Notice of City Council Regular Meeting AGENDA

July 11, 2023 at 6:00 PM

NOTICE IS HEREBY GIVEN that a Meeting of the Montgomery City Council will be held on **Tuesday**, **July 11, 2023**, at **6:00 PM** at the City of Montgomery City Hall, 101 Old Plantersville Road, Montgomery, Texas.

Members of the public may view the meeting live on the City's website under Agenda/Minutes and then select **Live Stream Page** (**located at the top of the page**). The meeting will be recorded and uploaded to the City's website.

CALL TO ORDER

INVOCATION

PLEDGE OF ALLEGIANCE TO FLAGS

VISITOR/CITIZENS FORUM:

Citizens are invited to speak for three (3) minutes on matters relating to City Government that relate to agenda or non-agenda items. Prior to speaking, each speaker must be recognized by the Presiding Officer. All speakers should approach the podium to address Council and give their name and address before sharing their comments. City Council may not discuss or take any action on an item, but may place the issue on a future agenda.

CONSENT AGENDA:

1. Consideration and approval of the revised minutes of the City Council Regular Meeting 05-23-2023

CONSIDERATION AND POSSIBLE ACTION:

- 2. Consideration and possible action on a parking variance request from Home Depot USA, Inc.
- <u>3.</u> Public Hearing and consideration and possible action on:
 - AN ORDINANCE OF THE CITY OF MONTGOMERY, TEXAS, GRANTING A SPECIAL USE PERMIT TO EVAN BALLEW FOR USE OF 14640 LIBERTY STREET, MONTGOMERY, TEXAS 77356 FOR A PROFESSIONAL REAL ESTATE OFFICE; ESTABLISHING CERTAIN TERMS, CONDITIONS AND LIMITATIONS; PROVIDING FOR PENALTY, SEVERABILITY, AND EFFECTIVE DATE.
- 4. Consideration and possible action on the application for a City Alcoholic Beverage Permit for Ryan Liquor.
- Consideration and possible action regarding the Certificate of Substantial Completion and Certificate of Acceptance for the Downtown Sanitary Sewer Rehabilitation Project.
- Consideration and possible action on: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS, AMENDING ARTICLE VI, "OPERATION OF GOLF CARTS ON PUBLIC STREETS", OF THE CITY CODE OF ORDINANCES; REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT THEREWITH; PROVIDING A SEVERANCE CLAUSE AND PROVIDING AN EFFECTIVE DATE.

- Consideration and possible action on accepting applications for an open position on the MEDC Board of Directors.
- 8. Consideration and possible action on approval of construction plans for Montgomery Bend Section One (Dev. No. 2203).
- Consideration of and Possible Action on the Proposed Amendments to the Approved Redbird Meadow Development Agreement

EXECUTIVE SESSION:

Adjourn into Closed Session in compliance with Section 551.01 etseg. Texas Government Code, to wit:

Sections **551.071** (consultation with attorney: Town Creek-Atkins Creek Hydrology Issue update).

551.072 (deliberation regarding real property).

POSSIBLE ACTION FROM EXECUTIVE SESSION:

Consideration and possible action from items dsicussed in Executive Session.

COUNCIL INQUIRY:

Pursuant to Texas Government Code Sect. 551.042 the Mayor and Council Members may inquire about a subject not specifically listed on this Agenda. Responses are limited to the recitation of existing policy or a statement of specific factual information given in response to the inquiry. Any deliberation or decision shall be limited to a proposal to place on the agenda of a future meeting.

ADJOURNMENT

/s/ Nici Browe

Nici Browe, City Secretary. TRMC

I certify that the attached notice of meeting was posted on the bulletin board at City of Montgomery City Hall, 101 Old Plantersville Road, Montgomery, Texas, July 7, 2023 at 5:00 p.m.

This facility is wheelchair accessible and accessible parking spaces are available. Please contact the City Secretary's office at 936-597-6434 for further information or for special accommodations.

City Council Regular Meeting MINUTES

May 23, 2023, at 6:00 PM

CALL TO ORDER

Mayor Byron Sanford called the meeting to order at 6:00 p.m.

Present: Byron Sanford Mayor

Carol Langley City Council Place #1

Casey Olson City Council Place #2

Sara Countryman City Council Place #3

Cheryl Fox City Council Place #4

Stan Donaldson City Council Place #5

Also Present: Gary Palmer City Administrator

Diana Cooley Deputy City Secretary

Katherine Vu WGA, City Engineer

CALL TO ORDER

Mayor Byron Sanford called the meeting to order at 6:00 P.M.

INVOCATION

Mayor Byron Sanford provided the Invocation.

PLEDGE OF ALLEGIANCE TO FLAGS

1. <u>Mayor Byron Sanford administered the Oath of Office to the following duly elected officials from May 6, 2023, City of Montgomery General Election:</u>

Carol Langley - City Council Place 1

Sara Countryman – City Council Place 3

Stan Donaldson – City Council Place 5

2. Recognition of outgoing Councilmember: Patricia Easley

Mayor Byron Sanford stated Councilmember Patricia Easley was not able to attend the meeting but will be presented with a plaque acknowledging and appreciating her service to the City this past year.

3. <u>Consideration and possible action to elect the Mayor Pro Tem for the term of one (1) year as provided by Texas Local Government Code 22.037 (b).</u>

Councilmember Cheryl Fox moved to elect as Mayor Pro Tem Casey Olson for a term of one year as provided Texas Local Government Code 22037 (b). Councilmember Carol Langley seconded the motion. **Motion passed** (5-0).

VISITOR/CITIZENS FORUM:

No visitors addressed City Council.

CONSENT AGENDA:

- 4. Approval of the following:
 - (a) City Council and Zoning Board of Adjustment meeting minutes 04-25-2023

Councilmember Carol Langley moved to table item 4(a) due to the date of the minutes being incorrect. Councilmember Cheryl Fox seconded the motion. Motion passed (5-0).

(b) Special City Council meeting minutes 05-15-2023

5. <u>Utility Billing Report</u>

Councilmember Sara Countryman asked what the miscellaneous is on the utility general fund report. Councilmember Sara Countryman said it use to be segregated out. Councilmember Sara Countryman asked if the community center is getting a lot of traffic and if so, they need to make sure they have the right improvements or do they need to add things or is it printed out once a month.

Mr. Dave McCorquodale said they can make that change.

Councilmember Sara Countryman asked where the miscellaneous money goes and asked if it goes to general fund. Mr. Palmer said yes it goes to the general fund.

6. Sales Tax Report

Councilmember Casey Olson moved to approve items 4(b), 5 and 6 on the consent agenda as presented. Councilmember Carol Langley seconded the motion. **Motion passed (5-0).**

CONSIDERATION AND POSSIBLE ACTION:

7. Consideration and possible action on the application for a City Alcoholic Beverage Permit for H-Bistrot.

Mr. Gary Palmer said Mr. Steve Hari owner of H-Bistrot approached the City regarding the application for this permit. Mr. Gary Palmer said Mr. Steve Hari needed to obtain the State permit first before applying for a permit from the City. Mr. Gary Palmer said Mr. Steve Hari did not come back to the City to obtain the permit. Mr. Gary Palmer said Code Enforcement spoke with Mr. Steve Hari and he has applied and is now in full compliance with our ordinance. Mr. Gary Palmer recommends approval.

Councilmember Sara Countryman said she has never seen someone open without having approval before coming to council. Councilmember Sara Countryman asked if it was us that failed.

Mr. Gary Palmer said as far as he knows we told Mr. Steve Hari he needed to obtain the permit from the State first and then reapply with the City as part of our application process. Mr. Gary Palmer said Mr. Steve Hari did that, but he never came back and finished the application with the City.

Councilmember Sara Countryman said she spoke with Mr. Steve Hari earlier in the day and it was a different story than what she was told.

Mr. Steve Hari presented his information and stated he submitted his application to the City Secretary and his assistant submitted the application to TABC. Mr. Steve Hari said he asked Nici the Secretary for the City of Montgomery what the process was to do the application for H-Bistrot because it is a restaurant with mixed beverages. Mr. Steve Hari said this is the stamped application from the City of Montgomery and the signage from Nici on it to say yes, you can mail your application to TABC. Mr. Steve Hari said he asked Nici because he knew the regulation usually had to pass first through council to explain the business. Mr. Steve Hari said Nici said no it does not matter and she did it. Mr. Steve Hari said he followed through with the process and did everything he was required to do.

Mr. Gary Palmer said it was a miscommunication as Mr. Steve Hari was to return to the City with his TABC permit and never did and therefore, a permit was never issued by the City. Mr. Gary Palmer said City Council needs to issue the permit.

Councilmember Carol Langley moved to approve the City Alcohol Beverage Permit for H-Bistrot. Councilmember Casey Olson seconded the motion. **Motion passed (5-0).**

8. Consideration and possible action on Certificate of Substantial Completion, commencement of one-year warranty period, Certificate of Construction Completion, and acceptance of the Water Plant No. 3 Generator Addition project (GLO CDBG-DR Contract No. 19-076-017-B366) Water Facilities.

Mr. Dave McCorquodale, Planning and Development Director said the installation of the backup generator project is now complete and the documents included are part of the closeout process.

Councilmember Casey Olson asked if the punchlist was completed. Mr. Chris Roznovsky, City Engineers - WGA stated there was a fuel range issue that happened after the punchlist was completed and installation panels are still being worked on. Councilmember Casey Olson asked why they would accept the warranty and start the warranty period before they actually repair all the items. Mr. Chris Roznovsky said the warranty starts at Substantial Completion which was deemed back in February when it was operational. Mr. Chris Roznovsky said it was put in service, set up and available for use back in February, which is when the warranty period starts. Mr. Chris Roznovsky said accepting and closing out the project which was what GLO has as a timeline does

not change a contractor's obligation as he still has to complete the work in the contract which is done and continue to service for the one year for anything that comes up.

Councilmember Sara Countryman moved to approve item #8 as presented. Councilmember Carol Langley seconded the motion. **Motion passed (5-0).**

9. Consideration and possible action on the Grant Completion Report for GLO CDBG-DR Contract No. 19-076-017-B366.

Mr. Dave McCorquodale stated that this report derives from the grant manager and is awaiting confirmation on the beneficiaries being 110 or 122.

Mayor Byron Sanford said he has been corresponding with Mr. Dave McCorquodale and both have been keeping him in the loop and there was a timeline of which they were aware. Mayor Byron Sanford stated he was double checking, and he does not see a problem with this.

Councilmember Sara Countryman asked if this closes out the GLO Project. Mr. Dave McCorquodale said it does not officially close it out as it is just a step along the way.

Councilmember Carol Langley asked if it is just a Grant Completion Report.

Mr. Dave McCorquodale said this is one of the documents GrantWorks Project Manager, Ana Sanchez-Gomez has to submit to the GLO to close the project out. He explained that GLO has a strict timeline and process to follow.

Councilmember Stan Donaldson said he is thoroughly opposed to signing documents that are incomplete and the only reason he will let it go this time is because the Mayor said it was an insignificant thing. He went on to say the Mayor said he wants every "T" crossed and every "I" dotted, this project has been going on for an entire year and are coming to the end of it, they still cannot complete a document. Councilmember Stan Donaldson said someone created the documents and put it in there for a reason. Councilmember Stan Donaldson said he does not think it is good practice to sign documents that are not completed, but he is willing to pass on it because of the Mayor's intervention.

Councilmember Carol Langley asked if this is actually GrantWorks and not GLO telling us we need to do this tonight. Mr. Dave McCorquodale said that is correct. Mr. Dave McCorquodale said this is not coming from the GLO. Mr. Dave McCorquodale said this is a document our Grant Manager is completing and filling out to submit to the GLO.

Councilmember Casey Olson asked what the public hearing is about. Mr. Dave McCorquodale said the Project Manager said a public hearing is required to close out a grant based on your citizen participation plan that is submitted at the beginning of the grant. Mr. Dave McCorquodale said he is not familiar with it as he was not around when it was submitted. Mr. Dave McCorquodale said the public hearing will be held on June 1, 2023.

Councilmember Casey Olson moved to approve the Grant Completion Report. Councilmember Carol Langley seconded the motion.

Councilmember Carol Langley said she knows how the deadlines are on the grants and was not comfortable with the Project Manager waiting until Friday afternoon. Councilmember Carol Langley said if she had thought the Project Manager was where she could reach her, she would have spoken with her.

Motion passed (5-0).

10. Consideration and possible action authorizing the City Administrator to approve expenses to replace a booster pump and motor at Water Plant 3.

Mr. Mike Muckleroy said the booster pump failed at Water Plant No. 3 and had received three quotes from three different companies. He added that the replacement is actually cheaper than rebuilding the pump and he is recommending replacing the motor because it is right at the 50 percent mark of the cost to replace it versus rebuild it.

He went on to say that with the summer months coming they did look at the possibility of having it rebuilt, however the timeline was too extensive.

Councilmember Carol Langley asked where Water Plant No. 3 is located. Mr. Muckleroy said on FM 1097 by Plez Morgan and Business Park Drive.

Councilmember Casey Olson asked if the pumps are interchangeable between stations. Mr. Mike Muckleroy said they are not. Mr. Mike Muckleroy said the three pumps that are on site at that plant are the same but they are not the same as Water Plant No. 2.

Councilmember Casey Olson asked if it would pay to rebuild it and keep it as a spare. Mr. Mike Muckleroy said it is possible but the rebuild price is actually more expensive. Councilmember Casey Olson said they could buy a new one and rebuild one for 50 percent and keep it as a spare but it is because of the lead times. Mr. Muckleroy confirmed to rebuild the pump is more expensive replacing. Mr. Muckleroy said the motor itself is \$2,361 to repair and the cost of the new motor is a little over \$5,000.

Councilmember Sara Countryman said it says the quote is good for 30 days and asked if they lock in the price when they say go or do they receive the price when it is delivered. Mr. Muckleroy said as soon as they tell them to go they lock in the price.

Councilmember Casey Olson said the budget amount of \$250,000 struck him as odd. Mr. Mike Muckleroy said that is the repair and maintenance budget this item will come out of.

Councilmember Sara Countryman asked if this went out to RFP. Mr. Muckleroy said it did not, they received three quotes on it.

Councilmember Stan Donaldson asked if every water well has a booster pump. Mr. Muckleroy said yes, multiples. Councilmember Donaldson asked what the booster pump does. Mr. Muckleroy says it supplies the pressure to the system. Councilmember Donaldson asked if it is a necessary item that needs to be replaced right away. Mr.

Muckleroy said yes. Councilmember Donaldson asked if they would need to rent one. Mr. Muckleroy said it would be smarter to rent one with the summer months coming. Mr. Muckleroy said if it was the end of summer and they were going into winter they would feel a lot more comfortable in just relying on the two that are there but with the heat of the summer coming and demand going up, it would definitely feel better having all three of them there.

Mr. Chris Roznovsky, WGA City Engineer said the way it is designed is the plant and equipment is designed to have one pump with the largest pump out of service which is required by the State.

Councilmember Sara Countryman asked if the rental charge is in the report. Mr. Muckleroy said they have not received the price for a rental charge. Mr. Muckleroy said this is just to approve the purchase of the new and get the process going. Mr. Mike Muckleroy said they are working on the pricing of a rental.

Councilmember Stan Donaldson asked if they are going to need to have another company install it. Mr. Muckleroy said they will have the company they would rent it from to install it. Mr. Muckleroy said it would be part of their services.

Councilmember Carol Langley moved to authorize the City Administrator to approve the expenses to replace a booster pump and motor at Water Plant No. 3. Councilmember Cheryl Fox seconded the motion. **Motion passed (5-0).**

11. <u>Consideration and possible action on Change Order No. 4 and the Certificate of Acceptance for the Water Plant No. 3 Improvements project.</u>

Mr. Chris Roznovsky, WGA, City Engineer said there were two water plant projects going on at the same time at Water Plant No. 3, the GLO funded project and the TWDB (Texas Water Development Board) funded project. Mr. Roznovsky said the TWDB project was deemed substantially complete in August 2022 and since then the contractor has been getting into as-built drawings and negotiations for the change order for a decrease of \$48,662 to the contract. Mr. Roznovsky said the decrease total is due to damage that occurred to one of the cooling towers. Mr. Roznovsky said this amount is being taken out of the contract total. Mr. Roznovsky said the two items for tonight are approval of Change Order No. 4, which is a decrease of \$48,662.93 that reduces the total contract amount from \$1,028,675.76 to \$980,012.83. Mr. Roznovsky said this project is complete with the Certificate of Acceptance officially deeming the project complete. Mr. Chris Roznovsky said this was already in substantial completion and the one-year warranty was already set so in the next few months there will be a one-year warranty inspection with the contractor.

Councilmember Sara Countryman moved to approve the motion to Change Order No. 4 as presented and accept the public water infrastructure. Councilmember Cheryl Fox seconded the motion. **Motion passed (5-0).**

12. <u>Consideration and possible action on a Resolution supporting the City of Montgomery's Application to TxDOT's 2023 Transportation Alternatives Set-Aside Call for Projects.</u>

Mr. Dave McCorquodale said the City submitted two years ago for a TxDOT grant for two sidewalks. Mr. McCorquodale said we were told we got very close but did not get awarded for either project, however, in a follow-up meeting with TxDOT they provided the city with reasons for the lack of award: the scope of the project, the number of beneficiaries or the number of folks it served, as well as lack of having something in a formal plan. Mr. McCorquodale said to go after some of the grant funds one needs a planning document or something that is approved that you can point to and say this is an important feature for our city as we have thought and planned for it and now, we are applying to get it funded to build it.

He then went on to say that earlier this year when TxDOT announced their Call for Projects, he spoke with Mr. Ryan Londeen who serves on the MEDC who is an engineer with Halff & Associates and has a grant team that would love to give some thoughts on what the city is considering applying for.

Mr. McCorquodale said the reality of the numbers is if this is not in a plan, you can have the best project in the world and it can be exactly what you need, but you will not get it funded as 20 percent of the scoring criteria is based on whether or not there is a formal plan and document that has the project in it, stating you need to be able to score every possible point and the only way to do that is with a plan.

Mr. McCorquodale said staff are proposing that they develop an active transportation mobility plan that will identify non-roadway pathways and trails. He stated it is an 80/20 match and based on the estimate they should plan on a \$120,000 project which would put the City's match at \$24,000. He did note that obviously that is not in the budget this year. Mr. McCorquodale said there are timelines for these plans. If you approve these plans, they will come back in the budget cycle to ask for the money for the plan. Mr. McCorquodale said the resolution is part of the detailed application and affirms the City understands they would be responsible for 20 percent of this plan document cost.

Councilmember Carol Langley asked who was going to create the plan. Mr. McCorquodale responded they would go out for an RFQ. Councilmember Langley asked if they have time for this. Mr. McCorquodale said yes in terms of the staff time that it needs. Councilmember Langley asked if they have time to do the plan if this is approved tonight. Mr. McCorquodale said the overall timeline for the grant is June 5th when the detailed applications are due and believes they award projects in late September or early October.

Councilmember Casey Olson said they basically have two years to become organized before they can apply again.

Councilmember Stan Donaldson said according to what he has read this money is for non-roadway projects and asked if that was correct. Mr. McCorquodale said it is and it does fund sidewalks, trails and crosswalks, things that are non-motorized transportation.

Councilmember Casey Olson moved to adopt the resolution according to the City's application to TxDOT's 2023 Transportation Alternatives Set-Aside Call for Project. . Councilmember Carol Langley seconded the motion. **Motion passed** (5-0).

DEPARTMENTAL REPORTS:

13. Municipal Court Report

Ms. Kimberly Duckett, Court Administrator provided council with the monthly court report. Ms. Kimberly Duckett said the court collections for April 2023 citations are 91 and the revenue was \$24,358.01.

Councilmember Carol Langley asked how the new employee was working out. Ms. Kimberly Duckett said she is doing wonderfully and catching on very well.

14. Public Works Report

Mr. Mike Muckleroy, Public Works Director presented the monthly report. Councilmember Sara Countryman inquired about the six-feet long potholes on Liberty Street. Mr. Muckleroy responded that a month ago the school called to inform them, and they waited until TxDOT showed up to show them what they had found. TxDOT did a temporary repair which is understandable, but to replace the culverts is a big undertaking and is going to end up with a road closure and a detour. He went on to say that when it surfaced again TxDOT came back out and we were told TxDOT was having trouble securing a contractor to perform the work for a permanent repair. Mr. Muckleroy said he will relay information if they see it starts to fail.

Councilmember Sara Countryman asked Mr. Gary Palmer if the City will take over if it takes two years to get it mitigated. Mr. Gary Palmer said he thinks it would be a discussion with TxDOT to see if they would even allow the City to do that.

Councilmember Cheryl Fox asked if a timeline was given. Mr. Muckleroy said there was not.

Councilmember Casey Olson asked about Clepper Street and the way it is collapsing by Jim's. Mr. Mike Muckleroy said a company they worked with last year called Pave reviewed the damage which included some work on Clepper and Caroline and were given an estimate of \$494,000. Mr. Muckleroy said they are getting more quotes from different companies and said they do not have that in the budget for this year to do it.

Councilmember Casey Olson said they need to make a note in their budget workshop and that the road has been layered and layered and they may have to go to the substructure of it to keep it from collapsing over and over again it needs to get fixed. He concluded his comment with instead of having to fix it continually every three to four years maybe they should look into replacing it in pieces.

Councilmember Sara Countryman asked Mr. Gary Palmer if this is something they could partner with MEDC on since it is in the central business district. Mr. Gary Palmer said it is possible. Mr. Muckleroy said he believes MEDC does have a \$200,000 line item in the budget for infrastructure. Councilmember Casey Olson said they need to make sure and bring it up during budget.

Councilmember Carol Langley asked if the County does any type of asphalt repair. Mr. Muckleroy said it is something they have requested before and they just need to work on that relationship, Interlocal does not say they have to come and do it, but they can ask... Mr. Mike Muckleroy said they would also need to make a resolution for it.

Councilmember Cheryl Fox said when you go to repair the road, a major part of that road was when the elementary school was there and all the buses were driving down that road. Councilmember Cheryl Fox said surely when it is repaired this time we will make sure we will not step over a dollar to pick up a dime and make sure it is something that will see us way into the future.

Mr. Muckleroy said they are working on quotes now and he can ask for a quote just on Clepper, so he at least has a number.

Councilmember Cheryl Fox asked if there are any other roads in the city with that much disrepair. Mr. Muckleroy said there are several roads and Buffalo Springs and Plez Morgan are included. He stated he did find a company called Robotics that will give you an assessment. - you do the assessment yourself with a smart phone in the dash and drive around the city then send the information to them and they will provide an assessment there is a one-time \$5,000 fee and you pay \$1,200 a year to maintain the inventory.

Councilmember Casey Olson asked if there is already an assessment. Mr. Mike Muckleroy said he is in the process of working through the agreement with them.

Councilmember Sara Countryman asked if we have spoken with other cites who have used it to get feedback. Mr. Muckleroy said he has not spoken with anyone at this point, and they have not signed up for anything yet. Mr. Muckleroy said he thinks the biggest savings are that they are not sending a \$125,000 rig out to drive around for a few days.

Councilmember Carol Langley thanked Mr. Muckleroy for getting the City sign downtown fixed.

Councilmember Casey Olson wanted to thank Mr. Muckleroy's crew for fixing the pipe in the creek.

Mayor Byron Sanford said in honor of Public Works Week the City Council would like for Mr. Muckleroy to take his crew out at his discretion to lunch and would like to give Public Works a round of applause for all their hard work.

15. Utility Operations Report (H2O)

The H2O representative stated there was one district alert for April 7th due to a high wet well at lift station 5. The H2O representative said upon investigation rags were found causing the pumps not to operate on auto. The H2O representative said the rags were removed and the pumps were put back on auto.

The H2O representative said the daily peak flow for the month was 787,000 gallons and the daily average flow was 265,400 gallons which is 66 percent of permitted capacity.

Councilmember Sara Countryman asked if 75 percent capacity is when they start looking at getting another water tower. The H2O representative said yes for the wastewater treatment plant.

The H2O representative said for the water report they pumped 11.04 million gallons and accounted for 10.926 million for an accountability rate of 94 percent.

Mr. Muckleroy said the efforts that were made today on the tie end for the force main were not just public works, it was coordinated with H2O, and they played a huge part in it.

16. Police and Code Enforcement Report

Chief Solomon asked if anyone had any questions. Councilmember Sara Countryman said there were nine accidents reported and asked if any of those accidents were in a particular location. Chief Solomon said they were not and that accidents have decreased a lot from last year.

Councilmember Casey Olson asked what the employee status is for his department and if they have lost any more employees. Chief Solomon said there are now four officers in training and three of the men have prior experience. Chief Solomon said they will be sending their first police officer to the Academy on the 30th and will be their first experience in taking a rookie right out of college and putting them in the Police Academy. Councilmember Casey Olson asked if we pay for that. Chief Solomon said yes it is 600 dollars. Chief Solomon said they will pay them while in the Academy and after they pass the Academy, they will go from there.

Mayor Byron Sanford said he thought he saw a new flock camera. Chief Solomon said the flock camera has been removed. Chief Solomon said TxDOT moved some of the cameras so they had to come back out and put them up so it looks like they moved them a bit over. Chief Solomon said it will not interfere with the reading of license plates.

17. City Engineer's Report

Ms. Katherine Vu presented her report stating the Capital Project Water Plant 3 project was addressed earlier in the agenda, as were the GLO Projects. She went on to state the 15-year infrastructure plan, a draft analysis has been submitted to the TORC who are reviewing it and has a scheduled meeting the next week to go over the analysis report. The intent is to address all questions and then present them to the city council at the June 13, 2023, council meeting.

Downtown Sanitary Sewer Rehab we did receive the first estimate payment of \$99,864.00 this includes reading and reviewing all their post rehab videos. A final walk through is scheduled in the morning.

2023 Sanitary Sewer Rehabilitation project was split into two phases; however, the 2nd phase is going to be broken into a different project so the manhole repairs and other items in phase 1 can be started sooner.

Bidding: Bid opening Thursday May 25, 2023, which we can bring to your June 13th meeting. Before the project bids we did prepare a final pre bid cost estimate: \$501,000 and the budget was \$500,000 and will cross into two fiscal years.

Councilmember Casey Olson asked "Jeff" in the audience with all of the rain if he had seen any flooding in his back yard again.

Jeff responded that he did not.

Ms. Vu moved on to the Athletics complex improvements advising they are finalizing the review of plans.

She went on to say there were not a lot of plat reviews this month. She added that Montgomery Bend Construction, and they are continuing their mass grading, detention, and off-site water lines. She provided a picture of the tie in at Terra Vista Circle.

TxDOT changes, they did receive the draft drawings for the Atkins Creek improvement.

Councilmember Sara Countryman asked if TxDOT are aware that the property is for sale, which could potentially become more concrete which means more water run off for the creek causing additional erosion.

Ms. Vu stated she was not sure if they were aware but felt confident, they would be keeping an eye on that.

Emergency Preparedness plan, this was submitted to the state last year and they never received any comments back, in the interest of Hurricane Season beginning June 1st, please take a look at your plan and make sure all contact information is UpToDate.

Lonestar Bridge Repair. This contract was awarded to Rubble Contractors at the Commissioners Court meeting on May 9th. The County has not yet requested the City's share of the project but is expecting that soon.

Councilmember Sara Countryman stated that she was at the meeting, and they stated that the City's share is \$100,000 and asked Ms. Vu if the city had any say in who the contractor would be and if we participated in any of this?

Ms. Vu responded that they did not, however, they were allowed to review plans, and the county addressed their comments, so there was involvement in the preliminary process.

Councilmember Sara Countryman asked if we had the plans from Commissioner Walkers Office.

Mr. Chris Roznovsky confirmed they have the plans.

Councilmember Carol Langley asked if Ms. Vu knew where the contractor was based.

Councilmember Sara Countryman responded that they were located in Willis, Texas.

Some discussion took place regarding the locality of the vendor (*inaudible/ many voices*) and Councilmember Carol Langley stated that she was not happy.

Councilmember Sara Countryman stated that is why she says the city should have had some say in who the contractor was to be if they were paying for a share of this, at least a voice at the table.

Ms. Vu concluded her report with TWDB, which is an annual report and requirement. This is a long list of documents and reports which have to be submitted prior to May 1st and she wanted to inform the council that they submitted this on April 28th.

Councilmember Sara Countryman stated she had an additional question over the Lonestar Parkway Bridge: She reported that this is a case of massive erosion which has been documented for some time, if something fails who is responsible is it the City or the County as the City has a \$100,000 obligation to this project. We have had no voice and she wishes to make sure we are not liable, as that situation is serious in her mind. She continued if that bridge fails and someone gets hurt or dies, she knows that is a County Road but as we now have money invested, we are partially responsible.

Caleb Villarreal, City Attorney stated he would need to go back and refresh himself with the interlocal agreement, typically we would NOT be responsible as it is a county road, unless there is a clause that says we would be responsible which he doubts there would be, the city is not responsible.

(inaudible/many voices talking at the same time)

Chris Roznovsky clarified that the language in the original agreement was vague and ambiguous, and responsibility could have been laid to the city, therefore was revised to remove that.

Councilmember Cheryl Fox said if the county has awarded the contract the contractors would have a bond which would be used if the bridge failed.

Councilmember Sara Countryman stated that she has not seen any paperwork.

(Inaudible multiple voices)

Chris Roznovsky clarified the county's bond requirements.

Councilmember Cheryl Fox asked Mr. Roznovsky to ask for a copy of the bond documents.

Councilmember Sara Countryman stated what about the bids, did you as engineers see any of the bids?

Chris Roznovsky stated he received the bid summary which shows the five or so bids and the bid amounts.

Councilmember Casey Olson stated he had a question about the project upon completion, does the City have a say whether or not we can accept it.

Chris Roznovsky responded he would have a look at the agreement again, but he believes the city is a funding partner, but the contract was through the county, therefore the final say is at the county level, however, he would touch base on that tomorrow.

Mayor Sanford stated that he and other members of Council have taken pictures of the erosion and it is formidable and very concerning, you are hearing the heart of all of us and the citizens. We want to make sure who is taking responsibility there and that the work is done right.

Chris Roznovsky provided the council with the ranges of the bids.

Councilmember Carol Langley confirmed with Ms. Vu that they will be onsite to begin the work any day now.

18. <u>City Administrator Report</u>

Mr. Gary Palmer read his report stating that they did complete the annual audit and is now posted to our website. He went on to update the council on the recruitment of the Finance Director position and the role of Carl Currie from SGR as the Interim Finance Director.

He advised the council that he met with the Historical Society and the Chamber of Commerce to discuss relationships past and how to make it work for the future. He also noted that he is beginning to meet with local businesses as well to forge a good relationship with the city.

Mayor Byron Sanford thanked Mr. Palmer for his report and his relationship building. He went on to say he has welcomed being kept up to date with legislative items and knows that the war is certainly ongoing with efforts to remove powers from local government. Cities need to be able to decide and regulate what is best for themselves.

Councilmember Carol Langley moved to approve the Departmental Reports. Councilmember Casey Olson seconded the motion. **Motion Passed (5-0).**

EXECUTIVE SESSION:

Adjourn into Closed Session in compliance with Chapter 551, et seq. Texas Government Code, to wit:

551.071 Consultation with Attorney – Town Creek Hydrology Issue; and

551.071 Consultation with Attorney – Redbird Development Agreement

City Council convened into Executive Session at 7:26 P.M.

City Council reconvened into Regular Session at 8:35 P.M.

POSSIBLE ACTION FROM EXECUTIVE SESSION:

Councilmember Sara Countryman moved to do nothing with item #1 (551.071 Town Creek Hydrology) and to approve the discussion of item 2 (551.071 Redbird Development) from executive session. **Motion Passed (5-0).**

COUNCIL INQUIRY:

Councilmember Casey Olson stated he does have some concerns over item 12 of tonight's Resolution supporting the City of Montgomery's Application to TxDOT's 2023 Transportation Alternatives Set-Aside Call for Projects. He added that he has briefly met with Dave on this, and it has to do with trails and walkways, our issue is we have a project but not a plan, maybe with some changes we could call the whole thing a walkway, we didn't get chance to finish our discussion but what do you think about turning the McCowan project with this into a grant?

Mr. McCorquodale said his biggest challenge would be changing the preliminary application, it could be put in a place holder for a mobility plan. Changing the application after the fact would be difficult.

Councilmember Casey Olson stated he thought they were two different submittals.

Mr. McCorquodale's response was inaudible as not near a microphone.

ADJOURNMENT

Councilmember Carol Langley moved to adjourn the meeting. Councilmember Cheryl Fox seconded the motion. **Motion passed (5-0).**

ADJOURNI	ED: 8:39 P.M.	
Submitted by	y: Date Approved:	
•	Diana Cooley, Deputy City Secretary/ Nici Browe City Secretary	
	Byron Sanford, Mayor	

Montgomery City Council AGENDA REPORT

Meeting Date: July 11, 2023	Budgeted Amount: N/A	
Department: Admin	Prepared By: Dave McCorquodale	

Subject

Consideration and possible action on a parking variance request from Home Depot USA, Inc.

Recommendation

Approve the parking variance with the following conditions:

- Installation of the proposed traffic light at Buffalo Springs Drive and Eva Street/SH105 and reconstruction of Buffalo Springs Drive between Eva Street and Lone Star Parkway.
- Screening of the rooftop equipment on the building (through revisions to the proposed landscape plan)
- 100% masonry exterior construction that is either brick or natural stone (not the proposed split-face concrete block).

Discussion

The Home Depot has applied for a parking variance for their proposed store immediately west of the Kroger shopping center (see attached site plan). Staff and city engineers met with the Home Depot team and provided a memo detailing the proposed conditions in the recommendation. The parking variance is the only variance the developer is requesting for the project. The attached plans and documents detail the request, and as a summary:

CITY REQUIREMENTS:

B – Commercial (Sec. 98-286.3) Each lot plan shall have off-street parking at a ratio of not less than 0.75 square feet of parking space for each one square foot of gross building area. Minimum parking space size = 9' x 18' (162 sqft)

PROJECT AREA CALCS:

Gross building area = 137,812 square feet

Required parking space area = 103,359 square feet

@ 9' x 19' (171 sqft) stall dimensions = 604 parking spaces

VARIANCE REQUEST:

Proposed number of customer-available parking = 399 spaces (206 spaces less than required by code) Parking dedicated for seasonal display, etc. = 43 spaces

Total parking spaces on site = 442 spaces

Approved By		
Assistant City Administrator &		
Planning & Development Director	Dave McCorquodale	Date: 07/07/2023
City Administrator	Gary Palmer	Date: 07/07/2023



Variance Request Application

City of Montgomery 101 Old Plantersville Road Montgomery, Texas 77316 (936) 597-6434

Upon completion return application to dmccorquodale@ci.montgomery.tx.us

Contact Information
Property Owner(s): Milestone 105 Investments LTD, a Texas limited partnership.
Address: 9800 Richmond Ave., Suite 490, Houston, TX Zip Code: 77042
Email Address: Jordan.Corbitt@kimley-horn.com Phone: (770) 545-6103 The Home Depot U.S.A., Inc.
Applicants: Kimley-Horn as project representative for both Owner and Home Depot
Address: 11720 Amber Park Dr, Suite 600, Alpharetta, GA, 30009
Email Address: Jordan.Corbitt@Kimley-Horn.com Phone: (770) 545-6103
Parcel Information
Property Identification Number (MCAD R#): 3014-02-00500
Legal Description: provided to city via land survey
Street Address or Location: NEQ Hwy 105 and Buffalo Springs Drive
Acreage: 11.81 Present Zoning: B - Commercial Present Land Use: Vacant
Variance Request
A self-series and the feet series of the feet series and the feet series are
Applicant is requesting a variance from the following:
City of Montgomery Ordinance No.: Article IV Section(s): 98-286
Ordinance wording as stated in Section (98-286):
Commercial District (B). Each lot plan for professional or commercial use (B) shall have off-street
parking at a ratio of not less then 0.75 square feet of parking space for each one square foot of
gross building area.
Detail the variance request by comparing what the ordinance states to what the applicant is requesting:
Per Section 98-286 & 98-289, the prototypical Home Depot store is required to provide a
minimum of 605 parking stalls with 9'x18' dimensions. The Home Depot requires 9'x19'
parking stalls and a minimum 25' drive aisle to ensure safety and provide a better customer experience. Using 9'x19' stalls, and due to topography constraints, Home Depot's site can
only accommodate 442 stalls, 43 of which will be needed by Home Depot for storage/display
of their typical outdoor uses such as rental trucks, trailers, equipment, and other display
items. Total parking available to customers will be 399 stalls. The intent of this variance
request is to allow Home Depot to operate beneath code parking requirements by 206 stalls.

Signatures

Owner(s) of record for the above described parcel:	
Signature: Joseph Colutt	Date:05/12/2023
Signature:	
Signature:	Date:
Note: Signatures are required for all owners of record for the property proposed for var	iance. Attach additional signatures on a separate sheet of paper.
Additional	Information
The following information must also be submitted:	
[] Cover letter on company letterhead stating what is being ask	ed. []
A site plan.	
[] All applicable fees and payments.	
[] The application from must be signed by the owner/applicant the owner authorizing the applicant to submit the variance reque	**
Date Received	

Public Hearings

Parties in interest and citizens shall have an opportunity to be heard at public hearings conducted by the Planning and Zoning Commission and the City Council before any variance to a district regulation, restriction, or boundary shall become effective. Regularly scheduled meetings are as follows and will be held accordingly unless public notice has been given of a change of dates:

Planning and Zoning Commission: 1st Tuesday of every month at 6:00 p.m.

City Council: 2nd and 4th Tuesday of every month at 6:00 p.m.

Finding of Undue Hardship

In order to grant a variance, the Board must make the following findings to determine that an undue hardship exists:

- 1. That literal enforcement of the controls will create an unnecessary hardship or practical difficulty in the development of the affected property; and
- 2. That the situation causing the hardship or difficulty is neither self-imposed nor generally affecting all or most properties in the same zoning district; and
- 3. That the relief sought will not injure the permitted use of adjacent conforming property; and
- 4. That the granting of a variance will be in harmony with the spirit and purpose of these regulations.
- 5. Financial hardship alone is not an "undue hardship" if the property can be used, meeting the requirements of the zoning district it is located in.

Factors not Considered

A variance shall not:

- 1. Be granted to relieve a self-created or personal hardship,
- 2. Be based solely upon economic gain or loss,
- 3. Permit or allow any person a privilege or advantage in developing a parcel of land not permitted or allowed by these Regulations to other parcels of land in the same particular zoning district,
- 4. Result in undue hardship upon another parcel of land.

Kimley » Horn

May 12, 2023

City of Montgomery 101 Old Plantersville Road Montgomery, TX 77316

RE: Variance Request Narrative

Home Depot Parking Variance - Buffalo Springs Drive and Highway 105

To Whom it May Concern:

This variance request application is being submitted to the City of Montgomery on behalf of the current property owner, Milestone 105 Investments LTD, and the potential developer, The Home Depot, who proposes to construct a prototypical Home Depot retail store with an attached garden center at the intersection of Buffalo Springs Drive and Highway 105. The intent for the proposed store is to serve the community of Montgomery, TX by offering services and goods typical of a home improvement store.

Per Section 98-286 in the City of Montgomery Code of Ordinances, "Each lot plan for professional or commercial use (B) shall have off-street parking at a ratio of not less then 0.75 square feet of parking space for each one square foot of gross building area." The total area of building, vestibules, and garden center equals 137,812 square feet. At a ratio of 0.75, the total required parking square footage is 103,359 square feet. This equates to 605 parking stalls at 171 square feet each (9'x19').

This variance application is to request that Home Depot be allowed to operate at 399 customeravailable stalls, for the following reasons.

- With 350 front field stalls being adequate to service the Home Depot, adding an additional 206 to meet code requirements will not increase customer experience or operational efficiency.
- Due to site constraints, such as topography, requiring any more parking stalls will force Home
 Depot to decrease the size of their retail center and/or garden center, which would also
 decrease the amount, and quality, of services they could offer to the Montgomery community.
 Reducing the store size would also negatively impact the city and community from the
 amount of sales and revenue that the store will generate for the city.

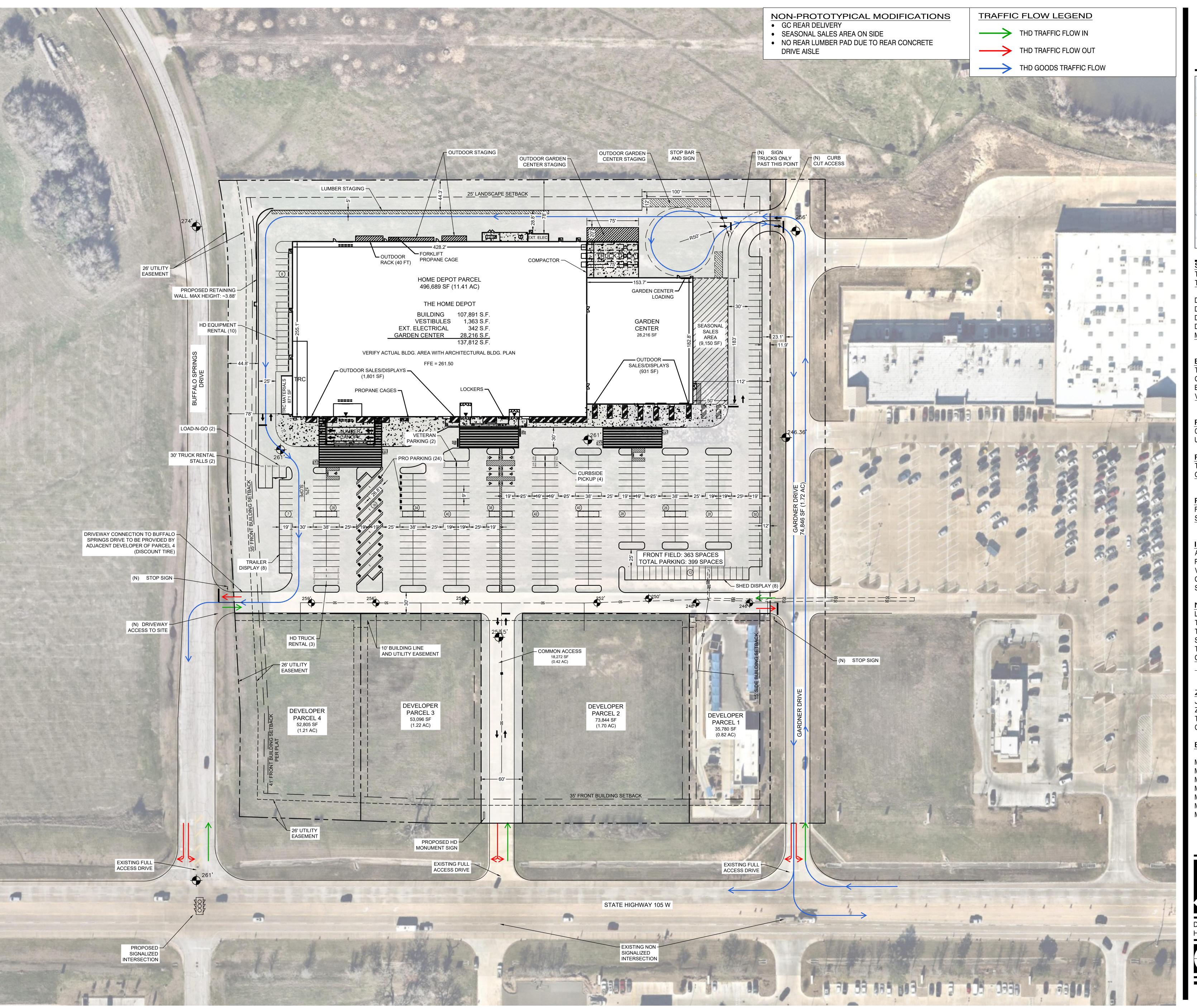
Please do not hesitate to contact me at 770-545-6103 or at <u>Jordan.Corbitt@kimley-horn.com</u> should you have any questions regarding our application.

Sincerely,

Jordan Corbitt, P.E.

Jordan Corath

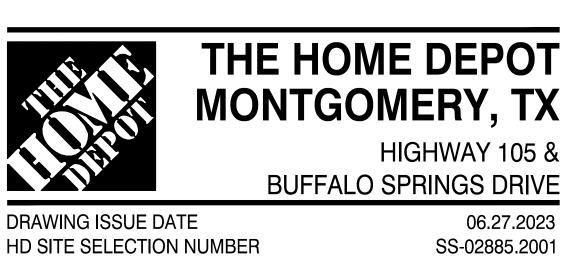
Authorized Representative



Kimley» Horn



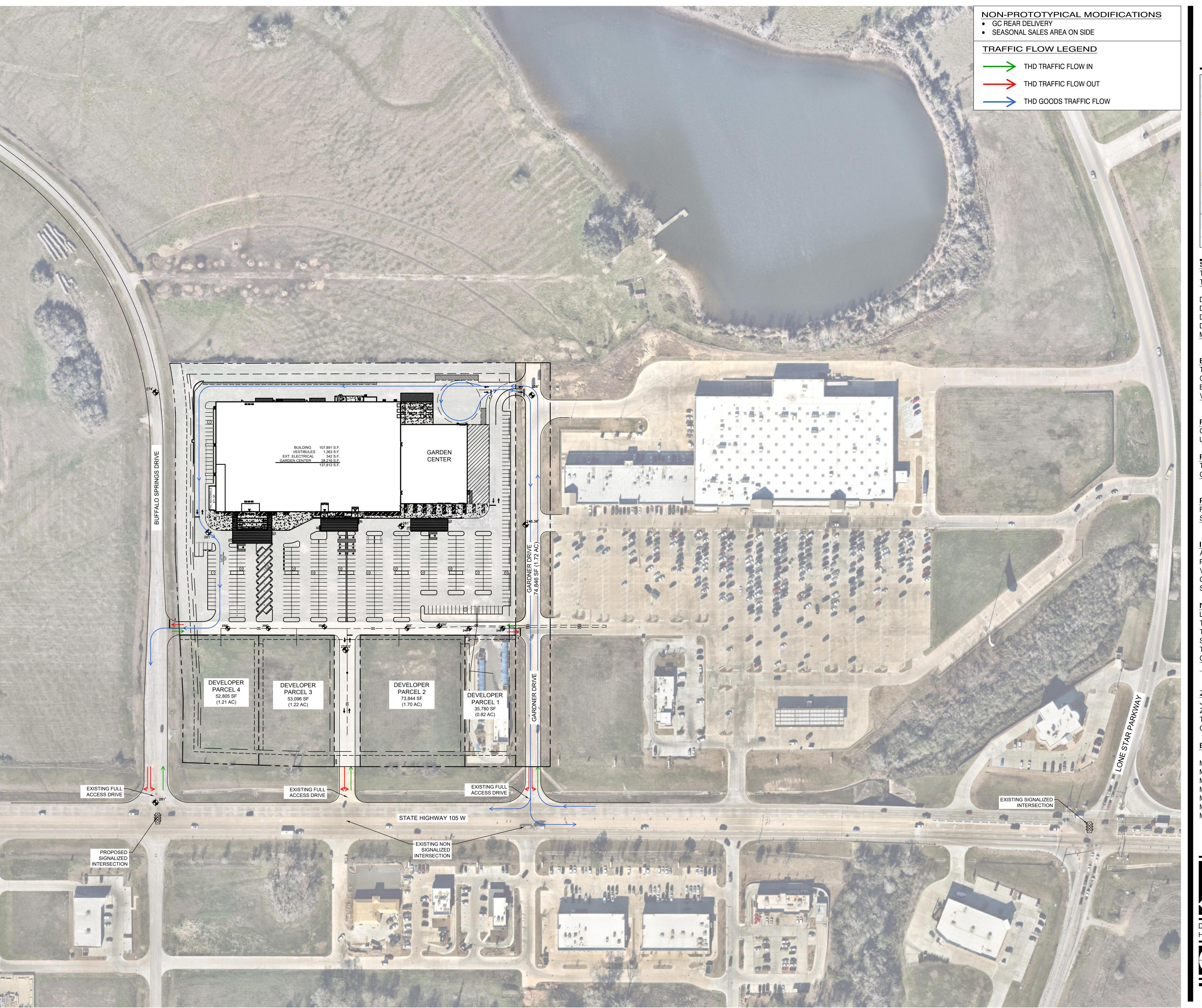
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SITE AREA		
THE HOME DEPOT PARCEL	11.39 AC	496,240 SF
THD UNUSABLE AREA	0.42 AC	18,272 SF
TOTAL THD SITE AREA	11.81 AC	514,512 SF
DEVELOPER PARCEL 1	0.82 AC	35,780 SF
DEVELOPER PARCEL 2	1.70 AC	73,844 SF
DEVELOPER PARCEL 3	1.22 AC	53,096 SF
DEVELOPER PARCEL 4	1,21 AC	52,805 SF
MILESTONE BOULEVARD	1.72 AC	74,846 SF
TOTAL SITE AREA	18.48 AC	804,883 SF
	10110710	33 1,333 31
BUILDING AREA		
THE HOME DEPOT		107,891 SF
GARDEN CENTER		28,216 SF
EXTERIOR ELECTRICAL ROOM		342 SF
VESTIBULES		1,363 SF
TOTAL THD AREA		137,812 SF
PARKING REQUIRED		
0.75 SF PER 1 SF OF GROSS BU	ILDING AREA	103,359 SF
USING 9'x19' PARKING STALLS		
PARKING REQUIRED		
THE HOME DEPOT		481 STALLS
GARDEN CENTER		124 STALLS
TOTAL THD PARKING		605 STALLS
PARKING PROVIDED		
FRONT FIELD		363 STALLS
SIDE FIELD / REAR		36 STALLS
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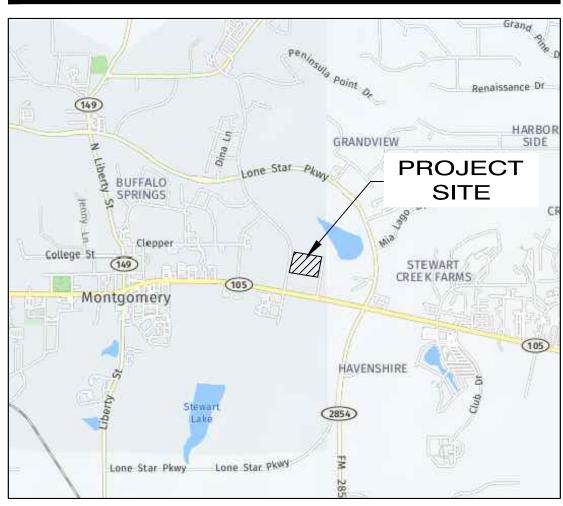
DRAWING ISSUE DATE
HD SITE SELECTION NUMBER

SCALE: 1 " = 50'

TX - SITE PLAN 5



Kimley» Horn



	8	
SITE AREA		
HE HOME DEPOT PARCEL	11.39 AC	496,240 SF
HD UNUSABLE AREA		•
	0.42 AC	18,272 SF
TOTAL THD SITE AREA	11.81 AC	514,512 SF
EVELOPER PARCEL 1	0.82 AC	35,780 SF
EVELOPER PARCEL 2	1.70 AC	73,844 SF
EVELOPER PARCEL 3	1.22 AC	53,096 SF
EVELOPER PARCEL 4	1.21 AC	52,805 SF
ILESTONE BOULEVARD	1.72 AC	74,846 SF
TOTAL SITE AREA	18.48 AC	804,883 SF
	10110710	00 1,000 01
BUILDING AREA		
HE HOME DEPOT		107,891 SF
		·
ARDEN CENTER		28,216 SF
XTERIOR ELECTRICAL ROOM		342 SF
ESTIBULES		1,363 SF
TOTAL THD AREA		137,812 SF
ARKING REQUIRED		
75 SF PER 1 SF OF GROSS BU		103,359 SF
SING 9'x19' PARKING STALLS		. 22,200 01
SING SAIS I / IIIIIII G SIALLO		
ABKING BEOLUBES		
PARKING REQUIRED	· -	404 OTALLO
HE HOME DEPOT		481 STALLS
ARDEN CENTER		124 STALLS
TOTAL THD PARKING		605 STALLS
ARKING PROVIDED		
RONT FIELD		363 STALLS
IDE FIELD / REAR		36 STALLS
TOTAL THD PARKING		399 STALLS
NCLUDED IN PARKIN		
CCESSIBLE STALLS (8 REQ @	301-400)	10 STALLS
RO PARKING		24 STALLS
ETERAN PARKING		2 STALLS
URBSIDE PICKUP		4 STALLS
EASONAL SALES AREA	9,150 SF	0 STALLS
	0,100 01	OOTALLO
IOT INCLUDED IN PA	ARKING PR	OVIDED
	AIRINGIII	
DAD-N-GO		2 STALLS
HD TRUCK RENTAL		5 STALLS
RAILER DISPLAY		8 STALLS
HED DISPLAY		8 STALLS
HD EQUIPMENT RENTAL		10 STALLS
ART CORRALS		10 STALLS
ACCESSORY PARKING NOT IN	CLUDFD	43 STALLS
TOTAL THD PARKING PROVIDE		442 STALLS
IOTAL ITID FARRING PROVIDE	ט	442 STALLS
ZONIINIO OL 400:-:0:	TION	
ONING CLASSIFICA		
URISDICTION		MONTGOMERY
ONING CLASSIFICATION	C	COMMERCIAL (B)
HD USE PERMITTED BY RIGHT		YÈŚ
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5.5551.5151.MGE/DIOI EAT 1		SIII INO
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BULK REGULATIONS		חחחווייי
III. EDON'T 0 10:4 (-: 1: -	REQUIRED	PROVIDED
IN. FRONT SETBACK (BLDG.)	35'	108'
IN. SIDE SETBACK (BLDG.)	15'	78'
IN. REAR SETBACK (BLDG.)	25'	N/A
IN. LANDSCAPE BUFFER	25'	44'
AX. IMPERVIOUS COVERAGE		TBD
	SILEINI	
	OII ENT	- 1 - 1 - 1
AX. FLOOR AREA RATIO	SILENT	0.28
AX. FLOOR AREA RATIO AX. BUILDING HEIGHT	SILENT 45'	0.28 24'



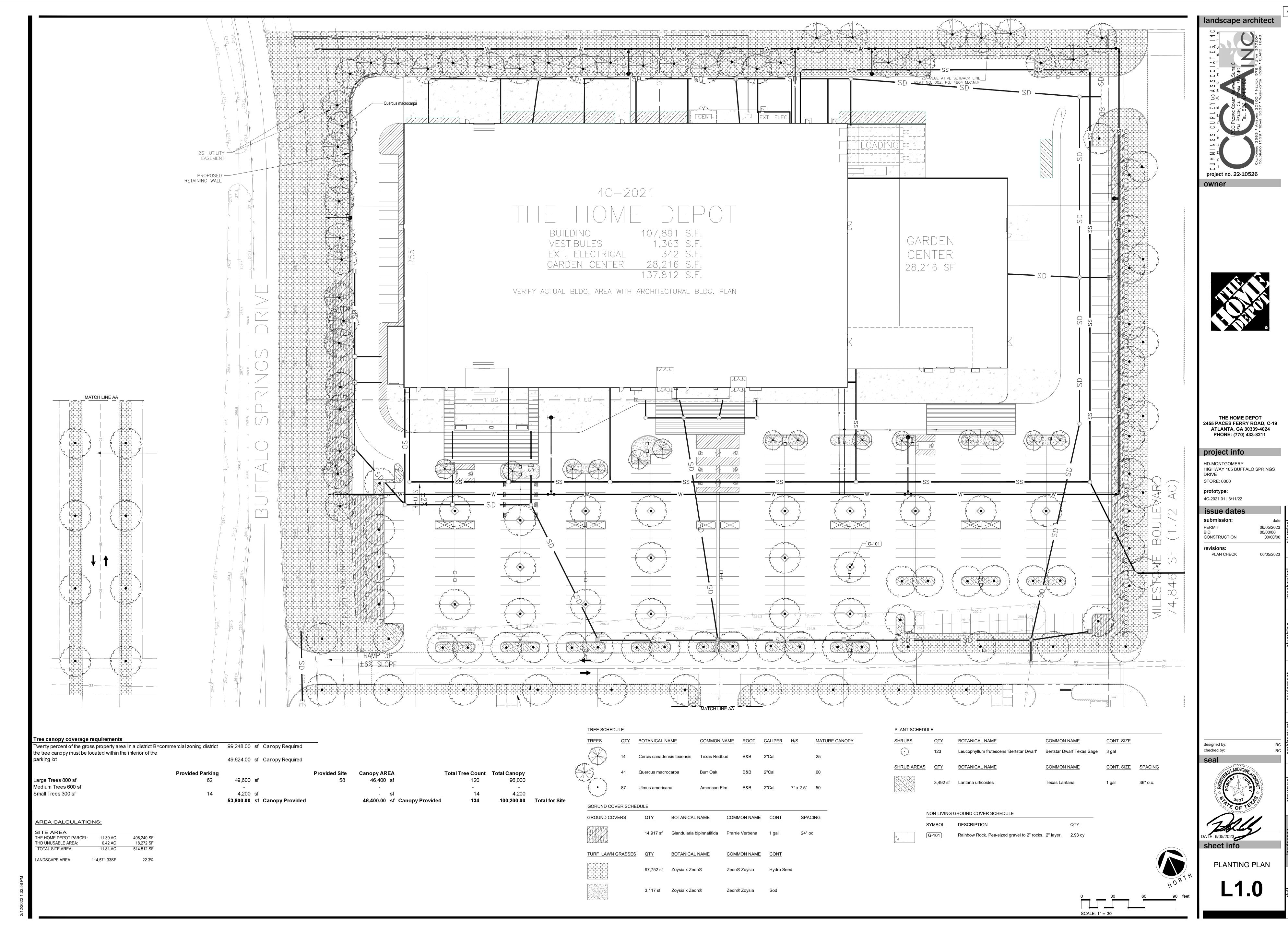
THE HOME DEPOT MONTGOMERY, TX

HIGHWAY 105 & BUFFALO SPRINGS DRIVE

PRAWING ISSUE DATE 06.27.2023
ID SITE SELECTION NUMBER SS-02885.2001

SCALE: 1 " = 80'

TX - SITE PLAN 5



PLANT SCHEDULE							
TREES	QTY	BOTANICAL NAME	COMMON NAME	ROOT	CALIPER	H/S	MATURE CANOPY
	14	Cercis canadensis texensis	Texas Redbud	B&B	2"Cal		25
	41	Quercus macrocarpa	Burr Oak	B&B	2"Cal		60
	87	Ulmus americana	American Elm	В&В	2"Cal	7` x 2.5`	50
SHRUBS	QTY	BOTANICAL NAME	COMMON NAME	CONT. SIZE	SPACING		
& A CONTRACT OF THE PROPERTY O	123	Leucophyllum frutescens 'Bertstar Dwarf'	Bertstar Dwarf Texas Sage	3 gal			
SHRUB AREAS	QTY	BOTANICAL NAME	COMMON NAME	CONT. SIZE	SPACING		
	3,492 sf	Lantana urticoides	Texas Lantana	1 gal	36" o.c.		
GROUND COVERS	QTY	BOTANICAL NAME	COMMON NAME	CONT	SPACING		
	14,917 sf	Glandularia bipinnatifida	Prarrie Verbena	1 gal	24" oc		
TURF LAWN GRASSES	QTY	BOTANICAL NAME	COMMON NAME	CONT			

Zeon® Zoysia

Zeon® Zoysia

97,752 sf Zoysia x Zeon®

Zoysia x Zeon®

GENERAL PLANTING NOTES

- 1. Installer shall be responsible for making himself familiar with all underground utilities, pipes and structures. Installer shall take sole responsibility for any cost incurred due to damage of said utilities.
 - 2. The installer shall make himself familiar with all local, regional, County, State and Federal regulations, requirements etc. in affect as to the transport, import, delivery and installation of all plant materials specified on the plans. It is strongly recommended to source plant materials from local nurseries that are also familiar with the requirements for growing, supplying and transporting plants into the area of the project.
- 3. Installer shall not willfully proceed with construction as designed when it is obvious that unknown obstructions and/or grade differences exist that may not have been known during design.
- 4. Installer shall have soils tested by a qualified agronomy laboratory. Materials and mixing of soil amendments, fertilizers, and back fill for planting pits shall be in accordance with recommendations of the soils agronomy report.
- 5. The installer shall secure all plant material for the project upon award of contract but in no instances less than 120 days prior to installation.
- 6. All plant material shall be approved by the Landscape Architect, Owner or Owner's representative prior to installation.

7. Final location of all plant material shall be subject to the approval of the Construction Manager.

- 8. See details for staking method and plant pit dimensions.
- 9. If conflicts arise between size of areas and plans, Installer to contact Construction Manager for resolution. Failure to make such conflicts known to the Construction Manager will result in Installer's liability to relocate the materials.
- 10. All ground covers to be held back 4" from edge of new shrubs typical and 2" from back of curbs or edge of walks at time of planting.
- 11. Ground covers shall be triangularly spaced per detail.
- 12. Trees shall be located minimum 4' from walls, overhead, walks, headers and other trees within the project, unless otherwise shown.
- 13. Place Deep Root Barrier at new trees that are with in 5' of Curbs or paving unless noted otherwise on the plans. Deep Root model UB 24-2 see installation detail.
- 14. Separate all ground cover and shrub areas from lawn areas with headers as per the installation details.
- 15. All slopes greater than 3:1 in shrub areas shall be covered jute mesh to prevent soil erosion during plant establishment
- 16. Remove stakes and trellis from vines and espaliers and secure to walls, fences and posts as per detail
- 17. In all cases "Root Bound" plant material will not be accepted.
- 18. No trees are to be planted within or above site storm drain pipes, swales or retention basins.
- 19. All planting areas including pots irrigated with drip irrigation or low volume irrigation components shall be hand watered by the installer until the plant materials root zones have established enough to effectively access the irrigation water from the drip systems.
- 20. Planting areas (except lawn and hydroseed areas) to be top dressed with 3" (three inch) min, layer of mulch Shredded Hardwood by Denton Sand & Gravel Inc. or equal.
- 21. Suitable Soil Import a. General - Topsoil shall be free of roots, clods, stones larger than 1-inch in the greatest dimension, pockets of coarse sand, noxious weeds, sticks, lumber, brush and other litter. It shall not be infested with nematodes or other undesirable disease-causing organisms
- such as insects and plant pathogens b. Topsoil shall be friable and have sufficient structure in order to give good tilth and aeration to the soil.
- c. Gradation limits soil shall be a sandy loam. The definition of soil texture shall be the USDA classification scheme cited below. Gravel over 2 millimeters in diameter shall be less than 20% by weight
- d. Permeability Rate Hydraulic conductivity rate shall be not less than one inch per hour nor more than 10 inches per hour when tested in accordance with the USDA Handbook Number 60, method 34b or other approved methods.
- e. Fertility The range of the essential elemental concentration in soil shall be as follows for approval of source soil:
 - Ammonium Bicarbonate/DTPA Extraction parts per million (mg/kilogram

dry weight basis 10 - 40 phosphorus 100 - 220 5- 35 manganese 0.6 - 6 zinc 1 - 8 0.3 - 5 0.2 - 1 50 - 150 magnesium sodium 0 - 100

molybdenum 0.1 - 2

sulfur

f. Acidity - The soil pH range measured in the saturation extract (Method 21a, USDA Handbook Number 60) shall be 6.0 - 7.9. g. Salinity - The salinity range measured in the saturation extract (Method 3a, USDA Handbook Number 60) shall be 0.5 - 2.5 dS/m. h. Chloride - The maximum concentration of soluble chloride in the saturation extract (Method 3a, USDA Handbook Number 60) shall be

25 - 500

- i. Boron The maximum concentration of soluble boron in the saturation extract (Method 3a, USDA Handbook Number 60) shall be
- Sodium Adsorption Ratio (SAR) The maximum SAR shall be 3 measured per Method 20b, USDA Handbook Number 60. k. Aluminum - Available aluminum measured with the Ammonium Bicarbonate/DTPA Extraction shall be less than 3 parts per million. I. Soil Organic Matter Content - Sufficient soil organic matter shall be present to impart good physical soil properties but not be
- excessive to cause toxicity or cause excessive reduction in the volume of soil due to decomposition of organic matter. The desirable range is 3% to 5%. The carbon:nitrogen ratio should be about 10.
- m. Calcium Carbonate Content Free calcium carbonate (limestone) shall not be present for acid-loving plants. n. Heavy Metals - The maximum permissible elemental concentration in the soil shall not exceed the following concentrations:

Ammonium Bicarbonate/DTPA Extraction parts per million (mg/kilogram) dry weight basis

arsenic cadmium chromium cobalt lead mercury nickel selenium silver vanadium 3

o. If the soil pH is between 6 and 7, the maximum permissible elemental concentration shall be reduced 50%. If the soil pH is less than 6.0, the maximum permissible elemental concentration shall be reduced 75%. No more than three metals shall be present at 50% or more of the above values.

Phytotoxic constituent, herbicides, hydrocarbons etc. - Germination and growth of monocots and dicots shall not be restricted more than 10% compared to the reference soil. Growth inhibiting constituents must not be present.

20. Organic soil amendment

- a. Composted aerobic humus compost without presence of decomposition products. The organic matter content shall be at least 50% on dry weight basis. Humus material shall have an acid-soluble ash content of no less than 6% and no more than 20%.
- b. The pH of the material shall be between 6 and 7.5.
- c. The salt content shall be less than 6 millimho/cm @ 25° C. (ECe less than 6) in a saturated paste extract.
- d. Boron content of the saturated extract shall be less than 1.0 part per million. e. Silicon content (acid-insoluble ash) shall be less than 50%.
- f. Calcium carbonate shall not be present if to be applied on alkaline soils.
- g. Types of acceptable products are composts, manures, mushroom composts, straw, alfalfa, peat mosses etc. low in salts, low in heavy metals, free from weed seeds, free of pathogens and other deleterious materials.
- h. Composted wood products are conditionally acceptable [stable humus must be present]. Wood based products are not acceptable which are based on red wood or cedar.
- Sludge-based materials are not acceptable. Carbon:nitrogen ratio is between 8.0 and 20:1.
- k. SAR (sodium adsorption ratio) less than 5.
- I. Seed germination over 80% germination in saturation extract diluted 1 to 3 in water compared to seeds germinated in deionized
- m. Germination vigor equal to or better than seed length for seeds germinated in deionized water. n. Maturity and stability - Solvita 5 or higher.
- o. Molar ratio of ammoniacal nitrogen to nitrate nitrogen less than 2.
- p. The compost shall be aerobic without malodorous presence of decomposition products. q. The maximum particle size shall be 0.5 inch, 80% or more shall pass a No. 4 screen.
 - Maximum total permissible pollutant concentrations in amendment in parts per million on a dry weight basis:

arsenic	12	copper	100	selenium	20
cadmium	15	lead	100	silver	10
chromium	100	mercury	10	vanadium	50
cobalt	50	zinc	200	molybdenum	20
nickel	100				

SOIL TESTS FOR SOIL MANAGEMENT

- 1. The Contractor shall be responsible for obtaining soils testing and soil amendment recommendations. Soils testing shall be completed and test results and amendment recommendations submitted to the Owner's Representative a minimum of sixty (60) days before commencement of any planting. The report shall be reviewed approved by the project Landscape Architect and ALL required governing agencies PRIOR to the commencement of any soil amending or planting.
- 2. The testing laboratory shall be Texas A&M AgriLife Extension Service Soil, Water and Forage Testing Laboratory, 2610 F&B Road College Station, TX 77845 or approved equal as approved by the Owner's Representative., or approved equal as approved by the Owner's
- 3. The testing laboratory for soils analysis shall use the following criteria for soil testing: USDA Agricultural Suitability Test per Handbook 60, to include Boron presence and content; and University of California Soil Fertility Test.
- 4. Interpretations, fertilization and soil amendment recommendations, and comments regarding these tests are required.
- 5. Infiltration Rate determined by laboratory test or Soil Texture and Infiltration Rate table
- 6. Soils test sites shall occur not more than 250 feet on center in the planting areas, unless otherwise noted on plans.
- 7. Samples of all import soil from each source shall also be submitted to the soils testing laboratory for analysis, interpretation and recommendations prior to placement, blending or back-filling.
- 8. A copy of the plant schedule shall be provided to the lab for review and comment in relation to the results of the soils tests.

PERCOLATION TEST

1. The landscape installer shall dig (as test areas) four (4) plant pits of 24" box size, or larger, at four (4) locations minimum within the job site. Pits are to be filled with water. The results of this test shall be reported to the Landscape Architect and owner 48 hours after initiating. Test pits shall be in actual location of trees as shown on the plan. Failure to carry out this test shall make the landscape installer liable for any and all trees that die due to poor water percolation beyond the agreed guarantee period.

landscape architect

project no. 22-10526

owner



THE HOME DEPOT 2455 PACES FERRY ROAD, C-19 ATLANTA, GA 30339-4024 PHONE: (770) 433-8211

project info

HD-MONTGOMERY HIGHWAY 105 BUFFALO SPRINGS

prototype:

STORE: 0000

revisions:

PLAN CHECK

4C-2021.01 | 3/11/22 issue dates PERMIT 06/05/2023 00/00/00 CONSTRUCTION 00/00/00

06/05/2023

PLANTING NOTES &

SCHEDULES

Meeting Date: July 11, 2023	Budgeted Amount: N/A	
Department: Admin	Prepared By: Dave McCorquodale	

Subject

Public Hearing and consideration and possible action on:

AN ORDINANCE OF THE CITY OF MONTGOMERY, TEXAS, GRANTING A SPECIAL USE PERMIT TO EVAN BALLEW FOR USE OF 14640 LIBERTY STREET, MONTGOMERY, TEXAS 77356 FOR A PROFESSIONAL REAL ESTATE OFFICE; ESTABLISHING CERTAIN TERMS, CONDITIONS AND LIMITATIONS; PROVIDING FOR PENALTY, SEVERABILITY, AND EFFECTIVE DATE.

Recommendation

This item requires 2 steps:

- 1. Hold the Public Hearing.
- 2. Approve the Special Use Permit with proposed conditions or add additional conditions that will further protect the character and development of the neighborhood.

Discussion

As you are aware, the rezoning request for this property from R1-Single Family Residential to B-Commercial was denied by City Council in April. The property owner has submitted a Special Use Permit application to request that the property be used as a real estate office without changing the underlying zoning.

The P&Z considered the SUP at their June 6, 2023 meeting and recommended approval with the following conditions:

- This permit is issued only to Evan Ballew and is not assignable without City Council permission.
- Require the same buffer, setbacks, and other regulations that pertain to commercial properties that abut residential areas in the city.
- Allow the existing accessory shed within the rear setback to remain.

Legal notice was published on June 23, 2023. State and local law requires publication of the notice once in the newspaper of record. Unlike the rezoning process, notification letters are not required because there is not a permanent change to the zoning classification. While I anticipated sending courtesy notification letters to surrounding property owners, time constraints did not allow for it.

Approved By		
Assistant City Administrator &		
Planning & Development Director	Dave McCorquodale	Date: 07/07/2023
City Administrator	Gary Palmer	Date: 07/07/2023



Special Use Permit

City of Montgomery 101 Old Plantersville Road Montgomery, Texas 77316 (936) 597-6434

Upon completion return application to dmccorquodale@ci.montgomery.tx.us

Contact Information
Property Owner(s): Evan Ballew
Address: 2470 N. Mt. Mariah Rd Montgomen ITX
Zip Code: 77356 Phone: (936)581-9959
Email Address: evanballengorp. com
Applicants: Evan Bailew - The Evan Ballew Group LLC
Address: 14640 N. Liberty Sx. mangonery, TX
Zip Code:
Email Address:
Parcel Information
Type of Business: Real Estate Office
Legal Description:
Street Address or Location: 14640 N- Liberty St- montgo mary, TX 77356
Special Use Permit Request
Description of request: Regrest permission to operate a professional business at this location, 2 and Residential, Improvements to site may include exterior point, signage, and parking.
Submission Information

This application is to be submitted to the City of Montgomery Director of Planning & Development:

City of Montgomery 101 Old Plantersville Road Montgomery, Texas 77316

Additional Information	
Date Application received by the City of Montgomery:	
Owner(s) of record for the above described parcel:	
Owner(s) of record for the above described parcel:	
Signature:	Date: 5/12/23
Signature:	Date:
Signature:	Date:
Note: Signatures are required for all owners of record for the property proposed for Spec	cial Use Permit. Attach additional signatures on a separate sheet of paper.
Date Received	

Sec. 98-27. - Special use permits.

- (a) The city council, by an affirmative four-fifths vote, may by ordinance grant a special permit for special uses in any district, for those uses listed under "CC" in the table of permitted uses in section 98-88, or which are otherwise not expressly permitted by this chapter, and may impose appropriate conditions and safeguards, including a specified period of time for the permit, to protect property and property values in the neighborhood. A special use permit may be revoked or canceled by the city council upon violation of any permit granted. Before authorization of any of such special uses, the request therefor shall be referred to the planning and zoning commission for study and report concerning the effect of the proposed use on the comprehensive plan and on the character and development of the neighborhood. A public hearing shall be held in relation thereto before the city council, and notice and publication of the time and place for which shall conform to the procedure prescribed in subsection (b) of this section.
- (b) A public hearing shall be held by the city council before adopting any proposed special use permit. Notice of such hearing shall be given by publication one time in a newspaper of general circulation in the city stating the time and place of hearing, which time shall not be earlier than 15 days from the date of publication.

(Ord. No. 2014-03, § 1, 5-20-2014)

PLANNING & ZONING COMMISSION REPORT OF FINDINGS AND RECOMMENDATION

TO: MONTGOMERY MAYOR AND CITY COUNCIL

FROM: PLANNING & ZONING COMMISSION

CC: GARY PALMER, CITY ADMINISTRATOR

SUBJECT: REPORT CONCERNING A SPECIAL USE PERMIT APPLICATION BY EVAN BALLEW TO REQUEST A "B"-COMMERCIAL LAND USE AT 14640 LIBERTY STREET, AN "R1"-SINGLE FAMILY RESIDENTIAL ZONING DISTRICT.

Mayor and Members of City Council,

Pursuant to Sections 98-27(a) of the City of Montgomery Code of Ordinances ("the Code"), the Montgomery Planning and Zoning Commission met on June 6, 2023 to consider a request from Evan Ballew for a Special Use Permit to use the property and existing structure at 14640 Liberty Street Montgomery, Texas 77356 for professional (real estate) office space.

After study, the Commission at its June 6th meeting thereby found:

- The property is currently designated with the zoning classification of R1-Single Family Residential.
- The proposed use, professional office space, is allowed by right only in a B-Commercial zoning district.
- Parking requirements were considered and the Commission found that
- . "USE" IS IN LINE WITH COMMERCIAL
- LICENSE WOULD RUN WITH THE OWNER

 [add points considered relevant to the request or property)

By a vote of 3-1, the Planning and Zoning Commission hereby presents this Report pursuant to Section 98-27(a) of the Code, recommending approval /-denial of the Special Use Permit. City Council can require conditions for the Special Use Permit, none / the following are recommended by the Commission:
• ESTABLISH COMMERCIAL / RESIDENTIAL BUFFER
BUILDING WITHIN SETBACK IS OK TO STAY.
•
[list any conditions deemed appropriate]
I, Jeffrey Waddell, Chairman of the Montgomery Planning and Zoning Commission, on this
Signed: JEFFREY WADDELL, Chairman
Attested: NICI BROWE, TRMC, City Secretary

MINUTES OF REGULAR MEETING

June 6, 2023

MONTGOMERY PLANNING AND ZONING COMMISSION

CALL TO ORDER

Chairman Waddell declared a quorum was present and called the meeting to order at 6:00 p.m.

Present: Jeffrey Waddell, Bill Simpson, Merriam Walker, Britnee Ghutzman

Absent: Daniel Gazda

Also Present: Gary Palmer, City Administrator, Chris Roznovsky, City Engineer

VISITOR/CITIZENS FORUM

None.

1. Approval of the meeting minutes for May 2, 2023.

Britnee Ghutzman moved to approve the minutes with two revisions clarifying comments made on agenda items 6 & 7. Bill Simpson seconded the motion, which carried unanimously. (4-0)

2. Consideration and possible action on rescheduling the July 2023 Regular Meeting.

With the July regular meeting falling on July 4th, staff recommended rescheduling the meeting date to July 3rd or July 5th. Merriam Walker moved to reschedule the meeting to July 5th. Britnee Ghutzman seconded the motion, which carried unanimously. (4-0)

3. <u>Consideration and possible action on a recommendation to City Council on a Special Use</u> Permit application for 14640 Liberty Street as submitted by Evan Ballew.

The applicant presented his concept of using the property as a real estate office for his business. The Commission discussed the details of the request with the applicant. Jeff Waddell noted that the SUP is a tool that has been utilized in past similar situations. As opposed to unrestricted commercial zoning, it allows the city to have desirable controls and apply all the normal city

ordinances that protect residential areas. The SUP works well for a small business that operates during daytime hours, is quiet by nature, and meets all enforceable city ordinances such as low lighting, etc. concerning residential neighbors. It was also noted that this could be a good first step in helping to clean up the area. After further discussion, Britnee Ghutzman noted the proposed use is consistent with commercial property regulations and moved to recommend approval of the SUP with the following conditions:

- The SUP runs with the applicant, not the use of the property.
- Require the same buffer, setbacks, and other regulations that pertain to commercial
 properties that abut residential areas in the city.
- Allow the existing accessory shed within the rear setback to remain.

Motion was seconded by Merriam Walker, which carried (3-1) with a dissenting vote by Bill Simpson.

4. Consideration and possible action on exterior renovations to 14259 Liberty Street, located in the Historic Preservation District, as submitted by Tony & Rebecca Noriega.

The applicants presented the information and proposed alternate colors for the building exterior if the Commission felt that the submitted colors were not acceptable. After discussion with the applicants, Britnee Ghutzman moved to approve the renovations as presented with the alternate exterior colors of "Jazzy Blue" for the walls and "Gray Cloth" trim. Bill Simpson seconded the motion, which carried unanimously. (4-0)

5. Consideration and possible action on approval of construction plans for Montgomery Bend Section One (Dev. No. 2203).

Chris Roznovsky presented the plans and answered questions from the Commission. Discussion was had on all drainage areas, including the detention pond and outfall, curb and gutter design, width of streets, adjoining properties, all easements and the future Section Two. The Commission also discussed the double lane boulevard entry, lot setbacks, and green space of the 2 lots adjacent to the entry.

Overall recreation and green space areas were reviewed, especially focusing on quality of life and quality of development and construction from a reputable developer. Following discussion, Bill

Simpson moved to approve the construction plans as presented. Britnee Ghutzman seconded the motion, which carried unanimously. (4-0)

Commission Inquiry

A question about activity at a residence on College Street was asked of staff. No information was known at the meeting and Mr. Palmer stated that staff would look at the property in question and get more information.

Adjournment

Bill Simpson moved to adjourn the meeting at 7:45 p.m. Britnee Ghutzman seconded the motion, which carried unanimously. (4-0)

ORDINANCE NO. 2023-

AN ORDINANCE OF THE CITY OF MONTGOMERY, TEXAS, GRANTING A SPECIAL USE PERMIT TO EVAN BALLEW FOR USE OF 14640 LIBERTY STREET, MONTGOMERY, TEXAS 77356 FOR A PROFESSIONAL REAL ESTATE OFFICE; ESTABLISHING CERTAIN TERMS, CONDITIONS AND LIMITATIONS; PROVIDING FOR PENALTY, SEVERABILITY, AND EFFECTIVE DATE.

WHEREAS, the City of Montgomery has received a request from Evan Ballew for a special use permit pursuant to Section 98-27 of the Code of Ordinances of the City of Montgomery, Texas, to use the herein referenced real property as a real estate office; and

WHEREAS, the matter was referred to the City of Montgomery Planning and Zoning Commission for consideration and recommendation, and the Planning and Zoning Commission, after due notice, did consider and make a report on the request for the special use permit, as provided by Section 98-27(a) of the Code of Ordinances; and

WHEREAS, the City Secretary caused to be issued and published the notice of public hearing required by the City of Montgomery Zoning Ordinance and laws of the State of Texas applicable thereto; and

WHEREAS, the City Council, pursuant to such notice, held its public hearing and heard all persons wishing to be heard both for and against the proposed special use permit, on the 11th day of July 2023; and

WHEREAS, the City Council, after determining that all legal requirements of notice and hearing have been met, is of the opinion and finds that the requested special use of the property described herein is authorized by Section 98-27 of the Code of Ordinances; and

WHEREAS, the City Council further finds that the granting of a special use permit to Evan Ballew to use the property as a real estate office will not have an adverse effect on the City's comprehensive zoning plan or on the character and development of the neighborhood in which the property is situated, so long as the City imposes appropriate conditions and safeguards;

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

SECTION 1. Grant of Permit. A special use permit is hereby granted to Evan Ballew to use 14640 Liberty Street, Montgomery, Texas 77356 (the "Premises"), for a professional real estate office. The special use permit is granted upon and subject to the terms, provisions and limitations specified in Section 2.

SECTION 2. Terms, Provisions and Limitations. The special use permit herein granted is expressly subject to the following terms, provisions and limitations, each of which is hereby deemed to be a condition precedent to the grant and continued effectiveness of the permit:

P&Z Recommended Conditions

- (a) This permit is issued only to Evan Ballew and is not assignable without City Council permission.
- (b) Require the same buffer, setbacks, and other regulations that pertain to commercial properties that abut residential areas in the city.
- (c) Allow the existing accessory shed within the rear setback to remain.
- (d) No articles or materials used in connection with the real estate business shall be stored outside of the existing structures on the Premises.
- (e) The City shall have the authority to inspect the Property from time to time to confirm Evan Ballew's compliance with the terms and conditions of this special use permit.

Standard Conditions

- (f) This special use permit does not waive, amend, abrogate or affect any law, rule or regulation, including any ordinance of the City of Montgomery. Evan Ballew shall comply with all ordinances of the City of Montgomery.
- (g) This permit shall expire ONE (1) year from the date of its issuance, subject to the City Council's right to renew the permit upon request by Evan Ballew. In the event of a violation by Evan Ballew of the terms and provisions of this special use permit, and the continuation of such violation after ten (10) days written notice from the City to Evan Ballew, at the option of City Council, this permit shall be revoked and shall be of no further force or effect. Such revocation will be effective and final, immediately upon action by City Council.

SECTION 3. Any person, firm, or corporation violating a provision of this Ordinance, upon conviction, is guilty of an offense punishable as provided in the Montgomery Code of Ordinances, as amended, by a fine not to exceed two thousand dollars (\$2,000.00); and each day or portion thereof during which the violation is committed, continued or permitted shall be a separate offense.

SECTION 4. It is the intention of the City Council that this Ordinance, and every provision thereof, shall be considered severable and the invalidity of any section, clause or provision or part or portion of any section, clause, or provision of this Ordinance shall not affect the validity of any other portion of this Ordinance.

SECTION 5. This Ordinance shall become effective immediately upon its passage.

PASSED AND APPROVED this 11th day of July 2023.

CITY OF MONTGOMERY, TEXAS

Mayor

Page -3-

Meeting Date: 06-11-2023	Budgeted Amount: n/a
Department: Administration	Prepared By: Nici Browe

Subject

Consideration and possible action on the application for a City Alcoholic Beverage Permit for Ryan Liquor.

Recommendation

Staff recommends approval of a City Alcoholic Beverage Permit.

Discussion

Mr. Troy Tep co-owner of Ryan Liquor visited the City Secretary several times from October 2022 through to December 2022, to gain assistance for obtaining his TABC permit. In those visits it became apparent that Mr. Tep had paid an agency to conduct the process on his behalf and they had not provided the city with any documentation and had disappeared.

He contacted the TABC representative that the city provided him, and he was ultimately put in touch with a reputable Alcohol licensing and permitting agent. The new agent bought Mr. Tep's TABC application and City Application to the City Secretary's Office on December 6, 2022. The Agent Mr. Kevin McLeroy received a full copy of the City Application, and the conditions of application were highlighted and was informed that once the TABC granted Mr. Tep his license, he should immediately present to the city, where his application can proceed through the permitting process per the ordinance, which requires the City Council to hear and vote on the application.

It is worthy of note that the TABC will NOT accept an application from an applicant if the City Secretary has not signed off, or indeed the County or the Comptroller. The City Ordinance Chapter 6 section 6.26 states the City will not grant a license under the article who has not first been licensed by the county and state, and who fails to present satisfactory evidence of such license.

This now provides the city with an opportunity to update the chapter 6 to be more business friendly to include a checklist for the applicant which will clearly highlight the mandate to return a copy of the TABC permit to continue with the city application, as we are one of only a handful of cities who still require city council approval after the TABC permit is issued, hence the confusion for many new alcoholic beverage owners and in this instance a well-seasoned agent.

Approved By		
	Nici Browe	
City Secretary		Date: 07-06-2023
City Administrator		Date:

Chapter 6 - ALCOHOLIC BEVERAGES

Footnotes:

--- (1) ---

State Law reference— Alcoholic beverages, V.T.C.A., Alcoholic Beverage Code § 1.01 et seq.; local regulation of alcoholic beverages, V.T.C.A., Alcoholic Beverage Code § 109.31 et seq.; local fee authorized, V.T.C.A., Alcoholic Beverage Code § 11.38; local license fee authorized, V.T.C.A., Alcoholic Beverage Code § 61.36; local regulation of billboards and electric signs, V.T.C.A., Alcoholic Beverage Code § 108.55; local option elections, V.T.C.A., Alcoholic Beverage Code § 251.71 et seq.

ARTICLE I. - IN GENERAL

Sec. 6-1. - Definitions.

Unless otherwise provided, the words, terms and phrases used in this chapter shall have the same meanings as ascribed to them by the Texas Alcoholic Beverage Code.

(Code 2002, § 6-1; Ord. No. 1989-2, § 1, 2-14-1989)

State Law reference— Definitions, V.T.C.A., Alcoholic Beverage Code § <u>1.04</u>.

Sec. 6-2. - Applicability of Texas Alcoholic Beverage Code and state and county regulations.

The provisions of this chapter shall be considered concurrent with or in addition to the Texas Alcoholic Beverage Code, and, where a conflict may be found to exist, the provisions of the Texas Alcoholic Beverage Code shall apply. Applicants for a city alcoholic beverage license must comply with all applicable state and county codes and regulations as well as the requirements of this chapter.

(Code 2002, § 6-2; Ord. No. 1989-2, § 22, 2-14-1989)

Sec. 6-3. - Violations; penalty.

Any person who violates any provision of this chapter, or who allows, on premises covered by his license issued under this chapter, any person to do the things prohibited by this chapter, shall be guilty of a misdemeanor and, upon conviction, shall be punished as provide in section 1-13. Any room, building, structure or place of any kind where alcoholic beverages are sold, bartered, stored, possessed or consumed in violation of this chapter or the Texas Alcoholic Beverage Code or under conditions and circumstances contrary to the purposes of this chapter or the Texas Alcoholic Beverage Code is hereby declared to be a common nuisance, and any person who maintains or assists in maintaining or permits the violation of this chapter or the Texas Alcoholic Beverage Code shall be guilty of a violation of this chapter. Action may be maintained by the city to abate and enjoin such nuisance.

(Code 2002, § 6-3; Ord. No. 1989-2, § 19, 2-14-1989)

State Law reference— General penalty, V.T.C.A., Alcoholic Beverage Code § 1.05.

Secs. 6-4—6-24. - Reserved.

ARTICLE II. - LICENSE

Footnotes:

--- (2) ---

State Law reference— Licenses and permits, V.T.C.A., Alcoholic Beverage Code ch. 11 et seq.

Sec. 6-25. - Required; fee; term.

It shall be unlawful for any person to manufacture, brew, distill, sell or distribute any wine, beer, liquor or other alcoholic beverage within the city, or engage in any other activity for which a license or permit is required by the Texas Alcoholic Beverage Code, without first obtaining a license to do so from the city. The fee for each such license shall be an amount equal to one-half of the fee charged by the state for a license or permit to engage in a similar activity. Such fee shall be paid to the tax collector, and the tax collector shall provide suitable and proper blanks for issuing receipts therefor referred and shall keep a duplicate copy of all license receipts issued as part of the records of office. All license receipts issued under the terms of this section shall terminate two years from the date of issuance, and no license receipt shall be issued covering a longer term than two years.

(Code 2002, § 6-31; Ord. No. 1989-2, § 2(a), 2-14-1989; Ord. No. 2018-01, § I, 1-9-2018)

State Law reference— Local fee authorized, V.T.C.A., Alcoholic Beverage Code §§ 11.38, 61.36.

Sec. 6-26. - State and county license required.

No applicant shall be granted a license under this article who has not first been licensed by the county and state, and who fails to present satisfactory evidence of such license.

(Code 2002, § 6-32; Ord. No. 1989-2, § 2(b), 2-14-1989)

State Law reference— Licenses, V.T.C.A., Alcoholic Beverage Code §§ 11.01 et seq., 61.01 et seq.

Sec. 6-27. - Persons owing delinquent taxes ineligible for license.

No license shall be issued under this article if the applicant shall owe any delinquent taxes to the city. For purposes of this section, the term "applicant" shall include each member of a partnership or association and all officers and the owner of the majority of the corporate stock of a corporation, and the manager of the

business for a corporation.

(Code 2002, § 6-33; Ord. No. 1989-2, § 2(c), 2-14-1989)

Sec. 6-28. - Use of license restricted to premises for which granted.

It shall be unlawful for any person licensed to sell beer, liquor or wine at retail, other than a manufacturer or distributor, to use or display a license or to exercise any privilege granted by a license except at the place, address, premises and location for which the license is granted.

(Code 2002, § 6-34; Ord. No. 1989-2, § 2(d), 2-14-1989)

Sec. 6-29. - Unlawful sales prohibited.

It shall be unlawful for any person to sell any type of alcoholic beverage, either for on-premises or offpremises consumption, except where such sale is permitted by ordinances.

(Code 2002, § 6-35; Ord. No. 1989-2, § 3(a), 2-14-1989)

Sec. 6-30. - Categories.

- (a) The types of categories for the sale of alcoholic beverages are hereby established as follows:
 - (1) Category A: Off-premises consumption sale of all alcoholic beverages; package store.
 - (2) Category B: Off-premises consumption sale of wine, beer or ale.
 - (3) Category C: Off-premises consumption sale of beer.
 - (4) Category D: On-premises consumption sale of beer, wine and mixed beverages; restaurant or café, where the sale of beer, wine and mixed beverages on the premises would be incidental to the restaurant or café business.
 - (5) Category E: On-premises consumption sale of beer, wine and mixed beverages; tavern, lounge, or bar, where the sale of beer, wine and mixed beverages for on-premises consumption is the principal business line.
 - (6) Category F: Warehouse storage of beer, wine, or liquor for distributors; no sale of beer, wine or liquor for on-premises or off-premises consumption is permitted on the premises.
- (b) All existing businesses heretofore approved by the city council are hereby reclassified according to subsection (a) of this section.

(Code 2002, § 6-36; Ord. No. 1989-2, § 3(b), (c), 2-14-1989; Ord. No. 2008-17, § 1, 10-14-2008)

Sec. 6-31. - Application.

- (a) Written application for the sale of alcoholic beverages shall be made on forms provided by the city and filed with the city secretary. Such application shall be signed by the actual lessee or intended operator of the business for which the license is sought. The owner of the property must file a written consent to the application, unless the owner is making the application. Every such application shall contain the following:
 - (1) An adequate legal description of the property for which license is sought, either by lot and block number or by a metes and bounds description.
 - (2) The exact nature of the business to be operated must be fully described.
 - (3) A plat of the property must be attached to the application showing the improvements, parking areas, and location of signs and other structures on the property and within 300 feet, to scale.
 - (4) A description of signs and the hours they will be operated.
 - (5) A floor plan of the building in which the business is to be conducted must be attached to the application, showing fixtures, furniture, restrooms, kitchen and other equipment.
 - (6) A statement giving the names, addresses, email addresses, telephone numbers and interests of all persons having a direct or indirect financial interest in the property and the business to be conducted.
 - (7) A verified statement must be attached to the application stating that the building is not within 300 feet of a church, school or hospital, and that the building is in compliance with the requirements of this chapter for separate and adequate toilet facilities for men and women, if used for on-premises consumption of beer, liquor or wine.
- (b) A filing fee, as fixed by resolution of the city council from time to time to defray the expenses of processing an application filed under this article, must be paid when the application is filed.

(Code 2002, § 6-37; Ord. No. 1989-2, § 3(d), (f), 2-14-1989)

State Law reference— Local fee authorized, V.T.C.A., Alcoholic Beverage Code §§ 11.38, 61.36.

Sec. 6-32. - Grounds for denial.

- (a) No application under this article shall be approved:
 - (1) If the applicant or application does not meet all requirements of the ordinances of the city.
 - (2) If the granting of such application shall increase the number of alcoholic beverage establishments to more than five in any one block, a block to be defined as being from intersection to intersection on both sides of the street.
 - (3) If the applicant shall owe any delinquent taxes to the city.
 - (4) If the applicant has not already fulfilled all county and state requirements.

Item 4.

(b) As used in this section, the term "applicant" shall mean and include each member of a partnership or association and all officers and the owner of the majority of the corporate stock of a corporation and the manager of such business for a corporation.

(Code 2002, § 6-38; Ord. No. 1989-2, § 3(g), 2-14-1989)

Sec. 6-33. - Approval of license application by city council.

After all the requirements for a license application under the provisions of this article have been met as determined by the city administrator, the application shall be presented to the city council for approval at a public meeting.

(Code 2002, § 6-39; Ord. No. 1989-2, § 3(h), 2-14-1989; Ord. No. 2018-01, § 1, 1-9-2018)

Sec. 6-34. - Conversion to different use.

Uses permitted under any of the categories designated in this article may be converted to another use only with the approval of city council.

(Code 2002, § 6-40; Ord. No. 1989-2, § 3(i), 2-14-1989; Ord. No. 2018-01, § I, 1-9-2018)

Secs. 6-35—6-56. - Reserved.

ARTICLE III. - REGULATIONS

Sec. 6-57. - Consumption on street, sidewalk or alley.

- (a) Drinking alcoholic beverages on a public street, sidewalk or alley of the city, whether afoot, or as a passenger in or an operator of any vehicle, is unlawful and is prohibited.
- (b) Exception. Subject to the rules and regulations of the Texas Alcoholic Beverages Code, persons afoot on a public street, sidewalk or alley of the city are permitted to drink beer and wine in a limited public area defined as:
 - (1) The north right-of way line of Eva Street (State Highway 105) extending north to the south right-of way line of Clepper Street and bounded on the east by Prairie Street, and on the west by Pond Street, extending north to the south right-of way line of College Street to also include the east of the eastern right-of way line of Liberty Street between College Street to the south right-of way line of Clepper Street and an area extending west from the west right-of way line of Pond Street and bounded on the south by the south right-of-way line of Eva Street, as further described by the map incorporated into this section as exhibit A.

This exception is authorized only from 7:00 a.m. to 12:00 midnight, Monday through Saturday; 12:00 midnight to 1:00 a.m. on Sundays; and 12:00 noon to 12:00 midnight on Sundays.

(c) The throwing of any opened container of any type generally used for beverages from or out of any vehicle shall be prima facie evidence that the occupant thereof was then and there drinking alcoholic beverages in violation of this section.

(Code 2002, § 6-61; Ord. No. 1989-2, § 14, 2-14-1989; Ord. No. <u>2017-16</u>, § II, 7-11-2017; Ord. No. <u>2021-04</u>, § 2, 2-9-2021; Ord. No. <u>2022-16</u>, § 2, 6-28-2022)

Editor's note— Exhibit A to Ord. No. <u>2022-16</u> is not set out herein but is available at the office of the city secretary.

Editor's note— Exhibit "A" to Ord. No. 2021-04 is not set out herein but is available at the office of the city secretary.

Sec. 6-58. - Consumption or possession in cemeteries.

It shall be unlawful for any person to drink or have in his possession any alcoholic beverages within any cemetery located within the corporate limits of the city.

(Code 2002, § 6-62; Ord. No. 1989-2, § 15, 2-14-1989)

Sec. 6-59. - Consumption in parks prohibited during certain hours.

It shall be unlawful for any person to drink alcoholic beverages of any kind in any public park within the corporate limits of the city between the hours of 9:00 p.m. and 7:00 a.m.

(Code 2002, § 6-63; Ord. No. 1989-2, § 16, 2-14-1989)

Sec. 6-60. - Sale near church, school or hospital.

- (a) The sale of alcoholic beverages by any dealer whose place of business is within 300 feet of a church, public or private school, or public hospital is prohibited.
- (b) The measurement of the distance between the place of business where alcoholic beverages are sold and the church or public hospital shall be along the property lines of the street fronts and from front door to front door, and in a direct line across intersections. The measurement of the distance between the place of business where alcoholic beverages are sold and the public or private school shall be:
 - (1) In a direct line from the property line of the public or private school to the property line of the place of business, and in a direct line across intersections; or

(2)

Item 4.

If the permit or license holder is located on or above the fifth story of a multi-story building, in a direct liberom the property line of the public or private school to the property line of the place of business, in a direct line across intersections, and vertically up the building at the property line to the base of the floor on which the permit or license holder is located.

- (c) As to any dealer who held a license or permit in a location where a regulation under this section was in effect on that date, for purposes of subsection (a) of this section, the measurement of the distance between the place of business of the dealer and a public or private school shall be along the property lines of the street fronts and from front door to front door, and in a direct line across intersections.
- (d) The city council may also allow variances to the regulation if the city council determines that enforcement of the regulation in a particular instance is not in the best interest of the public, constitutes waste or inefficient use of land or other resources, creates an undue hardship on an applicant for a license or permit, does not serve its intended purpose, is not effective or necessary, or for any other reason the city council, after consideration of the health, safety, and welfare of the public and the equities of the situation, determines is in the best interest of the community.
- (e) Subsection (a) of this section does not apply to the holder of:
 - (1) A license or permit who also holds a food and beverage certificate covering a premises that is located within 300 feet of a private school; or
 - (2) A license or permit covering a premises where minors are prohibited from entering and that is located within 300 feet of a private school.
- (f) In this section, the term "private school" means a private school, including a parochial school, that:
 - (1) Offers a course of instruction for students in one or more grades from kindergarten through grade 12; and
 - (2) Has more than 100 students enrolled and attending courses at a single location.

(Code 2002, § 6-64; Ord. No. 1989-2, § 4, 2-14-1989)

State Law reference— Authority to regulate sales near schools, churches or hospitals, V.T.C.A., Alcoholic Beverage Code § 109.33.

Sec. 6-61. - Building requirements for on-premises establishments.

No person shall sell beer, liquor or wine at or on any premises within the city for consumption on the premises where sold unless the building housing such business conforms to the following:

(1) Has not less than 600 square feet of floor space devoted solely to the retail portion of the operation of such business, exclusive of storage and/or restrooms.

- (2) Complies with the building code.
- (3) Complies with the electric code.
- (4) Complies with the plumbing code.
- (5) Is connected to the city sanitary sewer system for toilet facilities.
- (6) Is connected to the city water system.
- (7) Has adequate flush toilet facilities, with separate facilities for men and women in the building.

 Outside toilet facilities shall not constitute compliance with this requirement.
- (8) Has sufficient lighting, and such lighting provides illumination to at least 25 foot-candles in all areas of the premises where beer, liquor or wine is sold or consumed, according to measurements by an agent of the city.

(Code 2002, § 6-65; Ord. No. 1989-2, § 6, 2-14-1989)

Sec. 6-62. - Beer establishment personnel.

- (a) No person other than the permittee or licensee shall serve beer or other drink or food to any customer or patron of a beer establishment unless the person so serving is employed by the permittee or licensee of the beer establishment.
- (b) No person serving beer to any patron or customer of a beer establishment shall receive, as compensation, any part of the price paid by the patron or customer for such beer, nor shall his compensation be dependent on the amount served by him.
- (c) No person shall collect from any customer or patron of a beer establishment, as the price of beer, more than the price paid to the bartender or cashier by the person serving the beer.

(Code 2002, § 6-66; Ord. No. 1989-2, § 7, 2-14-1989)



City of Montgomery Alcohol Beverage License Application

City of Montgomery, Texas 101 Old Plantersville Road Montgomery, Texas 77316 936-597-3288

www.montgomerytexas.go

APPLICATION FOR THE SALE OF ALCOHOLIC BEVERAGE LICENSE

	Date Received by the City: 12 6 2022
1.	Type of Alcoholic Beverage License: (attach completed TABC Application Form)
	(1) Category A – Off Premises Consumption Sale of All Alcoholic Beverages – Package Store
	(2) Category B – Off Premises Consumption Sale of Wine, Beer or Ale.
	(3) Category C – Off Premises Consumption Sale of Beer.
	 (4) Category D - On Premises Consumption Sale of Beer, Wine and Mixed beverages - Restaurant or Café, where the sale of beer, wine and mixed beverage on the premises would be incidental to the restaurant or café. (5) Category E - On Premises Consumption Sale of Beer, Wine and Mixed beverages - Tavern, Lounge, or Bar. The sale of Beer, Wine and Mixed beverages for On-Premises Consumption being the principal business line. (6) Category F - Warehouse storage of Beer, Wine or Liquor for Distributors - No sale of Beer for on or Off-Premises Consumption permitted on the Premises.
2.	Legal Description of the property for which License is sought. (Either by Lot and Block number or by a Metes and Bounds Description: 5948600-Water stone On Lake Conroe OI, RES A-3, ACRES 1.011 F-1 commercial
3.	Exact Nature of the Business to be operated. (Must be fully described in cover letter on company letterhead).
4.	Attach a Plat of the property to the Application showing the improvements, parking areas, location of signage and other structures on the property and within three hundred (300) feet to scale.
5.	<u>Description of signs</u> and the hours they will be operated to be attached as a separate document.
6.	Attach floor plan of the building in which the business is to be conducted (showing fixtures, furniture, restrooms, kitchen and other equipment).
7.	Attach a verified statement stating that the building is not within three hundred (300) feet of a church, school or hospital and that the building is in compliance with the requirements of this chapter for separate and adequate toilet facilities for men and women if used for on-premises consumption of beer, liquor or wine. This can be included in cover letter.
8.	Business Owner: Lindy Tep Phone: 936-718-3822 Address: 22453 W Fm 1097 Rd Ste 102 Montgomery, Tx 77356 Home Address: III Anna Springs in Montgomery Tx 77356 Phone: 936-718-3822
9.	Home Address: III Anna Springs in Montgomery Tx 77356 Phone: 936-118-3822. Check if you are leasing property: [V] Land Owner: Troy Tep iic Phone: 936-718-3822 Address: III Anna Springs in Montgomery Tx 77356
10.	Business Partners: Rathy Ry Address: 22453 W FM 1097 Rd 5te 102 Montgomery, Tx 77356 Home Address: 3811 Graves Ave Groves Tx 77619 Phone: 347-993-9796

	This is to certify that I, Cindy Tep have complied with all State, County, Codes
	and Regulations of the City of Montgomery, Texas.
	Business Owner and/or Lessee Partner if Applicable

11. A cover letter on your company's letterhead shall include a description of the nature of the business to be conducted, the names and address and interests of all persons having a direct or indirect financial interest in the property. The cover letter can include any other requested information that needs further description.

Upon receipt of this application form and confirmation that all items have been received, you will be notified of the date and time of the City Council Meeting by the City Secretary.

The provisions of City Code shall be considered concurrent with or in addition to the Texas Alcoholic Beverage Code, and, where a conflict may be found to exist, the provisions of the Texas Alcoholic Beverage Code shall apply. Applicants for a City alcoholic beverage license must comply with all applicable state and county codes and regulations as well as the requirements of the City Code.

It shall be unlawful for any person to manufacture, brew, distill, sell or distribute any wine, beer, liquor or other alcoholic beverage within the City, or engage in any other activity for which a license or permit is required by the Texas Alcoholic Beverage Code, without first obtaining a license so to do from the City. The annual fee for each such license shall be an amount equal to one-half the fee charged by the state for a license or permit to engage in a similar activity.

Note: The Alcoholic Beverage Code, provides that a mixed beverage permit is exempt from City permit fees during the three year period following the issuance of the permit.

If you require any additional information, please contact the City Secretary at (936) 597-3288.

T1097 LIQUOR LLC

RYAN LIQUOR

LIQUOR STORE ADDRESS:

22453 W FM 1097 RD, SUITE 102 MONTGOMERY, TEXAS 936-718-3822 Troytep1@gmail.com

12-14-2022

Dear CITY OF MONTGOMERY,

Our liquor store will be called Ryan Liquor.

There is a sign above our door and on the property along the street.

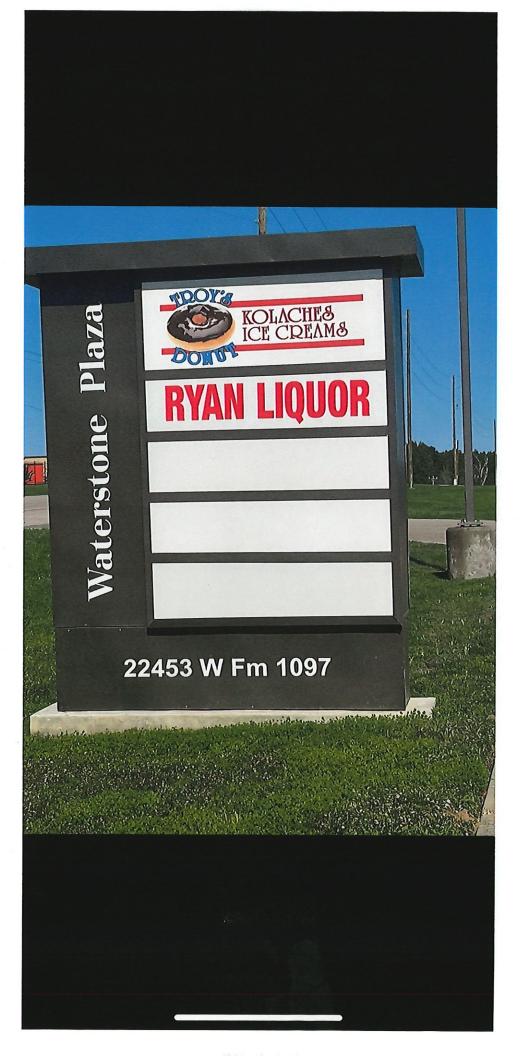
Hours:

Monday - Saturday: 10am through 9:00pm

Sunday: Closed

Sincerely,

RYAN LIQUOR







T1097 LIQUOR LLC

RYAN LIQUOR

LIQUOR STORE ADDRESS:

22453 W FM 1097 RD, SUITE 102 MONTGOMERY, TEXAS 936-718-3822 Troytep1@gmail.com

12-14-2022

Dear CITY OF MONTGOMERY,

The strip center where Ryan Liquor is located is not within three hundred (300) feet of a church, school, or hospital. The building is in compliance with the City of Montgomery requirements. The liquor store has an ADA handicapped restroom which is a requirement by the Texas Alcoholic Beverage Commission.

Sincerely,

T1097 LIQUOR LLC

RYAN LIQUOR

CITY OF MONTGOMERY

22453 W FM 1097 RD, SUITE 102 MONTGOMERY, TEXAS 936-718-3822 Troytep1@gmail.com

12-14-2022

Dear CITY OF MONTGOMERY,

Ryan Liquor will be a retail liquor store.

Cindy Tep and Rathy Ry will be leasing the suite and owning the liquor store.

Cindy Tep: 111 Anna Springs Ln Montgomery, TX 77356

Rathy Ry: 3811 Graves Ave Groves TX 77619

The owner of the property is Cindy Tep's husband, Troy Tep.

Troy Tep LLC -

Troy Tep: 111 Anna Springs Ln Montgomery TX 77356

Cindy Tep also owns the donut shop (Troy's Donuts) next door to the future liquor store.

Sincerely,

RYAN LIOUOR

TEXAS ALCOHOLIC BEVERAGE COMMISSION

P -200083739

Expires:1/30/2025

PACKAGE STORE PERMIT (P)

T1097 LIQUOR LLC

MONTGOMERY, TX, US, 77356 22453 FM 1097 W, SUITE 102 RYAN LIQUOR

EXECUTIVE DIRECTOR

THIS PERMIT IS NOT TRANSFERABLE, MUST BE PUBLICLY DISPLAYED AT ALL TIMES AND USED ONLY IN PLACE OF BUSINESS INDICATED HEREON THE ACCEPTANCE HEREOF CONSTITUTES AN EXPRESS AGREEMENT TO PERMIT ANY AUTHORIZED REPRESENTATIVE OF THE COMMISSION OR ANY PEACE OFFICER TO FREELY ENTER UPON PERMITEES TO PERFORM ANY DUTY IMPOSED UPON HIM

Montgomery City Council AGENDA REPORT

Meeting Date: July 11, 2023	Budgeted Amount: \$177,000
Department: Admin	Prepared By: Dave McCorquodale

Subject

Consideration and possible action regarding the Certificate of Substantial Completion and Certificate of Acceptance for the Downtown Sanitary Sewer Rehabilitation Project.

Recommendation

Motion to approve the Certificates of Substantial Completion and Acceptance as presented.

Discussion

The engineer's memo and related documents are attached.

Approved By		
Assistant City Administrator &		
Planning & Development Director	Dave McCorquodale	Date: 07/06/2023
City Administrator	Gary Palmer	Date: 07/06/2023



June 27, 2023

The Honorable Mayor and City Council City of Montgomery 101 Old Plantersville Road Montgomery, Texas 77316

Re: Downtown Sanitary Sewer Rehabilitation

City of Montgomery TIN No. 74-2063592

Dear Mayor and Council,

Enclosed is Progress Pay Request No. 2 & Final from Cruz Tec, Inc. for the referenced project. The estimate is in order; therefore, we recommend payment in the amount of \$11,864.00 to Cruz Tec, Inc.

Also enclosed is Construction Progress Report No. 2 & Final, which is submitted in accordance with Texas Commission on Environmental Quality Rule No. 293.62. This report covers construction activities for the referenced project during the period from March 18, 2023 to May 18, 2023.

Please note the retainage has been reduced from 10% to 0%.

Should you have any questions or require any additional information, please call me at 713-789-1900.

Sincerely,

Sean Donahue, PE Construction Manager

SD/jmr

Z:\00574 (City of Montgomery)\008 Downtown Sanitary Sewer Rehabilitation\Docs\CA 00574-008-00 (JMR)\6. Pay Estimates & Change Orders\Pay Estimates\Pay Estimate No. 2\Pay Estimate Letter.docx

Enclosure: Pay Estimate No. 2 & Final

cc (via email): Mr. Gary Palmer – City of Montgomery, City Administrator

Ms. Nicola Browe - City of Montgomery, City Secretary

Mr. Mike Muckleroy – City of Montgomery, Director of Public Works

Mr. Alan Petrov – Johnson Petrov, LLP, City Attorney

Mr. Andres Cruz - Cruz Tec, Inc., Contractor

Mr. Chris Roznovsky, PE – Ward, Getz, & Associates, PLLC, City Engineer



Project: Downtown Sanitary Sewer Rehabilitation Project No.: 00574-008-00

Owner: City of Montgomery Contractor: Cruz Tec, Inc.

101 Old Plantersville Road12210 Ann LaneMontgomery, Texas 77316Houston, TX 77064

Summary of Contract Period of Performance

ORIGINAL PERIOD OF PERFORMANCE

	Contract	Completion	
Awarded	Notice to Proceed	Final	
10/13/2022	12/16/2022	90	3/16/2023

THIS PERIOD OF PERFORMANCE

Pay Estimate	Received	Pay Period		Change Order
2 & FINAL	5/18/2023	3/18/2023	5/18/2023	None

PERIOD OF PERFORMANCE TO DATE

Contra	ct Days	Completion	Contract Time Used		Completed Work
Net Adjusted Days	Total Contract Days	Final	Days	%	By Value (%)
0	90	3/16/2023	153	170%	100%

Summary of Contract Cost

Original Contract Amount	\$	107,750.00
Net Change Orders	\$	-
Current Contract Amount	\$	107,750.00
Work Completed to Date	\$	111,710.00
Final Quantity Adjustment	\$	3,960.00
Less Amount Retained (0%)	\$	-
Less Previous Payment(s) to Contractor	\$	99,846.00
AMOUNT DUE THIS PAYMENT	Ś	11.864.00

CERTIFICATION AND APPROVAL OF WORK COMPLETED FOR PAYMENT

The undersigned Contractor certifies that the work covered by this Application for Payment has been completed in accordance with the Contract Document, that all amounts have been paid by him for work for which previous Recommendation for Payments were issued and payments received from the Owner, and that the current payment shown herein is now due.

CONTRACTOR:		Date:	
	Cruz Tec, Inc.		
		ordance with the	Contract, the undersigned 6/28/2023
OWNER:	Ward, Getz & Associates, PLLC City of Montgomery	Date:_	

i74 (City of Montgomery)\008 Downtown Sanitary Sewer Rehabilitation\Docs\CA 00574-008-00 (JMR)\6. Pay Estimates & Change Orders\Pay Estimates\Pay Estimate No. 2\Pay Estimate Spreadsher



Project: Downtown Sanitary Sewer Rehabilitation Project No.: 00574-008-00

?

Owner: City of Montgomery

101 Old Plantersville Road Montgomery, Texas 77316 **Contractor:** Cruz Tec, Inc. 12210 Ann Lane

Houston, TX 77064

Summary of Contract Period of Performance

ORIGINAL PERIOD OF PERFORMANCE

Contract			Completion
Awarded	Awarded Notice to Proceed Days		Final
10/13/2022	12/16/2022	90	3/16/2023

THIS PERIOD OF PERFORMANCE

Pay Estimate	Received	Pay Po	Change Order	
2 & FINAL	5/18/2023	3/18/2023	5/18/2023	None

PERIOD OF PERFORMANCE TO DATE

Contra	ict Days	Completion	Contract Tim	Completed Work		
Net Adjusted Days	Total Contract Days	Final	Days	%	By Value (%)	
0	90	3/16/2023	153	170%	100%	

Summary of Contract Cost

Original Contract Amount	\$	107,750.00
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Final Quantity Adjustment	\$	3,960.00
Less Amount Retained (0%)	\$	-
Less Previous Payment(s) to Contractor	\$	99,846.00
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CERTIFICATION AND APPROVAL OF WORK COMPLETED FOR PAYMENT

The undersigned Contractor certifies that the work covered by this Application for Payment has been completed in accordance with the Contract Document, that all amounts have been paid by him for work for which previous Recommendation for Payments were issued and payments received from the Owner, and that the current payment shown herein is now due.

CONTRACTOR:	Date: 7 5 13
Cruz Fec, Inc.	
Job progress is satisfactory and the work appears to be in complia	nce with plans and specifications. In accordance with the Contract, the undersigned
recommends payment to the Contractor of the amount due as sh	own above.
ENGINEER: 2	Date: 6/28/2023
Ward, Getz & Associates, PLLC	
OWNER:	Date:
City of Montgomery	
,,	

174 (City of Montgomery)\008 Downtown Sanitary Sewer Rehabilitation\Docs\CA 00574-008-00 (JMR)\6. Pay Estimates & Change Orders\Pay Estimates\Pay Estimate No. 2\Pay Estimate Spreadsher



Project: Downtown Sanitary Sewer Rehabilitation **Calendar Days** Project No.: 00574-008-00 Period of Performace

90 Original 12/16/2022 3/16/2023 3/16/2023 Revised 12/16/2022 0

Owner: City of Montgomery 5/18/2023 61 Contractor: Cruz Tec, Inc. This 3/18/2023

									-,,		
				PAY ES	TIMATE NO. 2 &	FINAL					
ITEM					T⊢	IIS	PRE\	/IOUS	QUANTITIY	% COMPLETE	AMOUNT
NO.	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	QUANTITY	AMOUNT	QUANTITY	AMOUNT	TO DATE	TO DATE	TO DATE
	BID ITEMS										
1	Move-in and start-up, including performance and payment bonds for 100 percent (100%) of the contract amount, a certificate of insurance, distribution of door hangers, and weekly project schedules as directed by Engineer.		1.0	\$20,000.00	0.0%	\$0.00	100.0%	\$20,000.00	1.00	100%	\$20,000.00
2	8-inch (8") sanitary sewer rehabilitation by CURED-IN-PLACE process, all depths, including pre- and post-construction cleaning and televising; removal of roots and other pipe obstructions by regular pipe cleaning methods; sewer flow control (including by-pass pumping, if required); for materials testing; removal and replacement of sprinkler systems, and other above ground obstructions per Attachment A of the Contract; providing the Engineer copies of the curing logs; and site restoration to existing or better condition (includes removal and replacement of fencing, sod, etc.); complete in place, as directed by Engineer.		1,590.0	\$35.00	0.0	\$0.00	1,606.0	\$56,210.00	1,606.0	101%	\$56,210.00
3	8-inch (8") POINT REPAIR (using 8-inch (8") SDR 26 PVC, including adapters to connect to existing pipe) by excavation, all depths, replacing 8-feet (8') of pipe for each repair, including excavation; trench safety; groundwater control; sewer flow control (including by-pass pumping, if required); installation; bedding; removal of old pipe; reconnecting service leads to sewer line (as applicable); testing; backfill and compaction testing; pre- and post-construction cleaning and televising; removal and replacement of sprinkler systems and other above ground obstructions per Attachment A of the Contract; and site restoration (includes removal and replacement of fencing, sod, standard concrete driveways, paving, sidewalk, etc. as needed)); complete in place, as directed by Engineer.		4.0	\$3,200.00	0.0	\$0.00	5.0	\$16,000.00	5.0	125%	\$16,000.00
4	SERVICE LEAD RECONNECTION upon completion of CURED- IN- PLACE process by televised remote controlled cutting device including removal of coupon and testing, all depths, all pipe sizes; complete in place, as directed by Engineer.		17.0	\$200.00	0.0	\$0.00	18.0	\$3,600.00	18.0	106%	\$3,600.00



Project: Downtown Sanitary Sewer Rehabilitation Project No.: 00574-008-00 Period of Performace Calendar Days

 Original
 12/16/2022
 3/16/2023
 90

 Revised
 12/16/2022
 3/16/2023
 0

 This
 2/18/2023
 5/18/2023
 64

Final Quantity Adjustment

TOTAL AMOUNT DUE THIS PAY ESTIMATE

Owner: City of Montgomery Contractor: Cruz Tec, Inc. This 3/18/2023 5/18/2023 61

				PAY ES	TIMATE NO. 2 &	FINAL					
TEM					TH	IS	PREV	/IOUS	QUANTITIY	% COMPLETE	AMOUNT
NO.	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	QUANTITY	AMOUNT	QUANTITY	AMOUNT	TO DATE	TO DATE	TO DATE
	CLEANING of sanitary sewer manhole to remove mineral deposits, heavy grease, heavy roots, or other stabilized debris from manhole, including mobilization, demobilization, and pre- and post-televising, complete in place, as directed by the Engineer.		1.0	\$750.00	1.0	\$750.00	0.0	\$0.00	1.0	100%	\$750.00
	Remove & Replace Manhole Ring & Lid with City of Montgomery lid, complete in place, as Directed by Engineer.		1.0	\$1,100.00	0.0	\$0.00	1.0	\$1,100.00	1.0	100%	\$1,100.00
7	Reseal Manhole Lid and Throat, complete in place.	EA	3.0	\$950.00	0.0	\$0.00	3.0	\$2,850.00	3.0	100%	\$2,850.00
8	Installation of steel infiltration dish, complete in place, as directed by the Engineer.	EA	2.0	\$850.00	0.0	\$0.00	2.0	\$1,700.00	2.0	100%	\$1,700.00
9	Traffic Control Plan, as needed.	LS	1.0	\$7,500.00	0.0%	\$0.00	100.0%	\$7,500.00	1.0	100%	\$7,500.00
	PROJECT REPORT for the total contract, include one (1) copy submitted on the USB drive per monthly pay request, as well as one (1) external hard drive or USB drive for the entire project to be submitted with the final pay requests. USB and/or hard drive to be in format as schematic on Attachment A. Project report also includes providing redlined project layouts of the actual locations and sizes of the sanitary sewer lines and manholes.		1.0	\$2,000.00	0.0%	\$0.00	100.0%	\$2,000.00	1.0	100%	\$2,000.00
			TOTAL WC	RK COMPLETED		\$750.00		\$110,960.00			\$111,710.00
				Retainage	(0%)	\$ -	(10%)	\$ 11,096.00		(0%)	ς -

PAY ESTIMATE DETAILS	No. 1	N	o. 2 & FINAL
Status	Approved		Approved
This Pay Estimate	\$ 110,960.00	\$	750.00
Total Previous Pay Estimate	\$ -	\$	110,960.00
Amount to Date	\$ 110,960.00	\$	111,710.00
Retainage This Pay Estimate	\$ 11,096.00	\$	-
Net Retainage/Pay Estimate	\$ 11,096.00	\$	-
Amount Approved/Pay Estimate	\$ 99,864.00	\$	11,864.00

Page 2 of 2

\$3,960.00

\$11,864.00



CERTIFICATE OF SUBSTANTIAL COMPLETION

June 27, 2023

Owner: The Honorable Mayor and City Council

City of Montgomery

101 Old Plantersville Road Montgomery, Texas 77316

Contractor: Mr. Andres Cruz

Cruz Tec, Inc. 12210 Ann Lane Houston, TX 77064

Re: Downtown Sanitary Sewer Rehabilitation

City of Montgomery TIN No. 74-2063592

Dear Mayor and Council,

We have observed the subject project constructed by the CONTRACTOR and find it to be substantially complete in accordance with the approved plans and specifications. The project was periodically observed during construction by our field project representative

We also recommend that the Contractor's warranty period of one-year begin May 18, 2023.

SEAN M. DONAHUE

144648

CONTROL CONSERVATION

SONAL ENGINE

(Professional Engineer Seal of Approval)

44

Sincerely,

Sean Donahue, PE Construction Manager

Z:\00574 (City of Montgomery)\008 Downtown Sanitary Sewer Rehabilitation\Docs\CA 00574-008-00 (JMR)\6. Pay Estimates & Change Orders\Pay Estimates\Pay Estimate No. 2\COSC & COA - City of Montgomery.docx

CERTIFICATE OF ACCEPTANCE

June 27, 2023

Mr. Andres Cruz Cruz Tec, Inc. 12210 Ann Lane Houston, TX 77064

Re: Downtown Sanitary Sewer Rehabilitation

City of Montgomery TIN No. 74-2063592

Mr. Cruz,

This is to certify that the City of Montgomery accepts the subject project on the basis of the Certificate of Substantial Completion issued by our Engineers at Ward, Getz, & Associates, PLLC, and understands that a guarantee shall cover a period of one-year beginning May 18, 2023.

Signatu	re:
	Mr. Gary Palmer
	City of Montgomery, City Administrator
Date Ap	proved:

cc: Ms. Nicola Browe – City of Montgomery, City Secretary

Mr. Mike Muckleroy - City of Montgomery, Director of Public Works

Mr. Alan Petrov – Johnson Petrov, LLP, City Attorney

Mr. Chris Roznovsky, PE – Ward, Getz, & Associates, PLLC, City Engineer

PROJECT:	DOWNTOWN SANITARY SEWER REHABILITA	TION								
OWNER:	CITY OF MONTGOMERY								PAY EST. 2/FINAL	18-May-23
					Total Work D)one	Doucout			
Item No.	Description GENERAL ITEMS	Description		Percent Complete Contract Unit Price		Amount Due This Estimate	Amount Due To Date			
1	Move-in and start-up, including performance and payment bonds for 100 percent (100%) of the contract amount, a certificate of insurance, distribution of door hangers, and weekly project schedules as directed by Engineer.	1	LS	0	1	1.0	100%	\$20,000.00	\$0.00	\$20,000.00
2	8-inch (8") sanitary sewer rehabilitation by CURED-IN-PLACE process, all depths, including pre- and post-construction cleaning and televising; removal of roots and other pipe obstructions by regular pipe cleaning methods; sewer flow control (including by-pass pumping, if required); for materials testing; removal and replacement of sprinkler systems, and other above ground obstructions per Attachment A of the Contract; providing the Engineer copies of the curing logs; and site restoration to existing or better condition (includes removal and replacement of fencing, sod, etc.); complete in place, as directed by Engineer.	1590	LF	0	1606	1606.0	101%	\$35.00	\$0.00	\$56,210.00
	8-inch (8") POINT REPAIR (using 8-inch (8") SDR 26 PVC, including adapters to connect to existing pipe) by excavation, all depths, replacing 8-feet (8') of pipe for each repair, including excavation; trench safety; groundwater control; sewer flow control (including by-pass pumping, if required); installation; bedding; removal of old pipe; reconnecting service leads to sewer line (as applicable); testing; backfill and compaction testing; pre- and post- construction cleaning and televising; removal and replacement of sprinkler systems and other above ground obstructions per Attachment A of the Contract; and site restoration (includes removal and replacement of fencing, sod, standard concrete driveways, paving, sidewalk, etc. as needed)); complete in place, as directed by	4.0	EA	0	5	5.0	125%	\$3,200.00	\$0.00	\$16,000.00
4	SERVICE LEAD RECONNECTION upon completion of CURED-IN- PLACE process by televised remote controlled cutting device including removal of coupon and testing, all depths, all pipe sizes; complete in place, as directed by Engineer.	17.0	EA	0	18	18.0	106%	\$200.00	\$0.00	\$3,600.00
5	CLEANING of sanitary sewer manhole to remove mineral deposits, heavy grease, heavy roots, or other stabilized debris from manhole, including mobilization, demobilization, and pre- and post-televising, complete in place, as directed by the Engineer.	1	EA	1	0	1.0	100%	\$750.00	\$750.00	\$750.00
6	Remove & Replace Manhole Ring & Lid with City of Montgomery lid, complete in place, as Directed by Engineer.	1	EA	0	1	1.0	100%	\$1,100.00	\$0.00	\$1,100.00
7	Reseal Manhole Lid and Throat, complete in place	3	EA	0	3	3.0	100%	\$950.00	\$0.00	\$2,850.00
8	Installation of steel infiltration dish, complete in place, as directed by the Engineer.	2	EA	0	2	2.0	100%	\$850.00	\$0.00	\$1,700.00
9	Traffic Control Plan, as needed.	1	LS	0	1	1.0	100%	\$7,500.00	\$0.00	\$7,500.00
10	PROJECT REPORT for the total contract, include one (1) copy submitted on the USB drive per monthly pay request, as well as one (1) external hard drive or USB drive for the entire project to be submitted with the final pay requests. USB and/or hard drive to be in format as schematic on Attachment A. Project report also includes providing redlined project layouts of the actual locations and sizes of the sanitary sewer lines and manholes.	1	LS	0	1	1.0	100%	\$2,000.00	\$0.00	\$2,000.00
					Subtot	al this estimate:		\$750.00	Total Work to Date:	\$111,710.00
					1	0% Retainage:		ф7E0 00	Less 10% Retainage:	\$0.00
						Subtotal: ontract Amount:		\$750.00 \$107,750.00	Subtotal: Percent Complete	\$111,710.00 103.68%
INSPECTOR	SIGNATURE:			Total A		pay retainage:		\$107,750.00	Total Amount Due:	\$11,846.00

WAIVER AND LIEN RELEASE UPON FINAL PAYMENT

THE STATE (OF TEXAS
COUNTY OF	Montgomery

The undersigned contracted with <u>Cruz Tec, Inc.</u> to furnish Labor, Materials and Incidental Items in connection with certain improvements to real property located in <u>Montgomery</u> County, Texas, and owned by <u>City of Montgomery</u> which improvements are described as follows:
Project Name: Downtown Sanitary Sewer Rehabilitation
Project Number:74-2063592
In consideration of Pay Estimate No. 2 AND FINAL in the amount of Eleven Thousand Eight Hundred Fortys Six Dollars Zero Cents (\$ 11,846.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the undersigned does hereby waive and release any mechanic's lien or materialmen's lien or claims of lien that the undersigned has or hereafter has on the above mentioned real property on account of any labor performed or materials furnished or to be furnished or labor performed and materials furnished by the undersigned pursuant to the above mentioned contract or any constitutional lien that the undersigned may have.
Undersigned hereby guarantees that all bills for labor performed and/or materials furnished in the erection and construction of such improvements on the Property have been fully paid (with the exception of the attached invoice) and satisfied and Undersigned does further guarantee that if for any reason a lien or liens are filed for material or labor against said Property arising out of any bills for material or labor in connection with the erection or construction of said improvements therein, Undersigned will obtain a settlement of such lien or liens and a proper release thereof shall be obtained.
Executed this 6th day of June , 20_23 Cruz Tec, Inc.
President
THE STATE OF TEXAS
COUNTY OF Harris
BEFORE ME, The undersigned authority, on this day personally appeared Andres Cruz of Cruz Tec, Inc., known to me to be the person and officer whose
name is subscribed to the foregoing instrument, and acknowledged to me that the executed the same as the act and deed of such corporation, for the purpose of consideration therein expressed and in the capacity therein stated.
GIVEN UNDER MY HAND AND SEAL OF OFFICE ON THIS THE 6th day of June 2023.
MY COMMISSION EXPIRES: 09.16.26 Jennifer Soliz NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS My Notary ID # 128389938 Expires September 16, 2026

AFFIDAVIT OF FINAL BILLS PAID

THE STATE OF TEXAS COUNTY OF MONTGOMERY

Andres Cruz Being first duly sworn, state that he is President
of <u>Cruz Tec, Inc.</u> of <u>Harris</u> County of Texas, hereinafter call
"Company", and The said Company has performed work and/or furnished <u>City of</u> <u>Montgomery</u> hereinafter called "Owner" pursuant to a contract, dated with Owner (hereinafter called
"Contract") for the construction of:
PROJECT: Downtown Sanitary Sewer Rehabilitation
PROJECT NO: 74-2063592
That all just and lawful invoices against the Company for Labor, materials and expendable equipment employed in the performance of the Contract and have been paid in full prior to acceptance of payments from the Owner, and
That the Company agrees to indemnify and hold the Owner and Engineers harmless from all liability arising from claims by subcontractors, materialmen and suppliers under Contract, and
That no claims have been made or filed upon the payment bond,
That the Company has not received any claims or notice of claims from the subcontractor, materialmen
and suppliers.
Executed this 6th day of June , 20_23 CONTRACTOR
President
Title
THE STATE OF TEXAS COUNTY OF Harris
BEFORE ME, The undersigned authority, on this day personally appeared Andres Cruz
of Cruz Tec, Inc., a Texas Corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to
me that the executed the same as the act and deed of such corporation, for the purpose of consideration therein expressed and in the capacity therein stated.
GIVEN UNDER MY HAND AND SEAL OF OFFICE ON THIS THE 6th day of June 2023.
MY COMMISSION EXPIRES: 09.16.26 NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
JENNIFER SOLIZ My Notary ID # 128389938 Expires September 18, 2026

TEXAS CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

Project: Downtown Sanitary Sewer Rehabilitation

Job No.: 74-2063592

On receipt by the signer of this document of a check from <u>City of Montgomery</u> in the sum of \$ 11,096.00 payable to <u>Cruz Tec, Inc.</u> and when the check has been properly endorsed and has been paid by the bank on which it is drawn or electronic payment deposited into payee's account, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of <u>City of Montgomery</u> located at <u>Montgomery</u>, <u>Texas</u> to the following extent: <u>Sanitary Sewer Rehabilitation</u>.

This release covers the final payment to the signer for all labor, services, equipment, or materials furnished to the property or to <u>Cruz Tec, Inc.</u>

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

Date <u>05.3</u>

Cruz Te

[Signature]

resident [Title]

STATE OF TEXAS

§

COUNTY OF Harris

000

Before me, the undersigned Notary Public in and for the State of Texas, on this day personally appeared Andres Cruz, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that s/he executed such instrument for the purposes therein expressed, and in the capacity therein stated as the act and deed of such business entity.

Name: Jennifer Soliz

Notary Public, State of Texas

My commission expires: 09.16.26

AFTER RECORDING RETURN TO:

12210 Ann Lane Houston, Texas 77064

*

JENNIFER SOLIZ My Notary ID # 128389938 Expires September 16, 2026

		-	
CONSENT OF SURETY	OWNER		Item 5.
TO FINAL PAYMENT	ARCHITECT		
AIA Document G707	CONTRACTOR SURETY		
Bond No. 30157867	OTHER	D	
TO OWNER: (Name and address)	ARCHITECT'S PROJECT NO.:		
City of Montgomery	CONTRACT FOR: General Construction		
PROJECT: (Name and address)	CONTRACT DATED:		
Downtown Sanitary Sewer Rehabilitation			
In accordance with the provisions of the Contract between the Owne (insert name and address of Surety)	er and the Contractor as indicated above, the		
Continental Casualty Company 151 N. Franklin Street			
Chicago, IL 60606	, sur	ETY,	
On bond of (Insert name and address of Contractor)			
Cruz Tec, Inc. 12210 Ann Lane			
Houston, TX 77064	, CONTRAC	ror,	
hereby approves of the final payment to the Contractor, and agrees any of its obligations to	that final payment to the Contractor shall not relieve the Sure	ty of	!
(Insurt name and address of Owner)			
City of Montgomery			
and the second of the second of the second	, OW	NER,	
as set forth in said Surety's bond.			

IN WITNESS WHEREOF, the Surety has hereunto set its hand on this date: May 19, 2023 (Insert in writing the month followed by the numeric date and year.)

Attest:

(Seal):

Belinda Rodriguez, Secretary

CORPORATE CONFORMED SEAL 1897

Continental Casualty Company

(Starety)

By:

(Signature of amborized representative)

Cheryl R. Colson

Attorney-in-Fact

(Printed name and title)

Item 5.

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That Continental Casualty Company, an Illinois insurance company, National Fire Insurance Company of Hartford, an Illinois insurance company, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania insurance company (herein called "the CNA Companies"), are duly organized and existing insurance companies having their principal offices in the City of Chicago, and State of Illinois, and that they do by virtue of the signatures and seals herein affixed hereby make, constitute and appoint

Cheryl R. Colson, Individually

of Spring, TX their true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on their behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

Surrey Bood No.: 30157867
Principal: Cruz Tec, Inc.
Obligate: City of Montgomery

and to bind them thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of their insurance companies and all the acts of said Attorney, pursuant to the authority hereby given is hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Laws and Resolutions, printed on the reverse hereof, duly adopted, as indicated, by the Boards of Directors of the insurance companies.

In Witness Whereof, the CNA Companies have caused these presents to be signed by their Vice President and their corporate seals to be hereto affixed on this 9th day of May, 2023.







Continental Casualty Company
National Fire Insurance Company of Hartford
American Casualty Company of Reading, Pennsylvania

arry Kasten Luo Lun
Vice President

State of South Dakota, County of Minnehaha, ss:

On this 9th day of May, 2023, before me personally came Larry Kasten to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is a Vice President of Continental Casualty Company, an Illinois insurance company, National Fire Insurance Company of Hartford, an Illinois insurance company, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania insurance company described in and which executed the above instrument; that he knows the seals of said insurance companies; that the seals affixed to the said instrument are such corporate seals; that they were so affixed pursuant to authority given by the Boards of Directors of said insurance companies and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said insurance companies.



My Commission Expires March 2, 2026

M. Bent

Notary Public

CERTIFICATE

I, D. Johnson, Assistant Secretary of Continental Casualty Company, an Illinois insurance company, National Fire Insurance Company of Hartford, an Illinois insurance company, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania insurance company do hereby certify that the Power of Attorney herein above set forth is still in force, and further certify that the By-Laws and Resolutions of the Board of Directors of the insurance companies printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said insurance companies this 19th day of May, 2023.







Continental Casualty Company
National Fire Insurance Company of Hartford
American Casualty Company of Reading, Pennsylvania

D. Johnson

Assistant Secretary

Form F6853-4-2023

Authorizing By-Laws and Resolutions

This Power of Attorney is signed by Larry Kasten, Vice President of each of the CNA Companies (as defined in the Power of Attorney), who has been authorized pursuant to the below Bylaws and Resolutions to execute power of attorneys on behalf of each of the CNA Companies.

ADOPTED BY THE BOARD OF DIRECTORS OF CONTINENTAL CASUALTY COMPANY:

This Power of Attorney is made and executed pursuant to and by authority of the following resolution duly adopted by the Board of Directors of the Company at a meeting held on May 12, 1995:

"RESOLVED: That any Senior or Group Vice President may authorize an officer to sign specific documents, agreements and instruments on behalf of the Company provided that the name of such authorized officer and a description of the documents, agreements or instruments that such officer may sign will be provided in writing by the Senior or Group Vice President to the Secretary of the Company prior to such execution becoming effective."

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the Company by unanimous written consent dated the 25th day of April, 2012:

"Whereas, the bylaws of the Company or specific resolution of the Board of Directors has authorized various officers (the "Authorized Officers") to execute various policies, bonds, undertakings and other obligatory instruments of like nature; and

Whereas, from time to time, the signature of the Authorized Officers, in addition to being provided in original, hard copy format, may be provided via facsimile or otherwise in an electronic format (collectively, "Electronic Signatures"); Now therefore be it resolved: that the Electronic Signature of any Authorized Officer shall be valid and binding on the Company."

This Power of Attorney may be signed by digital signature and sealed by a digital or otherwise electronic-formatted corporate seal under and by the authority of the following Resolution adopted by the Board of Directors of the Company by unanimous written consent dated the 27th day of April, 2022:

"RESOLVED: That it is in the best interest of the Company to periodically ratify and confirm any corporate documents signed by digital signatures and to ratify and confirm the use of a digital or otherwise electronic-formatted corporate seal, each to be considered the act and deed of the Company."

ADOPTED BY THE BOARD OF DIRECTORS OF NATIONAL FIRE INSURANCE COMPANY OF HARTFORD:

This Power of Attorney is made and executed pursuant to and by authority of the following resolution duly adopted by the Board of Directors of the Company by unanimous written consent dated May 10, 1995:

"RESOLVED: That any Senior or Group Vice President may authorize an officer to sign specific documents, agreements and instruments on behalf of the Company provided that the name of such authorized officer and a description of the documents, agreements or instruments that such officer may sign will be provided in writing by the Senior or Group Vice President to the Secretary of the Company prior to such execution becoming effective."

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the Company by unanimous written consent dated the 25th day of April, 2012:

"Whereas, the bylaws of the Company or specific resolution of the Board of Directors has authorized various officers (the "Authorized Officers") to execute various policies, bonds, undertakings and other obligatory instruments of like nature; and

Whereas, from time to time, the signature of the Authorized Officers, in addition to being provided in original, hard copy format, may be provided via facsimile or otherwise in an electronic format (collectively, "Electronic Signatures"); Now therefore be it resolved: that the Electronic Signature of any Authorized Officer shall be valid and binding on the Company."

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"RESOLVED: That it is in the best interest of the Company to periodically ratify and confirm any corporate documents signed by digital signatures and to ratify and confirm the use of a digital or otherwise electronic-formatted corporate seal, each to be considered the act and deed of the Company."

ADOPTED BY THE BOARD OF DIRECTORS OF AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA:

This Power of Attorney is made and executed pursuant to and by authority of the following resolution duly adopted by the Board of Directors of the Company by unanimous written consent dated May 10, 1995:

"RESOLVED: That any Senior or Group Vice President may authorize an officer to sign specific documents, agreements and instruments on behalf of the Company provided that the name of such authorized officer and a description of the documents, agreements or instruments that such officer may sign will be provided in writing by the Senior or Group Vice President to the Secretary of the Company prior to such execution becoming effective."

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the Company by unanimous written consent dated the 25th day of April, 2012:

"Whereas, the bylaws of the Company or specific resolution of the Board of Directors has authorized various officers (the "Authorized Officers") to execute various policies, bonds, undertakings and other obligatory instruments of like nature; and

Whereas, from time to time, the signature of the Authorized Officers, in addition to being provided in original, hard copy format, may be provided via facsimile or otherwise in an electronic format (collectively, "Electronic Signatures"); Now therefore be it resolved: that the Electronic Signature of any Authorized Officer shall be valid and binding on the Company."

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"RESOLVED: That it is in the best interest of the Company to periodically ratify and confirm any corporate documents signed by digital signatures and to ratify and confirm the use of a digital or otherwise electronic-formatted corporate seal, each to be considered the act and deed of the Company."

Montgomery City Council AGENDA REPORT

Meeting Date: July 11, 2023	Budgeted Amount: N/A
Department: Police Department	Prepared By: Anthony Solomon

Subject

Consideration and possible action on: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS, AMENDING ARTICLE VI, "OPERATION OF GOLF CARTS ON PUBLIC STREETS", OF THE CITY CODE OF ORDINANCES; REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT THEREWITH; PROVIDING A SEVERANCE CLAUSE AND PROVIDING AN EFFECTIVE DATE.

Recommendation

Approve the amendment to the City of Montgomery Municipal Code by repealing Article VI in its entirety and adopting the amended Article VI as proposed.

Discussion

In order to align with the State of Texas Transportation Code, Article VI needs to be updated. Effective June 1, 2019, Golf Carts, Neighborhood Electric Vehicles and Off-Highway Vehicles must now be issued a license plate or special State issued decal through the Texas Department of Motor Vehicles. (H.B. 1548). The amended Article VI clarifies definitions as well as operational requirements.

Included with the amended ordinance in your packets is an informational flyer and reference material from the State Department of Motor Vehicles broken down by vehicle type.

Approved By	
	Date:
City Administrator	Date:

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS, AMENDING ARTICLE VI, "OPERATION OF GOLF CARTS ON PUBLIC STREETS", OF THE CITY CODE OF ORDINANCES; REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT THEREWITH; PROVIDING A SEVERANCE CLAUSE AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the changes in Texas law, Texas Transportation Code permits the operation of golf carts, neighborhood electric vehicles, and off-highway vehicles within a municipality under certain conditions; and

WHEREAS, the changes in Texas law, Texas Transportation Code grants to a municipality the authority to prohibit the operation of a golf cart, a neighborhood electric vehicle, or an unregistered off-highway vehicle on a highway if the governing body of the municipality determines that the prohibition is necessary in the interest of safety; and

WHEREAS, upon the recommendation of the City of Montgomery Police Department, the City Council of the City of Montgomery, Texas, agrees that establishing the regulations and prohibitions set forth in this Ordinance are necessary in the best interest of public health, safety, and welfare, and to promote orderly and safe operations of vehicles within the City;

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

SECTION 1. That the city code of ordinances Article VI is hereby amended, such that it reads, in its entirety, as follows:

ARTICLE VI. – OPERATION OF GOLF CARTS, NEIGHBORHOOD ELECTRIC VEHICLES, AND OFF-HIGHWAY VEHICLES ON PUBLIC STREETS.

Sec. 86-200. – Purpose.

The purpose of this section is to protect the public health, safety, and welfare of all residents and visitors of the City of Montgomery by regulating the operation of golf carts, neighborhood electric vehicles, and off-highway vehicles on public streets.

Sec. 86-205. – Definitions.

The following words, terms, and phrases, when used in this article shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Daytime means the period beginning one-half hour before sunrise and ending one -half hour after sunset as defined by Section 541.401 of the Texas Transportation Code.

Golf cart means a motor vehicle designed by the manufacturer primarily for transporting persons on a golf course. use on a golf course as defined by Section 551.401 of the Texas Transportation Code.

Highway means the width between the boundary lines of a publicly maintained way any part of which is open to the public for vehicular travel as defined by Section 541.302 of the Texas Transportation Code.

Municipality means the City of Montgomery, Texas.

Neighborhood electric vehicle means a vehicle that can attain a maximum speed of 35 miles per hour on a paved level surface and other complies with Federal Motor Vehicle Safety Standards 500 (49 CFR Section 571.500) as defined by Section 551.301 of the Texas Transportation Code.

Off-highway vehicle means an all-terrain vehicle, recreational off-highway vehicle, or utility vehicle as defined by Section 551A.001(3) of the Texas Transportation Code.

Public street means a publicly-owned or dedicated road, street, drive, or other right-of-way for the use of vehicles within the corporate boundaries of the city.

Residential subdivision means a subdivision, planned unit development, townhouse regime, or similar planned development in which all land has been divided into two or more parts and is subject to restrictions that: (a) limit a majority of the land subject to the dedicatory instruments, excluding streets, common areas, and public areas, to residential use for single-family homes, townhomes, or duplexes only; (b) are recorded in the real property records of the county in which the residential subdivision is located; and (c) require membership in a property owners' association that has authority to impose regular or special assessments on the property in the subdivision.

Sec. 86-206. Golf carts permitted and restricted.

A person may operate a golf cart on a public street if:

- (1) The maximum speed limit on the public street is 35 miles per hour or less;
- (2) Notwithstanding subsection (1) of this section, a person is directly crossing an intersection, including a road or street that has a posted speed limit of more than 35 miles per hour, in accordance with applicable state law. Intersection means the common area at the junction of two highways, streets or roads from curb to curb.
- (3) The person has a valid driver's license;
- (4) The person maintains current financial responsibility for the golf cart, as required of other passenger vehicles in the V.T.C.A, Transportation Code § 601.051;
- (5) The person complies with all applicable federal, state, and local laws and ordinances;
- (6) The golf cart has the following equipment:

- a. Headlamps;
- b. Tail lamps;
- c. Reflectors;
- d. A parking brake;
- e. Mirrors; and
- f. A slow-moving vehicle emblem.
- (7) While the golf cart is in motion, the driver and every passenger in a golf cart is seated in a seat designed to hold passengers. No person may stand or ride in the lap of the driver and/or other passengers of a golf cart while it is moving; and
- (8) The person completes and signs a city-supplied registration permit application form, accompanied by a fee as currently established or as hereafter adopted by resolution of the city council from time to time, along with proof of financial responsibility as required herein, which shall contain the following:
 - a. Name, address, email address and telephone number of the owner;
 - b. Location where the golf cart is regularly stored overnight;
 - c. Model, make, name and golf cart identification number;
 - d. Current driver's license number of the owner:
 - e. Statement that the registration permit holder and any user shall indemnify and hold harmless the city for any and all civil liability associated with said registration, and waives any and all rights to sue or allow subrogation by an insurance company.

Sec. 86-206. – License plates.

A person may operate a golf cart or an unregistered off-highway vehicle on a highway in a manner authorized by this section only if the vehicle displays a license plate issued by the Texas Department of Motor Vehicles.

The Texas Department of Motor Vehicles may adopt rules relating to the registration and issuance of license plates to neighborhood electric vehicles. Per Transportation Code Section 551.304(b), a person is not required to register a neighborhood electric vehicle operated in compliance with Section 551.304(a).

Sec. 86-207. - Operation authorized in certain areas.

An operator may operate a golf cart or an unregistered off highway vehicle or a neighborhood electric vehicle:

(1) in a master planned community:

- (A) that (for golf carts in a residential subdivision or) has in place a uniform set of restrictive covenants; and
- (B) for which a municipality has approved a plat (for golf carts one or more plats);
- on a public or private beach that is open to vehicular traffic (except off-highway vehicle operation on public land or beach; safety certificate required Sec. 551A.031 Texas Transportation Code); or
- on a highway for which the posted speed limit is not more than 35 miles per hour, if the golf cart or off-highway vehicle or neighborhood electric vehicle is operated:
 - (A) during the daytime; and
 - (B) not more than two miles (for golf carts five miles) from the location where the golf cart or off-highway vehicle or neighborhood electric vehicle is usually parked and for transportation to or from a golf course.

Notwithstanding Sec. 86-206, a person may operate a golf cart in a master planned community described by Sec. 86-207(1) without a golf cart license plate on a highway for which the posted speed limit is not more than 35 miles per hour, including through an intersection of a highway for which the posted speed limit is more than 35 miles per hour.

A neighborhood electric vehicle may be operated only on a street or highway for which the posted speed limit is 45 miles per hour or less. A neighborhood electric vehicle may cross a road or street at an intersection where the road or street has a posted speed limit of more than 45 miles per hour. A neighborhood electric vehicle may not be operated on a street or highway at a speed that exceeds the lesser of (1) the posted speed limit; or (2) 35 miles per hour.

Sec. 86-208. – Prohibition of operation in certain areas by a municipality.

A municipality may prohibit the operation of a golf cart or an unregistered off-highway vehicle on a highway under Section 86-207 if the governing body of the municipality determines that the prohibition is necessary in the interest of safety.

A municipality may prohibit the operation of a neighborhood electric vehicle on a street or highway if the governing body of the municipality determines that the prohibition is necessary in the interest of safety.

Sec. 86-209. - Operation on highway authorized by municipality.

In addition to the operation authorized by Sec. 86-207, the governing body of a municipality may allow an operator to operate a golf cart or an unregistered off highway vehicle on all or part of a highway that:

- (1) is in the corporate boundaries of the municipality; and
- (2) has a posted speed limit of not more than 35 miles per hour.

Sec. 86-210. – Crossing intersections.

A golf cart or an unregistered off-highway vehicle may cross a highway at an intersection, including an intersection with a highway that has a posted speed limit of more than 35 miles per hour.

Sec. 86-210-1. Crossing highway at point other than intersection.

The operator of an off-highway vehicle may drive the vehicle across a highway that is not an interstate or limited access highway at a point other than an intersection if the operator:

- (1) brings the vehicle to a complete stop before crossing the shoulder or main traveled way of the roadway;
- (2) yield the right-of-way to oncoming traffic that is an immediate hazard; and
- (3) makes the crossing:
 - (A) at an angle of approximately 90 degrees to the roadway;
 - (B) at a place where no obstruction prevents a quick and safe crossing; and
 - (C) with the vehicle's headlights and taillights lighted.

Notwithstanding, the operator of an off-highway vehicle may drive the vehicle across a divided highway other than an interstate or limited access highway only at an intersection of the highway with another highway.

Sec. 86-211. - Equipment.

A golf cart operated under Sec. 86-209 must have the following equipment:

- (1) headlamps;
- (2) taillamps;
- (3) reflectors;
- (4) parking brake; and
- (5) mirrors.

Sec. 86-211-1. – Equipment and safety requirements.

An off-highway vehicle that is operated on a highway must be equipped per Transportation Code Chapter 551A.071.

Sec. 86-212. – Additional equipment requirements for slow-moving vehicles.

A golf cart, neighborhood electric vehicle, or off-highway vehicle that is operated at a speed of not more than 25 miles per hour is required to display a slow-moving vehicle emblem when it is operated on a highway. (Transportation Code 547.703(d))

Sec. 86-213. – Driver's license requirement.

Pursuant to the Texas Attorney General's office, KP-0364, that the requirement to possess a driver's license to operate a vehicle on a public roadway applies to the operation of golf carts and off-highway vehicles while on a public road. Yes, an operator of a golf cart or off-highway vehicle must possess a valid driver's license (or learner's permit with adult present) to operate either vehicle on a public roadway.

Sec. 86-214 – Exception to financial responsibility requirement.

Texas Transportation Code Section 601.051 states that a person may not operate a motor vehicle in this state unless financial responsibility is established for that vehicle. Texas Transportation Code Section 601.052 states that Section 601.051 does not apply to:

- (1) a neighborhood electric vehicle that is operated only as authorized by Texas Transportation Code Section 551.304;
- (2) a golf cart that is operated only as authorized by Section 551.403
- (3) an off-highway vehicle that is operated only as authorized by Subchapter C, of the Texas Transportation Code Section 551A or Chapter 29 Parks and Wildlife Code.

State Law references - Amended by: Texas Statutes, Transportation Code, HB 1548 06.14.2019; Texas Statutes, Transportation Code, HB 1281 06.15.2021.

SECTION 2. This amendment as codified in Article VI of the City Code, shall prevail and all other ordinances in conflict are hereby repealed to the extent of any conflict.

SECTION 3. This ordinance shall take effect immediately upon its passage and adoption.

Passed and adopted by the City Council of the City of Montgomery, Texas this	day of
, 2023.	

, 2023.	day of Montgomery, Texas this day	day of
	Byron Sanford, Mayor	
Attest:		
Nicola Browe, City Secretary		
Approved as to form:		
Alan P. Petrov, City Attorney		



CITY OF MONTGOMERY

101 Old Plantersville Road Montgomery, TX 77316 Tel: 936-597-6434

Fax: 936-597-6437

GOLF CARTS AND MOST OTHER OFF-HIGHWAY VEHICLES



Texas law now allows golf carts and most other off-highway vehicles to be operated on public roadways. **However**, to legally operate these vehicles, their operation is restricted to certain conditions and requirements. Note: An "off-highway vehicle" includes ATVs, ROVs, UTVs, and sand rails.

Requirements to operate:

- Vehicles must display a license plate issued by TXDMV.
- A vehicle operated at a speed of less than 25 miles per hour is required to display a slow-moving vehicle emblem.
- All traffic laws pertaining to the movement and operation of regular motor vehicles apply and must be obeyed.
- The operator must possess a valid driver's license (or learner's permit with an adult present).



A person may operate a golf cart or off-highway vehicle:

- In a master planned community (for golf carts in a residential subdivision or) has in place a uniform set of restrictive covenants; and has an approved plat.
- A public or private beach open to vehicular traffic (offhighway vehicles with safety certifications).
- A public roadway with a posted speed limit not more than 35 miles per hour, operated during the daytime, and not more than 2 miles (5 miles for golf carts) from the location where the vehicle is usually parked and for transportation to or from the golf course.



UNIQUE VEHICLES – Golf Carts

(https://www.txdmv.gov/motorists/buying-or-selling-a-vehicle/unique-vehicles)

Unique vehicles include off-highway vehicles, Golf Carts, and Neighborhood Electric Vehicles (NEVs). Off-highway vehicles include All-Terrain Vehicles (ATVs), Recreational Off-Highway Vehicles (ROVs), Utility Vehicles (UTVs), and Sand Rails.

A Golf Cart is a motor vehicle designed by the manufacturer primarily for use on a golf course. TxDMV does not title and register Golf Carts, but Golf Carts are eligible to receive a Golf Cart license plate. You may obtain a Golf Cart license plate from your county tax assessor-collector's office. The county will require a Form 130-U Application for Texas Title and/or Registration.

Golf Carts with a Golf Cart license plate may be operated on roads in the following situations:

- In a master planned community with a uniform set of restrictive covenants and a county or municipality approved plat
- On a public or private beach that is open to vehicular traffic
- On a highway with a posted speed limit of 35 mph, during the daytime and not more than two miles from the location where it is usually parked for transportation to and from a golf course
- To cross intersections, including an intersection with a highway that has a posted speed limit of more than 35 mph.

Golf Carts must have the following minimum equipment:

- Headlamps
- Tail lamps
- Reflectors
- Parking brake
- Mirrors

Additionally, cities or certain counties may authorize operation of Golf Carts on roads within the boundaries of the city or within unincorporated areas of certain counties. The Golf Cart must display a Golf Cart license plate when operated on roads authorized by the city or county. Operation may be authorized only on roads with a speed limit of 35 mph or less.

If operated on the roads at a speed of 25 mph or less, a Golf Cart is required to display a slow-moving vehicle emblem.

Application t	or rex	as litle	and/c	or Re	egistrati	on	Item 6.
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25. Applicant Phone Number (optional) 26. Email (optional)			27. Regi	stration Re	enewal eReminder	28. Communic	ation Impediment?
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(f) Late Tax Payment Penalty ☐ 5% or ☐ 10%	\$				Motor Vehicle Sale		
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I hereby certify all statements in this document are true and (Check only if applicable) I certify I am applying for a correct	correct to the be	est of my knowledge	e and belief, and	l am eligil	ole for title and/or re	egistration (as a	ipplicable).
Signature(s) of Seller(s), Donor(s), or Trader(s)		Printed Nam	ne(s) (Same as S	ignature(s))	Dat	e
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Application for Texas Title and/or Registration

Item 6.

General Instructions

With a few exceptions, you are entitled to be informed about the information the department collects about you. The Texas Government Code entitles you to receive and review the information and to request that the department correct any information about you that is incorrect. Please contact the Texas Department of Motor Vehicles at 1-888-368-4689 or 512-465-3000 for details.

This form must be completed and submitted to a county tax assessor-collector's office accompanied by any required application fee, supporting documents, registration fee, if applicable, and any motor vehicle tax due. An application form may be reproduced or faxed. A completed form must contain the original signature of the buyer. The seller's signature may be reproduced or faxed. All title applications must include one of the government-issued photo IDs listed in Box 15. Detailed instructions for completing this form are located in the Detailed Instructions for Application for Texas Title and/or Registration (Form VTR-130-UIF).

AVAILABLE HELP

- For assistance in completing this form, contact your county tax assessor-collector.
- For information about motor vehicle sales and use tax or emission fees, contact the Texas Comptroller of Public Accounts, Tax Assistance Section, at 1-800-252-1382 toll free nationwide or call 512-463-4600.
- For title or registration information, contact your county tax assessor-collector or the Texas Department of Motor Vehicles at 1-888-368-4689 or 512-465-3000.

Additional Details

Title Only: License plates and registration insignia previously issued for this motor vehicle must be surrendered in accordance with Transportation Code §501.0275, if applicable, unless this vehicle displays a license plate under an applicable status of forces agreement. The following types of vehicles are not eligible for Title Only: construction machinery (unconventional vehicles), water well drilling units, machinery used exclusively for drilling water wells, construction machinery not designed to transport persons or property, implements of husbandry, farm equipment (including combines), golf carts, slow moving vehicles, or any vehicle with a suspended or revoked title.

Registration Purposes Only: Do not surrender an original out of state title with this application. A Texas title will NOT be issued for a vehicle applying for Registration Purposes Only. The receipt issued upon filing this application will serve as the registration receipt and proof of application for Registration Purposes Only.

• <u>Foreign Vehicles</u>: Foreign vehicles applying for Registration Purposes Only must attach DOT Form HS-7 or U.S. Customs Form CF-7501 to indicate the vehicle is: 1) over 25 years old, or 2) complies with Federal Motor Vehicle Safety Standards, or 3) is being imported in the United States for a temporary period by a nonresident or a member of the armed forces of a foreign country on assignment in the U.S., and does not conform to the Federal Motor Vehicle Standards and cannot be sold in the U.S.

Nontitle Registration: Certain trailers, farm equipment, construction machinery, oil well servicing machinery, water well drilling units, etc. are either exempt from, or not eligible for title, but are eligible for, or required to, obtain registration or a specialty plate in order to operate on the highway. Applicants should mark this box only when applicable. Note: A lien cannot be recorded on this type of application.

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Notice

- The sales and use tax must be paid to the county tax assessor-collector within 30 days from the date of purchase or entry of the vehicle into Texas.
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- A 6.25 percent motor vehicle sales and use tax is imposed on the sales price (less trade-in allowance) of motor vehicles for use in Texas or a motor vehicle
 purchased outside of the state and later brought into this state by a Texas resident.
- Standard Presumptive Value (SPV) applies to private-party sales of most used motor vehicles purchased or brought into Texas. The tax is computed on the greater of the sales price or 80 percent of the SPV on the day of title application.
- New Texas residents are subject to a \$90 use tax on a vehicle brought into this state that was previously registered to the new resident in another state or foreign country. This is in lieu of the 6.25 percent use tax imposed on a Texas resident.
- A \$10 gift tax is due when a person receives a motor vehicle as a gift from an immediate family member, guardian, or a decedent's estate. A vehicle donated to, or given by, a non-profit service organization qualifying under IRC 501(c)(3) is also taxed as a gift. Both donor and recipient must sign the Comptroller's joint affidavit, Affidavit of Motor Vehicle Gift Transfer (Form 14-317). The affidavit and the title application must be submitted in person by either the donor or recipient.
- A transaction in which a motor vehicle is transferred to another person without payment of consideration and one that does not qualify as a gift described above is a sale and will be subject to tax calculated on the vehicle's standard presumptive value.
- A late penalty equal to 5 percent of the tax will be charged if the tax or surcharge is paid from 1 to 30 calendar days late. If more than 30 calendar days late, the penalty will be 10 percent of the tax; minimum penalty is \$1.
- In addition to the late tax payment penalty, Texas Transportation Code provides for an escalating delinquent transfer penalty of up to \$250 for failure to apply for title within 30 days from the date of title assignment. Submit this application along with proper evidence of ownership and appropriate valid proof of financial responsibility such as a liability insurance card or policy.
- All new residents applying for a Texas title and registration for a motor vehicle must file at a county tax assessor-collector's office within 30 days of
 establishing residency. Texas law requires that all vehicles previously registered and titled or registered in another state or country be inspected for safety
 and the vehicle identification number verified before such vehicles may be registered in Texas. These inspections must be made by a state appointed
 safety inspection station that will complete a Texas Vehicle Inspection Report. This form must be submitted to a county tax assessor-collector with your
 application for registration and Texas title.

UNIQUE VEHICLES – Off-Highway Vehicles

(https://www.txdmv.gov/motorists/buying-or-selling-a-vehicle/unique-vehicles)

Unique vehicles include off-highway vehicles, Golf Carts, and Neighborhood Electric Vehicles (NEVs). Off-highway vehicles include All-Terrain Vehicles (ATVs), Recreational Off-Highway Vehicles (ROVs), Utility Vehicles (UTVs), and Sand Rails.

The TxDMV is required to title off-highway vehicles (ATVs, ROVs, UTVs, and Sand Rails), but these vehicles are not eligible for registration. Off-highway vehicles are eligible to receive an Off-Highway Vehicle license plate, which may be obtained from your county tax assessor-collector's office. For Driver License requirements to operate any of these vehicles, contact the Texas Department of Public Safety. A <u>Texas Use Tax</u> will apply to vehicles purchased in other states. Find details on paying use tax visit the <u>Texas Comptroller website</u>.

An All Terrain Vehicle (ATV) is a motor vehicle that:

- Has a seat or seats for the rider and one passenger
- · Has three or more tires
- · Is not more than 50 inches wide
- Is designed for off-highway use
- Is not designed by the manufacturer for farm or lawn care.

A Recreational Off-Highway Vehicle (ROV) is a motor vehicle that:

- Has a seat or seats for the rider and one or more passengers
- · Has four or more tires
- · Is designed for off-highway use
- Is not designed by the manufacturer for farm or lawn care.

A Utility Vehicle (UTV) is a motor vehicle that:

- Has side by side seating for the operator and passenger
- · Has four or more tires
- · Is designed for off-highway use
- Is designed by the manufacturer for utility work and not for recreational purposes.

A Sand Rail is a motor vehicle that:

- Is designed or built for off-highway use in sandy terrains
- · Has a tubular frame
- · Has an integrated roll cage
- · Has an engine that is rear-mounted or placed midway between the front and rear axles
- Has a gross vehicle weight between 700 and 2,000 pounds.

An off-highway vehicle operated on public off-highway vehicle land must have:

- A brake system
- A muffler system
- U.S. Forest Service qualified spark arrester
- A head light and tail light
- An Off-Highway Vehicle decal issued by the Texas Parks and Wildlife Department.

ATVs, ROVs, UTVs and Sand Rails with an Off-Highway Vehicle license plate may be operated on roads in the following situations:

- In a master planned community with a uniform set of restrictive covenants and a county or municipality-approved plat
- On a road with a posted speed limit of not more than 35 mph, during the daytime and not more than two miles from the location where it is usually parked for transportation to and from a golf course
- To cross intersections, including a road or street that has a posted speed limit of more than 35 mph.

Additionally, cities and certain counties may authorize operation of ATVs, ROVs, UTVs, and Sand Rails on roads within the boundaries of the city or within unincorporated areas of certain counties. The ATV, ROV, UTV and Sand Rail must display an Off-Highway Vehicle license plate when operated on roads authorized by the city or county. Operation may be authorized only on roads with a speed limit of 35 mph or less. If operated on the roads at a speed of 25 mph or less, an ATV, ROV, UTV and Sand Rail is required to display a slow-moving vehicle emblem.

ATVs, ROVs, UTVs and Sand Rails may be operated on roads without the issuance of a license plate if the vehicle is:

- Owned by a state, county, or municipality and operated on a public beach or highway to maintain public safety and welfare
- Operated by a farmer or a rancher during the daytime and traveling no more than 25 miles from the point of origin to the destination and used in connection with the production, cultivation, harvesting, etc., of agricultural products*
- Operated by a public utility worker during the daytime for utility work and traveling no more than 25 miles from the point of origin to the destination*
- Operated by a law enforcement officer, or other person who provides firefighting, ambulance, medical, or other emergency services, and traveling no more than 10 miles from the point of origin to the destination*.

*ATVs, ROVs, UTVs and Sand Rails operated on a road without an Off-Highway Vehicle license plate require a triangular orange flag (slow moving emblem) mounted to the back of the vehicle at least six feet above ground level and the vehicle's headlights and taillights to be illuminated.

Buy Decals

Texas OHV decals are \$16 and are good Sept. 1 - Aug. 31 of the following year.

Revenues generated by the sale of the decals are used to create new and improve existing OHV recreation areas in Texas.

OHV decals are required by law for all individuals operating an OHV in Texas at an OHV legal venue which is located on the public lands of Texas, or on lands which have received OHV grants from the Texas Parks & Wildlife Department.

Order decals three ways:

- Call the TPWD Service Center at (512) 389-8917 Monday through Friday, 9 a.m. to 5 p.m. CST.
- · Purchase OHV decals online.
- · Visit an authorized dealer

Decal purchasing locations

- North Texas
- Southeast Texas
- Central Texas
- Far South Texas
- · Northwest/Panhandle Texas
- West Texas



UNIQUE VEHICLES – Neighborhood Electric Vehicles (NEV)

(https://www.txdmv.gov/motorists/buying-or-selling-a-vehicle/unique-vehicles)

Unique vehicles include off-highway vehicles, Golf Carts, and Neighborhood Electric Vehicles (NEVs). Off-highway vehicles include All-Terrain Vehicles (ATVs), Recreational Off-Highway Vehicles (ROVs), Utility Vehicles (UTVs), and Sand Rails.

A vehicle is classified as a Neighborhood Electric Vehicle (NEV) if it has:

- A maximum speed of 35 mph
- Four tires
- Seat belts
- · Head and tail lights
- A windshield
- · A parking brake
- Turn signals
- · Rear-view mirrors
- Brake lights
- Reflectors
- A valid 17-digit Vehicle Identification Number (VIN).

To title and register your NEV, take the following to your county tax assessor-collector's office:

- Evidence of ownership, such as a Manufacturer Certificate of Origin or title
- A completed Application for Texas Title and/or Registration (Form 130-U)
- Proof of insurance

Application to	or lexa	as littl	e and/o	or R	egistrat	ion	Item 6.
Applying for (please check one):					7	AX OFFICE USE C	NLY
\square Title & Registration \square Title Only \square Registration Purposes Only \square Nontitle Registration				ration	County:		
For a corrected title or registration, check reason:			Doc#:				
☐ Vehicle Description ☐ Add/Remove Lien ☐ Othe	r:				☐ SPV ☐ Appra	aisal Value \$	
1. Vehicle Identification Number	2. Year	3. Make	4. Body St	tyle	5. Model	6. Major Color	7. Minor Color
8. Texas License Plate No. 9. Odometer Reading (no tenths)	1		unless the mileage chanical Limits		11. Empty Weight	12. Carry	ing Capacity (if any)
13. Applicant Type	harman and a second and a second				14. Applicant Phot	o ID Number or I	EIN/EIN
☐ Individual ☐ Business ☐ Govern	nment	☐ Trust	☐ Non-Pro	ofit			
15. ID Type U.S. Driver License/ID Card (issued by:) 🗆 NAT	OID	□ U.S	Dept. of State	ID
☐ Passport (issued by:				Military			eland Security ID
☐ U.S. Citizenship & Immigration Services	/DOJ ID				ry Status of Force		orania occurrey ib
16. Applicant First Name (or Entity Name)	Middle Na	ime	Last Nan		.,	Suffix (i	f any)
17. Additional Applicant First Name (if applicable)	Middle Na	me	Last Nan	ne		Suffix (i	f any)
V-							
18. Applicant Mailing Address	City		State		Zip	19. Applicant C	ounty of Residence
20. Previous Owner Name (or Entity Name)	City		State 2	21. Dealer	GDN (if applicable) 22. Unit No. (if	applicable)
23. Renewal Recipient First Name (or Entity Name) (if different) Middle Na	me	Last Nam	ne		Suffix (i	f any)
24. Renewal Notice Mailing Address (if different)	City		State		,	Zip	
25. Applicant Phone Number (optional) 26. Email (optional)			107.0			1	
					enewal eReminder Email in #26)		ation Impediment? h Form VTR-216)
29. Vehicle Location Address (if different)	City		State			Zip	
30. Multiple (Additional) Liens 31. Electronic Title Req	uest 32. Certifie	ed/eTitle Lienho	older ID Number (i	f anv)		33 Fire	Lien Date (if any)
☐ Yes (Attach Form VTR-267) ☐ Yes (Cannot check			,			33.7113	Lien Date (ii aliy)
34. First Lienholder Name (if any) Mailing Address		City			State	Zip	
35. Check only if applicable:	MOTOR VI	EHICLE TAX STA	ATEMENT				
☐ I hold Motor Vehicle Retailer (Rental) Permit No			and will sat	isfy the m	inimum tax liability	(V.A.T.S., Tax C	ode §152.046[c])
I am a dealer or lessor and qualify to take the Fair Market V				GDN or L	essor Number		
36. Trade-In (if any) Year Make Yes (Complete)	Vehicle Ide	entification Nur	nber				itional Trade-In(s)
HOUSE DE LEGISTE & THE CONTROL OF TH							es
38. Check only if applicable: (a) Sales Price (\$ rebate has been deducte		O USE TAX CON	IPUTATION 90 New Resident 1	Tay _ (Pro	vious Stato)		
(b) Less Trade-in Amount, described in Box 36 above	\$(5 Even Trade Tax	iax – (Fie	vious state)		
(c) For Dealers/Lessors/Rental ONLY – Fair Market Value				ch Compti	roller Form 14-317		
Deduction, described in Box 36 above	\$ (65 Rebuilt Salvage				
(d) Taxable Amount (Item a minus Item b or Item c)	\$	2	.5% Emissions Fee	(Diesel V	ehicles 1996 and O	lder > 14,000 lbs	.)
(e) 6.25% Tax on Taxable Amount (Multiply Item d by .062	5) \$		% Emissions Fee (Diesel Ve	hicles 1997 and Ne	wer > 14,000 lbs	.)
(f) Late Tax Payment Penalty ☐ 5% or ☐ 10%	\$	U	xemption claimed	under the	e Motor Vehicle Sal	les and Use Tax L	aw because:
(g) Tax Paid to(STATE)	\$						
(h) AMOUNT OF TAX AND PENALTY DUE (Item e plus Item f minus Item g)	¢		28 or \$33 Applicat			the serve at fee \	-
CERTIFICATION – St	ata law makas fr				essor-collector for	the correct fee.)	
I hereby certify all statements in this document are true and co (Check only if applicable) I certify I am applying for a corrected	rrect to the best	of my knowled	ge and belief, and	I am eligi	ble for title and/or	registration (as a	pplicable).
Signature(s) of Seller(s), Donor(s), or Trader(s)		Printed Na	ıme(s) (Same as Si	gnature(s))	Dat	e
Signature of Applicant/Owner		Printed Na	ime (Same as Signa	ature)		Date	e
Signature(s) of Additional Applicant(s)/Owner(s)		Printed Na	me(s) (Same as Sig	gnature(s))	Date	86

Application for Texas Title and/or Registration

Item 6.

General Instructions

With a few exceptions, you are entitled to be informed about the information the department collects about you. The Texas Government Code entitles you to receive and review the information and to request that the department correct any information about you that is incorrect. Please contact the Texas Department of Motor Vehicles at 1-888-368-4689 or 512-465-3000 for details.

This form must be completed and submitted to a county tax assessor-collector's office accompanied by any required application fee, supporting documents, registration fee, if applicable, and any motor vehicle tax due. An application form may be reproduced or faxed. A completed form must contain the original signature of the buyer. The seller's signature may be reproduced or faxed. All title applications must include one of the government-issued photo IDs listed in Box 15. Detailed instructions for completing this form are located in the Detailed Instructions for Application for Texas Title and/or Registration (Form VTR-130-UIF).

AVAILABLE HELP

- For assistance in completing this form, contact your county tax assessor-collector.
- For information about motor vehicle sales and use tax or emission fees, contact the Texas Comptroller of Public Accounts, Tax Assistance Section, at 1-800-252-1382 toll free nationwide or call 512-463-4600.
- For title or registration information, contact your county tax assessor-collector or the Texas Department of Motor Vehicles at 1-888-368-4689 or 512-465-3000.

Additional Details

Title Only: License plates and registration insignia previously issued for this motor vehicle must be surrendered in accordance with Transportation Code §501.0275, if applicable, unless this vehicle displays a license plate under an applicable status of forces agreement. The following types of vehicles are not eligible for Title Only: construction machinery (unconventional vehicles), water well drilling units, machinery used exclusively for drilling water wells, construction machinery not designed to transport persons or property, implements of husbandry, farm equipment (including combines), golf carts, slow moving vehicles, or any vehicle with a suspended or revoked title.

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 safety inspection station that will complete a Texas Vehicle Inspection Report. This form must be submitted to a county tax assessor-collector with your
 application for registration and Texas title.

Montgomery City Council AGENDA REPORT

Meeting Date: July 11, 2023	Budgeted Amount: N/A		
Department: Admin	Prepared By: Dave McCorquodale		

Subject

Consideration and possible action on accepting applications for an open position on the MEDC Board of Directors.

Recommendation

Motion to authorize staff to proceed with the application process below.

Discussion

The MEDC currently has one open position on the Board of Directors. City staff recommends the following process for Council to select a new director for appointment:

- Advertise the position on the city website, LED sign and social media pages as appropriate.
- Accept applications for 30 days (7/14 8/13).
- Present qualified applicants and recommendation for Council action at 8/22 regular meeting.

The MEDC Board of Directors is comprised of seven members who are appointed by City Council to serve two-year terms. The terms are staggered in the same way City Council terms are. The open position term will end on January 1, 2025.

The qualifications for/composition of the Board are:

- Three Directors are not employees, officers, or members of City Council (the open position is one of these three).
- Two directors are members of City Council (Carol Langley & Byron Sanford).
- Live within Montgomery County and a majority of the board live within the city limits.

Currently, three Directors are city residents and three reside outside the city. The Council should appoint a city resident to the vacancy to conform to the MEDC bylaws.

Approved By		
Assistant City Administrator &		
Planning & Development Director	Dave McCorquodale	Date: 07/07/2023
City Administrator	Garv Palmer	Date: 07/07/2023

Item 7.

Montgomery City Council AGENDA REPORT

Montgomery City Council AGENDA REPORT

Meeting Date: July 11, 2023	Budgeted Amount: N/A		
Department: Admin	Prepared By: Dave McCorquodale		

Subject

Consideration and possible action on approval of construction plans for Montgomery Bend Section One (Dev. No. 2203).

Recommendation

Approve the construction plans as submitted.

Discussion

City Council tabled this item at the June 27th meeting and requested additional information. See additional attachments provided by the city engineers.

The engineer's memo is attached and recommends approval of the plans. The City of Montgomery Development Handbook prescribes that P&Z and City Council both approve the construction plans before the final plat is approved.

The engineers base their review and approval of the construction plans on the design requirements found in the City Code of Ordinances and the City's adopted Design Criteria Manual. One point of note is the Design Criteria Manual covers engineering details and standards for public infrastructure projects. It does not relate to design artistic quality, aesthetics, or overall design of developments.

The Planning & Zoning Commission approved the plans at their June 6, 2023 meeting.

Approved By		
Assistant City Administrator &		
Planning & Development Director	Dave McCorquodale	Date: 07/07/2023
_		
City Administrator	Gary Palmer	Date: 07/07/2023



<u>Timeline of Events – Montgomery Bend (Pulte Homes)</u>

- 1. Escrow Agreement Authorized by the Developer and City on April 12, 2022.
- 2. Utility & Economic Feasibility Presented to the City at the Council Meeting on May 24, 2022.
- 3. Developer Agreement Executed by the City and Developer on September 13, 2022.
- 4. WGA provided Clearing & Grubbing Plan approval on October 25, 2022.
- 5. WGA provided Drainage Impact Analysis report approval on December 22, 2022.
- 6. WGA recommended Section 1 Preliminary Plat approval on March 7, 2023.
- 7. WGA recommended Section 2 Preliminary Plat approval on March 7, 2023
- 8. WGA provided Mass Grading & Detention Plan approval on May 3, 2023.
- 9. WGA provided Section 1 Water, Sanitary, Drainage & Paving Plan approval on June 6, 2023 for consideration by P &Z and Council.
- 10. WGA is currently reviewing Section 2 Water, Sanitary, Drainage & Paving plans.





LEGEND

City Limit

City ETJ

MCAD Property Boundaries

Road Label

Date: 4/8/2022

1 INCH = 752 FEET

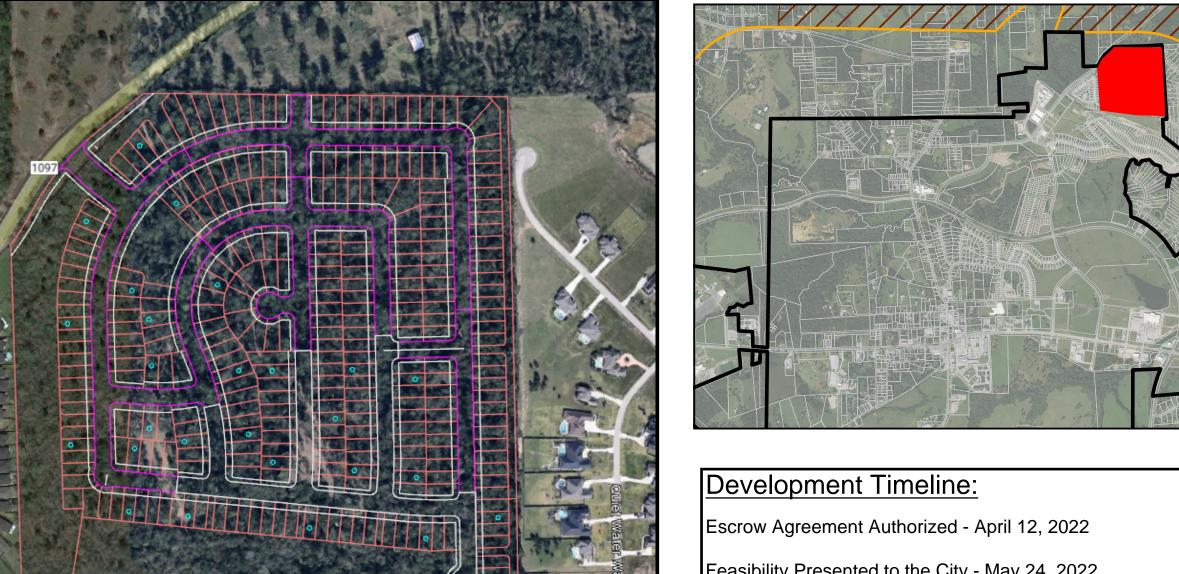
Disclaimer: This product is offered for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of propiety, governmental and bripoil cal boundaries or related facilities to su boundary. No express warranties are made by Jones & Carter, inc. concerning the accuracy, completieness, reliability, or usability of the information included within this



BEND SUBDIVISION TE HOMES) CITY OF MONTGOMERY MONTGOMERY (PUL







Feasibility Presented to the City - May 24, 2022

Developer Agreement Executed - September 13, 2022

Clearing & Grubbing Plan Approval - October 25, 2022

Drainage Impact Analysis Approval - December 22, 2022

Section 1 Preliminary Plat Approval - March 7, 2023

Section 2 Preliminary Plat - March 7, 2023

Mass Grading & Detention Plan Approval - May 3, 2023

Section 1 WSD&P Plan Approval - June 6, 2023

Section 2 WSD&P Plan Approval - In Review



May 24, 2023

The Planning and Zoning Commission City of Montgomery 101 Old Plantersville Rd. Montgomery, Texas 77316

Re: Submission of Water, Sanitary, Drainage, & Paving Plans

Montgomery Bend Sec. 1 (Dev. No. 2203)

City of Montgomery

Dear Commission:

We reviewed the WSD&P plans submission for the referenced development on behalf of the City of Montgomery (the "City"). Our review was based on the City's Code of Ordinances, Chapter 78 Section 60 and any other applicable chapters, and the City's Design Manual. Our review was also based upon the approved development regulations included as part of the development agreement between the Developer and the City.

We offer no objection to the WSD&P plans as submitted, and we recommend the Commission approve the plans.

If you have any questions or comments, please contact me.

Sincerely,

Chris Roznovsky, PE Engineer for the City

Chris Romonsky

CVR/ajn

Z:\00574 (City of Montgomery)_900 General Consultation\Correspondence\Letters\2023\2023.05.24 MEMO TO P&Z RE Montgomery Bend Sec.1 WSD&P Plans.docx

Enclosures: Montgomery Bend Section 1 WSD&P Plans

Cc (via email): The Honorable Mayor and City Council – The City of Montgomery

Mr. Gary Palmer – City of Montgomery, City Administrator Ms. Nici Browe – City of Montgomery, City Secretary

Mr. Dave McCorquodale - City of Montgomery, Director of Planning & Development

Mr. Alan Petrov – Johnson Petrov, LLP, City Attorney

Montgomery City Council AGENDA REPORT

Meeting Date: July 6, 2023	Budgeted Amount: N/A	
Department: Administration	Prepared By: G. Palmer	

Subject

Consideration of and Possible Action on Proposed Amendments to the Approved Redbird Meadow-City of Montgomery Development Agreement

Recommendation

Allow the Developer to Present the Proposed Amendments in the Open Meeting. Adjourn to Executive Session to Deliberate and Determine a Direction

Discussion

The Redbird Meadow developer has proposed several amendments to the approved development agreement for their residential subdivision (See attached Redbird Meadow Development Agreement Amendment No. 1 Summary). The developer should be provided time to present the proposed amendments to the City Council.

The City Council may:

- Do nothing and work with the developer in accordance with the approved development agreement
- Consider and approve the proposed amendments
- Offer alternatives to the developer for future Council consideration

Attached please find:

- Approved Redbird Meadow Development Agreement
- Redbird Meadow Development Agreement Amendment No. 1 Summary

Approved By		
		Date:
City Administrator	Gary Palmer	Date: July 6, 2023

DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MONTGOMERY, TEXAS AND REDBIRD MEADOW DEVELOPMENT, LLC

This DEVELOPMENT AGREEMENT (the "Agreement") is entered into between REDBIRD MEADOW DEVELOPMENT, LLC, a Texas limited liability company, its successors or assigns ("Developer"), and THE CITY OF MONTGOMERY, TEXAS ("City") to be effective on the date on May 10, 2022 (the "Effective Date").

RECITALS

The Developer owns approximately 388.5 acres of land, as described on the attached **Exhibit A** (defined herein as the "Tract") in Montgomery County, Texas, of which approximately 10.3 acres is within the corporate limits of the City and 378.2 acres is outside the corporate limits of the City. The Developer intends to develop the Tract for primarily single-family residential purposes. The Developer represents that the development of the Tract requires the creation of a special district over the Tract to fund certain public infrastructure, and an agreement with the City will provide for long-term certainty concerning development of the Tract. The Developer intends to petition the City for voluntary annexation of the approximately 378.2 acres (the "Annexation Tract") as described on **Exhibit E** into the corporate limits of the City. The City has adopted a resolution consenting to the creation of a special district over the boundaries of the Tract and annexed the Annexation Tract into the corporate limits of the City concurrently with the approval of this Agreement.

The City is a Type A general-law municipality with all powers except those specifically limited by the Constitution and laws of the State of Texas.

The City wishes to provide for the orderly, safe and healthful development of the Tract, and the City and the Developer agree that the development of the Tract can best proceed pursuant to a development agreement.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, obligations, and benefits contained herein as well as other good and valuable consideration, the sufficiency of which is acknowledged by the parties, the City and Developer agree as follows:

ARTICLE I. DEFINITIONS AND EXHIBITS

1.1 <u>Definitions</u>. Unless the context indicates others, the following words as used in this Agreement shall have the following meanings:

Annexation Tract means approximately 378.2 acres of land to be annexed by the City upon petition of the Developer, as described in **Exhibit E**

City means the City of Montgomery, Texas.

District means a municipal utility district to be created over the Tract upon petition to the TCEQ pursuant to Article XVI, Sec. 59, and Article III, Sec. 52, Texas Constitution, Chapters 49 and 54, Texas Water Code and rules of the TCEQ.

Developer means Redbird Meadow Development, LLC, a Texas limited liability company, its successors or assigns.

ESFC means that amount of water or wastewater, as applicable, set by the City that constitutes an Equivalent Single Family connection, which amount may be changed from time to time. At the time of this Agreement, an ESFC of water means 300 gallons per day and an ESFC of wastewater means 200 gallons per day.

Facilities means the water distribution, sanitary sewer collection, transportation and treatment, and stormwater collection, detention and drainage systems, roads and improvements in aid thereof, constructed or acquired or to be constructed or acquired by the District to serve lands within its boundaries, and all improvements, appurtenances, additions, extensions, enlargements or betterments thereto, together with all contract rights, permits, licenses, properties, rights-of-way, easements, sites and other interests related thereto.

Parties means the City and the Developer, collectively.

Proposed Collector Road means the public road improvement to be constructed described as "Proposed Collector" on **Exhibit D**.

Tract means the approximately 388.5 acres of land to be developed by Developer, as described in **Exhibit A**, and any additional land that may be annexed into the District as approved by the City.

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

1.2. Exhibits. The following Exhibits attached to this Agreement are a part of the Agreement as though fully incorporated herein:

Exhibit A Metes and Bounds Description of the Tract

Exhibit B Form of Utility Agreement

Exhibit C Utility Exhibit

Exhibit D Proposed Major Thoroughfare Plan

Exhibit E Annexation Tract

Exhibit F Phasing Plan

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ARTICLE II

DEVELOPER OBLIGATIONS

Section 2.1. Utilities.

- a. Water, Sanitary Sewer and Drainage Facilities. Developer agrees that all water, sanitary sewer and drainage facilities to serve the Tract, whether on the Tract or off-site, will be constructed in accordance with the applicable City regulations and ordinances, including the City of Montgomery Code of Ordinances, as amended (the "City Code"). The Developer is responsible for the design and construction of all internal water and sanitary sewer lines and associated facilities and drainage facilities to serve the Tract. The City will provide retail water and sanitary sewer service to customers within the Tract, all in accordance with a Utility Agreement, the form of which is attached hereto as Exhibit B. Following acceptance by the City, the water and sanitary sewer infrastructure will be owned, operated, and maintained by the City per normal practice and as described in the Utility Agreement. The City agrees to provide the District with its ultimate requirements for wastewater treatment and water capacity in accordance with the Utility Agreement and as further described herein.
- b. Water Supply Facilities. The parties acknowledge that the Tract will be developed in phases with ultimate water requirements of 168,000 gpd to serve approximately 560 connections. Parties agree that the Developer will develop the Tract in accordance with market and development demands, but a proposed phasing plan is attached hereto as Exhibit F.
 - First Phase Improvements. The first phase of development will consist of approximately 180 ESFCs necessitating 54,000 gpd of water capacity ("First Phase"). The City agrees that it has the capacity in its water treatment system to serve the First Phase; however the Developer is required to fund the construction of certain improvements to the City's water supply system in order to provide sufficient pressure for the Tract.
 - i. Water Line. The City agrees to design and construct, at the Developer's cost, a 12" off-site waterline connecting to the City's existing 8" waterline, which shall be routed generally as shown on Exhibit C or such other route as is mutually agreed upon by the Parties ("Water Line"). The Water Line will be constructed in public right of way or easement and to the extent necessary, the City will be responsible for acquiring any necessary public right of way required for the construction of the Water Line. The Water Line will be sized to serve the Tract; to the extent the City requires

the Water Line to be oversized to serve land outside the Tract, the Parties agree to comply with provisions of Section 2.3 below. The Developer will receive Impact Fee credit for funding of the Water Line as described in Section 2.1(d) below.

ii. Funding. The City will provide the Developer and the District a cost estimate of the engineering and construction costs of the Water Line, and upon presentation of such estimate, the Developer agrees to deposit with the City the funds due for design (including preliminary design, design, topographic survey, reimbursable expenses, and bid phase services) of the Water Line. The City will be responsible for bidding the Water Line in accordance with competitive bidding laws. Upon receipt and review of bids, the Developer will deposit the amount of the accepted bid plus 10% contingencies, the estimated cost for construction administration and inspection, construction staking, construction materials testing, and reimbursable expenses with the City. It is anticipated that the construction costs will include costs to bore under the railroad crossing. The Developer and District shall have the right to review all bids received for the construction of the Water Line, approve award of the construction contract for the Water Line, and review and approve all pay estimates and change orders related thereto. The Developer is not responsible for any change orders that exceed twenty-five percent of the construction contract as the maximum allowed by TCEO rules, and is therefore not eligible for reimbursement by the District of such change order. The City will keep accurate records of Developer deposits and Water Line costs and make such records available for Developer or District inspection upon request. Within 45 days of City acceptance of the Water Line, the City shall perform a reconciliation and final accounting and reimburse the Developer any unpaid funds under the construction contract. In the event the City has expended more than the deposit amount, the Developer will reimburse the City for any excess cost except for the aggregate of construction change order cost in excess of twenty-five percent of the total construction contract for the Water Line. The City will hold \$3,000 in escrow to cover estimated cost for completion of the one year warranty inspection. After completion of the one year warranty and action by City Council to officially end the warranty period, the City shall perform a reconciliation and final accounting within 45 days and reimburse the Developer any unused funds or request additional funds. Developer will get impact fee credit for all funds expended pursuant to this Section 2.1(b)(ii) in accordance with Section 2.1(d) below.

- **Timing.** Parties acknowledge that the Water Line is critical to the First Phase of development of the Tract. The City is obligated to begin design of the Water Line upon execution of this Agreement, and begin construction of the Water Line within six months of execution of this Agreement. The Developer and the City understand that there are certain factors outside of both the Developers and City's control including, but not limited to, easement acquisition and approval for the crossing of the railroad that may cause delay. The City agrees to use best efforts to timely acquire any right of way and/or railroad crossings, and will begin procuring such right of way and/or railroad crossings within fortyfive days of City approval of this Agreement. The Developer agrees to timely fund such design and construction. In the event that the City does not timely commence design and/or construction of the Water Line in accordance with this Agreement, the City agrees that the Developer and/or District may design and construct the Water Line to meet its development needs and receive Impact Fee credit for such costs as stated in Section 2.1(d) below.
- iv. Ownership. The City will accept such Water Line for ownership and operation in accordance with the terms of the Utility Agreement subject to a one-year maintenance bond to be enforceable by the City from the contractor.
 - Subsequent Phases. Parties acknowledge that the City will need to construct additional water supply facilities in order to serve the Tract at full build out, which is estimated to be 560 ESFCs or 168,000 gpd.
 - i. By the expiration of twenty-four (24) months following the date on which the Developer or District engineer notifies the City in writing that it requires additional capacity to timely serve subsequent phases of the Tract, the City agrees to have completed construction of the expansion of its water supply system to accommodate the Developer's subsequent phases of development. The Developer's obligation to fund expansions to the City's water supply system (other than the Water Line as described in Section 2(b)(1)) is limited to payment of Impact Fees paid in the same amount and same manner as set out in this Agreement.
 - ii. In the event that, at any phase of development, the City's water supply system does not have sufficient capacity to serve the land within the District as necessitated by development thereof, the Developer may elect to:

- Advance funds as payment towards Impact Fees that would be due and payable to the City for future development in the District, which funds shall be used by the City solely for funding the costs of constructing additional water supply facilities necessary to serve subsequent phases of development in the District, and the City would thereafter credit the Developer up to an amount equal to the amount advanced by the Developer; and/or
- 2. Construct, or cause the District to construct, additional water supply facilities based upon demand and usage and sized appropriately to serve development within the Tract in accordance with all regulatory requirements, and the City would thereafter credit the Developer for the Impact Fees related to development on the Tract that would otherwise be due and payable to the City up to an amount equal to the costs of constructing the additional water supply facilities.
- c. <u>Wastewater Treatment Facilities</u>. The parties acknowledge that the Tract will be developed in phases with ultimate wastewater requirements of 112,000 gpd to serve approximately 560 connections.
 - First Phase. The City agrees that it has permitted capacity in its wastewater treatment system to serve the First Phase of 180 ESFCs.
 - i. Force Main. The City agrees to design and construct an off-site force main to serve the Tract as generally shown on <u>Exhibit C</u> (the "Force Main"). The Force Main shall be sized to serve the Tract; if the City requires the Force Main to be oversized to serve land outside the Tract, the Parties agree to comply with provisions of Section 2.3 herein. The City will acquire any necessary right of way for construction of the Force Main.
 - ii. Funding. The City will provide the Developer and the District a cost estimate of the engineering and construction costs of the Force Main, and upon presentation of such estimate, the Developer agrees to deposit with the City the funds due for design (including preliminary design, design, topographic survey, reimbursable expenses, and bid phase services) of the Force Main. The City will be responsible for bidding the Force Main in accordance with competitive bidding laws. Upon receipt and review of bids, the Developer will deposit the amount of the accepted bid plus 10% contingencies, the estimated cost for construction administration and inspection, construction staking, construction materials testing, and reimbursable expenses with the City. It is anticipated that the

construction costs will include costs to bore under the railroad crossing. The Developer and District shall have the right to review all bids received for the construction of the Force Main, approve award of the construction contract for the Force Main, and review and approve all pay estimates and change orders related thereto. The Developer is not responsible for any change orders that exceed twenty-five percent of the construction contract as the maximum allowed by TCEO rules, and is therefore not eligible for reimbursement by the District of such change order. The City will keep accurate records of Developer deposits and Force Main costs and make such records available for Developer or District inspection upon request. Within 45 days of City acceptance of the Force Main, the City shall perform a reconciliation and final accounting and reimburse the Developer any unpaid funds under the construction contract. In the event the City has expended more than the deposit amount, the Developer will reimburse the City for any excess cost except for the aggregate of construction change order cost in excess of twenty-five percent of the total construction contract for the Force Main. The City will hold \$3,000 in escrow to cover estimated cost for completion of the one year warranty inspection. After completion of the one year warranty and action by City Council to officially end the warranty period, the City shall perform a reconciliation and final accounting within 45 days and reimburse the Developer any unused funds or request additional funds.

Timing. Parties acknowledge that the Force Main is critical to the First Phase of development of the Tract. The City is obligated to begin design of the Force Main upon execution of this Agreement and begin construction of the Force Main within six months of execution of this Agreement. The Developer and the City understand that there are certain factors outside of both the Developers and City's control including, but not limited to, easement acquisition and approval for the crossing of the railroad that may cause delay. The City agrees to use best efforts to timely acquire any right of way and/or railroad crossings, and will begin procuring such right of way and/or railroad crossings within fortyfive days of City approval of this Agreement. The Developer agrees to timely fund such design and construction. In the event that the City does not timely commence design and/or construction of the Force Main in accordance with this Agreement, the City agrees that the Developer and/or District may design and construct the Force Main to meet its development needs.

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iv. Ownership. The City will accept such Force Main for ownership and operation in accordance with the terms of the Utility Agreement subject to a one-year maintenance bond to be enforceable by the City from the contractor.

2. Subsequent Phases.

- i. Parties acknowledge that the City will need to construct additional wastewater treatment facilities in order to serve the Tract at full build out. By the expiration of twenty-four(24) months following the date on which the Developer and/or District engineer notifies the City in writing that the Developer requires such additional capacity to serve subsequent phases of the Tract, the City agrees to have completed construction of the expansion of its wastewater treatment system to accommodate the Developer's subsequent phases of development. The Developer's obligation to fund expansions to the City's wastewater treatment facilities (other than the Force Main as described in Section 2(c)(1)) is limited to payment of Impact Fees paid in the same amount and same manner as set out in this Agreement.
- ii. In the event that, at any phase of development, the City's wastewater treatment system does not have sufficient capacity to serve the land within the District as necessitated by development thereof, the Developer may elect to:
 - Advance funds as payment towards Impact Fees that would be due and payable to the City for future development on the Tract, which funds shall be used by the City solely for funding the costs of constructing additional wastewater treatment facilities sufficient to serve subsequent phases of development in the District. The City would thereafter credit the Developer for Impact Fees up to an amount equal to the amount advanced by the Developer; and/or
 - 2. Construct, or cause the District to construct, additional wastewater treatment facilities based upon demand and usage and sized appropriately to serve development within the Tract in accordance with all regulatory requirements, and the City would thereafter credit the Developer for the Impact Fees related to development on the Tract that would otherwise be due and payable to the City up to an amount

equal to the costs of constructing the additional wastewater treatment facilities.

- d. <u>Impact Fees.</u> The Developer agrees to pay impact fees for water supply facilities and wastewater treatment facilities ("Impact Fees") in the amount as stated in the City's current adopted Impact Fees, or as may be amended from time to time. The Developer will be assessed and pay Impact Fees at the time of the City's approval of the final plat for each section based on the number of connections in such plat. The Water Line is a regional facility and is included in the City CIP. The Developer will receive Impact Fee credit for the amount expended and paid to the City for the Water Line. The Developer will receive credit upon final platting until such costs are reimbursed in full.
- e. <u>Drainage Facilities</u>. The Developer will submit a drainage study to the City prior to approval of construction plans. All drainage and detention facilities must be designed and constructed in accordance with the City Code and any applicable Montgomery County standards. The City agrees to allow culverts and public roads within public road right of way as restrictors or control structures for detention facilities. All onsite storm sewer systems will be designated as public facilities and accepted by the City upon completion. Any detention ponds will not be accepted by the City but owned and maintained by the District and/or a property owners association.

Section 2.2. Road Improvements.

- a. General. Parties agree to the alignment of all major thoroughfares as shown on Exhibit D. Any public road improvements constructed within the Tract, other than the Proposed Collector Road as provided herein, shall be constructed in accordance with the City Code and in accordance with the City's Major Thoroughfare Plan. The Developer will obtain any easements or rights-of-way necessary for construction of public road improvements inside the boundaries of the Tract; however to the extent additional easements or rights-of-way are necessary to construct public road improvements outside the boundaries of the Tract on land not owned by the Developer, the City is responsible for obtaining such easements or rights-of-way at no cost to the Developer. Once constructed, all public road improvements shall be dedicated to and accepted by the City for operation and maintenance.
- b. <u>Proposed Collector Road.</u> The Parties agree that the Proposed Collector Road (designated as the Proposed Collector on <u>Exhibit D</u>) shall be constructed in phases as shown on <u>Exhibit F</u>). Developer on behalf of the District agrees to extend the Proposed Collector Road to Spring Branch Road in connection with the development of Phase III as shown on <u>Exhibit F</u>.

c. <u>Non-Standard Road Improvements</u>. The Developer may place additional features ("Non-Standard Improvements") on certain public roads to enhance the aesthetic appeal of roads in the District, including but not limited to the installation of bricks and pavers or patterned concrete for the purposes of beautification and visual enhancement, as approved by the City engineer. The Developer agrees that the District will be solely responsible for the maintenance of any Non-Standard Improvements that are not accepted by the City for maintenance within the public road rights-of-way, including general upkeep for functional and aesthetic purposes and replacement when necessary to preserve the intended functions of the Non-Standard Improvements. The District shall keep all Non-Standard Improvements in operable condition. The Parties agree that the District may remove the Non-Standard Improvements at any time provided that it repairs and replaces the Non-Standard Improvements with a surface substantially similar to the adjoining roadway, at which time the City will resume maintenance of the public road right-of-way to the same standard as all other City roads.

Section 2.3. Oversizing. If the City requires portions of the Facilities to be constructed to a size larger than would be required pursuant to the City Code to serve the Tract, the City will pay or cause to be paid the incremental costs to construct such excess capacity in accordance with state law. Prior to award of any contract in which oversized Facilities will be built, the Developer will present the City with the bids and bid tabulations, and the City and the Developer (or District in accordance with the Utility Agreement) must agree to the incremental costs based on such bid or the Developer is not required to oversize the Facilities. The City will pay its pro rata share of the oversized facilities upon award of the construction contract for such facilities.

Section 2.4. Parks and Recreational Facilities. The Developer shall design and construct all park and recreational facilities to serve the Tract in accordance with the City Code and any applicable Montgomery County standards. Any park and recreational facilities will not be accepted by the City but owned and maintained by the District and/or a property owners association.

Section 2.5. Development Regulations. Developer agrees that the development of the Tract shall be in accordance with the City Code except as to lot size: a maximum of 47% of the platted single-family residential lots within the District may be a minimum of 60 feet wide and 8,400 square feet. This Agreement constitutes the City's acceptance of the described variance from its City Code.

Section 2.6. Minor Modifications. Minor modifications to the Developer or District's utility plan, thoroughfare plan, phasing plan or variances in development regulations are authorized under this Agreement upon review and approval of the City Administrator, or its designee, and no amendment to this Agreement is required. A minor modification would include, but is not limited to, an adjustment in the alignment of a roadway, adjustment in lot sizes or densities that is less than 15% of such category, an adjustment or relocation of public utility infrastructure if approved by the City Administrator or its designee; or any modification {00224888.dox }

that is an elaboration, refinement or clarification of this Agreement and deemed to be a minor modification by the City Administrator.

ARTICLE III. DEFAULT AND TERMINATION

<u>Section 3.1. Material Breach of Agreement.</u> It is the intention of the parties to this Agreement that the Tract be developed in accordance with the terms of this Agreement.

- a. The parties acknowledge and agree that any substantial deviation by the Developer from the material terms of this Agreement would frustrate the intent of this Agreement, and, therefore, would be a material breach of this Agreement. A material breach of this Agreement by the Developer shall be deemed to have occurred in the event of failure of the Developer to comply with a provision of this Agreement or the City Code provisions applicable to the Tract.
- b. The parties acknowledge and agree that any substantial deviation by the City from the material terms of this Agreement would frustrate the intent of this Agreement and, therefore, would be a material breach of this Agreement. A material breach of this Agreement by the City shall be deemed to have occurred in the following instances:
- (i) An attempt by the City to dissolve the District without complying with the terms of this Agreement or in violation of the provisions of the Utility Agreement;
 - (ii) An attempt by the City to delay or limit reimbursement to the Developer in violation of the provisions of this Agreement; or
 - (iii) An attempt by the City to enforce any provisions of the City Code within the Tract that is inconsistent with the terms and conditions of this Agreement.

In the event that a party to this Agreement believes that another party has, by act or omission, committed a material breach of this Agreement, the provisions of this Article III shall provide the remedies for such default.

Section 3.2. Notice of Developer's Default.

a. The City shall notify Developer in writing of an alleged failure by the Developer to comply with a provision of this Agreement, describing the alleged failure with reasonable particularity. Developer shall, within thirty (30) days after receipt of the notice or a longer period of time as the City may specify in the notice, either cure the alleged failure or, in a written response to the City, either present facts and arguments in refutation or excuse of the alleged failure or state that the alleged failure will be cured and set forth the method and time schedule for accomplishing the cure.

- b. The City shall determine: (i) whether a failure to comply with a provision has occurred; (ii) whether the failure is excusable; and (iii) whether the failure has been cured or will be cured by Developer. The alleged defaulting party shall make available to the City, if requested, any records, documents or other information necessary to make the determination, except to the extent that such information is protected by attorney/client privilege.
- c. If the City determines that the failure has not occurred, or that the failure either has been or will be cured in a manner and in accordance with a schedule reasonably satisfactory to the City, or that the failure is excusable, the determination shall conclude the investigation.
- d. If the City determines that a failure to comply with a provision has occurred and that the failure is not excusable and has not been or will not be cured by Developer in a manner and in accordance with a schedule reasonably satisfactory to the City, then the City may pursue any and all remedies it has at law or equity.

Section 3.3. Notice of City's Default.

- a. Developer shall notify the City in writing specifying any alleged failure by the City to comply with a provision of this Agreement, describing the alleged failure with reasonable particularity. The City shall, within thirty (30) days after receipt of the notice or the longer period of time as Developer may specify in the notice, either cure the alleged failure or, in a written response to Developer, either present facts and arguments in refutation or excuse of the alleged failure or state that the alleged failure will be cured and set forth the method and time schedule for accomplishing the cure.
- b. Developer shall determine: (i) whether a failure to comply with a provision has occurred; (ii) whether the failure is excusable; and (iii) whether the failure has been cured or will be cured by the City. The City shall make available to the Developer, if requested, any records, documents or other information necessary to make the determination that are subject to the Public Information Act, Chapter 551, Texas Government Code.
- c. If Developer determines that the failure has not occurred, or that the failure either has been or will be cured in a manner and in accordance with a schedule reasonably satisfactory to Developer, or that the failure is excusable, the determination shall conclude the investigation.
- d. If Developer determines a failure to comply with a provision has occurred and that the failure is not excusable and has not been or will not be cured by the City in a manner and in accordance with a schedule reasonably satisfactory to Developer, then Developer may pursue any and all remedies it has at law or equity.
- Section 3.4. Remedies. In addition to all the rights and remedies provided under the laws of the State of Texas, because of the peculiar damage each party hereto might suffer by

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virtue of a default by another party, each party shall be entitled to the equitable remedy of specific performance or mandamus, as well as all other legal and equitable remedies available.

ARTICLE IV. <u>CITY'S CONSENT TO CREATION; VOLUNTARY ANNEXATION;</u> <u>DISTRICT ANNEXATION OF LAND</u>

Section 4.1. Consent to Creation of the District. Concurrently with approval of this Agreement, the City has approved a resolution consenting to creation of the District, and the City agrees that the resolution will be deemed to constitute the City's consent to creation of the District. No further action will be required on the part of the City to evidence its consent; however the City agrees to provide any additional confirmation of its consent that may be required by the Developer or the District if requested to do so.

Section 4.2. Consent to Annexation of City. Concurrently with approval of this Agreement, the Developer has submitted to the City its petition for annexation of the Annexation Tract into the corporate limits of the City. Once the annexation process is complete, the City hereby agrees to annex the Annexation Tract into the corporate limits of the City, and the Annexation Tract shall be entitled to all the rights and privileges and bound by all regulations of the City.

Section 4.3. Annexation of Land by District. The District may not annex additional land into the boundaries of the District or serve property outside the boundaries of the District without the consent of the City. In the event land is annexed into the boundaries of the District with the City's consent, the terms of this Agreement shall apply to the annexed land.

ARTICLE V. DISSOLUTION

The City agrees that irrespective of its right and power under existing or subsequently enacted law, it will not dissolve the District until the following conditions have been met:

- a. At least 90% of the developable acreage within the District has been developed with water, wastewater, and drainage facilities. Developable acreage means the total acreage in the District less acreage associated with land uses for roads, utility easements, drainage easements, levee easements, lakes, creeks, bayous, and open space; and
- b. The Developer has been reimbursed by the District to the maximum extent permitted by the rules of the TCEQ or the City assumes any obligation for such reimbursement of the District under such rules.

ARTICLE VI.

MISCELLANEOUS

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Section 6.1. Sale of Tract; Assignability. Any agreement by Developer to sell the entirety or any portion of the Tract to a person intending to develop the tract or such portion thereof (a "Successor Developer," whether one or more) and any instrument of conveyance for the entirety or any portion of the Tract to such Successor Developer shall recite and incorporate this Agreement and provide that this Agreement be binding on such Successor Developer. This Agreement is not intended to be, and shall not be, binding on the ultimate purchasers of parcels out of the Tract. This Agreement is assignable upon written notice to the City; such notice of assignment shall be given within 30 days of an assignment and such notice shall include evidence that the assignee has assumed the obligations under this Agreement.

Section 6.2. Force Majeure. In the event a party is rendered unable, wholly or in part, by force majeure, to carry out any of its obligations under this Agreement, it is agreed that on such party's giving notice and full particulars of such force majeure in writing to the other parties as soon as possible after the occurrence of the cause relied upon, then the obligations of the party giving such notice, to the extent it is affected by force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided, but for no longer period. Such cause shall as far as possible be remedied with all reasonable dispatch.

The term "force majeure" as used herein shall include, but not be limited to, acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy or of terrorism, war, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests and restraints of governments and people, suspension of issuance of permits by environmental agencies outside the control of any party, explosions, breakage or damage to machinery or pipelines and any other inabilities of any party, whether similar to those enumerated or otherwise, and not within the control of the party claiming such inability, which by the exercise of due diligence and care such party could not have avoided.

Section 6.3. Law Governing. This Agreement shall be governed by the laws of the State of Texas, and no lawsuit shall be prosecuted on this Agreement except in a federal or state court of competent jurisdiction.

Section 6.4. No Additional Waiver Implied. No waiver or waivers of any breach or default (or any breaches or defaults) by any party hereto of any term, covenant, condition, or liability hereunder, or the performance by any party of any duty or obligation hereunder, shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, under any circumstances.

Section 6.5. Addresses and Notice. Unless otherwise provided in this Agreement, any notice, communication, request, reply, or advise (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made, or accepted by any party to another (except bills), must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and {00224888.docx}

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addressed to the party to be notified. Notice deposited in the mail in the manner hereinabove described shall be conclusively deemed to be effective, unless otherwise stated in this Agreement, from and after the expiration of three (3) days after it is deposited. Notice given in any such other manner shall be effective when received by the party to be notified. For the purpose of notice, addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to the City, to:

City of Montgomery, Texas 101 Old Plantersville Road Montgomery, TX 77535 Attention: City Manager

With a copy to City attorney:

Johnson Petrov LLP 2929 Allen Parkway, Suite 3150 Houston, TX 77019 Attention: Alan P. Petrov

If to the Developer, to:

Redbird Meadow Development, LLC 5910 FM 2920, Suite B Spring, TX. 77388 Attention: Perry Senn

With a copy to:

Allen Boone Humphries Robinson LLP 3200 Southwest Freeway, Suite 2600 Houston, Texas 77027 Attention: Annette Stephens

The parties shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify any other address by at least fifteen (15) days' written notice to the other parties.

Section 6.6. Merger and Modification. This Agreement, including the exhibits that are attached hereto and incorporated herein for all purposes, embodies the entire agreement between the parties relative to the subject hereof. This Agreement shall be subject to change or modification only with the mutual written consent of all the parties.

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<u>Section 6.7. Severability.</u> The provisions of this Agreement are severable, and if any part of this Agreement or the application thereof to any person or circumstances shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of part of this Agreement to other persons or circumstances shall not be affected thereby.

<u>Section 6.8. Benefits of Agreement.</u> This Agreement is for the benefit of the City and Developer, and shall not be construed to confer any benefit on any other person except as expressly provided for herein.

Section 6.9. Recordation. The City shall record this Agreement and any amendments thereof in the deed records of Montgomery County. In addition, any assignments of this Agreement shall be recorded in the deed records of Montgomery County. This Agreement, when recorded, shall be a covenant running with the land and binding upon the Tract, the parties and their assignees during the term of this Agreement. However, this Agreement shall not be binding upon and shall not constitute any encumbrance to title as to any purchaser of a tract or lot within the Tract who does not intend to resell, subdivide or develop the tract or lot in the ordinary course of business.

Section 6.10. Term. This Agreement shall be in force and effect from the Effective Date and continue for a term of thirty (30) years unless otherwise previously terminated pursuant to some term or condition of this Agreement or by express written agreement by the City and Developer. Upon expiration of thirty (30) years from the Effective Date of this Agreement, this Agreement may be extended upon mutual consent of the Developer and the City.

Section 6.11. Authority for Execution. The City hereby certifies, represents and warrants that the execution of this Agreement is duly authorized and adopted in conformity with the City Code. The Developer hereby certifies, represents and warrants that the execution of this Agreement is duly authorized and adopted in conformity with the articles of incorporation and bylaws or partnership agreement of such entity.

Section 6.12. Execution of Agreement by District. After approval of the creation of the District by the TCEQ, Developer shall cause the assignment, execution and adoption by the Board of Directors of the District of the Utility Agreement in the form attached hereto as **Exhibit B** within 90 days after the election confirming creation of the District.

(Signature Pages to Follow)

Executed by the Developer and the City to be effective on the Effective Date.

Redbird Meadow Development, LLC, a

Texas limited liability company

STATE OF TEXAS

8 8 8

COUNTY OF MONTGOMERY

This instrument was acknowledged before me this 10th day of May

of Redbird Meadow Development, LLC, a SENN 2022, by PERRY Texas limited liability company, on behalf of said limited liability company.

Notary Public, State of Texas

NICI BROWE

(NOTARY SEAL)



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1021845

CITY OF MONTGOMERY, TEXAS

Sara Countryman, Mayor

ATTEST:

Title: City Secretary

STATE OF TEXAS

§

COUNTY OF MONTGOMERY

This instrument was acknowledged before me this 10th day of May 2022, by Sara Countryman, Mayor, City of Montgomery, Texas, on behalf of said City.

Notary Public, State of Texas

(NOTARY SEAL)



{00224888.docx }

1021845

EXHIBIT "A"

METES AND BOUNDS

Zachariah Landrum Survey, Abstract No. 22

Michael J. and Judith L. Kammerer 388.5 acres

STATE OF TEXAS

8

COUNTY OF MONTGOMERY

8

A METES & BOUNDS description of a certain 388.5 acre (16,923,690 square feet) tract of land situated in the Zachariah Landrum Survey, Abstract No. 22, in Montgomery County, Texas, being a portion of the remainder of a called 454.2890 acre tract conveyed to Michael J. Kammerer and spouse, Judith L. Kammerer, by deed recorded in Clerk's File No. 9401426, Montgomery County Official Public Records of Real Property; said 388.5 acre (16,923,690 square feet) tract of land being more particularly described as follows with all bearings being based on the Texas Coordinate System, Central Zone, NAD 83, 2001 Adjustment:

COMMENCING at a 5/8-inch iron rod found on a south line of the remainder of said called 454.2890 acre tract, being the northwest corner of a called 49.956 acre tract conveyed to Scott T. Kammerer and wife, Kimberly K. Kammerer, by deed recorded in Clerk's File No. 2006-111859, Montgomery County Official Public Records of Real Property, also being the northeast corner of a called 251.96 acre tract conveyed to Steven L. Havens by deed recorded in Clerk's File No. 9403259, Montgomery County Official Public Records of Real Property;

THENCE, South 88°19'34" West, along said south line of the remainder of said called 454.2890 acre tract and the north line of said called 251.96 acre tract, a distance of 151.98 feet to a 5/8-inch iron rod (with cap) found, being the **POINT OF BEGINNING** of the herein described tract;

THENCE, South 88°19'34" West, continuing along said south line of the remainder of said called 454.2890 acre tract and the north line of said called 251.96 acre tract, 2,414.45 feet to a fence post found, being the southeast corner of a called 29.510 acre tract conveyed to Eco World Construction LLC by deed recorded in Clerk's File No. 2017075464, Montgomery County Official Public Records;

THENCE, North 01°03'09" West, along the east line of said called 29.510 acre tract, 936.63 feet to a 1/2-inch iron rod (with cap) found, being the northeast corner of said called 29.510 acre tract, also being the southeast corner of a called 18.285 acre tract conveyed to Cullan Morris Cotton and spouse, Angela Carolyn Cotton, by deed recorded in Clerk's File No. 2013123600, Montgomery County Official Public Records;

THENCE, North 01°18'35" West, along the east line of said called 18.285 acre tract, 538.33 feet to a 1/2-inch iron rod (with cap) found;

THENCE, along the north line of said called 18.285 acre tract, the following two (2) courses and distances:

- South 86°44'07" West, 713.98 feet to a 5/8-inch iron rod (with cap stamped Manhard) set;
- South 84°52'41" West, 788.26 feet to a mag nail in asphalt set in the approximate centerline of Spring Branch Road;

THENCE, North 07°58'17" West, along said approximate centerline of Spring Branch Road, 60.07 feet to a mag nail in asphalt set for a northwest corner of the remainder of said called 454.2890 acre tract;

P:\610.097 Kammerer Tract\00-Surveying Services\Legal Descriptions\610.097 388.5 acres M&B 20210121.doc

Michael J. and Judith L. Kammerer 388.5 acres

THENCE, North 84°52'41" East, along a north line of the remainder of said called 454.2890 acre tract, at a distance of 53.58 feet passing a 5/8-inch iron rod found for the southwest corner of a called 5.74 acre tract conveyed to Ty Russell by deed recorded in Clerk's File No. 2002-029580, Montgomery County Official Public Records of Real Property, in all a distance of 792.22 feet to a 1-inch iron pipe found, being the southeast corner of said called 5.74 acre tract, also being the southwest corner of a called 14.929 acre tract conveyed to Carl M. Wilson, Jr. by deed recorded in Clerk's File No. 2012019241, Montgomery County Official Public Records;

THENCE, North 86°44'07" East, continuing along said north line of the remainder of said called 454.2890 acre tract and along the south line of said called 14.929 acre tract, 717.13 feet to a 1/2-inch iron rod (with cap) found, being the southeast corner of said called 14.929 acre tract;

THENCE, North 07°47'11" West, along a west line of the remainder of said called 454.2890 acre tract, 1,165.08 feet to a 5/8-inch iron rod (with cap stamped Manhard) set, being the southwest corner of a called 44.201 acre tract conveyed to Promocon USA LLC by deed recorded in Clerk's File No. 2019008141, Montgomery County Official Public Records;

THENCE, North 86°39'25" East, along a north line of the remainder of said called 454.2890 acre tract and the south line of said called 44.201 acre tract, 1,710.81 feet to a 1-inch iron pipe found, being the southeast corner of said called 44.201 acre tract;

THENCE, North 03°01'49" West, along a west line of the remainder of said called 454.2890 acre tract and the east line of said called 44.201 acre tract, at a distance of 1,403.16 feet passing a 5/8-inch iron rod found for the northeast corner of said called 44.201 acre tract, in all a distance of 1,436.78 feet to a mag nail in asphalt set in the approximate centerline of Old Dobbin Road;

THENCE, along the approximate centerline of said Old Dobbin Road, the following three (3) courses and distances:

- North 63°02'56" East, 319.69 feet to a mag nail in asphalt set;
- North 65°05'57" East, 303.42 feet to a mag nail in asphalt set;
- 3. North 62°20'23" East, 242.77 feet to a mag nail in asphalt set in the approximate centerline of Old Plantersville Road;

THENCE, along said approximate centerline of Old Plantersville Road, the following five (5) courses and distances:

- 1. South 50°02'03" East, 484.20 feet to a mag nail in asphalt set;
- South 49°34'13" East, 603.77 feet to a mag nail in asphalt set;
- South 49°43'52" East, 594.81 feet to a mag nail in asphalt set;

Michael J. and Judith L. Kammerer 388.5 acres

- 4. South 49°49'14" East, 503.40 feet to a mag nail in asphalt set, being the beginning of a curve to the left;
- 5. Along said curve to the left in an easterly direction, with a radius of 1,540.00 feet, a central angle of 70°15'24", an arc length of 1,888.37 feet, and a chord bearing of South 84°56'56" East, 1,772.26 feet to a mag nail in asphalt set;

THENCE, South 03°00'07" East, along the east right-of-way line of Womack Cemetery Road, at a distance of 898.45 feet passing a 5/8-inch iron rod found, being the southwest corner of a called 9.35 acre tract conveyed to Donald Davis and Sharon Davis, by deed recorded in Clerk's File No. 2014059226, Montgomery County Official Public Records, also being the northwest corner of a called 3.000 acre tract (Tract Two) conveyed to Edward R. Lofton and wife, Marian Lofton, by deed recorded in Clerk's File No. 9513228, Montgomery County Official Public Records of Real Property, at a distance of 1,138.56 feet passing a 5/8-inch iron rod found, being the southwest corner of said called 3.000 acre tract (Tract Two), also being the northwest corner of a called 3.000 acre tract conveyed to James Edward Thrower, III and Tanya Thrower, a married couple, by deed recorded in Clerk's File No. 2018030495, Montgomery County Official Public Records, at a distance of 1,398.43 feet passing a 5/8-inch iron rod found, being the southwest corner of a called 7.544 acre tract (Tract One) conveyed to Edward R. Lofton and wife, Marian Lofton, by said deed recorded in Clerk's File No. 9513228, Montgomery County Official Public Records of Real Property, also being the northwest corner of a 20 foot wide (called 0.695 acre) ingress/egress easement (Tract Two) conveyed to David Solomon by deed recorded in Clerk's File No. 2020115162, Montgomery County Official Public Records, in all a distance of 1,913.12 feet to a 1/2-inch iron rod found, being on the west line of a called 10.758 acre tract conveyed to Ford Hal Bazar by deed recorded in Clerk's File No. 2001-040245, Montgomery County Official Public Records of Real Property, also being the northeast corner of a called 18.43 acre tract conveyed to Van Stovall and Jeanne Stovall by deed recorded in Clerk's File No. 99050272, Montgomery County Official Public Records of Real Property, also being on the south right-of-way line of Womack Cemetery Road;

THENCE, along said south right-of-way line of Womack Cemetery Road, the following six (6) courses and distances:

- 1. South 71°44'11" West, 497.65 feet to a 5/8-inch iron rod (with cap stamped Manhard) set, being the northwest corner of said called 18.43 acre tract, also being the northeast corner of a called 8.0793 acre tract conveyed to Samuel Scheler and Tanya Scheler, husband and wife, by deed recorded in Clerk's File No. 2013100439, Montgomery County Official Public Records;
- 2. South 71°58'44" West, along the north line of said called 8.0793 acre tract and the north line of a called 9.434 acre tract conveyed to Micah D. Tomlinson and spouse, Diane Tomlinson, by deed recorded in Clerk's File No. 2006-009043, Montgomery County Official Public Records of Real Property, 493.64 feet to a 5/8-inch iron rod (with cap stamped Manhard) set on the north line of said called 9.434 acre tract;
- 3. South 75°35'39" West, along the north line of said called 9.434 acre tract and the north line of a called 15.1045 acre tract conveyed to Lester W. Gallatin and Cynthia J. Gallatin, husband and wife, by deed recorded in Clerk's File No. 2003-152894, Montgomery County Official Public Records of Real Property, at a distance of 431.76 feet passing a 5/8-inch iron rod found, in all a distance of 604.23 feet to a 1/2-inch iron rod found, being the northwest corner of said called 15.1045 acre tract;

Michael J. and Judith L. Kammerer 388.5 acres

- 4. South 59°21'52" West, 55.10 feet to a 1/2-inch iron pipe found, being the north corner of a called 2.221 acre tract conveyed to 11845 Womack Cemetery Road Joint Venture by deed recorded in Clerk's File No. 2018057068, Montgomery County Official Public Records;
- 5. South 35°03'48" West, 625.59 feet to a 1-inch iron pipe found, being the southwest corner of said called 2.221 acre tract, being on the north line of said called 49.956 acre tract;
- 6. South 87°25'18" West, along the north line of said called 49.956 acre tract, a distance of 512.09 feet to a 5/8-inch iron rod (with cap) found;

THENCE, over and across the remainder of said called 454.2890 acre tract, the following three (3) courses and distances:

- North 00°05'49" East, 998.33 feet to a 5/8-inch iron rod (with cap) found;
- South 87°23'22" West, 677.53 feet to a 5/8-inch iron rod (with cap) found;
- South 12°17'49" West, 1,028.95 feet to the POINT OF BEGINNING, CONTAINING 388.5 acres (16,923,690 square feet) of land in Montgomery County, Texas, filed in the offices of Manhard Consulting, Ltd. in The Woodlands, Texas.

Manhard Consulting, Ltd.
2445 Technology Forest Blvd, Suite #200
The Woodlands, Texas 77381
(832) 823-2200
Texas Board of Professional Engineers & Land Surveyors Firm Reg. No. 10194379

Acting By/Through Joel K. Nalley Registered Professional Land Surveyor No. 6525 jnalley@manhard.com



12 December 2020

EXHIBIT "B"

UTILITY AGREEMENT

THE STATE OF TEXAS \$

\$
COUNTY OF MONTGOMERY \$

THIS AGREEMENT is made and entered into as of the date herein last specified, by and between the CITY OF MONTGOMERY, TEXAS (the "City"), a Type A general-law municipality located in Montgomery County, Texas, and MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 215, created as a body politic and corporate and a governmental agency of the State of Texas organized under the provisions of Article XVI, Section 59 and Article III, Section 52 of the Texas Constitution, and Chapters 49 and 54, Texas Water Code, as amended (hereinafter, the term "District" (as defined herein)).

WITNESSETH:

WHEREAS, the Texas Commission on Environmental Quality (the "TCEQ") by order dated ______, 202_ has granted the landowner's petition to create the District within the corporate limits of the City, for the purposes of, among other things, providing water distribution, wastewater collection and drainage, road and park facilities (as more fully defined below, the "Facilities") to serve development occurring within the corporate limits of the City situated within the boundaries of the District, by financing and purchasing the Facilities; and

WHEREAS, the City by resolution dated ______, 202_ has consented to the creation of the proposed District (the "City Consent Resolution"); and

WHEREAS, under the authority of Chapter 791, Texas Government Code and Section 552.014, Texas Local Government Code, the City and the District may enter into an agreement under the terms of which the District will acquire for the benefit of, and for ultimate conveyance to, the City, the Facilities needed to provide utility service and roads to lands being developed within the District and the City; and

WHEREAS, the parties understand and agree that this Agreement does not constitute, and shall not be construed as, an "allocation agreement" within the meaning of Texas Water Code Section 54.016(f); and

WHEREAS, the City and the District have determined that they are authorized by

the Constitution and laws of the State of Texas to enter into this Agreement and have further determined that the terms, provisions and conditions hereof are mutually fair and advantageous to each; NOW, THEREFORE;

AGREEMENT

For and in consideration of these premises and of the mutual promises, obligations, covenants and benefits herein contained, the District and the City contract and agree as follows:

ARTICLE I DEFINITIONS

The capitalized terms and phrases used in this Agreement shall have the meanings as follows:

"Approving Bodies" shall mean the City, the TCEQ, the Attorney General of Texas, the Comptroller of Public Accounts of Texas, the United States Department of Justice and all other federal and state governmental authorities having regulatory jurisdiction and authority over the financing, construction or operation of the Facilities or the subject matter of this Agreement.

"Bonds" shall mean the District's bonds, notes or other evidences of indebtedness issued from time to time for the purpose of financing the costs of acquiring, constructing, purchasing, operating, repairing, improving or extending the Facilities, whether payable from ad valorem taxes, the proceeds of one or more future bond issues or otherwise, and including any bonds, notes or similar obligations issued to refund such bonds.

"City Code" shall mean the Code of Ordinances adopted by the City, as amended from time to time.

"City Manager" shall mean the City Manager of the City.

"Development Agreement" shall mean that certain Development Agreement, dated ______, 2022, between the City and Redbird Meadow Development, LLC, a Texas limited liability company, as may be amended from time to time.

"District" shall mean Montgomery County Municipal Utility District No. 215, a body politic and corporate and a governmental agency of the State of Texas organized under the provisions of Article XVI, Section 59 and Article III, Section 52 of the Texas Constitution, and Chapters 49 and 54 Texas Water Code, as amended, and which includes within its boundaries approximately 388.5 acres of land described on Exhibit "A"

attached hereto, and any land that is annexed to the District with the consent of the City.

"District Assets" shall mean (i) all rights, title and interests of the District in and to the Facilities, (ii) any Bonds of the District which are authorized but have not been issued by the District, (iii) all rights and powers of the District under any agreements or commitments with any persons or entities pertaining to the financing, construction or operation of all or any portion of the Facilities and/or the operations of the District, and (iv) all books, records, files, documents, permits, funds and other materials or property of the District.

"District's Obligations" shall mean (i) all outstanding Bonds of the District, (ii) all other debts, liabilities and obligations of the District to or for the benefit of any persons or entities relating to the financing, construction or operation of all or any portion of the Facilities or the operations of the District, and (iii) all functions performed and services rendered by the District, for and to the owners of property within the District and the customers of the Facilities.

"Engineers" shall mean LJA Engineering, consulting engineers, or its replacement, successor or assignee.

"Engineering Reports" shall mean and refer to that certain Preliminary Engineering Report prepared by the Engineers relating to the creation of the District and describing the initial scope and extent of the Facilities and any additional engineering reports prepared by the Engineers from time to time relating to the issuance of Bonds by the District, copies of which shall be on file in the offices of the District.

"ESFC" means that amount of water or wastewater, as applicable, set by the City that constitutes an Equivalent Single Family connection, which amount may be changed from time to time. At the time of this Agreement, an ESFC of water means 300 gallons per day and an ESFC of wastewater means 200 gallons per day.

"Facilities" shall mean and include the water distribution, sanitary sewer collection, transportation and treatment, and stormwater collection, detention and drainage systems, roads and improvements in aid thereof, park and recreational facilities constructed or acquired or to be constructed or acquired by the District to serve lands within and adjacent to its boundaries, and all improvements, appurtenances, additions, extensions, enlargements or betterments thereto, together with all contract rights, permits, licenses, properties, rights-of-way, easements, sites and other interests related thereto, all as more fully described in the Engineering Reports.

"Parties" shall mean the City and the District, collectively.

"TCEQ" shall mean the Texas Commission on Environmental Quality or its successor agency of the State of Texas having jurisdiction over the District.

ARTICLE II DESCRIPTION, DESIGN, FINANCING AND CONSTRUCTION OF THE FACILITIES

- 2.01. <u>Facilities</u>. The Facilities, as described in the Engineering Reports, shall be designed and constructed in compliance with all applicable requirements and criteria of the applicable Approving Bodies. All plans and specifications for the Facilities shall be submitted to the City for approval prior to construction and advertising for bids. The plans and specifications shall be prepared in accordance with the applicable provision of the City Code, as they may be amended from time to time. The District shall not be required to design and construct the Facilities to requirements more stringent than the City's requirements and criteria applicable to all design and construction within the City's jurisdiction, unless required by State or Federal regulation or code. The District shall design, construct or extend the Facilities to serve the District in such phases or stages as the District, in its sole discretion, from time to time may determine to be economically feasible.
- 2.02. Water Distribution and Supply Facilities. The City shall provide the District with its ultimate requirements for water production supply of 168,000 gpd to serve approximately 560 ESFCs. The City shall design and construct, at the District's cost, a 12" off-site waterline connecting to the City's existing 8" waterline, which shall be routed generally as shown on Exhibit "B" attached hereto or such other route as is mutually agreed upon by the Parties ("Water Line"). The Water Line will be constructed in public right of way or easement and to the extent necessary, the City will be responsible for acquiring any necessary public right of way required for the construction of the Water Line. The Water Line will be sized to serve the District; to the extent the City requires the Water Line to be oversized to serve land outside the District, the Parties agree to comply with provisions of Section 2.07 below. The District shall have the right to review all bids received for the construction of the Water Line, approve award of the construction contract for the Water Line, and review and approve all pay estimates and change orders related thereto. Funding of the Water Line by the District shall be in accordance with the terms of the Development Agreement. The District will receive Impact Fee credit for funding of the Water Line as described in Section 2.04 below. Timing of design and construction of the Water Line by the City shall be in accordance with the terms of the Development Agreement. In the event that the City does not timely commence design and/or construction of the Water Line in accordance with the Development Agreement, the City agrees that the District may design and construct the Water Line to meet its development needs and receive Impact Fee credit for such costs as stated in Section 2.04

below. The City will accept the Water Line for ownership and operation in accordance with the terms of this Agreement subject to a one-year maintenance bond to be enforceable by the City from the contractor.

The Parties acknowledge that the City will need to construct additional water supply facilities in order to serve the District at full build out, which is estimated to be 560 ESFCs or 168,000 gpd. By the expiration of twenty-four (24) months following the date on which the District engineer notifies the City in writing that it requires additional capacity to timely serve subsequent phases of the District, the City agrees to have completed construction of the expansion of its water supply system to accommodate the District's subsequent phases of development. The District's obligation to fund expansions to the City's water supply system (other than the Water Line as described in this Section 2.02) is limited to payment of Impact Fees paid in the same amount and same manner as set out in this Agreement.

In the event that, at any time during the term of this Agreement, the City's water supply system does not have sufficient capacity to serve the land within the District as necessitated by development thereof, the District may elect to:

- a. Advance funds as payment towards Impact Fees that would be due and payable to the City for future development in the District, which funds shall be used by the City solely for funding the costs of constructing additional water supply facilities necessary to serve subsequent phases of development in the District, and the City would thereafter credit the District up to an amount equal to the amount advanced by the District; and/or
- b. Construct additional water supply facilities based upon demand and usage and sized appropriately to serve development within the District in accordance with all regulatory requirements, and the City would thereafter credit the District for the Impact Fees related to development in the District that would otherwise be due and payable to the City up to an amount equal to the costs of constructing the additional water supply facilities.
- 2.03. <u>Wastewater Treatment Plant Facilities</u>. The City shall provide the District with its ultimate wastewater requirements of 112,000 gpd to serve approximately 560 connections. The City agrees to design and construct an off-site force main to serve the District as generally shown on Exhibit "B" attached hereto (the "Force Main"). The Force Main shall be sized to serve the District; if the City requires the Force Main to be oversized to serve land outside the District, the Parties agree to comply with provisions of Section 2.07 below. The City will acquire any necessary right of way for construction of the Force

Main. The City will be responsible for bidding the Force Main in accordance with competitive bidding laws. The District shall have the right to review all bids received for the construction of the Force Main, approve award of the construction contract for the Force Main, and review and approve all pay estimates and change orders related thereto. Funding of the Force Main by the District shall be in accordance with the terms of the Development Agreement. Timing of design and construction of the Force Main by the City shall be in accordance with the terms of the Development Agreement. In the event that the City does not timely commence design and/or construction of the Force Main in accordance with the Development Agreement, the City agrees that the District may design and construct the Force Main to meet its development needs. The City will accept the Force Main for ownership and operation in accordance with the terms of this Agreement subject to a one-year maintenance bond to be enforceable by the City from the contractor.

The Parties acknowledge that the City will need to construct additional wastewater treatment facilities in order to serve the District at full build out. By the expiration of twenty-four (24) months following the date on which the District engineer notifies the City in writing that the District requires such additional capacity to serve subsequent phases of the District, the City agrees to have completed construction of the expansion of its wastewater treatment system to accommodate the District's subsequent phases of development. The District's obligation to fund expansions to the City's wastewater treatment facilities (other than the Force Main as described in this Section 2.03) is limited to payment of Impact Fees paid in the same amount and same manner as set out in this Agreement.

In the event that, at any time during the term of this Agreement, the City's wastewater treatment system does not have sufficient capacity to serve the land within the District as necessitated by development thereof, the District may elect to:

- a. Advance funds as payment towards Impact Fees that would be due and payable to the City for future development in the District, which funds shall be used by the City solely for funding the costs of constructing additional wastewater treatment facilities sufficient to serve subsequent phases of development in the District. The City would thereafter credit the District for Impact Fees up to an amount equal to the amount advanced by the District; and/or
- b. Construct additional wastewater treatment facilities based upon demand and usage and sized appropriately to serve development within the District in accordance with all regulatory requirements, and the City would thereafter credit the District for the Impact Fees related to development in the District that would otherwise be due and payable to the City up to an amount equal to the costs of

constructing the additional wastewater treatment facilities.

- 2.04. Impact Fees. The District agrees to pay impact fees for water supply facilities and wastewater treatment facilities ("Impact Fees") in the amount as stated in the City's current adopted Impact Fees, or as may be amended from time to time. The District will be assessed and pay Impact Fees at the time of the City's approval of the final plat for each section based on the number of connections in such plat. The Water Line is a regional facility and is included in the City CIP. The District will receive Impact Fee credit for the amount expended and paid to the City for the Water Line. The District will receive credit upon final platting until such costs are reimbursed in full.
- 2.05. <u>Letter of Assurance and Issuance of Assignments of Capacity by the District.</u>
 The City agrees that, from time to time, the City shall, upon reasonable request, issue a letter of assurance to the District upon reasonable request of the District that the City has capacity in its wastewater treatment plant and/or has sufficient water supply to serve the District.
- 2.06. <u>Road Facilities</u>. The District shall be authorized to construct such roads as are authorized by applicable law and approved by the City in accordance with this Agreement. The public road Facilities will be conveyed to the City upon final completion and subject to final acceptance by the City.
- 2.07. Oversizing. If the City requires portions of the Facilities to be constructed to a size larger than would be required pursuant to the City Code to serve the District, the City will pay or cause to be paid the incremental costs to construct such excess capacity in accordance with state law. Prior to award of any contract in which over-sized facilities will be built, the District will present the City with the bids and bid tabulations, and the City and the District must agree to the incremental costs based on such bid or the District is not required to oversize the Facilities. The City will pay its pro rata share of the oversized facilities upon award of the construction contract for such facilities.
- 2.08 <u>Drainage Facilities</u>. The District will submit a drainage study to the City prior to approval of construction plans. All drainage and detention Facilities must be designed and constructed in accordance with the City Code and any applicable Montgomery County standards. The City agrees to allow culverts along public roads to serve as detention facilities. All onsite storm sewer systems will be designated as public facilities and accepted by the City upon completion. Any detention ponds will not be accepted by the City but owned and maintained by the District and/or a property owners association.
- 2.09 Parks and Recreational Facilities. The District shall design and construct all park and recreational facilities to serve the District in accordance with the City Code and

any applicable Montgomery County standards. Any park and recreational facilities will not be accepted by the City but owned and maintained by the District and/or a property owners association.

2.10 <u>Minor Modifications</u>. Minor modifications to the District's utility plan are authorized under this Agreement upon review and approval of the City Administrator, or its designee, and no amendment to this Agreement is required. A minor modification would include, but is not limited to, an adjustment or relocation of public utility infrastructure if approved by the City Administrator or its designee; or any modification that is an elaboration, refinement or clarification of this Agreement and deemed to be a minor modification by the City Administrator.

ARTICLE III OWNERSHIP, OPERATION AND MAINTENANCE OF FACILITIES

- 3.01. Ownership by the City. As construction of each phase of the Facilities is completed and becomes operational, the District shall convey the same to the City, free and clear of all encumbrances.
- 3.02. Operation by the City. As construction of each phase of the Facilities is completed, representatives of the City shall inspect the same and, if the City finds that the same has been completed in accordance with the approved plans and specifications, the City will accept the same, whereupon such portion of the Facilities shall be operated and maintained by the City at its sole expense as provided herein. In the event that the Facilities have not been completed in accordance with the approved plans and specifications the City will immediately advise the District in what manner the infrastructure does not comply, and the District shall immediately correct the same; whereupon the City shall again inspect the Facilities and accept the same if the defects have been corrected. During the term of this Agreement, the City will operate the Facilities and provide retail water and sanitary sewer service to all users within the District without discrimination. The City shall at all times maintain the Facilities or cause the same to be maintained, in good condition and working order and will operate the same, or cause the same to be operated, in an efficient and economical manner at a reasonable cost and in accordance with sound business principles in operating and maintaining the Facilities, and the City will comply with all contractual provisions and agreements entered into by it and with all valid rules, regulations, directions or orders by any governmental administrative or judicial body promulgating the same.
- 3.03. <u>Rates and Meters.</u> The City shall bill and collect fees from District customers of the water and wastewater system and shall from time to time fix such rates and charges for such customers of the system as the City, in its sole discretion, determines are necessary; provided that the rates and charges for services afforded by the system will be

equal and uniform to those charged other similar classifications of users in the City. All water and wastewater revenues from the District customers shall belong exclusively to the City. The City shall be responsible for providing and installing any necessary meters for the individual customers.

3.04. <u>Tap Fees / Connection Charges.</u> Notwithstanding anything in the City Code to the contrary, the City will impose a charge for tap fees or connections to the water and wastewater system at a rate to be determined from time to time by the City, provided the charge is equal to the sums charged other City users for comparable connections, and the connection charges shall belong exclusively to the City.

ARTICLE IV FINANCING OF FACILITIES

4.01 <u>Authority of District to Issue Bonds.</u> The District shall have the authority to issue, sell and deliver Bonds from time to time, as deemed necessary and appropriate by the Board of Directors of the District, for the purposes, in such form and manner and as permitted or provided by federal law and the general laws of the State of Texas.

At least thirty (30) days before the issuance of bonds, except refunding bonds, the District's financial advisor shall certify in writing that bonds are being issued within the existing economic feasibility guidelines established by the TCEQ (if applicable) and whether or not the District bonds have been approved by the TCEQ, if applicable. The report, provided to the City Manager, should also state the following:

- The amount of bonds being proposed for issuance,
- The projects to be funded by such bonds,
- The proposed debt service tax rate after issuance of the bonds.

Within thirty (30) days after the District closes the sale of a series of bonds, the District shall deliver to the City Manager a copy of the final official statement for such series of bonds as well as any additional information requested by the City and provide the City with a complete transcript of bond proceedings within sixty (60) days after the date the bonds are delivered.

4.02 <u>Purpose for Bonds and Use of Bond Proceeds.</u> The District will issue Bonds only for the purpose of purchasing and constructing or otherwise acquiring Facilities or parts thereof, and to make any and all necessary purchases, construction, improvements, extensions, additions, and repairs thereto, and purchase or acquire all necessary land, right-of-way, easements, sites, equipment, buildings, plants, structures, and facilities therefor within or without the boundaries of the District, and providing for developer

interest and for any necessary capitalized interest and costs of issuance.

- 4.03 <u>Bond Provisions.</u> The District's Bonds shall expressly provide that the District reserves the right to redeem the Bonds on any interest-payment date subsequent to the tenth anniversary of the date of issuance without premium and will be sold only after the taking of public bid therefore. None of such Bonds, other than refunding Bonds, will be sold for less than 95% of par; provided that the net effective interest rate on Bonds so sold, taking into account any discount or premium as well as the interest rate borne by such Bonds, will not exceed two percent above the highest average interest rate reported by the Daily Bond Buyer in its weekly "20 Bond Index" during the one-month period next preceding the date notice of the sale of such Bonds is given, and that bids for the Bonds will be received not more than forty-five days after notice of sale of the Bonds is given. The Bonds shall not have a maturity of more than twenty-five years and shall not provide for more than twenty-four months of capitalized interest.
- 4.04. <u>Bonds as Obligation of District</u>. Unless and until the City shall dissolve the District and assume the properties, assets, obligations and liabilities of the District, the Bonds of the District, as to both principal and interest, shall be and remain obligations solely of the District and shall never be deemed or construed to be obligations or indebtedness of the City; the Bonds shall not contain a pledge of any revenues of the Facilities.
- 4.05. Construction by Third Parties. From time to time, the District may enter into one or more agreements, (hereinafter, "Development Financing Agreement") with landowners or developers of property located within or in the vicinity of the District whereby such landowners or developers will undertake, on behalf of the District, to prefinance and pre-construct, in one or more phases, all or any portion of the Facilities. Under the terms of each Development Financing Agreement, the landowners or developers will be obligated to finance and construct the Facilities in the manner which would be required by law if such work were being performed by the District. Each Development Financing Agreement will provide for the purchase of the Facilities from the landowners or developers using the proceeds of one or more issues of Bonds, as otherwise permitted by law and the applicable rules, regulations and guidelines of the applicable Approving Bodies.

ARTICLE V DISSOLUTION OF THE DISTRICT

5.01. <u>Dissolution of District Prior to Retirement of Bonded Indebtedness.</u> The City and the District recognize that, as provided in the laws of the State of Texas, the City has the right to dissolve the District and to acquire the District's Assets and assume the

District's Obligations. Notwithstanding the foregoing, the City agrees that it will not dissolve the District until the following conditions have been met:

- 1. At least 90% of the Facilities to serve all the developable acreage at full development has been constructed. Developable acreage means the total acreage in the District less acreage associated with land uses for roads, utility easements, drainage easements, levee easements, lakes, creeks, rivers, fire facilities, and open space; and
- The developer of the District has been reimbursed by the District to the maximum extent permitted by the rules of the TCEQ or the City assumes any obligation for such reimbursement of the District under such rules.

Upon dissolution of the District, the City shall acquire the District's Assets and shall assume the District's Obligations. If requested by the District, the City shall afford the District the opportunity to discharge any remaining District's Obligations pursuant to any existing Development Financing Agreements of the District, by either (i) authorizing the District to sell its Bonds before or during a transition period prior to the effective date of dissolution as established by the City, or (ii) pursuant to Local Government Code Section 43.080, as amended, issuing and selling bonds of the City in at least the amount necessary to discharge the District's Obligations, including those under any Development Financing Agreements.

5.02. <u>Transition upon Dissolution</u>. In the event all required findings and procedures for the annexation and dissolution of the District have been duly, properly and finally made and satisfied by the City, and unless otherwise mutually agreed by the City and the District pursuant to then existing law, the District agrees that its officers, agents and representatives shall be directed to cooperate with the City in any and all respects reasonably necessary to facilitate the dissolution of the District and the transfer of the District's Assets to, and the assumption of the District's Obligations by, the City.

ARTICLE VI REMEDIES IN EVENT OF DEFAULT

The parties hereto expressly recognize and acknowledge that a breach of this Agreement by either party may cause damage to the nonbreaching party for which there will not be an adequate remedy at law. Accordingly, in addition to all the rights and remedies provided by the laws of the State of Texas, in the event of a breach hereof by either party, the other party shall be entitled but not limited to the equitable remedy of specific performance or a writ of mandamus to compel any necessary action by the breaching party. In the event that a party seeks a remedy as provided in this Article or any monetary damages as otherwise provided in this Agreement, the breaching party

shall be required to pay for the non-breaching party's attorneys fees and court costs.

ARTICLE VII MISCELLANEOUS PROVISIONS

- 7.01. Force Majeure. In the event either party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, then the obligations of such party, to the extent affected by such force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused, to the extent provided, but for no longer period. As soon as reasonably possible after the occurrence of the force majeure relied upon, the party whose contractual obligations are affected thereby shall give notice and the full particulars of such force majeure to the other party. Such cause, as far as possible, shall be remedied with all reasonable diligence.
- 7.02. Approvals and Consents. Approvals or consents required or permitted to be given under this Agreement shall be evidenced by an ordinance, resolution or order adopted by the governing body of the appropriate party or by a certificate executed by a person, firm or entity previously authorized to give such approval or consent on behalf of the party. Approvals and consents shall be effective without regard to whether given before or after the time required for giving such approvals or consents.
- 7.03. Address and Notice. Unless otherwise provided in this Agreement, any notice to be given under this Agreement shall be given in writing and may be given either by depositing the notice in the United States mail postpaid, registered or certified mail, with return receipt requested; delivering the notice to an officer of such party; or sending the notice by prepaid telegram, when appropriate. Notice deposited by mail in the foregoing manner shall be effective the day after the day on which it is deposited. Notice given in any other manner shall be effective only when received by the party to be notified. For the purposes of notice, the addresses of the parties shall be as follows:

If to the City, to:

City of Montgomery, Texas 101 Old Plantersville Road Montgomery, TX 77535 Attention: City Manager

With a copy to City attorney:

Johnson Petrov LLP 2929 Allen Parkway, Suite 3150 Houston, TX 77019 Attn: Alan P. Petrov

If to the District, to:

Montgomery County Municipal Utility District No. 215 c/o Allen Boone Humphries Robinson LLP 3200 Southwest Freeway, Suite 2600 Houston, Texas 77027 Attn: Annette Stephens

The parties shall have the right from time to time to change their respective addresses by giving at least fifteen (15) days' written notice of such change to the other party.

- 7.04. <u>Assignability</u>. This Agreement may not be assigned by either except upon written consent of the other party
- 7.05. No Additional Waiver Implied. The failure of either party to insist upon performance of any provision of this Agreement shall not be construed as a waiver of the future performance of such provision by the other party.
- 7.06. <u>Reservation of Rights.</u> All rights, powers, privileges and authority of the parties hereto not restricted or affected by the express terms and provisions hereof are reserved by the parties and, from time to time, may be exercised and enforced by the parties.
- 7.07. Parties in Interest. This Agreement shall be for the sole and exclusive benefit of the parties hereto and shall not be construed to confer any rights upon any third parties.
- 7.08. Merger. This Agreement embodies the entire understanding between the parties and there are no representations, warranties or agreements between the parties covering the subject matter of this Agreement other than the Consent Resolution between the City and the District. If any provisions of the Consent Resolution appear to be inconsistent or in conflict with the provisions of this Agreement, then the provisions contained in this Agreement shall be interpreted in a way which is consistent with the Consent Resolution.
- 7.09. <u>Captions</u>. The captions of each section of this Agreement are inserted solely for convenience and shall never be given effect in construing the duties, obligations or liabilities of the parties hereto or any provisions hereof, or in ascertaining the intent of

either party, with respect to the provisions hereof.

- 7.10 . <u>Interpretations.</u> This Agreement and the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity of this Agreement.
- 7.11. Severability. If any provision of this Agreement or the application thereof to any person or circumstances is ever judicially declared invalid, such provision shall be deemed severed from this Agreement and the remaining portions of this Agreement shall remain in effect.
- 7.12. <u>Term and Effect.</u> This Agreement shall remain in effect until the earlier to occur of (i) the dissolution of the District by the City or (ii) the expiration of thirty (30) years from the date hereof.

[EXECUTION PAGES FOLLOW.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of equal dignity, on this 10th day of May 2022.

THE CITY OF MONTGOMERY, TEXAS

Mayor

ATTEST/SEAL:

City Secretary



MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 215

	By: President, Board of Directors
ATTEST:	
· · ·	
Secretary, Board of Directors	
SEAL)	

EXHIBIT "C"

UTILITY EXHIBIT



EXHIBIT "D"

PROPOSED MAJOR THOROUGHFARE PLAN

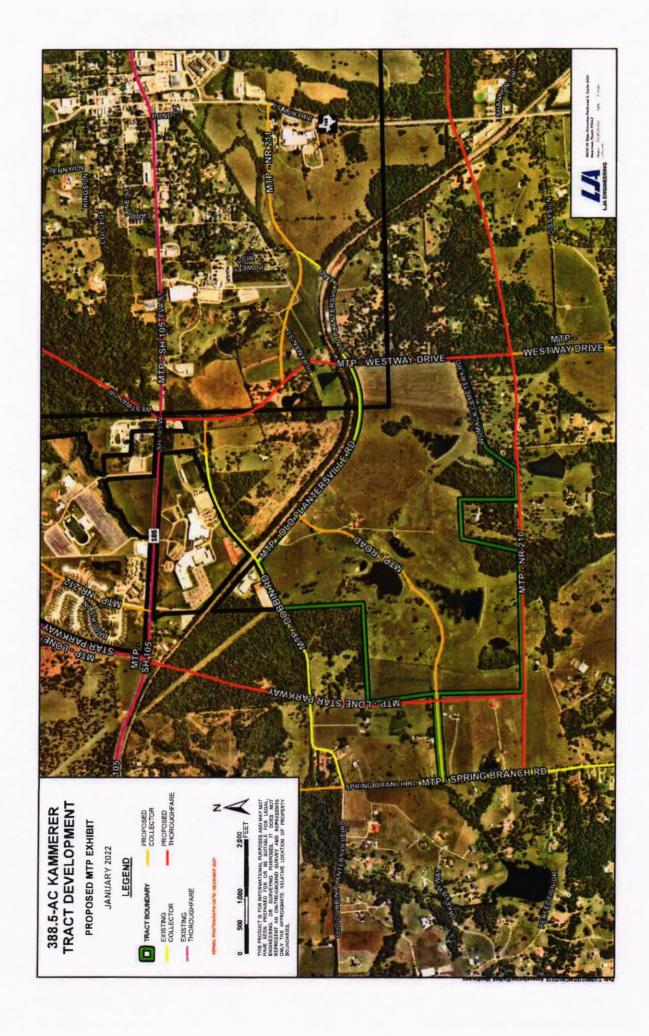


EXHIBIT "E"

ANNEXATION TRACT

CITY OF MONTGOMERY ANNEXATION (378.2115 AC)

DECEMBER 2021



ANNEXATION INSIDE ETJ (279.30 ACRES)



ANNEXATION OUTSIDE ETJ (98.9115 ACRES)

*THIS DOCUMENT WAS PREPARED UNDER 22 TAC \$138,95, DOES NOT REFLECT THE RESULTS OF AN ON THE GROUND SURVEY, AND IS NOT TO BE USED TO CONVEY OR ESTABLISH INTERESTS IN REAL PROPERTY EXCEPT THOSE RIGHTS AND INTERESTS IMPLIED OR ESTABLISHED BY THE CREATION OR RECONFIGURATION OF THE BOUNDARY OF THE POLITICAL SUBDIVISION FOR WHICH IT WAS PREPARED,





AERIAL PROTOGRAPH DATE: NEARANT 2021

THIS PRODUCT IS FOR INFORMATIONAL PURPOSES AND MAY NOT HAVE BEEN PREPARED FOR OR BE SUITABLE FOR LEGAL, FORDINGERING, OR SURVEYING PURPOSES, IT DOES NOT REPRESENT AN ON-THE-GROUND SURVEY AND REPRESENTS ONLY THE APPROXIMATE RELATIVE LOCATION OF PROPERTY BOUNDARES,



3000 W Sam Houston Purkupy S. Saits 500 Houston, Tenes 7704.2 Major FLANDSSIG TAPE 4: (160)



EXHIBIT "F"

PHASING PLAN



Conceptual Development Plan
REDBIRD MEADOW
Montgomery County, Texas
REDBIRD DEVELOPMENT, LLC

60'X140' - 263 DU 85 5 Ac 85 X170 - 174 DU 98 5 Ac 110 X200 - 118 DU 88 2 Ac

RESIDENTIAL TOTAL 271.7 Ac - 555 DU

LAKES \ DETENTION
36.3 Ac.
PIPE LINES, MAJOR ROAD ROW, DETENTION,
WETLANDS, PARKS, OPEN SPACE, DRAINAGE
80 Ac.

GRAND TOTAL 388.5

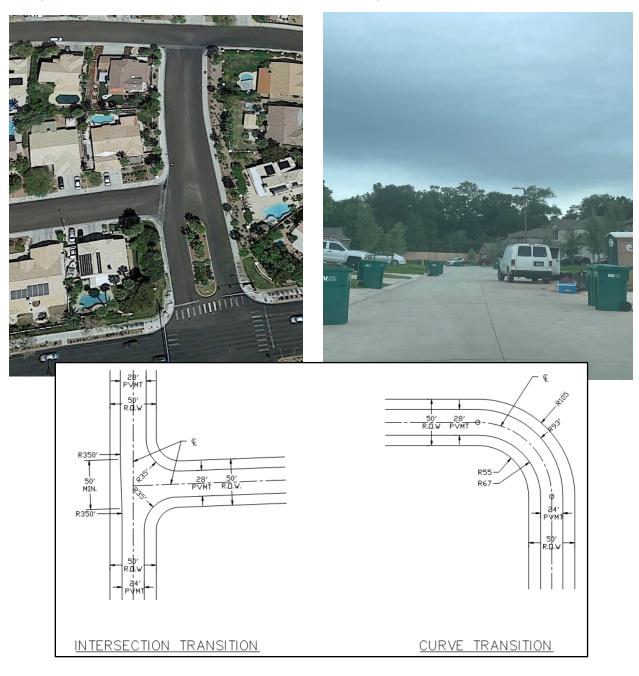


Redbird Meadows Development Agreement Amendment No. 1 Summary

	Original Agreement Terms	Proposed Amendment Terms	
Lots	Up to 560 lots total	Up to 669 lots total	
	263 lots @ 60'x140' (47.4%)	166 lots @ 60'x140' (24.8%)	
	174 lots @ 85'x170' (31.4%)	248 lots @ 70'x140' (37.1%)	
	118 lots @ 110'x200' (21.2%)	255 lots @ 80'x140' (38.1%)	
Roadways	28' residential streets	24' wide residential streets	
	36' collector street	28' wide interior collector streets	
		36' wide minor collector street	
		8' wide concrete Shared use path	
Side Yard Setbacks	10-ft setback	5-ft setback w/ no appurtenances in	
		side yard	

Example of transition to 24' wide residential streets:

Example of 24' wide residential streets:



Example of 5' side yard setbacks:



Lot Density Analysis

Subdivision Name	Lot Width	Lot Count	Density
Hills of Town Creek	50 ft	131	4.2 lots/acre
Terra Vista	50 ft	61	4.4 lots/acre
Montgomery Bend	45 ft	309	3.7 lots/acre
Redbird Meadows (original DA)	Varies	550	1.4 lots/acre
Redbird Meadows (proposed DA)	Varies	682	1.8 lots/acre

Original Phasing Plan (from executed Development Agreement)



Conceptual Development Plan

REDBIRD MEADOW

Montgomery County, Texas
REDBIRD DEVELOPMENT, LLC

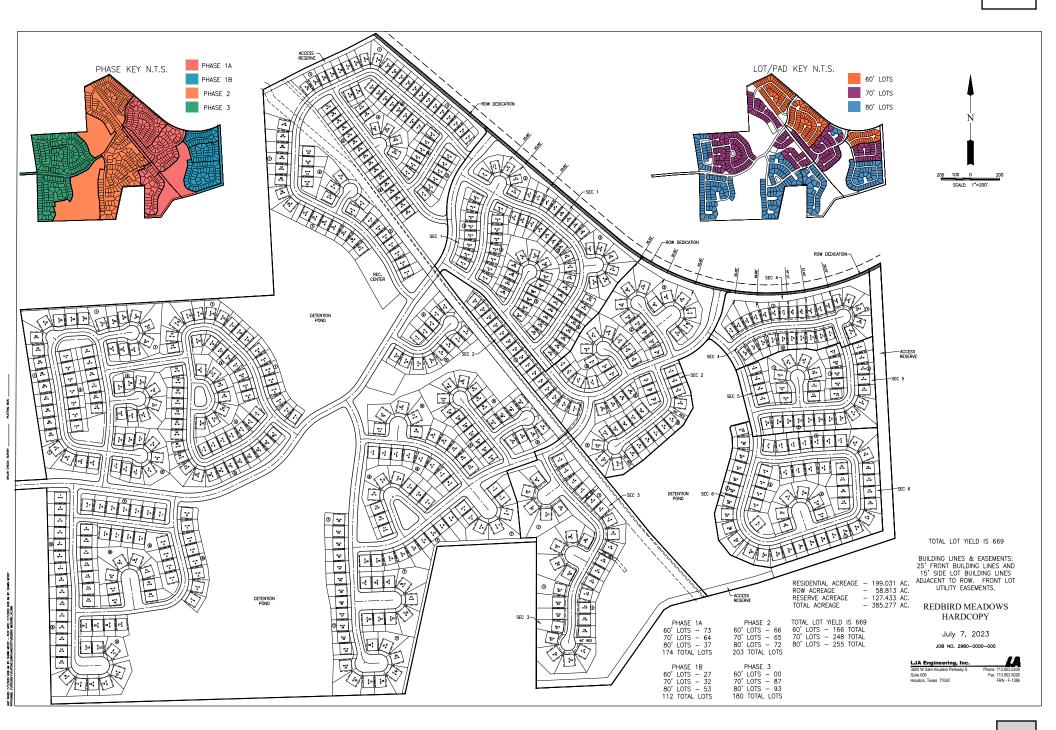
60'X140' - 263 DU 85 5 Ac 85 X170 - 174 DU 98 5 Ac 110 X200 - 118 DU 88 2 Ac

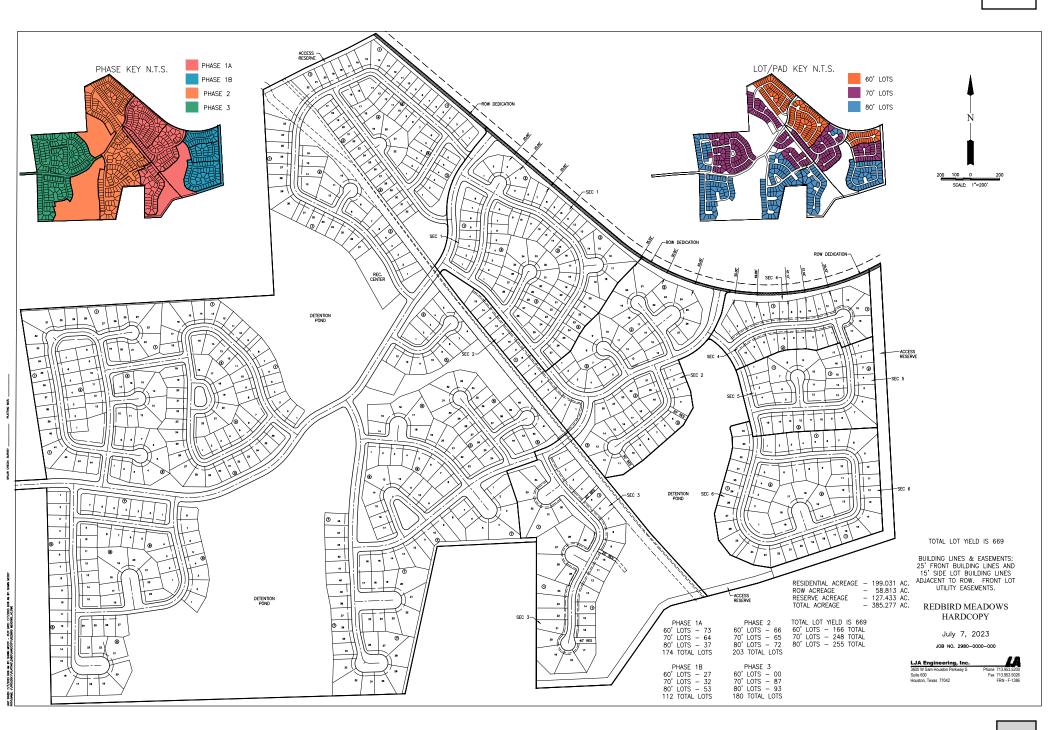
RESIDENTIAL TOTAL 271.7 Ac - 555 DU

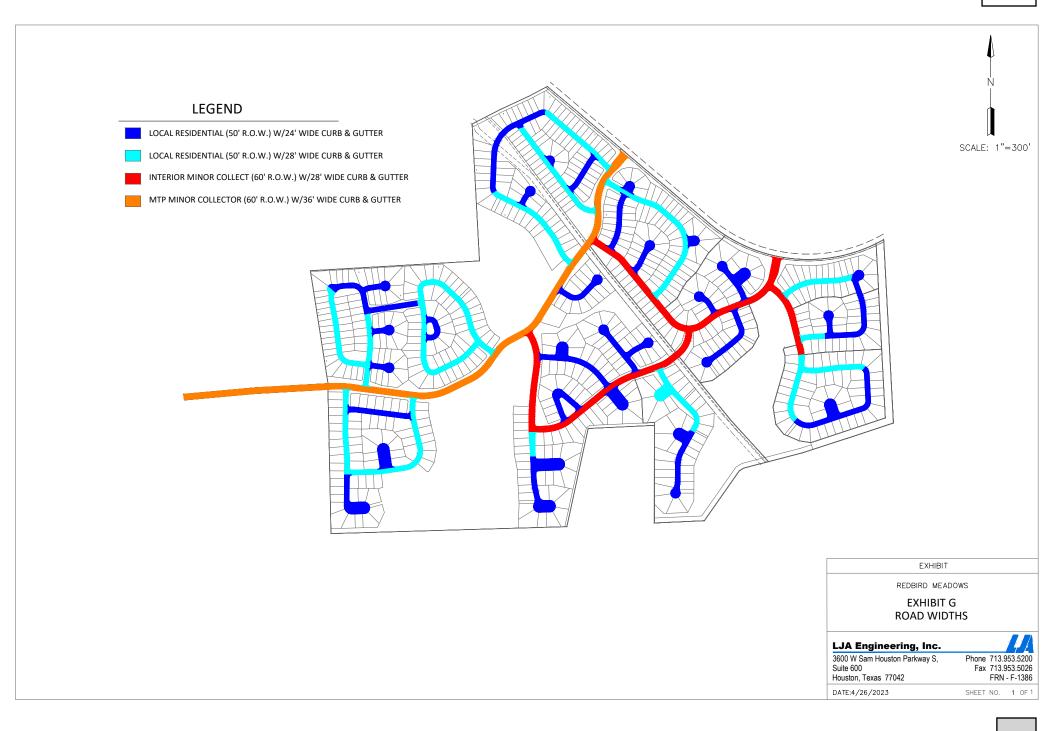
LAKES \ DETENTION 36,3 Ac. PIPE LINES, MAJOR ROAD ROW, DETENTION, WETLANDS, PARKS. OPEN SPACE, DRAINAGE 80 Ac.

GRAND TOTAL 388.5













REDBIRD MEADOWS IN CITY OF MONTGOMERY

0 75' 150'

LOCATION: MONTGOMERY, TEXAS

CLIENT: CANTERRA

DATE: 23 JUNE, 2023

SCHEMATIC DESIGN | 1