Section 395.019 and Section 13.07.004(f) of Chapter 13 *Utilities* of the City's Code of Ordinances authorizes the City to enter into an agreement whereby the Developer will construct capital improvements or facility expansions identified within the City's Capital Improvements Plan and Impact Fee Study (July 2022) ("Study"), and the costs incurred by the Developer will be credited against the balance of the total impact fees otherwise due the City from the new development; and

WHEREAS, the Parties desire to enter into this Development Agreement under the terms and for the purposes outlined herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

SECTION 1. DEVELOPMENT AGREEMENT

1.1 Authority. This Agreement is made, pursuant to Section 212.172 of the Texas Local Government Code, as amended, to provide for the continuation of the extraterritorial status of the Property until annexation, a development plan under which certain general uses and the development of the Project are authorized before and after annexation, for infrastructure for the Property, and for the annexation of the Property.

1.2 City Covenants. The City guarantees the continuation of the extraterritorial status of the Property, its immunity from annexation by the City, and its immunity from City property taxes until voluntary annexation of the Property by the City Council, in accordance with this Agreement. The City covenants that it will not authorize connection to the City's water and wastewater infrastructure for the Project on the Property until after voluntary annexation of the Property. Upon satisfactory and full completion and compliance by the Owner with City regulations and standards, the City covenants to authorize the connection to the City's water and wastewater infrastructure for the Project on the Property in accordance with this Agreement.

1.3 Owner Covenants. Owner covenants that the development of the Property, both before and after voluntary annexation, shall be as provided for in the development plan outlined herein and shall conform to the uses and development standards provided in and pursuant to this Agreement.

1.4 Project and Development Plan.

1.4.1 Development of the Project, both before and after voluntary annexation, shall consist of and include the following ("Development Plan"):

1.4.1.1 A mixed-use development comprising approximately 408 multifamily residential units consisting of individual structures with approximately eight (8) units and two (2) stories per structure and related amenities, approximately 47,850 square feet of commercial / retail space, and approximately 1.00 acre of self-storage facilities, as more particularly depicted in the "Hill Country Springs Development Site Plan" dated April 18, 2023 (of which a full and complete site plan is on file with the City) and incorporated by reference as Exhibit "B", "Project Site Plan", attached hereto and incorporated fully herein;

1.4.1.1.1 The Developer shall ensure that all buildings and/or structures constructed prior to voluntary annexation are inspected by a State-registered professional engineer for structural soundness of the building and/or structures' weight bearing components, such as framing, foundation, beams, columns, posts, or trusses. Signed and sealed inspection reports indicating approval, shall be submitted to the City by the Developer within sixty (60) days of annexation approval by the City Council.

1.4.1.1.1.1 In addition to the above inspection requirements, the Parties agree that, following voluntary annexation and prior to occupancy of all buildings and/or structures, the Developer shall

submit to the City a Certificate of Use and Occupancy ("CofO") Application(s) and requisite fee(s). Upon receipt of the CofO Application(s) and fee(s), the City shall schedule required CofO inspections of the buildings and/or structures by the Building Official. Deficiencies, if any, shall be corrected by the Developer at his expense prior to CofO issuance and occupancy.

1.4.1.1.2 Following annexation, the Developer shall submit to the City building permit applications for all undeveloped portions of the Project, accompanied by payment in full of all building permit and plan review fees. The City shall review the application and shall issue, upon satisfactory review and within a reasonable time period, all necessary building permits for construction of the Project under the rules and regulations in effect as of the date of permit submittal. Approved building permits shall be inspected for Code compliance by the City's Building Official on a routine basis.

1.4.1.1.3 Unless specified differently herein, the Developer shall construct the Project in accordance with all applicable Federal, State and local laws, codes, and regulations in effect as of the effective date of this Agreement and in accordance with the Project Site Plan (Exhibit "B"), in particular, the General Construction Notes at Sheets 3 and 4 of the Plan, including, but not limited to, Texas Department of Licensing & Regulation Architectural Barriers regulations and requirements.

1.4.1.1.4 It is understood and agreed that all improvements, including streets and streetlights, constructed within the Property will not be transferred, dedicated, or assigned to the City and shall remain as the Developer's property for maintenance and other purposes. This condition shall be indicated on all deeds and/or recorded plats.

1.4.1.2 The Parties acknowledge that offsite water and wastewater improvements are required prior to receiving water and wastewater services from the City and will provide a significant benefit to the Project. Moreover, the Parties acknowledge that the Project will create increased demand on the City's water and wastewater infrastructure. Accordingly, the Development Plan includes construction, at Owner/Developer's expense and constructed in accordance with procedure outlined in the Impact Fee Credit Agreement, Exhibit "D", attached hereto and incorporated fully herein, of the following:

a. In accordance with City water and wastewater standards and regulations, approximately 1,945 linear feet of offsite 12-inch diameter water main from an existing 10-inch main located near Danz Well Road and N. Ave. Q, south across W. U.S. Highway 290, and west across the entire front Property line within the Texas Department of Transportation (TxDOT) right-of-way, as more particularly depicted in Exhibit "C", "Offsite Water and Wastewater Improvements", attached hereto and incorporated fully herein. 12-

inch water mains shall not be located in private easements, but rather, shall be located in public right-of-way.;

b. A private, onsite wastewater lift station and 4-inch wastewater force main to serve the Project serving approximately 363 equivalent single-family units (ESFU), which include 408 multifamily residential units and related amenities, approximately 47,850 square feet of commercial / retail space, and approximately 1.00 acre of self-storage facilities. All water and wastewater infrastructure within the Property, including the private, onsite wastewater lift station, shall be private and maintained exclusively by the Developer and subsequent owners of the Property. Deeds of sale shall reflect said maintenance requirement. Owner agrees that in the event of assignment of this improvement to the City for acceptance, the lift station shall meet and be in accordance with the City's standards and regulations prior to any assignment or transfer; and

c. Construct, enlarge, and/or pipe burst approximately 1,082 linear feet of offsite 8-inch diameter wastewater gravity main from the northeast corner of the Property line east along W. U.S. Highway 290 to N. Avenue N, and approximately 2,325 linear feet of offsite 8-inch diameter wastewater gravity main from N. Avenue N and W. U.S. Highway 290 to N. Avenue N and W. Pecan Street to an existing manhole at the intersection of Avenue I and W. Pecan Street, as more particularly depicted in Exhibit "C". Wastewater mains shall not be located in private easements, but rather, shall be located within the Texas Department of Transportation (TxDOT) and City rights-of-way.

1.4.1.2.1 Offsite water and wastewater improvements shall be designed and constructed in accordance with the City's Design Standards in effect at the execution date of this Agreement and all other applicable Federal, State and local laws, codes and regulations in effect as of the effective date of this Agreement.

1.4.1.2.2 Prior to the initiation of the Developer's construction of offsite water and wastewater improvements, the Developer shall cause payment and performance bonds, a trust agreement, or a letter of credit to be issued to the City for the estimated construction cost of the capital improvements and facility expansions identified herein.

1.4.1.2.3 The City Engineer and/or City Utility Department shall be responsible for the review and approval of offsite water and wastewater construction documents, and for scheduling and conducting inspections of the offsite water and wastewater construction and related improvements.

1.4.1.2.4 Upon completion of construction by the Developer, the City Engineer and/or City Utility Department shall then review the construction for approval.

Upon approval, the Developer shall submit a two-year maintenance bond to the City for acceptance of the improvements by the City.

1.4.1.2.5 The City agrees to approve all required connections to the City's water and wastewater system if the connections comply with applicable City ordinances and City, State, and Federal regulations.

1.4.2 Right-of-Way. The Developer shall receive approval from the Texas Department of Transportation ("TxDOT") for driveway locations and other related matters prior to voluntary annexation into the City. The City, operating through the City Engineer's Office, shall work jointly with the Developer in the submission of a Utility Installation Request ("UIR") to TxDOT for all off-site water and wastewater improvements related to the Project and contained within TxDOT rights-of-way.

1.4.3 Applicable Regulations. Before and after voluntary annexation, the Project shall be subject to the following regulations:

a. Blanco County Fire Code, 2021 (to be applicable before and after annexation);
b. Article 3.06 *Signs* of the City's Code of Ordinances;
c. Article 3.09 *Outdoor Lighting* of the City's Code of Ordinances;
d. Article 10.03 *Stormwater Detention and Drainage* of the City's Code of Ordinances; and
e. Chapter 15 *Environment* of the City's Code of Ordinances. The Developer may request a variance(s) from the regulations contained within Chapter 15 *Environment*, pursuant to Sections 15.01.004 (e) and 15.01.041.

1.4.4 Governing Regulations – Development and Use. Development and use of the Property as such is described herein shall be governed by the terms of this Agreement and, unless specified differently herein and upon annexation, by applicable City Codes and regulations in effect as of the effective date of this Agreement.

1.4.5 Subdivision. The Parties agree that a subdivision plat will not be required for development of the Property. Accordingly, the City shall issue a certificate of plat compliance, as provided in Section 10.02.065 of Article 10.02 of the Subdivision Ordinance of the City's Code of Ordinances and Local Government Code Section 212.012. If a plat is required in the future, Developer shall submit a plat application in accordance with Chapter 10 *Subdivision Regulation*, and the Developer shall pay all required City platting fees and for construction of required dedicated improvements, if any, on the Property. The City shall review and consider, within the authorized statutory timelines, the Developer's subdivision plat application under the subdivision rules and regulations in effect as of the the date of plat submittal.

1.4.6 Project Term. The Developer shall design, construct, and complete the Project within ten (10) years of the effective date of this Agreement. In accordance with Section 5 hereof, the Agreement shall automatically be extended for one (1)

additional ten (10) year term after expiration of the initial term following written notice by the Developer to the City 120 days prior to the expiration of the initial term.

1.4.7 Amendments. Amendments to the Development Plan may be made, from time to time, through mutual written agreement of the Parties, subject to approval by the City Council; provided, however, the City's Chief Administrative Officer may approve modifications to the Site Plan that do not alter the use or increase the density of the Project.

1.4.8 Wastewater Line Capacity. The Developer's engineer provided a sewer capacity analysis / study to the City Engineer for review and approval. Said study is on file at the offices of the City. The study analyzed the capacity of the existing City-owned sanitary sewer lines from the Project to the intersection of W. Pecan St. and Avenue I, including all tributary areas which connect with the sewer line the Project connects to, in order to show that the City's existing collection system (i.e. wastewater lines) has adequate capacity for Phases 1 and 2 of the Project, and the City's proposed system (i.e. wastewater lines) with upgrades has adequate capacity for the full Project buildout. The City Engineer approved the study on February 8, 2023. Consequently, the City warrants and represents that there is sufficient capacity in its wastewater collection system (i.e. wastewater lines) with the planned upgrades to serve the Project as described herein. The Developer agrees that the City shall not be deemed liable in the event of insufficient capacity.

1.4.9 Following annexation and upon connection to the City's water and wastewater system, the Developer shall abandon and not use, for irrigation or any other purposes, all prior, current, and future water wells, whether permitted, unpermitted, previously drilled, or in service, on the Property. All water for the Project shall originate from City sources.

1.4.10 Rainwater Collection System. Developer shall, at his expense, install, operate and maintain a 50,000-gallon rainwater collection tank and system for landscape irrigation purposes adjacent to or near the stormwater detention basin indicated on Exhibit "B" to this Agreement and serving the multi-family residential units.

1.4.11 Fencing. Developer shall, at his expense, install and maintain:

1.4.11.1 An eight (8) foot privacy fence along the western property line between the subject Property and property with Blanco County Appraisal District ID No. 3287 (Troy & Rebecca Danz; ABS A0262 SURVEY 167 Z.J. HEMPHILL,ACRES 4.67,SN1 PH073326A;HUD TEX0472510); and

1.4.11.2 A deer-proof fence along the remaining perimeter of the Property.

1.4.12 Utility Billing. The Parties agree that the Developer shall be billed monthly for utility services for the Project in accordance with the Municipal Fee Schedule, as amended, and in the following manner:

1.4.12.1 Water Rate – Commercial (Inside City Limits);
1.4.12.2 Sewer Rate – Commercial (Inside City Limits);
1.4.12.3 Garbage Rate – As determined by the Developer; and
1.4.12.4 Vehicle and Equipment Replacement Program Rate – Residential – Billed per multifamily residential unit constructed at the time of billing.

1.4.13 Project Phasing. The Parties agree that the Project's multifamily residential unit components shall be constructed in phases, as depicted in Exhibit "B". Phase 2 of the Project shall not commence construction until Phase 1 is fully leased at seventy-five percent (75%) of available units (e.g. 126 units). Phase 3 of the Project shall not commence construction until Phase 2 is fully leased at seventy-five percent (75%) of available units (e.g. 96 units). Further, the Developer agrees to not commence construction on Phases 2 or 3 of the multifamily residential units or the commercial / retail / self-storage components of the Project, as depicted in Exhibit "B", until after voluntary annexation of the Property.

1.4.14 Parkland Dedication. Developer will set aside or reserve approximately 9.47 acres for parkland, drainage easement, and open space lot, as depicted in Exhibit "B".

1.4.14.1 Developer will construct within same open space area approximately 1,990 feet of 6' wide hike and bike trail, 10 benches, 5 picnic tables, 5 covered picnic tables, and 5 BBQ pits.

SECTION 2. ANNEXATION AND ZONING

2.1 Voluntary Petition.

2.1.1 Developer, shall submit to the City a voluntary petition for annexation of the Property approximately sixty (60) days prior to the anticipated time of Project hookup to the City's water and wastewater system. Failure to submit a petition within the prescribed time period shall be considered a default and shall result in immediate termination of this Agreement.

2.1.2 The City shall accept the voluntary petition for annexation of the Property and consider it for approval within the authorized statutory timelines. The City shall issue a service plan in accordance with State law, and the service plan will include the terms of this Agreement.

2.1.3 If the City fails to meet the annexation terms of this Agreement, this Agreement is null and void and shall constitute grounds for termination of this Agreement to include de-annexation by the Developer of the Property.

2.2 Rezoning. Developer acknowledges that Chapter 14 *Zoning* of the City's Code of Ordinances provides that, on annexation, a property is automatically zoned residential. Contemporaneously with the petition for annexation of the Property, the Developer shall apply for rezoning of the Property, including rezoning as a Planned Unit Development with terms and development standards in accordance with the Project's use and design, as

depicted in Exhibit "B". In the unlikely event that the Property is not given a zoning designation authorizing the Project as a permitted use, Developer may seek to terminate this Agreement in accordance with Section 5.2.1.4 of this Agreement.

SECTION 3. IMPACT FEE CREDITS / OFFSETS

3.1 Assessment.

3.1.1 The Parties agree that development of the Property is subject to impact fees and that said fees shall be calculated and assessed based on 363 ESFU.

3.1.2 Should the Project require more than 363 ESFU, water and wastewater impact fees will be assessed by the City on the development and will be payable by the Developer to the City in full.

3.2 Credits/Offsets Agreement. In accordance with Texas Local Government Code Chapter 395, Section 395.019 *Collection of Fees if Services Not Available*, and Section 13.07.004(f) *Offsets* of Chapter 13 *Utilities* of the City's Code of Ordinances, the City agrees that:

a. The Developer shall construct and finance those capital improvements and facility expansions described in Section 1.4 of this Agreement; and

b. The costs incurred by the Developer will be credited against the impact fees otherwise to be assessed and due from the Project.

3.3 Terms of Impact Fee Agreement.

3.3.1 The Parties agree to enter into the "Impact Fee Credit Agreement", attached as Exhibit "D" and incorporated fully herein, to include the following:

a. An estimate of the total water and wastewater impact fees to be assessed on 363 ESFU;

b. An estimate of the construction costs of the capital improvements and facility expansions performed by the Developer;

c. An estimate of the amount of the offset to be credited against the total impact fee assessment;

d. Construction requirements, including bond requirements;

e. Term and termination of the Impact Fee Credit Agreement;

f. Acceptance by the City of the completed and City Engineer / City Utility Department approved improvements; and

g. Timing of impact fee payments to the City.

3.3.2 The Parties shall execute the Impact Fee Credit Agreement contemporaneously with this Agreement to be effective as contained therein.

SECTION 4. ADDITIONAL COVENANTS AND WARRANTIES

4.1 Developer Covenants. In furtherance of this Agreement, Developer makes the following covenants and warranties that:

4.1.1 Developer is the owner of the Property;

4.1.2 Developer is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas and the United States of America during the term of this Agreement, and shall abide by all laws, regulations, and rules, including local ordinances;

4.1.3 Developer is not a party to any bankruptcy proceedings currently pending or contemplated, and Developer has not been informed of any potential involuntary bankruptcy proceedings;

4.1.4 Developer shall timely and fully perform the obligations and duties contained in this Agreement;

4.1.5 Developer shall use commercially reasonable efforts to complete the Project, and shall obtain or cause to be obtained, and pay for, all necessary and required building permits and approvals from the City and other regulatory agencies; and

4.1.6 The Developer shall be solely responsible for and bear all costs, improvements, and expenses associated with the Project.

4.2 City Covenants. In furtherance of this Agreement, the City makes the following covenants and warranties that:

4.2.1 The City has full constitutional and lawful right, power and authority, under currently applicable law, to execute and deliver and perform the terms and obligations of this Agreement;

4.2.2 City approvals under this Agreement have been duly and validly authorized in accordance with all necessary City proceedings, findings and actions;

4.2.3 This Agreement constitutes the legal, valid, and binding obligation of the City, and does not require the consent of any other governmental authority; and

4.2.4 The City shall timely and fully perform the obligations and duties contained in this Agreement.

SECTION 5. TERM AND TERMINATION

5.1 Effective Date; Term. This Agreement shall be effective as of the date of the last signature of the Parties to this Agreement ("Effective Date") and shall be in effect for a term of ten

(10) years unless sooner terminated as provided herein. The Agreement shall automatically be extended for one (1) additional ten (10) year term after expiration of the initial term following written notice by the Developer to the City 120 days prior to the expiration of the initial term.

5.2 Termination; Default.

5.2.1 This Agreement shall terminate:

5.2.1.1 Upon written notice by any Party, if the other Party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured as provided herein;

5.2.1.2 Upon written notice by the City, if the Developer suffers an event of bankruptcy or insolvency;

5.2.1.3 Upon written notice by the City, if the Developer fails to submit a petition for voluntary annexation of the Property within approximately sixty (60) days prior to the anticipated time of Project hookup to the City's water and wastewater system;

5.2.1.4 Upon written notice by the Developer, if the City has not rezoned the Property in accordance with the use of the Property and to accommodate the construction and operation of the Project; or

5.2.1.5 Upon written notice by the Developer, and prior to the initiation of any construction, if the Developer elects not to proceed with the Project.

5.2.2 Default.

5.2.2.1 The following shall be considered an act of default:

a. Failure by either Party to timely and fully perform the obligations and duties described in this Agreement; or
b. Any false or substantially misleading statement made by either Party and contained herein.

5.2.2.2 No party shall be declared in default until written notice of the default has been given to the defaulting party. Such notice shall set forth, in reasonable detail, the nature of the default. The defaulting party shall be given ninety (90) calendar days after the receipt of such written notice to cure the default. A defaulting party shall not be declared in default, if, within the cure period, the defaulting party has commenced in a commercially reasonable manner to remove or cure such alleged default, provided that, in the event the alleged default cannot reasonably be removed or cured within the cure period, the defaulting party shall provide the non-defaulting party a commercially reasonable written timeline for removing or curing such alleged default and the Parties shall enter into a written agreement extending the cure period to a timeframe consistent with such timeline.

5.3 Performance on Termination. Termination of this Agreement shall mutually release the Parties of any further duty of performance.

SECTION 6. ADDITIONAL PROVISIONS

6.1 Findings of Fact. The above stated Recitals are true and correct and are incorporated fully herein as findings of fact.

6.2 Chapter 245 Permit. This Agreement constitutes a permit under Chapter 245 of the Texas Local Government Code. Unless specified differently herein, ordinances and regulations applicable to this Project shall be those in effect as of the Effective Date of this Agreement and shall remain applicable provided the Project does not become dormant, as defined by State law. In the event the Project falls dormant and is subsequently revived after the statutory timelines, the ordinances and regulations in effect at that time shall apply.

6.3 Binding Effect; Covenants Run with the Land. This Agreement shall run with the land and be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

6.4 Assignment.

6.4.1 This Agreement may not be assigned by the Developer without the express written consent of the City Council, except as provided in Section 6.4.2.

6.4.2 Developer may assign, in whole or in part, its rights and obligations under this Agreement to any person(s) and/or entity(ies) acquiring, whether by purchase or devise, all of the Property.

6.4.3 In the event of an assignment of this Agreement, Developer who executes this Agreement shall be released from any obligations under this Agreement.

6.4.4 The Developer shall record a written assignment of said rights in the Official Public Records of Blanco County, Texas in order to be effective. A copy shall be provided to the City.

6.5 Entire Agreement and Exhibits. This Agreement constitutes the entire Agreement between the Parties. There is no other collateral oral or written agreement between the Parties that in any manner relates to the subject matter of this Agreement. All exhibits attached to this Agreement are incorporated into and made a part of this Agreement for all purposes.

6.6 Headings and Construction. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs. Each of the Parties has been actively and equally involved in the negotiation of this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting Party will not be employed in interpreting this Agreement or its exhibits.

6.7 Amendment. This Agreement may be amended only by the mutual written agreement of the Parties, subject to approval of the City Council.

6.8 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the Parties that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.9 Force Majeure. If either Party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, then the time period for performance of the obligations of either Party, to the extent affected by such act, shall be extended for a period no longer than two (2) years from the date of such event. Such cause shall be remedied with all reasonable diligence at the earliest practicable time. The term "force majeure" shall include acts of God, acts of a public enemy (including domestic and foreign terrorism), or orders of any kind of the Government of the United States or of the State of Texas impacting the Property or the Project.

6.10 Relationship of the Parties; No Third-Party Beneficiaries. This Agreement shall not be construed to create an agency, partnership, or joint venture of any type between the Parties. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the Parties do not intend to create any third-party beneficiaries by entering into this Agreement. The City will not be liable for any claims that may be asserted by any third party against the Developer or its consultants, contractors, subcontractors, or tenants occurring in connection with services performed by the Developer under this Agreement.

6.11 Litigation.

6.11.1 Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas, and exclusive venue for any action concerning this Agreement shall be in Blanco County, Texas.

6.11.2 Dispute Resolution. Any dispute that may arise under this Agreement shall first be submitted to non-binding mediation or to alternative dispute resolution proceedings before litigation is filed in court.

6.11.3 Litigation Costs. In the event of litigation, each Party shall be responsible for its own litigation costs and fees, and waives its right to recovery from the prevailing Party of litigation costs and fees, including attorney's fees.

6.11.4 Limitation of Damages. No Party will be liable to the other under this Agreement for consequential damages, including lost profits or exemplary damages.

6.12 Waiver of Rights; Remedies. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either Party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the Parties may have by law, statute, ordinance, or otherwise.

The failure by any Party to exercise any right, power, or option given to it by this Agreement, or to insist upon strict compliance with the terms of this Agreement, shall not constitute a waiver of the terms and conditions of this Agreement with respect to any other or subsequent breach thereof, nor a waiver by such Party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. Any rights and remedies any Party may have with respect to the other arising out of this Agreement shall survive the cancellation, expiration or termination of this Agreement, except as otherwise set forth herein.

6.13 **Indemnity; Limitation on Liability; Immunity. Each Party is deemed to have acted independently. In no event shall the City be liable to Developer, their successors or assigns for any indirect, special, punitive, incidental or consequential damages, including without limitation, lost profits, costs of delay, or liabilities to third parties. Developer agrees to indemnify and hold harmless the City and its elected officials, officers, and employees from any claims, suits, and causes of actions, liabilities and expenses, including reasonable attorney's fees, of any nature whatsoever arising out of any act or omission of the Developer or any of its subcontractors, or their respective officers, employees or agents, in connection with the performance of this Agreement. Nothing contained in this Agreement shall be construed as a waiver of or relinquishment of governmental or sovereign immunity by the City. The indemnity provided herein shall survive termination and/or expiration of this Agreement.**

6.14 Texas Government Code Chapter 2264. In accordance with Chapter 2264 of the Texas Government Code, as amended, Developer, as project developer, certifies that Developer, and its branches, divisions and departments, do not and will not knowingly employ any person who is not lawfully admitted for permanent residence to the United States or who is not authorized under law to be employed in the United States. The Developer shall not be liable for a violation of Chapter 2264 by a subsidiary, affiliate, or franchisee, or by a person with whom the Developer contracts.

6.15 Notice. All notices, authorizations, and requests in connection with this Agreement shall be in writing and deemed given (i) three days after being deposited in the U.S. mail, postage prepaid, certified or registered, return receipt requested; or (ii) one day after being sent by overnight courier, charges prepaid; and addressed as first set forth below or to such other address as the Party to receive the notice or request so designates by written notice to the other:

To the City:
City of Johnson City
Attn: Chief Administrative Officer
303 E. Pecan Drive (Physical)
P.O. Box 369 (Mailing)
Johnson City, Texas 78636

To the Developer:
TX-290-1031, LLC
4064 West US Highway 290
Johnson City, Texas 78636

6.16 Mandatory Disclosure. The Parties agree that in accordance with Section 212.172(b-1) of the Texas Local Government Code, this Agreement serves also to provide the Owner with statutory mandatory disclosure of the following:

6.16.1 The Owner is not required by statute or otherwise to enter into this Agreement with the City;

6.16.2 The Owner acknowledges that the City may annex the land pursuant to a voluntary petition for annexation as provided in Subchapter C-3, Section 43.0672, *et. seq.* of the Texas Local Government Code;

6.16.3 Annexation procedures conducted shall be pursuant to a voluntary petition for annexation in accordance with Subchapter C-3;

6.16.4 Annexation shall be accomplished upon the Owner's consent in accordance with a voluntary petition for annexation; and

6.16.5 Nothing contained in this Agreement shall be construed as a waiver of or relinquishment of governmental or sovereign immunity by the City.

6.17 Authorization. The undersigned officers and/or agents of the Parties executing this Agreement represent that each is the properly authorized person to execute this Agreement on behalf of the respective Party.

6.18 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument. This Agreement will become effective only when one or more counterparts, individually or taken together, bear the signatures of all of the Parties.

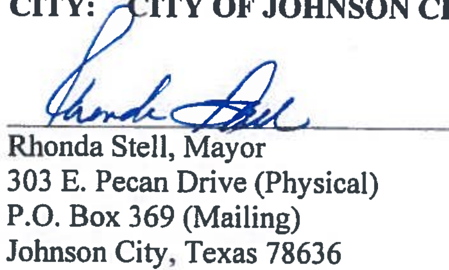
6.19 Recording. Upon execution, this Agreement shall be recorded by the Developer at Developer's expense in the Official Public Records of Blanco County, Texas. A copy of the recorded instrument shall be provided to the City.

Remainder of page intentionally left blank.

Signature pages follow.

IN WITNESS WHEREOF, the authorized representatives of the Parties have executed this Agreement on the dates indicated below and is effective as of the date of the last signature.

CITY: CITY OF JOHNSON CITY, TEXAS



Rhonda Stell, Mayor
303 E. Pecan Drive (Physical)
P.O. Box 369 (Mailing)
Johnson City, Texas 78636

Date: 4/24/2023

Attest:

Whitney Walston, City Secretary

Date: 4/24/2023

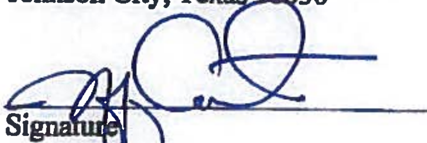
ACKNOWLEDGEMENT

This instrument was acknowledged before me on this 24 day of April, 2023 by Rhonda Stell, Mayor of the City of Johnson City, Texas, a Texas Type A general law municipality, on behalf of said municipality, known to me to be the person whose name is subscribed to the foregoing instrument.

Notary Public

Date: 4/24/2023

DEVELOPER: TX-290-1031, LLC, a Texas Limited Partnership
4064 West US Highway 290
Johnson City, Texas 78636



Signature

Date: 5/8/2023

JEFF CARTER
Printed Name

MANAGER
Title

Not Applicable

Signature

Date: ____________________

____
Printed Name

____
TX-290-1031, LLC Secretary

ACKNOWLEDGEMENT

This instrument was acknowledged before me on this_______day of____________________, 2023 by ______________________________, on behalf of ____________________, General Partner of TX-290-1031, LLC, a Texas limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument.

____
Notary Public

Date: ____________________

ACKNOWLEDGMENT

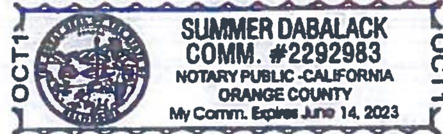
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Orange)

On May 8, 2023 before me, Summer Dabalack, Notary Public
(insert name and title of the officer)

personally appeared Jeff Carter,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.



WITNESS my hand and official seal.

Signature Summer Dabalack (Seal)

DEVELOPER: TX-290-1031, LLC, a Texas Limited Partnership
4064 West US Highway 290
Johnson City, Texas 78636

Signature

Date: MAY 4 2023

JAMES A CARTER
Printed Name

MANAGER
Title

Not Appliable
Signature

Date:

Printed Name

TX-290-1031, LLC Secretary

ACKNOWLEDGEMENT

This instrument was acknowledged before me on this 4 day of May, 2023 by James Carter, on behalf of TX-290-1031 LLC, General Partner of TX-290-1031, LLC, a Texas limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument.

Notary Public

Date: 5/4/23

EXHIBIT "A"

PROPERTY LEGAL DESCRIPTION AND SURVEY

of

HILL COUNTRY SPRINGS DEVELOPMENT

HAMBRIGHT LAND SURVEYING
P.O. BOX 1228
JOHNSON CITY, TEXAS 78636
PHONE: (830) 868-2574
TEXAS FIRM NO. 100587-00

AUGUST 14TH, 2018, JOB NO. JN018-103, FIELD NOTE NO. JN018-103.
PROJECT: 50.48 ACRE SURVEY

FIELD NOTES

A DESCRIPTION OF A 50.48 ACRE TRACT OF LAND BEING ALL OF THAT 50.47 ACRE TRACT OF LAND DESCRIBED IN CLERK'S DOCUMENT NUMBER 171304 OF THE OFFICIAL PUBLIC RECORDS OF BLANCO COUNTY, TEXAS, SITUATED IN THE ZENO HEMPHILL SURVEY NO. 167, ABSTRACT NO. 282 IN SAID COUNTY. SAID 50.48 ACRES AS SHOWN ON THE ACCOMPANYING MAP IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING at a 3/8" iron rod found for the southwest corner of said 50.48 acres, being the northwest corner of that certain 203.87 acre tract of land described in Volume 130, Page 403 of the Deed Records of said county and being in the east line of that certain 78.28 acre tract of land described in Volume 480, Page 1009 of the Official Public Records of said county;

THENCE along the most west line of said 50.48 acres, being the east line of said 78.28 acres, N01°38'53"W, 801.57 feet to a four (4) inch metal fence post found for a lower northwest corner of said 50.48 acres and being the southwest corner of that certain 4.67 acre tract of land described in Volume 231, Page 001 of the Official Public Records of said county;

THENCE along a lower north line of said 50.48 acres, being the south line of said 4.67 acres, N88°20'09"E, 290.80 feet to a three (3) inch metal fence post found for an ell corner of said 50.48 acres and being the southeast corner of said 4.67 acres;

THENCE along a west line of said 50.48 acres, being the east line of said 4.67 acres N01°38'34"W, 790.80 feet to a ½" iron found for the most northwest corner of said 50.48 acres, being the northeast corner of said 4.67 acres and being in the south right-of-way line of U.S. Highway No. 290;

THENCE generally along a fence, along the north line of said 50.48 acres and the south right-of-way line of said highway, the following four (4) courses:

1. N52°38'32"E, 17.31 feet to a concrete highway monument found;
2. N50°32'20"E, 77.60 feet to a concrete highway monument found;
3. N50°48'04"E, 421.46 feet to a ½" iron rod, capped with HLS 5283, set;
4. N50°37'30"E, 682.36 feet to a four (4) inch metal fence post found for the northeast corner of said 50.48 acres and being the northwest corner of that certain 89.00 acre tract of land described in Volume 47, Page 419 of the Deed Records of said county;

THENCE along the east line of said 50.48 acres, being the west line of said 89.00 acres, the following three (3) courses:

1. S01°27'31"E, 337.80 feet to a seven (7) inch cedar fence post found;
2. S01°30'13"E, 1561.19 feet to a six (6) inch cedar fence post found;
3. S01°38'34"E, 617.58 feet to a three (3) inch metal fence post found for the southeast corner of said 50.48 acres and being the northeast corner of said 203.87 acres;

THENCE along the south line of said 50.48 acres, being the north line of said 203.87 acres, S88°21'37"W, 1222.82 feet to the POINT OF BEGINNING, containing 50.48 acres of land, more or less.

FN 018-103

08-14-18

MAP TO ACCOMPANY FIELD NOTE NO. 018-103

SURVEY OF 50.48 ACRES SITUATED IN THE ZENO HEMPHILL SURVEY NO. 167, ABSTRACT NO. 282, BLANCO COUNTY, TEXAS

50.48 ACRES

US HIGHWAY NO. 290

CLIENT: JIM CARTER
TX-290-1031, LLC
34843 RANCHO CALIFORNIA ROAD
TEMECULA, CALIFORNIA 92591

TITLE SURVEY

HILL COUNTRY SPRINGS APARTMENTS
JOHNSON CITY, TEXAS

CUATRO Consultants, LTD.

SHEET 2 OF 27

EXHIBIT "B"

PROJECT SITE PLAN

entitled

SITE PLAN FOR
HILL COUNTRY SPRINGS DEVELOPMENT

Date: April 18, 2023

FUTURE PHASE 0.71 AC

FUTURE PHASE 4.91 AC

STORY 15,000 SF

BUILDING 12,750 SF

BUILDING 15,000 SF

US HIGHWAY 290 WEST

COMMERCIAL/RETAIL
11.26 ACRES,
APPROX. 47,850 SF.
OF BUILDING SPACE

PHASE 1
168 UNITS

PHASE 1
14.43 AC

PHASE 2
128 UNITS

PHASE 2
6.09 AC

PHASE 3
9.23 AC

PHASE 3
112 UNITS

FUTURE PHASE
3.69 AC

FUTURE PHASE
.67 AC

FUTURE PHASE
1.28 AC

OPEN/GREEN SPACE
9.47 AC

STORMWATER DETENTION BASIN

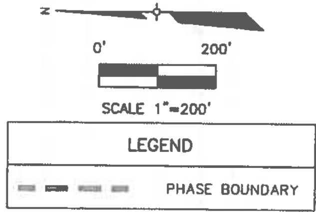
1990 L.F., 6' WIDE HIKE/BIKE TRAIL
10 – BENCHES
5 – COVERED PICNIC TABLES
5 – PICNIC TABLES
5 – BBQ PITS

JAY STEVENS TAYLOR
89.00 ACRES
VOLUME 47, PAGE 419
O.P.R.B.C.T.

TROY & REBECCA DANZ
1.67 ACRES
VOLUME 231, PAGE 001
O.P.R.B.C.T.

DAVID EUGENE BEHNER
156.57 ACRES
DOCUMENT NO. 2019191790
O.P.R.B.C.T.

TX-290-1031 LLC
75.29 ACRES
2018183721
O.P.R.B.C.T.



LAND USE SUMMARY		
TRACT AREA:	50.48	ACRES
LAND USE:		ACREAGE
MULTI FAMILY	29.75	ACRES
COMMERCIAL	11.26	ACRES
PARKLAND, DRAINAGE, AND OPEN SPACE	9.47	ACRES
TOTAL AREA:	50.48	ACRES

MULTI-FAMILY PHASING SUMMARY

PHASE	BUILDING TYPE	COUNT	TOTAL UNITS
1	I	2	16
	II	12	96
	III	4	32
	IV	3	24
2	I	2	16
	II	7	56
	III	5	40
	IV	2	16
3	I	0	0
	II	9	72
	III	4	32
	IV	1	8
TOTALS:		51	408

EXHIBIT "B"
SITE PLAN
HILL COUNTRY SPRINGS DEVELOPMENT
BLANCO COUNTY, TEXAS
DATE: 04/18/2023

4CUATRO Consultants, LTD.
Registration No. F-3524

EXHIBIT "C"

OFFSITE WATER AND WASTEWATER IMPROVEMENTS

entitled

DEVELOPER FUNDED IMPROVEMENTS FOR HILL COUNTRY SPRINGS DEVELOPMENT

Date: April 3, 2023

END 8" WW LINE PIPE BURSTING. BEGIN 8" WW LINE

8" WASTEWATER LINE ~2,325 LF.

EXISTING MANHOLE

W. PECAN STREET

10" W.L.

7TH STREET

AVENUE I

N. AVENUE Q

N. AVENUE O

N. AVENUE N

N. AVENUE L

AVENUE K

AVENUE J

10" W.L.

US HIGHWAY 290

DANZ WELL ROAD

END 8" WW LINE

BEGIN 8" WW LINE PIPE BURSTING

CITY LIMITS

10" W.L.

BEGIN 12" WATER MAIN ~ 1,945 L.F.

US HIGHWAY 290

EXISTING MANHOLE

S. AVENUE N

CITY LIMITS

CITY LIMITS

8" WW GRAVITY MAIN, ~1,082 L.F.

END 12" WATER MAIN

4" PRIVATE WW FORCE MAIN

TX-290-1031, LLC
50.48 AC.
DOC. 20183170
BLANCO COUNTY, TEXAS

PRIVATE WW LIFT STATION

PROJECT SITE

SCALE: 1" = 600'

LEGEND

EXISTING	PROPOSED	DESCRIPTION
		WATER LINE
		WASTEWATER LINE
		WW PIPE BURSTING (6" TO 8" Ø)

EXHIBIT C

DEVELOPER FUNDED IMPROVEMENTS FOR HILL COUNTRY SPRINGS DEVELOPMENT

U.S. HIGHWAY 290 WEST
BLANCO COUNTY, TEXAS

DATE: 03-14-23

4CUATRO Consultants, LTD
Firm F-3524
3601 Kyle Crossing, Suite A Phone (512) 312-5040 Fax: (512) 312-5399
Kyle, Texas 78640 e-mail: cuatro@cuatroconsultants.com

EXHIBIT "D"

IMPACT FEE CREDIT AGREEMENT

between the

CITY OF JOHNSON CITY

and

TX-290-1031, LLC

Date: April 18, 2023

STATE OF TEXAS §
§
COUNTY OF BLANCO §

IMPACT FEE CREDIT AGREEMENT BETWEEN THE CITY OF JOHNSON CITY AND TX-290-1031, LLC

This Impact Fee Credit Agreement ("Agreement") is made and entered into by and between the City of Johnson City, Texas, a Type A General Law municipal corporation ("City"), and TX-290-1031, LLC, a Texas limited partnership ("Owner"; "Developer"), individually referred to as the "Party" and, collectively, as the "Parties".

RECITALS

WHEREAS, the Parties have entered into a Development Agreement ("Development Agreement") for the development of that tract of land owned by the Developer and consisting of approximately 50.48 acres of land located on the South side of U.S. Highway 290 W. approximately 0.70 miles west of N. Nugent Ave. ("Property"); and

WHEREAS, development of the Property is subject to impact fees, which fees are to be calculated and assessed based on 363 equivalent single-family units (ESFU); and

WHEREAS, Texas Local Government Code Section 395.019 and Section 13.07.004(f) of Chapter 13 *Utilities* of the City's Code of Ordinances authorizes the City to enter into an agreement whereby the Developer will construct, at his expense, capital improvements or facility expansions identified within the City's Capital Improvements Plan and Impact Fee Study (July 2022) ("Study"), and the costs incurred by the Developer will be credited against the balance of the total impact fees otherwise due the City from the new development; and

WHEREAS, the City agrees to the construction to be undertaken by the Developer of offsite water and wastewater capital improvements ("Improvements") contained within the Study and related to the development; and

WHEREAS, the Developer agrees to construct, pay for, and dedicate those improvements outlined herein for eligibility to receive an impact fee credit to offset the total development impact fee to be paid by the Developer; and

WHEREAS, the Parties desire to enter into an Impact Fee Credit Agreement outlining the terms and conditions for the Impact Fee Credit for costs associated with the capital improvements construction.

NOW, THEREFORE, for the purposes set forth herein, and for good and valuable consideration, the adequacy of which is hereby acknowledged, the Parties agree as follows:

SECTION 1. CAPITAL IMPROVEMENTS AND CONSTRUCTION

A. Improvements. Developer, at his expense, will construct and install the Improvements, as described in the Development Agreement and outlined at Exhibit "C", "Offsite Water and Wastewater Improvements", attached hereto and incorporated fully herein, and as follows:

1. Approximately 1,945 linear feet of offsite 12-inch diameter water main from an existing 10-inch main located near Danz Well Road and N. Ave. Q, south across W. U.S. Highway 290, and west across the entire front Property line within the Texas Department of Transportation (TxDOT) right-of-way; and

2. Construct, enlarge, and/or pipe burst approximately 1,082 linear feet of offsite 8-inch diameter wastewater gravity main from the northeast corner of the Property line east along W. U.S. Highway 290 to N. Avenue N, and approximately 2,325 linear feet of offsite 8-inch diameter wastewater gravity main from N. Avenue N and W. U.S. Highway 290 to N. Avenue N and W. Pecan Street to an existing manhole at the intersection of Avenue I and W. Pecan Street. Wastewater mains shall not be located in private easements, but rather, shall be located within the Texas Department of Transportation (TxDOT) and City rights-of-way.

As contained in the Development Agreement, the Improvements do not include the lift station to be located and constructed onsite.

B. Construction Term; Completion. The Developer shall begin construction, to include, if applicable, acquisition of right-of-way at his expense, within three hundred sixty-five (365) days of execution of this Agreement. Developer shall submit to the City a written notice of intent to commence construction along with all requisite documents, including insurance and permits. Upon receipt and approval, the City shall issue to the Developer a notice to proceed. Construction must be completed within three hundred sixty-five (365) days after initiation of construction. The Parties may extend this deadline by written mutual agreement approved by the City Council.

C. Design Standards; Construction Procedures. The Improvements shall be designed and constructed in accordance with the City's Design Standards and with all other applicable Federal, State and local laws, codes and regulations, including the Utility Accommodation Rules of the Texas Department of Transportation, in effect as of the effective date of this Agreement. The Developer shall conduct and complete the construction pursuant to the procedures outlined in Sections 10.02.272 and 10.02.273 of Article 10.02, the City's Subdivision Ordinance ("Subdivision Ordinance"). Without limiting or diminishing the Developer's obligation to indemnify or hold the City harmless, the Developer shall provide to the City proof of insurance coverage for construction in amounts as required by the City. Said insurance shall be maintained throughout the term of the construction.

D. Inspection; Approvals. The City Engineer and/or City Utility Department shall be responsible for the review and written approval of offsite water and wastewater construction plans and documents and changes thereto. The City shall have right of access to the construction worksite for conducting inspections of the Improvement construction. The Developer shall maintain the worksite and the constructed Improvements in good and safe condition until acceptance of the Improvements by the City.

E. Construction Bonds. Prior to the initiation of Developer's construction of the Improvements, the Developer shall cause payment and performance bonds, a trust agreement, or a letter of credit to be issued to the City for the estimated construction cost of the Improvements. The bonds shall be issued in accordance with the bond requirements contained in Section 10.02.301(b) of the City's Subdivision Ordinance.

F. Approval; Acceptance of Improvements; Maintenance Bond. Upon completion of construction, the Developer shall submit to the City a notice of completion to include a two-year maintenance bond issued pursuant to the bond requirements contained in Section 10.02.331 of the City's Subdivision Ordinance. The City Engineer and/or City Utility Department shall review the construction for final approval and for acceptance of the Improvements by the City Council under the procedures contained in Section 10.02.362 of the City's Subdivision Ordinance. No improvements shall be finally accepted unless all aspects of the work have been determined to have been completed in accordance with the improvement construction plans and City standards.

G. Connection. Upon receipt of the maintenance bond, and acceptance of the Improvements by the City, the City shall authorize the connection of the development's water and wastewater lines to the City's water and wastewater infrastructure.

H. Incomplete Improvements. If the City is required to complete all or any part of the construction of the Improvements, this Agreement is null and void and the Developer forfeits claim to all potential impact fee credits/offsets.

SECTION 2. IMPACT FEE CREDIT/OFFSET

A. ESFU Units. The Improvements will service approximately 363 equivalent single-family units (ESFU), which include approximately 408 multifamily residential units and related amenities, approximately 47,850 square feet of commercial / retail space, and approximately 1.00 acre of self-storage facilities.

B. Total Impact Fee Assessment. Under the Impact Fee Schedule in effect at the time of this Agreement, and construction begun and completed within two (2) years of the effective date of this Agreement, the total water and wastewater impact fees to be assessed on 363 ESFU / 8" water meter is estimated at $921,941.00 ("Impact Fee Assessment"). Impact fees to be assessed, beyond the two-year timeframe, shall be those in effect at the time of connection. Impact fees are subject to adjustment by the City. Should the development require more than 363 ESFU / 8" water meter, water and wastewater impact fees will be assessed by the City on the additional development and will be payable by the Developer to the City in full.

C. Construction Costs Amount. Pursuant to the "Opinion of Probable Construction Cost", attached hereto as Attachment "A", and incorporated fully herein, the preliminary estimated construction cost of the offsite Improvements is $1,061,561.34 ("Maximum Construction Cost"). Construction costs exceeding this estimate must be approved by the City. Right-of-way acquisition costs, if applicable, are not included in construction costs and are not creditable as impact fee credits. .

D. Credit Applied. Upon full and satisfactory completion of construction of the Improvements, the Developer is eligible to receive an Impact Fee Credit only for actual costs incurred, excluding contingency costs, up to the Maximum Construction Cost to offset the total development Impact Fee Assessment. In no event shall the credit be greater than the total Impact Fee Assessment. Following completion and prior to any water/wastewater connections, the Developer shall submit proof of payment and an affidavit indicating and detailing the total actual costs spent on the Improvements and to be applied as an offset against the total Impact Fee Assessment due and owing on the development. Upon review and approval, the City shall apply total offset costs as a credit to the total Impact Fee Assessment determined due and owing. No excess offset cost shall be applied to subsequent impact fees assessed for additional and/or new development.

E. Payment Timing. Impact fees, with the corresponding credit, shall be payable to the City at the time of connection of the development's water and wastewater lines to the City's water and wastewater systems.

F. Forfeiture. In the event that the Developer does not meet and satisfy the Agreement obligations outlined herein, or does not complete the construction within the term prescribed herein, the Developer shall forfeit any and all fee credits for this development project and shall not be entitled to receive an impact fee credit/offset.

SECTION 3. GENERAL PROVISIONS

A. Findings. The above stated Recitals are true and correct and are incorporated fully herein as findings of fact.

B. Term. This Agreement shall be effective as of the date of the last signature of the Parties to this Agreement ("Effective Date") and shall be in effect for a term of ten (10) years unless sooner terminated as provided herein. The Agreement shall automatically be extended for one (1) additional ten (10) year term after expiration of the initial term following written notice by the Developer to the City 120 days prior to the expiration of the initial term.

C. Termination; Default. The terms for termination and default contained in the Development Agreement are incorporated fully herein. A default under that agreement shall be considered a default of this Agreement.

D. Entire Agreement; Amendments. This Agreement constitutes the entire Agreement between the Parties. This Agreement may be amended only by the mutual written agreement of the Parties, subject to approval of the City Council.

E. Assignment. This Agreement may not be assigned by the Developer without the express written consent of the City Council, except that the Developer may assign, in whole or in part, its rights and obligations under this Agreement to any person(s) and/or entity(ies) acquiring, whether by purchase or devise, all of the Property. In the event of an assignment of this Agreement, Developer who executes this Agreement shall be released from any obligations under this Agreement.

F. Binding Effect. This Agreement shall run with the land and be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

G. Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions.

H. Force Majeure. If either Party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, then the time period for performance of the obligations of either Party, to the extent affected by such act, shall be extended for a period no longer than two (2) years from the date of such event. Such cause shall be remedied with all reasonable diligence at the earliest practicable time.

I. Relationship of the Parties; No Third-Party Beneficiaries. This Agreement shall not be construed to create an agency, partnership, or joint venture of any type between the Parties. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement. The City shall have no responsibility for payment to any contractor, subcontractor or supplier of the Developer.

J. Litigation. This Agreement shall be governed by the laws of the State of Texas, and exclusive venue for any action concerning this Agreement shall be in Blanco County, Texas. In the event of litigation, each Party shall be responsible for its own litigation costs and fees, and waives its right to recovery from the prevailing Party of litigation costs and fees, including attorney's fees.

K. Waiver of Rights; Remedies. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either Party shall not preclude or waive its right to use any or all other remedies. The failure by any Party to exercise any right, power, or option given to it by this Agreement, or to insist upon strict compliance with the terms of this Agreement, shall not constitute a waiver of the terms and conditions of this Agreement.

L. Development Agreement. Nothing contained herein shall be construed as affecting the City's or the Developer's duties and rights outlined in the Development Agreement between the City and the Developer.

M. **Indemnification. Developer agrees to indemnify and hold harmless the City and its elected officials, officers, and employees from any claims, suits, and causes of actions, liabilities and expenses, including reasonable attorney's fees, of any nature whatsoever arising out of any act or omission of the Developer or any of its subcontractors, or their respective officers, employees or agents, in connection with the performance of this Agreement. Nothing contained in this Agreement shall be construed as a waiver of or relinquishment of governmental or sovereign immunity by the City. The indemnity provided herein shall survive termination and/or expiration of this Agreement.**

N. Notice. All notices, authorizations, and requests in connection with this Agreement shall be in writing and deemed given (i) three days after being deposited in the U.S. mail, postage prepaid, certified or registered, return receipt requested; or (ii) one day after being sent by overnight courier, charges prepaid; and addressed as first set forth herein or to such other address as the Party to receive the notice or request so designates by written notice to the other.

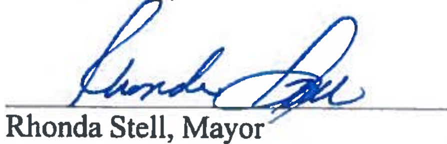
O. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument. This Agreement will become effective only when one or more counterparts, individually or taken together, bear the signatures of all of the Parties.

Remainder of page intentionally left blank.

Signature pages follow.

IN WITNESS WHEREOF, the authorized representatives of the Parties have executed this Agreement on the dates indicated below and is effective as of the date of the last signature.

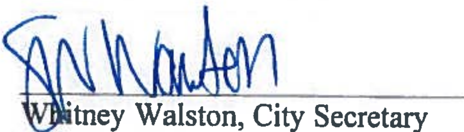
CITY: CITY OF JOHNSON CITY, TEXAS
303 E. Pecan Drive (Physical)
P.O. Box 369 (Mailing)
Johnson City, Texas 78636



Rhonda Stell, Mayor

Date: 4/24/2023

Attest:

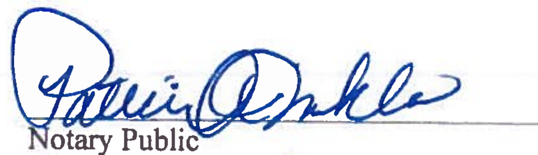


Whitney Walston, City Secretary

Date: 4/24/2023

ACKNOWLEDGEMENT

This instrument was acknowledged before me on this 24 day of April, 2023 by Rhonda Stell, Mayor of the City of Johnson City, Texas, a Texas Type A general law municipality, on behalf of said municipality, known to me to be the person whose name is subscribed to the foregoing instrument.



Notary Public

Date: 4/24/2023

DEVELOPER: TX-290-1031, LLC, a Texas Limited Partnership
4064 West US Highway 290
Johnson City, TX 78636

Signature

Date: 5/8/2023

JEFF CARTER
Printed Name

MANAGER
Title

Not Applicable
Signature

Date: ____________________

____
Printed Name

____
TX-290-1031, LLC Secretary

Date: ____________________

ACKNOWLEDGEMENT

This instrument was acknowledged before me on this______day of____________________, 2023 by ______________________________, and ______________________________, on behalf of TX-290-1031, LLC, a Texas limited partnership, known to me to be the persons whose names are subscribed to the foregoing instrument.

____
Notary Public

Date: ____________________

ACKNOWLEDGMENT

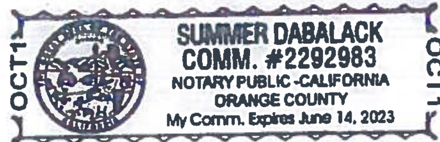
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Orange)

On May 8, 2023 before me, Summer Dabalack, Notary Public
(insert name and title of the officer)

personally appeared Jeff Carter,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.



WITNESS my hand and official seal.

Signature Summer Dabalack (Seal)

DEVELOPER: TX-290-1031, LLC, a Texas Limited Partnership
4064 West US Highway 290
Johnson City, TX 78636

Signature

Date: May 4 2023

JAMES A. CARTER
Printed Name

MANAGER
Title

Not Applicable
Signature

Date: ____________________

____
Printed Name

____
TX-290-1031, LLC Secretary

Date: ____________________

ACKNOWLEDGEMENT

This instrument was acknowledged before me on this 4 day of May, 2023 by James Carter, and ____________________, on behalf of TX-290-1031, LLC, a Texas limited partnership, known to me to be the persons whose names are subscribed to the foregoing instrument.

Notary Public

Date: 5/4/23

ATTACHMENT "A"

OPINION OF PROBABLE CONSTRUCTION COST

for

HILL COUNTRY SPRINGS DEVELOPMENT
DEVELOPER-FUNDED OFFSITE WATER AND WASTEWATER IMPROVEMENTS
CITY OF JOHNSON CITY
BLANCO COUNTY, TEXAS

By: Cuatro Consultants, Ltd.
Date: April 3, 2023

OPINION OF PROBABLE CONSTRUCTION COST
FOR
HILL COUNTRY SPRINGS DEVELOPMENT
DEVELOPER-FUNDED OFFSITE WATER AND WASTEWATER IMPROVEMENTS
CITY OF JOHNSON CITY
BLANCO COUNTY, TEXAS

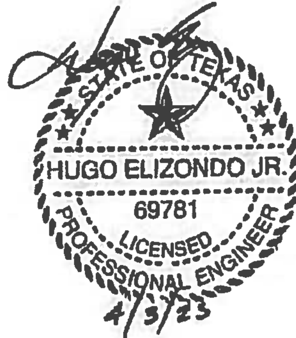
April 3, 2023

ITEM NO.	DESCRIPTION	UNIT	QTY	UNIT PRICE	TOTAL PRICE
A. EROSION/SEDIMENTATION CONTROL					
1	SILT FENCE	LF	1,700	$ 3.00	$ 5,100.00
2	RE-VEGETATION OF DISTURBED AREAS (HYDROMULCH) NO WATERING	SY	3,430	$ 1.00	$ 3,430.00
	SUBTOTAL: EROSION/SEDIMENTATION CONTROL			$	8,530.00
B. WATER IMPROVEMENTS					
3	MOBILIZATION	LS	1	$ 24,775.00	$ 24,775.00
4	12" PVC MAIN, DR 18 (INCLUDING FITTINGS)	LF	1,945	$ 90.00	$ 175,050.00
5	24" STEEL ENCASEMENT IN BORE UNDER US HIGHWAY 290	LF	84	$ 575.00	$ 48,300.00
6	WET CONNECTION TO EXISTING 10" MAIN	LS	1	$ 6,000.00	$ 6,000.00
7	AIR VACUUM RELIEF VALVE	EA	1	$ 4,000.00	$ 4,000.00
8	12" GATE VALVE WITH BOX	EA	3	$ 6,000.00	$ 18,000.00
9	10" GATE VALVE WITH BOX	EA	1	$ 4,000.00	$ 4,000.00
10	FIRE HYDRANT ASSEMBLY	EA	5	$ 7,000.00	$ 35,000.00
11	AVENUE Q STREET REPAIR	LS	1	$ 5,000.00	$ 5,000.00
12	DRIVEWAY REPAIR	EA	6	$ 1,500.00	$ 9,000.00
13	TRAFFIC CONTROL	LS	1	$ 3,500.00	$ 3,500.00
14	TRENCH SAFETY(ROAD PLATES)	LF	1,150	$ 3.00	$ 3,450.00
	SUBTOTAL: WATER IMPROVEMENTS			$	336,075.00
C. WASTEWATER IMPROVEMENTS					
15	8" PVC MAIN, SDR 26 (0-8') OFFSITE	LF	1,083	$ 50.00	$ 54,150.00
16	WASTEWATER MANHOLE WITH COATING	EA	5	$ 5,700.00	$ 28,500.00
17	CONNECT TO EXISTING MANHOLE AT AVENUE N. (SOUTH)	EA	1	$ 6,500.00	$ 6,500.00
18	DRIVEWAY REPAIR	EA	4	$ 1,500.00	$ 6,000.00
19	TRAFFIC CONTROL	EA	1	$ 2,500.00	$ 2,500.00
20	TRENCH SAFETY	LF	1,083	$ 2.00	$ 2,166.00
	SUBTOTAL: WASTEWATER IMPROVEMENTS			$	99,816.00
	SUBTOTAL CONSTRUCTION COST: (TOTAL OF A, B, AND C)			$	444,421.00
	CONTINGENCY, 15%:			$	66,663.15
	ENGINEERING/SURVEY/LEGAL, 11%:			$	48,886.31
	TOTAL PROJECT COST:			$	559,970.46

CLARIFICATIONS:

1. THIS OPC INCLUDES THE CONSTRUCTION OF DEVELOPER FUNDED OFFSITE WATER AND WASTEWATER IMPROVEMENTS PER FOR REVIEW ONLY PLAN SET DATED 1/27/2023
2. THIS OPC EXCLUDES ANY AND ALL SOFT COSTS OR ANY AND ALL DEVELOPMENT FEES, ETC
3. THIS OPC EXCLUDES PAYMENT BOND, PERFORMANCE BOND, AND MAINTENANCE BOND
4. THIS OPC EXCLUDES ANY CONSTRUCTION TESTING BY BY 3RD PARTY LABORATORY.
5. THIS OPC EXCLUDES ANY COST OF THIRD PART CONSTRUCTION TESTING OF TRENCH DENSITIES OR BASE REPAIR

Prepared By:
Hugo Elizondo, Jr, P.E.
Cuatro Consultants, Ltd.
Firm No. F-3524
3601 Kyle Crossing, Suite A
Kyle, Texas 78640
512-312-5040



OPINION OF PROBABLE CONSTRUCTION COST
FOR
HILL COUNTRY SPRINGS DEVELOPMENT
EXISTING WASTEWATER SYSTEM REPLACEMENT/UPGRADES
CITY OF JOHNSON CITY
BLANCO COUNTY, TEXAS

April 3, 2023

ITEM NO.	DESCRIPTION	UNIT	QTY	UNIT PRICE	TOTAL PRICE
A. EROSION/SEDIMENTATION CONTROL					
1	SILT FENCE	LF	300	$ 3.00	$ 900.00
2	RE-VEGETATION OF DISTURBED AREAS (HYDROMULCH) NO WATERING	LS	1	$ 3,500.00	$ 3,500.00
	SUBTOTAL: EROSION/SEDIMENTATION CONTROL				$ 4,400.00
B. WASTEWATER IMPROVEMENTS					
3	8" PVC MAIN, SDR 26 (0-8')	LF	538	$ 58.00	$ 31,204.00
4	8" PVC MAIN, SDR 26 (8-10')	LF	384	$ 64.00	$ 24,576.00
5	8" PVC MAIN, SDR 26 (10-12')	LF	165	$ 66.00	$ 10,890.00
6	6" TO 8" HDPE MAIN PIPE BURSTING, DR 17 (0-8') AND SERVICE RECONNECTIONS WITH PAVEMENT REPAIR	LF	1,238	$ 150.00	$ 185,700.00
7	WASTEWATER MANHOLE WITH COATING	EA	3	$ 5,700.00	$ 17,100.00
8	CONNECT TO EXISTING MANHOLE	EA	2	$ 6,500.00	$ 13,000.00
9	MANHOLE REHABILITATION	EA	5	$ 4,000.00	$ 20,000.00
10	BYPASS PUMPING	LS	1	$ 20,000.00	$ 20,000.00
11	RECONNECT SERVICES ALONG NEW CONSTRUCTION 8" PVC MAIN	EA	18	$ 2,000.00	$ 36,000.00
12	STREET OVERLAY REPAIR 1.5" TYPE D HMAC 11' WIDE	SY	1,329	$ 15.00	$ 19,935.00
13	SAW CUT PAVEMENT	LF	2,174	$ 3.50	$ 7,609.00
14	TRAFFIC CONTROL	LS	1	$ 5,500.00	$ 5,500.00
15	TRENCH SAFETY	LF	1,087	$ 2.00	$ 2,174.00
	SUBTOTAL: WASTEWATER IMPROVEMENTS				$ 393,688.00
	SUBTOTAL CONSTRUCTION COST: (TOTAL OF A AND B)				$ 398,088.00
	CONTINGENCY, 15%:				$ 59,713.20
	ENGINEERING/SURVEY/LEGAL, 11%:				$ 43,789.68
	TOTAL PROJECT COST:				$ 501,590.88

CLARIFICATIONS:

1. THIS OPC IS PRELIMINARY ONLY AND NOT BASED ON FINAL APPROVED CONSTRUCTION DRAWINGS.
2. THIS OPC INCLUDES THE CONSTRUCTION OF DEVELOPER-FUNDED EXISTING WASTEWATER SYSTEM REPLACEMENT/UPGRADES.
3. THIS OPC EXCLUDES ANY AND ALL DEVELOPMENT FEES
4. THIS OPC EXCLUDES PAYMENT BOND, PERFORMANCE BOND, AND MAINTENANCE BOND.
5. THIS OPC EXCLUDES ANY COST OF THIRD PARTY CONSTRUCTION TESTING OF TRENCH DENSITIES OR BASE REPAIR

Prepared By:
Hugo Elizondo, Jr, P.E.
Cuatro Consultants, Ltd.
Firm No. F-3524
3601 Kyle Crossing, Suite A
Kyle, Texas 78640
512-312-5040