AGENDA

City of Lucas
City Council Regular Meeting
November 5, 2015
5:50 PM
City Hall – Council Chambers
665 Country Club Road – Lucas, Texas

Notice is hereby given that a City of Lucas Regular City Council Meeting will be held on Thursday, November 5, 2015 at 5:50 pm at Lucas City Hall, 665 Country Club Road, Lucas, Texas, 75002-7651 at which time the following agenda will be discussed. As authorized by Section 551.071 of the Texas Government Code, the City Council may convene into closed Executive Session for the purpose of seeking confidential legal advice from the City Attorney on any item on the agenda at any time during the meeting.

Call to Order

- Roll Call
- Determination of Quorum
- Reminder to turn off or silence cell phones
- Pledge of Allegiance

Executive Session
Conference Room

The City Council may convene in a closed Executive Session pursuant to Chapter 551.074 of the Texas Government Code (Personnel Matters).

1. Pursuant to Section 551.074 of the Texas Government Code, the City Council will convene into Executive Session to discuss existing Board of Adjustment membership and conduct interviews for appointments to the Board of Adjustment. **(Mayor Jim Olk)**

2. Reconvene into Regular Session and take any action necessary from the Executive Session. **(Mayor Jim Olk)**

Citizen Input

The Citizens' Input portion of the agenda is an opportunity for the public to address the City Council on any subject. By completing a "Request to Speak" form and submitting it to the City Secretary, citizens have an opportunity to speak at the City Council meeting. However, in accordance with the Texas Open Meetings Act, the City Council cannot discuss issues raised or make any decisions but may refer items to City Staff for research and possible inclusion on a future agenda.

3. Citizen Input **(Mayor Jim Olk)**

Community Interest

Pursuant to Section 551.0415 of the Texas Government Code, the City Council may report on the following items 1) expression of thanks, congratulations or condolences; 2) information about holiday schedules; 3) recognition of individuals; 4) reminders about upcoming City Council events; 5) information about community events; and 6) announcements involving imminent threat to public health and safety.

4. Community Interest **(Mayor Jim Olk)**

Consent Agenda

All items listed under the consent agenda are considered routine and are recommend to the City Council for a single vote approval. If discussion is desired, an item may be removed from the consent agenda for a separate vote.

5. Consider approval of the minutes of the October 15, 2015 City Council meeting. **(City Secretary Stacy Henderson)**

6. Consider authorizing the City Manager to enter into a Lease Agreement between the City of Lucas and Family Promise of Collin County for a period of one year ending November 30, 2016 with renewals of successive one year terms on December 1st of each year unless terminated. **(City Secretary Stacy Henderson)**

7. Consider adopting Ordinance 2015-11-00824 granting to Atmos Energy Corporation, a Texas and Virginia corporation franchise to construct, maintain, and operate pipelines and equipment in the City of Lucas for the transportation, delivery, sale, and distribution of gas in, out of, and through said City for all purposes. **(Development Services Director Joe Hilbourn)**

Regular Agenda

8. Discuss the city-wide replacement of water registers and associated utility billing and provide staff direction or further recommendations. **(Mayor Jim Olk)**

9. Provide direction to the City Manager regarding the need to paint the McGarity water tower. **(Public Works Director/City Engineer Stanton Foerster)**

10. Consider adopting Ordinance 2015-11-00825 amending Chapter 12 of the Code of Ordinances titled “Traffic and Vehicles” by adding Article 12.05 titled “Stopping, Standing, and Parking” for the purpose of prohibiting parking along various roadways. **(Public Works Director/City Engineer Stanton Foerster)**

11. Consider authorizing the Mayor to enter into a Development Agreement between the City of Lucas and Goose Real Estate Inc., for a parcel of land situated in the Calvin Boles Survey, ABS Number 28 also known as Lots 1-9 of the Ford Cattle Ranch being 67.0300 acres. **(Development Services Director Joe Hilbourn)**

12. Discuss and give staff direction regarding amendments to Chapter 10 of the Code of Ordinances Subdivision Regulations including optional land studies, adding road types to match the Master Thoroughfare Plan, changing the location of the Fee Schedule to Appendix C of the Code of Ordinances and adding requirements pertaining to OSSF. **(Development Services Director Joe Hilbourn)**

13. Discuss and provide direction to staff regarding declaring December as Lucas History Month. **(City Secretary Stacy Henderson and Councilmember Debbie Fisher)**

14. Consider selecting a date for the 2016 Founders Day event. **(City Secretary Stacy Henderson)**

Certification

I hereby certify that the above notice was posted in accordance with the Texas Open Meetings Act on the bulletin board at Lucas City Hall, 665 Country Club Road, Lucas, TX 75002 and on the City's website at www.lucastexas.us on or before 5:00 p.m. on Friday, October 30, 2015.

_____

Stacy Henderson, City Secretary

In compliance with the American with Disabilities Act, the City of Lucas will provide for reasonable accommodations for persons attending public meetings at City Hall. Requests for accommodations or interpretive services should be directed to Stacy Henderson at 972.912.1211 or by email at shenderson@lucastexas.us at least 48 hours prior to the meeting.

Item No. 01-02

City of Lucas
Council Agenda Request
November 5, 2015

Requester: **Mayor Jim Olk**

Agenda Item:

Executive Session:

1. Pursuant to Section 551.074 of the Texas Government Code, the City Council will convene into Executive Session to discuss existing Board of Adjustment membership and conduct interviews for appointments to the Board of Adjustment.

2. Reconvene into Regular Session and take any action necessary as a result of the closed Executive Session.

Background Information:

NA

Attachments/Supporting Documentation:

NA

Budget/Financial Impact:

NA

Recommendation:

NA

Motion:

NA

Item No. 03

City of Lucas
Council Agenda Request
November 5, 2015

Requester: **Mayor Jim Olk**

Agenda Item:

Citizen Input

Background Information:

NA

Attachments/Supporting Documentation:

NA

Budget/Financial Impact:

NA

Recommendation:

NA

Motion:

NA

Item No. 04

City of Lucas
Council Agenda Request
November 5, 2015

Requester: Mayor Jim Olk

Agenda Item:

Community Interest:

There are no Community Interest items scheduled for this meeting.

Background Information:

Attachments/Supporting Documentation:

NA

Budget/Financial Impact:

NA

Recommendation:

NA

Motion:

NA

Item No. 05-06-07

City of Lucas
Council Agenda Request
November 5, 2015

Requester: City Secretary Stacy Henderson

Agenda Item:

Consent Agenda:

5. Consider approval of the minutes of the October 15, 2015 City Council meeting.

6. Consider authorizing the City Manager to enter into a Lease Agreement between the City of Lucas and Family Promise of Collin County for a period of one year ending November 30, 2016 with renewals of successive one year terms on December 1st of each year unless terminated.

7. Consider adopting Ordinance 2015-11-00824 granting to Atmos Energy Corporation, a Texas and Virginia corporation franchise to construct, maintain, and operate pipelines and equipment in the City of Lucas for the transportation, delivery, sale, and distribution of gas in, out of, and through said City for all purposes.

Background Information:

Agenda Item No. 6:

The existing Lease Agreement with Family Promise of Collin County will be expiring November 30, 2015. The proposed Lease Agreement has been updated to reflect an automatic renewal of the contract each year unless the contract is terminated.

Agenda Item No. 7:

The need for an Agreement with Atmos Energy became apparent with the addition of Wendy's and Starbucks. Atmos Energy has a franchise agreement with the City of Allen, the only other property they currently serve in Lucas is the Wal-Mart on Angel Parkway.

A very small portion of the City will be served by Atmos Energy Cooperation including the following locations:

- Angel Parkway between Estates and West Lucas Road
- Estates Road between Angel Parkway and the proposed Allison Lane
- West Lucas Road from Angel Parkway to proposed Allison Lane
- Parker Road from 1378 to Stinson Road
- 1378 from Parker Road to roughly the entrance of Seis Lagos

Item No. 05-06-07

City of Lucas
Council Agenda Request
November 5, 2015

Requester: City Secretary Stacy Henderson

Attachments/Supporting Documentation:

1. Minutes of October 15, 2015
2. Proposed Lease Agreement with Family Promise of Collin County.
3. Ordinance 2015-11-00824 – Atmos Energy Corporation

Budget/Financial Impact:

NA

Recommendation:

NA

Motion:

I make a motion to approve/deny the Consent Agenda as presented.

City of Lucas
City Council Meeting
October 15, 2015
7:00 PM
City Hall - 665 Country Club Road – Lucas Texas

Minutes

Call to Order

Mayor Olk called the meeting to order at 7:00 p.m.

Council Members Present:
Mayor Jim Olk
Mayor Pro Tem Kathleen Peele
Councilmember Debbie Fisher
Councilmember Steve Duke
Councilmember Philip Lawrence
Councilmember Tim Baney
Councilmember Wayne Millsap *(arrived at 7:10pm)*

Staff:
City Manager Joni Clarke
City Secretary Stacy Henderson
City Attorney Joe Gorfida
Development Services Director Joe Hilbourn
Public Works Director/City Engineer Stanton Foerster

Mayor Olk determined that a quorum was present. Everyone was reminded to turn off or silence their cell phones and the City Council recited the Pledge of Allegiance.

Citizen Input

1. Citizen Input

Matthew Poulton, 2208 Wolfcreek Drive, stated he had been receiving high water bills since July and while they had built a pool, they were no longer watering excessively and they had looked for leaks within his system. He stated he was concerned about the trend of high water bills.

Mayor Olk directed Mr. Poulton to discuss this matter with City Staff so that they could test the meter and would be able to chart where water consumption was occurring.

Eric Schnurr, 709 Bluffview, raised concerns as well regarding high water usage bills and that bills had tripled since the meter was changed out.

Mayor Olk noted that the City had some meters that were failing and increases in usage had occurred when the meters were changed out. Mayor Olk also discussed the amount of water the city was purchasing versus how much was being sold to the residents.

Community Interest

2. Community Interest Items.

Mayor Olk congratulated the Finance Department for receiving the Financial Excellence in Reporting award. He also noted that National Night Out was well attended with seven events throughout the City. Mayor Olk also discussed a meeting he attended regarding future road improvements to U.S. Highway 75 and the possibility of future connections to Lake Lavon. Lastly, Mayor Olk noted that the City of Lucas will be featured on an edition of HGTV House Hunters on November 13.

Mayor Pro Tem Peele reminded those in attendance to take part in the Founders Day Stick Horse Rodeo event.

Regular Agenda

3. Consider approval of the minutes of the October 1, 2015 City Council meeting.

***MOTION**: A motion was made by Councilmember Fisher, seconded by Councilmember Duke to approve the minutes of the October 1, 2015 City Council meeting. The motion passed unanimously by a 7-0 vote.*

4. Presentation by Bill Baxter and Anne Hudson with Baxter I.T. regarding the new City website design.

Bill Baxter presented the new website design for the City's website to the City Council that will be transitioned to November 1, 2015.

5. Discuss and provide direction to the City Manager regarding an ordinance preventing parking along Estates Parkway and other recommendations to improve pedestrian safety and traffic mobility associated with events at Lovejoy High School.

Stanton Foerster, Public Works Director/City Engineer, stated that noticeable improvements have been made to the parking situation during Lovejoy High School football games. Mr. Foerster stated that an additional parking lot was opened allowing for additional parking, and two police officers were in attendance to assist with directing traffic.

Mayor Olk stated that he also noticed a substantial improvement and that having the officers on duty prevented attendees from parking in the grass.

Ted Moore, Lovejoy ISD Superintendent stated they communicated heavily with the school to ensure parking occurred in appropriate locations. He also stated that they were in favor of the City adopting an Ordinance preventing parking in certain areas to alleviate any safety concerns.

The City Council directed staff to bring forward an ordinance to address the parking concerns at a future council meeting.

This was a discussion item only, no formal action was taken.

6. Consider reappointments to the Parks and Open Space Board, Planning and Zoning Commission and Board of Adjustment and discuss and provide direction to Staff regarding the Board appointment process for vacant positions.

The City Council discussed reappointments to the Planning and Zoning Commission and the Parks and Open Space Board.

***MOTION**: A motion was made by Councilmember Fisher, seconded by Councilmember Duke to reappoint Peggy Rusterholtz, David Keer and Alternate Scott Sperling to Planning and Zoning Commission for a two year term. The motion passed unanimously by a 7-0 vote.*

***MOTION**: A motion was made by Councilmember Fisher, seconded by Councilmember Baney to reappoint Ken Patterson, Valerie Turnbow, Alternate Jerry Straka and Alternate Amber Patteson to the Parks and Open Space Board for a two year term. The motion passed unanimously by a 7-0 vote.*

Mayor Olk asked that discussion related to the Board of Adjustment be brought back to the November 5 City Council meeting to discuss during Executive Session.

The Mayor and City Council discussed the process of interviewing applicants for the two open Board of Adjustment positions that will take place during the November 5 City Council Executive Session meeting.

The City Council asked that the City Secretary forward all applications to the City Council for their review.

7. Consider authorizing the City Manager to enter into a construction contract with Four Star Excavating, Inc. for the construction of the Wendy Lane Culvert Project in the amount not to exceed $129,318, plus a 20% contingency amount of $25,864 for a total of $155,182.

Stanton Foerster, Public Works Director/City Engineer stated that the culvert on Wendy Lane washed out after the flooding in May occurred and is need of repair.

Councilmember Fisher asked that the Contractor's work be evaluated to ensure quality work has occurred and to review work completed in other cities as well.

***MOTION**: A motion was made by Councilmember Millsap, seconded by Councilmember Lawrence to authorize the City Manager to enter into a construction contract with Four Star Excavating, Inc., for construction of the Wendy Lane Culvert Project in the amount not to exceed $129,318, plus a 20% contingency amount of $25,864 for a total of $155,182. The motion passed unanimously by a 7-0 vote.*

8. Discuss and provide direction to the City Manager regarding 1) the possible trail elements along Blondy Jhune and 2) prioritization of the Neighborhood Connector projects.

City Manager Joni Clarke discussed the improvements proposed to Blondy Jhune Road and the additional cost associated with incorporating trail elements of an additional $240,000. Ms. Clarke asked if the City Council wanted to commit to a pedestrian trail along Blondy Jhune so that this element could be incorporated into the project if needed.

Councilmember Fisher stated she had concerns regarding the placement of a trail in that location and the potential of trespassing on private property.

The City Council discussed location of the trail and the concerns with trying to retrofit a trail at a later time.

Carol Winston, 315 Blondy Jhune, discussed the large pecan tree located near the Blondy Jhune Bridge and that she had an Arborist conduct an assessment on the tree. Ms. Winston stated the tree was 250 years old and was in healthy condition. Ms. Winston shared the report with the Council and asked that when constructing the bridges to use great care around the tree.

Councilmember Millsap and Mayor Pro Tem Peele stated they were in agreement that the trails should be incorporated at this time as part of the proposal, and it also addresses safety concerns.

The City Council was in agreement to add the trail elements along the Blondy Jhune bridges.

City Manager Joni Clarke discussed the Neighborhood Connector Street projects and asked if the scope should be narrowed to Blondy Jhune and Winningkoff as Stinson, Forest Grove and Snider Roads had development occurring which would only deteriorate the roadway during that development process. The City would also like to see how much participation can be obtained from the Developer regarding road improvements. Ms. Clarke stated that the bridges along Snider Lane and Stinson Road would also be included in the Neighborhood Connector Street proposals.

The City Council agreed to move forward with Blondy Jhune, Winningkoff and the bridges along Snider Lane and Stinson Road as part of the Neighborhood Connector Street project.

9. Consider setting a date for the City Council Strategic Planning Session.

The City Council agreed to set the date of January 23, 2016 for their Strategic Planning Session.

10. Discuss and provide direction to the City Manager regarding the possible traffic impact/concerns on Aztec Trail resulting from the intra connections between the City of Lucas and the Collin County Water Control and Improvement District (CCWCID) No. 3 commonly known as Inspiration.

Stanton Foerster, Public Works Director/City Engineer stated that the City received a request from the County to tie into Aztec Trail. Because the area is not within the city limits and located within the ETJ, the County issued a permit for the roadway project. Mr. Foerster stated that he and the City Manager spoke with homeowners on Aztec and their main concerns related to speed and volume of traffic.

Councilmember Fisher asked if traffic had been measured in that area and that she had concerns regarding accidents at that intersection.

Mayor Olk asked that Staff discuss intersection improvements with the State and County to determine if intersections improvements could be made at the time the connection project takes place.

This was a discussion item only, no formal action was taken.

Closed Executive Session
(City Hall Conference Room)

11. Pursuant to Section 551.071 of the Texas Government Code, the City Council will convene into Executive Session to receive advice from the City Attorney regarding legal matters related to drainage.

Mayor Olk announced that the City Council would convene into Executive session at 8:40pm.

12. Reconvene into Regular Session and take any action necessary as a result of the closed Executive Session.

The City Council reconvened into Regular Session at 9:07pm.

***MOTION**: A motion was made by Mayor Pro Tem Peele, seconded by Councilmember Lawrence to direct the City Manager to draft a letter to the residents that outlines the City's current position regarding drainage and the work that is being done to obtain a long-term solution at an upcoming workshop. The motion passed unanimously by a 7-0 vote.*

13. Adjournment.

***MOTION**: A motion was made by Councilmember Duke, seconded by Councilmember Baney to adjourn the meeting at 9:08pm. The motion passed unanimously by a 7-0 vote.*

APPROVED:

_____

Jim Olk, Mayor

ATTEST:

_____

Stacy Henderson, City Secretary

STATE OF TEXAS §
§ **LEASE AGREEMENT**
COUNTY OF COLLIN §

This Lease is entered into between the City of Lucas, Texas ("Landlord") and Family Promise of Collin County ("Tenant").

In consideration of the mutual covenants and agreements of this Lease, and other good and valuable consideration, Landlord demises and leases to Tenant, and Tenant leases from Landlord, 325 W. Lucas Road, Lucas, Collin County, Texas (the "Premises"). The Premises are referred to in this Lease as the "Premises" or the "Leased Premises." The building is referred to as the "Building."

I. TERM OF LEASE

1.01 **Term:** Term of this Lease is one (1) year, beginning on the 1st day of December, 2015, and ending on the 30th day of November, 2016, as provided in this Lease ("Lease Term").

1.02 **Renewal:** This Agreement shall renew for successive one (1) year terms on the 1st day of December of each year, unless sooner terminated as provided herein.

1.03 **Termination:** Landlord may terminate this Lease during the Lease Term or any extension thereof upon ninety (90) days prior written notice thereof.

II. RENT

Basic Rent: Tenant will pay Landlord $10.00 per month, from the beginning of the Lease Term and throughout the Lease Term. The monthly rent due throughout the Lease Term shall be paid in advance of the fifth (5th) day of each month.

III. USE OF PREMISES

3.01 **Permitted Use. Day Center:** Tenant will use the Premises for the purpose of providing a Day Center with hours of operation from 7:30 a.m. to 5:30 p.m. The Day Center will provide case management services, and shower and laundry service for Day Center clients. Monthly Board Meetings in the evenings are also permitted. Tenant may also sublease the Premises or portions of the Premises to Trusted World ("Subtenant") for the purpose of providing office space and storage. No other services are permitted unless Landlord gives Tenant prior written consent for additional permitted uses.

3.02 **Insurance Hazards:** Tenant may not use, or permit using, the Premises in any manner (excluding the present type of use of the Premises by Tenant) that will cause a cancellation of, or an increase in, the existing rates for fire, liability, or other insurance policies covering the Premises or any improvements on them, or insuring Landlord for any liability in connection with owning the Premises. Tenant shall during the term hereof, at its sole expense, maintain in full force and effect the following insurance: (1) a policy of insurance for bodily

injury, death and property damage insuring against all claims, demands or actions relating to the Tenant's lease of the Premises with a minimum combined single limit of not less than $1 million dollars per occurrence for injury to persons (including death), and for property damage with an aggregate of not less than $1 million dollars; (2) a policy of comprehensive general liability (public) insurance with a minimum combined single limit of not less than $1 million dollars per occurrence with an aggregate of not less than $1 million dollars. All insurance and certificate(s) of insurance shall contain the following provisions: (1) name the Landlord, its officers, agents and employees as additional insureds as to all applicable coverage; (2) provide for at least thirty (30) days prior written notice to the Landlord for cancellation, non-renewal, or material change of the insurance; (3) provide for a waiver of subrogation against the Landlord for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance. All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service. A certificate of insurance evidencing the required insurance shall be submitted prior to the occupancy of the Premises.

3.03 **Compliance with Laws:**

(a) Tenant may not use, or permit using, the Premises in any manner that results in waste of premises or constitutes a nuisance or for any illegal purpose. Tenant, at its own expense, will comply, and will cause its officers, employees, agents and invitees to comply, with all applicable laws, ordinances, and governmental rules and regulations concerning the use of the Premises, including Hazardous Materials Laws.

(b) "Hazardous Materials" means any substance, material, or waste that is or becomes regulated by any local governmental agency, the State of Texas, or the Federal Government, including, but not limited to, any material or substance that is (1) *designated as a "hazardous substance" pursuant to § 311 of the Clean Water Act, 33 U.S.C. § 1251 et. seq., or listed pursuant to § 307 of the Clean Water Act, 33 U.S.C. § 1317,* (2) *defined as a "hazardous substance" pursuant to § 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et. seq.,* (3) *defined as a "hazardous waste" pursuant to § 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et. seq;,* (4) *petroleum,* (5) *asbestos, and* (6) *polychlorinated biphenyls.*

3.04 **Condition of Premises, Tenant Finish-Out:** Tenant acknowledges and agrees and does hereby accept the Premises AS IS with all faults. Tenant shall, without cost to Landlord, be responsible for the design and construction of all Tenant finish out for the Premises including exterior improvements.

IV. MAINTENANCE AND SURRENDER

Maintenance and Surrender by Tenant: Tenant will maintain the leased Premises and keep them free from waste or nuisance throughout the Lease Term and any extensions of it. When this Lease terminates, Tenant must deliver the Premises in as good a state of repair and condition as they existed when Landlord delivered possession to Tenant, except for reasonable

wear and tear commensurate with the age of the Premises and damage by fire, tornado, or other casualty. If Tenant neglects to reasonably maintain the Premises, Landlord may, but is not required to, cause repairs or corrections to be made. Any reasonable costs incurred for repairs or corrections for which Tenant is responsible under this section are payable by Tenant to Landlord as a reimbursement within thirty (30) days after Lease termination.

V. UTILITIES AND TAXES

Utilities and Taxes on Tenant's Property: Landlord shall pay or cause to be paid all charges for water, heat, gas, and electricity (collectively referred to as "Utilities"), and all other Utilities used on the Premises throughout Term, including any connection fees. Tenant shall reimburse Landlord for all Utilities paid within thirty (30) days of receiving a written invoice from Landlord. Tenant shall pay all ad valorem taxes, if any, assessed against the leased Premises and any improvements constructed by Tenant during the Lease Term. Tenant may, in good faith, at its own expense (in its own name as Tenant may determine appropriate), contest any such assessment or taxes. Landlord, at no cost or expense to Landlord, shall reasonably cooperate with Tenant in contesting any such assessment; provided, however, Landlord shall not in any way become liable for the payment of any such assessment or taxes, nor be held responsible for the outcome of any contest of assessments or taxes filed by Tenant will pay all taxes levied or assessed against personal property, furniture, or fixtures it places in or on the Premises. If any such taxes for which Tenant is liable are levied or assessed against Landlord or Landlord's property, and Landlord elects to pay them, or if the assessed value of Landlord's property is increased by including personal property, furniture, or fixtures placed by Tenant in the Premises, and Landlord elects to pay the taxes based on the increase, Tenant must, upon demand, pay Landlord the part of the taxes for which Tenant is primarily liable under this article.

VI. ALTERATIONS, ADDITIONS, IMPROVEMENTS AND FIXTURES

6.01 **Consent of Landlord:** Tenant may not make any alterations, additions, or improvements to the Premises without Landlord's prior written consent, which shall not be unreasonably denied or delayed.

6.02 **Property of Landlord:** All alterations, additions, or improvements made by Tenant will become Landlord's property when this Lease terminates.

6.03 **Trade Fixtures:** Tenant has the right at all times to erect or install furniture and fixtures, as long as Tenant complies with all applicable governmental laws, ordinances, and regulations. Tenant may remove such items when this Lease terminates, if Tenant is not in default at that time and the fixtures can be removed without structural damage to the Premises. Before this Lease terminates, Tenant must repair any damage caused by removing any fixtures and should have 15 days to comply. Any furniture or fixtures not removed by Tenant when this Lease terminates are considered abandoned by Tenant and automatically become Landlord's property.

6.04 **Construction by Tenant:** Tenant shall have the right during the term of this Lease to erect, maintain, alter, remodel, reconstruct, or rebuild the tenant improvements within the Premises, subject to the following general conditions:

1. Tenant bears cost of any such work;
2. The Premises shall at all times kept free of mechanics' and material men's liens;
3. Any improvements constructed on the Premises shall be approved by Landlord pursuant to §6.05 herein and if remaining at the end of the Lease Term, shall become the property of Landlord; and
4. Any removal of tenant improvements must be pre-approved by Landlord.

6.05 **Landlord's Approval:** The following rules govern Landlord's approval of construction, additions, and alterations of the building or other improvements:

(a) **Written approval required**. No tenant or other improvement may be constructed unless the plans, specifications, and proposed location of the improvement have received Landlord's written approval. No material addition to or alterations of the Premises may be begun until plans and specifications covering the proposed addition or alteration have been first submitted to and approved by Landlord. The Landlord shall not unreasonably withhold approval of such plans and specifications. .

(b) **Landlord's approval**. Landlord will promptly review and approve all plans submitted under subparagraph above or note in writing any' required changes or corrections that must be made to the plans, Failure to object to the plans within thirty (30) days constitutes its approval of the changes. Any required changes or corrections must be made, and the plans resubmitted to Landlord, within thirty (30) days after the corrections or changes have been noted. Landlord's failure to object to the resubmitted plans and specifications within thirty (30) days constitutes its approval of the changes. Minor changes in work or materials not affecting the general character of the Premises project may be made at any time without Landlord's approval, but a copy of the altered plans and specifications must be furnished to Landlord.

VII. DAMAGE OR DESTRUCTION

7.01 **Notice to Landlord:** If the Premises or any structures or improvements on the are damaged or destroyed by fire, tornado, or other casualty, Tenant must immediately give Landlord written notice of the damage or destruction, including a general description of the damage and, as far as known to Tenant, the cause of the damage.

7.02 **Total Destruction:** If the Premises are totally destroyed by fire, tornado, or other casualty this Lease will terminate, and rent will be abated for the unexpired portion of this Lease, effective as of the date of written notification as provided in § 7.01. The Landlord in its sale discretion may elect to restore the Premises and rebuild the Building in which event the Lease shall continue in under the same terms and conditions set forth herein from the date the Premises has been fully restored. Alternatively, the Tenant with the consent of Landlord may, by written notice within thirty (30) days after the notice as provided in § 7.01, elect to rebuild the Building

and restore the Premises provided Tenant commences the restoration of the Premises within one hundred eighty (180) days thereafter and at Tenant's cost.

7.03 **Partial Destruction:** If the Premises are damaged by fire, tornado, or other casualty other than by the negligence, gross negligence, or intentional tort of Tenant or any person in or about the Premises with Tenant's express or implied consent, or if they are so damaged that rebuilding or repairs cannot reasonably be completed within one hundred eighty (180) working days or the damage exceeds the Landlord's insurance recovery, or the Landlord elects not to restore the Premises, this Lease will terminate.

VIII. CONDEMNATION

8.01 **Total Condemnation:** If, during the Lease Term or any extension or renewal of the Lease, all of the Premises are taken for any public or quasi-public use under any governmental law, ordinance, or regulation, or by right of eminent domain, or are sold to the condemning authority under threat of condemnation, this Lease will terminate, and the rent will be abated during the unexpired portion of this Lease, effective as of the date the condemning authority takes the Premises.

8.02 **Partial Condemnation:** If less than all of the Premises is taken for any public or quasi-public use under any governmental law, ordinance, or regulation or by right of eminent domain, or is sold to the condemning authority under threat of condemnation, either party may terminate this Lease by giving written notice to the other within thirty (30) days. In addition, if all or a portion of the parking area, or the signage, of the Premises is taken for any public. or quasi-public use under any governmental law, ordinance, or regulation or by right of eminent domain, or is sold to the condemning authority under threat of condemnation, either party may terminate this Lease by giving Landlord written notice within thirty (30) days. If the Premises are partially condemned and neither party elects to terminate this Lease, this Lease will not terminate, but the rent will be adjusted equitably during the un-expired portion of this lease.

8.03 **Condemnation Award:** Landlord is entitled to receive and retain the entire award in any condemnation proceedings, except for any portion attributable to trade fixtures and personal property owned by Tenant, which Tenant is entitled to receive and retain. The termination of this Lease will not affect the right to this award.

IX. INSPECTION BY LANDLORD

Landlord and its officers, agents, employees, and representatives may enter any part of the Premises during normal business hours for the purpose of inspection, cleaning, maintenance, repairs, alterations, or additions as Landlord considers necessary (but without any obligation to perform any of these functions except as stated in this Lease), or to show the Premises to prospective tenants, purchasers, or lenders. Tenant is not entitled to any abatement or reduction of rent by reason of entry of Landlord or any of its officers, agents, representatives, or employees under this article, nor will such an entry be considered an actual or constructive eviction.

X. MECHANIC'S LIEN

Tenant will not permit any mechanic's lien to be placed on the Premises or on improvements made to the Premises. If a mechanic's lien is filed on the Premises or on improvements on them, Tenant will promptly pay it. If default in payment of the lien continues for thirty (30) days after Landlord's written notice to Tenant, Landlord may, at is option, pay the lien or any portion of it without inquiring into its validity. Any amounts Landlord pays to remove a mechanic's lien caused by Tenant to be filed against the Premises or against improvements on the Premises, including expenses and interest, are due from Tenant to Landlord and must be repaid to Landlord immediately on rendition of notice, together with annual interest at the highest rate then allowed by law until paid.

XI. INDEMNITY

11.01 **Tenant's General Indemnity:** Tenant will indemnify and hold Landlord harmless against any claims, demands," damages, costs, and expenses, including reasonable attorney's fees, for defending claims and demands arising from the conduct or management of Tenant's business on the Premises or its use of the Premises, or from any breach on Tenant's part of any conditions of this Lease, or from any act or negligence of Tenant, its officers, agents, contractors, employees, subtenants, or invitees in or about the Premises. In case of any action or proceeding brought against Landlord by reason of any such claim, Tenant, on notice from Landlord, will defend the action or proceeding by counsel acceptable to Landlord.

11.02 **Tenant's Environmental Indemnity:**

(a) Tenant is responsible only for the payment of that portion of any cleanup costs for the Premises necessary for compliance with Hazardous Materials Laws that arise as a result of Tenant's discharge of Hazardous Materials on the Premises during Tenant's occupancy of the Premises. Landlord is responsible for all other cleanup costs and for ensuring that any other responsible party participates in the cleanup to the extent of its responsibility for a release.

(b) Tenant must indemnify, defend, and hold harmless Landlord from and against all claims, liabilities, losses, damages, and costs, foreseen or unforeseen, including without limitation counsel, engineering, and other professional or expert fees, that Landlord may incur by reason of Tenant's action or inaction with regard to Tenant's obligations under this section. This section survives the expiration or earlier termination of this Lease.

XII. ASSIGNMENT AND SUBLEASE

Assignment and Subletting by Tenant: Tenant may not assign this Lease, or any interest in it, nor sublet the Premises, or any part of them without prior written consent of Landlord.

XIII. DEFAULT

13.01 **Tenant's Default:** The following events are considered events of default by

Tenant under this Lease:

(a) Tenant fails to pay any installment of rent due under this Lease, whether base rent or additional rent, or any other amounts owing by Tenant to Landlord, and the failure continues for thirty (30) days after receipt of written thereof.

(b) Tenant fails to comply with any term or covenant of this Lease, other than the payment of rent or any other sum of money owing by Tenant to Landlord, and does not cure the failure within sixty (60) days after written notice of the failure to Tenant; provided that if such failure cannot be cured within sixty (60) days Tenant shall not be in default if Tenant is proceeding to cure the failure and cures such failure within thirty (30) days thereafter.

(c) Tenant makes an assignment for the benefit of creditors.

(d) Tenant deserts or vacates any substantial portion of the Premises for sixty (60) or more consecutive days.

13.02 **Landlord's Remedies:** In the event of any default specified in §13.01, Landlord may pursue one or more of the following remedies:

(a) Landlord may terminate this Lease, in which event Tenant must immediately surrender the Premises to Landlord. If Tenant fails to do so, Landlord may, without prejudice - to any other remedy that it may have for possession or arrearages in rent, enter on and take possession and expel or remove Tenant and any other person occupying the Premises or any part of them, by any lawful means, without being liable for prosecution or any claim of damages for the entrance and expulsion or removal. Tenant will, on demand, pay Landlord the amount of all loss and damage that Landlord suffers by reason of the termination, whether through inability to re-let the Premises on satisfactory terms, if Landlord elects to re-let, or otherwise.

(b) Landlord may enter on and take possession of the Premises and expel or remove Tenant and any other person occupying the Premises or any part of them, by any lawful means, without being liable for prosecution or any claim for damages for the entrance and expulsion or removal; re-let the Premises on the terms Landlord considers advisable; and receive the rent for the re-letting. Tenant will, on demand, pay Landlord any deficiency that may arise by reason of re-letting.

(c) Landlord may enter the Premises, by any lawful means (and Landlord is expressly reserving and retaining the right to so re-enter the Premises), without being liable for prosecution or any claim for damages for the entry, and do whatever Tenant is obligated to do under the terms of this Lease to correct the default. Tenant will, on demand, reimburse Landlord for any expenses that Landlord incurs in effecting compliance with Tenant's obligations under this Lease in this manner, and Tenant further releases Landlord from liability for any damages resulting to Tenant from such an action.

13.03 **Cumulative Remedies:** Landlord's or Tenant's pursuing any remedy provided in this Lease will not preclude pursuing any other remedy provided in this Lease. Either party's pursuing any remedy provided in this lease or by law will not constitute a forfeiture or waiver of

any damages accruing to either party by reason of violating any term or covenant of this Lease. Nor will Landlord's pursuing any remedies provided in this Lease constitute a waiver or forfeiture of any rent due under this Lease.

13.04 **Waiver of Default:** Either party's waiving any default or violation or breach of any term or covenant of this Lease does not waive any other violation or breach of any term or covenant of this Lease. Nor does either party's forbearing to enforce one or more of the remedies provided in this Lease or by law on a default waiver the default. Landlord's accepting rent following default under this Lease does not waive the default.

13.05 **Surrender of Premises:** No act done by Landlord or its agents during the Lease Term may be considered an acceptance of a surrender of premises is valid unless in writing and subscribed by Landlord.

XIV. MISCELLANEOUS

14.01 **Notices and Addresses:** All notices required under this Lease may be given by the following methods:

(a) By certified mail, return receipt requested, addressed to the proper party, at the following addresses:

If to **Landlord**:
City Of Lucas
Attn: City Manager
City Manager
665 Country Club Road
Lucas, Texas 75002

If to **Tenant**:
Family Promise of Collin County
Attn: Executive Director
P. O. Box 1601
Allen, Texas 75013

Notices are effective when received. Either party may change the address to which notices are to be sent by sending written notice of the new address or number to the other party in accordance with the terms of this section.

14.02 **Parties Bound:** This agreement binds, and inures to the benefit of, the parties to this Lease and their respective heirs, executors, administrators, legal representatives, successors, and assigns when this agreement permits.

14.03 **Texas Law to Apply:** This agreement is to be construed under Texas law, and all obligations of the parties created by this agreement are performable in Collin County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said Court.

14.04 **Legal Construction:** If anyone or more of the provisions in this agreement are for any reason held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability will not affect any other provision of the agreement, which will be construed as if it had not included the invalid, illegal, or unenforceable provision.

14.05 **Prior Agreements Superseded:** This agreement constitutes the parties sole agreement and supersedes any prior understandings or written or oral agreements between the parties with respect to the subject matter.

14.06 **Amendment:** No amendment, modification, or alteration of the terms of this agreement is binding unless in writing, dated subsequent to the date of this agreement, and duly executed by the parties.

14.07 **Rights and Remedies Cumulative:** The rights and remedies provided by this Lease are cumulative, and either party's using any right or remedy will not preclude or waive its right to use any other remedy. These rights and remedies are in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

14.08 **Attorney's Fees and Costs:** If, as a result of either party's breaching this agreement, the other party employs an attorney to enforce its rights under this Lease, the breaching or defaulting party will pay the other party the reasonable attorney's fees and costs incurred to enforce this Lease.

14.09 **Force Majeure:** Neither Landlord nor Tenant is required to perform any term or covenant of this Lease so long as performance is delayed or prevented *by force majeure*, which includes acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods, and any other cause not reasonably within Landlord's or Tenant's control and that Landlord or Tenant, by exercising due diligence and paying money, cannot prevent or overcome in whole or part.

The undersigned Landlord and Tenant execute this agreement on the _____ day of _____, 2015.

Landlord:

By: _____
City of Lucas, Texas
Name: Jim Olk
Title: Mayor

Tenant:

By: _____
Family Promise of Collin County
Name: _____
Title: _____

ORDINANCE 2015-11-00824
[GRANTING ATMOS ENERGY CORPORATION A FRANCHISE]

AN ORDINANCE GRANTING TO ATMOS ENERGY CORPORATION, A TEXAS AND VIRGINIA CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO CONSTRUCT, MAINTAIN, AND OPERATE PIPELINES AND EQUIPMENT IN THE CITY OF LUCAS, COLLIN COUNTY, TEXAS, FOR THE TRANSPORTATION, DELIVERY, SALE, AND DISTRIBUTION OF GAS IN, OUT OF, AND THROUGH SAID CITY FOR ALL PURPOSES; PROVIDING FOR THE PAYMENT OF A FEE OR CHARGE FOR THE USE OF THE PUBLIC RIGHTS-OF-WAYS; AND PROVIDING THAT SUCH FEE SHALL BE IN LIEU OF OTHER FEES AND CHARGES, EXCEPTING AD VALOREM TAXES; AND REPEALING ALL PREVIOUS GAS FRANCHISE ORDINANCES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LUCAS, TEXAS:

SECTION 1. GRANT OF AUTHORITY: The City of Lucas, Texas, hereinafter called "City," hereby grants to Atmos Energy Corporation, Mid-Tex Division, hereinafter called "Atmos Energy" or "Company," its successors and assigns, consent to use and occupy the present and future streets, alleys, highways, public utility easements, public ways and other public places ("Public Rights-of-Way"), for the purpose of laying, maintaining, constructing, protecting, operating, and replacing therein and thereon pipelines and all other appurtenant equipment (the "System") to deliver, transport, and distribute gas in, out of, and through City for persons, firms, and corporations, including all the general public, and to sell gas to persons, firms, and corporations, including all the general public, within the City corporate limits, as such limits may be amended from time to time during the term of this franchise, said consent being granted for a term ending December 31, 2039. This Franchise does not authorize Atmos Energy to use any property owned by the City that is not considered Public Rights-of-Way.

SECTION 2. CONSTRUCTION, MAINTENANCE, OPERATION & RELOCATION OF ATMOS ENERGY FACILITIES:

A. General Provisions: Atmos Energy shall lay, maintain, construct, operate, use, extend, remove, repair, and replace its pipes, mains, laterals, and other equipment to minimize interference with the proper and intended use of the Public Rights-of-Way . Upon request by the City, Atmos Energy shall furnish the City information relevant to such matters which is prepared,

maintained, and available in the ordinary course of business and not deemed confidential or proprietary.

B. Location and Construction: The location of all Company's pipes, mains, laterals, and other equipment in the present and future Public Rights-of-Way in the City shall be fixed under the supervision of the City or an authorized agent appointed by the City. In addition, Atmos Energy shall comply with applicable permitting requirements, except that in no event shall Atmos Energy or contractors working on behalf of Atmos Energy be required to pay for street cutting permits, street excavation permits or other permits related to work in Public Rights-of-Way in connection with Atmos Energy's operations in Public Rights-of-Way.

Upon reasonable request from the City for a public health or safety purpose, Atmos Energy shall identify for the City the location of its System Facilities located in the City. Any maps provided by Company to the City shall be deemed confidential and shall be clearly identified as such by Atmos Energy when provided to the City, and will be provided solely for the City's use. The City agrees to maintain the confidentiality of any non-public information obtained from Atmos Energy to the extent allowed by law. If the City receives a request under the Texas Public Information Act that includes Atmos Energy's previously designated proprietary or confidential information, City will request an opinion from the Texas Attorney General as to the confidential or the proprietary nature of the document(s). The City also will provide Atmos Energy with notice of the request, and thereafter Company is responsible for establishing that an exception under the Texas Public Information Act allows the City to withhold the information. Atmos Energy shall provide all location and "as built" plans on a going forward basis if required through the City's permitting process.

Except to the extent a conflict with this Franchise exists, Atmos Energy agrees to comply with all other City laws, rules, or ordinances that govern the use of Public Rights-of-Way that currently exist or may be applicable during the term of this Franchise.

In determining the location of Company's pipeline within City, Company shall minimize interference with then existing underground structures of City or other utility franchisees. Likewise, in determining the location of the facilities of the City and other users of Public Rights-of-Way within City, City shall minimize interference with then existing Facilities of Company and shall require other users of Public Rights-of-Way to minimize interference with existing Facilities of Atmos Energy. In the event of a conflict between the location of the

Facilities of Company and the location of the facilities of City or other users of Public Rights-of-Way within Public Rights-of-Way that cannot otherwise be resolved, City Manager and/or his designee or an authorized agent of City shall resolve the conflict and determine the location of the respective facilities within the Public Rights-of-Way.

City agrees to provide Atmos Energy with its annual capital improvements plan as well as any material updates or changes within a reasonable time after they become available. City shall notify Atmos Energy as soon as reasonably possible of any projects that will affect Atmos Energy's Facilities located in the Public Rights-of-Way. Atmos shall comply with Chapter 251 of the Texas Utilities Code with respect to the identification and location of Facilities in the City's Public Rights-of-Way. In the event that Company fails to provide the necessary information, and damage is caused to Company Facilities as a direct result of withholding said information, the Company shall hold the City harmless from all liability, damage, cost or expense resulting from any City action in this regard.

C. Restoration: The surface of any Public Rights-of-Way disturbed by Atmos Energy in laying, maintaining, constructing, operating, replacing and removing shall be restored to approximate original condition as soon as is reasonably possible.

When Company makes, or causes to be made, excavations, or places, or causes to be placed, obstructions in any Public Rights-of-Way, Company shall place, erect, and maintain appropriate barriers and lights to identify the location of such excavations or obstructions In the event of emergency requiring excavations in the Public Rights-of-Way, notice shall be made to the City as soon as practicable after such emergency excavation.

In addition to providing the location of Company's Facilities, Company shall obtain facilities location information from other users of the Public Rights-of-Way prior to Company's construction, reconstruction, maintenance, operations and repair of its Facilities.

D. Relocation: When the Company is required by City to remove, modify, alter or relocate its mains, laterals, and other Facilities lying in the Public Rights-of-Way to accommodate construction, repair, maintenance, removal, or installation of sewers, drainage, water lines, streets or utilities, such removal, modification, alteration, or relocation shall be promptly made by Company when directed in writing to do so by the City and shall do so at its own expense when Facilities are deemed to be in conflict, unless such work is for the primary purpose of beautification or to accommodate a private developer. Facilities are deemed to be in

conflict to the extent that the proposed City facilities are determined by Atmos Energy to be inconsistent with gas distribution industry standard safe operating practices for Company's existing facilities. Atmos shall have the right to propose alternative plans regarding City requested relocations to the extent that the Company deems City proposed placement of Facilities to be inconsistent with gas distribution industry standard safe operating practices for existing Facilities. Atmos Energy shall not be required to relocate facilities to a depth of greater than four (4) feet unless prior agreement is obtained from Atmos Energy.

Company shall pay the cost of such relocation unless there are funds specifically made available to affected users of the Public Right-of-Way for reimbursement of such costs, in which case Company shall be entitled to its share of such funding. When Atmos Energy is required by City to remove or relocate its mains, laterals, and other facilities lying within Public Rights-of-Way to accommodate a request by City, and costs of utility removals or relocations are eligible under federal, state, county, local or other programs for reimbursement of costs and expenses incurred by Atmos Energy as a result of such removal or relocation, and such reimbursement is required to be handled through City, Atmos Energy costs and expenses shall be included in any application by City for reimbursement if Atmos Energy submits its cost and expense documentation to City prior to the filing of the application. City shall provide reasonable written notice to Atmos Energy of the deadline for Atmos Energy to submit documentation of the costs and expenses of such relocation to City. Company shall be required to notify City of the availability and request that City make application on Company's behalf. Upon receipt of an amount of reimbursement intended for utility relocations including gas utilities, the City shall remit to the Company, within thirty (30) days of receipt, its portion related to the relocation or removal of Company's facilities. However, nothing in this agreement shall require City to make such application.

When Atmos Energy is required to remove or relocate its mains, laterals or other facilities to accommodate construction by City without reimbursement Atmos Energy shall have the right to seek a surcharge to recover relocation costs pursuant to applicable state and/or federal law. Nothing herein shall be construed to prohibit, alter, or modify in any way the right of Atmos Energy to seek or recover a surcharge from customers for the cost of relocation pursuant to applicable state and/or federal law. City shall not oppose recovery of relocation costs when Company is required by City to perform relocation. City shall not require that Company

document a request to the City for reimbursement as a pre-condition to recovery from customers of such relocation costs. When required by City to remove or relocate its mains, laterals, and/or other facilities lying within Public Rights-of-Way, Atmos Energy shall do so as soon as practically possible with respect to the scope of the project. In no event shall Atmos Energy be required to remove or relocate its facilities in less than thirty (30) days from the time notice is given to Atmos Energy by City. In the event Company, after notice, fails or refuses to commence, pursue, or complete such relocation work within a reasonable time, the City may require the Company to attend a meeting that establishes a formal record of the reasons for the delay and the timeframe in which the Company will complete the relocation work. If Atmos Energy is required by City to remove or relocate its mains, laterals, or other facilities lying within Public Rights-of-Way for any reason other than the construction or reconstruction of sewers, drainage, water lines, streets or utilities by City, Atmos Energy shall be entitled to reimbursement from City or others of the cost and expense of such removal or relocation. If the City requires Atmos Energy to remove, modify, alter or relocate its mains, laterals, and other Facilities specifically for the purpose of enabling the use of the Public Rights-of-Way by another person or corporation and not the City, the Company shall not be bound to make such changes until the other person or corporation has agreed to reimburse the Company for relocation expenses, provided however, that the City shall not be liable for the reimbursement.

E. Abandonment: If City abandons any Public Rights-of-Way in which Atmos Energy has facilities, such abandonment shall be conditioned on Atmos Energy's right to maintain its use of the former Public Right-of-Way and on the obligation of the party to whom the Public Right-of-Way is abandoned to reimburse Atmos Energy for all removal or relocation expenses if Atmos Energy agrees to the removal or relocation of its facilities following abandonment of the Public Right-of-Way. If the party to whom the Public Right-of-Way is abandoned requests Atmos Energy to remove or relocate its facilities and Atmos Energy agrees to such removal or relocation, such removal or relocation shall be done within a reasonable time at the expense of the party requesting the removal or relocation. If relocation cannot practically be made to another Public Right-of-Way, the expense of any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.

SECTION 3. INDEMNITY & INSURANCE:

A. General Provisions: In consideration of the granting of this Franchise, Atmos Energy agrees that the City, its agents and employees shall not be liable or responsible for any costs, expenses (including attorney fees) or any other damages to persons or property by reason of Atmos Energy's construction, operation, maintenance, or replacement of Atmos Energy's System within Public Rights-of-Way, and Atmos Energy does hereby release, agree to indemnify and keep harmless the City, its agents and employees from and against all suits, actions, or claims of injury to any person or persons, or damages to any property brought or made for or on account of any death, injuries, to or damages received or sustained by any person or persons or for damage to or loss of property arising out of, or occasioned by any acts or omissions by Atmos Energy, its agents or employees in connection with their operations, except to the extent such death, injury or damage is attributable to the City's negligent or intentional acts or omissions. In the event that any action, suit, or proceeding is brought against the City, its agents and employees, upon any liability arising out of Atmos Energy's operations, the City shall give notice in writing to Atmos Energy. Upon receipt of such notice, Atmos Energy, at its sole expense, shall defend such action and take all such steps as may be necessary or proper to prevent the obtaining of a judgment against the City and/or to satisfy said judgment. The City agrees to reasonably cooperate with Atmos Energy in connection with such defense. In the event of joint and concurrent negligence or fault of both Atmos Energy and the City, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas without, however, waiving any of the defenses of the parties under Texas law. It is understood that it is not the intention of the parties hereto to create liability for the benefit of third parties, but that this section shall be solely for the benefit of the parties hereto and shall not create or grant any rights, contractual or otherwise, to any person or entity.

B. Damage to City Property: If, as a result of negligence or intentional acts or omissions Atmos Energy employees damage the facilities owned by City within the Public Rights-of-Way, Atmos will be responsible for repairing the damages without charge to the City. However, if such damage by Atmos Energy's employees is due to inaccurate information with respect to the location or description of City's facilities within the Public Rights-of-Way, City will be responsible for all costs associated with such repair or related consequences. Atmos Energy

agrees to notify the appropriate City official as soon as reasonably possible after the occurrence of such damage.

C. Damage to Atmos Energy Property by City: If, as a result of negligence or intentional acts or omissions, including failure to obtain location information from the Company, the City's employees damage Facilities owned by Atmos Energy within the Public Rights-of-Way, the City shall be responsible for the repair of such damage without charge to the Company. However, if such damage by the City's employees is due to inaccurate information with respect to the location or description of Atmos Energy's Facilities within the Public Rights-of-Way, Atmos Energy will be responsible for all costs associated with such repair or related consequences. City agrees to notify the appropriate personnel of Atmos Energy as soon as reasonably possible after the occurrence of such damage.

D. Damage to Atmos Energy Property Due to Work by Others: The City reserves the right to permit to be laid, sewer, water, electric, and other utilities, pipe lines, cables, and conduits, ,and to do and permit to be done any underground or aboveground work that may be necessary or proper within the Public Rights-of-Way. The City also reserves the right to change any curb, sidewalk, grade of the street or other changes due to a publically funded city project. In permitting this work to be done, the City shall not be liable to the Company for any resulting damage, but nothing herein shall relieve any other person or corporation from being responsible for the damages to Atmos Energy Facilities.

E. Insurance: Company shall maintain adequate insurance covering its obligations of indemnity under this Franchise. Such insurance shall be at the Company's sole expense. Atmos Energy's insurance of its obligations and risks undertaken pursuant to this Franchise may be in the form of self-insurance to the extent permitted by applicable law, but in no instance shall such self-insurance be less than $10,000,000 in commercial insurance coverages. An insurance certificate shall be provided to the City initially and upon any substantial change in the nature of its coverage under this Section. This Franchise shall satisfy any requirements in the City of Lucas Code of Ordinances with respect to proof of appropriate insurance or other financial assurance required for receipt of a permit to perform work within the Public Rights-of-Way.

SECTION 4. QUALITY OF SERVICE, RATES, INSTALLATION CHARGES, DEPOSITS AND OTHER COMPANY CHARGES

A. General Provisions: Atmos Energy shall at all times furnish service which is safe, modern and sufficient to meet reasonable demands without undue interruption or fluctuations to any person, firm, or corporation that demands service within the City. The service provided shall be equal to or better in all instances to those required within the Mid-Tex Tariff – Service Rules and Regulations as may be amended from time to time, and as kept on file with the City. In addition to the rates charged for gas supplied, Company may make and enforce reasonable charges for service rendered in the conduct of its business, including a charge for services rendered in the inauguration of natural gas service.

B. Service Rates: The City hereby expressly reserves the right, power, and authority to fully regulate and fix the rates and charges for the services of Atmos Energy to its customers located within the City as provided by State law. Atmos Energy shall at all times have current rates and charges on file with the City Secretary and shall update such within fifteen (15) days of any changes thereto.

SECTION 5. NON-EXCLUSIVE FRANCHISE: The rights, privileges, and franchises granted by this ordinance are not to be considered exclusive, and City hereby expressly reserves the right to grant, at any time, like privileges, rights, and franchises as it may see fit to any other person or corporation for the purpose of transporting, delivering, distributing, or selling gas to and for City and the inhabitants thereof.

SECTION 6. PAYMENTS TO CITY:

A. Atmos Energy agrees to pay and City agrees to accept, a one-time payment of fifty dollars ($50.00) in consideration of the use and occupancy of the Public Rights-of-Way during the prior period ending December 31, 2014. Atmos Energy, its successors and assigns, agrees to pay and City agrees to accept, on or before the 15th day of February, 2016 and on or before the same day of each succeeding year during the term of this franchise the last payment being made on the 15th day of February, 2040, a sum of money which shall be equivalent to five percent (5%) of the Gross Revenues, as defined in6.B below, received by Atmos Energy during the preceding calendar year.

B. "Gross Revenues" shall mean:

(1) all revenues received by Atmos Energy from the sale of gas to all classes of customers (excluding gas sold to another gas utility in the City for resale to its customers within City) within the City;

(2) all revenues received by Atmos Energy from the transportation of gas through the System of Atmos Energy within the City to customers located within the City (excluding any gas transported to another gas utility in City for resale to its customers within City);and

(3) "Gross Revenues" shall not include:

(a) revenues billed but not ultimately collected or received by Atmos Energy;

(b) contributions in aid of construction;

(c) the revenue of any affiliate or subsidiary of Atmos Energy;

(d) sales tax and franchise fees paid to the City;

(e) interest or investment income earned by Atmos Energy; and

(f) monies received from the lease or sale of real or personal property, provided, however, that this exclusion does not apply to the lease of facilities within the City's right of way.

C. Privilege Period: The initial payment for the rights and privileges herein provided shall be for the privilege period January 1 through December 31, 2015, and each succeeding payment shall be for the privilege period of the calendar year preceding the year in which the payment is made.

D. Payment in Lieu of: It is also expressly agreed that the aforesaid payments shall be in lieu of any and all other and additional occupation taxes, easement, franchise taxes or charges (whether levied as an ad valorem, special, or other character of tax or charge), municipal license, permit, and inspection fees, bonds, street taxes, and street or alley rentals or charges, and all other and additional municipal taxes, charges, levies, fees, and rentals of whatsoever kind and character that City may now impose or hereafter levy and collect from Atmos Energy or Atmos Energy's agents, excepting only the usual general or special ad valorem taxes that City is authorized to levy and impose upon real and personal property. If the City does not have the legal power to agree that the payment of the foregoing sums of money shall be in lieu of taxes,

licenses, fees, street or alley rentals or charges, easement or franchise taxes or charges aforesaid, then City agrees that it will apply so much of said sums of money paid as may be necessary to satisfy Atmos Energy's obligations, if any, to pay any such taxes, licenses, charges, fees, rentals, easement or franchise taxes or charges aforesaid.

E. Effect of Other Municipal Franchise Ordinance Fees Accepted and Paid by Atmos Energy

If Atmos Energy should at any time after the effective date of this Ordinance agree to a new municipal franchise ordinance, or renew an existing municipal franchise ordinance, with another municipality in Atmos Energy's Mid-Tex Division, which municipal franchise ordinance determines the franchise fee owed to that municipality for the use of its public rights-of-way in a manner that, if applied to the City, would result in a franchise fee greater than the amount otherwise due City under this Ordinance, then the franchise fee to be paid by Atmos Energy to City pursuant to this Ordinance may, at the election of the City, be increased so that the amount due and to be paid is equal to the amount that would be due and payable to City were the franchise fee provisions of that other franchise ordinance applied to City. The City acknowledges that the exercise of this right is conditioned upon the City's acceptance of all terms and conditions of the other municipal franchise *in toto*. The City may request waiver of certain terms and Company may grant, in its sole reasonable discretion, such waiver.

F. Atmos Energy Franchise Fee Recovery Tariff

(1) Atmos Energy may file with the City a tariff or tariff amendment(s) to provide for the recovery of the franchise fees under this agreement.

(2) City agrees that (i) as regulatory authority, it will adopt and approve the ordinance, rates or tariff which provide for 100% recovery of such franchise fees as part of Atmos Energy's rates; (ii) if the City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of Atmos Energy's franchise fees is an issue, the City will take an affirmative position supporting 100% recovery of such franchise fees by Atmos Energy and; (iii) in the event of an appeal of any such regulatory proceeding in which the City has intervened, the City will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by Atmos Energy.

(3) City agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such franchise fees by Atmos Energy.

G. Lease of Facilities Within City's Rights-of-Way. Atmos Energy shall have the right to lease, license or otherwise grant to a party other than Atmos Energy the use of its facilities within the City's public rights-of-way provided: (i) Atmos Energy first notifies the City of the name of the lessee, licensee or user; the type of service(s) intended to be provided through the facilities; and the name and telephone number of a contact person associated with such lessee, licensee or user and (ii) Atmos Energy makes the franchise fee payment due on the revenues from such lease pursuant to Section 5 of this Ordinance. This authority to Lease Facilities within City's Rights-of-Way shall not affect any such lessee, licensee or user's obligation, if any, to pay franchise fees.

SECTION 7. DEFAULT AND FORFEITURE.

In the event Atmos Energy has failed or refused to correct a defect, impairment or substandard condition after written notice by the City and such failure has continued for longer than thirty (30) days from the date the notice was received by the Company, the City shall have the right to file a claim through the Company's claims department. The City shall notify the Company, in writing, of an alleged failure to comply with a material provision of this Franchise, which notice shall specify the alleged failure with reasonable particularity. The Company shall, within thirty (30) days after receipt of such notice or such longer period of time as the City may specify in such notice, either cure such alleged failure or, in a written response to the City, either present facts and arguments in refutation or excuse of such alleged failure or state that such alleged failure will be cured and set forth the method and time schedule for accomplishing such cure. In the event that such cure is not forthcoming, such default shall entitle the City to compel compliance by suit in any court of competent jurisdiction and if, upon final judgment, not subject to further appeal, being entered in favor of the City, the Company remains in default of any material provision of this Franchise or the final judgment, the City may declare this Franchise to be forfeited and canceled. Prior to a decision from such court, the Company shall have the right to operate its Facilities pursuant to the provisions of this Franchise.

Atmos Energy further agrees, that if, for any reason other than an event of force majeure, the Company fails to pay the regularly scheduled franchise fees as provided in this Franchise within thirty (30) days following written notice from the City that the Company has failed to make payment, such failure shall be sufficient to permit the City to forfeit this Franchise without court action. For the purposes of this section, an event of force majeure means any event or circumstance or combination of events or circumstances beyond the reasonable control of the Company that materially and adversely affects or affect the performance by the Company of its obligations under or pursuant to this Franchise including but not limited to, an act of God; act of civil or military authority; act of war; (whether declared or undeclared); act (including delay, failure to act, or priority) of any governmental authority (including the City); civil disturbance; insurrection or riot; sabotage; fire; inclement weather conditions; earthquake; flood; strike; work stoppage or other labor difficulty; embargo; or other failure or delay beyond it's reasonable control. The Company's financial inability to perform shall expressly be excluded from force majeure events. In the event that any of the above force majeure circumstances prevent the timely payment of franchise fees, the Company shall notify the City within five (5) business days.

SECTION 8. CONFORMITY TO LAWS AND REGULATIONS.

A. Applicable Laws. Notwithstanding Section 13.B below, this Franchise is subject to applicable provisions of the Constitution and Laws of the United States and the State of Texas. This Franchise shall in no way affect or impair the rights, obligations, or remedies of the parties under the Public Utility Regulatory Act of Texas, as it may be amended from time to time. Except as expressly provided herein, Atmos Energy shall not recover costs or expenses directly from the City (exclusive of charges related to the City's billings as a customer) for taking any actions mandated by this Franchise or by any order or request issued by authority of this Franchise.

B. Reservation of Right to Adopt Rules and Regulations: The City reserves the right to adopt, in addition to the provisions included in this Franchise, such additional reasonable regulations as it shall find necessary with respect to governing the use of its Public Rights-of-Way, provided, however, that such regulations are not in conflict with the privileges granted by this Franchise.

SECTION 9. ACCEPTANCE OF FRANCHISE: In order to accept this franchise, Atmos Energy must file with the City Secretary its written acceptance of this franchise ordinance within sixty (60) days after its final passage and approval by City. If such written acceptance of this franchise ordinance is not filed by Atmos Energy, the franchise ordinance shall be rendered null and void.

When this franchise ordinance becomes effective, all previous ordinances of City granting franchises for gas delivery purposes that were held by Atmos Energy shall be automatically canceled and annulled, and shall be of no further force and effect.

SECTION 10 PARAGRAPH HEADINGS. CONSTRUCTION: The paragraph headings contained in this ordinance are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the preparation of this ordinance and this ordinance shall not be construed either more or less strongly against or for either party.

SECTION 11. EFFECTIVE DATE: If Atmos Energy accepts this ordinance, it becomes effective as of January 1, 2016.

PASSED AND APPROVED on this the _____ day of _____, 2015.

ATTEST:

_____	_____
Stacy Henderson, City Secretary	Jim Olk, Mayor
City of Lucas, Texas	City of Lucas, Texas

STATE OF TEXAS §

COUNTY OF COLLIN §

CITY OF LUCAS §

I, Stacy Henderson, City Secretary of the City of Lucas, Collin County, Texas, do hereby certify that the above and foregoing is a true and correct copy of an ordinance passed by the City Council of the City of Lucas, Texas, at a _____ session, held on the _____ day of _____, 2015, as it appears of record in the Minutes in Book _____, page _____.

WITNESS MY HAND AND SEAL OF SAID CITY, this the ___ day of _____, 2015.

_____
Stacy Henderson, City Secretary
City of Lucas, Texas

Item No. 08

City of Lucas
Council Agenda Request
November 5, 2015

Requester: Mayor Jim Olk

Agenda Item:

Discuss the city-wide replacement of water meter registers along with associated utility billing and provide direction and/or recommendations to Staff.

Background Information:

The City of Lucas has approximately 2,300 water customers. In 2010, the City began using remote read water meter registers. From 2012 through 2014 staff noticed that the new water meter registers were failing at an alarming rate. It was determined in 2014 that the City would need to change out all registers to universal registers to fit the various types of meters throughout the City to remediate the failures. A contract to replace the registers occurred in January 2015.

Starting in 2012, the numbers of water accounts where the registers had failed grew to almost 800. Water consumption for these water bills was estimated using previous years consumption. At that time, watering was restricted to twice per month. The new water meter registers were installed between April and August 2015.

In September, as customers started receiving bills with actual consumption numbers, the City received approximately 417 service order requests from citizens concerned about their higher water bills. Registers were checked and it was found that 300 accounts were accurate and 138 adjustments to water bills were made. Of those adjustments, 95 were malfunctions, 23 were leak adjustments and 20 bill corrections were made due to an error in the read of the register. Due to the extremely high bills, staff suspended automatic drafts, service fees and late fees. Additionally due to the meter issues, billing cycles were altered and September's billing went out later than normal.

This "perfect storm" affected a number of customers and the City received many requests for additional relief to the high bills. Staff addressed many of these issues where justifications could be substantiated. Many requested to talk to the Mayor about the issue.

The Mayor is bringing this item forward and will have a presentation for City Council. The Mayor is requesting that the City Council provide additional direction to staff regarding the suspension of service fees, late fees, automatic drafts and if any additional considerations should be given for relief.

Attachments/Supporting Documentation:

NA

Item No. 08

City of Lucas
Council Agenda Request
November 5, 2015

Requester: **Mayor Jim Olk**

Budget/Financial Impact:

NA

Recommendation:

NA

Motion:

Provide direction to City staff.

Item No. 09

City of Lucas
Council Agenda Request
November 5, 2015

Requester: Public Works Director/City Engineer Stanton Foerster

Agenda Item:

Provide direction to the City Manager regarding the need to paint the McGarity water tower.

Background Information:

In 2014, Verizon entered into a licensing agreement for the use of a specific elevation on the McGarity water tower. Verizon submitted an "after" rendering of the tower with the proposed antenna installed. The word LUCAS on the stem of the tower was visible in the rendering. When Verizon installed the cellular antenna, they covered the "L", and now all that can be seen is "UCAS." Staff met with Verizon and suggested three options:

1. Do nothing and the city will repaint the tower when the rest of the tower needs painting;
2. Verizon will paint the stem and cover up the UCAS; or
3. Verizon will paint the stem and the word LUCAS will be repainted also.

Attachments/Supporting Documentation:

None

Budget/Financial Impact:

The City has no funds budgeted in FY 15-16 for painting the tower.

Recommendation:

Ask Verizon to repaint the stem to cover up the letters UCAS.

Motion:

NA

Item No. 10

City of Lucas
Council Agenda Request
November 5, 2015

Requester: Public Works Director/City Engineer Stanton Foerster

Agenda Item:

Consider adopting Ordinance 2015-11-00825 amending Chapter 12 of the Code of Ordinances titled "Traffic and Vehicles" by adding Article 12.05 titled "Stopping, Standing, and Parking" for the purpose of prohibiting parking along various roadways.

Background Information:

During Lovejoy ISD football games and special events at Lovejoy High School, there is a shortage of on-site parking. Some visitors are parking along Estates Parkway and on side streets in nearby neighborhoods. Parking on Estates Parkway causes traffic congestion and poses a safety risk to both pedestrians and motorists in the area. The Lucas City Council discussed this matter during the July 2, July 16, and October 15, 2015 City Council meetings. The City Council requested staff to write an ordinance restricting parking and creating a tow away zone.

Attachments/Supporting Documentation:

1. Ordinance 2015-11-00825

Budget/Financial Impact:

The cost of signage is contemplated in account 11-8210-433 with a balance of $10,000.

Recommendation:

NA

Motion:

I make a motion to approve/deny Ordinance 2015-11-00825 amending Chapter 12 of the Code of Ordinances titled "Traffic and Vehicles" by adding Article 12.05 titled "Stopping, Standing, and Parking" for the purpose of prohibiting parking along various roadways.

ORDINANCE # 2015-11-00825
[AMENDING CODE OF ORDINANCE CHAPTER 12, ADDING ARTICLE 12.05]

AN ORDINANCE OF THE CITY OF LUCAS, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 12 "TRAFFIC AND VEHICLES" BY ADDING ARTICLE 12.05 "STOPPING, STANDING AND PARKING" TO PROVIDE REGULATIONS FOR PROHIBITED PARKING ALONG VARIOUS ROADWAYS LOCATED WITHIN CITY LIMITS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALING CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO HUNDRED DOLLARS ($200.00) FOR EACH OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council finds that amending the Code of Ordinances to include the regulation of parking on Estates Parkway is in the best interest of the City and will promote the health, safety and welfare of its citizens and the general public.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LUCAS, TEXAS:

Section 1. That the Code of Ordinances of the City of Lucas, Texas be, and the same is, hereby amended by amending Chapter 12 "Traffic and Vehicles" by adding Article 12.05 "Stopping, Standing and Parking", to read as follows:

"CHAPTER 12

TRAFFIC AND VEHICLES

. . .

ARTICLE 12.05 STOPPING, STANDING AND PARKING

Sec. 12.05.001 Stopping, standing, parking prohibited in specific places

(a) A person commits an offense if, as the operator of a vehicle, he parks, stops or stands the vehicle in violation of an official sign, ordinance, curb marking or street marking prohibiting, regulating or restricting the parking, stopping or standing of a vehicle.

(b) On the hereinafter designated streets, or portions thereof, no person shall stop, stand, or park a motor vehicle. Such streets, or portions thereof, being more particularly described:

Road	Extent	Speed Limit
Estates Parkway (FM 2170)	From Angel Parkway (FM 2551) to Ingram Lane on the south side of Estates Parkway (FM 2170)	No stopping, standing or parking
Estates Parkway (FM 2170)	From Ingram Lane to Angel Parkway (FM 2551) on the north side of Estates Parkway (FM 2170)	No parking

(c) Any violations of the provisions of this section shall be punishable by a fine not to exceed two hundred dollars ($200.00).

(d) In any prosecution charging a violation of any ordinance or regulation governing the standing or parking of a vehicle, proof that the particular vehicle described in the complaint was parked in violation of any such ordinance or regulation, together with proof that the defendant named in the complaint was, at the time of such parking, the owner of such vehicle, shall constitute in evidence a prima facie presumption that the owner of such vehicle was the person who parked or placed such vehicle at the point where, and for the time during which, such violation occurred.

Sec. 12.05.002 Removal of Personal Property

(a) A peace officer is authorized to remove or cause to be moved personal property, without the consent or the owner or carrier of the property, from a roadway or right-of-way:

(1) if the vehicle is unlawfully parked; or

(2) if the peace officer determines that the property blocks the roadway or endangers public safety.**"**

Section 2. All ordinances of the City of Lucas in conflict with the provisions of this Ordinance shall be, and same are hereby, repealed, provided, however, that all other provisions of said Ordinances that are not in conflict herewith shall remain in full force and effect.

Section 3. Should any word, sentence, paragraph, subdivision, clause, phrase or section of this Ordinance or of the City of Lucas Code of Ordinances, as amended hereby, be adjudged or held to be voided or unconstitutional, the same shall not affect the validity of the remaining portions of said Ordinances or the City of Lucas Code of Ordinances, as amended hereby, which shall remain in full force and effect.

Section 4. An offense committed before the effective date of the Ordinance is governed by prior law and the provisions of the City of Lucas Code of Ordinances in effect when the offense was committed and the former law is continued in effect for this purpose.

Section 5. Any person, firm or corporation violating any of the provisions or terms of this

Ordinance shall be subject to the same penalty as provided for in the Code of Ordinances, as amended, and upon conviction in the municipal court shall be punished by a fine not to exceed the sum of Two Hundred Dollars ($200) for each offense, and each and every day such violation shall continue shall be deemed to constitute a separate offense.

Section 6. This Ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Lucas, and it is accordingly so ordained.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF LUCAS, COLLIN COUNTY, TEXAS, ON THIS 5th DAY OF NOVEMBER 2015.

APPROVED:

_____

Jim Olk, Mayor

APPROVED AS TO FORM:

_____

Joseph J. Gorfida, Jr., City Attorney

(10-27-15/73928)

ATTEST:

_____

Stacy Henderson, City Secretary

Item No. 11

City of Lucas
Council Agenda Request
November 5, 2015

Requester: **Development Services Director Joe Hilbourn**

Agenda Item:

Consider authorizing the Mayor to enter into a Development Agreement between the City of Lucas and Goose Real Estate Inc., for a parcel of land situated in the Calvin Boles Survey, ABS Number 28 also known as Lots 1-9 of the Ford Cattle Ranch being 67.0300 acres.

Background Information:

This property is formerly owned by the Ford family and then given to SMU. The property is for sale and Goose Real Estate is interested in developing the property. They have asked for a Development Agreement. The Agreement requests frontage relief on four lots, the lots will be over-sized almost 5 acres in size. Staff would like the Developer to repave and complete base repairs on Ford Lane, East Winningkoff Road, and Webb Lane with reimbursement of impact fees in an amount not to exceed the amount collected for road impact fees.

Attachments/Supporting Documentation:

1. Development Agreement.

Budget/Financial Impact:

N/A

Recommendation:

1. Approve as presented or suggest changes deemed necessary.

Motion:

I make a motion to approve/deny authorizing the City Manager to enter into a Development Agreement between the City of Lucas and Goose Real Estate Inc., for a parcel of land situated in the Calvin Boles Survey, ABS Number 28 also known as Lots 1-9 of the Ford Cattle Ranch being 67.0300 acres.

STATE OF TEXAS §
§ **DEVELOPMENT AGREEMENT**
COUNTY OF COLLIN §

This Development Agreement ("Agreement")\ is executed this _____ day of November 2015, by and between the City of Lucas, Texas, a municipal corporation existing under the laws of the State of Texas ("City"), and Goose Real Estate, Inc., an Ohio corporation, duly qualified to transact business in the State of Texas ("Owner") (each a "Party" and collectively the "Parties"), acting by and through their authorized representatives.

RECITALS:

WHEREAS, Goose Real Estate, Inc. is the owner of the Property, which is located in Lucas, Texas, and which Owner desires to develop the Property in accordance with the Development Regulations and other applicable City ordinances, including the construction of Public Improvement; and

WHEREAS, Owner intends to develop the Property and to design and construct certain Roadway Improvements, on and for the benefit of the Property; and

WHEREAS, in association with the construction of the Development, the Parties find it to be in their mutual benefit and interest that Owner construct or cause to be constructed Roadway Facilities that consist of following three areas: (1) Ford Lane from Welborn Lane to west side of 1540 Ford Lane (2200 feet); (2) Welborn Lane from Ford Lane to East Winningkoff Road (1300 feet); and (3) East Winningkoff Road from Welborn Lane to the east end of the Development (2700 feet). The east end of Ford Lane at the west side of 1540 Ford Lane and the east end of East Winningkoff shall end in an approved turn-around; and

WHEREAS, Texas Local Government Code §212.071, as amended, authorizes municipalities to participate in the Owner's costs of construction of public improvements related to the development of subdivisions within the municipality without compliance with Chapter 252 of the Texas Local Government Code, as amended;

NOW THEREFORE, in consideration of the premises and the mutual covenants contained herein and other valuable consideration the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows

Article I
Definitions

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them in this Article I unless the context clearly indicates a different meaning:

"City" shall mean City of Lucas, Texas.

"City Engineer" shall mean City of Lucas City Engineer, or designee.

"Commencement of Construction" shall mean that: (i) the Construction Documents have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of Roadway Facilities; (ii) all necessary permits for the construction of the Roadway Facility pursuant to the Construction Documents therefore have been issued by all applicable governmental authorities; and (iii) grading of the Roadway Facilities has commenced.

"Completion of Construction" shall mean: (i) the Roadway Facilities have been substantially completed in accordance with the Construction Documents; and (ii) the respective Roadway Facilities have been accepted by City.

"Construction Documents" shall mean the plans and specifications submitted for the design, installation and construction of the Roadway Facilities, as approved by City Engineer.

"Owner" shall mean Goose Real Estate Inc. and any subsequent owner of any portion of the Property.

"Effective Date" shall mean the last date of execution of this Agreement.

"Force Majeure" shall mean any delays due to strikes, riots, acts of God, shortages of labor or materials, war, adverse market conditions, governmental approvals, laws, regulations, or restrictions, or other cause beyond the control of the Party.

"Property" shall mean the real property described and depicted in Exhibits "A-1" and "A-2" attached hereto.

"Roadway Facilities" shall mean the design and construction of the road base and resurface (asphalt) of Ford Lane, Welborn Lane and East Winningkoff Road. The base shall be twenty six (26) feet wide and a sub-grade consisting of five percent (5%) cement stabilized base. The pavement shall be a minimum of three (3) inches thick and twenty four (24) feet wide of Type D asphalt concrete pavement (ACP) in accordance with the current City of Lucas Standard Construction Details and as depicted in Exhibit "C" in accordance with the Construction Documents.

Article II
Term; Termination

The term of this Agreement shall commence on the Effective Date and shall continue until the Parties have fully satisfied all terms and conditions of this Agreement unless sooner terminated as provided herein.

Article III
Roadway Facilities

3.1 Roadway Facilities. At the time building permits have been issued for the construction of homes/ accessory buildings on 75% of the lots shown on the conceptual plan

attached hereto as Exhibit "B", the Owner/Developer shall cause the Commencement of Construction of the Roadway Facilities. Owner shall cause the Completion of Construction to occur with 180 days after the Commencement of Construction. Subject to events of Force Majeure, Owner agrees to design and construct the Roadway Facilities in accordance with the applicable standards, ordinances, and regulations adopted by the City ("City of Lucas Standard Construction Details"). Owner shall submit plans for the design and construction of the Roadway Facilities ("Construction Plans") to the City Engineer for review and approval. Subject to extensions for delay or caused by events of Force Majeure and to the City's approval of the Approved Plans, Owner agrees, at Owner's sole cost, to construct or cause the construction of the Roadway Facility. Upon Completion of Construction Owner shall provide City with construction pay applications and maintenance bonds and such other records as City may reasonably request to document the actual costs of the design and construction of the Roadway Facilities.

3.2 City's Participation. The City will collect impact fees in connection with the issuance of building permits for improvements on the lots shown on the conceptual plan attached hereto as Exhibit "B" and reimburse the Owner/Owner for the construction costs of Roadway Facility after the Completion of Construction and the City verification of such costs. City agrees to pay Owner in an amount not to exceed $110,000 (the "City's Cost Participation"). Owner shall be responsible for any costs that exceed the City's Participation Amount.

3.3 Maximum Participation. In no case shall the City Cost Participation to the Roadway Facility exceed thirty percent (30%) of the actual costs of design, engineering, site preparation and construction of any improvements, including buildings or the Roadway Facility itself, on the Property as required by the development regulations, whether constructed by Owner or another party ("the Development Infrastructure"), unless the contracts for construction of the Development Infrastructure have been procured and entered into in compliance with the applicable competitive sealed bid procedures set forth in Chapter 252 of the Texas Local Government Code, as amended.

Article IV
General

4.1 Early Plat Recording. Owner may record a final plat before the final public improvements are completed and accepted.

Article V
Termination

This Agreement may be terminated by the mutual written agreement of the Parties. Either Party may terminate this Agreement if the other Party breaches any of the terms and conditions of this Agreement, and such breach is not cured by such Party within sixty (60) days after receipt of notice thereof.

Article VI
Miscellaneous

6.1 Release. Upon the full and final satisfaction by City and Owner of their respective obligations contained herein, City and Owner shall execute and record, in the Deed Records of Collin County, a release of City and Owner from their obligations set forth herein.

6.2 Books and Records. Owner and City agree to make their respective books and records relating to the construction of the Project available for inspection by the other Party, until acceptance of the Project by City.

6.3 Indemnification/Hold Harmless. **OWNER DOES HEREBY RELEASE, INDEMNIFY AND HOLD HARMLESS CITY, ITS OFFICERS, AGENTS, EMPLOYEES, AND THIRD PARTY REPRESENTATIVES (COLLECTIVELY REFERRED TO AS "CITY") FROM ANY AND ALL CLAIMS, DAMAGES, CAUSES OF ACTION OF ANY KIND WHATSOEVER, STATUTORY OR OTHERWISE, PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE AND LAWSUITS AND JUDGMENTS, INCLUDING COURT COST, EXPENSES AND ATTORNEY'S FEES, AND ALL OTHER EXPENSES ARISING DIRECTLY OR INDIRECTLY FROM OWNER'S PERFORMANCE OF THIS AGREEMENT. THE FOREGOING RELEASE AND INDEMNITY SHALL SURVIVE TERMINATION OF THIS AGREEMENT.**

6.4 Project Plans. Except as otherwise provided herein, prior to Commencement of Construction, Owner shall submit all Construction Documents for all Roadway Facilities to City Engineer for review and approval.

6.5 Compliance with Laws. Except as otherwise provided herein, Owner shall fully comply with all local, state and federal laws, including all codes, ordinances and regulations applicable to this Agreement and the work to be done hereunder, which exist or which may be enacted later by governmental bodies having jurisdiction or authority for such enactment.

6.6 Successors and Assigns. All obligations and covenants of Owner under this Agreement shall be binding on Owner, its successors and permitted assigns. Owner may not assign this Agreement without the prior written consent of City, which shall not be unreasonably withheld.

6.7 Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and assigns of all Parties hereto.

6.8 Limitation on Liability. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties. It is understood and agreed between the Parties that Owner, in satisfying the conditions of this Agreement, has acted independently, and City assumes no responsibilities or liabilities to third parties in connection with these actions.

6.9 Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

6.10 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days after it is sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below or on the day actually received when sent by courier or otherwise hand delivered.

If intended for Owner, to:

Goose Real Estate, Inc.
Attn: James Roberts
1200 Kempton Park
Fairview, Texas 75069

If intended for City, to:

City of Lucas
Attn: Joni Clarke, City Manager
665 Country Club Road
Lucas, Texas 75002

With a copy to:

Joseph J. Gorfida, Jr.
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 N. Akard
Dallas, Texas 75201

6.11 Entire Agreement. This Agreement embodies the complete agreement of the Parties hereto, superseding all oral or written, previous and contemporary, agreements between the Parties and relating to the matters in this Agreement.

6.12 Governing Law. The validity of this Agreement and any of its terms and provisions, as well as the rights and duties of the Parties, shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in State District Court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

6.13 Amendment. This Agreement may be amended by the mutual written agreement of the Parties.

6.14 Legal Construction. 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 to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision 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.

6.15 Recitals. The recitals to this Agreement are incorporated herein and are found to be true and correct.

6.16 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

6.17 Exhibits. Any exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

6.18 Survival of Covenants. The representations, warranties, covenants, and obligations of Owner set forth in this Agreement shall survive termination.

6.19 Recordation of Agreement. An original of this Agreement shall be recorded in the Deed Records of Dallas County, Texas.

6.20 Covenants Run With Property. The provisions of this Agreement are hereby declared covenants running with the Property and are fully binding on Owner and each and every subsequent owner of all or any portion of the Property but only during the term of such Party's ownership thereof (except with respect to defaults that occur during the term of such person's ownership) and shall be binding on all successors, heirs, and assigns of Owner which acquire any right, title, or interest in or to the Property, or any part thereof. Any person who acquires any right, title, or interest in or to the Property, or any part hereof, thereby agrees and covenants to abide by and fully perform the provisions of this Agreement with respect to the right, title or interest in such Property.

6.21 Effective Date. The effective date of this Development Agreement shall be the date on which this Development Agreement is approved by the City Council of the City.

(signature page to follow)

EXECUTED as of the date first above written.

CITY:

CITY OF LUCAS, TEXAS

By _____
Jim Olk
Mayor

OWNER:

GOOSE REAL ESTATE, INC.,
an Ohio corporation

By _____
James Roberts
President

Approved as to Form:

By _____
Joseph J. Gorfida, Jr.
City Attorney
(10-27-15/73930)

THE STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ___ day of November, 2015, by Jim Olk, Mayor of City of Lucas, Texas, a municipal corporation on behalf of such municipal corporation.

_____
Notary Public in and for the State of Texas

THE STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ___ day of October, 2015, by James Roberts, President of Goose Real Estate, Inc., an Ohio corporation, on behalf of such corporation.

_____
Notary Public in and for the State of Texas

roberts,james\ford'sranch\developmentag-v3.doc

EXHIBIT "A-1"
Legal Description

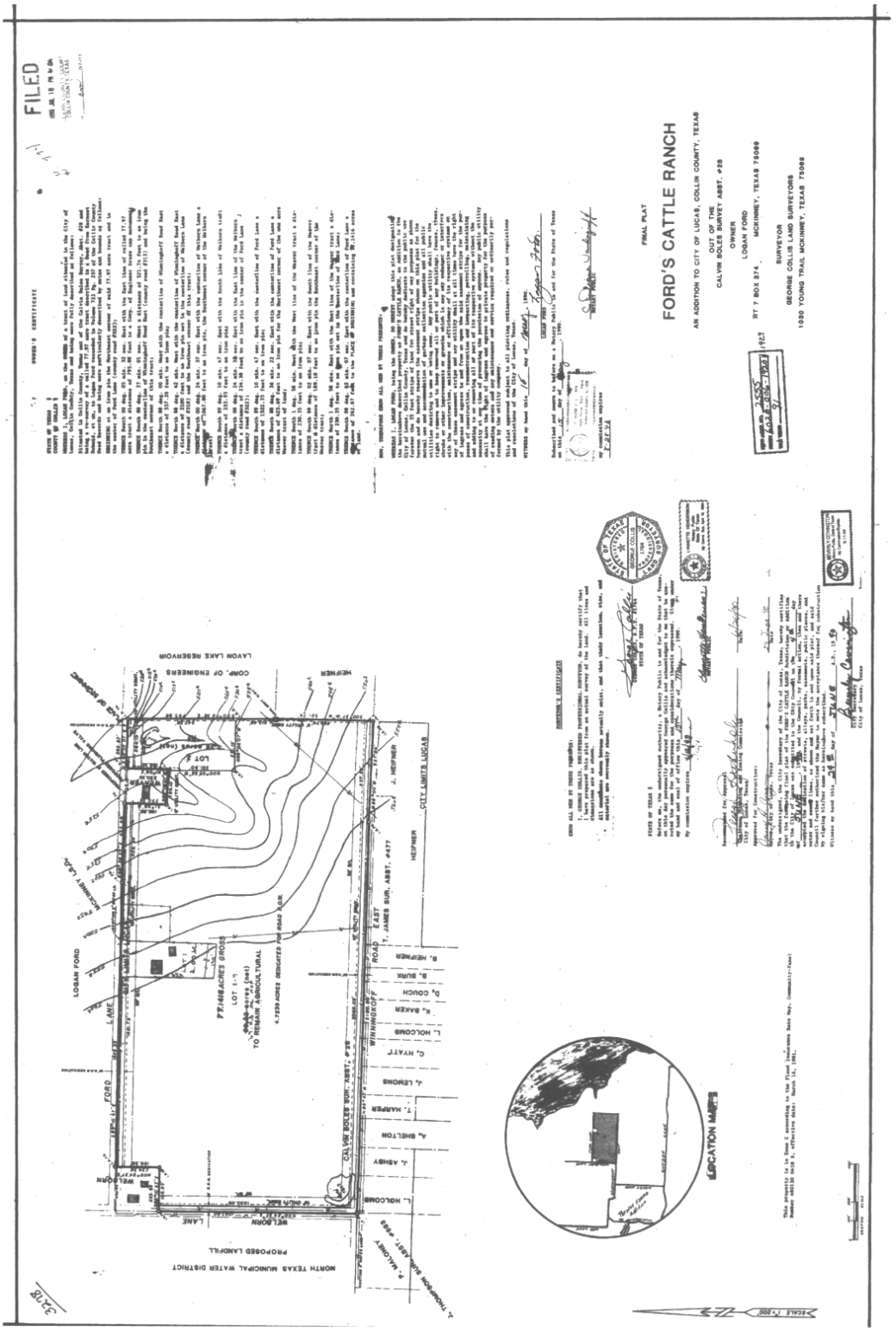

EXHIBIT "A-2"
Legal Description

STATE OF TEXAS §
COUNTY OF COLLIN §

WHEREAS I, LOGAN FORD, am the owner of a tract of land situated in the City of Lucas, Collin County, Texas and being more fully described as follows:

Situated in Collin County, Texas out of the Calvin Boles Survey, Abst. #28 and being a re-survey of a called 77.97 acre tract described in a Deed from Earnest Schmid, et ux, to Logan Ford recorded in Volume 722 Pg. 237 of the Collin County Deed Records and being more particularly described by mates and bounds as follows:

BEGINNING at an iron pin the Northeast corner of said 77.97 acre tract and in the center of Ford Lane (county road #322);

THENCE South 00 deg. 05 min. 32 sec. East with the East line of called 77.97 acre tract a distance of 795.88 feet to a Corp. of Engineer brass cap monument;

THENCE South 00 deg. 37 min. 01 sec. West a distance of 321.74 feet to an iron pin in the centerline of Winninghoff Road East (county road #313) and being the Southeast corner of this tract;

THENCE North 88 deg. 00 min. West with the centerline of Winninghoff Road East a distance of 537.20 feet to an iron pin;

THENCE North 88 deg. 42 min. West with the centerline of Winninghoff Road East a distance of 2100 feet to an iron pin set in the centerline of Welborn Lane (county road #318) and the Southwest corner of this tract;

THENCE North 00 deg. 24 min. 37 sec. East with the centerline of Welborn Lane a distance of 1067.80 feet to an iron pin, the Southeast corner of the Welborn tract;

THENCE South 89 deg. 10 min. 47 sec. East with the South line of Welborn tract a distance of 233.93 feet to an iron pin;

THENCE North 00 deg. 24 min. 37 sec. East with the East line of the Welborn tract a distance of 234.38 feet to an iron pin in the center of Ford Lane (county road #322);

THENCE South 89 deg. 10 min. 47 sec. East with the centerline of Ford Lane a distance of 1522.33 feet to an iron pin;

THENCE South 88 deg. 36 min. 22 sec. East with the centerline of Ford Lane a distance of 423.69 feet to an iron pin for the Northwest corner of the one acre Weaver tract of land;

THENCE South 1 deg. 58 min. West with the West line of the Weaver tract a distance of 230.35 feet to an iron pin;

THENCE South 88 deg. 02 min. 07 sec. East with the South line of the Weaver tract a distance of 189.10 feet to an iron pin the Southeast corner of the Weaver tract;

THENCE North 1 deg. 58 min. East with the East line of the Weaver tract a distance of 230.35 feet to an iron pin set in the centerline of Ford Lane;

THENCE South 88 deg. 02 min. 07 sec. East with the centerline of Ford Lane a distance of 262.87 feet to the PLACE OF BEGINNING and containing 7.1416 acres of land.

EXHIBIT "B"
Conceptual Plan

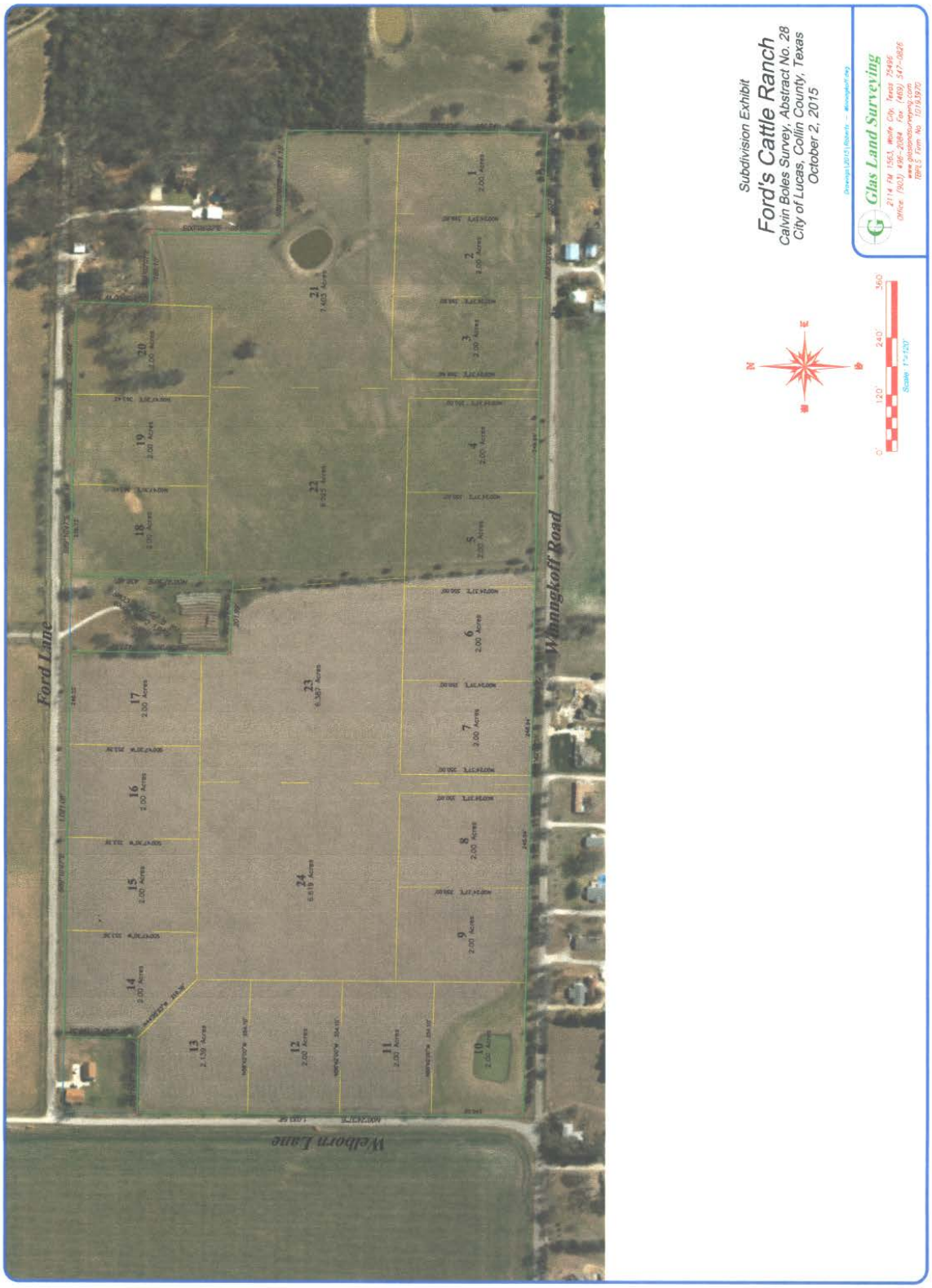

EXHIBIT "C"
Special Regulations

Residential Property

Uses: Single Family Residential and accessory uses

Building Regulations:

Lot Sizes:

Minimum lot size - two acres;
Minimum average width - 200 ft.

Setbacks:

Front Setbacks – 50';
Side Setbacks – 20';
Rear Setbacks – 30';
Corner Setbacks – none

Accessory buildings:

Accessory buildings may be constructed before the primary residence on the lot

General:

Unless addressed in this Development Agreement, the Development must comply with the City's R-2 single family zoning district in effect on the Effective Date

Item No. 12

City of Lucas
Council Agenda Request
November 5, 2015

Requester: **Development Services Director Joe Hilbourn**

Agenda Item:

Discuss and give staff direction regarding amendments to Chapter 10 of the Code of Ordinances Subdivision Regulations including optional land studies, adding road types to match the Master Thoroughfare Plan, changing the location of the Fee Schedule to Appendix C of the Code of Ordinances and adding requirements pertaining to OSSF.

Background Information:

The proposed changes to Chapter 10 include optional land studies, adding road types to match the Master Thoroughfare Plan, changing the location of the Fee Schedule to Appendix C of the Code of Ordinances and adding requirements pertaining to OSSF. Highlighted changes are attached for Council review.

Attachments/Supporting Documentation:

1. Chapter 10 of the Code of Ordinances with highlighted changes.

Budget/Financial Impact:

NA

Recommendation:

NA

Motion:

NA

CHAPTER 10

SUBDIVISIONS

ARTICLE 10.01 GENERAL PROVISIONS*

Sec. 10.01.001 Platting and plan review fees

The fees for final and preliminary plats, replats, concept plans, landscape plans, architectural plans, filing fees, costs, miscellaneous fees and outside consultant fees shall be and are hereby changed and/or established as set forth in the city code of ordinances chapter 15 titled master Fee Schedule platting fees fee schedule The previous fee schedule is hereby repealed and is replaced in its entirety with the fee schedule located in the code of ordinances chapter 15 titled Master Fee Schedule.

Commented [JH1]: New and some deleted

ARTICLE 10.02 IMPACT FEES†

Sec. 10.02.001 Purpose; policy

This article is adopted pursuant to the provisions of chapter 395 of the Texas Local Government Code, as well as under the authority of article 11, section 5, of the state constitution. This article implements a policy of the city to impose fees upon each new development project to pay the costs of constructing capital improvements and facility expansions necessary to serve new developments.

Sec. 10.02.002 Definitions

For purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Advisory committee. The members of the planning and zoning commission and the representatives appointed by the city council as required by the enabling legislation for this article.

Assessment. The determination of the amount of the maximum impact fee which can be imposed on new developments pursuant to this article.

Capital improvements. Any of the following facilities that have a life expectancy of three or more years and are owned and operated by or on behalf of the city:

(1) Water supply and distribution facilities, wastewater collection facilities, and stormwater, drainage, and flood control facilities as they relate to the construction of roadway facilities, whether or not they are located within the service area; and

(2) Roadway facilities.

Capital improvements plan. A plan contemplated by this article that identifies capital improvements or facility expansions for which impact fees may be assessed. The capital improvements plan is hereby adopted with this article.

Commission. The commission means the Planning and Zoning commission.

Commented [JH2]: New definition

Credit. The amount of the reduction of an impact fee for fees, payments or charges for or construction of the same type of facility.

Facility expansion. The expansion of the capacity of an existing facility that serves the same function as an otherwise necessary new capital improvement, in order that the existing facility may serve new developments. The term does not include the repair, maintenance, or modernization of an existing facility to better serve existing developments.

Final plat approval or approval of a final plat. The point at which the applicant has complied with all conditions of approval and the plat has been released for filing with the county clerk.

(Ordinance 1997-05-00335, sec. 2, adopted 5/12/97)

Impact fee. A charge or assessment imposed as set forth in this article against a new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development. The term includes amortized charges, lump sum charges, capital recovery fees, contributions in aid of construction, and any other fee that functions as described by this definition. The term does not include:

(1) Dedication of land for public parks or payment in lieu of the dedication to serve park needs;

(2) Dedication of rights-of-way or easements or construction or dedication of on-site or off-site water distribution, wastewater collection or drainage facilities, or streets, sidewalks, or curbs if the dedication or construction is required by a valid ordinance and is necessitated by and attributable to the new development;

(3) Lot or acreage fees to be placed in trust funds for the purposes of reimbursing developers for oversizing or constructing water or sewer mains or lines; or

(4) Other pro-rata fees for reimbursement of water or sewer mains or lines extended by the city.

However, an item included in the capital improvements plan may not be required to be constructed except in accordance with section 395.019(2) of the Local Government Code, and an owner may not be required to construct or dedicate facilities and to pay impact fees for those facilities.

(Ordinance 2001-12-00458, sec. 1, adopted 12/10/01)

Land use assumptions. A description of the service area and projections of changes in land uses, densities, intensities, and population in the service area over at least a 10-year period which has been adopted by the city and upon which the capital improvements plan is based.

New development. The subdivision of land, the construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of a structure, or any use or extension of the use of land, any of which increases the number of service units.

Off-site. Located entirely on property which is not included within the bounds of the plat being considered for impact fee assessment.

On-site. Located at least partially on the plat which is being considered for impact fee assessment.

(Ordinance 1997-05-00335, sec. 2, adopted 5/12/97)

Roadway facilities. Arterial or collector streets or roads that have been designated on an officially adopted roadway plan of the city, together with all necessary appurtenances. The term includes the city's share of costs for roadways and associated improvements designated on the federal or state highway system, including local matching funds and costs related to utility line relocation and the establishment of curbs, gutters, sidewalks, drainage appurtenances, and rights-of-way.

Service area. The area within the corporate boundaries or extraterritorial jurisdiction of the city, to be served by the capital improvements or facilities expansions specified in the capital improvements plan, except roadway facilities and stormwater, drainage, and flood control facilities. For roadway facilities, the service area is limited to an area within the corporate boundaries of the city and shall not exceed six miles.. For stormwater, drainage, and flood control facilities, the service area may not exceed the area actually served by the stormwater, drainage, and flood control facilities designated in the capital improvements plan and shall not extend across watershed boundaries.

Commented [JH3]: Deleted and shall not exceed six miles.

Commented [JG4]: Section 395.001(8) requires the "exceed six miles" to be in the definition of service area. Recommend reinserting text.

Service unit. That standardized measure of consumption, use, generation, or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards and based on historical data and trends applicable to the city during the previous ten years. The applicable service units shall be shown on the conversion table in the capital improvements plan and impact fee calculation which can be converted to equivalent single-family residential p.m. peak-hour average vehicle trip ends per

acre for roadway facilities and water meter equivalents, as the context indicates, which serves as the standardized unit of measure or consumption or discharge for water and wastewater facilities.

(Ordinance 2001-12-00458, sec. 1, adopted 12/10/01)

Water facility. An improvement for providing water supply, treatment and distribution service, including, but not limited to, land easements for water treatment facilities, water supply facilities, or water distribution lines. "Water facility" excludes water lines or mains which are constructed by developers, the costs of which are reimbursed from pro-rata charges paid by developers or owners of property in other subdivisions as a condition of connection to or use of such facility.

Sec. 10.02.003 Advisory committee

(a) The capital improvements advisory committee (advisory committee) shall consist of the planning and zoning commission. If the advisory committee does not include at least one representative of the real estate, development or building industry who is not an employee or official of a political subdivision or governmental entity, the city council shall appoint at least one such representative as an ad hoc voting member of the advisory committee. If any impact fee is to be applied in the extraterritorial jurisdiction of the city, a representative from the area shall be appointed by the city council.

(b) The advisory committee serves in an advisory capacity and is established to:

(1) Advise and assist in the adoption of land use assumptions;

(2) Review the capital improvements plan and file written comments;

(3) Monitor and evaluate implementation of the capital improvements plan;

(4) File semiannual reports ~~or as needed~~ with respect to the progress of the capital improvements plan and report to the city council any perceived inequities in implementing the plan or imposing the impact fee; and

(5) Advise the city staff and council of the need to update or revise the land use assumptions, capital improvements plan and impact fee.

Commented [JH5]: added or as needed

Commented [JG6]: Would delete "or as needed". Tracking the mandatory language in chapter 395.

(c) All professional reports concerning the development and implementation of the capital improvements plan shall be made available to the advisory committee.

(d) The advisory committee shall elect a chairperson to preside at its meetings and a vice-chairperson to serve in his absence. All meetings of the advisory committee shall be open to the public and posted at least 72 hours in advance. A majority of the membership of the advisory committee shall constitute a quorum.

(Ordinance 1997-05-00335, sec. 2, adopted 5/12/97)

Sec. 10.02.004 Periodic updates required

The land use assumptions and capital improvements plan upon which impact fees are based shall be updated at least every five years. The initial five-year period begins on the day the capital improvements plan was adopted, May 12, 1997. Alternatively, the city council may determine that no change to the land use assumptions, capital improvements plan, or impact fee is needed, pursuant to the provisions of section 395.0575 of the Local Government Code. (Ordinance 2001-12-00458, sec. 2, adopted 12/10/01)

Commented [JG7]: 395.0575 not 395.075

Sec. 10.02.005 Assessment and collection; exceptions

(a) Impact fees shall be assessed to new development at the time of recordation of the subdivision plat or other plat required by the subdivision ordinance of the city. If the city has water and wastewater capacity available, impact fees shall be collected at the time the city issues a building permit; or, for land platted outside the corporate boundaries, the city shall collect the fees at the time an application for an individual meter connection to the city's water or wastewater system is filed; or, where the city lacks authority to issue a building permit in an area where an impact fee applies, the fee shall be collected at the time an application is filed for an individual meter connection to the city's water or wastewater system. Impact fees for properties platted prior to the adoption of this article shall be collected at any time after one year of adoption of this article (May 12, 1997) and shall be due and payable prior to or at the time of issuance of the building permit or connection to the city's water and sanitary sewer system, whichever occurs first. (Ordinance 2001-12-00458, sec. 3, adopted 12/10/01)

(b) Additional impact fees or increases in fees shall not be assessed unless the number of service units to be developed on the tract increases. Should the service units be increased, impact fees shall be increased in an amount equal to the current impact fee per service unit multiplied by the difference in number of service units.

(c) Except for roadway facilities, impact fees may be assessed but not collected for property where service is not available unless:

(1) The city commits to commence construction of necessary facilities identified in the capital improvements plan within two years and have service available in a reasonable time not exceeding five years; or

(2) The city agrees in writing to permit the owner of the property to construct or finance the required capital improvement or facility expansion and agrees that the cost incurred or funds advanced will either:

(A) Be credited against the impact fees otherwise due from the new development;

(B) Reimburse the owner for such costs from impact fees paid from other new developments that will use such capital improvements or facility expansions, in

which case fees shall be reimbursed to the owner at the time collected as other new development plats are recorded; or

(C) The owner voluntarily requests that the city reserve capacity to serve future development and the city and the owner enter into a valid written agreement.

(d) The owner of the property for which there is a recorded plat may enter into a written agreement with the city providing for the time and method of payment of impact fees, which agreement shall prevail over any contrary provision of this article.

(Ordinance 1997-05-00335, sec. 2, adopted 5/12/97)

Sec. 10.02.006 Calculation

(a) The city shall provide for a capital improvements plan to be developed by qualified professionals using generally accepted engineering and planning practices in accordance with the requirements of section 395.014 of the Texas Local Government Code. Impact fees shall be determined by multiplying the number of service unit in the proposed development by the amount per service unit due under exhibit B which is attached to Ordinance 1997-05-00335 and incorporated herein for all purposes. The number of service unit equivalents shall be determined by using the conversion table contained in the capital improvements plan and attached to Ordinance 1997-05-00335 as exhibit A and made a part of this article. (Ordinance 2001-12-00458, sec. 4, adopted 12/10/01)

(b) The determination of impact fees shall be reduced by any allowable credits for the category of capital improvements as provided in section 10.02.007.

(c) The total amount of unpaid impact fees shall be attached to the development application, or if, to be paid at some later date, to the request for other permit or connection.

(d) Replatting shall not require recalculation of impact fees unless the number of service units is increased or land uses change. If a proposed development increases the number of service units, the impact fee shall be recalculated as provided in section 10.02.005.

Sec. 10.02.007 Credits

(a) Any construction of, contributions to, or dedications of any facility appearing on the capital improvements plan which is required by the city to be constructed by the owner as a condition of development shall be credited against the impact fees otherwise due for the same category of impact fees otherwise due from the development. Credit for impact fees due an owner in one category of impact fees (i.e., water and thoroughfares) may not be used as an offset for impact fees due in another category of impact fees.

(b) The city and the owner may enter into an agreement providing that, in addition to the credit, the owner will be reimbursed for all or a portion of the costs of such facilities from impact fees as

received from other new developments that will use such capital improvements or facility expansions.

(c) An owner shall be entitled to a credit against any category of impact fee as provided in any written agreement between the city and the owner.

(d) No credit for construction of any facility shall exceed the total amount of impact fees due from the development for the same category of improvements.

(Ordinance 1997-05-00335, sec. 2, adopted 5/12/97)

(e) The capital improvements plan must contain specific enumeration of the items contained in section 395.014 of the Local Government Code, including a plan for awarding:

(1) A credit for the portion of ad valorem tax and utility service revenues generated by new service units during the program period that is used for the payment of improvements, including the payment of debt, that are included in the capital improvements plan; or

(2) In the alternative, a credit equal to fifty percent of the total projected cost of implementing the capital improvements plan.

(Ordinance 2001-12-00458, sec. 5, adopted 12/10/01)

Sec. 10.02.008 Expenditure of funds; interest; accounting

(a) All impact fees collected shall be deposited in interest-bearing accounts clearly identifying the category of capital improvements or facility expansions within the service area for which the fee is adopted.

(b) Interest earned shall be credited to the account and shall be subject to the same restrictions on expenditures as the funds generating such interest. Impact fees and the interest earned thereon may be spent only for the purposes for which such fees were imposed as shown in the capital improvements plan.

(c) The records of the accounts into which impact fees are deposited shall be open for public inspection and copying during ordinary business hours.

Sec. 10.02.009 Appeals

Upon written application of an owner of property upon which impact fees were assessed, the city council shall consider appeals to the interpretations of or errors in the application of the impact fee regulations or schedules which are used to calculate the fees or credits.

(Ordinance 1997-05-00335, sec. 2, adopted 5/12/97)

ARTICLE 10.03 SUBDIVISION AND DEVELOPMENT ORDINANCE*

Division 1. General

Sec. 10.03.001 Title

This article shall be known and may be cited as "The City of Lucas Subdivision and Development Ordinance."

Sec. 10.03.002 Authority

This article is adopted under the authority of the city charter, and the constitution and laws of the state, including chapters 43, 212 and 242 of the Texas Local Government Code, as amended.

Sec. 10.03.003 Purpose; plat required

(a) The purpose of this article is to: (i) provide for the orderly, safe and healthy development of the land within the city; (ii) protect and promote the health, safety, morals and general welfare of the city; (iii) guide the future growth and development of the city; (iv) provide for the proper location and width of streets and building lines; (v) provide adequate and efficient transportation, streets, storm drainage, water, wastewater, parks, and open space facilities; (vi) establish reasonable standards of design and procedures for platting to promote the orderly layout and use of land, and to insure proper legal descriptions and monumenting of platted land; (vii) insure that public infrastructure facilities required by city ordinances are available with sufficient capacity to serve the proposed development; (viii) require the cost of public infrastructure improvements that primarily benefit the tract of land being platted be borne by the owners of the tract.

(b) Every owner of any tract of land situated within the corporate limits of the city or within the extraterritorial jurisdiction of the city who divides the tract in two or more parts to lay out a subdivision of the tract, including an addition to the city, to lay out a building lot, or other lots, or to lay out streets, alleys, squares, parks or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks, or other parts must have a plat of the subdivision prepared and approved according to this article. A division of a tract under this article includes a division regardless of whether it is made by using a metes and bounds description in a deed of conveyance or in a contract for a deed, by using a contract of sale or other executing contract, or by using any other method. A division of land does not include a division of land into parts greater than 5 acres, where each part has access and no public improvement is dedicated.

(Ordinance 2006-07-00567, sec. 1, adopted 7/7/06)

(c) The procedure for approving a plat requires a preliminary plat and final plat. Except as otherwise permitted, the approval of a preliminary plat by the planning and zoning commission and city council is required for the construction of public improvements on the property. The preliminary plat and the associated engineering plans for the property may be amended during

construction, with only major changes requiring reapproval by the planning and zoning commission. Upon completion of the required public improvements, or the provision of an improvement agreement, the owner may submit a corrected final plat for the subdivision. Lots may be sold and building permits obtained after approval of the final plat by the planning and zoning commission, and the recording thereof. (Ordinance 2010-11-00668, sec. 1, adopted 11/4/10)

Sec. 10.03.004 Applicability

This article shall apply to all subdivisions of land within the corporate limits of the city, and all land outside the corporate limits that the city council may annex, and all land within the extraterritorial jurisdiction of the city to the full extent allowed by state law. (Ordinance 2006-07-00567, sec. 1, adopted 7/7/06)

Sec. 10.03.005 Definitions

The following words and phrases when used in this article shall have the meaning respectively ascribed to them in this section:

Alley. A minor right-of-way, dedicated to public use, which affords only secondary means of vehicular access to the back or side of properties otherwise abutting a street, and which may be used for public utility purposes.

City council. The governing body of the City of Lucas, Texas.

City engineer. The person or company employed or appointed as the city engineer or director of public works by the city manager.

City staff. A person currently employed by the City of Lucas.

Comprehensive plan. A plan of the city adopted by the city council, as amended from time to time. The comprehensive plan indicates the general locations recommended for various land uses, transportation routes, streets, parks and other public and private developments and improvements.

Comprehensive zoning ordinance. The city's comprehensive zoning ordinance, as amended.

Design standards. Collectively means the drainage and stormwater pollution prevention design manual, the current North Texas Council of Governments ("NTCOG") paving design standards, and water and wastewater design manual.

Developer. The owner of property or the person authorized by the owner to develop the property.

Development. The subdivision of land and/or the construction or reconstruction of one (1) or more buildings or the structural alteration, relocation or enlargement of any buildings or structures on a tract or tracts of land.

Development review committee (DRC). The DRC is comprised of staff members representing the various departments and divisions involved in the review and approval process (administration, planning, engineering, building inspection, public works, fire, parks and health). DRC is responsible for review of development and building plans, subdivision plats and zoning applications. It offers reports and recommendations to both P&Z and city council pertaining to applications and proposals requiring actions by these bodies. DRC has final approval authority for certain plats such as minor plats in compliance with Texas Local Government Code, section 212.016.

Development services director. The city manager or the person appointed by the city manager as the development services director of the city who oversees the daily operations involving the development of the city.

Commented [JH8]: Added who oversees the daily operations involving the development of the city.

Drainage and stormwater pollution prevention design manual. The city drainage standards adopted by ordinance from time to time as amended.

Easement. One or more of the property rights granted by the owner to and/or for the use by the public, or another person or entity.

Engineer. A person licensed as a professional engineer duly authorized under the provisions of the Texas Engineering Practice Act, as amended, to practice the profession of engineering.

Engineering plans. The drawings and specifications prepared by a registered professional engineer submitted to the city and required for plat approval.

Extraterritorial jurisdiction. The unincorporated area that is contiguous to the corporate boundaries of the city, as determined by Texas Local Government Code, section 42.001 et seq.

Improvement agreement. A contract entered into by the developer and the city by which the developer promises to complete the required public improvements within the subdivision within a specific time period following final plat approval in accordance with this article (i.e., letter of credit, cash bond, facilities agreement).

Lot. An undivided tract or parcel of land under one ownership having frontage on a public street, and either occupied or intended to be occupied by one main building and the required parking, or a group of main buildings, and accessory buildings, which parcel of land is designated as a separate and distinct tract and building site.

May. The word “may” is permissive.

Owner. The person or legal entity that holds fee simple title to the property, and the person or persons that have acquired any interest in the property by contract or purchase or otherwise; or, the owner’s authorized representative.

Paving design standards. The current North Texas Council of Governments (“NTCOG”) design standards.

Plan for development. Any formal plan, such as a plat, replat, any site plan, or concept plan which has been deemed administratively complete and contains all of the items or information required under this code and has affixed thereto a stamp or notation that the development documents are filed.

Planned development. A zoning district which accommodates planned associations of uses developed as integral land use units such as industrial districts, office, commercial or service centers, shopping centers, residential developments of multiple or mixed housing including attached single-family dwellings or an appropriate combination of uses which may be planned, developed or operated as integral land use units either by a single owner or a combination of owners.

Planning and zoning commission, or commission. Appointed by the city council to develop design standards, and make recommendations concerning the platting, zoning, and use of land within the city.

Planning and zoning manager. The development services director or the person appointed by the city manager.

Plat. The graphic representation of a subdivision, resubdivision, combination of lots or tracts, or recombination of lots or tracts. Plat includes a replat, minor plat, and amending plat.

Plat, amending. A plat as described by Texas Local Government Code, section 212.016, as amended.

Plat, final. The final plat of a proposed development submitted for approval by the planning and zoning commission prepared in accordance with the provisions of this article and requested to be filed with the county clerk.

Plat, minor. A plat which contains four (4) or fewer lots fronting on an existing street and not requiring the creation of any new street or extension of municipal facilities as described by Texas Local Government Code, section 212.0065, as amended.

Plat, preliminary. The initial plat or working draft map or plan of a proposed development submitted to the planning and zoning commission and the city council for approval.

Shall. The word “shall” is always mandatory and nondiscretionary.

Stormwater management plan. The master plan for the city for storm drainage facilities adopted and amended by ordinance from time to time.

Street. A public way for vehicular traffic, whether designated as a street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, private place, or however otherwise designated, other than an alley or driveway.

Structure. Anything constructed or erected, the use of which requires location on the ground, or which is attached to something having a location on the ground.

Subdivision. The division of any tract of land situated within the corporate limits, or within the city's extraterritorial jurisdiction, in two or more parts, or the identification of a single tract, for the purpose of laying out any subdivision of any tract of land or any addition to the city, or for laying out suburban lots or building lots, or any lots, streets, alleys, squares, parks or other parts intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks, or other parts for the purpose, whether immediate or future, of creating building sites. A division of a tract includes a division regardless of whether it is made by using metes and bounds description in a deed of conveyance or in a contract for a deed, by using a contract of sale or other executory contract to convey, or by using any other method. Subdivision includes resubdivision, but it does not include the division of land into parts greater than five (5) acres, where each part has access and no public improvement is dedicated.

Surveyor. A registered professional land surveyor, as authorized by state law to practice the profession of surveying as authorized by the Professional Land Surveying Practices Act, as amended.

Temporary improvement. Improvements built and maintained by an owner during construction of the development of the subdivision or addition and prior to the acceptance of the performance bond or improvements required for the short-term use of the property.

Thoroughfare master plan. The thoroughfare plan adopted by ordinance and as amended from time to time.

Vicinity location map. A small vicinity location map which shows sufficient streets, collector and arterial street names, and major features of the surrounding area to locate the area being subdivided.

Wastewater master plan. The master plan for the city for wastewater facilities adopted and amended by ordinance from time to time.

Water and wastewater design manual. The city water and wastewater standards adopted and amended by ordinance from time to time.

Water master plan. The master plan for the city for water facilities adopted and amended by ordinance from time to time.

(Ordinance 2012-05-00715, sec. 1, adopted 5/17/12

Sec. 10.03.006 Appeal to city council

Except as otherwise provided herein, any developer aggrieved by any finding or action of the planning and zoning department or the planning and zoning commission may appeal to the city council within thirty (30) days after the date of such finding or action and not thereafter.

Sec. 10.03.007 Filing fees

(a) Filing fees for plats established by ordinance by the city council from time to time shall be paid by the developer at time of application.

Commented [JH9]: Changed from resolution to ordinance

(b) Plat recordation fees which are charged by the county shall be paid by the developer to the planning and zoning department at the time of application.

Sec. 10.03.008 Waivers

(a) The standards and requirements of this article may be modified by the planning and zoning commission for a subdivision zoned planned development containing several types of land uses which, in the judgment of the planning and zoning commission, provides adequate public spaces and improvements for vehicular circulation, recreation, light, air and service needs of the tract when fully developed and which also provides such covenants or other legal provisions as will assure conformity to and achievement of the plan.

(b) Where existing conditions require a modification of these standards and regulations because of a unique and unusual condition not applicable generally to other property, the planning and zoning commission may, subject to city council approval, grant a waiver to these standards to permit equitable treatment of the land or tract in light of the condition.

(c) In granting waivers and modifications, the planning and zoning commission and city council may require such conditions as will, in their judgment, secure substantially the purposes of these standards and requirements and maintain the spirit and intent of this article.

(d) The grant of a waiver shall not in any manner vary the provisions of the city comprehensive zoning ordinance.

(e) A request for a waiver shall be submitted in writing by the developer at the time the preliminary plat is filed.

(f) A request for a waiver must be approved by the city council at the time of preliminary plat approval.

(Ordinance 2006-07-00567, sec. 1, adopted 7/7/06)

Sec. 10.03.009 Penalty; enforcement

(a) Any person, firm or corporation who shall violate any of the provisions of this article or who shall fail to comply with any provision hereof within the corporate limits of the city shall be guilty

of a misdemeanor and upon conviction shall be subject to a fine as provided in section 1.01.009 of this code, and each day that such violation continues shall constitute a separate offense. (Ordinance 2006-07-00567, sec. 1, adopted 7/7/06; Ordinance adopting Code)

(b) Any person, firm, or corporation who shall violate any of the provisions of this article or who shall fail to comply with any provisions hereof within the corporate boundaries of the city or the extraterritorial jurisdiction of the city shall be subject to any appropriate action or proceeding by the city to enjoin, correct, abate or restrain the violation of this article including the recovery of damages and civil penalties. (Ordinance 2006-07-00567, sec. 1, adopted 7/7/06)

Secs. 10.03.010–10.03.030 Reserved

Division 2. Platting Procedure

Sec. 10.03.031 General

(a) Before any land is platted, the owner shall apply for and secure approval of the proposed subdivision plat in accordance with the following procedures, unless otherwise provided by these regulations. The procedure for approving a plat typically requires two steps: preliminary plat, and final plat. (Ordinance 2010-11-00668, sec. 1, adopted 11/4/10)

(b) Except as otherwise permitted, the approval of the commission and city council of a preliminary plat is required prior to the construction of public improvements on the property. The preliminary plat and the associated engineering plans for the property may be amended during construction, with only major changes requiring reapproval by the planning and zoning commission. Subject to review and approval by city council.

(c) Upon completion of the required public improvements, or the provision of an improvement agreement, the owner may submit a corrected final plat for the subdivision. Lots may be sold and building permits obtained after approval of the final plat by the planning and zoning commission, and filing of the signed plat. Subject to review and approval by city council.

(Ordinance 2006-07-00567, sec. 1, adopted 7/7/06)

Sec. 10.03.032 Submission dates

The planning and zoning manager may establish official submission deadlines for the placement of plats on the agenda of the planning and zoning commission and the city council for consideration. No plat shall be considered by the planning and zoning commission until it has been determined by the planning and zoning department that the submittal is complete and in conformance with this article.

Sec. 10.03.033 Official filing date

For purposes of this article, the date the planning and zoning department has determined that: (1) the submittal is complete and in conformance with this article; (2) all required documents are submitted in a complete format; and (3) all required fees have been paid, shall constitute the official filing date of the plat, from which the statutory period requiring approval or disapproval of the plat shall commence. The planning and zoning commission and city council may not table or postpone the consideration of the approval or disapproval of a plat, but may request the applicant to withdraw. The applicant may withdraw a plat from consideration by submitting a written request, and may resubmit the plat with no additional fees if it is rescheduled within sixty (60) days of the date of withdrawal.

Sec. 10.03.034 General approval criteria

No plat shall be approved unless the following standards have been met:

(1) The plat conforms to applicable zoning, the comprehensive plan, the capital improvements plan of the city, the design standards, the major thoroughfare plan, the master park plan of the city, and other regulations in this article. If a zoning change is contemplated for the property, the zoning change must be completed before the approval of preliminary plat of the property. Any plat reflecting a condition not in accordance with the zoning requirements shall not be approved until any available relief from the board of adjustment has been obtained;

(Ordinance 2010-11-00668, sec. 1, adopted 11/4/10)

(2) Adequate provision has been made for the dedication and installation of public improvements; and

(3) All required fees have been paid.

Sec. 10.03.035 Dedications

The owner of the property to be platted must provide an easement or fee simple dedication of all property needed for the construction of streets, thoroughfares, alleys, sidewalks, storm drainage facilities, floodways, water mains, wastewater mains and other utilities, public parks, and any other property necessary to serve the plat and to implement the requirements of this article. Dedications shown on plats are irrevocable offers to dedicate the property shown. Once the offer to dedicate is made, it may be accepted by an action by the city by acceptance of the improvements in the dedicated areas for the purpose intended, or by actual use by the city. No improvements may be accepted until they are constructed in accordance with this article, and the final plat is filed for recording. No dedication otherwise required by this article may be imposed upon an owner unless the property is being subdivided and the dedication related to the impact of the proposed development is roughly proportional to the needs created by the proposed development, and provides a benefit to the development.

(Ordinance 2006-07-00567, sec. 1, adopted 7/7/06)

Sec. 10.03.036 Reserved

Editor's note–Former section 10.03.036 pertaining to optional land study and deriving from section 6.206 of Ordinance 2006-07-00567 adopted by the city on July 7, 2006 has been deleted by section 1 of Ordinance 2010-11-00668 adopted by the city on November 4, 2010.

Sec. 10.03.037 Procedure for preliminary plat

(a) Prior to the filing of a preliminary plat, the developer shall meet with the city staff. The purpose of the meeting is to familiarize the developer with the city's development regulations and the relationship of the proposed subdivision to the comprehensive plan. At such meeting, the general character of the development, the zoning, utility service, street requirements and other pertinent factors related to the proposed subdivision will be discussed.

(b) Prior to submission of a preliminary plat, the developer shall submit to the city construction and engineering plans for the public infrastructure improvements required for the proposed subdivision unless the approval of an improvement agreement has been requested. If the city does not approve of the use of an improvement agreement, engineering and construction plans for the required public infrastructure must be submitted by the developer and approved by the city engineer prior to approval of the preliminary plat.

(c) After the preapplication conference and completion of engineering and construction plans for all public infrastructure improvements, the developer shall file the required number of copies of the preliminary plat of the proposed subdivision with the development review committee, for submission to the planning and zoning commission, and include the required filing fees and tax certificates showing all taxes have been paid on the property being platted.

(d) The following notice shall be stamped on the face of each preliminary plat: "Preliminary Plat - for inspection purposes only, and in no way official or approved for record purposes."

(e) Preliminary plats shall be distributed by city staff to city departments. The owner shall be responsible for the distribution of copies of the preliminary plats to the agencies listed below. The city staff shall give the owner and such agencies a specific date by which to return written responses. The owner and the agencies listed below shall be provided an opportunity to attend a developer/city staff conference for the purpose of notifying the developer of necessary corrections.

(1) Independent school districts affected by the plat (one copy).

(2) City utility departments (two copies).

(3) Public utility companies and franchise utility companies that serve or will provide service to the proposed subdivision (two copies).

(4) County commissioner and county public works director if the subdivision is outside the city limits (one copy each).

(f) The development review committee shall accumulate the comments of the city departments and agencies, and conduct a developer/city staff conference to report the comments and requested corrections to the developer. The developer shall be allowed to make comment or make required corrections and submit the corrected preliminary plat to the development review committee for submission to the planning and zoning commission. The corrected preliminary plat shall be submitted within thirty (30) days of the date the original preliminary plat was officially filed and prior to the meeting of the planning and zoning commission at which such preliminary plat is scheduled for consideration. Upon timely receipt, the planning and zoning manager shall submit the corrected preliminary plat to the planning and zoning commission.

(g) A written report shall be prepared by city staff and submitted to the planning and zoning commission stating the review comments of the preliminary plat noting any unresolved issues.

(h) Following review of the preliminary plat and other materials submitted in conformity with this article, the planning and zoning commission shall act on a preliminary plat, within thirty (30) days after the date the preliminary plat is officially filed. The planning and zoning commission may either: (i) approve the preliminary plat as presented; (ii) approve the preliminary plat with conditions; or (iii) disapprove the preliminary plat. If disapproved, the planning and zoning commission, upon written request, shall state the reasons for disapproval. A conditional approval shall be considered a disapproval until the conditions have been satisfied.

(i) The actions of the planning and zoning commission shall be noted on two (2) copies of the preliminary plat. One (1) copy shall be returned to the developer and the other retained in the files of the development review committee.

(j) The planning and zoning commission shall, in its action on the preliminary plat, consider the physical arrangement of the subdivision and determine the adequacy of the street and thoroughfare rights-of-way and alignment and the compliance of the streets and thoroughfares with the major thoroughfare plan, the existing street pattern in the area and with any other applicable provisions of the comprehensive zoning ordinance and comprehensive plan. The planning and zoning commission, based on city staff recommendations, shall also ascertain that adequate easements for proposed or future utility service and surface drainage are provided, and that the lot sizes and area comply with the comprehensive zoning ordinance and are adequate to comply with the minimum requirements for the type of sanitary sewage disposal proposed. All on-site sewage disposal systems shall meet the minimum standards required by the city plumbing code and the regulations of the county and of the state commission on environmental quality, or their successors.

(k) After approval of a preliminary plat by the planning and zoning commission, the development review committee shall forward the preliminary plat to the city council for consideration at the next available city council meeting.

(l) The city council shall act on the preliminary plat within thirty (30) days after the date the preliminary plat is approved by the planning and zoning commission or is considered approved by the inaction of the planning and zoning commission. A preliminary plat shall be considered approved by the city council unless it is disapproved within that period.

(m) Approval of a preliminary plat by the planning and zoning commission and/or the city council is not approval of the final plat but is an expression of approval of the layout shown subject to satisfaction of specified conditions. The preliminary plat serves as a guide in the preparation of a final plat.

(n) Expiration of preliminary plat approval. The approval of a preliminary plat expires 5 years after the date of city council approval unless a final plat is submitted and has received approval by the planning and zoning commission for the property within such period, or the period is extended by the planning and zoning commission upon written request of the owner. If the time period is not extended, or a final plat is not submitted and approved by the planning and zoning commission within the sixty-month period, the preliminary plat approval shall be null and void, and the owner shall be required to submit a new plat for the property subject to the then-existing zoning, subdivision and other regulations.

(o) Phased development. The preliminary plat shall indicate any phasing of the proposed development with a heavy dashed line. Each phase shall be numbered sequentially and in the proposed order of development. The proposed utility, street and drainage layout for each phase shall be designed in such a manner that the phases can be developed in numerical sequence. Thereafter, plats of subsequent units of such subdivision shall conform to the approved overall layout and phasing, unless a new preliminary plat is submitted. The planning and zoning commission and city council may impose such conditions upon the filing of the phases as deemed necessary to assure the orderly development of the city. Such conditions may include but are not limited to temporary street and alley extensions, temporary cul-de-sacs, turnarounds, and off-site utility extensions. Failure to indicate phasing of the proposed development in accordance with this section prohibits the approval of a final plat for such subdivision in phases.

(p) Effective period of preliminary plat approved for phased development. If a final plat has not been submitted and approved on at least one phase of the area covered by the preliminary plat 5 years after the date of preliminary plat approval, the preliminary plat shall expire and be declared null and void. If in the event that only a phase of the preliminary plat has been submitted for final plat approval, then the preliminary plat for those areas not final platted within two years of the date of preliminary plat approval shall expire and be declared null and void, unless an extension of time is granted by the planning and zoning commission. Any phase of a preliminary plat not receiving final plat approval within the period of time set forth herein shall expire and be declared null and void, and the owner shall be required to submit a new preliminary plat for approval which shall be subject to the then-existing zoning, subdivision and other regulations, and the payment of any applicable fees.

Sec. 10.03.038 Extension and restatement of expired preliminary plats

(a) Sixty (60) days prior to or following the lapse of approval for a preliminary plat, as provided in these regulations, the owner may request the commission to extend or reinstate the approval.

(b) In determining whether to grant such request, the commission shall take into account the reasons for lapse, the ability of the owner to comply with any conditions attached to the original approval and the extent to which newly adopted zoning and subdivision regulations shall apply to

the preliminary plat. The commission may extend or reinstate the preliminary plat, or deny the request, in which instance the owner must submit a new preliminary plat application for approval.

(c) The commission may extend or reinstate the approval subject to additional conditions based upon newly enacted regulations such as are necessary to issue [insure] compliance with the original conditions of approval. The commission may also specify a shorter time for lapse of the extended or reinstated preliminary plat than is applicable to original preliminary plat approval.

Sec. 10.03.039 Standards for approval of preliminary plats

No preliminary plat shall be approved unless the following standards have been met:

(1) The engineering and construction plans for the required public infrastructure improvements have been submitted and approved by the city engineer, unless the approval of an improvement agreement has been requested and approved;

(2) Provision for installation and dedication of public improvements has been made; and

(3) The preliminary plat conforms to the applicable zoning and all other requirements of this article.

(Ordinance 2006-07-00567, sec. 1, adopted 7/7/06)

(4) (A) A tree survey, which identifies large trees with a DBH ("diameter at breast height" measured at 4.5 feet above grade) of four and one-half inches (4.5") or greater and small trees with a DBH of two inches (2") or greater, shall be submitted prior to submission of the engineering and construction plans. The tree survey shall include the species and caliper at DBH of each tree in a tabular form, with each tree identified by a number corresponding to a numbered tree on the tree survey site plan. The tree survey must denote which trees will be saved and which will be removed. (Ordinance 2006-07-00567, sec. 1, adopted 7/7/06; Ordinance adopting Code)

(B) The tree survey must be reviewed and approved by the planning and zoning commission prior to the preliminary plat being submitted and prior to staff approving the engineering and construction plans. The commission shall act on the tree survey within thirty (30) days after it is officially filed. If the commission does not approve the tree survey, that decision may be appealed to city council for consideration at the next available city council meeting, and the city council shall act on the appealed tree survey within thirty (30) days after the date the tree survey was denied by the commission. Inaction by the city council within this period shall be considered as approval.

(C) The commission, or the council upon appeal, shall approve the tree survey if it finds and determines that the developer has made a good faith effort to save

as many trees, 6" caliper or greater at DBH, as possible, given the subdivision layout, lot size, and topography of the proposed development.

(D) As part of the final plat application, the developer must submit to the planning department a spreadsheet that summarizes, for each lot, the number of trees that were to be saved per tree survey, as well as the number of trees to be saved that were lost during construction. The spreadsheet must denote the caliper inch and species of each tree saved, as well as for the trees to be saved, but lost during development. This will allow staff to verify how many replacement trees are needed for each lot at the building permit stage.

(Ordinance 2006-07-00567, sec. 1, adopted 7/7/06)

(E) Except as provided in section 3.18.005, no person, directly or indirectly, shall cut down, destroy, remove or move, or effectively destroy through damaging any protected tree situated on property regulated by article 3.18 without first obtaining a tree removal permit, unless otherwise specified in article 3.18. (Ordinance adopting Code)

(F) Then, prior to the final inspection in connection with a building permit, any tree(s) shown on the tree survey as being retained on the lot, and which is removed or lost during development of the lot or home, shall be replaced by the developer or builder by planting a tree or trees of equivalent caliper inches. The trees used as replacement trees must each have a caliper of at least one and one-half inches (1-1/2") and be container grown. Trees used as replacement trees must be from the large tree list found on the approved list in section 3.18.019 or approved by the planning and zoning manager. The replacement tree(s) must be planted on the same lot where the tree(s) it is replacing was, provided that the planning and zoning manager may approve placement of the tree(s) on another lot(s) in the subdivision, if he finds it to be in the public interest. (Ordinance 2006-07-00567, sec. 1, adopted 7/7/06; Ordinance adopting Code)

Sec. 10.03.040 Data requirement for preliminary plat

(a) The owner shall submit the required number of copies of the preliminary plat an [and] 8-1/2" x 11" and a 11" x 17" reduction of copies of the preliminary plat, as determined by the development review committee, to allow for the distribution of the proposed preliminary plat for review. Each copy of the preliminary plat shall be folded so that the title block for the subdivision may be read in the lower righthand corner. The preliminary plat shall be drawn to a scale of one inch equals one hundred feet (1" = 100') or larger on 24" x 36" sheet size. In cases of large developments which would exceed the dimensions of the required sheet at the 100-foot scale, preliminary plats may be submitted at a scale of one inch equals two hundred feet (1" = 200') on multiple sheets, properly registered.

(b) The preliminary plat shall contain or be accompanied by the following:

(1) The required number of copies of the preliminary plat and the approved engineering and construction plans for all public infrastructure improvements in accordance with the design standards of the city, to include all streets, water mains and services, sewer system and services, and drainage systems required to develop the proposed subdivision.

(2) The name, address and telephone number of the owner, the surveyor, and engineer responsible for the preparation of the final plat.

(3) The name of the subdivision, vicinity location map showing adjacent subdivisions, street names (which shall conform, whenever possible, to existing street names) and lot and block numbers in accordance with a systematic arrangement.

(4) An accurate boundary survey description of the property, with bearings and distances, referenced to survey lines, existing property descriptions and established subdivisions, and showing the lines of adjacent tracts, the layout, dimensions and names of adjacent streets and alleys and lot lines shown in dashed lines.

(5) Scale, north point, date, lot and block numbers.

(6) The name and location of adjacent subdivisions or unplatted tracts drawn to scale shown in dotted lines and in sufficient detail to accurately show the existing streets, alleys and other features that may influence the layout and development of the proposed subdivision. The abstract name and number and name of the owner of the adjacent unplatted tracts shall be shown.

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(7) Exact location of lots, streets, public highways, alleys, parks and other features, with accurate dimensions in feet and decimal fractions of feet, with the length of radii and of arcs of all curves, internal angles, points of curvatures, length and bearings of the tangents, and with all other surveyor information necessary to reproduce the plat on the ground. Dimensions shall be shown from all angle points. All lots on building sites shall conform to the minimum standards for area, width and depth prescribed by the zoning district or districts in which the subdivision is located, and state the area size of each lot.

(8) Building setback lines and the location of utility easements.

(9) Topographic information showing contour lines with intervals up to one foot (1') indicating the terrain, the drainage pattern of the area, and the drainage basin areas within the proposed subdivision. Topographic information showing contour lines with intervals up to two (2) feet indicating the terrain, the drainage pattern of the area, and the drainage basin areas outside the boundaries of the proposed subdivision.

(10) The layout and dimensions of proposed storm drainage areas, easements and rights-of-way necessary for drainage within and outside the boundaries of the proposed subdivision.

(11) The location and purpose of all proposed parks or other areas offered for dedication to public use.

(12) The location of all existing property lines, buildings, sewer or water mains, storm drainage areas, water and wastewater facilities, fire hydrants, gas mains or other underground structures, easements of record or other existing features.

(13) The location, size and identification of any physical features of the property, including watercourses, ravines, bridges, culverts, existing structures, drainage or other significant topographic features located on the property or within one hundred fifty feet (150') of the proposed subdivision.

(14) Copy of any deed restrictions, restrictive covenants, special use permit or planned development district ordinance regulating the property.

(15) The angle of intersection of the centerlines of all intersecting streets which are intended to be less than ninety degrees (90°).

(16) In accordance with the city floodplain management regulations, of the Code of Ordinances, as amended, the floodplain and floodway lines and base flood elevations as shown on the current effective flood insurance rate maps for the city shall be shown, where applicable. A notation shall be shown on the face of the preliminary plat stating: "Lots or portions of lots within the floodplain or areas of special flood hazard require a development permit prior to issuance of a building permit or commencement of construction including site grading, on all or part of those lots."

(17) For a preliminary plat of land located outside the city limits where sanitary sewer does not exist or where street improvement standards vary from those specified by the city, such differences shall be noted.

(18) A certificate of ownership and dedication of all streets, alleys, easements, parks and other land intended for public use, signed and acknowledged before a notary public by the owner and lienholders of the property, along with complete and accurate metes and bounds description of the land subdivided and the property dedicated to public use.

(19) Receipt showing all taxes on the subject property are paid.

(20) Certification by a surveyor, to the effect that the preliminary plat represents a survey made by the surveyor, and that all the necessary survey monuments are correctly shown thereon.

(21) A preliminary plat provided in multiple sheets shall include a key map showing the entire subdivision at smaller scale with lot and block numbers and street names on one (1) of the sheets or on a separate sheet of the same size.

(22) Copy of any proposed property owner or homeowners' association agreements, covenants and restrictions.

Sec. 10.03.041 Effect of preliminary plat approval

Approval of a preliminary plat by the commission and city council constitutes authorization for the city engineer to release construction plans and to permit the owner to commence construction of the public improvements. Approval of a preliminary plat also authorizes the owner, upon fulfillment of all requirements and conditions of approval, to submit a final plat for approval. Upon release of the construction plans, the city engineer may, upon request of the applicant, issue a certificate indicating the construction plans have been released and construction of the improvement is thereafter authorized. The certificate shall read as follows:

> "The Preliminary Plat for (insert name of the subdivision or addition) as approved by the City Council for the City of Lucas on (insert date of approval) is authorized for use with engineering plans for the construction of public improvements as approved by the City Engineer. A Final Plat shall be approved by the Planning and Zoning Commission upon the completion of all public improvements or the provision of an Improvement Agreement under the terms of the Subdivision and Development Ordinance and submission of a Final Plat in compliance with the Subdivision and Development Ordinance of the City of Lucas."

(Ordinance 2006-07-00567, sec. 1, adopted 7/7/06)

Sec. 10.03.042 Amendments to preliminary plat

Commented [JH11]: Deleted reference to optional land study

(a) At any time following the approval of a preliminary plat, and before the lapse of such approval, the owner may request an amendment. No amendment may be approved pursuant to this section which amends or changes any condition, regulation, or development required by a planned development ordinance or specific use permit which governs the development of such subdivision. The rerouting of streets, addition or deletion of alleys, or addition or deletion of more than ten percent (10%) of the approved number of lots shall be considered a major amendment. The adjustment of street and alley alignments, lengths, and paving details; the addition or deletion of lots within ten percent (10%) of the approved number and the adjustment of lot lines shall be considered minor amendments.

(b) The ~~planning and zoning manager~~Director of D~~d~~evelopment S~~s~~ervices may approve or disapprove a minor amendment. Disapproval may be appealed to the commission. Major amendments may be approved by the commission at a public meeting in accordance with the same requirements for the approval of a preliminary plat.

Commented [JG12]: Do we have a planning and zoning manager?

(Ordinance 2010-11-00668, sec. 1, adopted 11/4/10)

(c) Approval. The commission shall approve, conditionally approve or disapprove any proposed major amendment and may make any modifications in the terms and conditions of preliminary plat approval reasonably related to the proposed amendment.

(d) Retaining previous approval. If the applicant is unwilling to accept the proposed amendment under the terms and conditions required by the commission, the applicant may withdraw the proposed major amendment or appeal the action of the commission to the city council in accordance with section 10.03.006.

Sec. 10.03.043 Procedure for final plat

(a) After approval of the preliminary plat by the planning and zoning commission and the city council and upon completion of the required public improvements or the provision of an improvement agreement as allowed herein, the owner shall submit a final plat for the property for approval.

(b) The final plat shall conform substantially to the approved preliminary plat and, if desired by the developer, may cover only a phase of the approved preliminary plat; provided, however, such phase conforms to all the requirements of this article and the approved preliminary plat indicated the phasing of such development.

(c) The final plat shall be distributed to the city departments and other agencies for review and comment in the same manner as a preliminary plat.

(d) The development review committee shall accumulate the comments of the city departments and agencies and conduct a developer/city staff conference to report the comments and requested corrections to the developer. The developer shall make comment or make the required corrections and submit the corrected final plat to the development review committee for submission to the planning and zoning commission. The corrected final plat shall be submitted within thirty (30) days of the date the original final plat was officially filed and prior to the meeting of the planning and zoning commission at which the original final plat is scheduled for consideration.

(e) The final plat shall be submitted to the planning and zoning commission at the next available meeting with any appropriate comments and recommendations by the development review committee. The planning and zoning commission shall act on the final plat within thirty (30) days after the official filing date. If no action is taken by the planning and zoning commission within such period, the final plat shall be deemed approved. A certificate showing the filing date and failure to take action thereon within the thirty-day period shall, on request, be issued by the planning and zoning commission, which shall be sufficient in lieu of a written endorsement of approval. The planning and zoning commission shall be the final approval authority for final plats. The denial of approval of a final plat shall not be appealable to the city council.

(f) The planning and zoning commission shall consider the final plat, including all proposals by the owner with respect to the dedication of right-of-way for public use, the construction of utilities, streets, drainage and other improvements.

(g) The approval of the final plat by the planning and zoning commission shall authorize the planning and zoning commission chairperson to execute the certificate of approval on the final plat.

(h) The approved final plat shall then be filed of record in the plat records of the county.

(i) The final plat for any subdivision located outside the city limits shall be submitted to the commissioner's court of the county for approval and the execution of any applicable agreements.

(j) After action by the commissioner's court, the final plat shall be returned to the city for filing by the development review committee.

(k) Final plats disapproved by the planning and zoning commission shall be returned to the developer by the development review committee.

(l) In the event a final plat is approved by the planning and zoning commission for a subdivision in phases, the final plat of each phase shall carry the same name throughout the entire subdivision, but bear a distinguishing letter, number or subtitle. Lot and block numbers shall run consecutively throughout the entire subdivision, even though such subdivision may be finally approved in phases.

Sec. 10.03.044 Standards for approval of final plat

No final plat shall be approved unless the following standards have been met:

(1) The final plat substantially conforms to the preliminary plat;

(2) Required public improvements have been constructed and are ready to be accepted, and/or an improvement agreement has been approved by the city for the subsequent completion of the public improvements;

(3) The final plat conforms to the applicable zoning and all other requirements of this article;

(4) Provisions have been made for adequate public facilities under the terms of this article; and

(5) All required fees have been paid.

Sec. 10.03.045 Data requirement for final plat

The owner shall prepare a final plat in accordance with the conditions of approval for the preliminary plat drawn to a scale of one inch equals one hundred feet (1" = 100') on 24" x 36" sheet size. For large developments, the final plat may be submitted on multiple sheets properly registered to match with the surrounding sheets and a small-scale key map showing all sheets of the final plat have been [shall be] provided. The owner shall submit the required number of "copies" of the final plat and 8-1/2" x 11" and an 11" x 17" reduction copies of the final plat as determined by the development review committee with three (3) copies of the approved construction plans for the public infrastructure improvements for the proposed subdivision. Each copy of the final plat shall be folded so that the title block for the subdivision may be read in the lower righthand corner. The final plat shall contain or be accompanied by the following:

(1) Record drawings, construction plans including two sets of Mylar's and a digital copy in DWG or DGN format, and two sets of blackline, where applicable.

(2) All information required for a preliminary plat.

(3) The improvement agreement and security, if required, in a form satisfactory to the city attorney and in an amount established by the city council upon recommendation of the city engineer and shall include a provision that the owner shall comply with all the terms of the final plat approval as determined by the commission.

(4) Formal irrevocable offers of dedication to the public of all streets, alleys, utilities, easements and parks in a form approved by the city attorney.

(5) The following certificates shall be placed on the final plat in a manner that will allow them to be clearly visible on the final plat.

APPROVED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF LUCAS, TEXAS, ON THE _____ DAY OF _____, ___.

ATTEST:

_____

Chairperson, Planning and Zoning Commission

_____

Zoning Secretary

(6) An owner may, at the discretion of the commission, obtain approval of a phase of a subdivision for which a preliminary plat was approved provided such phase meets all the requirements of this article in the same manner as is required for a complete subdivision.

(7) If applicable, copy of agreements, covenants and restrictions establishing and creating the homeowners' association approved by the commission based on recommendation of the city attorney.

~~(8) The Home Owners Association is responsible for maintaining the right of way and all easements up to the edge of pavement. If the Home Owners Association should fail the responsibility for maintaining all easements and the right of way up to the edge of pavement shall fall to the homeowners.~~

(~~8~~9) On Site Sew~~er~~age Facilities note with signature block for Collin County Development Services.

Commented [JH13]: Changed from one set to two sets.

Commented [JH14]: Changed from blue line to blackline

Commented [JG15]: No legal authority to shift the responsibility.

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Sec. 10.03.046 Execution and recordation of final plat

(a) When an improvement agreement and security are required, the city council shall endorse approval on the final plat after the improvement agreement and security have been approved by the city attorney, and all the conditions pertaining to the final plat have been satisfied. A final plat for which an improvement agreement has been approved shall contain the following notation on the final plat:

> "This Subdivision is subject to an Improvement Agreement pursuant to the City of Lucas, Texas Subdivision and Development Ordinance. All or some of the public infrastructure were not constructed and accepted by the City of Lucas, Texas prior to approval of this Final Plat."

(b) When installation of public improvements is required prior to recordation of the final plat, the city council shall endorse approval on the final plat after all conditions of approval have been satisfied and all public improvements are satisfactorily completed. There shall be written evidence that the required public improvements have been installed and have been completed in a manner satisfactory to the city as shown by a certificate signed by the city engineer stating that the necessary dedication of public lands and installation of public improvements and [sic] have been accomplished.

(c) City staff shall be responsible for filing the final plat with the county clerk. Simultaneously with the filing of the final plat, the city staff shall record such other agreements of dedication and legal documents as shall be required to be recorded by the city ~~attorney~~secretary or by the city atto~~u~~rney. The final plat, bearing all required signatures, shall be recorded after final approval and within five working days of its receipt. One (1) copy of the recorded final plat, with street addresses assigned, will be forwarded to the owner by the city staff.

Commented [JH18]: Changed by city secretary or by city attorney.

(d) Approval of a final plat shall certify compliance with the regulations of the city pertaining to the subdivision. An approved and signed final plat may be filed with the county as a record of the subdivision and may be used to reference lots and interests in property thereon defined for the purpose of conveyance and development as allowed by these regulations.

Sec. 10.03.047 Administrative approval of certain amending plats, minor plats and replats

(a) The development review committee is authorized to approve the following:

(1) Amending plats described by section 212.016 Tex. Loc. Gov't Code;

(2) Minor plats involving four or fewer lots fronting an existing street and not requiring the creation of any new street or extension of municipal facilities; and

(3) A replat under section 212.0145 Tex. Loc. Gov't Code that does not require the creation of any new street or the extension of municipal facilities.

(b) The planning and zoning manager may for any reason elect to present an amending plat, minor plat or replat meeting the requirements of (a) above to the planning and zoning commission for approval.

(c) Any amending plat, minor plat or replat meeting the requirements of (a) above which the planning and zoning manager fails or refuses to approve shall be submitted to the planning and zoning commission for approval.

Sec. 10.03.048 Vacating plats, replats and amendment of plats

(a) Vacating plats.

(1) The owners of the tract covered by a plat may vacate the plat at any time before any lot in the plat is sold. The plat is vacated when a signed, acknowledged instrument declaring the plat vacated is approved and recorded in the manner prescribed for the original plat. Subject to review and approval by both the Pplanning and Zzoning Ceommission and the city council.

Commented [JH19]: Added planning commission

(2) If lots have been sold, the plat, or any part of the plat, may be vacated on the application of all the owners of lots in the plat with approval obtained in the manner prescribed for the original plat. Subject to review and approval by city council.

(3) The planning and zoning commission shall disapprove any vacating instrument which abridges or destroys public rights in any of the public uses, improvements, streets or alleys.

(4) Upon approval and recording with the county clerk, the vacated plat has no effect.

(b) Replatting without vacating preceding plat.

(1) A replat of a subdivision or part of a subdivision may be recorded and is controlled over the preceding plat without vacation of that plat if the replat: (i) is signed and acknowledged by only the owners of the property being platted; (ii) does not attempt to amend or remove any covenants or restrictions; and (iii) and is approved, after a public hearing on the matter, by the planning and zoning commission. Subject to review and approval by city council.

(2) An application for a replat shall follow the same procedure required for preliminary and final plats.

(c) Additional requirements for certain replats.

(1) In addition to compliance with section 10.03.048(b), a replat without vacation of the preceding plat must conform to the requirements of this section if:

(A) During the preceding five (5) years, any of the area to be replatted was limited by an interim or permanent zoning classification to residential use for not more than two (2) residential units per lot; or

(B) Any lot in the preceding plat was limited by deed restrictions to residential use for not more than two (2) residential units per lot.

(2) Notice of the public hearing, as required in section 10.03.048(b), shall be given before the fifteenth (15th) day before the date of the public hearing by: (1) publication in the official newspaper; and (2) by written notice, with a copy of Tex. Loc. Gov't Code section 212.015(c) attached, forwarded to the owners of lots that are in the original subdivision and that are within two hundred feet (200') of the lots to be replatted, as indicated on the most recently approved city tax rolls or[, in] the case of a subdivision within the extraterritorial jurisdiction, the most recently approved county tax roll of the property upon which the replat is requested.

(3) If the proposed replat requires a waiver and is protested in accordance with this subsection, the proposed replat must receive, in order to be approved, the affirmative vote of at least three-fourths (3/4) of the members present at the meeting of the planning and zoning commission. For a legal protest, written instruments signed by owners of at least twenty percent (20%) of the area of the lots or land immediately adjoining the area covered by the proposed replat and extending two hundred feet (200') from that area, but within the original subdivision, must be filed with the planning and zoning commission prior to the close of the public hearing.

(4) In computing the percentage of land area under subsection (3), the area of streets and alleys shall be included.

(5) Compliance with subsections (3) and (4) is not required for approval of a replat of part of a preceding plat if the area to be replatted was designated or reserved for other than single or duplex family residential use by notation on the last legally recorded plat or in the legally recorded restrictions applicable to the plat.

(d) Plat amendments and corrections.

(1) The planning and zoning commission may approve an amending plat, which may be recorded and is controlled over the preceding plat without vacation of that plat, if the amending plat is signed by all the owners and is solely for one or more of the following purposes:

Commented [JG20]: Pursuant to Section 212.016; staff can approve amending plats. They do not have to go before P&Z and council.

(A) To correct an error in a course or distance shown on the preceding plat;

(B) To add a course or distance that was omitted on the preceding plat;

(C) To correct any error in the real property description shown on the preceding plat;

(D) To indicate monuments set forth after death, disability, or retirement from practice of the engineer or surveyor responsible for setting monuments;

(E) To show the location or character of monument that has been changed in location or character or that is shown incorrectly as to location or character on the preceding plat;

(F) To correct any other type of scrivener or clerical error or omission previously approved by [sic] including lot numbers, acreage, street names, and identification of adjacent recorded plats;

(G) To correct an error in courses and distances of lot lines between two (2) adjacent lots if: (1) both lot owners join in the application for amending the plat; (2) neither lot is abolished; (3) the amendment does not attempt to remove recorded covenants or restrictions; and (4) the amendment does not have a material adverse effect on the property rights of the other owners in the plat;

(H) To relocate a lot line to eliminate an inadvertent encroachment of a building or other improvement on a lot line or easement;

(I) To relocate one or more lot lines between one or more adjacent lots if: the owner(s) of all such lots join in the application for amending the plat; the amendment does not attempt to remove recorded covenants or restrictions and does not increase the number of lots;

(J) To make necessary changes to the preceding plat to create six (6) or fewer lots in the subdivision or part of the subdivision if: (1) the changes do not affect applicable zoning and other regulations of the city; (2) the changes do not attempt to amend or remove any covenants or restrictions; (3) the area covered by the changes is located in an area that the planning and zoning commission has approved, after a public hearing, as a residential improvement area; and

(K) To replat one or more lots fronting on an existing street if:

(i) The owners of all those lots join in the application for amending the plat;

(ii) The amendment does not attempt to remove recorded covenants or restrictions;

(iii) The amendment does not increase the number of lots; and

(iv) The amendment does not create or require the creation of a new street or make necessary the extension of municipal facilities.

(2) Notice and a hearing and the approval of other lot owners are not required for the approval and issuance of an amending plat.

(3) Subject to review and approval by city council.

~~Joe H. Have you considered adding the following language:~~

The Director of Development Services is authorized to approve the following:

(1) Amending plats described by Section 212.016 Tex. Loc. Gov't Code;

(2) Minor plats involving four or fewer lots fronting an existing street and not requiring the creation of any new street or extension of municipal facilities; and

(3) A replat under Section 212.0145 Tex. Loc. Gov't Code that does not require the creation of any new street or the extension of municipal facilities.

(b) The Director of Development Services may for any reason elect to present an amending plat, minor plat or replat meeting the requirements of (1) above to the planning and zoning commission for approval.

(c) Any amending plat, minor plat or replat meeting the requirements of (1) above which the planning and zoning manager fails or refuses to approve shall be submitted to the planning and zoning commission for approval.

Sec. 10.03.049 Expiration of final plat approval

(a) If public improvements for a subdivision have not been constructed and accepted by the city and the corresponding final plat for said subdivision has not [been] filed in the county plat records within two (2) years after the date of final plat approval by the planning and zoning commission, said final plat shall be null and void and shall conclusively be deemed to be withdrawn without further action by the city. This provision shall not apply to final plats approved by the city prior to the effective date of this section [ordinance adopted July 7, 2006].

(b) Final plats approved prior to the effective date of this section [ordinance adopted July 7, 2006] shall become null and void and shall be conclusively deemed to be withdrawn without further action by the city in 5 years if the public improvements for the subdivision have not been

Commented [JG21]: See comment above.

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Commented [JH22]: New section recommended by Joe G

Commented [JG23]: Reinserted the final flat expiration language. You need to have the ability to act of dormant projects.

Commented [JH24]: Must stay per Joe G

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constructed and accepted by the city and the corresponding final plat for said subdivision filed in the county plat records.

(c) An approved, unexpired final plat may be extended by the planning and zoning commission upon written request, once for a period not to exceed twelve (12) months provided:

(1) Good cause is shown by the developer; and

(2) There has been no significant change in development conditions affecting the subdivision; and

(3) The final plat continues to comply with all applicable regulations, standards and this article.

Sec. 10.03.050 Nonresidential property

A nonresidential subdivision shall be processed for approval in the same manner as a residential subdivision, except that no individual lots need be drawn on such plat. Only streets, blocks, drainage easements and minimum building lines need be shown.

Secs. 10.03.051–10.03.080 Reserved

Division 3. Completion and Maintenance of Public Improvements

Sec. 10.03.081 Construction plan procedure

(a) General application requirement. Construction plans shall be prepared by or under the supervision of a professional engineer or architect registered in the state as required by state law governing such professions. Plans submitted for review by the city shall be dated and bear the responsible engineer's or architect's name, serial number and the designation of "engineer," "professional engineer" or "P.E." or "architect" and an appropriate stamp or statement near the engineer's or architect's identification, stating that the documents are for preliminary review and are not intended for construction. Final plans acceptable to the city shall bear the seal and signature of the engineer or architect and the date signed on all sheets of the plans. Public works construction in streets, alleys or easements which will be maintained by the city shall be designed by a professional engineer registered in the state.

(b) Construction plan review procedure. Copies of the construction plans, and the required number of copies of the preliminary plat, shall be submitted to the city engineer for final approval. The plans shall contain all necessary information for construction of the project, including screening walls and other special features. All materials specified shall conform to the standard specifications and standard details of the city. Each sheet of the plans shall contain a title block

including space for the notation of revisions. This space is to be completed with each revision to the plan sheet and shall clearly note the nature of the revision and the date the revision was made. The city engineer will release the plans for construction, after approval of the preliminary plat by the commission subject to review and approval by city council and payment of all inspection fees. Upon such release, each contractor shall maintain one set of plans, stamped with city release, at the project site at all times during construction.

(c) Failure to commence construction. If commencement of construction has not occurred within one (1) year after approval of the plans, resubmittal of plans may be required by the city engineer for meeting current standards and engineering requirements. For purposes of this section "commencement of construction" shall mean (i) issuance of construction permit(s); and (ii) grading of the land.

Sec. 10.03.082 Improvement agreements

(a) Completion of improvements. Except as provided below, before the final plat is approved by the commission or planning and zoning manager, all applicants shall be required to complete, in accordance with the city's direction and to the satisfaction of the city engineer, all street, sanitary, and other public improvements, including lot improvements on the individual residential lots of the subdivision as required in these regulations and specified in the final plat, and to dedicate those public improvements to the city. As used in this section, "lot improvements" refers to grading and installation of improvements required for proper drainage and prevention of soil erosion.

(b) Improvement agreement.

(1) Agreement. The city council, considering the recommendation of the commission, may waive the requirement that the applicant complete and dedicate all public improvements prior to approval of the final plat, and may permit the owner to enter into an improvement agreement by which the owner covenants to complete all required public improvements no later than two (2) years following the date on which the final plat is signed. The city council may also require the owner to complete and dedicate some required public improvements prior to approval of the final plat and to enter into an improvement agreement for completion of the remainder of the required improvements during such two-year period. The improvement agreement shall contain such other terms and conditions as are agreed to by the owner and the city.

(2) Improvement agreement required for oversize reimbursement. The city shall require an improvement agreement pertaining to any public improvement for which the developer shall request reimbursement from the city for oversize costs.

(3) Security. The improvement agreement shall require the owner to provide sufficient security, covering the completion of the public improvements. The security shall be in the form of cash escrow or, where authorized by the city, a letter of credit, or other security acceptable to the city attorney. Security shall be in an amount equal to one hundred percent (100%) of the city's estimated cost of completion of the required public improvements and lot improvements. In addition to all other security,

for completion of those public improvements where the city participates in the cost, the owner shall provide a performance bond from the contractor, with the city as a co-obligee. The issuer of any surety bond and letter of credit shall be subject to the approval of the city attorney.

(4) Letter of credit. If the city council authorizes the owner to post a letter of credit as security for its promises contained in the improvement agreement, the letter of credit shall:

(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 to the city's right to draw funds under the letter of credit.

(5) Letter of credit reductions. As portions of the public improvements are completed, the developer may make application to the city engineer to reduce the amount of the original letter of credit.

(A) The city engineer, if satisfied that such portion of the improvements has been completed in accordance with city standards, may cause the amount of the letter of credit to be reduced by such amount deemed appropriate, so that the remaining amount of the letter of credit adequately insures the completion of the remaining public improvements.

(B) Upon the dedication of and acceptance by the city of all required public improvements, the city shall authorize a reduction in the security to 10% of the original amount of the security if the owner is not in breach of the improvement agreement. The remaining security shall be security for the owner's covenant to maintain the required public improvements and the warrant that the improvements are free from defect for two (2) years thereafter.

(c) Temporary improvements. The owner shall build and pay for all costs of temporary improvements required by the commission and shall maintain those temporary improvements for the period specified by the commission. Prior to construction of any temporary improvement, the owner shall file with the city a separate improvement agreement and escrow, or where authorized, a letter of credit, in an appropriate amount for such temporary improvements, which improvement agreement and escrow or letter of credit shall ensure that the temporary improvements will be properly constructed, maintained, and removed.

(d) Units of government. Governmental units may file, in lieu of the contract and security, a certified resolution or ordinance agreeing to comply with the provisions of this section.

(e) Failure to complete improvements. For plats for which no improvement agreement has been executed and no security has been posted, if the public improvements are not completed within the period specified by the city, the preliminary plat approval shall be deemed to have expired. In those cases where an improvement agreement has been executed and security has been posted and required public improvements have not been installed within the terms of the agreement, the city may:

(1) Declare the agreement to be in default and require that all the public improvements be installed regardless of the extent of completion of the development at the time the improvement agreement is declared to be in default;

(2) Suspend final plat approval until the public improvements are completed and record a document to that effect for the purpose of public notice;

(3) Obtain funds under the security and complete or cause the public improvements to be completed;

(4) Assign its right to receive funds under the security to any third party, including a subsequent owner of the subdivision for which public improvements were not constructed, in whole or in part, in exchange for that subsequent owner's promise to complete the public improvements in the subdivision; and

(5) Exercise any other rights available under the law.

(f) Acceptance of dedication offers. Acceptance of formal offers of dedication of streets, public areas, easements, and parks shall be by authorization of the city engineer. The approval by the commission of a plat, whether preliminary or final, shall not in [and] of itself be deemed to constitute or imply the acceptance by the city of any street, easement, or park shown on plat. The commission may require the plat to be endorsed with appropriate notes to this effect.

(g) Maintenance of public improvements. The owner shall maintain all required public improvements for a period of two (2) years following the acceptance by the city and shall provide a warranty that all public improvements shall be free from defect for a period of two (2) years following such acceptance by the city.

Sec. 10.03.083 Construction procedures

(a) Permit required. A permit is required from the city prior to commencement of any subdivision development work in the city which affects erosion control, vegetation or tree removal, or a floodplain.

(b) Preconstruction conference. The city engineer may require that all contractors participating in the construction meet for a preconstruction conference to discuss the project prior to release of a permit.

(c) Conditions prior to authorization. Prior to authorizing release of a construction permit, the city engineer shall be satisfied that the following conditions have been met:

(1) The preliminary plat shall be approved by the commission subject to the review and approval by council.

(2) All required contract documents shall be completed and filed with the city engineer.

(3) All necessary off-site easements or dedications required for city infrastructure and not shown on the final plat must be conveyed solely to the city, with proper signatures affixed. The original of the documents shall be returned to the engineering department prior to approval and release of the engineering plans and issuance of a permit.

(4) All contractors participating in the construction shall be provided, at the developer's cost, with a set of approved plans bearing the stamp of release of the engineering department. One set of these plans shall remain on the job site at all times.

(5) A complete list of the contractors, their representatives on the site, and telephone numbers where a responsible party may be reached at all times must be submitted to the city engineer at least twenty-four (24) hours prior to the preconstruction meeting which is optional.

(6) All applicable fees must be paid to the city.

(7) Subject to the approval by city council.

Sec. 10.03.084 Inspection of public improvements

(a) General procedure. Construction inspection shall be supervised by the city engineer. Construction shall be in accordance with the approved plans and the design standards. Any change in design required during construction should be made by the engineer whose seal and signature are shown on the plans. Another engineer may make revisions to the original engineering plans if so authorized by the owner of the plans and the engineer who sealed the original plans if those revisions are noted on the plans or documents. All revisions shall be approved by the city engineer. If the city engineer's inspection finds that any of the required public improvements have not been constructed in accordance with the city's construction standards and specifications, the owner shall be responsible for completing and/or correcting the public improvements.

(b) Certificate of satisfactory completion. The city will not accept dedication of required public improvements until the applicant's engineer or surveyor has certified to the city engineer, through submission of record drawings, indicating location, dimensions, materials, and other information required by the commission or city engineer, that all required public improvements have been completed. The record drawings shall also include a complete set of drawings of the paving, drainage, water, sanitary sewer, or other public improvements, showing that the layout of the line

and grade of all public improvements is in accordance with construction plans for the plat, and all changes made in the plans during construction and containing on each sheet a record drawing stamp bearing the signature of the engineer and the date. The engineer or surveyor shall also furnish a copy of the final plat and engineering plans, if prepared on a computer assisted design drawings (CADD) system, in such a format that is compatible with the city's CADD system. The developer shall provide a maintenance bond executed by a corporate surety duly authorized to do business in the state, payable to the city and approved by the city as to form, to guarantee the maintenance of the construction for a period of two (2) years after its completion and acceptance by the city. In lieu of a maintenance bond the developer may submit either an irrevocable letter of credit payable to the city and approved by the city as to form, or a cash bond payable to the city and approved as to form. The amount of the maintenance bond, letter of credit or cash bond shall be at least ten percent (10%) of the full cost of the infrastructure in the subdivision, as determined by the estimate of construction costs. When such requirements have been met the city engineer shall thereafter accept the public improvements.

(c) Acceptance of the development shall mean that the developer has transferred all rights to all the public improvements to the city for use and maintenance.

(d) Upon acceptance of the required public improvements, the city engineer shall submit a certificate to the developer stating that all required public improvements have been satisfactorily completed.

Sec. 10.03.085 Deferral of required improvements

(a) The commission, subject to the review and approval of city council, may, upon petition of the owner, defer at the time of final approval, subject to appropriate conditions, the provision of any or all public improvements [that] are not required in the interests of the public health, safety and general welfare.

(b) Whenever a petition to defer the construction of any public improvement required under these regulations is granted by the commission, the owner shall deposit in escrow the developer's share of the costs of the future public improvements with the city prior to approval of the final plat, or the owner may execute a separate improvement agreement secured by a cash escrow or, where authorized, a letter of credit guaranteeing completion of the deferred public improvements upon demand of the city.

Sec. 10.03.086 Issuance of building permits and certificates of occupancy

(a) No building permit shall be issued for a lot or building site unless the lot or site has been officially recorded by a final plat approved by the city, and all public improvements as required for final plat approval have been completed, except as permitted below.

> (1) Building permits may be issued for nonresidential developments provided that a preliminary plat is approved by the city and civil construction plans have been released by the city engineer. Building construction will not be allowed to surpass the construction of fire protection improvements.

(2) The city engineer may authorize residential building permits for a portion of a subdivision, provided that a preliminary plat has been approved and all public improvements have been completed for that portion of the development, including but not limited to those required for fire and emergency protection. Notwithstanding, no lot may be sold or title conveyed until a final plat approved by the city has been recorded.

(b) No certificate of occupancy shall be issued for a building or the use of property unless all subdivision improvements have been completed and a final plat approved by the city has been recorded. Notwithstanding the above, the city building official may authorize the occupancy of a structure provided that an agreement providing cash escrow, a letter of credit, or other sufficient surety is approved by the city for the completion of all remaining public improvements.

Sec. 10.03.087 Utility connections

Utility connections for individual lots are not authorized until a final plat has been approved in accordance with this article.

Sec. 10.03.088 Withholding improvements

The city shall withhold all city improvements of whatsoever nature, including the furnishing of water facilities and service, from any subdivision which has not been constructed and approved in accordance with this article.

Secs. 10.03.089–10.03.120 Reserved

Division 4. Standards and Requirements

Sec. 10.03.121 Lots and blocks

(a) All lots of a plat shall front on a dedicated public street, or an approved private street.

(b) Lot dimensions shall comply with the standards required by the comprehensive zoning ordinance.

(c) The area of the lots shall be computed by taking the total area measured on a horizontal plane, included within the lot lines.

(d) All side lines of lots shall be at right angles to straight street lines or radial to curved street lines, unless a waiver from this rule would, in the opinion of the planning and zoning commission, subject to review and approval by council, produce a better lot plan and better utilize the proposed development.

(e) Block lengths between intersecting cross streets shall be no more than one thousand six hundred feet (1,600') and no less than two hundred fifty feet (250').

Sec. 10.03.122 Park sites

(a) Whenever a final plat is submitted to the city or is required to be approved by the city for development of a residential area consisting of ten (10) or more single-family residences in accordance with the ordinances of the city, such plat shall contain a clear fee simple dedication of an area of land to the city for park purposes, which area shall equal one acre for each 30 proposed dwelling units. No plat showing a dedication of less than one (1) acre shall be approved, except as hereinafter provided.

(b) The city council declares that development of an area smaller than one acre for public park purposes is impractical. Therefore, if a proposed subdivision consists of fewer than 35 units, the developer shall be required to pay a sum of money in lieu of a dedication of landing [land in] the amount provided in this subsection. In lieu of dedication, the developer may make payment at a per-acre price set from time to time by resolution of the city council, sufficient to acquire land and provide for adjacent streets and utilities for a neighborhood park to serve the park zone in which such development is located. The zones are hereby illustrated in exhibit A. Unless changed hereafter by the city council, such per-acre price shall be computed on the basis of fewer than 35 lots and basis of $1,000.00 per dwelling unit/lot. Such funds may be used for acquisition, improvement, or maintenance of a park within a same zone as a development. The city council may establish a special fund for the deposit of all sums paid in lieu of any land dedication. These sums must be expended within two (2) years of the completion of the subdivision for the acquisition, development, or maintenance of a neighborhood park. If the funds are not expended, the funds shall be refunded to the property owners in the subdivision on a pro-rata basis. For proposed subdivisions of 35 or greater family dwellings, the developer may elect to pay cash, subject to city council approval, in lieu of any land dedication requirement.

Editor's note–Exhibit A, referred to in the above section, is not printed herein but is on file in the city secretary's office.

Sec. 10.03.123 Streets and drainage

(a) Streets.

(1) All street widths in subdivisions shall conform to the ~~major~~ master thoroughfare plan and shall be as follows:

Street or Thoroughfare Type	ROW Width	Pavement Width*
Arterial (type A)	120 ft.	39 ft. (each direction)
Major collector (type B)	90 ft.	64 ft.
Collector (type C)	60 ft.	34 ft.
Residential (type D)	50 ft.	24 ft.

*Pavement widths are measured from edge of pavement.

Commented [JG25]: This language is a state law requirement.

Commented [JH26]: Delete within a same zone as a development.

Commented [JH27]: Add type A, B, C, D, to match master plan.

(2) All necessary street rights-of-way shall be dedicated as part of the platting process and shall be dedicated to the city without cost.

(3) Existing streets shall be continued with the same or greater right-of-way and pavement widths as the existing streets being connected where practical, as determined by the planning and zoning commission. Street names shall also be continued for extended streets.

(Ordinance 2006-07-00567, sec. 1, adopted 7/7/06)

(4) Dead-end streets may be platted where the land adjoining the proposed plat has not been developed and the opportunity exists for future extension of the proposed street and shall not exceed one hundred fifty feet (150'). In the event that such proposed street exceeds one hundred fifty feet (150') in length or one lot width, from the nearest street intersection, the street will be provided with an approved cul-de-sac, turnaround either permanent or temporary (defined as permanent quality and made of asphalt), having a minimum right-of-way radius of sixty feet (60'). (Ordinance 2006-07-00567, sec. 1, adopted 7/7/06; Ordinance adopting Code)

(5) Where streets within the proposed subdivision are dictated by lot design to be cul-de-sacs, such cul-de-sac streets shall be provided with a permanent cul-de-sac having a minimum right-of-way radius of sixty feet (60') and shall not exceed six hundred feet (600') in length except in circumstances dictated by topography and existing development. Future streets that may offer a second point of access shall not be considered when measuring the length of cul-de-sac until the street is actually constructed. In situations where cul-de-sacs exceed the prescribed length by more than five percent (5%), a combination of the following based on the number of lots and dwelling units will be considered as a mitigating measure:

(A) A secondary emergency entrance/exit;

(B) Widening of the street and enlarging the cul-de-sac turnaround;

(C) Addition of fire hydrants; and

(D) Looped water system.

(6) A secondary point of access, meeting the fire code, will be required for any subdivision, or any part of a subdivision, to prevent more than 10 lots from having only one point of access or emergency access. The secondary point of access shall not be routed through existing subdivisions.

(7) Roadways shall be designed with regard for all topographical features lending themselves to treatment and layout of utilities.

(8) In platting the subdivision, the developer shall dedicate all the necessary right-of-way for the existing and proposed streets as shown on the proposed plat in accordance with the major thoroughfare plan or other plans approved by the city, at no cost to the city.

(9) All streets shall be constructed in the dedicated right-of-way as required by the major thoroughfare plan. If a street as shown on the major thoroughfare plan is located in the interior of the subdivision, the developer shall construct the entire width of the roadway. Streets which dead-end at utility rights-of-way, intended for future extension across these rights-of-way, shall be constructed to the center of the right-of-way as required by the major thoroughfare plan for half the distance across the rights-of-way. Where streets are dedicated adjacent to undeveloped land and the property line is normally the centerline of the street, the developer shall dedicate the necessary right-of-way.

(10) All new streets and median openings and left-turn lanes, constructed in existing streets to serve dedicated streets in a development, or to serve private drives, shall be paved to city standards, inspected by city inspectors and paid for by the developers.

(11) Acceleration and deceleration lanes shall be constructed to the same standards as the adjoining streets, and cost of construction shall be the developer's responsibility.

(12) All handicap ramps shall be constructed by the developer in accordance with the paving design manual prior to acceptance of the subdivision.

(13) At a signalized intersection in which one public street terminates at the intersection of a connecting cross street, a private driveway shall not be placed on the cross street so as to be in alignment with the terminating street. However, an exception to this requirement may be considered when it is demonstrated that the location of the proposed drive, at the intersection, is the only acceptable access point due to spacing requirements and other design standards.

(14) A public cross-access easement shall be required between adjacent lots fronting on an arterial street in order to minimize the number of access points and facilitate access between and across individual lots and [at] any other location where existing lot widths are not sufficient to allow individual driveways per the city's driveway criteria. The location shall be approved by the city. Minimum easement width shall be twenty-four (24) feet and the length shall be the full width of the lot fronting the roadway. This standard is required and must be shown on all optional studies, preliminary plats and final plats.

(15) Subdivision streets shall be tied to an existing paved public street by pavement built to city standards.

(16) Residential lots shall not face arterial streets or thoroughfares and driveways shall not be permitted on arterial streets.

(b) Private drives.

(1) Private drives serving less than 4 houses shall have a minimum right-of-way width of fifty feet (50') and shall have a minimum pavement width of twenty-four feet (24') constructed in accordance with the paving design manual.

(c) Sidewalks.

(1) Concrete sidewalks are required for all streets in residential R1 and any commercial or retail zoning, unless waived by the city council at time of preliminary plat approval.

Commented [JH28]: Removed parenthesis from residential to zoning

(2) Sidewalks located on residential streets shall be five feet (5') in width, located within the street right-of-way and constructed in accordance with the paving design manual.

(3) Sidewalks located adjacent to commercial property and all designated arterial or collector streets, as shown in the major thoroughfare plan, shall be eight feet (8') in width within the street right-of-way and constructed in accordance with the paving design manual.

(4) Sidewalks adjacent to arterial or collector streets shall be constructed at the time the street is constructed. All other sidewalks shall be constructed at the time the residence or development is permitted.

(d) Street name signs.

(1) Street name signs and markers and traffic-control signs, in accordance with the Manual for Uniform Traffic-Control Devices, and the standards adopted by the city, shall be required at each intersection.

(2) The cost of the street name signs, poles and installation shall be paid by the developer prior to acceptance of the subdivision. The city shall install the signs upon receipt of payment.

(e) Storm sewers–Residential developments.

(1) An adequate storm sewer system consisting of inlets, pipes, and/or excavated channels or natural creeks and other drainage structures shall be constructed with [within] the subdivision. The developer shall bear the cost of all channel excavation, inlets, laterals, headwalls, manholes, junction structures, and all other items required to complete the system.

(2) The developer shall be responsible for all the costs of storm drainage systems where a pipe of seventy-two inches (72") in diameter, or less, is installed.

(3) In cases where the storm drain is larger than seventy-two inches (72"), twenty-five percent (25%) of the cost of providing the additional pipe larger than seventy-two inches (72") may be borne by the city and reimbursed to the developer, if a part of the capital improvement plan for the city and if funds become available. In such event, the developer shall be responsible for the remaining seventy-five percent (75%) and the cost of constructing the seventy-two-inch diameter pipe.

(4) In general, underground drainage shall be constructed in streets, alleys and drainage easements. As an alternate, and upon approval by the city engineer, the developer may construct, excavate, or reconstruct, at the developer's expense, an open channel. The proposed channel shall be constructed in accordance with the drainage and stormwater pollution prevention design manual.

(5) All channels shall be provided with dedicated drainage easements covering the floodway areas as defined by the drainage and stormwater pollution prevention design manual. All lots platted adjacent to the channel shall include the required drainage easement. Where possible, the property line division between lots shall be the center of the constructed channel.

(6) If a developer chooses to construct an open channel or maintain a channel in its existing condition, the following conditions shall be met:

(A) Creeks or excavated channels with side slopes of 4:1, or less, shall be maintained by the adjacent owner(s); and

(B) Creeks or channels with greater slopes shall be maintained by the adjacent owners through an organized entity, owner association, public improvement district, condominium agreement, or other means. The city shall, through written agreement with the operating entity, have access for emergency purposes.

(7) In street crossings over drainage systems with a cross-section exceeding the dimension of an opening larger than that of a two (2) seventy-two-inch culvert pipe culvert, the city may participate in such crossings in an amount not to exceed twenty-five percent (25%) of the construction costs if a part of the capital improvement plan and if funds become available.

(f) Storm sewers–Nonresidential developments.

(1) An adequate storm drainage system consisting of inlets, pipes, underground structures, and/or channels or creeks shall be constructed by the developer in accordance with the drainage and stormwater pollution prevention design manual.

(2) The developer shall pay the total cost of all underground systems which are constructed where a double seventy-two-inch diameter or smaller pipe will carry the runoff. The city may participate to the extent of ten percent (10%) of the difference between two seventy-two-inch pipes and any larger diameter pipes, and reimburse the

developer for such costs if a part of the capital improvement plan and if funds become available.

(3) In general, underground drainage shall be constructed in rights-of-way. As an alternate, if approved by the city engineer, the developer may construct, excavate, or reconstruct, at the developer's expense, an open channel in accordance with the drainage and stormwater pollution prevention design manual.

(4) In street crossings over drainage systems with a cross-section exceeding the dimension of an opening larger than that of a two (2) seventy-two-inch culvert pipe culvert, the city may participate in such crossings in an amount not to exceed twenty-five percent (25%) of the construction costs if a part of the capital improvement plan and if funds become available.

(g) Lakes, detention ponds, and retention ponds may be constructed in all areas to be maintained by the owner, subject to approval by the city engineer. Dedication of an easement to the city is required to provide access for emergency purposes.

(h) Other innovative drainage concepts will be considered, subject to review and approval by the city engineer and city council.

(i) Street lighting shall be provided at street intersections within new subdivisions and at streets connecting to new subdivisions and shall conform to the latest edition of the Illuminating Engineering Society Handbook and the city's lighting ordinances. The use of sodium vapor lights for street and parking lot illumination shall not be allowed in the city. Cost of installation of street lighting shall be borne by the subdivider. Cost of ongoing service and utilities shall be borne by the subdivider and included in a maintenance agreement as part of the homeowners' association documents.

(j) The city engineer may based on field conditions ~~may~~ modify the requirements of this section.

Commented [JH29]: New section

Sec. 10.03.124 Water and utility extensions

(a) Water and utility, general provisions.

(1) All utilities shall be required to extend across the full width of the last lot platted on each street proposed within the subdivision, in such an alignment that it can be extended to the next property in accordance with the master water and sewer plans for the city. Properties already served by water and sewer shall not be required to install additional facilities unless the current lines are not of adequate capacity to serve the proposed development, in which case the developer shall be required to install adequate facilities.

(2) Every lot of the plat shall have direct access to the water. Utility service shall be from a water main located in an abutting right-of-way or through easements from the lot to a water main.

(b) Water.

(1) No water main shall be extended unless the diameter of any such extended main is a minimum of eight inches (8") in diameter. Larger mains may be required per the water master plan.

(2) The water system shall be looped. Dead-end mains, if permitted, shall not exceed six hundred feet (600'). Single feeds may be permitted with the approval of the city engineer. Single feeds shall provide for looping in the future.

(3) The spacing and location of all fire hydrants shall comply with the provisions of the fire code and the water and wastewater design manual adopted by the city.

(4) The developer will bear the total cost of on-site mains, with sizes to be determined by the city, except that the city may pay for the increment of cost of water and sewer mains over twelve inches (12") in diameter provided that such mains are required as a part of the water master plan, and if a part of the capital improvement plan for the city, and if funds become available. The increment of the cost borne by the city shall be determined on the basis of percentage difference between the twelve-inch water or sewer mains and the larger size required.

(c) Wastewater. In locations where wastewater service is not available, as determined by the city engineer, an individual sewage disposal system of a type approved by the building official may be installed, in conformance with the plumbing code adopted by the city, as applicable, and the requirements of the county and the state commission on environmental quality.

Sec. 10.03.125 Provision of amenities

(a) When amenities are proposed as a part of a subdivision and are owned and maintained by owners in common or through an association of owners, or where the amenities are to be dedicated to the city and are to be maintained publicly or privately through agreement with the city, the city may require the following:

(1) Plans and illustration of the proposed amenities;

(2) Cost estimates of construction, maintenance and operating expenses;

(3) Association documents, deed restrictions, contracts and agreements pertaining to the amenities; and

(4) Provision of surety as required for maintenance and other expenses related to the amenities.

(b) The design of amenities shall conform to the city's guidelines for residential amenities as adopted by the city council.

(c) All amenities to be placed on land dedicated to the city, or involving the potential use of public funds for maintenance and/or operation, shall require city council approval prior to approval of the preliminary plat. The city council may deny any such amenities at its sole discretion.

(d) All such amenities must be completed and in place prior to acceptance of the public improvements and prior to final release of certificate of occupancy and occupying of residential structures.

(e) Any subdivision creating an area or amenity to be owned in common by the owners of lots within the subdivision shall require the establishment of a mandatory owners' and/or homeowners' association prior to the approval of the final plat.

Sec. 10.03.126 Mandatory homeowners' association

(a) Applicability. When a subdivision contains streets, sewers, sewage treatment facilities, water supply systems, drainage systems or structures, parks, landscaping systems or features, irrigation systems, screening walls, living screens, buffering systems, subdivision entryway features (including monuments or other signage), or other physical facilities or grounds held in common that are not to be maintained by the city, the city may require the establishment and creation of a mandatory homeowners' association to assume and be responsible for the continuous and perpetual operation, maintenance and supervision of such facilities or grounds.

(b) Responsibilities. Such mandatory homeowners' associations shall be responsible for the continuous and perpetual operation, maintenance and/or supervision of landscape systems, features or elements located in parkways, lighting, [and] common areas between screening walls or living screens and adjacent curbs or street pavement edges, adjacent to drainageways or drainage structures, or at subdivision entryways. Subdivision entryway treatments or features shall not be allowed unless a mandatory homeowners' association as required herein is established and created. The city shall be responsible for the repair of landscape systems, features or elements damaged by city-initiated utility work in dedicated easements. Other damage occurring during utility repairs will be the responsibility of the appropriate utility company.

(c) Purpose. A homeowners' association shall be established and created to assume and be responsible for the continuous and perpetual operation, maintenance and supervision of landscape systems, features or elements located in parkways, common areas between screening walls or living screens and adjacent curbs or street pavement edges, adjacent to drainageways or drainage structures or at subdivision entryways, open space common areas or properties including but not limited to: landscape features and irrigation systems, subdivision entryway features and monuments, private amenity center, playgrounds, pavilions, ponds, detention ponds, off-street parking for the private amenity center, swimming pool, exercise trail, private neighborhood park and related amenities.

(d) Dedications to homeowners' association. All open space and common properties or areas, facilities, structures, improvements systems, or other property that are to be operated, maintained and/or supervised by the homeowners' association shall be dedicated by easement or deeded in fee simple ownership interest to the homeowners' association after construction and installation as applicable by the owner and shall be clearly identified on the record final plat of the property.

(e) Approval. A copy of the agreements, covenants and restrictions establishing and creating the homeowners' association must be approved by the planning and zoning commission based on recommendation of city attorney prior to the approval of the final plat of the subdivision and must be filed of record with said final plat in the plat records of the county. The final plat shall clearly identify all facilities, structures, improvements, systems, areas or grounds that are to be operated, maintained and/or supervised by the homeowners' association.

(f) Contents of homeowners' association agreements. At a minimum, the agreements, covenants and restrictions establishing and creating the homeowners' association required herein shall contain and/or provide for the following:

(1) Definitions of terms contained therein;

(2) Provisions acceptable to the city for the establishment and organization of the mandatory homeowners' association and the adoption of bylaws for said homeowners' association, including provisions requiring that the owner(s) of any lot or lots within the applicable subdivision and any successive purchaser(s) shall automatically and mandatorily become a member of the homeowners' association;

(3) The initial term of the agreement; covenants and restrictions establishing and creating the homeowners' association shall be for a twenty-five-year period and shall automatically renew for successive ten-year periods, and the homeowners' association may not be dissolved without the prior written consent of the city;

(4) Provisions acceptable to the city to ensure the continuous and perpetual use, operation, maintenance and/or supervision of all facilities, structures, improvements, systems, open space or common areas that are the responsibility of the homeowners' association and to establish a reserve fund for such purposes;

(5) Provisions prohibiting the amendment of any portion of the homeowners' association's agreements, covenants or restrictions pertaining to the use, operation, maintenance and/or supervision of any facilities, structures, improvements, systems, area or grounds that are the responsibility of the homeowners' association without the prior written consent of the city;

(6) The right and ability of the city or its lawful agents, after due notice to the homeowners' association, to remove any landscape systems, features or elements that cease to be maintained by the homeowners' association; to perform the responsibilities of the homeowners' association and its board of directors if the homeowners' association fails to do so in compliance with any provisions of the agreements,

covenants or restrictions of the homeowners' association or of any applicable city codes or regulations; to assess the homeowners' association for all costs incurred by the city in performing said responsibilities if the homeowners' association fails to do so; and/or to avail itself of any other enforcement actions available to the city pursuant to state law, city codes or regulations; and

(7) Provisions indemnifying and holding the city harmless from any and all costs, expenses, suits, demands, liabilities or damages including attorney's fees and costs of suit, incurred or resulting from the city's removal of any landscape systems, features or elements that cease to be maintained by the homeowners' association or from the city's performance of the aforementioned operation, maintenance or supervision responsibilities of the homeowners' association due to the homeowners' association's failure to perform said responsibilities.

(g) Notice to purchasers. Builders are required to post notice in a prominent place in all model homes, sales offices and on all open space areas larger than 20,000 square feet stating that a property association has been established and membership is mandatory for all property owners. The notice shall state at a minimum that the builder shall provide any person upon their request the association documents and a five-year projection of dues, income and association expenses.

(h) Maintenance reserve fund. Prior to the transfer of the control of the homeowners' association to the lot owners, the developer must provide a reserve fund equivalent to two months' dues based on full homeowners' association membership.

(i) Property association activation. Concurrent with the transfer of the homeowners' association, the developer must transfer to the homeowners' association control over all utilities related to property and amenities to be owned by the homeowners' association. The developer must also disclose to the homeowners' association the total cost to date related to the operation and maintenance of common property and amenities.

Sec. 10.03.127 Design standards

The following design standards and specifications are incorporated by reference into this article:

(1) The city drainage and stormwater pollution prevention design manual, paving design manual, and water and wastewater design manual adopted by ordinance from time to time.

(2) The city water master plan, wastewater master plan and storm drainage master plan.

Sec. 10.03.128 Payment of fees, charges and assessments

As a condition of plat approval, the developer shall pay all fees, charges, and assessments established by resolution or ordinance of the city council, as may be imposed under this article or other regulations of the city.

(Ordinance 2006-07-00567, sec. 1, adopted 7/7/06)

ARTICLE 10.04 STORMWATER RUNOFF REGULATIONS AND CONTROL

Sec. 10.04.001 Purpose

The purpose of this article is to diminish threats to the public health and safety caused by the runoff of excess stormwater, to minimize movement of soils resulting from development, to reduce the possibilities of hydraulic overloading of the storm sewer drainage system, to reduce economic losses to individuals and the community at large as a result of erosion and the runoff of excess stormwater, and to protect and conserve land and water resources, while at the same time ensuring orderly development. The provisions of this article are specifically intended to supplement existing ordinances regulating the following:

(1) The subdivision, layout, and improvement of lands located within the city;

(2) The excavating, filling, and grading of lots and other parcels or areas;

(3) The construction of buildings, including related parking and other paved areas, and the drainage of the sites on which those structures and their related parking and other paved areas are located; and

(4) The design, construction, and maintenance of erosion control and stormwater drainage facilities and systems.

Sec. 10.04.002 Definitions

For the purposes of this article, the following definitions are adopted:

Base flood elevation. The elevation delineating the flood level having a one-percent probability of being equaled or exceeded in any given year (also known as the 100-year flood elevation), as determined from flood insurance rate maps (FIRMS) or the best available information.

Channel. A natural or manmade open watercourse with definite bed and banks which periodically or continuously contains moving water, or which forms a connecting link between two bodies of water.

City. The City of Lucas.

City engineer. The city engineer or his designee.

City manager. The city manager or his designee.

Conduit. Any channel, pipe, sewer, or culvert used for the conveyance of movement of water, whether open or closed.

Control elevation. Contour lines and points of predetermined elevation used to denote a detention storage area on a plat or site drawing.

Design standards for public improvements. Standards on file in the city's offices to which all designs and the resulting public improvements, must conform.

Detention facility. A facility constructed or modified to restrict the flow of stormwater to a prescribed maximum rate, and to concurrently detain the excess waters that accumulated behind the outlet.

Detention storage. The temporary detaining or storage of stormwater in storage basins, on rooftops, in streets, parking lots, school yards, parks, open space, or other areas under predetermined and controlled conditions, with the rate of drainage therefrom regulated by appropriately installed devices.

Discharge. The rate of outflow of water from any source.

Drainage area. The area from which water is carried off by a drainage system, i.e., a watershed or catchment area.

Excess stormwater runoff. The rate of flow of stormwater discharged from an urbanized drainage area which is or will be in excess of that volume and rate which represented or represents the runoff from the property prior to the date of this article.

Floodplain. The special flood hazard lands adjoining a watercourse, the surface elevation of which is lower than the base flood elevation and is subject to periodic inundation.

Hydrograph. A graph showing, for a given point on a stream or conduit, the runoff flow rate with respect to time.

Land disturbance. Any manmade change to improve or unimprove real estate including but not limited to building structures, filling, grading, excavation, clearing, or removal of vegetation.

One-hundred-year storm. A precipitation event of 24-hours' duration, having a one-percent chance of occurring in any one year.

Peak flow. The maximum rate of flow of stormwater at a given point or in a channel or conduit resulting from a predetermined storm or flood.

Sediment. Any particulate matter that can be transported by fluid flow, and which eventually is deposited.

Stormwater drainage facility. Any element in a stormwater drainage system which is made or improved by man.

Stormwater drainage system. All means, natural or manmade, used for conducting stormwater to, through, or from a drainage area to the point of final outlet including, but not limited to, any of the following: open and closed conduits and appurtenant features, canals, channels, ditches, streams, swales, culverts, streets, and pumping stations.

Stormwater runoff. The waters derived from precipitation within a tributary drainage area flowing over the surface of the ground or collected in channels or conduits.

Time of concentration. The elapsed time for stormwater to flow from the most distant point in a drainage area to the outlet or other predetermined point.

Two-year storm. A precipitation event having a fifty percent chance of occurring in any one year.

Two-year storm runoff. The stormwater runoff having a fifty percent probability of occurring in any one year.

Unprotected channel. A channel which receives stormwater discharge and which is not paved, riprapped, or otherwise improved by addition of manmade materials so as to reduce the potential for erosion.

Upland area. Any land whose surface drainage flows toward the area being considered for development.

Urbanization. The development, change, or improvement of any parcel of land consisting of one or more lots for residential, commercial, industrial, institutional, recreational, or public utility purposes.

Waterbody. Any natural or artificial pond, lake, reservoir, or other area which ordinarily or intermittently contains water and which has a discernable shoreline.

Watercourse. Any natural or artificial stream, river, creek, channel, ditch, canal, conduit, culvert, drain, waterway, gully, ravine, street, roadway, swale, or wash in which water flows in a definite direction, either continuously or intermittently, and which has a definite channel, bed, or banks.

Wet bottom detention basin. A basin designed to retain a permanent pool of stormwater after having provided its planned detention of runoff during a storm event.

Sec. 10.04.003 Permit

Before initiating any activity regulated by this article, an applicant shall be required to obtain a permit from the city which indicated that the requirements of this article have been met. Permit fees shall be located in the city fee schedule for permits.

Sec. 10.04.004 Other requirements

In addition to meeting the requirements of section 10.04.003 and the more specific requirements of sections 10.04.005–10.04.029 of this article and before starting any activity regulated by this article, an applicant shall comply with the requirements set forth in all other related ordinances and state statutes and regulations.

Sec. 10.04.005 Specific requirements; general

Sediment shall be maintained on site and excess stormwater runoff shall be detained in connection with any new construction, development, redevelopment, or land use change occurring within the city in accordance with the requirements set forth in this article. Notwithstanding the foregoing, exceptions to this requirement are as follows:

(1) For stormwater detention, the development of any subdivision of five or less single-family lots.

(2) For stormwater detention, the development of commercial or industrial property in which the increase in runoff is less than ten percent (10%) of the pre-development runoff rate and less than five (5) cubic feet per second.

(3) A determination by the city that the excess runoff from the proposed construction, development, redevelopment, or land use change will be insufficient to adversely effect the carrying capacity of the receiving body or watercourse. In this connection and should the city's determination of insufficient adverse effect be sought, the developer shall make available to the city such hydraulic or hydrologic computations as will support the requested exception.

(4) In the event it is determined to the city manager's satisfaction, after consultation with appropriate engineering consultants, that the goals of this article will be better met by the owner or developer of the site paying to the city an amount equal to the cost of the detention pond(s) required herein. Such cost shall be determined by the actual construction cost amount, if known, or as estimated by the design engineer and approved by the city. This agreement and payment will be completed before the city's approval of the development's construction plans.

Sec. 10.04.006 Discharge rate

The peak discharge rate after full development resulting from the proposed development shall not exceed the corresponding peak discharge rate prior to development during storms of 2-year, 5-year, 10-year, and 25-year return frequencies.

Sec. 10.04.007 Flood elevation

There shall be no detrimental effect on the floodway or the flood elevation during a 100-year storm upstream or downstream of the proposed development area as a result of the proposed development.

Sec. 10.04.008 Allowable detention facilities

The increased stormwater runoff resulting from proposed development shall be detained by providing for appropriate detention storage as required by this article. Where streets or parking areas are used for temporary storage of stormwater runoff all manholes for sanitary sewers shall be of a type which prevent the infiltration of the ponded water. Where streets are used for the temporary storage of stormwater runoff, in no case shall the maximum design depth exceed six (6) inches.

Sec. 10.04.009 Detention storage

Designs for detention storage and related appurtenances shall be submitted to the city for approval. Upon submittal of designs of detention storage the city shall make a determination as to whether any or all of the facilities proposed are to become part of the public drainage system. The city shall, at the same time, in the case of a proposed subdivision make a determination as to those control elevations that shall be entered on the final plat or make a determination as to the necessity for deed restrictions on any particular lot in said subdivision requiring the preservation of mandatory drainage facilities. Where a non-subdivided parcel of land is proposed for development, the city shall make a determination as to the need for covenants to maintain responsibility for mandatory drainage facilities. All of said facilities shall be designed and constructed in accordance with the city specifications, and shall be subject to continuing inspection during the construction period in the same manner as any other improvement regulated under this article. Detention facilities associated with residential subdivisions shall be in a separate lot that shall be deeded to the HOA after 75% of the lots in the subdivision are occupied and the lot soil stabilized. Prior to acceptance of the detention facility the city and the developer will inspect the facility to assure it meets all of the requirements of this article. If any deficiencies are found, the developer will be responsible to make the necessary changes at his expense. Wet bottom detention basin shall be aerated or designed to drain within 60 hours.

Sec. 10.04.010 Sizing of detention storage and outlet

Detention storage shall meet the requirements of this article and the city drainage manual.

Sec. 10.04.011 Discharge velocity

The discharge velocity from detention facilities shall not exceed three feet per second unless it is determined by the city that greater velocities will not be harmful to the receiving channel. Where the city's determination is requested, the developer shall make available such hydraulic or hydrologic computations as will adequately support the course of action being requested.

Sec. 10.04.012 Emergency spillway

Emergency spillways shall be provided to permit the safe passage of runoff generated from rainfall events in excess of the 100-year rainfall event.

Sec. 10.04.013 Freeboard

Detention storage areas shall have adequate capacity to contain the storage volume of tributary stormwater runoff with at least one foot of freeboard above the water surface during the 100-year rainfall event.

Sec. 10.04.014 Joint development of control system

Stormwater control systems may be planned in coordination by two or more property owners as long as the potential for damage from stormwater is not increased at intervening locations.

Sec. 10.04.015 Early installation of control systems

Stormwater control measures shall be installed prior to undertaking other grading of site and a schedule of construction for this purpose shall be submitted by the owner(s)/developer(s) prior to construction in the city.

Sec. 10.04.016 Flows from upland areas

The total drainage area must be used in calculating the allowable release rate. The required storage volume will be based on the project area only, with extraneous flows from upland areas being bypassed or discharged via overflow spillways or other devices. Where storm sewers are required they shall be of such size as will provide sufficient capacity to receive the flow generated by five-year storm from upland areas. As to the latter and regardless of whether it has occurred in fact, such upland area shall be deemed to have been fully developed for all purposes of this requirement.

Sec. 10.04.017 Land disturbance of five acres or more

The developer shall comply with the Texas Commission on Environmental Quality or TPDES and federal NPDES permit for stormwater discharges associated with construction activity and provide a copy to the city prior to starting construction.

Sec. 10.04.018 Land disturbance of more than two acres and less than five acres

The developer shall submit to the city a sediment and erosion control plan that meets the requirements of the Texas Commission on Environmental Quality or TPDES and federal NPDES permit for stormwater discharges associated with construction activity prior to starting construction.

Sec. 10.04.019 All land disturbances

Land disturbances associated with any new construction, development, redevelopment, or land use change on any site of 2,500 square foot or larger or requiring a building permit shall incorporate into the development plan the following elements as minimum:

(1) Stone construction entrance.

(2) Silt fence or other sediment retaining device on the low side of the site.

(3) Temporary seeding of disturbed areas remaining open more than three weeks.

(4) Immediate removal of soil tracked into the public right-of-way.

(5) Permanent turf established. A copy of the development plan shall be submitted to the city prior to starting construction.

Sec. 10.04.020 Preliminary plats

Information indicating the manner in which the provisions of this article are to be met shall be submitted with the preliminary plats.

Sec. 10.04.021 Requirements for construction plans

Information indicating the manner in which the provisions of this article are to be met shall be submitted with all construction plan submissions or any other plan for improvements which falls under the requirements of section 10.04.005 of this article. All computations, plans, and specifications shall be prepared and sealed by a professional engineer registered in the state.

Sec. 10.04.022 Requirements for final plats

The easements or separate lots required for detention facilities shall be shown on the final plat. The control elevation for each detention facility shall be shown on the plat near the detention facility.

Sec. 10.04.023 Drainage and detention design requirements

All subdivisions and other proposed improvements which are subject to the provisions of section 10.04.005 of this article shall incorporate such design features as are required in this article. Variation from these requirements shall require the approval of the city planning commission whose action shall be conditioned upon the following:

(1) That a petition be submitted describing in detail the rationale for the proposed designs change.

(2) That there are special circumstances or conditions affecting the property under consideration such that strict compliance with the provisions of this article would deprive the applicant of the reasonable use of his land.

(3) That the variance is necessary for the preservation and enjoyment of a substantial property right of the proprietor.

(4) That the granting of the variance will not be detrimental to the public health, safety, or welfare or injurious to other property in the territory in which said property is located.

Sec. 10.04.024 Maintenance

Designs of detention facilities will incorporate features which facilitate their inspection and maintenance. The designer shall submit an operation and maintenance (O&M) plan for any detention facility prior to its approval by the city. All privately owned detention facilities may be inspected by representatives of the city at such times as they deem necessary. If deficiencies, or conditions creating nuisances, are found, the owner or homeowners' association shall be required to initiate the necessary corrections within fourteen (14) days, and all deficiencies shall be corrected within forty-five (45) days.

Sec. 10.04.025 Safety features

Designs of detention facilities shall incorporate safety features, particularly at inlets, outlets, on steep slopes, and at any attractive nuisances. These features shall include, but not be limited to, fencing, handrails, lighting, steps, grills, signs, and other protective or warning devices so as to restrict access.

Sec. 10.04.026 Responsibility

The administration of this article shall be the responsibility of the city.

Sec. 10.04.027 Interpretation

In the interpretation and application of this article, the provisions expressed herein shall be held to be the minimum requirements and shall be liberally construed in favor of the city.

Sec. 10.04.028 Appeals

The city council is hereby designated as the appeals board for disputes arising from the application of this article. The council's responsibility shall be to hear appeals where it is alleged by an appellant that there is error in any order, requirement, decision, grant or refusal made by the city in the enforcement of the provisions of this article.

Sec. 10.04.029 Penalties

(a) General. Any person, firm, organization, association, or corporation violating any of the provisions of this article, including violation of any variances granted under the authority of this article, shall be deemed guilty of a violation of a municipal ordinance and each such person or other entity shall be deemed guilty of a separate offense for each and every day or portion thereof that any violation of any of the provisions of this code is committed, continued or permitted, and upon conviction of such violation, such person or other entity may be punished by a fine of not less than two hundred and fifty dollars ($250.00) and not more than two thousand dollars ($2,000.00).

(b) Additional corrective actions. Any building or structure constructed in violation of the provisions of this article or any use carried on in violation of this article is hereby declared to be a nuisance per se, with any court of competent jurisdiction having the authority to determine that the owner or developer is guilty of maintaining a nuisance per se and to order such nuisance abated. In this connection, the city is hereby authorized to institute any appropriate action or proceeding in any appropriate court to prevent, restrain, correct, or abate any violations of this article.

(Ordinance 2009-04-00645 adopted 4/2/09)

Item No. 13

City of Lucas
Council Agenda Request
November 5, 2015

Requester: City Secretary Stacy Henderson and Councilmember Debbie Fisher

Agenda Item:

Discuss and provide direction to staff regarding declaring December as Lucas History Month.

Background Information:

The City would like to have available during the month of December various displays of the history of Lucas and the many residents that helped incorporate the City in which we enjoy so much today. Also during December, we would like to have this same display available during our Country Christmas event on December 4th in the Community Center.

Attachments/Supporting Documentation:

NA

Budget/Financial Impact:

NA

Recommendation:

NA

Motion:

NA

Item No. 14

City of Lucas
Council Agenda Request
November 5, 2015

Requester: **City Secretary Stacy Henderson**

Agenda Item:

Consider selecting a date for the 2016 Founders Day event.

Background Information:

In looking forward to the 2016 Founders Day event, the Planning Committee has suggested a date of October 22, 2016 so as to not conflict with Halloween activities the following Saturday, of October 29.

Attachments/Supporting Documentation:

NA

Budget/Financial Impact:

NA

Recommendation:

NA

Motion:

NA