



# AGENDA CITY COUNCIL MEETING

December 21, 2023 | 6:30 PM

Council Chambers

City Hall | 665 Country Club Road, Lucas, Texas

*Notice is hereby given that a meeting of the Lucas City Council will be held on Thursday, December 21, 2023, beginning at 6:30 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. Pursuant to Texas Government Code 551.127, one or more members of the governing body may appear via videoconference call. The presiding officer and a quorum of the City Council will be physically present at this meeting.*

If you would like to watch the meeting live, you may go to the City's live streaming link at <https://www.lucastexas.us/departments/public-meetings/>.

## **How to Provide Input at a Meeting:**

**Speak In Person:** Request to Speak forms will be available at the meeting. Please fill out the form and give to City Secretary Toshia Kimball prior to the start of the meeting. This form will also allow a place for comments.

**Submit Written Comments:** If you are unable to attend a meeting and would like to submit written comments regarding a specific agenda item, email City Secretary Toshia Kimball at [tkimball@lucastexas.us](mailto:tkimball@lucastexas.us) by no later than 3:30 pm the day of the meeting. The email must contain the person's name, address, phone number, and the agenda item(s) for which comments will be made. Any requests received after 3:30 pm will not be included at the meeting.

## **Call to Order**

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

## **Citizen Input**

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1. Citizen Input.

## **Community Interest**

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*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.*

2. Items of Community Interest.

## Consent Agenda

*All items listed under the consent agenda are considered routine and are recommended 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.*

### 3. Consent Agenda:

- A. Approval of the minutes of the December 7, 2023 City Council Meeting.  
(City Secretary Toshia Kimball)
- B. Consider amending the Development Agreement between the City of Lucas and Goose Real Estate, Inc. regarding roadway improvements at Ford Lane and Welborn Lane to provide for a reduction in the width of pavement from 24 feet to 20 feet. (City Manager Joni Clarke)

## Regular Agenda

- 4. Consider entering into a Professional Services Agreement between the City of Lucas and Huitt-Zollars, Inc. for the Osage Lane Lift Station Design Project (previously referred to as the Hunt Property Sewer Facilities) in the amount of \$74,500, authorizing the City Manager to execute the Agreement, and appropriate \$74,500 from unrestricted water reserves or from the escrow account funds (File No. 3002-09S26719-CR6).  
(Public Works Director Scott Holden)

## Executive Session

### 5. Executive Session:

- A. The City Council will convene into Executive Session pursuant to Section 551.074(a)(1) of the Texas Government Code, Personnel Matters, for City Manager Evaluation.
- B. The City Council will convene into Executive Session pursuant to Section 551.074(a)(1) of the Texas Government Code, Personnel Matters, to deliberate the appointment of members to the Planning and Zoning Commission.

- 6. Reconvene from Executive Session and take any action necessary as a result of the Executive Session.

- 7. Adjournment.

## Certification

*I do 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, Texas 75002 and on the City's website at [www.lucastexas.us](http://www.lucastexas.us) on or before 5:00 p.m. on December 15, 2023.*

*Toshia Kimball, 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 City Secretary Toshia Kimball at 972.912.1211 or by email at [tkimball@lucastexas.us](mailto:tkimball@lucastexas.us) at least 48 hours prior to the meeting.*



# City of Lucas

## City Council Agenda Request

### December 21, 2023

Item No. 01

Requester: Mayor Jim Olk

#### **Agenda Item Request**

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Citizen Input.

#### **Background Information**

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NA

#### **Attachments/Supporting Documentation**

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NA

#### **Budget/Financial Impact**

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NA

#### **Recommendation**

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NA

#### **Motion**

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NA



# City of Lucas

## City Council Agenda Request

### December 21, 2023

Requester: Mayor Jim Olk

#### **Agenda Item Request**

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Items of Community Interest.

#### **Background Information**

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NA

#### **Attachments/Supporting Documentation**

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NA

#### **Budget/Financial Impact**

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NA

#### **Recommendation**

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NA

#### **Motion**

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NA



# City of Lucas

## City Council Agenda Request

### December 21, 2023

Item No. 03

Requester: City Secretary Toshia Kimball  
City Manager Joni Clarke

#### **Agenda Item Request**

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Consent Agenda:

- A. Approval of the minutes of the December 07, 2023, City Council Meeting.
- B. Consider amending the Development Agreement between the City of Lucas and Goose Real Estate, Inc. regarding roadway improvements at Ford Lane and Welborn Lane to provide for a reduction in the width of pavement from 24 feet to 20 feet.

#### **Background Information**

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Item 3B:

City Council previously held discussion of this item on August 17, 2023, and the City held a neighborhood meeting on October 26, 2023, with a follow up discussion at the November 16, 2023 City Council Meeting. This item amends and restates the related 2015 development agreement with Goose Realty to reduce the width of paving to 20' based on area constraints at the site and as is consistent with common practice for road repaving projects in Lucas. TexasBit Inc. estimated the total construction cost at \$304,294.96 for both streets based on a tonnage rate for materials at the given project area based on the standards for materials and construction typically used in Lucas. The city's maximum cost share is \$79,000.

#### **Attachments/Supporting Documentation**

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1. Minutes of the December 7, 2023, City Council Meeting
2. Development Amendment Agreement with Goose Real Estate

#### **Budget/Financial Impact**

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NA

#### **Recommendation**

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Staff recommends approval of the consent agenda as presented.

#### **Motion**

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I make a motion to approve the consent agenda as presented.



## MINUTES

### CITY COUNCIL REGULAR MEETING

December 7, 2023 | 6:30 PM

Council Chambers

City Hall | 665 Country Club Road, Lucas, Texas

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#### City Councilmembers Present:

Mayor Jim Olk  
Mayor Pro Tem Kathleen Peele  
Councilmember Tim Johnson  
Councilmember David Keer  
Councilmember Phil Lawrence  
Councilmember Debbie Fisher  
Councilmember Dusty Kuykendall

#### City Staff Present:

City Manager Joni Clarke  
Assistant City Manager Kent Souriyasak  
City Secretary Toshia Kimball  
Fire Chief Ted Stephens  
City Attorney Joe Gorfida  
Finance Director Liz Exum  
Deputy Nick Noel

The regular City Council meeting was called to order at 6:30 pm.

#### Citizen Input

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##### 1. Citizen Input

There were no members of the public wishing to address the City Council.

#### Community Interest

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##### 2. Items of Community Interest.

- Pearl Harbor
- Service Tree Nominations
- 2024 General Elections
- Parks Survey

#### Consent Agenda

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##### 3. Consent Agenda:

- A. Approval of the minutes of the November 16, 2023 City Council Meeting.
- B. Approval of the Resolution R-2023-12-00549 City of Lucas Volunteer Firefighter Resolution to terminate LOSAP and authorize the plan administrator, HR Generalist, Alana Cohen to execute said Resolution.
- C. Approval of the City of Lucas Quarterly Investment Report ended September 2023.

**MOTION:** A motion was made by Councilmember Kuykendall, seconded by Councilmember Lawrence, to approve the Consent Agenda as presented. The motion passed unanimously by a 7 to 0 vote.

## **Regular Agenda**

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4. **Presentation to the City of Lucas Finance Department for receiving the 2022 Certificate of Achievement for Excellence in Financial Reporting Award from the Government Finance Officers Association.**

Mayor Jim Olk presented certificate to Finance Director Liz Exum. Councilmembers commended the Finance Department for all their hard work.

5. Discuss the following topics as it relates the City of Lucas Code of Ordinances, Chapter 2 Animal Control and Chapter 1 General Provisions, Article 1.09 Parks and Recreation:
1. Unrestrained dogs in city parks
  2. Acceptable control devices for dogs while in city parks
  3. Owners' responsibility for picking up after their animal
  4. Penalties for violation of ordinances

Councilmember Lawrence advised of situations that have occurred in the city parks seeking a solution. After City Council discussion it was decided that City Attorney Joe Gorfida will update the current ordinances and staff will make a recommendation for additional signage.

There was no motion needed for this item.

6. **Discuss updating the City of Lucas Code of Ordinances Chapter 14 titled "Zoning."**

Assistant City Manager Kent Souriyasak presented.

Following City Council discussion, it was decided that a subcommittee would be formed with Mayor Olk, Councilmember Kuykendall, Councilmember Johnson, Assistant City Manager Kent Souriyasak and Development Services Director Joe Hilbourn. The subcommittee will review Chapter 14 and make a recommendation to Council.

There was no motion needed for this item.

7. **Consider discontinuation of the Founders Day Parade and evaluate location, options, and ideas regarding a future City of Lucas Community Parade.**

Mayor Pro Tem Kathleen Peele requested to discontinue the Founders Day Parade and have a City of Lucas Community Parade on October 19, 2024 at 2pm.

Following City Council discussion, the City Council decided not to proceed with an additional City sponsored event at this time and suggested to consider City Council feedback regarding the parade. Mayor Pro Tem Kathleen Peele withdrew her request.

There was no motion needed for this item.

## Executive Agenda

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### Executive Session:

The City Council will convene into Executive Session pursuant to Section 551.074(a)(1) of the Texas Government Code, Personnel Matters, for City Manager Evaluation.

The City Council will convene into Executive Session pursuant to Section 551.072 of the Texas Government Code to deliberate the purchase, exchange, lease, or value of real property.

The City Council will convene into Executive Session pursuant to Section 551.074(a)(1) of the Texas Government Code, Personnel Matters, to deliberate the appointment of members to the Planning and Zoning Commission.

City Council convened into Executive Session at 8:35 p.m.

8. **Reconvene from Executive Session and take any action necessary as a result of the Executive Session.**

City Council reconvened from Executive Session at 10:00 p.m.

No action necessary for this item.

9. **Adjournment.**

**MOTION:** A motion was made by Mayor Olk, seconded by Councilmember Kuykendall, to adjourn the meeting at 10:00 p.m. The motion passed unanimously by a 7 to 0 vote.

APPROVED:

ATTEST:

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Mayor Jim Olk

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Toshia Kimball, City Secretary

COUNTY OF COLLIN  
STATE OF TEXAS

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**FIRST AMENDED AND RESTATED  
DEVELOPMENT AGREEMENT**

This First Amended and Restated Development Agreement ("Agreement") is executed on the \_\_\_\_\_ day of \_\_\_\_\_, 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**, the Parties previously entered into that certain Development Agreement on November 19, 2015 (the "Agreement"); and

**WHEREAS**, the Parties previously agreed that the Owner shall 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 (2,200 feet);
- 2) Welborn Lane from Ford Lane to East Winningkoff Road (1,300 feet); and
- 3) East Winningkoff Road from Welborn Lane to the east end of the Development (2,700 feet).

**WHEREAS**, the Parties have now agreed that the roadway improvements shall be constructed at 20 feet wide and have further agreed that the portion of East Winningkoff Road from Welborn Lane to the east end of the Development has previously been constructed by the City and is; and

**WHEREAS**, the Parties have now agreed that Owner shall construct or cause to be constructed Roadway Facilities that consist of following: (1) Ford Lane from Welborn Lane to west side of 1540 Ford Lane (2,200 feet);and (2) Welborn Lane from Ford Lane to East Winningkoff Road (1,300 feet); 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 "A2" 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 and shall be varying in width. Ford Lane from 1335 Ford to Welborn Lane shall be twenty feet (20') wide, from 1340 Ford Lane east to the end of the development shall be a minimum of seventeen and one-half feet (17.5') wide to twenty feet (20') wide where possible, Welborn Lane from East Winningkoff Road shall be eighteen feet (18') to twenty feet (20') wide were possible with a sub-grade consisting of five percent (5%) cement stabilized base six inches (6") deep. The pavement shall be a minimum of

three inches (3”) thick of Type D asphalt concrete pavement (ACP), and a one-foot (1’) shoulder 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 residential homes 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 \$79,000 (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 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.

3.4 Development Requirements. Lots shall be developed in accordance with the Conceptual Site Plan attached hereto as Exhibit B" and in accordance with the City of Lucas Development Regulations and other applicable City Ordinances in effect at the time the

preliminary plat is filed and approved by the City Council. Lots 21, 22, 23 and 24 shall not be subdivided.

#### **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 Collin 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 Collin 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**

**OWNER:**

**GOOSE REAL ESTATE, INC.,**  
an Ohio corporation

By \_\_\_\_\_  
Joni Clarke  
City Manager

By \_\_\_\_\_  
James Roberts  
President

Approved as to Form:

By \_\_\_\_\_  
Joseph J. Gorfida, Jr.  
City Attorney  
(12-11-2023: 4869-1595-6374)

**THE STATE OF TEXAS           §**  
**§**  
**COUNTY OF COLLIN           §**

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2023, by Joni Clarke, City Manager of the 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 \_\_\_\_\_, 2023, 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



## Exhibit A-2

### Legal Description Logan Ford Ranch Phase 1

#### OWNER'S DEDICATION AND ACKNOWLEDGEMENT

STATE OF TEXAS     §  
COUNTY OF COLLIN   §

WHEREAS *Southern Methodist University, as Trustee of the Lee and Logan Ford Charitable Remainder Unitrust and Goose Real Estate, Inc.* are the owners of a tract of land situated in the State of Texas, County of Collin, and City of Lucas, being part of the Calvin Boles Survey, Abstract No. 28, and being all of Lot 1 of Ford's Cattle Ranch as recorded in Volume G, Pages 773-774 of the Collin County Map Records, being the remainder of a called 67.03 acre tract (Tract One) as recorded under Document No. 20091109001366040 of the Collin County Land Records and all of a 31.897 acre tract as recorded under Document No. 20160224000208980 of the Collin County Land Records with said premises being more particularly described as follows:

BEGINNING at a Glas capped iron rod set at the intersection of the east right-of-way line of Welborn Lane with the north right-of-way line of East Winningkoff Road marking the southwest corner of Lot 1, the southwest corner of said 67.03 acre tract, and the southwest corner of said premises;

THENCE with the east right-of-way line of Welborn Lane, the west line of Lot 1, the west line of said 67.03 acre tract, and the west line of said premises, North 00°24'37" East, 1,032.90 feet to a Glas capped iron rod set marking the most westerly northwest corner of Lot 1, the most westerly northwest corner of said 67.03 acre tract, the most westerly northwest corner of said premises, and being in the south line of a called 1.255 acre tract as recorded under Document No. 20131031001487460 of the Collin County Land Records;

THENCE with a north line of Lot 1, a north line of said 67.03 acre tract, a north line of said premises, and the south line of said 1.255 acre tract, South 89°10'47" East, 198.93 feet to a 5/8-inch iron rod found marking an interior ell-corner of Lot 1, an interior ell-corner of said 67.03 acre tract, an interior ell-corner of said premises, and the southeast corner of said 1.255 acre tract;

THENCE with a west line of Lot 1, a west line of said 67.03 acre tract, a west line of said premises, and the east line of said 1.255 acre tract, North 00°24'37" East, 199.38 feet to a Glas capped iron rod set in the south right-of-way line of Ford Lane marking the most northerly northwest corner of Lot 1, the most northerly northwest corner of said 67.03 acre tract, and the most northerly northwest corner of said premises;

THENCE with the south right-of-way line of Ford Lane, the north line of Lot 1, the north line of said 67.03 acre tract, the north line of said 31.897 acre tract, and the north line of said premises, South 89°10'47" East, 1,521.90 feet to a Glas capped iron rod set and South 88°36'22" East, 423.16 feet to a Glas capped iron rod set marking the northeast corner of Lot 1, the northeast corner of said 31.897 acre tract, the northeast corner of said premises, and being in the west line of a called 1.00 acre tract as recorded in Volume 5736, Page 2768 of the Collin County Land Records;

THENCE with an east line of Lot 1, an east line of said 31.897 acre tract, an east line of said premises, and the west line of said 1.00 acre tract, South 01°58'00" West, 195.35 feet to a Glas capped iron rod set marking an interior ell-corner of Lot 1, an interior ell-corner of said 67.03 acre tract, an interior ell-corner of said premises, and the southwest corner of said 1.00 acre tract, from which a 3/8-inch iron rod found bears South 25°13'09" West, 1.10 feet;

THENCE with a north line of Lot 1, a north line of said 31.897 acre tract, a north line of said premises, and the south line of said 1.00 acre tract, South 88°02'07" East, 189.10 feet to a 5/8-inch iron rod found marking a northeast corner of Lot 1, a northeast corner of said 31.897 acre tract, a northeast corner of said premises, the southeast corner of said 1.00 acre tract, and being in the west line of Lot 2 of said addition;

THENCE with an east line of Lot 1, an east line of said 31.897 acre tract, an east line of said premises, and the west line of said Lot 2, South 00°05'32" East, 351.90 feet to a Collis capped iron rod found marking an interior ell-corner of Lot 1, an interior ell-corner of said 31.897 acre tract, an interior ell-corner of said premises, and the southwest corner of said Lot 2;

THENCE with a north line of Lot 1, a north line of said 31.897 acre tract, a north line of said premises, and the south line of said Lot 2, South 88°02'07" East, 271.15 feet to a Collis capped iron rod found marking the most easterly northeast corner of Lot 1, the most easterly northeast corner of said 31.897 acre tract, the most easterly northeast corner of said premises, the southeast corner of said Lot 2, and being in the west line of a called 15.78 acre USA tract (per Collin County Central Appraisal District);

THENCE with the east line of Lot 1, the east line of said 31.897 acre tract, the east line of said premises, partway with the west line of said USA tract, and partway with the west line of the remainder of a called 20 acre tract as recorded under Document No. 20150819001043200 of the Collin County Land Records as follows:

South 00°12'06" East, 213.71 feet to a Corps of Engineer's concrete monument found with brass disk marking the southwest corner of said USA tract and the northwest corner of said remainder of a called 20 acre tract;

South 00°42'06" West, 486.32 feet to a Glas capped iron rod set in the north right-of-way line of East Winningkoff Road marking the southeast corner of Lot 1, the southeast corner of said 31.897 acre tract, and the southeast corner of said premises;

THENCE with the north right-of-way line of East Winningkoff Road, the south line of Lot 1, the south line of said 31.897 acre tract, the south line of said 67.03 acre tract, and the south line of said premises, North 88°00'00" West, 536.76 feet and North 88°42'00" West, 2,065.25 feet to the point of beginning and containing 69.019 acres of land.

## Exhibit A-3

### Legal Description Logan Ford Ranch Phase 2

#### OWNER'S DEDICATION AND ACKNOWLEDGEMENT

STATE OF TEXAS     §  
COUNTY OF COLLIN §

WHEREAS *Goose Real Estate, Inc.* is the owner of a tract of land situated in the State of Texas, County of Collin, and City of Lucas, being part of the Calvin Boles Survey, Abstract No. 28, and being all of Lot 12, Block A of Logan Ford Ranch, Phase 2, an addition to the City of Lucas as recorded in Volume 2016, Page \_\_\_ of the Collin County Map Records with said premises being more particularly described as follows:

BEGINNING at a Glas capped iron rod set at the intersection of the east right-of-way line of Welborn Lane with the north right-of-way line of East Winningkoff Road marking the southwest corner of Lot 12 and and the southwest corner of said premises;

THENCE with the east right-of-way line of Welborn Lane, the west line of Lot 12, and the west line of said premises, North 00°24'37" East, 1,032.90 feet to a Glas capped iron rod set marking the most westerly northwest corner of Lot 12, the most westerly northwest corner of said premises, and being in the south line of a called 1.255 acre tract as recorded under Document No. 20131031001487460 of the Collin County Land Records;

THENCE with a north line of Lot 12, a north line of said premises, and the south line of said 1.255 acre tract, South 89°10'47" East, 198.93 feet to a 5/8-inch iron rod found marking an interior ell-corner of Lot 12, an interior ell-corner of said premises, and the southeast corner of said 1.255 acre tract;

THENCE with a west line of Lot 12, a west line of said premises, and the east line of said 1.255 acre tract, North 00°24'37" East, 199.38 feet to a Glas capped iron rod set in the south right-of-way line of Ford Lane marking the most northerly northwest corner of Lot 12 and the most northerly northwest corner of said premises;

THENCE with the south right-of-way line of Ford Lane, the north line of Lot 12, and the north line of said premises, South 89°10'47" East, 1,021.08 feet to a Glas capped iron rod found marking the northeast corner of Lot 12, the northeast corner of said premises, and the northwest corner of Lot 11, Block A of said addition;

THENCE with an east line of Lot 12, an east line of said premises, and the south line of said Lot 11, South 00°47'30" West, 427.11 feet to a Glas capped iron rod found marking an interior ell-corner of Lot 12, an interior ell-corner of said premises, and the southwest corner of said Lot 11;

THENCE with a north line of Lot 12, a north line of said premises, and the south line of said Lot 11, South 86°31'40" East, 169.00 feet to a Glas capped iron rod set marking the most easterly northeast corner of Lot 12, the most easterly northeast corner of said premises, and a northwest corner of Lot 6, Block A of said addition;

THENCE with the east line of Lot 12, the east line of said premises, and the west line of said Lot 6, South 04°00'07" East, 460.86 feet to a Glas capped iron rod set marking the most easterly southeast corner of Lot 12, the most easterly southeast corner of said premises, the southwest corner of said Lot 6, and being in the north line of Lot 5, Block A of said addition;

THENCE with a south line of Lot 12, a south line of said premises, and the north line of said Lot 5, North 88°42'00" West, 21.64 feet to a Glas capped iron rod set marking an interior ell-corner of Lot 12, an interior ell-corner of said premises, and the northwest corner of said Lot 5;

THENCE with an east line of Lot 12, an east line of said premises, and the west line of said Lot 5, South 00°24'37" West, 350.00 feet to a Glas capped iron rod set in the north right-of-way line of East Winningkoff Road marking the southeast corner of Lot 12, the southeast corner of said premises, and the southwest corner of said Lot 5;

THENCE with the north right-of-way line of East Winningkoff Road, the south line of Lot 12, and the south line of said premises, North 88°42'00" West, 1,399.88 feet to the point of beginning and containing 37.122 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

#### **General:**

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

**Contractor Construction Standards/Estimated Project Costs**



A CRH COMPANY

Texas Materials Group, Inc.  
 420 Decker Drive, Suite 200  
 Irving, TX 75062  
 Phone: (214) 741-3531

**PROPOSAL AND CONTRACT**  
 (Dallas County Interlocal Agreement)

To: City of Lucas

Effective Date: November 20, 2023

Texas Materials Group, Inc., TexasBit, offers to furnish all material, labor and equipment required for the performance of the following described work subject to the terms and conditions of the Dallas County Interlocal Agreement.

Description of Work and Price: Place hot mix asphalt paving @ approximately 345 lbs/sy

<u>Location</u>	<u>Limits</u>	<u>Mob</u>	<u>Tons</u>	<u>Unit Price (per ton)</u>	<u>Approx. Total</u>
Wellborn Ln	1318 LF	\$2,000.00	506	\$145.83	\$75,789.98
Ford St	2455 LF	\$0.00	942	\$145.83	\$137,371.86
					<hr/>
					\$213,161.84

\*"See Attached Sheet"

Unless the words "Lump Sum" appear next to an item of work, it is understood and agreed that the quantities referred to above are estimates only and that payment shall be made at the state unit prices for actual quantities of work performed by TexasBit.

This estimate expires thirty (30) days from the above date.

TEXASBIT, INC.

ACCEPTED: City of Lucas

W. L. Warner  
 Account Manager  
 214-926-9072  
 William.Warner@Texasbit.com

Date \_\_\_\_\_



A CRH COMPANY

Texas Materials Group, Inc.  
420 Decker Drive, Suite 200  
Irving, TX 75062  
Phone: (214) 741-3531

**PROPOSAL AND CONTRACT**  
(Ellis County Interlocal Agreement)

To: City of Lucas

Effective Date: November 20, 2023

TexasBit, Inc. TexasBit offers to furnish all material, labor and equipment required for the performance of the following described work subject to the terms and conditions of the Ellis County Interlocal Agreement.

Description of Work and Price: Cement Stabilization - 24lbs. Per square yard - Only; Minimum of 500 tons per move in.

<u>Location</u>	<u>Limits</u>	<u>SY</u>	<u>Unit Price</u>	<u>Approx Total</u>
Wellborn Ln	1318 LF	3,222	\$9.88	\$31,833.36
Ford St	2455 LF	6,002	\$9.88	\$59,299.76

\_\_\_\_\_ **\$91,133.12**

\*"See Attached Sheet"

Unless the words "Lump Sum" appear next to an item of work, it is understood and agreed that the quantities referred to above are estimates only and that payment shall be made at the state unit prices for actual quantities of work performed by TexasBit.

This estimate expires thirty (30) days from the above date.

TEXASBIT, INC.

ACCEPTED: City of Lucas

W. L. Warner  
Account Manager

\_\_\_\_\_  
Date \_\_\_\_\_

Date  
11/20/2023

TEXASBIT ESTIMATE ONLY  
City of Lucas

FOB Price varies  
Haul charge rate \$ 130  
Zone 32  
Plan Location Estimated Total Cost:

Total Estimated Tons: 1448

Estimated Total Cost:

\$ 304,294.96

\$ 211,161.84 \$ 91,133.12 \$ 2,000.00

Revised  
November 20, 2023

Location/Street	Limits	Length	Width	Full Depth Reclamation with Portland	SY (Additional 1' on both sides)	Stabilization Depth (24#s/SY)	Depth/SY	Tons	Ty-C/D	Mileage From Plant	FOB Price	Mileage Charge	Total Change Per Ton (HM/AC) (Dallas County Interlocal Pricing)	Total Change Per SY (Stabilization (Ellis County Interlocal Pricing))	Total HM/AC Cost	Total Full Depth Reclamation with Portland	Total Mobilization
Wellborn Ln	1318 LF	1318	20	Yes	2829	3222	345	906	TY-C/D	32	\$117.83	\$ 28.00	\$ 145.83	\$ 9.88	\$ 73,789.98	\$ 31,833.36	
Ford St	2455 LF	2455	20	Yes	5456	6002	345	942	TY-C/D	32	\$117.83	\$ 28.00	\$ 145.83	\$ 9.88	\$ 137,371.86	\$ 59,299.76	
Mobilization (1)																	\$ 2,000.00



# City of Lucas

## City Council Agenda Request

### December 21, 2023

Requester: Public Works Director Scott Holden, PE  
CIP Manager Patrick Hubbard

#### **Agenda Item Request**

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Consider entering into a Professional Services Agreement between the City of Lucas and Huitt-Zollars, Inc. for the Osage Lane Lift Station Design Project (previously referred to as the Hunt Property Sewer Facilities) in the amount of \$74,500, authorizing the City Manager to execute the Agreement, and appropriate \$74,500 from unrestricted water reserves or from the escrow account funds (File No. 3002-09S26719-CR6).

#### **Background Information**

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In June 2009, the City of Lucas entered into a Development Agreement with HHEC Spinco, LLC. The purpose of this agreement was to fund and construct a wastewater lift station and force main serving the commercial interests of the HHEC Spinco, LLC property (427+/- acres) on the northwest corner of the Southview Drive/Parker Road intersection. HHEC Spinco, LLC with participation from the Wylie Independent School District (WISD) would fund the project, and the City of Lucas would oversee the design and construction of the wastewater lift station and force main.

In accordance with the Development Agreement, the City was to start the design within three months of June 2009 and complete the construction work within two years by June 2011. In August 2009, a Utilities Escrow Agreement was established between the City of Lucas, HHEC Spinco, LLC, the Wylie Independent School District (WISD), and the American Escrow Company. The purpose of the Utilities Escrow Agreement was to fund the wastewater work contemplated in the Development Agreement. The estimated cost was one million dollars. The City was required to get written approval from the owners to incur any cost/expense or pay any cost/expense in connection with the design, construction, and installation of the sewer facilities.

BW2 Engineers, Inc. was retained to design the wastewater work for \$99,500 in July 2009 and finalized the plans in June 2010. At the August 5, 2010 City Council meeting, the City Council authorized the Mayor and City Manager to execute a construction contract for the construction of the sanitary sewer forced main. Staff have not been able to locate the signed contract with UtiliTex Construction, LLP to construct the wastewater work in September 2010.

Effective on September 29, 2010, the Development Agreement with HHEC Spinco, LLC was amended. In the Amended Development Agreement, HHEC Spinco, LLC agreed to deposit an additional \$100,000 with the Escrow Agent and indicated that all the escrow funds shall be the exclusive property of the City for the completion of the Sewer Facilities. HHEC Spinco, LLC and WISD conclusively were deemed to have satisfied all their obligations and liabilities for the funding under the Amended Development Agreement.



# City of Lucas

## City Council Agenda Request

### December 21, 2023

In 2015, HHEC Spinco, LLC sold the property to JCBR Holdings, LLC and requested to amend the agreements to reflect the current owner. At the City Council meeting on July 16, 2015, the City Council approved assigning the Development Agreement and the First Amendment to the Utilities Escrow Agreement to JCBR Holdings, LLC.

Due to there being a Utilities Escrow Agreement and a First Amendment to the Utilities Escrow Agreement in place, the City is getting pushback from the Escrow Agent indicating that the City must still receive approvals from HHEC Spinco, LLC and WISD before payment can be made. Staff has checked with legal and confirmed that the City will have to get approval of both parties.

The lift station with force main has been constructed; however, the lift station doesn't have mechanical, electrical or civil site work completed. The missing items are the pumps, electrical control and power, and civil site work to include improvements to the existing site.

In 2022, a developer approached the City regarding a potential development for the existing site. However, prior to any development, the lift station would need to be constructed. To put the lift station into service, city staff requested Huitt-Zollars, Inc. to provide an engineer's opinion of construction cost to complete the design of the lift station.

Item	Description	Units	Quantity	Unit Price	Total Price
1.	Mobilization	LS	1	\$ 25,000.00	\$ 25,000.00
2.	Lift Station Pumps	EA	2	\$ 75,000.00	\$ 150,000.00
3.	Wet Well Piping and Valves	LS	1	\$ 25,000.00	\$ 25,000.00
4.	Valve Vault Piping and Valves	LS	1	\$ 25,000.00	\$ 25,000.00
5.	Scada System	LS	1	\$ 35,000.00	\$ 35,000.00
6.	Electrical System	LS	1	\$ 75,000.00	\$ 75,000.00
				Sub Total	\$ 335,000.00
				Contingency (30%)	\$ 100,500.00
				Total Construction Cost	\$ 435,500.00
				Engineering/Surveying Fee	\$75,000.00
				Total Project Cost	\$ 510,500.00

Since the force main was not put into service following its construction in 2015, the force main will require a full inspection. The inspection of the force main will ensure it has not been compromised. Once this is complete, the force main can be certified as secure and following the construction of the lift station.



# City of Lucas

## City Council Agenda Request

### December 21, 2023

#### **Attachments/Supporting Documentation**

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1. Professional Services Agreement with Huitt-Zollars, Inc. in the amount of \$74,500 for the Osage Lane Lift Station Design Project
2. File Balance Sheet dated February 7, 2022, for File No. 3002-09S26719-CR6 and Reconciliation of Escrow
3. Development Agreement between the City of Lucas and HHEC Spinco, LLC dated June 25, 2009
4. Amended Development Agreement between the City of Lucas, HHEC Spinco, LLC, Wylie Independent School District and American Escrow Company with an effective date of September 29, 2010
5. Utilities Escrow Agreement between the City of Lucas, HHEC Spinco, LLC, Wylie Independent School District and American Escrow Company dated August 10, 2009
6. Amended Utilities Escrow Agreement between the City of Lucas, HHEC Spinco, LLC, JCBR Holdings, LLC, Wylie Independent School District and American Escrow Company dated October 14, 2015
7. Water Fund Unrestricted Reserve Schedule

#### **Budget/Financial Impact**

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The contract will be in the amount of \$74,500 funded on a not-to-exceed basis from unrestricted water reserves **or** from the escrow account funds (File No. 3002-09S26719-CR6).

#### **Recommendation**

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Staff recommends entering into a Professional Services Agreement between the City of Lucas and Huitt-Zollars, Inc. for the Osage Lane Lift Station Design Project (previously referred to as the Hunt Property Sewer Facilities) in the amount of \$74,500.

#### **Motion**

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I make a motion to approve/deny entering into a Professional Services Agreement between the City of Lucas and Huitt-Zollars, Inc. for the Osage Lane Lift Station Design Project (previously referred to as the Hunt Property Sewer Facilities) in the amount of \$74,500, authorizing the City Manager to execute the Agreement, and appropriate \$74,500 from unrestricted water reserves **or** from the escrow account funds (File No. 3002-09S26719-CR6).



skill and care ordinarily provided by similar consultants practicing in the same or similar locality and under the same circumstances and applicable licenses or certifications; and (ii) as expeditiously as is prudent considering the ordinary skill and care of similar competent consultants.

2.2 The City shall, prior to commencement of services, provide the Professional with the information set forth in the Scope of Services, if any.

2.3 Licenses. Professional represents to City that Professional possesses any and all licenses which may be required by the State of Texas or any other governmental entity having jurisdiction as may be necessary for the performance of Professional's services pursuant to this Agreement.

2.4 Information/Confidentiality. City will furnish to Professional such information with respect to the Project as Professional may reasonably request in order to render Professional's services effectively. Professional will hold in strict confidence all information with respect to the Project which is furnished to Professional by City in confidence and which is not otherwise publicly available and/or not required, as a matter of law or proper business practice, to be disclosed to a third party in connection with the consulting services for the Project.

2.5 Deliverables. All files, documents, data and other information generated under this Agreement, of any nature whatsoever furnished by, or developed by Professional, shall be and remain the property of City.

2.6 Conflict of Interest. Professional agrees to notify City and seek City's approval prior to Professional's retention by any other individuals or entities, which either directly or indirectly may create a conflict of interest in Professional's services under this Agreement. City may deny any such approval for Professional's retention set forth above, in the event City, in City's sole and absolute discretion, should conclude that such retention would have an adverse effect on Professional's services under this Agreement.

### **Article III Schedule of Work**

The Professional agrees to complete the required services in accordance with the Project Schedule outlined in the Scope of Services.

### **Article IV Compensation and Method of Payment**

4.1 Professional will be compensated in accordance with the payment schedule and amounts set forth in the Scope of Services. Unless otherwise provided herein, payment to the Professional shall be monthly based on the Professional's monthly progress report and detailed monthly itemized statement for services that shows the names of the Professional's employees, agents, contractors performing the services, the time worked, the actual services performed, the rates charges for such service, reimbursable expenses, the total amount of fee earned to date, and

the amount due and payable as of the current statement, in a form reasonably acceptable to the City. Monthly statements shall include authorized non-salary expenses with supporting itemized invoices and documentation. The City shall pay such monthly statements within thirty (30) days after receipt and City verification of the services and expenses unless otherwise provided herein.

4.2 Unless otherwise provided in the Scope of Services the Professional shall be responsible for all expenses related to the services provided pursuant to this Agreement including, but not limited to, travel, copying and facsimile charges, telephone, internet and email charges.

4.3 The hourly rates set forth in the Scope of Services, if any, shall remain in effect during the term of this Agreement. Any changes to established hourly rates shall require the prior written consent of the City.

## **Article V Devotion of Time; Personnel; and Equipment**

5.1 The Professional shall devote such time as reasonably necessary for the satisfactory performance of the services under this Agreement. Should the City require additional services not included under this Agreement, the Professional shall make reasonable effort to provide such additional services within the time schedule without decreasing the effectiveness of the performance of services required under this Agreement, and shall be compensated for such additional services on a time and materials basis, in accordance with Professional's standard hourly rate schedule, or as otherwise agreed between the Parties.

5.2 To the extent reasonably necessary for the Professional to perform the services under this Agreement, the Professional shall be authorized to engage the services of any agents, assistants, persons, or corporations that the Professional may deem proper to aid or assist in the performance of the services under this Agreement. The Professional shall provide written notice to and obtain written approval from the City prior to engaging services not referenced in the Scope of Services. The cost of such personnel and assistance shall be included as part of the total compensation to be paid Professional hereunder, and shall not otherwise be reimbursed by the City unless otherwise provided herein.

5.3 The Professional shall furnish the facilities, equipment and personnel necessary to perform the services required under this Agreement unless otherwise provided herein.

5.4 The Professional shall submit monthly progress reports and attend monthly progress meetings as may be required by the City from time to time based upon Project demands. Each progress report shall detail the work accomplished and special problems or delays experienced on the Project during the previous report period, and the planned work activities and special problems or delays anticipated for the next report period.

## **Article VI Miscellaneous**

6.1 Entire Agreement. This Agreement constitutes the sole and only agreement between the Parties and supersedes any prior understandings written or oral agreements between the Parties with respect to this subject matter.

6.2 Assignment. The Professional may not assign this Agreement without the prior written consent of City. In the event of an assignment by the Professional to which the City has consented, the assignee shall agree in writing with the City to personally assume, perform, and be bound by all the covenants, and obligations contained in this Agreement.

6.3 Successors and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.

6.4 Governing Law. The laws of the State of Texas shall govern this Agreement without regard to any conflict of law rules; and venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

6.5 Amendments. This Agreement may be amended by the mutual written agreement of the Parties.

6.6 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

6.7 Independent Contractor. It is understood and agreed by and between the Parties that the Professional, in satisfying the conditions of this Agreement, is acting independently, and that the City assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by Professional pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of the City. Professional shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement.

6.8 Right-of-Access. The Professional shall not enter onto private property without lawful right-of-access to perform the required surveys, or other necessary investigations. The Professional will take reasonable precautions to minimize damage to the private and public property in the performance of such surveys and investigations. Any right-of-access to public or private property shall be obtained in accordance with the Scope of Services.

6.9 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, courier or by confirmed telefax or facsimile to the address specified below, or to

such other Party or address as either Party may designate in writing, and shall be deemed received three (3) days after delivery or on the day actually received if sent by courier or otherwise hand delivered:

If intended for City, to:

City of Lucas, Texas  
Attn: Joni Clarke, City Manager  
665 Country Club Road  
Lucas, Texas 75002-7663  
Phone: (972) 912-1212

With a copy to:

Joseph J. Gorfida, Jr.  
Nichols, Jackson, Dillard, Hager  
& Smith, L.L.P.

1800 Ross Tower 500  
North Akard Dallas,  
Texas 75201 Phone:  
(214) 965-9900

If intended for Professional:

Huitt-Zollars Inc.  
Attn: John Ho, PE  
54330 LBJ Freeway, Suite 1500, Dallas, TX, 75240  
Phone: (214) 871-3311

#### 6.10 Insurance.

- (a) Professional shall during the term hereof maintain in full force and effect the following insurance: (i) a comprehensive general liability policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the Professional's performance of services pursuant to this Agreement with a minimum combined single limit of not less than \$2,000,000.00 per occurrence for injury to persons (including death), and for property damage; policy of automobile liability insurance covering any vehicles owned and/or operated by Professional, its officers, agents, and employees, and used in the performance of this Agreement with policy limits of not less than \$500,000.00 combined single limit and aggregate for bodily injury and property damage; statutory Worker's Compensation Insurance at the statutory limits and Employers Liability covering all of Professional's employees involved in the provision of services under this Agreement with policy limit of not less than \$500,000.00; and (iv) Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limit of not less than \$2,000,000.00 per claim and \$2,000,000.00 in the aggregate.
- (b) All policies of insurance shall be endorsed and contain the following provisions: (1) name the City, its officers, and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance and Professional Liability; and (2) provide for at least thirty (30) days prior written notice to the City for cancellation of the insurance; (3) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any

other loss to the extent the same is covered by the proceeds of insurance, except for Professional Liability Insurance. The Professional shall provide written notice to the City of any material change of or to the insurance required herein.

- (c) 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.
- (d) A certificate of insurance and copies of the policy endorsements evidencing the required insurance shall be submitted prior to commencement of services and upon request by the City.

6.11 Debarment and Suspension.

- (a) In accordance with 2 CFR section 180.300, the principal of this Agreement as described in 2 CFR section 180.995 being duly sworn or under penalty of perjury under the laws of the United States, certifies that neither Professional nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency, the State of Texas or any of its departments or agencies.
- (b) If, during the term of this Agreement, Professional becomes debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation, Professional shall immediately inform the City of Lucas.
- (c) For agreements that are financed by Federal or State grants, Professional agrees that this section will be enforced on each of its subcontractors and will inform the City of Lucas of any violations of this section by subcontractors to the Agreement.
- (d) The certification in this section is a material representation of fact relied upon by the City in entering into this Agreement.

6.12 Indemnification. **PROFESSIONAL DOES HEREBY COVENANT AND CONTRACT TO WAIVE ANY AND ALL CLAIMS, RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS CITY COUNCIL, OFFICERS, EMPLOYEES, AND AGENTS, FROM AND AGAINST ALL LIABILITY, CAUSES OF ACTION, CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES, PENALTIES OR SUITS, CAUSED BY OR RESULTING FROM THE NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY THE PROFESSIONAL, ITS AGENT, ITS CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE PROFESSIONAL EXERCISES CONTROL.**

**INDEMNIFIED ITEMS SHALL INCLUDE REASONABLE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS IN PROPORTION TO THE PROFESSIONAL'S LIABILITY.**

**THE PROFESSIONAL'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY PROFESSIONAL UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

6.13 Counterparts. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the Parties hereto.

6.14 Exhibits. The exhibits attached hereto are incorporated herein and made a part hereof for all purposes.

6.15 Boycott Israel; Boycott Energy Companies; and Prohibition of Discrimination against Firearm Entities and Firearm Trade Associations.

- (a) Professional verifies that it does not Boycott Israel and agrees that during the term of the Agreement will not Boycott Israel as that term is defined in Texas Government Code Section 808.001, as amended.
- (b) Professional verifies that it does not Boycott Energy Companies and agrees that during the term of this Agreement will not Boycott Energy Companies as that term is defined in Texas Government Code Section 809.001, as amended.
- (c) Professional verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association as those terms are defined in Texas Government Code Section 2274.001, as amended; and (ii) will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.
- (d) This section does not apply if Professional is a sole proprietor, a non-profit entity, or a governmental entity; and only applies if: (i) Professional has ten (10) or more fulltime employees and (ii) this Agreement has a value of \$100,000.00 or more to be paid under the terms of this Agreement.

6.16 Lone Star Infrastructure Protection Act Verification. . If under this Agreement, Professional is granted direct or remote access to the control of critical infrastructure, excluding access specifically allowed for product warranty and support, Professional verifies, pursuant to Chapter 2274 of the Texas Government Code (as added by Senate Bill 2116, 87th Legislature Regular Session), that neither Professional, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Professional, nor any of its sub-contractors (i) is owned or controlled by (a) individuals who are citizens of China, Iran, North Korea, Russia or any

designated country; or (b) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, of any designated country; and (ii) is headquartered in China, Iran, North Korea, Russia or a designated country. The term “designated country” means a country designated by the Governor as a threat to critical infrastructure under Section 113.003 of the Texas Business & Commerce Code. The term “critical infrastructure” means a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility.

6.17 Anti-Terrorism Verification. Professional hereby represents and warrants that at the time of this Agreement neither Professional, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Professional: (i) engages in business with Iran, Sudan, or any foreign terrorist organization pursuant to Subchapter F of Chapter 2252 of the Texas Government Code; or (ii) is a Company listed by the Texas Comptroller pursuant to Section 2252.153 of the Texas Government Code. The term “foreign terrorist organization” has the meaning assigned to such term pursuant to Section 2252.151 of the Texas Government Code. For purposes of this paragraph, “Company” means a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or other entity or business association whose securities are publicly traded, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit.

*(Signature Page to Follow)*

**EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

City of Lucas, Texas

By: \_\_\_\_\_  
Joni Clarke, City Manager

Approved as to form:

By: \_\_\_\_\_  
Joseph J. Gorfida, Jr., City Attorney  
(02-03-2023:TM 133450)

**EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

\_\_\_\_\_ (Name of Entity)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT "A"**  
**SCOPE OF WORK**

**(TO BE ATTACHED)**



## File Balance Sheet

<b>PR:</b>	RTRUTX - Republic Title	<b>Printed:</b>	2/7/2022 1:18:10 PM
<b>Ofc:</b>	3002 - 3002-American Escrow	<b>Estimated Settlement Date:</b>	
<b>File No.:</b>	<b>3002-09S26719-CR6</b>	<b>Disbursement Date:</b>	
<b>Officer:</b>	/ SD		
<b>Buyer:</b>	City of Lucas, et al		
<b>Seller:</b>	HHEC SPINCO, LLC		
<b>Property:</b>	, Dallas, TX		

Deposits To Bank	\$263,051.08
Less Total Disbursements	- \$0.00
Less Funds Held from Seller	- \$0.00
Less Funds Held from Buyer	- \$0.00
<b>File Balance</b>	<b>\$263,051.08</b>
Plus Projected Loan Funding	\$0.00
Less Charges Retained by Outside Title Co.	\$0.00
Plus Buyer's Funds Due	\$0.00
Plus Seller's Funds Due	\$0.00
Plus IBA Funds Due	\$0.00
Plus Listing Broker's Funds Due	\$0.00
Plus Selling Broker's Funds Due	\$0.00
Plus Other Real Estate Broker's Funds Due	\$0.00
<b>Projected File Balance</b>	<b>\$263,051.08</b>

Deposits to Bank	\$263,051.08
Less Disbursements: Issued	- \$0.00
<b>Current Bank Balance</b>	<b>\$263,051.08</b>
Less Disbursements Pending	- \$0.00
Less Funds Held from Seller	- \$0.00
Less Funds Held from Buyer	- \$0.00
<b>File Balance</b>	<b>\$263,051.08</b>

Lender Name	Loan Amount	Net Charges	Net Fees	Projected Loan Funding	Received
	\$0.00	\$0.00	\$0.00	\$0.00	

Buyer	Seller	Other	Total Issued	Net Adjustments	Net Dep./Receipts
\$0.00	\$0.00	\$263,051.08	\$263,051.08	\$0.00	\$263,051.08

Receipt No.	Dep Status/ Date	Issue Date	Payor	Description	Amount
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Receipt No.	Dep Status/ Date	Issue Date	Payor	Description	Amount
300291		9/12/2018	IFT FROM ESC 09S26719	Miscellaneous Deposit	\$263,051.08

Disbursement Summary						
Issued Checks	Issued Wires	Issued Fee Transfers	Issued IBA Disbursements	Pending	Net Adjustments	Total Disbursements
\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

Document No.	Paid Status/ Date	Issue Date	Payee	Description	Amount
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City of Lucas  
 Project: Wastewater Forced Main - Utilitex Const.  
 Reconciliation of Escrow

**Deposits**

Date	Description	Amount
8/10/2009	Wylie ISD	\$ 500,600.00
8/10/2009	HHEC, Spinco, LLC	\$ 500,600.00
	HHEC, Spinco, LLC	\$ 100,000.00
	Total Funding	<u>\$ 1,101,200.00</u>

**Expenditures**

Date	Description	Amount
8/10/2009	American Escrow Company	\$ 1,200.00
12/10/2009	BW2 Engineers	\$ 12,065.00
3/31/2010	BW2 Engineers	\$ 17,910.00
5/4/2010	BW2 Engineers	\$ 18,300.00
6/7/2010	BW2 Engineers	\$ 10,050.00
7/30/2010	BW2 Engineers	\$ 17,850.00
8/27/2010	BW2 Engineers	\$ 5,950.00
9/15/2010	BW2 Engineers	\$ 7,855.00
10/29/2010	Utilitex Construction, LLP	\$ 50,274.71
10/29/2010	BW2 Engineers	\$ 2,975.00
11/18/2010	BW2 Engineers	\$ 595.00
12/8/2010	Utilitex Construction, LLP	\$ 112,565.82
12/17/2010	BW2 Engineers	\$ 595.00
12/27/2010	Utilitex Construction, LLP	\$ 86,280.35
2/2/2011	Utilitex Construction, LLP	\$ 62,617.11
3/7/2011	Utilitex Construction, LLP	\$ 96,121.00
3/8/2011	BW2 Engineers	\$ 595.00
3/10/2011	Utilitex Construction, LLP	\$ 93,489.50
4/5/2011	BW2 Engineers	\$ 595.00
4/7/2011	Utilitex Construction, LLP	\$ 103,443.84
5/18/2011	Utilitex Construction, LLP	\$ 48,806.26
5/20/2011	BW2 Engineers	\$ 595.00
6/27/2011	BW2 Engineers	\$ 16,268.75
7/5/2011	Utilitex Construction, LLP	\$ 14,250.00
8/5/2011	Utilitex Construction, LLP	\$ 36,148.67
10/30/2017	BW2 Engineers	\$ 8,075.00
10/30/2017	Oncor Electric	\$ 12,677.91
	Total Expenditures	<u>\$ 838,148.92</u>
	Remaining Escrow Balance	<u>\$ 263,051.08</u>



NOW, THEREFORE, in consideration of the covenants and conditions contained in this Agreement, the City and Owner agree as follows:

## ARTICLE I ANNEXATION AND DEVELOPMENT

1.1 *Agreement to Annex.* Owner agrees to file a petition for voluntary annexation of the Owner's Property within sixty (60) days after the later of (i) the approval of this Agreement, and (ii) the approval of the Master Plan by the Water District. Upon the filing of such petition, the City agrees to promptly annex the Owner's Property.

1.2 *Sewer Facilities.* The Sewer Facilities shall consist of an on-site wastewater lift station and force-main (both on-site and off-site), as conceptually shown on Exhibit "T", to a mutually agreed point of connection to other municipal wastewater facilities at the southern boundary of the FM 2551 Commercial Area, depicted on the Master Plan to be constructed by others without any funding from Owner or WISD, sufficient in size and capacity to provide service to future commercial development on Owner's South Tract and a WISD future High School on the Property. Following construction and final acceptance by the City, the City will be the owner and operator of the Sewer Facilities.

1.3 *Construction of Sewer Facilities.* Pursuant to that certain Utilities Escrow Agreement (the "Escrow Agreement") to be entered into for the funding of costs of design, construction and installation of the Sewer Facilities according to this Agreement, among City, Owner, the WISD, and American Escrow Company ("Escrow Agent"), Owner and WISD have agreed to provide for the escrow of funds (the "Escrow Funds") upon the complete execution and delivery of this Agreement and the Escrow Agreement in the amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) to design, construct and install the Sewer Facilities. If the actual total costs to design, construct and install the Sewer Facilities (the "Actual Project Cost"), incurred in accordance with the terms and provisions of this Agreement, exceed the total amount of the Escrow Funds deposited under this Escrow Agreement, Owner shall deposit such excess amount with Escrow Agent to be held and applied in accordance with the terms and provisions of the Escrow Agreement.

The City hereby agrees to:

- (a) Select and retain a qualified Engineer, subject to Owner's concurrence, to perform the surveys, design, and preparation of on-site and off-site easements as required for the Sewer Facilities, the costs and expenses of which shall be paid from the Escrow Funds pursuant to the terms and provisions of this Agreement and the Escrow Agreement.
- (b) Manage the design process for the Sewer Facilities in coordination with separate City water improvements planned within the same area, thereby providing a high level of coordination between the two projects.
- (c) Provide preliminary and final construction designs, specifications, and plans for the Sewer Facilities for review and approval by the Owner. In the event any change orders are required during construction, they shall also be submitted to the Owner for approval prior to authorization. Such designs, specifications, and plans, including all change orders, as finally approved by Owner, collectively are called the "Approved Plans". The

costs and expenses of the Approved Plans shall be paid from the Escrow Funds pursuant to the terms and provisions of this Agreement and the Escrow Agreement.

- (d) Provide all off-site easements as required for construction and operation of the Sewer Facilities at no cost to the Owner (specifically, without limitation, not using any portion of the Escrow Funds therefor).
- (e) Issue the final construction plans, specifications, and estimates (PS&E) for competitive bids by competent contractors, receive bids, and award a construction contract to the selected and bonded Contractor for construction of the Sewer Facilities. Appropriate Performance and Payment Bonds and indemnifications shall be provided by the primary contractor, in favor of the City, Owner, and WISD. The Owner shall be provided an opportunity to review all bids and concur in the selection of the Contractor and approval of the construction contract (as finally approved by Owner, the "Approved Contract").
- (f) Supervise the construction of the Sewer Facilities and provide all necessary inspections and testing, the costs and expenses of which shall be paid from the Escrow Funds pursuant to the terms and provisions of this Agreement and the Escrow Agreement.
- (g) Commence the design of the Sewer Facilities within three (3) months after the Effective Date; commence construction and installation of the Sewer Facilities within twelve (12) months after the Effective Date; and complete such design, construction, and installation, with operable connection to the City's waste water system within twenty-four (24) months after the Effective Date (the "Outside Completion Date").
- (h) Process and provide to the Owner monthly Applications for Payment as received from the Contractor, reviewed and approved by the Engineer. The Owner shall review and approve, with adjustments as necessary and without approval being unreasonably withheld, each Application for Payment and authorize the release of a portion of the Escrow Funds by the Escrow Agent for each payment. Items eligible for payment from the escrow account include, and are limited to the following, all as approved (if approved) by Owner:

Approved survey and design fees  
Approved contractor Applications for Payment  
Authorized third party testing fees  
Authorized electric and communication construction costs  
Approved change orders.

Attached to this Agreement is the current Estimated Project Costs schedule, which shall be finalized, then approved by Owner, with such final Estimated Project Costs schedule to be attached to this Agreement for budget purposes for the design, construction and installation of the Sewer Facilities and the payment of costs associated therewith.

All matters set for in this Section 1.3 are subject to and, to the extent applicable, governed by the Escrow Agreement. Further, with respect to any matter submitted or required to be submitted to Owner for Owner approval, consent, or concurrence under or in connection with this Agreement and the matters covered hereby, City shall submit its request in writing to Owner and Owner shall have fifteen (15) calendar days to approve, consent to, or concur with such documents or matters, or provide notice of issues to be resolved—in any event, such response must be in writing (as applicable, a "Response"). If Owner shall fail to timely provide a Response, Owner shall be conclusively deemed to have approved the

document(s) or matter(s) submitted for approval. Upon approval or deemed approval by Owner, City shall be fully authorized to proceed with the specific matter(s) so submitted to Owner for approval and so approved or deemed approved by Owner.

Notwithstanding anything to the contrary contained in this Agreement, it is expressly agreed as follows:

I. If the Water District expressly denies its approval of the Master Plan, the City may terminate this Agreement by giving written notice of termination to Owner within 15 days after such denial;

II. If the Water District has not fully and finally approved the Master Plan on or before September 1, 2009, Owner may terminate this Agreement by giving written notice of termination to the City at any time thereafter;

III. No costs shall be payable out of the Escrow Funds under the Escrow Agreement unless and until the Master Plan has been fully and finally approved by the Water District prior to any termination of this Agreement, and the Escrow Agreement is executed by all parties thereto and the Escrow Funds are deposited thereunder; and

IV. The City agrees to diligently pursue the approval of the Master Plan until the final action thereon is taken by the Water District. Upon the full and final approval of the Master Plan by the Water District, the City and Owner agree to promptly execute the Escrow Agreement (together with the other parties thereto), and to promptly commence work on the Sewer Facilities according to this Agreement.

1.4 *Development Regulations.* Provided the Owner's Property is annexed and zoning is approved as contemplated by this Agreement, all regulations pertaining to the development of the Owner's Property set forth in this Agreement and all exhibits hereto, together with the following regulations as modified by this Agreement, shall constitute the exclusive development standards and conditions applicable to the Owner's Property (the "Development Standards") and shall occur in accordance with the following regulations:

- (A) Lucas Subdivision Regulations adopted by the Lucas City Council on July 7, 2006, by Ordinance No. 2006-07-00567;
- (B) All uniform building, fire, plumbing, electrical, mechanical, energy, and property maintenance codes adopted by the City from time to time, including generally applicable local amendments thereto, and;
- (C) Development of the Property and Owner's South Tract shall be governed by and occur in accordance with the development regulations set forth in the City's Commercial District "C" zoning classification. Owner's West Tract shall be governed and controlled by the development regulations set forth in the City's "R-1.0 Single Family Residential District" zoning classification, as such classifications and regulations exist on the Effective Date, provided flood plain shall not be used in calculating the 1.0 acre minimum requirement for R-1.0 Single Family Residential District.

1.5 *Impact Fees.* Provided the Owner's Property is annexed and zoning is approved as contemplated by this Agreement, development of the Owner's Property shall be subject to payment to the City of all generally-applicable impact fees (the "Impact Fees") adopted by ordinance approved by the City Council pursuant to the requirements of Chapter 395 Texas Local Government Code. The Owner (or actual developer of individual parcels) shall pay to the City the Impact Fees for each parcel within

Owner's South Tract and/or Owner's West Tract within thirty (30) days of final plat approval. In the event sanitary sewer impact fees are required in connection with development of Owner's South Tract or Owner's West Tract, impact fee credit shall be given to the Owner (or, if and as any such credits are assigned by Owner, to the actual developer of individual parcels) in an aggregate amount equal to the documented design and construction cost of the Sewer Facilities.

## **ARTICLE II ZONING OF THE DEVELOPMENT PROPERTY**

2.1 The City agrees to consider zoning of Owner's South Tract as Commercial, and R-1 Residential for Owner's West Tract, according to a schedule which parallels the annexation process, with a goal of completing the annexation and zoning process on the same date. If the City does not approve the Proposed Zoning, Owner and City shall be relieved of all the obligations in this Agreement. Notwithstanding the foregoing, nothing in this Agreement shall be interpreted to require the City to approve zoning of any portion of the Owner's Property.

## **ARTICLE III NOTICE**

3.1 All notices required hereunder shall be in writing and served by a professional delivery service; overnight courier service; certified mail, return receipt requested; postage prepaid; facsimile; or email at the addresses or other applicable contact information set forth below, provided that any party hereto shall have the right to change such address by written notice to the other parties and any notices of default, resignation, or termination shall be delivered by at least one of professional delivery service; overnight courier service; or certified mail, return receipt requested, postage prepaid.

If Notice to Owner:

HHBC SpinCo, LLC  
4900 Thanksgiving Tower  
1601 Elm Street  
Dallas, Texas 75201  
ATTN: Donald D. Dillard  
Phone: (214) 616-7765  
Fax: (214) 922-1060  
email: [don@galatynpark.com](mailto:don@galatynpark.com)

With a Copy to:

William D. Miller  
Miller & Haney, L.L.P.  
512 Main Street  
Suite 901  
Fort Worth, Texas 76102  
Phone: (817) 332-3057  
Fax: (817) 332-3041  
email: [bmiller@millerhaney.com](mailto:bmiller@millerhaney.com)

If Notice to Lucas:

City Manager  
City of Lucas  
151 Country Club Road  
Lucas, Texas 75002  
ATTN: Robert Patrick  
Phone: (972) 727-8999  
Fax: (972) 727-0091  
email: rpatrick@lucastexas.us

With a Copy to:

Joe Gorfida, Jr.  
Nichols, Jackson, Dillard, Hager & Smith  
500 N. Akard  
Suite 1800  
Dallas, Texas 75201  
Phone: (214) 965-9900  
Fax: (214) 965-0010  
email: Jgorfida@njdhs.com

#### ARTICLE IV TERMINATION

4.1 This Agreement may be terminated as follows: (a) by the mutual written agreement of the Parties; (b) by either party providing written notice of such termination to the other Party if the other Party breaches any of the material terms and conditions of this Agreement, and such breach is not cured by such party within sixty (60) days after receipt of written notice thereof (or, if cure cannot be completed within said time period, if cure of such breach is not commenced within such time period and/or not thereafter diligently and continuously pursued to completion within 120 days after receipt of written notice thereof); (c) by City providing written notice to Owner if Owner suffers an event of bankruptcy or insolvency; (d) by either party providing written notice to the other party if any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable; or (e) according to the provisions of Section 1.3 of this Agreement. Owner and the City agree to execute a recordable form of release and termination instrument promptly upon any termination of this Agreement.

#### ARTICLE V MISCELLANEOUS

5.1 Assignment of Agreement. This Agreement may be assigned by Owner without the prior written consent of the City. This Agreement may not be assigned, in whole or in part, by the City.

5.2 Venue. This Agreement shall be construed under and in accordance with the laws of the State of Texas and is specifically performable in Collin County, Texas. Exclusive venue shall be in state district court in Collin County, Texas.

5.3 Savings / Severability. In case any one or more provisions contained in this Agreement shall be for any reason held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, 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.

5.4 Authority. Each of the parties represents and warrants to the other that they have the full power and authority to enter into and fulfill the obligations of this Agreement.

5.5 Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties to this Agreement.

5.6 Consideration. This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

5.7 Counterparts. This Agreement may be executed in a number of identical counterparts, each of which will be deemed an original for all purposes.

5.8 Representations. Each signatory represents this Agreement has been read by the party for which this Agreement is executed, and that such party has had an opportunity to confer with it legal counsel.

5.9 Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

5.10 Time is of the Essence. Time is of the essence in this Agreement.

5.11 Recordation, Releases, and Estoppel. Pursuant to the requirements of Section 212.72(c)(4) of the Texas Local Government Code, this Agreement, and all amendments to this Agreement, shall be recorded in the deed records of Collin County, Texas. This Agreement shall be binding upon: (1) the Property and, except as provided in this subsection, future owners of all or any portion of the Property ("Successors"); (2) the parties; (3) assignees; and (4) lenders. Notwithstanding the foregoing, however, this Agreement is not binding upon, and shall not constitute any encumbrance to title as to any end-buyer of a fully developed and improved lot within the Property except for land use and development regulations that apply to specific lots. For purposes of this Agreement: (A) the term "end-buyer" means any owner, developer, tenant, user, or occupant; (B) the term "fully developed and improved lot" means any lot, regardless of the use, for which a final plat has been approved by the City; and (C) the term "land use and development regulation that apply to specific lots" mean the Development Standards applied in accordance with this Agreement. A successor is not a party to this Agreement unless this Agreement is amended to add the successor as a party (which amendment shall be signed by the successor).

5.12 Termination. In the event this Agreement is terminated as provided in this Agreement or is terminated pursuant to other provisions, or is terminated by mutual agreement of the parties, the parties must promptly execute and file of record, in the Official Public Records of Real Property of Collin County, Texas, a document confirming the termination of this Agreement, and such other documents as may be appropriate to reflect the basis upon which such termination occurred.

5.13 Binding Effect. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and authorized assigns. This Agreement only inures to the benefit of, and may only be enforced by, the parties, assignees, lender, successors, and the City. No other person or entity is a third-party beneficiary of this Agreement.

5.14 Authority. The City represents and warrants that this Agreement has been approved by the City Council of the City in accordance with all applicable public meeting and public notice requirements (including, but not limited to, notices required by the Texas Open Meetings Act) and that the individual executing this Agreement on behalf of the City has been authorized to do so. Owner represents and warrants that this Agreement has been approved on behalf of Owner and that the individual executing this Agreement on behalf of Owner has been authorized to do so. Each assignee, lender, or successor who becomes a party to this Agreement represents and warrants that this Agreement has been approved by appropriate action of such assignee, lender, or successor and that the individual executing this Agreement on behalf of such assignee, lender, or successor has been authorized to do so.

5.15 Governmental Powers; Waiver of Immunity. By its execution of this Agreement, the City does not waive or surrender any of its governmental powers, immunities, or rights except as to the enforcement of this Agreement.

5.16 Expenses. Unless otherwise specifically provided herein, all expenses shall be paid by the party that incurred them without expectation of reimbursement or cost sharing.

5.17 No Joint Venture. 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, nor to cause City to be deemed to be a constituent partner of the Owner.

5.18 Legal Construction. In case 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 enforceability shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

5.19 Multiple Counterparts and Duplicate Originals. This Agreement may be executed in any number of multiple counterparts and/or duplicate originals, each of which shall be deemed an original and all of which considered together shall be deemed one and the same Agreement.

5.20 Effective Date. The Effective Date of this Agreement shall be the date on which this Agreement is approved by the City Council of the City, which date shall be inserted in the space provided for it at the top of the first page of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective for all purposes as of the Effective Date.

CITY OF LUCAS

By: Bill Carmickle  
Bill Carmickle, Mayor

APPROVED AS TO FORM:

By: Joe Gorfida, Jr.  
Joe Gorfida, Jr., City Attorney

THE STATE OF TEXAS §

COUNTY OF Collin §

The foregoing instrument was acknowledged before me this 24 day of June, 2009, by Bill Carmickle, Mayor of The City of Lucas, a municipal corporation existing under the laws of the State of Texas, in such capacity on behalf of such municipal corporation.



Jennifer Faircloth  
Notary Public, State of Texas

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective for all purposes as of the Effective Date

HHEC SPINCO, LLC,  
A Delaware limited liability company

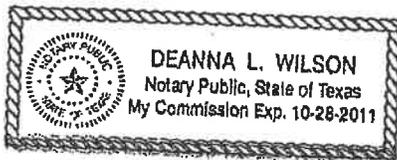
By: Ellen Hunt Flowers, Manager  
Ellen Hunt Flowers  
Manager and Chairman of the Board *& Chairman*

THE STATE OF TEXAS §

§

COUNTY OF Dallas §

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of June, 2009, by Ellen Hunt Flowers, Manager and Chairman of the Board of HHEC SpinCo, LLC, a Delaware limited liability company, in such capacity on behalf of such limited liability company.



Deanna L. Wilson  
Notary Public, State of Texas

**EXHIBIT A**

**DESCRIPTION OF OWNER'S PROPERTY**

**DESCRIPTION OF PROPERTY SURVEYED  
427.347 ACRES**

**JAMES ANDERSON SURVEY, No. 17  
JOHN MCKINNEY SURVEY, ABSTRACT No. 596  
I.&G.N. RY. CO. SURVEY, ABSTRACT No. 1060  
COLLIN COUNTY, TEXAS**

**BEING** a tract of land situated in the James Anderson Survey, Abstract Number 17, the John McKinney Survey, Abstract Number 596, and the I.&G.N. RY. CO. Survey, Abstract Number 1060, Collin County, Texas, and being part of a called 427.600 acre tract of land described in a deed to HHEC SpinCo, LLC, as recorded in Clerk's File Number 20080902001058900, of the Land Records of Collin County, Texas, and being more particularly described as follows:

**BEGINNING** at a 1/2-inch iron rod found on the northerly right-of-way line of Parker Road (FM No. 2514, a 100-foot wide public right-of-way) for the southerly common corner of the beforementioned 427.600 acre tract and Lot 29 of KIRKLAND ESTATES, an addition to the City of Lucas, Collin County, Texas, according to the plat thereof recorded in Cabinet A, Slide 46 of the Plat Records of Collin County, Texas;

**THENCE** leaving the northerly right-of-way line of Parker Road with the westerly line of the 427.600 acre tract, the following courses and distances to wit:

- North 01°03'35" West, a distance of 1295.53 feet to a 1/2-inch iron rod found for the southeasterly corner of a called 15.00 acre tract of land described in deed to Young Dean Homestead, Inc., recorded in Volume 5167, Page 3443 of the Land Records of Collin County, Texas;
- North 00°46'37" West, continuing with the westerly line of the 427.600 acre tract and partially with the easterly line of the 15.00 acre tract, a distance of 1615.78 feet to a 5/8-inch iron rod with "KHA" cap set for the easterly common corner of the 427.600 acre tract and a called 29.185 acre tract of land described in deed to Young Dean Homestead, Inc., recorded in Volume 5167, Page 3443 of the Land Records of Collin County, Texas;
- South 89°15'01" West, with the common line of the 427.600 acre tract and the 29.185 acre tract, a distance of 482.00 feet to a 1/2-inch iron rod found for the southerly common corner of the 427.600 acre tract and a called 15.961 acre tract of land described in deed to Norris Ranch, Ltd., recorded in Volume 5878, Page 2019 of the Land Records of Collin County, Texas;

—North 01°07'25" West, leaving the northerly line of the 29.185 acre tract, passing at a distance of 594.95 feet a 5/8-inch iron rod found for the easterly common corner of the 15.961 acre tract and a called 10.00 acre tract of land described in deed to Cortesano Brothers, LP (a.k.a. Outback Custom Homes), recorded under Instrument Number 20060823001212270 of the Official Public Records of Collin County, Texas, passing at a distance of 2000.06 feet a 1/2-inch iron rod found for the easterly common corner of a called 18.463 acre tract of land described in deed to Stinson 1415, LLC, recorded under Instrument Number 20050008569 of the Official Public Records of Collin County, Texas, and a called 10.185 acre tract of land described in deed to Richard G. Phillips et ux, recorded in County Clerk's File Number 96-0077102 of the Deed Records of Collin County, Texas, passing at a distance of 2370.06 feet a PK Nail found for the easterly common corner of the 10.185 acre tract and a called 9.973 acre tract of land described in deed to Roger A. Stevens et ux, recorded in Volume 5476, Page 4793 of the Deed Records of Collin County, Texas, continuing in all a distance of 2730.35 feet to a 1/2-inch iron rod found in the southerly line of a called 12.0 acre tract of land described as Tract 1 in deed to Venita Ellis, recorded in County Clerk's File Number 96-0025352 of the Deed Records of Collin County, Texas, for the northerly common corner of the 9.973 acre tract and the 427.600 acre tract;

**THENCE** with the northerly line of the 427.600 acre tract, the following courses and distances to wit:

—South 89°17'35" East, passing at a distance of 156.96 feet a 1/2-Inch iron rod found for the southerly common corner of the 12.0 acre tract and Lot 11 of BROOKHAVEN RANCH ESTATES, an addition to the City of Lucas, Collin County, Texas, according to the plat thereof recorded in Volume 6, Page 71 of the Deed Records of Collin County, Texas, continuing in all a distance of 1065.97 feet to a 5/8-inch iron rod with "KHA" cap set for corner;

—North 84°12'23" East, a distance of 435.32 feet to a 5/8-inch iron rod found in the westerly line of a called 14.5 acre tract of land described as Tract I in deed to Guardian Mortgage Company, Inc., recorded in County Clerk's File Number 93-0046259 of the Deed Records of Collin County, Texas, for the easterly common corner of the 427.600 acre tract and Lot 15 of BROOKHAVEN RANCH ESTATES;

**THENCE** South 00°38'53" East, with the common line of the 14.5 acre tract and the 427.600 acre tract, a distance of 352.45 feet to a 5/8-inch iron rod with "KHA" cap set for the westerly common corner of the 14.5 acre tract and the beforementioned 93.442 acre tract;

**THENCE** North 88°48'31" East, along the common line of said 427.600 acre tract of land and said 14.5 acre tract of land, passing a 1/2-inch iron rod found at the common southerly corner of said 24.45 acre tract of land and said 14.5 acre tract of land, at a distance of 923.03 feet and continuing for a total distance of 1,803.45;

**THENCE** along the southwesterly right-of-way line of said Southview Drive and the easterly line of the subject tract the following courses and distances to wit:

- South 17°38'22" East, a distance of 307.29 feet to a 5/8-inch iron rod with "KHA" cap set for corner at the beginning of a curve to the right, through a central angle of 12°25'00", a radius of 909.72 feet and a chord bearing and distance of South 11°25'52" East, 196.76 feet;
- Southeasterly, along said curve to the right, an arc length of 197.15 feet to a 5/8-inch iron rod with "KHA" cap set for corner;
- South 05°13'22" East, a distance of 1,474.10 feet to a 5/8-inch iron rod with "KHA" cap set for corner at the beginning of a curve to the right, through a central angle of 3°32'00", a radius of 2820.33 feet and a chord bearing and distance of South 03°27'22" East, 173.90 feet;
- Southeasterly, along said curve to the right, an arc length of 173.92 feet to a 5/8-inch iron rod with "KHA" cap set for corner;
- South 01°41'22" East, a distance of 1108.80 feet to a 5/8-inch iron rod with "KHA" cap set for corner at the beginning of a curve to the left, through a central angle of 28°33'00", a radius of 617.96 feet and a chord bearing and distance of South 15°57'53" East, 304.75 feet
- Southeasterly, along said curve to the left, an arc length of 307.92 feet to a 5/8-inch iron rod with "KHA" cap set for corner;
- South 30°14'22" East, a distance of 290.04 feet to a 5/8-inch iron rod with "KHA" cap set for corner;

**THENCE** leaving the southwesterly right-of-way line of said Southview Drive, along the common line of the subject tract and a 2.00 acre tract of land described in a deed to Merle D. Harter, et ux, as recorded in Volume 4645, Page 491 of the Deed Records of Collin County, Texas the following courses and distances to wit:

- South 87°16'23" West, a distance of 168.90 feet to a 5/8-inch iron rod with "KHA" cap set for corner;
- South 01°37'05" East, a distance of 603.16 feet to a 5/8-inch iron rod with "KHA" cap set for corner;
- North 89°01'09" East, a distance of 410.29 feet to a 5/8-inch iron rod with "KHA" cap set in the southwesterly right-of-way line of said Southview Drive for corner;

**THENCE** along the southwesterly right-of-way line of said Southview Drive and the easterly line of subject tract the following courses and distances to wit:

- South  $01^{\circ}59'22''$  East, a distance of 618.69 feet to a 5/8-inch iron rod with "KHA" cap set for corner;
- South  $00^{\circ}36'16''$  East, a distance of 443.18 feet to a 5/8-inch iron rod with "KHA" cap set for the northern corner of a corner clip at the intersection of said Southview Drive and Parker Road;

**THENCE** South  $44^{\circ}41'48''$  West, along said corner clip, a distance of 66.46 feet to a 5/8-inch iron rod with "KHA" cap set for the south corner of said corner clip;

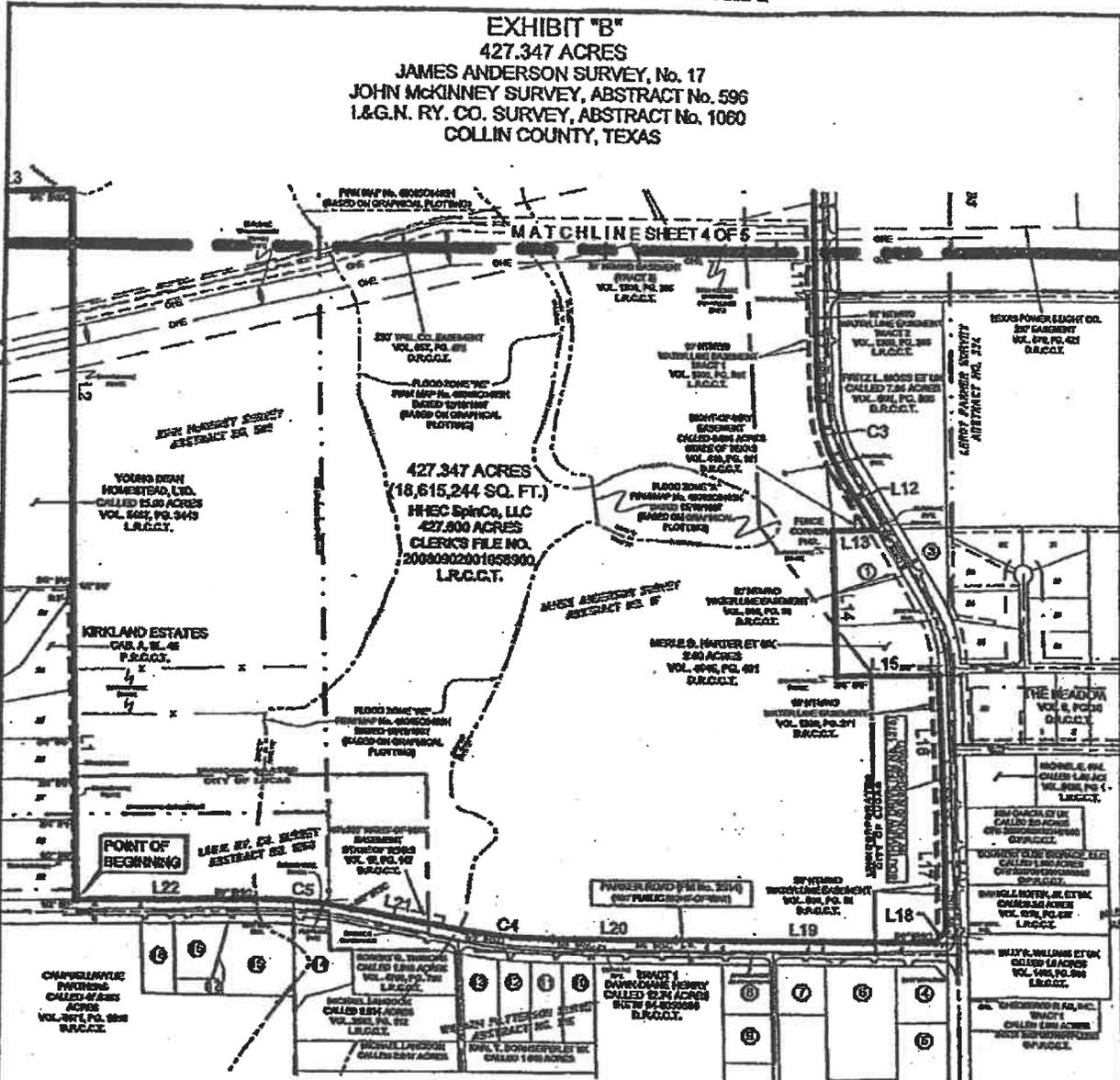
**THENCE** leaving said corner clip, along the northerly right-of-way line of said Parker Road and the southerly line of said 427.600 acre tract the following courses and distances to wit:

- North  $89^{\circ}53'12''$  West, a distance of 1047.65 feet to a 5/8-inch iron rod with "KHA" cap set for corner;
- South  $89^{\circ}38'48''$  West, a distance of 512.30 feet to a 5/8-inch iron rod with "KHA" cap set for corner at the beginning of a curve to the right, through a central angle of  $11^{\circ}09'00''$ , a radius of 1860.03 feet and a chord bearing and distance of North  $84^{\circ}46'42''$  West, 361.40 feet;
- Northwesterly, along said curve to the right, an arc length of 361.97 feet to a 5/8-inch iron rod with "KHA" cap set for corner;
- North  $79^{\circ}12'12''$  West, a distance of 462.90 feet to a 5/8-inch iron rod with "KHA" cap set for corner at the beginning of a curve to the left, through a central angle of  $11^{\circ}41'57''$ , a radius of 1960.00 feet and a chord bearing and distance of North  $85^{\circ}03'12''$  West, 399.51 feet;
- Northwesterly, along said curve to the left, an arc length of 400.21 feet to a 5/8-inch iron rod with "KHA" cap set for corner;
- South  $89^{\circ}05'48''$  West, a distance of 729.50 feet to the **POINT OF BEGINNING** and containing 427.347 acres (18,615,244 square feet) of land, more or less.

MAP DEPICTING OWNER'S PROPERTY

EXHIBIT "B"  
427.347 ACRES

JAMES ANDERSON SURVEY, No. 17  
JOHN MCKINNEY SURVEY, ABSTRACT No. 596  
I.&G.N. RY. CO. SURVEY, ABSTRACT No. 1060  
COLLIN COUNTY, TEXAS

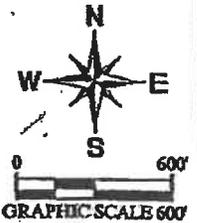


NOTES:

1. Basis of bearing is the north right-of-way line of Parker Road (FM No. 2514), having as one north right-of-way line a bearing of "North 89°56'33" West".
2. The location of the Abstract lines shown on this survey are based on graphical plotting only and may not represent its actual location.
3. The location of the City Limits lines shown on this survey are based on graphical plotting only and may not represent its actual location.

LEGEND:

IRSC = "KHA" CAPPED IRON ROD SET  
ESMT. = EASEMENT  
D.R.T.C.T. = DEED RECORDS OF DENTON COUNTY, TEXAS  
P.R.T.C.T. = PLAT RECORDS OF TARRANT COUNTY, TEXAS



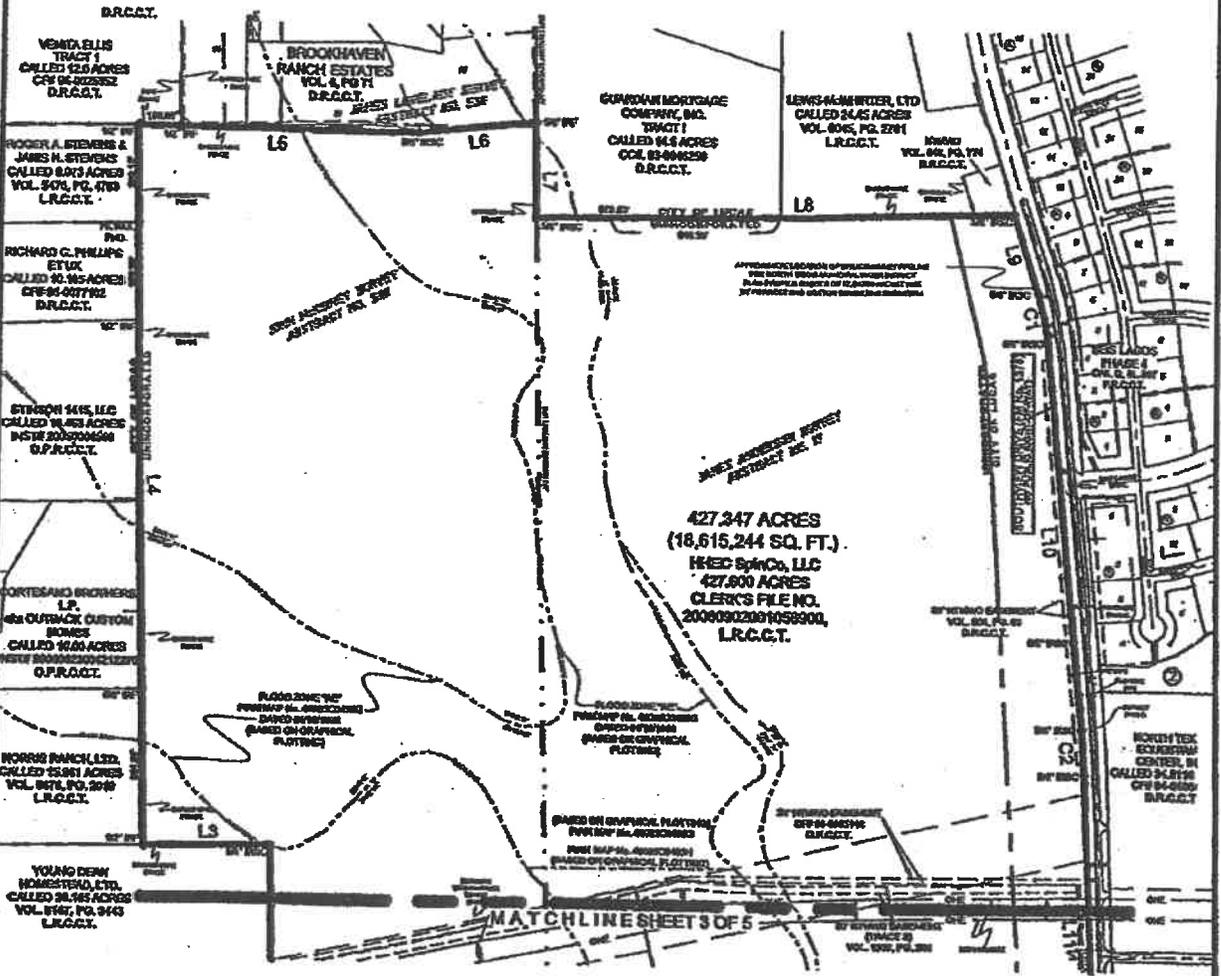
		<b>Kimley-Horn and Associates, Inc.</b> 12300 East Central Drive, Suite 1800 Dallas, Texas 75241 Tel. No. (972) 778-1300 Fax No. (972) 239-3423	
Scale: 1" = 600'	Drawn by: KVG	Checked by: TWB	Date: 8/26/2009
		Project No. 067012038	Sheet No. 3 OF 5

MAP DEPICTING OWNER'S PROPERTY

EXHIBIT "B"

427.347 ACRES

JAMES ANDERSON SURVEY, No. 17  
 JOHN MCKINNEY SURVEY, ABSTRACT No. 598  
 L.&G.N. RY. CO. SURVEY, ABSTRACT No. 1060  
 COLLIN COUNTY, TEXAS

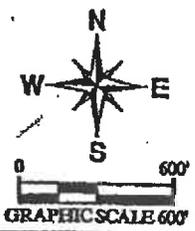


NOTES:

1. Basis of bearing is the north right-of-way line of Parker Road (FM No. 2614), having as one north right-of-way line a bearing of "North 89°56'33" West".
2. The location of the Abstract lines shown on this survey are based on graphical plotting only and may not represent its actual location.
3. The location of the City Limits lines shown on this survey are based on graphical plotting only and may not represent its actual location.

LEGEND:

IRSC = "TKH" CAPPED IRON ROD SET  
 ESMT. = EASEMENT  
 D.R.T.C.T. = DEED RECORDS OF DENTON COUNTY, TEXAS  
 P.R.T.C.T. = PLAT RECORDS OF TARRANT COUNTY, TEXAS



**Kimley-Horn and Associates, Inc.**  
 22200 Park Central Drive, Suite 1000  
 Dallas, Texas 75252  
 Tel. No. (972) 770-1300  
 Fax No. (972) 239-3620

Scale 1" = 600'	Drawn by RVO	Checked by TWM	Date 02/26/2009	Project No. 06301333	Sheet No. 4 OF 5
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SURVEYED BY: [Name] [Title] [Firm]  
 CHECKED BY: [Name] [Title] [Firm]  
 DATE: [Date]

**EXHIBIT C**

**DESCRIPTION OF PROPERTY**

**DESCRIPTION OF PROPERTY SURVEYED  
60.000 ACRES  
JAMES ANDERSON SURVEY, ABSTRACT NO. 17  
COLLIN COUNTY, TEXAS**

BEING a tract of land situated in the James Anderson Survey, Abstract No. 17, Collin County, Texas, and being part of a called 427.600 acre tract of land described in a deed to HHEC SpinCo, LLC, as recorded in Clerk's File Number 20080902001058900, of the Land Records of Collin County, Texas, and being more particularly described as follows:

BEGINNING at a 5/8-inch Iron rod with "KHA" cap set at the common easterly corner of said 427.600 acre tract of land and a called 24.45 acre tract of land described in a deed to Lewis-McWhirter, LTD, as recorded in Volume 6045, Page 2781, of the Land Records of Collin County, Texas, same being on the southwesterly right of way line of Southview Drive (FM No. 1378), a called 90-foot public right of way;

THENCE South  $17^{\circ}38'22''$  East, along the southwesterly right of way line of said Southview Drive (FM No. 1378), a distance of 307.29 feet to a 5/8-inch iron rod with "KHA" cap set for corner at the beginning of a curve to the right, through a central angle of  $12^{\circ}25'00''$ , a radius of 909.72 feet and a chord bearing and distance of South  $11^{\circ}25'52''$  East, 196.76 feet;

THENCE along said curve to the right, an arc length of 197.15 feet to a 5/8-inch iron rod with "KHA" cap set for corner;

THENCE South  $05^{\circ}13'22''$  East, continuing along the southwesterly right of way line of Southview Drive (FM No. 1378), a distance of 1,142.09 feet to a 5/8-inch iron rod with "KHA" cap set for corner;

THENCE South  $88^{\circ}48'31''$  West, departing the southwesterly right of way line of Southview Drive (FM No. 1378), a distance of 1,426.02 feet to a 5/8-inch iron rod with "KHA" cap set for corner;

THENCE North  $27^{\circ}45'23''$  West, a distance of 222.24 feet to a 5/8-inch iron rod with "KHA" cap set for corner;

THENCE North  $55^{\circ}39'13''$  West, a distance of 89.85 feet to a 5/8-inch iron rod with "KHA" cap set for corner;

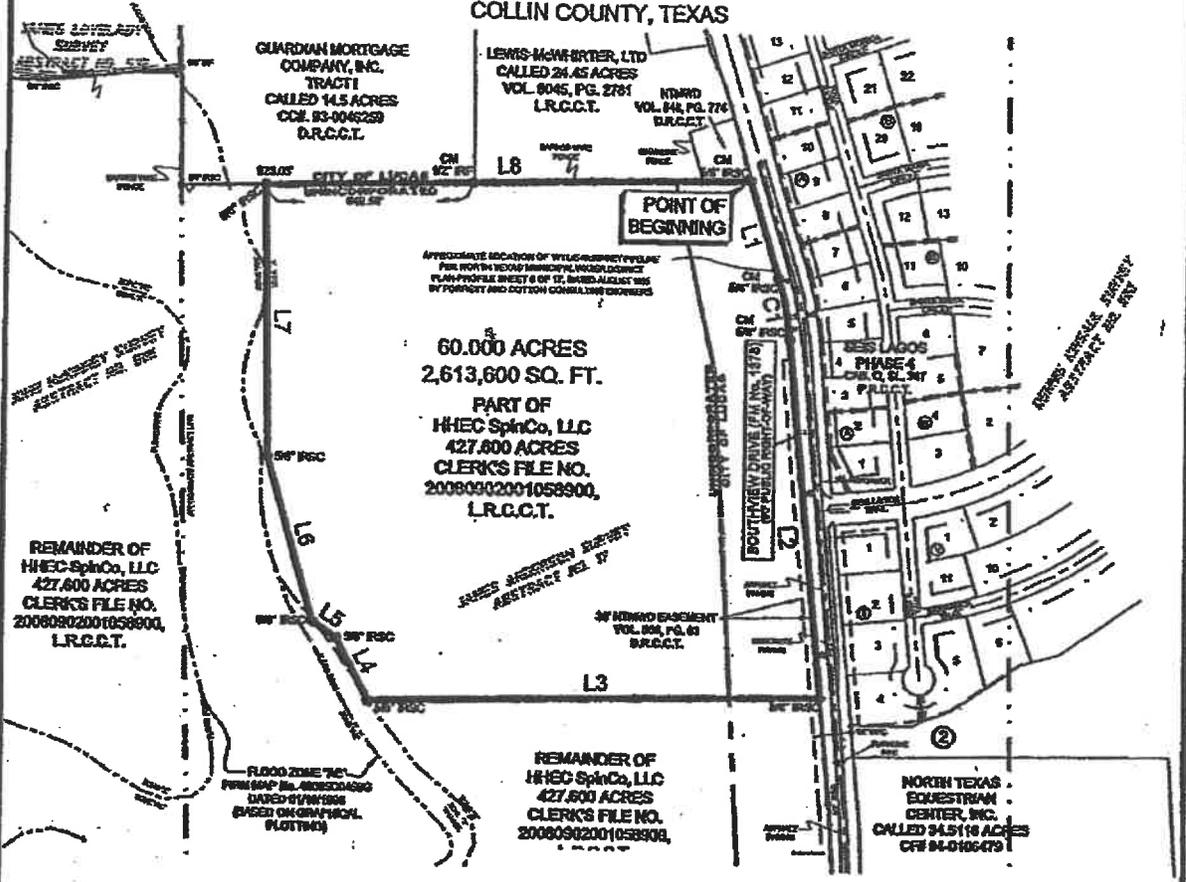
THENCE North  $15^{\circ}26'35''$  West, a distance of 543.34 feet to a 5/8-inch iron rod with "KHA" cap set for corner;

THENCE North  $01^{\circ}11'29''$  West, a distance of 850.00 feet to a 5/8-inch iron rod with "KHA" cap set for corner on the common line of said 427.600 acre tract of land and a called 14.5 acre tract of land described in a deed to Guardian Mortgage Company, Inc, as recorded in County Clerk's File Number 93-0046259, of the Land Records of Collin County, Texas;

THENCE North  $88^{\circ}48'31''$  East, along the common line of said 427.600 acre tract of land and said 14.5 acre tract of land, passing a 1/2-inch iron rod found at the common southerly corner of said 24.45 acre tract of land and said 14.5 acre tract of land, at a distance of 649.59 feet and continuing for a total distance of 1,530.00 feet to the POINT OF BEGINNING and containing 60.000 acres or 2,613,600 sq. ft. of land, more or less.

DEPICTION OF PROPERTY

EXHIBIT "D"  
60.000 ACRES  
JAMES ANDERSON SURVEY, ABSTRACT NO. 17  
COLLIN COUNTY, TEXAS

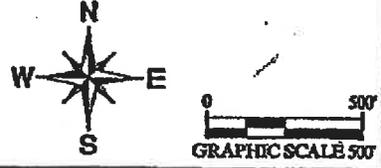


CURVE TABLE					
CURVE	DELTA	RADIUS	LENGTH	CHORD BEARING	CHORD
C1	12°25'00"	809.72	197.15	S11°25'52"E	198.76

LINE TABLE		
LINE	LENGTH	BEARING
L1	307.29	S17°38'22"E
L2	1142.09	S05°19'22"E
L3	1426.02	S88°48'31"W
L4	222.24	N27°45'23"W
L5	89.85	N55°39'13"W
L6	543.34	N15°26'35"W
L7	850.00	N01°11'29"W
L8	1530.00	N88°48'31"E

- NOTES:**
1. Basis of bearing is the north right-of-way line of Paster Road (FM No. 2514), having as one north right-of-way line a bearing of "North 89°56'33" West".
  2. The location of the Abstract lines shown on this survey are based on graphical plotting only and may not represent its actual location.
  3. The location of the City Limits lines shown on this survey are based on graphical plotting only and may not represent its actual location.

**LEGEND:**  
 IRSC = "1/4" x 1/4" CAPPED IRON ROD SET  
 ESMT. = EASEMENT  
 D.R.T.C.T. = DEED RECORDS OF DENTON COUNTY, TEXAS  
 P.R.T.C.T. = PLAT RECORDS OF TARRANT COUNTY, TEXAS



**Kimley-Horn and Associates, Inc.**  
 12200 Park Central Drive, Suite 1609  
 Dallas, Texas 75251  
 Tel. No. (972) 770-1300  
 Fax No. (972) 259-9620

Scale 1" = 500'	Drawn by RVC	Checked by TWM	Date 05/24/2009	Project No. 0601203	Sheet No. 2 OF 2
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Surveyed by: [Name] on [Date] at [Location].  
 Checked by: [Name] on [Date].  
 Approved by: [Name] on [Date].  
 Licensed Professional Surveyor, State of Texas, No. [Number].  
 License expires on [Date].

**EXHIBIT E**

**DESCRIPTION OF OWNER'S SOUTH TRACT**

**DESCRIPTION OF PROPERTY SURVEYED  
128.633 ACRES  
JAMES ANDERSON SURVEY, No. 17  
JOHN MCKINNEY SURVEY, ABSTRACT No. 596  
COLLIN COUNTY, TEXAS**

BEING a tract of land situated in the James Anderson Survey, Abstract No. 17, Collin County, Texas, and being part of a called 427.600 acre tract of land described in a deed to HHEC SpinCo, LLC, as recorded in Clerk's File Number 20080902001058900, of the Land Records of Collin County, Texas, and being more particularly described as follows:

COMMENCING at a 1/2-inch iron rod found in the northerly right-of-way line of Parker Road (FM No. 2514, a 100-foot wide public right-of-way) for the southerly common corner of the said 427.600 acre tract and Lot 29 of KIRKLAND ESTATES, an addition to the City of Lucas, Collin County, Texas, according to the plat thereof recorded in Cabinet A, Slide 46 of the Plat Records of Collin County, Texas;

THENCE along the northerly right-of-way line of said Parker Road and the southerly line of said 427.600 acre tract the following courses and distances to wit:

North 89°05'48" East, a distance of 729.50 feet to a 5/8-inch iron rod with "KHA" cap set for corner at the beginning of a curve to the right, through a central angle of 11°41'57", a radius of 1960.00 feet and a chord bearing and distance of South 85°03'12" East, 399.51 feet;

Southeasterly, along said curve to the right, an arc length of 400.21 feet to a 5/8-inch iron rod with "KHA" cap set for corner;

South 79°12'12" East, a distance of 356.46 feet to a 5/8-inch iron rod with "KHA" cap set for corner, same being the POINT OF BEGINNING;

THENCE leaving the northerly right-of-way line of said Parker Road and the southerly line of said 427.600 acre tract, through said 427.600 acre tract the following courses and distances to wit:

North 10°48'07" East, a distance of 970.07 feet to a 5/8-inch iron rod with "KHA" cap set for corner;

North 15°18'07" East, a distance of 867.16 feet to a 5/8-inch iron rod with "KHA" cap set for corner;

North 00°21'11" West, a distance of 947.53 feet to a 5/8-inch iron rod with "KHA" cap set for corner;

North 14°50'56" West, a distance of 814.04 feet to a 5/8-inch iron rod with "KHA" cap set for corner;

North 27°45'23" West, a distance of 297.96 feet to a 5/8-inch iron rod with "KHA" cap set for corner;

North 88°48'31" East, a distance of 1426.02 feet to a 5/8-inch iron rod with "KHA" cap set in the southwesterly right-of-way line of Southview Drive for the northeastern corner of subject tract;

THENCE along the southwesterly right-of-way line of said Southview Drive (FM No. 1378, a 90-foot wide public right-of-way) and the easterly line of subject tract the following courses and distances to wit:

South 05°13'22" East, a distance of 332.01 feet to a 5/8-inch iron rod with "KHA" cap set for corner at the beginning of a curve to the right, through a central angle of 3°32'00", a radius of 2820.33 feet and a chord bearing and distance of South 03°27'22" East, 173.90 feet;

Southeasterly, along said curve to the right, an arc length of 173.92 feet to a 5/8-inch iron rod with "KHA" cap set for corner;

South 01°41'22" East, a distance of 1108.80 feet to a 5/8-inch iron rod with "KHA" cap set for corner at the beginning of a curve to the left, through a central angle of 28°33'00", a radius of 617.96 feet and a chord bearing and distance of South 15°57'53" East, 304.75 feet

Southeasterly, along said curve to the left, an arc length of 307.92 feet to a 5/8-inch iron rod with "KHA" cap set for corner;

South 30°14'22" East, a distance of 290.04 feet to a 5/8-inch iron rod with "KHA" cap set for corner;

THENCE leaving the southwesterly right-of-way line of said Southview Drive, along the common line of the subject tract and a 2.00 acre tract of land described in a deed to Merle D. Harter, et ux, as recorded in Volume 4645, Page 491 of the Deed Records of Collin County, Texas the following courses and distances to wit:

South 87°16'23" West, a distance of 168.90 feet to a 5/8-inch iron rod with "KHA" cap set for corner;

South 01°37'05" East, a distance of 603.16 feet to a 5/8-inch iron rod with "KHA" cap set for corner;

North 89°01'09" East, a distance of 410.29 feet to a 5/8-inch iron rod with "KHA" cap set in the southwesterly right-of-way line of said Southview Drive for corner;

THENCE along the southwesterly right-of-way line of said Southview Drive and the easterly line of subject tract the following courses and distances to wit:

South 01°59'22" East, a distance of 618.69 feet to a 5/8-inch iron rod with "KHA" cap set for corner;

South 00°36'16" East, a distance of 443.18 feet to a 5/8-inch iron rod with "KHA" cap set for the northern corner of a corner clip at the intersection of said Southview Drive and Parker Road;

THENCE South 44°41'48" West, along said corner clip, a distance of 66.46 feet to a 5/8-inch iron rod with "KHA" cap set for the south corner of said corner clip;

THENCE leaving said corner clip, along the northerly right-of-way line of said Parker Road and the southerly line of said 427.600 acre tract the following courses and distances to wit:

North 89°53'12" West, a distance of 1047.65 feet to a 5/8-inch iron rod with "KHA" cap set for corner;

South 89°38'48" West, a distance of 512.30 feet to a 5/8-inch iron rod with "KHA" cap set for corner at the beginning of a curve to the right, through a central angle of 11°09'00", a radius of 1860.03 feet and a chord bearing and distance of North 84°46'42" West, 361.40 feet;

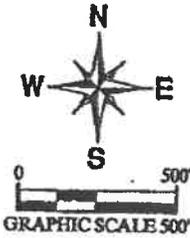
Northwesterly, along said curve to the right, an arc length of 361.97 feet to a 5/8-inch iron rod with "KHA" cap set for corner;

North 79°12'12" West, a distance of 106.44 feet to the POINT OF BEGINNING and containing 128.633 acres or 5,603,244 square feet of land, more or less.

DEPICTION OF OWNER'S SOUTH TRACT

EXHIBIT "F"  
128.633 ACRES

JAMES ANDERSON SURVEY, No. 17  
JOHN MCKINNEY SURVEY, ABSTRACT No. 596  
COLLIN COUNTY, TEXAS

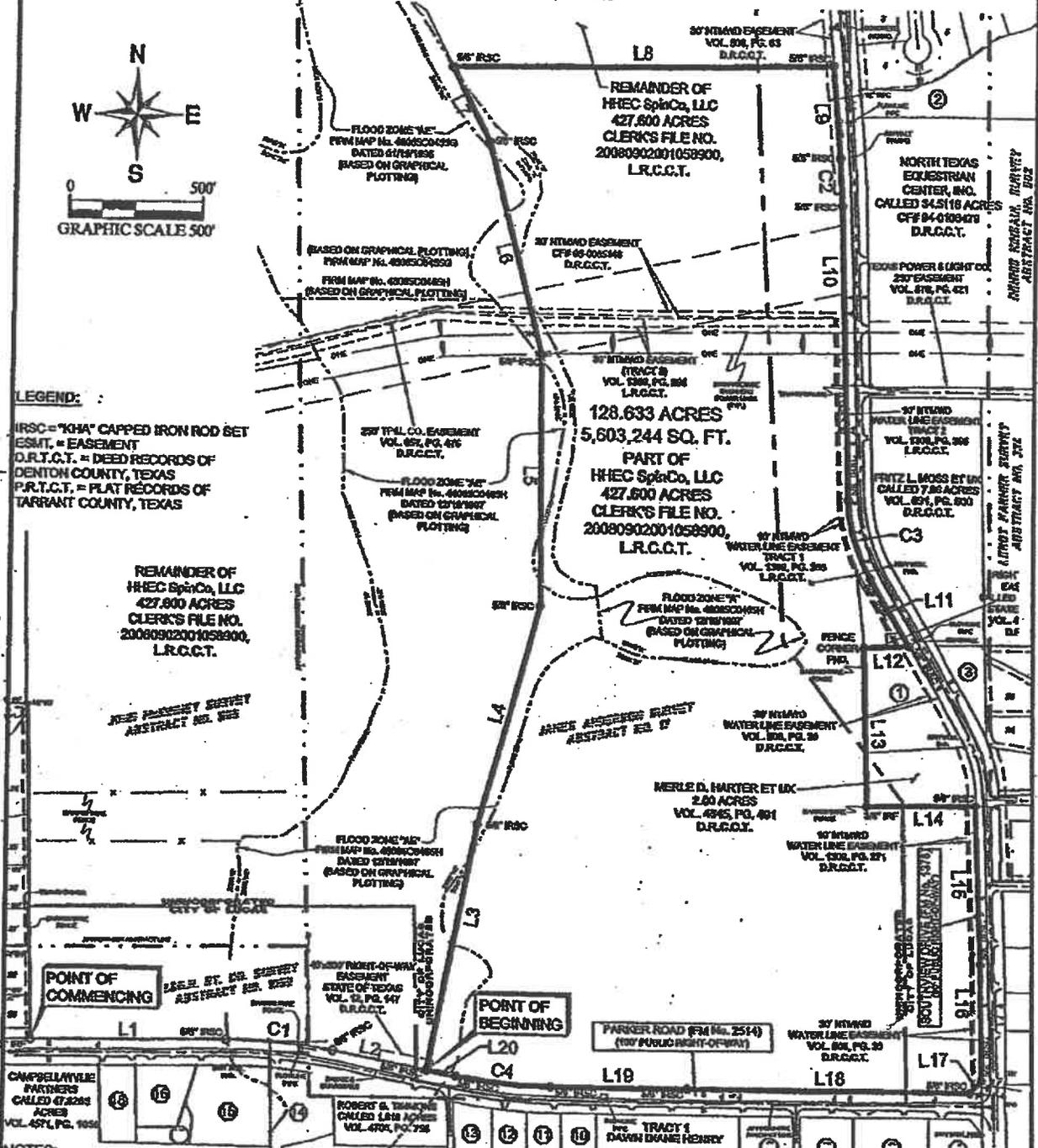


LEGEND:

IRSC = "1/4" CAPPED IRON ROD SET  
E. = EASEMENT  
D.R.T.C.T. = DEED RECORDS OF DENTON COUNTY, TEXAS  
P.R.T.C.T. = PLAT RECORDS OF TARRANT COUNTY, TEXAS

REMAINDER OF HHEC SpnCo, LLC  
427.600 ACRES  
CLERK'S FILE NO. 20080902001058900,  
L.R.C.C.T.

128.633 ACRES  
5,603,244 SQ. FT.  
PART OF HHEC SpnCo, LLC  
427.600 ACRES  
CLERK'S FILE NO. 20080902001058900,  
L.R.C.C.T.



- NOTES:
1. Basis of bearing is the north right-of-way line of Parker Road (FM No. 2514), having as one north right-of-way line a bearing of "North 89°50'33" West".
  2. The location of the Abstract lines shown on this survey are based on graphical plotting only and may not represent its actual location.
  3. The location of the City Limits lines shown on this survey are based on graphical plotting only and may not represent its actual location.

**Kimley-Horn and Associates, Inc.**  
12700 Park Central Drive, Suite 1000  
Dallas, Texas 75221  
Tel. No. (972) 770-1300  
Fax No. (972) 249-3620

Scale 1" = 500'	Drawn by RVC	Checked by TWM	Date 05/26/2009	Project No. 05301208	Sheet No. 3 OF 4
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DRAWN BY: KIMLEY-HORN AND ASSOCIATES, INC.  
 CHECKED BY: TERRY W. MUMFORD  
 DATE: 05/26/2009  
 PROJECT NO.: 05301208  
 SHEET NO.: 3 OF 4

**EXHIBIT G**

**DESCRIPTION OF OWNER'S WEST TRACT**

**DESCRIPTION OF PROPERTY SURVEYED**

**238.714 ACRES**

**JAMES ANDERSON SURVEY, No. 17  
JOHN MCKINNEY SURVEY, ABSTRACT No. 596  
I.&G.N. RY. CO. SURVEY, ABSTRACT No. 1060  
COLLIN COUNTY, TEXAS**

**BEING** a tract of land situated in the James Anderson Survey, Abstract No. 17, the John McKinney Survey, Abstract Number 596, and the I.&G.N. RY. CO. Survey, Abstract Number 1060, Collin County, Texas, and being part of a called 427.600 acre tract of land described in a deed to HHEC SpinCo, LLC, as recorded in Clerk's File Number 20080902001058900, of the Land Records of Collin County, Texas, and being more particularly described as follows:

**BEGINNING** at a 1/2-inch iron rod found on the northerly right-of-way line of Parker Road (FM No. 2514, a 100-foot wide public right-of-way) for the southerly common corner of the beforementioned 427.600 acre tract and Lot 29 of KIRKLAND ESTATES, an addition to the City of Lucas, Collin County, Texas, according to the plat thereof recorded in Cabinet A, Slide 46 of the Plat Records of Collin County, Texas;

**THENCE** leaving the northerly right-of-way line of Parker Road with the westerly line of the 427.600 acre tract, the following courses and distances to wit:

North 01°03'35" West, a distance of 1295.53 feet to a 1/2-inch iron rod found for the southeasterly corner of a called 15.00 acre tract of land described in deed to Young Dean Homestead, Inc., recorded in Volume 5167, Page 3443 of the Land Records of Collin County, Texas;

North 00°46'37" West, continuing with the westerly line of the 427.600 acre tract and partially with the easterly line of the 15.00 acre tract, a distance of 1615.78 feet to a 5/8-inch iron rod with "KHA" cap set for the easterly common corner of the 427.600 acre tract and a called 29.185 acre tract of land described in deed to Young Dean Homestead, Inc., recorded in Volume 5167, Page 3443 of the Land Records of Collin County, Texas;

South 89°15'01" West, with the common line of the 427.600 acre tract and the 29.185 acre tract, a distance of 482.00 feet to a 1/2-inch iron rod found for the southerly common corner of the 427.600 acre tract and a called 15.961 acre tract of land described in deed to Norris Ranch, Ltd., recorded in Volume 5878, Page 2019 of the Land Records of Collin County, Texas;

North 01°07'25" West, leaving the northerly line of the 29.185 acre tract, passing at a distance of 594.95 feet a 5/8-inch iron rod found for the easterly common corner of the 15.961 acre tract and a called 10.00 acre tract of land described in deed to Cortesano Brothers, LP (a.k.a. Outback Custom Homes), recorded under Instrument Number 20060823001212270 of the Official Public Records of Collin County, Texas, passing at a distance of 2000.06 feet a 1/2-inch iron rod found for the easterly common corner of a called 18.463 acre tract of land described in deed to Stinson 1415, LLC, recorded under Instrument Number 20050008569 of the Official Public Records of Collin County, Texas, and a called 10.185 acre tract of land described in deed to Richard G. Phillips et ux, recorded in County Clerk's File Number 96-0077102 of the Deed Records of Collin County, Texas, passing at a distance of 2370.06 feet a PK Nail found for the easterly common corner of the 10.185 acre tract and a called 9.973 acre tract of land described in deed to Roger A. Stevens et ux, recorded in Volume 5476, Page 4793 of the Deed Records of Collin County, Texas, continuing in all a distance of 2730.35 feet to a 1/2-inch iron rod found in the southerly line of a called 12.0 acre tract of land described as Tract 1 in deed to Venita Ellis, recorded in County Clerk's File Number 96-0025352 of the Deed Records of Collin County, Texas, for the northerly common corner of the 9.973 acre tract and the 427.600 acre tract;

THENCE with the northerly line of the 427.600 acre tract, the following courses and distances to wit:

South 89°17'35" East, passing at a distance of 156.96 feet a 1/2-inch iron rod found for the southerly common corner of the 12.0 acre tract and Lot 11 of BROOKHAVEN RANCH ESTATES, an addition to the City of Lucas, Collin County, Texas, according to the plat thereof recorded in Volume 6, Page 71 of the Deed Records of Collin County, Texas, continuing in all a distance of 1065.97 feet to a 5/8-inch iron rod with "KHA" cap set for corner;

North 84°12'23" East, a distance of 435.32 feet to a 5/8-inch iron rod found in the westerly line of a called 14.5 acre tract of land described as Tract I in deed to Guardian Mortgage Company, Inc., recorded in County Clerk's File Number 93-0046259 of the Deed Records of Collin County, Texas, for the easterly common corner of the 427.600 acre tract and Lot 15 of BROOKHAVEN RANCH ESTATES;

THENCE South 00°38'53" East, with the common line of the 14.5 acre tract and the 427.600 acre tract, a distance of 352.45 feet to a 5/8-inch iron rod with "KHA" cap set for the westerly common corner of the 14.5 acre tract and the beforementioned 93.442 acre tract;

THENCE North 88°48'32" East, along the southerly line of the 14.5 acre tract, a distance of 273.45 feet to a 5/8-inch iron rod with "KHA" cap set;

THENCE through the 427.600 acre tract, the following courses and distances to wit:

South 01°11'29" East, a distance of 850.00 feet to a 5/8-inch iron rod with "KHA" cap set for corner;

South 15°26'35" East, a distance of 543.34 feet to a 5/8-inch iron rod with "KHA" cap set for corner;

South 55°39'13" East, a distance of 89.85 feet to a 5/8-inch iron rod with "KHA" cap set for corner;

South 27°45'23" East, a distance of 520.19 feet to a 5/8-inch iron rod with "KHA" cap set for corner;

South 14°50'56" East, a distance of 814.04 feet to a 5/8-inch iron rod with "KHA" cap set for corner;

South 00°21'11" East, a distance of 947.53 feet to a 5/8-inch iron rod with "KHA" cap set for corner;

South 15°18'07" West, a distance of 867.16 feet to a 5/8-inch iron rod with "KHA" cap set for corner;

South 10°48'07" West, a distance of 970.07 feet to a 5/8-inch iron rod with "KHA" cap set for corner on the northerly right-of-way line of said Parker Road (FM No. 2514);

THENCE along the northerly right-of-way line of said Parker Road (FM No. 2514), the following courses and distances to wit:

North 79°12'12" West, a distance of 356.46 feet to a 5/8-inch iron rod with "KHA" cap set for corner at the beginning of a curve to the left, through a central angle of 11°41'57", a radius of 1960.00 feet and a chord bearing and distance of North 85°03'12" West, 399.51 feet;

Along said curve to the left, an arc length of 400.21 feet to a 5/8-inch iron rod with "KHA" cap set for corner;

South 89°05'48" West, a distance of 729.50 feet to the POINT OF BEGINNING and containing 238.714 acres or 10,398,398 sq. ft. of land, more or less.

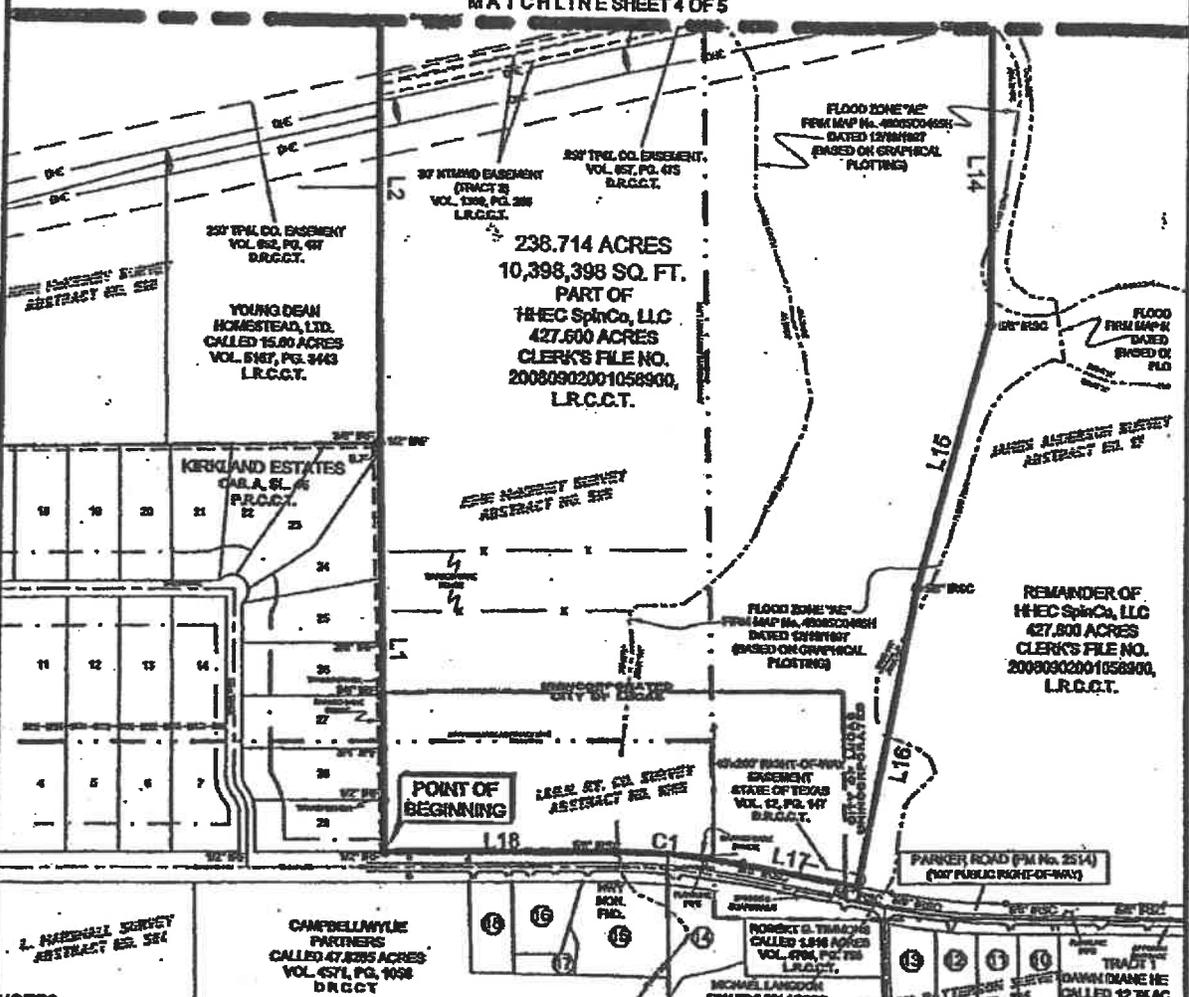
# DEPICTION OF OWNER'S WEST TRACT

## EXHIBIT "H"

238.714 ACRES

JAMES ANDERSON SURVEY, No. 17  
 JOHN MCKINNEY SURVEY, ABSTRACT No. 596  
 I.&G.N. RY. CO. SURVEY, ABSTRACT No. 1060  
 COLLIN COUNTY, TEXAS

MATCHLINE SHEET 4 OF 5

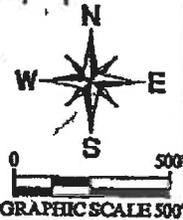


**NOTES:**

1. Basis of bearing is the north right-of-way line of Parker Road (FM No. 2514), having as one north right-of-way line a bearing of "North 89°56'33" West".
2. The location of the Abstract lines shown on this survey are based on graphical plotting only and may not represent its actual location.
3. The location of the City Limits lines shown on this survey are based on graphical plotting only and may not represent its actual location.

**LEGEND:**

IRSC = "KHA" CAPPED IRON ROD SET  
 ESMT. = EASEMENT  
 D.R.T.C.T. = DEED RECORDS OF DENTON COUNTY, TEXAS  
 P.R.T.C.T. = PLAT RECORDS OF TARRANT COUNTY, TEXAS



**Kimloy-Horn  
and Associates, Inc.**

12700 Park Central Drive, Suite 1000  
Dallas, Texas 75228

Tel. No. (972) 776-4300  
Fax No. (972) 239-3030

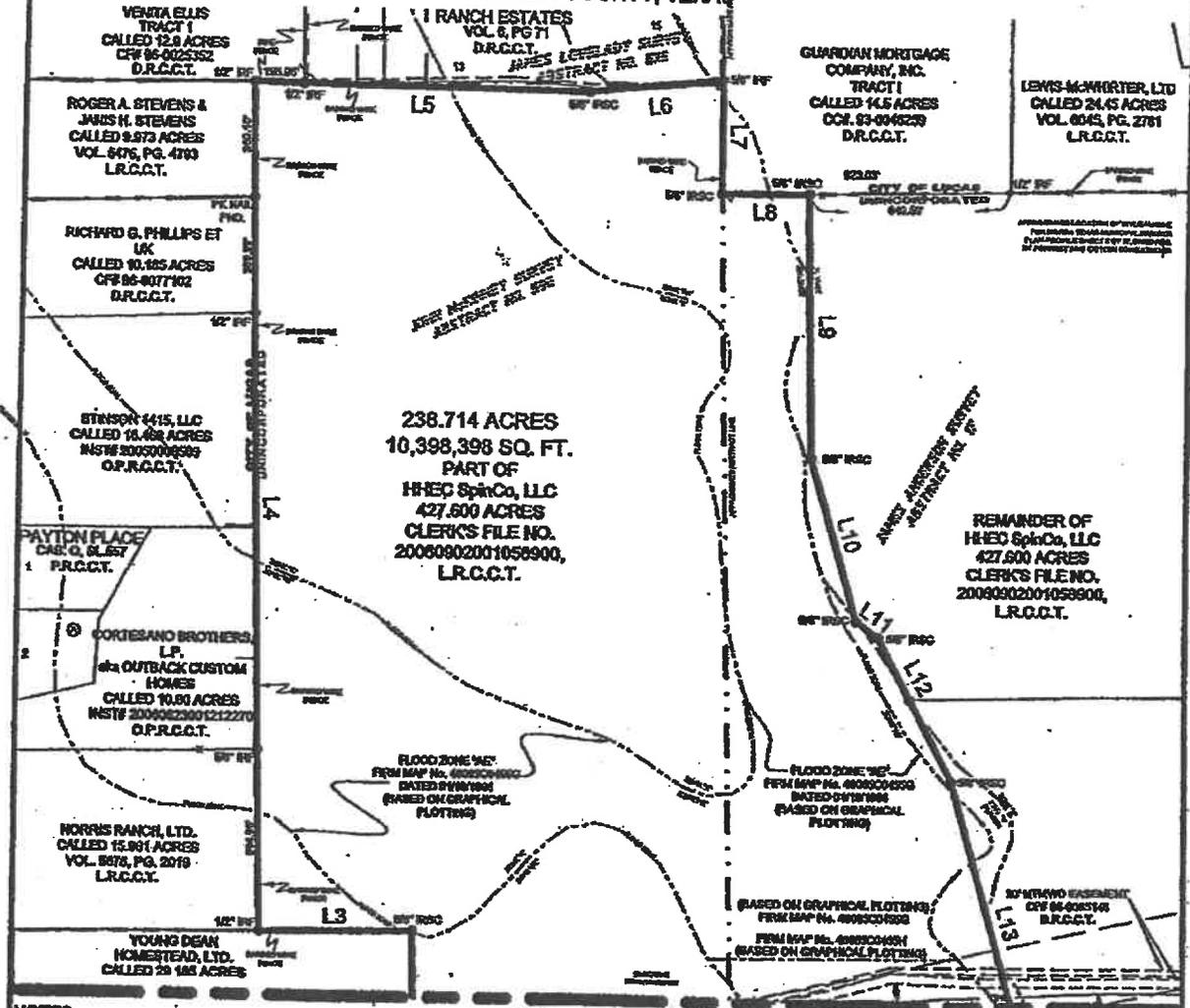
Scale 1" = 50'	Drawn by RVG	Checked by TWM	Date 03/26/09	Project No. 06701303	Sheet No. 3 OF 5
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DEPICTION OF OWNER'S WEST TRACT

EXHIBIT "H"

238.714 ACRES

JAMES ANDERSON SURVEY, No. 17  
 JOHN MCKINNEY SURVEY, ABSTRACT No. 596  
 I.&G.N. RY. CO. SURVEY, ABSTRACT No. 1060  
 COLLIN COUNTY, TEXAS



238.714 ACRES  
 10,398,398 SQ. FT.  
 PART OF  
 HNEC SpCo, LLC  
 427,600 ACRES  
 CLERK'S FILE NO.  
 20060802001058900,  
 L.R.C.C.T.

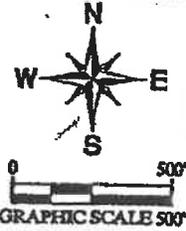
NOTES:

1. Basis of bearing is the north right-of-way line of Parker Road (FM No. 2514), having as one north right-of-way line a bearing of "North 89°56'33" West".
2. The location of the Abstract lines shown on this survey are based on graphical plotting only and may not represent its actual location.
3. The location of the City Limits lines shown on this survey are based on graphical plotting only and may not represent its actual location.

LEGEND:

IRSC = "KHA" CAPPED IRON ROD SET  
 ESMT. = EASEMENT  
 D.R.T.C.T. = DEED RECORDS OF DENTON COUNTY, TEXAS  
 P.R.T.C.T. = PLAT RECORDS OF TARRANT COUNTY, TEXAS

MATCHLINE SHEETS 3 OF 5



MADE BY: JEFF WORTHMAN, THE ENGINEER, AS  
 THE SURVEYOR OF COLLIN COUNTY, TEXAS, AND  
 THE SURVEYOR OF TARRANT COUNTY, TEXAS,  
 LAST DAY OF FEBRUARY, 2009, AT 10:00 AM.  
 11-2009-25874

		12701 Park Central Drive, Suite 1000 Dallas, Texas 75251		Tel. No. (972) 778-1300 Fax No. (972) 238-3820	
Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 30'	RYG	TWM	02/25/09	66302308	4 OF 5



## ESTIMATED PROJECT COST—SEWER FACILITIES

As of June 24, 2009  
(to be replaced by final approved budget  
according to Section 1.3 of this Agreement)

<u>Item</u>	<u>Cost</u>
6" Force Main 27,350 LF @ \$20.00/LF	\$547,000
Lift Station	170,000
Sub-Total – Construction	\$717,000
Survey & Design (15% of construction)	107,550
Off-Site Easements (To Be Provided By Others)	0
Materials Testing (2% of construction)	14,340
Sub-Total – Project	\$838,890
Contingency (15%) (Owner and City expressly agree that up to \$30,000 of this Contingency amount shall be available for customary inspections by the City of the Sewer Facilities)	125,834
Total Project Cost	\$964,724



Filed and Recorded  
Official Public Records  
Stacey Kemp, County Clerk  
Collin County, TEXAS  
06/25/2009 03:18:44 PM  
\$132.00 DLAIRD  
20090625000794560

*Stacey Kemp*

STATE OF TEXAS §  
§  
COUNTY OF COLLIN §

AMENDMENT TO DEVELOPMENT AGREEMENT

THIS AMENDMENT TO DEVELOPMENT AGREEMENT (the "Amendment") is executed to be effective for all purposes as of September 29, 2010 (the "Effective Date"), by and between the CITY OF LUCAS, TEXAS, a municipal corporation existing under the laws of the State of Texas (the "City"), and HHEC SPINCO, LLC, a Delaware limited liability company ("Owner"), and joined in execution by WYLIE INDEPENDENT SCHOOL DISTRICT, a Texas independent school district and political subdivision of the State of Texas ("WISD"), and AMERICAN ESCROW COMPANY, a Texas corporation ("Escrow Agent").

**RECITALS**

**WHEREAS**, the City and Owner entered into that certain Development Agreement (herein so called) dated to be effective as of June 25, 2009, recorded in the Real Property Records of Collin County, Texas as Instrument No. 20090625000794560 (capitalized terms used, and not otherwise defined, in this Amendment shall have the meanings given to them in the Development Agreement); and

**WHEREAS**, on June 25, 2009, Owner transferred to WISD a portion of the Owner's Property which is described by metes and bounds in Exhibit C of the Development Agreement and depicted in the drawing on Exhibit D of the Development Agreement (defined in the Development Agreement as the Property and referred to in this amendment as the "WISD Tract"); and

**WHEREAS**, the City, Owner and WISD have agreed to and approved the Approved Plans for the Sewer Facilities as set forth in the Project Manual for City of Lucas, Texas—Wastewater Force Main and Lift Station, dated June 2010, with amendments and addenda to date agreed to by the City, Owner and WISD, and prepared by BW2 Engineers, Inc. (the "June 2010 Approved Plans"); and

**WHEREAS**, the City, Owner and WISD have determined to phase the construction of the Sewer Facilities, and accordingly agreed to and approved the Approved Plans for the major portion of the Sewer Facilities as set forth in the Project Manual for City of Lucas, Texas—Wastewater Force Main and Lift Station, dated August 2010 and prepared by BW2 Engineers, Inc. (the "August 2010 Approved Plans;" and the portion of the Sewer Facilities covered thereby is referred to herein as the "Major Portion of the Sewer Facilities"); and

**WHEREAS**, the City and UtiliTex Construction, L.L.P. ("UtiliTex"), have entered into an Approved Contract for the construction of the Major Portion of the Sewer Facilities according to the August 2010 Approved Plans, pursuant to that certain Construction Contract, dated September 16, 2010, by and between the City and UtiliTex (the "Major Approved Contract"), UtiliTex and the Major Approved Contract each having been approved by Owner as required by the Development Agreement; and

**WHEREAS**, construction of the Major Portion of the Sewer Facilities is currently underway pursuant to the Major Approved Contract, and the remaining portion of the Sewer Facilities shall be completed according to the Approved Plans therefor as set forth in the June 2010 Approved Plans (such remaining portion of the Sewer Facilities is called the "Remaining Portion of the Sewer Facilities"); and

**WHEREAS**, annexation and rezoning of Owner's Property (including the WISD Tract, the Owner's South Tract and the Owner's West Tract) as contemplated by the original Development

Agreement have been completed, and the Master Plan has been approved by the Water District, all of which were required by the Development Agreement; and

**WHEREAS**, Owner has granted all easements that are necessary and desirable for the Sewer Facilities located on portions of Owner's Property, as agreed to by the parties hereto, and no other easements on any portion of Owner's Property shall be required; and

**WHEREAS**, the City, Owner and WISD agree that, with the completion of the June 2010 Approved Plans and the August 2010 Approved Plans, the execution of the Major Approved Contract, the commencement of work thereunder, and the granting of the easements on Owner's Property, there is a level of certainty concerning the scope and cost of completing the Sewer Facilities pursuant to the Development Agreement such that they can enter into this Amendment to modify the Development Agreement to provide for the completion of the Sewer Facilities, with conforming changes to the Escrow Agreement, according to the terms and provisions of this Amendment.

**NOW, THEREFORE**, in consideration of the covenants and conditions contained in this Amendment, the City and Owner agree as follows, and WISD joins in execution of this Amendment to evidence its agreement with all of the terms and provisions of this Amendment:

#### AGREEMENTS

1. Acceptance of Recitals. The Recitals set forth above are accepted by the parties to this Amendment as true and accurate in all respects and are incorporated into this Amendment as the agreements of the parties hereto.

2. Major Portion of the Sewer Facilities. The City shall cause the Major Portion of the Sewer Facilities to be completed in accordance with the August 2010 Approved Plans and the Major Approved Contract, including, without limitation, according to the timeframes provided in the Major Approved Contract for completion (but in any event no later than June 25, 2011, being the Outside Completion Date), and at the sole cost and expense of the City.

3. Remaining Portion of the Sewer Facilities. The City shall cause the Remaining Portion of the Sewer Facilities to be completed in accordance with the June 2010 Approved Plans and the summary scope set forth in Exhibit A attached to this Amendment and made a part hereof for all purposes, and otherwise in accordance with the Development Agreement as modified by this Amendment, and at the sole cost and expense of the City. It is the intention of the City, the Owner and WISD that commencement and completion of the Remaining Portion of the Sewer Facilities will be at a later time. It is further agreed that the City may so complete the Remaining Portion of the Sewer Facilities at such time as the City shall determine, provided that Owner or WISD may provide written notice to the City at such time as either of them desires the Remaining Portion of the Sewer Facilities to be completed, and the City shall cause the Remaining Portion of the Sewer Facilities to be completed in accordance with the June 2010 Approved Plans, with operable connection to the City's waste water system, within One Hundred Twenty (120) days after such notice is given. Notice shall be deemed given upon actual receipt of notice or upon the expiration of five (5) days after mailing of such notice to the City Clerk by Owner or WISD. No further approval of Owner or WISD shall be required with respect to the Remaining Portion of the Sewer Facilities so long as the City complies with the provisions of this paragraph 3.

4. Failure of the City to Complete Remaining Portion of the Sewer Facilities. It is the intention of the parties that, to the extent such right is not included in the Development Agreement, both Owner and WISD shall have the right and option, but not any obligation, to cause the

Secretary  
[Signature]

completion of the Remaining Portion of the Sewer Facilities and to use the funds deposited under the Escrow Agreement to do so, in the event that the City shall fail to Substantially Complete construction of the Remaining Portion of the Sewer Facilities in accordance with the June 2010 Approved Plans with operable connection to the City's waste water system, within One Hundred Twenty (120) days after a completion notice is given by Owner or WISD pursuant to Paragraph 3 of this Amendment.

5. No Other Approvals of Owner or WISD. The City shall not be required to obtain the approval of Owner or WISD of the contract(s) to complete the Remaining Portion of the Sewer Facilities complying with this Section 3, so long as Remaining Portion of the Sewer Facilities are completed in compliance with the June 2010 Approved Plans and the Development Agreement as amended by this Amendment.

6. Funds to Complete Sewer Facilities. Concurrently with the execution and delivery of this Amendment by all parties hereto, Owner shall deposit the additional sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) with Escrow Agent to be held and disbursed as part of the Escrow Funds under and according to the Escrow Agreement. Upon the deposit of these additional Escrow Funds, (i) all of the Escrow Funds shall be the exclusive property of the City and shall be used solely for the completion of the Sewer Facilities in accordance with the June 2010 Approved Plans, the Major Approved Contract, the August 2010 Approved Plans, and the Development Agreement as modified by this Amendment and otherwise disbursed according to the Escrow Agreement, (ii) Owner and WISD conclusively shall be deemed to have satisfied all of their obligations and liabilities for the funding of any portion of the Sewer Facilities and shall have no further obligation to make additional contributions toward completion of the Sewer Facilities, (iii) neither Owner nor WISD shall have any right or claim to any unused portion of the Escrow Funds, if any, upon completion of the Sewer Facilities in accordance with the June 2010 Approved Plans and the August 2010 Approved Plans, which sums will be disbursed to the City in accordance with the Escrow Agreement, and (iv) the City no longer shall be required to obtain the approval of Owner or WISD to the Applications for Payment.

7. Modification of Escrow Agreement. The Escrow Agreement hereby is modified to the extent necessary to conform to the terms and provisions of this Amendment.

8. No Further Obligations or Liabilities of Owner or WISD. Owner and WISD have completely satisfied all of their obligations, and shall have no liabilities, in connection with or for the design, construction, and/or installation of the Sewer Facilities (and any successor(s) to either of Owner or WISD as the owner(s) of any portion(s) of the Owner's Property shall have no obligations or liabilities therefor).

9. Miscellaneous.

- (a) The rights and benefits of Owner and WISD, respectively, under and pursuant to the Development Agreement, as modified by this Amendment, and in and to the Sewer Facilities shall inure to the benefit of the owner(s) of any portion of the Owner's Property, as applicable to such portion of the Owner's Property.
- (b) The Development Agreement is modified as necessary to conform to the provisions of this Amendment, and except as modified by this Amendment, the Development Agreement remains in full force and effect.

- (c) This Amendment, together with the Development Agreement as modified by this Amendment, contains the entire agreement of the parties with respect to the matters contained herein.
- (d) This Amendment may be executed in a number of identical counterparts, each of which will be deemed an original for all purposes.
- (e) Headings in this Amendment are for the convenience of the parties and are not intended to be used in construing this document.
- (f) Time is of the essence in this Amendment.
- (g) Pursuant to the requirements of Section 212.72(c)(4) of the Texas Local Government Code, this Amendment shall be recorded in the deed records of Collin County, Texas.
- (h) 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.

UNOFFICIAL

IN WITNESS WHEREOF, the parties have executed this Amendment to be effective for all purposes as of the Effective Date.

CITY OF LUCAS

By: Kathleen A. Peele  
Kathleen Peele, Mayor Pro Tem (Acting Mayor)

APPROVED AS TO FORM:

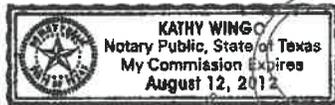
By: [Signature]  
Joe Gorfida, Jr., City Attorney

THE STATE OF TEXAS

COUNTY OF COLLIN

000 000 000

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of December, 2010, by Kathleen Peele, Mayor Pro Tem (Acting Mayor) of The City of Lucas, a municipal corporation existing under the laws if the State of Texas, in such capacity on behalf of such municipal corporation.



[Signature]  
Kathy Wingo, Notary Public, State of Texas

UNOFFICIAL

IN WITNESS WHEREOF, the parties have executed this Amendment to be effective for all purposes as of the Effective Date.

**HHEC SPINCO, LLC,**  
A Delaware limited liability company

By: *Ellen Hunt Flowers*  
Ellen Hunt Flowers  
Manager and Chairman of the Board *Meg + Chen*

THE STATE OF TEXAS           §  
  §  
COUNTY OF Dallas           §

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of December, 2010, by Ellen Hunt Flowers, Manager and Chairman of the Board of HHEC SpinCo, LLC, a Delaware limited liability company, in such capacity on behalf of such limited liability company.



*Deanna L. Wilson*  
Notary Public, State of Texas

UNOFFICIAL

WISD joins in the execution of this Amendment to evidence its agreement with, and hereby does agree with and accept, all of the terms and provisions of this Amendment, and executes this Amendment to be effective for all purposes as of the Effective Date.

**THE WYLIE INDEPENDENT SCHOOL DISTRICT,**  
A Political Subdivision of the State of Texas

By: [Signature]  
Name: Ralph E. James  
Title: Board President

THE STATE OF TEXAS §  
COUNTY OF Collin §

The foregoing instrument was acknowledged before me this 18th day of October 2010, by Ralph E. James, Board President of The Wylie Independent School District, a political subdivision of the State of Texas, in such capacity on behalf of such political subdivision.



[Signature]  
Notary Public, State of Texas

UNOFFICIAL COPY

Escrow Agent joins in the execution of this Amendment to evidence its agreement with, and hereby does agree with and accept, all of the terms and provisions of this Amendment as they affect and modify the Escrow Agreement, and executes this Amendment to be effective for all purposes as of the Effective Date.

**AMERICAN ESCROW COMPANY,**  
A Texas corporation

By: *Carla D. Janousek*  
Name: Carla D. Janousek  
Title: Senior Vice President

THE STATE OF TEXAS           §  
  §  
COUNTY OF Dallas           §

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of January, 2011 ~~2010~~, by Carla D. Janousek, Senior Vice President of American Escrow Company, a Texas corporation, in such capacity on behalf of such corporation.

*Shay Evans Sides*  
Notary Public, State of Texas



UNNOTED COPY

**EXHIBIT A**

**SUMMARY SCOPE OF REMAINING PORTION OF THE SEWER FACILITIES**

1. Complete progress payments for surveying, engineering, and geotech services.
2. Complete road repairs as necessary to repair damages caused by, or resulting from, construction of the Sewer Facilities.
3. Satisfaction of TCEQ requirements for emergency generator servicing the Sewer Facilities lift station.
4. Installation of electric service facilities for public utility provision of three-phase power to the Sewer Facilities lift station.
5. Purchase and installation of submersible pumping units, piping, and valves within and associated with the Sewer Facilities lift station and valve vault, including all necessary accessories to provide for an operational system capable of handling wastewater flows generated by development of a WISD future high school on the Property and future commercial development on Owner's South Tract, as originally specified in the June 2010 Approved Plans. Pumping units and accessories shall include pumps, motors, control panels, support bases, rails, discharge piping, electrical components, and all other necessary appurtenances.
6. Inspection and testing services as necessary and/or required.

UNOFFICIAL



**Filed and Recorded  
Official Public Records  
Stacey Kemp, County Clerk  
Collin County, TEXAS  
01/06/2011 11:41:48 AM  
\$48.00 DLAIRD  
20110106000027900**

*Stacey Kemp*

## UTILITIES ESCROW AGREEMENT

This Utilities Escrow Agreement (this "Escrow Agreement") dated August 10, 2009 (the "Effective Date"), is made and entered into by and among HHEC SPINCO, LLC, a Delaware limited liability company ("Owner HHEC"), and WYLIE INDEPENDENT SCHOOL DISTRICT, a Texas independent school district and political subdivision of the State of Texas ("Owner Wylie") (sometimes collectively referred to as "Owners"), and THE CITY OF LUCAS, TEXAS, a municipal corporation existing under the laws of the State of Texas ("City"), and AMERICAN ESCROW COMPANY, a Texas corporation ("Escrow Agent," and together with the Owners and City, the "Parties").

### W I T N E S S E T H:

WHEREAS, Owners entered into that certain Contract of Sale (as amended from time to time, the "Contract"), pursuant to which Owner HHEC sold to Owner Wylie, and Owner Wylie purchased from Owner HHEC, the property described more particularly on Exhibit A attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, in connection with the Contract, Owner HHEC and City entered into that certain Development Agreement (the "City Development Agreement"), pursuant to which City agreed to design, construct and install the Sewer Facilities (as defined in the City Development Agreement) to serve the Property and other properties as provided therein; and

WHEREAS, capitalized terms used and not otherwise defined in this Escrow Agreement shall have the meanings given to them in the City Development Agreement; and

WHEREAS, the City Development Agreement provides that (i) City is responsible to commence the design of the Sewer Facilities, as defined therein, within ~~three (3) months after the Closing Date (as defined in the Contract)~~, and commence construction and installation of the Sewer Facilities within twelve (12) months after the Closing Date, and complete such design, construction and installation no later than twenty-four (24) months after the Closing Date (the "Outside Completion Date"); and (ii) Owners shall deposit, or cause to be deposited, in escrow with Escrow Agent funds in the amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) (the "Escrow Funds") to be held and disbursed by Escrow Agent pursuant to the terms of this Escrow Agreement.

NOW, THEREFORE, for and in consideration of the premises, the mutual promises contained herein, the sum of \$10.00, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree to the following:

1. Contemporaneously with the full execution of this Escrow Agreement, Owners shall deliver, or cause to be delivered, the Escrow Funds, in the amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00), to Escrow Agent to be held in escrow according to the terms and conditions of this Escrow Agreement, and Owners shall pay the Fee to Escrow Agent according to and as such term is defined in Section 5 of this Escrow Agreement. Escrow Agent hereby agrees to accept the Escrow Funds and to retain them in escrow and distribute them pursuant to the terms of this Escrow Agreement.

2. (a) City shall design and cause the construction and installation of the Sewer Facilities to be completed in accordance with the Approved Plans and the Approved Contract, and no later than the Outside Completion Date, all in accordance with the provisions of the City Development Agreement. The provisions of the City Development Agreement are incorporated into this Escrow Agreement in their entirety as if fully set forth herein.

(b) City shall be entitled to disbursements of portions of the Escrow Funds to make progress payments due and owing for the Approved Plans and under the Approved Contract according to this Section 2(b). City shall not, without the prior written approval of Owners, incur any cost or expense, or pay any cost or expense, in connection with the design, construction and installation of the Sewer Facilities except pursuant to the terms and provisions of this Escrow Agreement. City shall submit to Owners each payment application for which City seeks disbursement of funds out of the Escrow Funds to make progress payments due and owing for the Approved Plans and under the Approved Contract. Each payment application shall be certified by City and the contractor under the Approved Contract and submitted to Owners, and shall include such supporting information and materials as Owners may reasonably request, but including, without limitation, executed and notarized lien waivers from each party to be paid out of such requested funds. Owners shall jointly approve or disapprove (stating in reasonable detail the reasons for such disapproval), in writing, such submission for disbursement from the Escrow Funds within fifteen (15) calendar days after Owners' receipt of such complete submission; and if Owners do not provide either their joint approval or disapproval within such 15 day period as earlier provided in this sentence, then Owners shall be deemed to have approved such submission for disbursement from the Escrow Funds. Upon Owners' approval or deemed approval of a payment application, City shall submit to Escrow Agent and Owners the approved payment application, including Owners' written approval or, in the case of Owners' deemed approval as contemplated in the preceding sentence, City's affidavit stating that Owners failed to either approve or disapprove the submitted payment application within 15 days of Owners' receipt thereof from City. Escrow Agent shall promptly deliver to City a check covering payment out of the Escrow Funds in the full amount of the approved payment application so submitted to Escrow Agent, and City agrees with Owners to promptly pay all of such payment to the contractor(s) according to the approved payment application. Escrow Agent shall provide to the applicable of Owners and City a full copy

of all written communications Escrow Agent has under this Escrow Agreement with either Owners or City.

(c) If the actual total costs to design, construct and install the Sewer Facilities (the "Actual Project Cost") is less than the total amount of the Escrow Funds deposited under this Escrow Agreement, the remaining Escrow Funds shall be promptly delivered to Owners as follows: if the Actual Construction Cost equals or exceeds \$500,000.00, all amounts of the remaining Escrow Funds shall be delivered to Owner HHEC; if the Actual Construction Cost is less than \$500,000.00, an amount of the Escrow Funds equal to such difference shall be delivered to Owner Wylie and all remaining amounts of the Escrow Funds shall be delivered to Owner HHEC. If the Actual Project Cost, incurred in accordance with the City Development Agreement, exceeds the total amount of the Escrow Funds deposited under this Escrow Agreement, Owner HHEC shall deposit such excess amount with Escrow Agent to be held and applied in accordance with the terms and provisions of this Escrow Agreement. Escrow Agent is not liable for any shortfall in the sufficiency of the amount held in escrow to accomplish the purpose of the escrow. Escrow Agent is under no obligation to collect additional funds, unless such obligation is in writing and signed by the Escrow Agent.

(d) Subject to events of *Force Majeure*, if at any time City is not diligently and continuously prosecuting the design, construction and installation of the Sewer Facilities according to the agreed project schedule and time line ("Delay"), Owners, by and through Owner HHEC, shall have the right to provide written notice of the Delay to City. If City does not cure such Delay within 30 days of receipt of Owners' notice, Owner HHEC shall have the right to take over the design, construction and installation process and to immediately use the Escrow Funds for such purposes. In addition, in the event that City shall fail to Substantially Complete construction of the Sewer Facilities in accordance with the Approved Plans no later than the Outside Completion Date, Owner HHEC shall have the right to take over the design, construction and installation process and to immediately use the Escrow Funds for such purposes. In either of such foregoing events, Owners (but not City) also shall be entitled to use the Escrow Funds to reimburse Owners' reasonable and necessary administrative and/or management costs. Escrow Agent hereby is authorized by Owners and City to promptly pay to Owners, and agrees to promptly pay to Owners, portions of the Escrow Fund requested in writing by Owner HHEC for the payment of amounts due and owing under the Approved Plans and/or the Approved Contract, and/or for such administrative and/or management costs and/or expenses incurred by Owners. Owners shall concurrently furnish City with a copy of all materials so submitted to Escrow Agent.

3. City will not permit any liens to attach to any property of Owner HHEC or Owner Wylie by reason of its design, construction, and/or installation of the Sewer Facilities; provided that if a mechanic's or materialman's lien is filed against any of such land in connection with the construction and completion of the Sewer Facilities, then City may challenge and dispute such lien provided that City (i) files a bond to indemnify against a lien pursuant to Section 53.171 of the Texas Property Code, (ii) promptly notifies Owner HHEC and Owner Wylie of such lien and such challenge action taken by

City, and (iii) diligently resolves such challenge and dispute without any liability or obligation of Owner HHEC or Owner Wylie, and without any foreclosure of such lien. Owner HHEC and Owner Wylie shall have the right to take such actions as either of them reasonably deems necessary to prevent a foreclosure of any such mechanic's or materialman's lien and shall provide advance notice to City of intentions in this regard. City agrees that it shall, to the extent permitted by Texas law, indemnify, defend and hold Owner HHEC and Owner Wylie, and their respective lands, harmless from and against any and all claims, demands, liens, encumbrances, fees, losses, damages, liabilities and expenses related to the construction and installation of the Sewer Facilities.

4. The Escrow Funds shall be placed in an account fully insured by the FDIC, even if non-interest bearing, chosen by Owner HHEC and acceptable to City and Owner Wylie upon notice to Escrow Agent, under the employer identification number of Owner HHEC. All interest earned on the Escrow Funds, if any, shall be included as a part of the Escrow Funds and shall be disbursed with the Escrow Funds according to this Escrow Agreement. Escrow Agent assumes no liability and the parties hereto consent and agree that Escrow Agent shall have no liability for any defalcation, insolvency, receivership, or conservatorship of any depository institution utilized in connection with this escrow. Escrow Agent is not liable for any loss or impairment of funds that have been deposited in escrow while those funds are in the course of collection or while those funds are on deposit in the depository institution. Further, Escrow Agent is not liable for any loss or impairment of funds due to the invalidity of any draft, check, or other negotiable instrument delivered to Escrow Agent.

5. Escrow Agent agrees to perform the obligations of Escrow Agent set forth herein. A fee of \$1,200.00 (the "Fee") shall be paid to Escrow Agent upon the execution of this Escrow Agreement and delivery of the Escrow Funds to Escrow Agent, one-half (1/2) by Owner HHEC and one-half (1/2) by Owner Wylie. Escrow Agent may resign from its duties hereunder at any time by giving written notice of such resignation to the parties hereto and returning to Owners the unamortized portion of the Fee as of the effective date of resignation, based on a straight-line amortization thereof over a 24 month period beginning with the Effective Date; however, Escrow Agent shall continue to serve until its successor is appointed jointly by Owners and City, and such successor ~~accepts and agrees to perform the obligations of Escrow Agent hereunder and receives~~ the balance of the Escrow Funds. Owners and City shall have the right at anytime upon mutual agreement to substitute a new escrow agent by giving written notice thereof to Escrow Agent then acting.

6. Under this Escrow Agreement, Escrow Agent is a depository only and shall have no liability for the holding, investment, disbursement, application or other disposition of any monies and/or documents received by Escrow Agent other than to comply with the specific instructions, terms and provisions expressly set forth and/or provided for in this Escrow Agreement. Escrow Agent shall not be responsible or liable in any manner for the legal effect, sufficiency, correctness, genuineness or validity of any instrument deposited with it hereunder, or for the form or execution thereof, or for the identity, authority or rights of any person executing or depositing the same. In accepting

any monies and/or documents delivered to Escrow Agent hereunder, it is agreed and understood that Escrow Agent will not be called upon to construe any contract, instrument or document deposited herewith or submitted hereunder, but only to follow the specific instructions expressly set forth and/or provided for in this Escrow Agreement.

7. Escrow Agent, as a part of the consideration for its acceptance of this escrow, shall not, in the performance of its duties under this Escrow Agreement, be liable for any error of judgment, or for any acts or omissions done by it in good faith, or for any mistake of fact or law, or for any claims, demands, causes of action, losses, liabilities, damages, costs or expenses claimed or suffered by any party to this Escrow Agreement, except such as may arise solely and directly as a result of Escrow Agent's own gross negligence or willful misconduct. Escrow Agent is hereby authorized and instructed to rely and act upon, and shall be protected in acting upon, any notice, request, waiver, consent, receipt, certificate, affidavit, authorization, power of attorney, trust agreement or other paper or document believed by Escrow Agent in good faith to be genuine and what it purports to be. Escrow Agent incurs no liability for its compliance with any legal process, subpoena, writ, order, judgment, or decree of any court whether issued with or without jurisdiction and whether or not subsequently vacated, modified, set aside, or reversed.

8. If either Owners or City, acting in good faith, reasonably believes that the disbursement of the Escrow Funds sought by Owners or City, as the case may be, is not proper according to the terms and conditions of this Escrow Agreement, either Owners or City may give the other party and Escrow Agent a written notice disputing such requested disbursement containing an explanation of the basis for such dispute (a "Dispute Notice"). If a Dispute Notice is given, Escrow Agent shall withhold the requested disbursement specified in such Dispute Notice until Owners and City deliver a joint notice to Escrow Agent that the dispute has been resolved, authorizing disbursement as set forth in such joint notice. Escrow Agent shall be entitled to interplead into a court of competent jurisdiction in Collin County, Texas the amount of any requested disbursement, as the case may be, with respect to which any dispute exists. Owners and City equally shall pay the reasonable attorneys' fees and court costs incurred by Escrow Agent in connection with such interpleader proceeding.

9. All notices required hereunder shall be in writing and served by a professional delivery service; overnight courier service; certified mail, return receipt requested, postage prepaid; facsimile; or email at the addresses or other applicable contact information set forth below, provided that any party hereto shall have the right to change such address by written notice to the other parties and any notices of default, resignation, or termination shall be delivered by at least one of professional delivery service; overnight courier service; or certified mail, return receipt requested, postage prepaid:

**If to Owner HHEC:** HHEC SpinCo, LLC  
4900 Thanksgiving Tower  
Dallas, Texas 75201  
Attention: Don Dillard  
Phone: (214) 616-7765  
Fax: (214) 922-1060  
email: don@galatynpark.com

**With a copy to:** William D. Miller  
Miller & Haney, L.L.P.  
512 Main Street, Suite 901  
Fort Worth, Texas 76102  
Phone: (817) 332-3057  
Fax: (817) 332-3041  
email: [bmiller@millerhaney.com](mailto:bmiller@millerhaney.com)

**If to Owner Wylie:** The Wylie Independent School District  
951 South Ballard  
P.O. Box 490  
Wylie, Texas 75098-0490  
Attention: Brian Miller  
Phone: (972) 442-5444  
Fax: (972) 422-5368  
email: [Brian.Miller@wylieisd.net](mailto:Brian.Miller@wylieisd.net)

**With a copy to:** Winifred H. Dominguez.  
Walsh, Anderson, Brown, Aldridge & Gallegos P.C.  
100 N.E. Loop 410, Suite 900  
San Antonio, Texas 78216  
Phone: (210) 979-6633  
Fax: (210) 979-7024  
email: [wdominguez@sa.wabsa.com](mailto:wdominguez@sa.wabsa.com)

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**If to City:** City Manager  
City of Lucas  
151 Country Club Road  
Lucas, Texas 75002  
Attention: Robert Patrick  
Phone: (972) 727-8999  
Fax: (972) 727-0091  
email: [rpatrick@lucastexas.us](mailto:rpatrick@lucastexas.us)

**With a copy to:** Joe Gorfida, Jr.  
Nichols, Jackson, Dillard, Hager & Smith  
500 N. Akard  
Suite 1800  
Dallas, Texas 75201  
Phone: (214) 965-9900  
Fax: (214) 965-0010  
email: Jgorfida@njdhs.com

**If to Escrow Agent:** American Escrow Company  
2626 Howell Street, 10<sup>th</sup> Floor,  
Dallas, Texas 75204  
Attention: Carla Janousek  
Phone: (214) 855-8879  
Email: cjanousek@republictitle.com

10. Should any third party that is not a Party to this Escrow Agreement make a claim on the Escrow Funds, the Escrow Agent shall give written notice to Owner and City of such claim. Escrow Agent shall not be entitled to interplead into a court of competent jurisdiction the amount claimed by such third party unless Escrow Agent receives consent in writing from both Owners and City. Provided that Escrow Agent complies with this provision, (i) Owners shall, to the extent permitted by Texas law, indemnify, defend, and hold Escrow Agent harmless from and against any claim by such third party claiming against the Escrow Funds, by, through or under Owners, and (ii) City shall indemnify, defend, and hold Escrow Agent harmless from and against any claim by such third party claiming against the Escrow Funds, by, through or under City.

11. The prevailing party in any litigation concerning this Escrow Agreement shall be entitled to recover from the other party all court costs and reasonable attorneys' fees incurred by such prevailing party in connection with such litigation.

12. This Escrow Agreement contains the entire agreement between the parties relating to the subject matter hereof, ~~SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS~~, is performable in Collin County, Texas, can be amended only by written document signed by all parties hereto and their respective successors and assigns. This Escrow Agreement may be signed in separate counterparts, each of which when executed, when taken together shall constitute one and the same instrument.

13. This Escrow Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

14. The term of this Escrow Agreement shall commence on the date hereof and shall continue in full force and effect until the Escrow Funds has been fully disbursed as provided above.

15. In case any of the provisions of this Escrow Agreement shall be held to be invalid, illegal or unenforceable, for any reason, such invalidity, illegality or unenforceability shall not affect any of the provisions hereof, and this Escrow Agreement shall be construed as if such invalid, illegal and unenforceable provision had never been contained herein.

16. This Escrow Agreement is for the sole benefit of Owners, City, and Escrow Agent and is not for the benefit of any third party.

*{Signature Page Follows}*

EFFECTIVE the date first written above.

**OWNERS:**

**HHEC SPINCO, LLC,**  
a Delaware limited liability company

By: *Ellen Hunt Flowers, Manager & Chairman*  
Ellen Hunt Flowers,  
Manager and Chairman of the Board

**THE WYLIE INDEPENDENT SCHOOL DISTRICT,**  
A Political Subdivision of the State Of Texas

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CITY:**

**CITY OF LUCAS**

By: \_\_\_\_\_  
Bill Carmickle, Mayor

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Joe Gorfida, Jr., City  
Attorney

**ESCROW AGENT:**

**AMERICAN ESCROW COMPANY**

By: *Carla D. Janousek*  
Name: Carla D. Janousek  
Title: Senior Vice President

EFFECTIVE the date first written above.

**OWNERS:**

**HHEC SPINCO, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Ellen Hunt Flowers,  
Manager and Chairman of the Board

**THE WYLIE INDEPENDENT SCHOOL DISTRICT,**  
A Political Subdivision of the State Of Texas

By: \_\_\_\_\_  
Name: H. John Fuller, Ed.D.  
Title: Superintendent

**CITY:**

**CITY OF LUCAS**

By: \_\_\_\_\_  
Bill Carmickle, Mayor

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Joe Gorfida, Jr., City  
Attorney

**ESCROW AGENT:**

**AMERICAN ESCROW COMPANY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EFFECTIVE the date first written above.

**OWNERS:**

**HHEC SPINCO, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Ellen Hunt Flowers,  
Manager and Chairman of the Board

**THE WYLIE INDEPENDENT SCHOOL DISTRICT,**  
A Political Subdivision of the State Of Texas

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CITY:**

**CITY OF LUCAS**

By: Bill Carmickle  
Bill Carmickle, Mayor

**APPROVED AS TO FORM:**

By: Joe Gorfida, Jr.  
Joe Gorfida, Jr., City  
Attorney

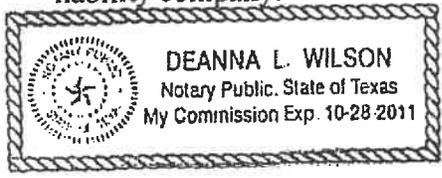
**ESCROW AGENT:**

**AMERICAN ESCROW COMPANY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF TEXAS           §  
  §  
COUNTY OF Dallas       §

This instrument was acknowledged before me on the 10th day of August, 2009, by Ellen Hunt Flowers, Manager and Chairman of the Board of HHEC SpinCo, LLC, a Delaware limited liability company, in such capacity and on behalf of said limited liability company.



Deanna L. Wilson  
Notary Public, State of Texas

STATE OF TEXAS           §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_ day of August, 2009, by \_\_\_\_\_ of Wylie Independent School District, a Texas independent school district and political subdivision of the State of Texas, in such capacity and on behalf of said school district and subdivision of the State of Texas.

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS           §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_ day of August, 2009, by \_\_\_\_\_ of The City of Lucas, Texas, a municipal corporation existing under the laws of the State of Texas, in such capacity and on behalf of said municipal corporation.

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS           §  
  §  
COUNTY OF \_\_\_\_\_§

This instrument was acknowledged before me on the \_\_\_\_ day of August, 2009, by Ellen Hunt Flowers, Manager and Chairman of the Board of HHEC SpinCo, LLC, a Delaware limited liability company, in such capacity and on behalf of said limited liability company.

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS           §  
  §  
COUNTY OF \_\_\_\_\_§

This instrument was acknowledged before me on the 7<sup>th</sup> day of August, 2009, by H. John Fuller, Superintendent of Wylie Independent School District, a Texas independent school district and political subdivision of the State of Texas, in such capacity and on behalf of said school district and subdivision of the State of Texas.



Sherry G. Corning  
Notary Public, State of Texas

STATE OF TEXAS           §  
  §  
COUNTY OF \_\_\_\_\_§

This instrument was acknowledged before me on the \_\_\_\_ day of August, 2009, by \_\_\_\_\_ of The City of Lucas, Texas, a municipal corporation existing under the laws of the State of Texas, in such capacity and on behalf of said municipal corporation.

\_\_\_\_\_  
Notary Public, State of Texas



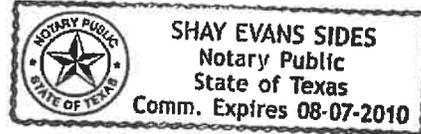
STATE OF TEXAS

§  
§  
§

COUNTY OF Dallas

This instrument was acknowledged before me on the 10<sup>th</sup> day of August, 2009, by Carla D. Janousek, Senior Vice President of American Escrow Company, a Texas corporation, in such capacity and on behalf of said corporation.

Shay Evans Sides  
Notary Public, State of Texas



**EXHIBIT A**

**DESCRIPTION OF PROPERTY**

**DESCRIPTION OF PROPERTY SURVEYED  
60.000 ACRES  
JAMES ANDERSON SURVEY, ABSTRACT NO. 17  
COLLIN COUNTY, TEXAS**

BEING a tract of land situated in the James Anderson Survey, Abstract No. 17, Collin County, Texas, and being part of a called 427.600 acre tract of land described in a deed to HHEC SpinCo, LLC, as recorded in Clerk's File Number 20080902001058900, of the Land Records of Collin County, Texas, and being more particularly described as follows:

BEGINNING at a 5/8-inch iron rod with "KHA" cap set at the common easterly corner of said 427.600 acre tract of land and a called 24.45 acre tract of land described in a deed to Lewis-McWhirter, LTD, as recorded in Volume 6045, Page 2781, of the Land Records of Collin County, Texas, same being on the southwesterly right of way line of Southview Drive (FM No. 1378), a called 90-foot public right of way;

THENCE South 17°38'22" East, along the southwesterly right of way line of said Southview Drive (FM No. 1378), a distance of 307.29 feet to a 5/8-inch iron rod with "KHA" cap set for corner at the beginning of a curve to the right, through a central angle of 12°25'00", a radius of 909.72 feet and a chord bearing and distance of South 11°25'52" East, 196.76 feet;

THENCE along said curve to the right, an arc length of 197.15 feet to a 5/8-inch iron rod with "KHA" cap set for corner;

THENCE South 05°13'22" East, continuing along the southwesterly right of way line of Southview Drive (FM No. 1378), a distance of 1,142.09 feet to a 5/8-inch iron rod with "KHA" cap set for corner;

THENCE South 88°48'31" West, departing the southwesterly right of way line of Southview Drive (FM No. 1378), a distance of 1,426.02 feet to a 5/8-inch iron rod with "KHA" cap set for corner;

THENCE North 27°45'23" West, a distance of 222.24 feet to a 5/8-inch iron rod with "KHA" cap set for corner;

THENCE North 55°39'13" West, a distance of 89.85 feet to a 5/8-inch iron rod with "KHA" cap set for corner;

THENCE North 15°26'35" West, a distance of 543.34 feet to a 5/8-inch iron rod with "KHA" cap set for corner;

THENCE North 01°11'29" West, a distance of 850.00 feet to a 5/8-inch iron rod with "KHA" cap set for corner on the common line of said 427.600 acre tract of land and a called 14.5 acre tract of land described in a deed to Guardian Mortgage Company, Inc, as recorded in County Clerk's File Number 93-0046259, of the Land Records of Collin County, Texas;

THENCE North 88°48'31" East, along the common line of said 427.600 acre tract of land and said 14.5 acre tract of land, passing a 1/2-inch iron rod found at the common southerly corner of said 24.45 acre tract of land and said 14.5 acre tract of land, at a distance of 649.59 feet and continuing for a total distance of 1,530.00 feet to the POINT OF BEGINNING and containing 60.000 acres or 2,613,600 sq. ft. of land, more or less.

STATE OF TEXAS

§  
§  
§  
§

**FIRST AMENDMENT TO  
UTILITIES ESCROW AGREEMENT**

COUNTY OF DALLAS

This First Amendment to the Utilities Escrow Agreement is made and entered into by and between HHEC Spinco, LLC, a Delaware limited liability company (“Owner HHEC”), JCBR Holdings, LLC (“JCBR”) and Wylie Independent School District, a Texas independent school district (“Owner Wylie”) and the City of Lucas, Texas, a municipal corporation existing under the laws of the State of Texas (“the City”) , and American Escrow Company, a Texas corporation (“Escrow Agent,” and together with the Owners and City, the “Parties”), acting by and through their authorized representatives

**WHEREAS**, the Parties previously entered into that certain Utilities Escrow Agreement dated August 9, 2009 (the “Escrow Agreement”); and

**WHEREAS**, the Parties desire to amend the Agreement as set forth herein;

**NOW THEREFORE**, in consideration of the foregoing, and on the terms and conditions hereinafter set forth and other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. In accordance with Paragraph 13 of the Escrow Agreement, Owner HHEC assigns all of its ownership rights under the Escrow Agreement to:

JCBR Holdings, LLC  
3744 Avimore Drive  
Fort Worth, Texas 76109

2. The Escrow Agreement shall continue in full force and effect except as amended herein. If any terms or conditions contained in the First Amendment are inconsistent with the Escrow Agreement, the terms and conditions contained in the First Amendment shall be controlling.

*(signature pages to follow)*

EXECUTED on this 16 day of July, 2015.

City of Lucas, Texas

By: [Signature]  
Name: Jim Burk  
Title: Mayor

Approved as to Form:

By: [Signature]  
Joseph J. Gorfida, Jr., City Attorney  
(06-26-15/72260)

EXECUTED on this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

JCBR Holdings

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXECUTED on this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

Owner HHEC Spinco, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXECUTED on this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**City of Lucas, Texas**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Approved as to Form:**

By: \_\_\_\_\_  
Joseph J. Gorfida, Jr., City Attorney  
(06-26-15/72260)

EXECUTED on this 14<sup>th</sup> day of October, 2015.

**JCBR Holdings**

By: John W. Crecy  
Name: JOHN W. CRECY  
Title: Member, JCBR Holdings LLC

EXECUTED on this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**Owner HHEC Spinco, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXECUTED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**Owner Wylie Independent School District**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ESCROW AGENT:**

**American Escrow Company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

City of Lucas  
Water Fund Reserves by Fiscal Year

	Actual 2015-2016	Actual 2016-2017	Actual 2017-2018	Actual 2018-2019	Actual 2019-2020	Actual 2020-2021	Actual 2021-2022	Projected 2022-2023	Projected 2023-2024
<b>Unrestricted Cash Balance per Audit Report</b>	<b>\$ 5,579,746</b>	<b>\$ 5,548,487</b>	<b>\$ 5,996,412</b>	<b>\$ 6,215,622</b>	<b>\$ 6,945,017</b>	<b>\$ 7,276,317</b>	<b>\$ 8,106,958</b>	<b>\$ 8,106,958</b>	<b>\$ 8,106,958</b>
Adjusted For:									
Projected Excess Fund Balance FY 22-23								\$ 1,373,669	\$ 1,373,669
Projected Excess Fund Balance FY 23-24									\$ 503,280
Additional Restrictions:									
CC 10-19-23 Reserve Restriction for Water Tower Project (FY 22-23)								\$ (510,632)	\$ (510,632)
Customer Deposits	\$ (239,250)	\$ (245,600)	\$ (247,600)	\$ (256,220)					
<b>Reserve Balance Prior to GASB 54 Requirement</b>	<b>\$ 5,340,496</b>	<b>\$ 5,302,887</b>	<b>\$ 5,748,812</b>	<b>\$ 5,959,402</b>	<b>\$ 6,945,017</b>	<b>\$ 7,276,317</b>	<b>\$ 8,106,958</b>	<b>\$ 8,969,995</b>	<b>\$ 9,473,275</b>
<b>Reserve Balance in Operating Months</b>	<b>19</b>	<b>16</b>	<b>18</b>	<b>18</b>	<b>20</b>	<b>21</b>	<b>20</b>	<b>19</b>	<b>19</b>
50% Current Year Water Fund Expenditures (6 months)	\$ (1,656,470)	\$ (1,897,744)	\$ (1,949,722)	\$ (1,983,894)	\$ (2,081,761)	\$ (2,127,754)	\$ (2,416,524)	\$ (2,824,261)	\$ (2,965,532)
<b>Reserve Balance After GASB 54 Requirement</b>	<b>\$ 3,684,026</b>	<b>\$ 3,405,143</b>	<b>\$ 3,799,090</b>	<b>\$ 3,975,508</b>	<b>\$ 4,863,256</b>	<b>\$ 5,148,563</b>	<b>\$ 5,690,434</b>	<b>\$ 6,145,734</b>	<b>\$ 6,507,743</b>
<b>Reserve Balance in Operating Months</b>	<b>13</b>	<b>10</b>	<b>12</b>	<b>12</b>	<b>14</b>	<b>15</b>	<b>14</b>	<b>13</b>	<b>13</b>
<b>Restricted during Fiscal Year Audit:</b>									
Capital Project Funding approved (3-2-17)(51-1007-50/3105)			\$ 120,979	\$ 120,979	\$ 120,979	\$ 120,979	\$ 120,979	\$ 120,979	\$ -
Reserve Funding Bait Shop Water Line(51-1007-75/51-3106-75)						\$ 31,118			
Impact Fees (Lakeview Downs) (51-1001-75)/(51-3106-10)					\$ 27,500	\$ 33,000	\$ 11,000	\$ 22,000	\$ 22,000
Impact Fees (Capital Projects) (51-1001)/(51-3106-15)						\$ 352,448	\$ 447,709	\$ 618,050	\$ -
Debt Service (51-1007-40)/(51-1008)/(51-3106)	\$ 375,000	\$ 425,000	\$ 435,000	\$ 477,800	\$ 515,000	\$ 495,000	\$ 410,000	\$ 415,000	\$ 415,000
Impact Fee Study (51-1007-70/51-3106-70)							\$ 23,040		
Project Mgmt (51-1007-70)				\$ 69,945	\$ 17,486				
Bait Shop Waterline Restricted (51-1007-75/51-3106-75)							\$ 1,148,202		
Water Tower Project Restricted								\$ 510,632	
Water Operations Restricted (51-1007-60/51-3106-60)							\$ 35,826	\$ 53,157	
Customer Deposits (51-1012)/(51-3106-20)					\$ 258,400	\$ 278,625	\$ 287,600	\$ 295,600	\$ 295,600
Reserve Restricted per Audit Report	\$ 375,000	\$ 425,000	\$ 555,979	\$ 668,724	\$ 939,365	\$ 1,311,170	\$ 2,484,356	\$ 2,035,418	\$ 732,600



# City of Lucas

## City Council Agenda Request

### December 21, 2023

Item No. 05

Requester: Mayor Jim Olk

#### **Agenda Item Request**

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Executive Session:

- A. The City Council will convene into Executive Session pursuant to Section 551.074(a)(1) of the Texas Government Code, Personnel Matters, for City Manager Evaluation.
- B. The City Council will convene into Executive Session pursuant to Section 551.074(a)(1) of the Texas Government Code, Personnel Matters, to deliberate the appointment of members to the Planning and Zoning Commission.

#### **Background Information**

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The meeting is closed to the public as authorized by Section 551.074(a)(1) of the Texas Government Code.

#### **Attachments/Supporting Documentation**

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NA

#### **Budget/Financial Impact**

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NA

#### **Recommendation**

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NA

#### **Motion**

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NA



# City of Lucas

## City Council Agenda Request

### December 21, 2023

Item No. 06

Requester: City Council

#### **Agenda Item Request**

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Reconvene from Executive Session and take any action necessary as a result of the Executive Session.

#### **Background Information**

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NA

#### **Attachments/Supporting Documentation**

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NA

#### **Budget/Financial Impact**

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NA

#### **Recommendation**

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NA

#### **Motion**

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NA