

CITY OF HUNTSVILLE, TEXAS

Russell Humphrey, Mayor

Vicki McKenzie, Mayor Pro Tem
Position 3 At-Large
Bert Lyle, Position 1 At-Large
Karen Denman, Position 2 At-Large
Pat Graham, Position 4 At-Large



Tore Fossum, Ward 1
Casey Cox, Ward 2
Anissa Antwine, Ward 3
Jon Strong, Ward 4

**HUNTSVILLE CITY COUNCIL AGENDA
TUESDAY, FEBRUARY 6, 2024**

AMENDED

**WORKSHOP 5:00 P.M. - Staggs Community Room
REGULAR SESSION 6:00 P.M. - Staggs Community Room**

Huntsville Public Library, 1219 13th Street, Huntsville, Texas, 77340

Persons with disabilities who plan to attend this meeting and may need auxiliary aids or services are requested to contact the City Secretary's office (936.291.5413) two working days prior to the meeting for appropriate arrangements.

WORKSHOP (5:00 p.m.)

DISCUSSION

- a. Presentation from Trinity River Authority (TRA) to discuss future improvements to the City's water system.
Aron Kulhavy, City Manager

MAIN SESSION (6:00 p.m.)

CALL TO ORDER

INVOCATION AND PLEDGES - *U.S. Flag and Texas Flag: Honor the Texas Flag. I pledge allegiance to thee, Texas, one state, under God, one, and indivisible.*

PROCLAMATION

PRESENTATIONS

PUBLIC HEARING

1. CONSENT AGENDA

The presiding officer will call for public comments before action is taken on these items. *(Approval of Consent Agenda authorizes the City Manager to implement each item in accordance with staff recommendations. An item may be removed from the Consent Agenda and added to the Statutory Agenda for full discussion by request of a member of Council.)*

- a. Consider approving the Amended Minutes from the December 5, 2023, Regular City Council Meeting.
Kristy Doll, City Secretary
- b. Consider approving the Minutes from the January 23, 2024, Special City Council Meeting.
Kristy Doll, City Secretary

- c. Consider authorizing the City Manager to enter into a five-year agreement with Sky Wonder Pyrotechnics for the fireworks display at the 4th of July Celebration.
Penny Joiner, Director of Parks and Leisure
- d. Consider Resolution 2024-3 authorizing the City Manager to apply for and accept, if awarded, funding under the General Victim Assistance Direct Services Program to support the Victim Services Coordinator.
Ashley Brown, Grants Manager
- e. Consider Resolution 2024-4 authorizing the City Manager to apply for and accept, if awarded, funding under the FY25 Criminal Justice Program to continue digital evidence management.
Ashley Brown, Grants Manager
- f. Consider Resolution 2024-5 authorizing the City Manager to apply for and accept, if awarded, funding under the FY24 State Homeland Security Program (SHSP) - LETPA Projects to purchase Flock Safety LPRs.
Ashley Brown, Grants Manager
- g. Consider authorizing the City Manager to award a contract for the installation of two 30'' Line Stops and one 30" Gate valve at Palm Street Water Plant.
Brent Sherrod, Public Works Director
- h. Consider authorizing the City Manager to enter into an agreement to provide janitorial services for City of Huntsville facilities.
Penny Joiner, Director of Parks and Leisure
- i. Consider authorizing the City Manager to enter into an agreement for professional engineering services for the FY23-24 CIP Dawson Lake Dam Project.
Kathlie Jeng-Bulloch, City Engineer

2. STATUTORY AGENDA

- a. Consider approval of Resolution 2024-1 in support of an application to the Texas Department of Housing and Community Affairs for a 9% housing tax credit to fund a rehabilitation of MillPond Living at Huntsville (formerly known as Cedarwood Apartments) at 2201 Bobby K Marks Drive.
Kevin Byal, Director of Development Services
- b. ~~Consider approval of Resolution 2024-2 in support of an application to the Texas Department of Housing and Community Affairs for a 9% housing tax credit to fund the development of Ardent at Huntsville, a multi-family apartment development to be located at 3508 Montgomery Road in Huntsville.~~
Kevin Byal, Director of Development Services
- c. Consider a ground lease with Huntsville Hangars, LLC at the Bruce Brothers Huntsville Regional Airport and authorize the City Manager to enter into a ground lease agreement for said hangar.
Layne Yeager, Planner
- d. Consider a ground lease with Mr. Conrad Liles at the Bruce Brothers Huntsville Regional Airport and authorize the City Manager to enter into a ground lease agreement for said hangar.
Layne Yeager, Planner
- e. Consider approving Resolution No. 2024-6, a resolution consenting to the creation of a Municipal Utility District to be known as "Evergreen Hills Municipal Utility District No. 1 of Walker County".
Kevin Byal, Director of Development Services
- f. Consider authorizing the City Manager to enter into a Development Agreement with SPJR Properties, LLC., for the development of an approximately 86.855-acre development for a single-family master planned community.
Kevin Byal, Director of Development Services

- g. Consider first amendment to the development agreement between the City of Huntsville and Forestar Real Estate group for development of property in the Extra-Territorial Jurisdiction (ETJ).
Aron Kulhavy, City Manager

3. CITY COUNCIL/MAYOR/CITY MANAGER

4. MEDIA INQUIRIES RELATED TO MATTERS ON THE AGENDA

5. ITEMS OF COMMUNITY INTEREST

6. EXECUTIVE SESSION

- a. City Council will convene in closed session as authorized by Texas Government Code, Chapter 551, Section 551.071 to receive legal advice on Cause No. 2230703, City of Huntsville vs. Architects Design Group/ADG, Inc. in the 278th District Court, Walker County, Texas.
Leonard Schneider, City Attorney

7. RECONVENE

Take action on item discussed in executive session, if needed.

ADJOURNMENT

*If during the course of the meeting and discussion of any items covered by this notice, City Council determines that a Closed or Executive session of the Council is required, then such closed meeting will be held as authorized by Texas Government Code, Chapter 551, Section 551.071 – consultation with counsel on legal matters; 551.072 – deliberation regarding purchase, exchange, lease or value of real property; 551.073 – deliberation regarding a prospective gift; 551.074 – personnel matters regarding the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; 551.076 – implementation of security personnel or devices; 551.087 – deliberation regarding economic development negotiation; Sec. 551.089 - deliberation regarding security devices or security audits; and/or other matters as authorized under the Texas Government Code. If a Closed or Executive session is held in accordance with the Texas Government Code as set out above, the City Council will reconvene in Open Session to take action, if necessary, on the items addressed during Executive Session.

CERTIFICATE

I, Kristy Doll, City Secretary, do hereby certify that the above notice was posted on the City Hall bulletin board, a place convenient and readily accessible to the general public at all times, and to the City's website, www.HuntsvilleTX.gov, in compliance with Chapter 551, Texas Government Code.

DATE OF POSTING: February 2, 2024

TIME OF POSTING: 3:00 p.m.

TAKEN DOWN:

Kristy Doll

Kristy Doll, City Secretary



CITY COUNCIL AGENDA

2/6/2024

Agenda Item Number: a.

Agenda Item: Presentation from Trinity River Authority (TRA) to discuss future improvements to the City's water system.

Initiating Department/Presenter: City Manager

Presenter:

Aron Kulhavy, City Manager

Recommended Motion: Not applicable

Strategic Initiative: Goal #4, Infrastructure - Ensure the quality of the City utilities, transportation and physical structures so that the City's core services can be provided in an effective and efficient manner.

Discussion:

Previous Council Action:

Financial Implications:

Approvals:

Kristy Doll

Aron Kulhavy

Associated Information:



CITY COUNCIL AGENDA

2/6/2024

Agenda Item Number: 1.a.

Agenda Item: Consider approving the Amended Minutes from the December 5, 2023, Regular City Council Meeting.

Initiating Department/Presenter: City Secretary

Presenter:

Kristy Doll, City Secretary

Recommended Motion: Motion to approve the Amended Minutes from the December 5, 2023, Regular City Council Meeting.

Strategic Initiative:

Discussion: The table identifying the Board and Commission appointed and reappointed members was added to the Amended Minutes.

Previous Council Action: Approved Minutes without attached table.

Financial Implications:

Approvals:

Kristy Doll

Associated Information:

1. AMENDED December 5, 2023 City Council Minutes

AMENDED MINUTES FROM THE HUNTSVILLE CITY COUNCIL REGULAR MEETING HELD ON THE 5th DAY OF DECEMBER 2023, AT THE HUNTSVILLE PUBLIC LIBRARY, LOCATED AT 1219 13th STREET, IN THE CITY OF HUNTSVILLE, COUNTY OF WALKER, TEXAS, AT 6:00 P.M.

The Council met in regular session with the following:

COUNCILMEMBERS PRESENT: Mayor Humphrey, Mayor Pro Tem McKenzie, Councilmember At-Large Position 1 Lyle, Councilmember Ward 1 Fossum, Councilmember At-Large Position 2 Denman, Councilmember Ward 3 Antwine, Councilmember At-Large Position 4 Graham, Councilmember Ward 4 Strong.

COUNCILMEMBERS ABSENT: Councilmember Ward 2 Cox.

OFFICERS PRESENT: Aron Kulhavy, City Manager; Kristy Doll, City Secretary; Leonard Schneider, City Attorney

MAIN SESSION (6:00 p.m.)

CALL TO ORDER (6:00 p.m.)

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

INVOCATION AND PLEDGES - *U.S. Flag and Texas Flag:* *Honor the Texas Flag. I pledge allegiance to thee, Texas, one state, under God, one, and indivisible.*

Mayor Humphrey gave the invocation and led the pledges.

1. CONSENT AGENDA

The presiding officer will call for public comments before action is taken on these items. (Approval of Consent Agenda authorizes the City Manager to implement each item in accordance with staff recommendations. An item may be removed from the Consent Agenda and added to the Statutory Agenda for full discussion by request of a member of Council.)

- a. Consider approving the Minutes from the November 21, 2023 Regular City Council Meeting.**
Kristy Doll, City Secretary
- b. Consider authorizing the City Manager to execute an agreement for stop loss insurance coverage.**
Brian Beasley, HR Director
Steve Ritter, Finance Director

Councilmember Vicki McKenzie made a motion to approve the Consent Agenda Items a and b. The motion was seconded by Councilmember Tore Fossum. The motion passed 8-0. Yes - Russell Humphrey, Karen Denman, Vicki McKenzie, Jon Strong, Bert Lyle, Anissa Antwine, Tore Fossum, Pat Graham; No - None

2. STATUTORY AGENDA

- a. **Second Reading - Consider adopting Ordinance 2023-26, to change the Development District Classification of the approximate 86.56-acre tract of land adjacent to the 150 Block of FM 247 and also just east of American Legion Drive located on Walker County Property ID #13938, #13939, and #13941 from Management to Planned Development and to consider approval of the Concept Plan for the Planned Development.**

Armon Irones, City Planner

Armon Irones provided background on the Planned Development (PD) Zoning District that can only be established through a development district map amendment. There is a three-step process to get this achieved. We are currently in step one. There are five components of the approval criteria process in step one. If the second reading passes with the zone change and the Concept Plan, then step two will be the Development Plan. The Development Plan will be more detailed with a process to follow to complete step two. After the approval process is completed with step two then it will move to step three. Step three will be the final site plan.

Citizen comments were heard in opposition from Tomalea Bench.

Councilmember Bert Lyle made a motion to adopt Ordinance 2023-26 to change the Development District Classification of the approximate 86.56-acre tract of land adjacent to the 150 Block of FM 247 and also just east of American Legion Drive located on Walker County Property ID #13938, #13939, and #13941 from Management to Planned Development and approval of the Concept Plan for the Planned Development. The motion was seconded by Councilmember Vicki McKenzie. The motion passed 7-1.

Roll Call Vote

Yes: Vicki McKenzie, Tore Fossum, Russell Humphrey, Jon Strong, Anissa Antwine, Bert Lyle, Karen Denman

No: Pat Graham

3. CITY COUNCIL/MAYOR/CITY MANAGER

- a. **Consider directing staff to initiate the process of abandoning 17th Street between Bearkat Boulevard and Bobby K. Marks as requested by Sam Houston State University.**

Aron Kulhavy, City Manager

Councilmember Karen Denman made a motion to direct staff to initiate the process of abandoning 17th Street between Bearkat Boulevard and Bobby K. Marks as requested by Sam Houston State University. The motion was seconded by Councilmember Bert Lyle. The motion passed 8-0. Yes - Russell Humphrey, Karen Denman, Vicki McKenzie, Jon Strong, Bert Lyle, Anissa Antwine, Tore Fossum, Pat Graham; No – None.

- b. **Consider the appointment to the City of Huntsville Boards and Commissions.**
Russell Humphrey, Mayor

Councilmember Vicki McKenzie made a motion to appoint the Board and Commission members as presented. The motion was seconded by Councilmember Bert Lyle. The motion passed 8-0. Yes - Russell Humphrey, Karen Denman, Vicki McKenzie, Jon Strong, Bert Lyle, Anissa Antwine, Tore Fossum, Pat Graham; No – None.

BOARD NAME	SEAT #	APPOINT/ REAPPOINT	BOARD MEMBER	TERM EXPIRES
TIRZ				
	2	Reappoint	Ken Holland	12-31-2025
	4	Appoint	Todd Armstrong	12-31-2025
ARTS COMMISSION				
	2	Appoint	Mike Yawn	8-31-2025
HGAC				
	Designee	Appoint	Russell Humphrey	8-31-2025
FINANCE COMMITTEE				
		Appoint	Pat Graham	
	Chair	Appoint	Jon Strong	
		Appoint	Vicki McKenzie	
		Appoint	Karen Denman	
LIBRARY BOARD				
	3	Appoint	Andy Brauningner	8/31/2025

4. MEDIA INQUIRIES RELATED TO MATTERS ON THE AGENDA

None

5. ITEMS OF COMMUNITY INTEREST

Mayor and Council announced Items of Community Interest.

6. EXECUTIVE SESSION

a. City Council will convene in closed session as authorized by Texas Government Code, Chapter 551, Section 551.071 to receive legal advice on PUC Docket No. 54529, Petition by Walker County SUD filed with the Public Utility Commission of Texas.

Leonard Schneider, City Attorney

b. City Council will convene in closed session as authorized by Texas Government Code, Chapter 551, Section 551.071 to receive legal advice on Cause No. 2230703, City of Huntsville vs. Architects Design Group/ADG, Inc. in the 278th District Court, Walker County, Texas.

Leonard Schneider, City Attorney

City Council convened in closed session at 6:26 p.m.

7. RECONVENE

City Council reconvened from Executive Session into Open Session at 7:00 p.m.

Councilmember Vicki McKenzie made a motion to approve the settlement terms between the City and Walker County SUD. The motion was seconded by Councilmember Bert Lyle. The motion passed 8-0. Yes - Russell Humphrey, Karen Denman, Vicki McKenzie, Jon Strong, Bert Lyle, Anissa Antwine, Tore Fossum, Pat Graham; No – None.

ADJOURNMENT

Mayor Humphrey adjourned the meeting without objection at 7:00 p.m.

ATTEST:

CITY OF HUNTSVILLE

Kristy Doll, City Secretary

Russell Humphrey, Mayor



CITY COUNCIL AGENDA

2/6/2024

Agenda Item Number: 1.b.

Agenda Item: Consider approving the Minutes from the January 23, 2024, Special City Council Meeting.

Initiating Department/Presenter: City Secretary

Presenter:

Kristy Doll, City Secretary

Recommended Motion: Motion to approve the Minutes from the January 23, 2024, Special City Council Meeting.

Strategic Initiative:

Discussion:

Previous Council Action:

Financial Implications:

Approvals:

Kristy Doll

Associated Information:

1. Minutes City Council Special Meeting 1-23-2024

MINUTES FROM THE HUNTSVILLE CITY COUNCIL SPECIAL MEETING HELD ON THE 23RD DAY OF JANUARY 2024, AT THE HUNTSVILLE PUBLIC LIBRARY, LOCATED AT 1219 13th STREET, IN THE CITY OF HUNTSVILLE, COUNTY OF WALKER, TEXAS, AT 6:00 P.M.

The Council met in a special session with the following:

COUNCILMEMBERS PRESENT: Mayor Humphrey, Councilmember At-Large Position 1 Lyle, Councilmember Ward 1 Fossum, Councilmember At-Large Position 2 Denman, Councilmember Ward 2 Cox, Councilmember Ward 3 Antwine, Councilmember At-Large Position 4 Graham, Councilmember Ward 4 Strong.

COUNCILMEMBERS ABSENT: Mayor Pro Tem McKenzie

OFFICERS PRESENT: Aron Kulhavy, City Manager; Kristy Doll, City Secretary; Leonard Schneider, City Attorney

MAIN SESSION (6:00 p.m.)

CALL TO ORDER (6:00 p.m.)

Mayor Humphrey called the meeting to order at 6:01 p.m.

INVOCATION AND PLEDGES - *U.S. Flag and Texas Flag:* *Honor the Texas Flag. I pledge allegiance to thee, Texas, one state, under God, one, and indivisible.*

Mayor Humphrey gave the invocation and led the pledges.

PROCLAMATION

- a. Proclamation No. 2024-01: Crime Stoppers Month.
Russell Humphrey, Mayor

PRESENTATION

- a. Recognize Jessica Lacy for her work at the Sam Houston Statue Visitor's Center.
Russell Humphrey, Mayor

1. CONSENT AGENDA

The presiding officer will call for public comments before action is taken on these items. (Approval of Consent Agenda authorizes the City Manager to implement each item in accordance with staff recommendations. An item may be removed from the Consent Agenda and added to the Statutory Agenda for full discussion by request of a member of Council.)

- a. Consider approving the Minutes from the December 19, 2023, Regular City Council Meeting.
Kristy Doll, City Secretary
- b. Consider ratifying the award of a contract for the emergency purchase of new

pumping equipment and installation at Water Well 19 located at 3391 Autumn Road.

Brent Sherrod, Public Works Director

c. Consider approval of a purchase order for outfitting police patrol vehicles

Wade Roberts, Sergeant

Darryle Slaven, Police Chief

Councilmember Jon Strong made a motion to approve the Consent Agenda, items a through c. The motion was seconded by Councilmember Bert Lyle. The motion passed 8-0. Yes - Russell Humphrey, Karen Denman, Bert Lyle, Jon Strong, Anissa Antwine, Tore Fossum, Pat Graham, Casey Cox; No – None.

2. STATUTORY AGENDA

3. CITY COUNCIL/MAYOR/CITY MANAGER

a. Consider the appointments to the City of Huntsville Boards and Commissions for vacant board positions.

Russell Humphrey, Mayor

Councilmember Bert Lyle made a motion to appoint Board and Commission members as presented. The motion was seconded by Councilmember Pat Graham. The motion passed 8-0. Yes - Russell Humphrey, Karen Denman, Bert Lyle, Jon Strong, Anissa Antwine, Tore Fossum, Pat Graham, Casey Cox; No – None

BOARD NAME	SEAT #	APPOINT/ REAPPOINT	BOARD MEMBER	TERM EXPIRES
AIRPORT ADVISORY BOARD				
	6	Appoint	Jon Strong	08-31-2024
TIRZ				
	Chair	Appoint	Ken Holland	

4. MEDIA INQUIRIES RELATED TO MATTERS ON THE AGENDA

None

5. ITEMS OF COMMUNITY INTEREST

Mayor and Council announced Items of Community Interest.

6. EXECUTIVE SESSION

a. City Council will convene in closed session as authorized by Texas Government Code, Chapter 551, Section 551.071 to receive legal advice on the petitions for condemnation in Cause No. 2230554: City of Huntsville, Texas v. Jerry Ellisor and Byron Ellisor; In the 12th District Court of Walker County, Texas; and Cause No. 2230555: City of Huntsville, Texas v. Edwin Thomason, et al; In the 278th District Court of Walker County, Texas.

Leonard Schneider, City Attorney

- b. **City Council will convene in closed session as authorized by Texas Government Code, Chapter 551, Section 551.071 to receive legal advice on Cause No. 2230703, City of Huntsville vs. Architects Design Group/ADG, Inc. in the 278th District Court, Walker County, Texas.**
Leonard Schneider, City Attorney

City Council convened in closed session at 6:19 p.m.

7. RECONVENE

City Council reconvened from Executive Session into Open Session at 7:55 p.m.

Councilmember Karen Denman made a motion to approve the settlement with Jerry Ellisor and Byron Ellisor for the condemnation. The motion was seconded by Councilmember Bert Lyle. The motion passed 8-0. Yes - Russell Humphrey, Karen Denman, Bert Lyle, Jon Strong, Anissa Antwine, Tore Fossum, Pat Graham, Casey Cox; No – None.

Councilmember Karen Denman made a motion to authorize staff to settle the Edwin and Sandy Thomason condemnation case. The motion was seconded by Councilmember Bert Lyle. The motion passed 8-0. Yes - Russell Humphrey, Karen Denman, Bert Lyle, Jon Strong, Anissa Antwine, Tore Fossum, Pat Graham, Casey Cox; No – None.

ADJOURNMENT

Mayor Humphrey adjourned the meeting without objection at 7:56 p.m.

ATTEST:

CITY OF HUNTSVILLE

Kristy Doll, City Secretary

Russell Humphrey, Mayor



CITY COUNCIL AGENDA

2/6/2024

Agenda Item Number: 1.c.

Agenda Item: Consider authorizing the City Manager to enter into a five-year agreement with Sky Wonder Pyrotechnics for the fireworks display at the 4th of July Celebration.

Initiating Department/Presenter: Parks and Leisure

Presenter:

Penny Joiner, Director of Parks and Leisure

Recommended Motion: Move to authorize the City Manager to enter into a five-year agreement with Sky Wonder Pyrotechnics for the fireworks display at the 4th of July Celebration.

Strategic Initiative: Goal #1, City Appearance - Provide policies, amenities, and events that enhance the City's already beautiful and historic natural environment.

Discussion: The City of Huntsville Parks and Leisure Department puts on an annual 4th of July celebration at Kate Barr Ross Park. The program takes place from 4:00 PM to 8:00 PM with fun activities for family members to enjoy. At 8:00 PM, the program wraps up, and patrons find their favorite spot in the park to watch the fireworks display that takes place at 9:15 PM. The fireworks display lasts approximately 20 minutes.

The City went out for bid on the fireworks display and received one response from Sky Wonder Pyrotechnics. The City has used this company for our 4th of July Fireworks display over the last five years.

The contract total is \$160,000 and will end in 2028.

Previous Council Action: City Council adopted the FY 23-24 budget which included \$30,000 for the annual fireworks display. Also, the City Council previously approved a two-year agreement with Sky Wonder Pyrotechnics in 2021 for FY 21-22 and FY 22-23.

Financial Implications: FY 23-24: \$30,000

FY 24-25: \$31,000

FY 25-26: \$32,000

FY 26-27: \$33,000

FY 27-28: \$34,000

Approvals:

Penny Joiner

Leonard Schneider

Aron Kulhavy

Kristy Doll

Associated Information:

1. Bid Tab - NO. 24-10 Aerial Fireworks Display
2. Sky Wonder Proposal 2024

Bid Tabulation

Project Name: NO. 24-10 Aerial Fireworks Display

Location: 1212 Avenue M Huntsville, TX 77340

Date: December 6, 2023 Time: 2:30 PM



Sky Wonder	
Description	Total Bid Amount
Aerial Fireworks Display July 4, 2024	\$ 30,000.00
Aerial Fireworks Display July 4, 2025	\$ 31,000.00
Aerial Fireworks Display July 4, 2026	\$ 32,000.00
Aerial Fireworks Display July 4, 2027	\$ 33,000.00
Aerial Fireworks Display July 4, 2028	\$34,000
Grand Total (2024, 2025, 2026, 2027 and 2028)	\$ 160,000.00
Should you have any videos of your work, please provide a link here:	



SKY WONDER
PYROTECHNICS

City of Hunstville

Fireworks Proposal

For July 4th, 2024

Table of Contents

A. Business Organization.....	Page 3
B. System Concept and Solution.....	Page 3
C. Program.....	Page 3
D. Firing System.....	Page 4
E. Authorized Negotiator.....	Page 4
F. Reference Clients.....	Page 5
G. Other Services Offered.....	Page 5
H. Attachments and Addendum.....	Page 5

A. Business Organization:

Sky Wonder Pyrotechnics (SWP)
3626 CR 203
Liverpool, TX 77577
Office: 281 393-2500

Points of Contact:

Aaron Hoot 979 997-6456
Email: aaron.hoot@skywonderpyro.com

Tammy Zientek 281 393-2500
Email: tammy.zientek@skywonderpyro.com

SWP is an LLC company incorporated in the state of Texas and holds the following license from:

Texas Department of Insurance State Fire Marshal's Office

- Distributor's License # FWD-202113

US Department of Justice Bureau of ATF

- License # 5-TX-039-51-8L-01851

SWP has been in business for 68 years with the acquisition of Alpha Lee Enterprises in 2015, which spans back to 1952. SWP has 6 full-time and 64 part-time employees.

B. System Concept and Solution:

SWP's understanding of said "Scope of Work" is as follows: to provide a high-quality display with creativity and variety at said one location for the maximum enjoyment for the spectators of The City of Huntsville. The total proposed contract price is \$30,000.00. The proposed contract price is turn-key and includes all product, permit fees, stand-by fees, all necessary equipment, operator labor, and insurance requirements.

C. Program:

Below is a technical plan outlining the process from arrival to launching and clean-up for the proposed show. The outline defines various activities and check points along the way to ensure quality but foremost safety for our operators and the spectators:

- Once product arrives on site, the operator will verify inventory of product matches packing list defined from SWP home office. This will consist of proper pyro count by sizes and the required "e-match" count needed to launch the product.
- Racks and pods will be positioned and orientated based on the approved site plan locations.

- The operator will start to direct the crew to carry out the following tasks:
 - Loading the product into the racks and pods
 - Lay out of the firing modules at each location
 - Electronic matching of the product
 - Put in place clean-up activities to keep the area clean
 - Monitor these activities from a safety perspective
- Based on the scope of work, the operator will then start to arrange the wired-up product to the firing modules to define the different phases of the show, opening, main, and finale.
- Once the operator is satisfied the show is arranged and ready to go, there are several tests that will be carried out to ensure the safety and quality of the show are ready:
 - Product is safely loaded into launching tubes
 - All wiring will be tested for proper connections
 - Battery tested to ensure power supply is good
 - Fire extinguishers in place for safety
 - All crew is ready and on stand-by for monitoring
- After the show, only the operator will be allowed around the firing site to check for un-launched product and will remove, as necessary.
- Break-down and clean-up will commence after conclusion of the show
- Notes:
 - Each listed step above is considered a very high technical factor and is treated with extreme caution when dealing with pyrotechnics.
 - SWP follows all applicable rules and regulations of federal, state and local governing entities (AHJ, authority having jurisdiction).

D. Firing System:

SWP will be utilizing a Cobra Wireless Firing System for every shell being fired. The show will be scripted so that the operator pushes one button to start the.

E. Authorized Negotiator:

Aaron Hoot (President) has full authority to negotiate contract terms and render binding decisions on contract matters:

Aaron Hoot
 3626 CR 203
 Liverpool, TX 77577
 979-997-6456
aaron.hoot@skywonderpyro.com

F. Reference Clients:

City of Sugarland
City of Lake Jackson
City of Port Lavaca
City of West Columbia
City of Brazoria
City of Galveston
City of League City
City of Texas City
City of Beaumont
City of Mont Belvieu
City of Port Arthur
City of Orange
City of Brownsville
City of Fredericksburg
City of Huntsville
City of Stafford
City of Pecan Grove
City of Pflugerville
City of Victoria
City of Madisonville
City of Wharton
City of Port Neche
Texas A&M University

USAA
Fort Sam
Moody Gardens
Mardi Gras – Beaumont
Hyatt Lost Pines Resort
Houston Yacht Club
Austin Symphony
Bentwater Yacht Club
Lakeside Country Club
Royal Oaks Houston
Royal Oaks Dallas
Miller Theatre
Pirates Beach
Sienna Plantation
Sonterra County Club
Veranda
Walden Community
Willow Brook Country Club
Austin County Club
St. Edwards University
Rice University
University of Texas

SWP will provide any requested contact information regarding the clients referenced above. SWP will provide additional references as required.

G. Other Services Offered:

Simulcast Broadcasting App – Included in proposal for up to 30,000 users (additional \$1,000 for up to 50,000 users, and \$3,500 for up to 500,000 users)

H. Attachments and Addendum:

Attachment A – Shell Breakdown

11.28.2023

Shell Breakdown

To: City of Hunstville

20-22 Min. Show July 4th: \$30,000.00

Body of Show

144 – 3" Flights of Two Assorted Shells

180 – 4" Flights of Two Assorted Shells

108 – 5" Assorted Shells

54 – 6" Assorted Shells

10 – 100 2.5" Shot Fan Cakes (1000 shots)

FINALE WILL CONSIST OF

240 – 3" Assorted Shells

108 – 4" Assorted Shells

54 – 5" Assorted Golden Palms and Golden Kamuro

18 – 6" Assorted Golden Palms and Golden Kamuro

Sky Wonder Pyrotechnics, LLC

Tel 281-393-2500

3626 CR 203 Liverpool, TX
77577

www.skywonderpyro.com
sales@skywonderpyro.com





CITY COUNCIL AGENDA

2/6/2024

Agenda Item Number: 1.d.

Agenda Item: Consider Resolution 2024-3 authorizing the City Manager to apply for and accept, if awarded, funding under the General Victim Assistance Direct Services Program to support the Victim Services Coordinator.

Initiating Department/Presenter: Finance

Presenter:

Ashley Brown, Grants Manager

Recommended Motion: Move to adopt Resolution 2024-3 authorizing the City Manager to apply for and accept, if awarded, funding under the General Victim Assistance Direct Services Program in the amount of \$97,783.00 (\$78,226.40 federal grant share, \$19,556.60 city match share) to support the Victim Services Coordinator.

Strategic Initiative: Goal #7 - Public Safety - Provide safety and security for all citizens.

Discussion: The City has had a Victim Service Coordinator since November 2011 through grant funding from the Criminal Justice Department (CJD) of the Governor's Office and Houston-Galveston Area Council (H-GAC); we are now in our 13th year of funding.

On February 7, 2023, Council approved the continuation of the grant through Resolution 2023-2 applying for \$108,182.50 (\$86,546.00 in grant funds with \$21,636.50 in cash match). The FY 2024 grant was awarded under Contract Number 2463210 and the performance cycle of that grant will end on September 30, 2024. Continuation of the same grant program will require a new application to the Governor's Office with a new budget to be applied for the FY 2025 performance period, with an effective start date of October 1, 2024. The continuation contract number to be assigned from the Governor's Office under this program is 2463211.

The Victim Services Coordinator offers crisis intervention, referrals to community agencies for counseling for sexual assault and domestic violence, assistance in completing safety plans for domestic violence situations, assistance in filing for restitution and relocations for victims, provides support and advocacy for hospital visits, and assists victims in registering for notifications.

The Victim Services Coordinator program is in need of \$97,783.00 (\$78,226.40 federal grant share, \$19,556.60 city match share) in order to operate for the FY 2024-2025 performance term. The grant funding provided in this award will pay for 80% of the salary and benefits for the Victim's Service Coordinator along with office supplies, travel and training, equipment, program and victim service goods, and the monthly fees associated with telecommunication and internet service equipment.

All expenditures budgeted for this position are budgeted in the General Fund, and unreimbursed expenditures (cash match) are paid from other General Fund Revenues.

Previous Council Action: Council approved the current year's grant under Contract #2463210, referencing Resolution 2023-2 on February 7, 2023. Continuation of this grant with a new performance budget under Contract #2463211 is a new action.

Financial Implications: If the grant is awarded, Staff will bring a Budget Amendment to Council for approval at the appropriate time.

Approvals:

Aron Kulhavy

Kristy Doll

Associated Information:

1. FY25 Victim Svcs Resolution 2024-3

RESOLUTION NO. 2024-3

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HUNTSVILLE, TEXAS, AUTHORIZING THE SUBMISSION OF THE APPLICATION FOR THE FY 2025 GENERAL VICTIM ASSISTANCE GRANT PROGRAM TO THE TEXAS CRIMINAL JUSTICE DIVISION OF THE GOVERNOR’S OFFICE FOR A VICTIM SERVICES COORDINATOR AND DIRECT SERVICES; AND AUTHORIZING THE CITY MANAGER TO ACT AS THE CITY’S EXECUTIVE OFFICER AND AUTHORIZED REPRESENTATIVE IN ALL MATTERS PERTAINING TO THE CITY’S PARTICIPATION IN THE GRANT PROGRAM.

WHEREAS The City desires to ensure the safety of all its citizens and; the City of Huntsville requires the Huntsville Police Department be charged with this task; and

WHEREAS It is necessary and in the best interest of the City to apply for funding under the FY 2025 General Victim Assistance Grant Program.

NOW, THEREFORE, be it resolved by the City Council of the City of Huntsville, Texas, that:

SECTION 1: A General Victim Assistance Grant Program application is hereby authorized to be filed on behalf of the City and be placed in competition for funding to the Texas Office of the Governor, Public Safety Office, Criminal Justice Division.

SECTION 2: The application will be for \$97,783.00, of which \$78,226.40 will be in grant funds, to provide salary, benefits, supplies and training for a Victim Services Coordinator and the City agrees to provide matching funds of \$19,556.60.

SECTION 3: The Mayor and City Council strongly support this application to address the safety and well-being needs of the Community.

SECTION 4: The City agrees that in the event of loss or misuse of the Criminal Justice Division funds, the City assures that the funds will be returned to the Criminal Justice Division in full.

SECTION 5: The City Council directs and designates the City Manager as the City’s Chief Executive Officer and Authorized Representative to act in all matters in connection with this application and the City’s participation in the FY 2025 General Victim Assistance Program.

PASSED AND APPROVED this 6th day of February, 2024.

THE CITY OF HUNTSVILLE

Russell Humphrey, Mayor

ATTEST:

APPROVED AS TO FORM:

Kristy Doll, City Secretary

Leonard Schneider, City Attorney



CITY COUNCIL AGENDA

2/6/2024

Agenda Item Number: 1.e.

Agenda Item: Consider Resolution 2024-4 authorizing the City Manager to apply for and accept, if awarded, funding under the FY25 Criminal Justice Program to continue digital evidence management.

Initiating Department/Presenter: Finance

Presenter:

Ashley Brown, Grants Manager

Recommended Motion: Move to adopt Resolution 2024-4 authorizing the City Manager to apply for and accept, if awarded, funding under the FY25 Criminal Justice Program in the amount of \$42,840.00 (\$42,840.00 federal grant share, \$0.00 city match share) to continue digital evidence management.

Strategic Initiative: Goal #7 - Public Safety - Provide safety and security for all citizens.

Discussion: To aid in meeting the technological goals to secure investigative evidence data and information, the Huntsville Police Department would like to submit a grant application to the Governor's Office under the FY25 Criminal Justice Program in the amount of \$42,840.00 to fund the continuation of migration of evidence records to a secure cloud-based digital evidence management system.

Over time, the amount of network storage used for active case files has steadily increased by almost 150% each year, from 80 gigabytes (GB) in 2017 to 550 gigabytes (GB) as of January 2022. The storage of case information and evidence has been saved to DVDs preserved by the Department. The amount of archived information preserved to DVDs have increased from 1,000 DVD discs in 2016 to over 15,000 discs as of 2021. Archived storage capacity has exceeded 23.5 Terabytes (or 23,500 Gigabytes), with each disc saved at storage capacity. With car and body camera footage, the evidence expires after 120 days. The footage storage amounts to preserve visual evidence is currently beyond 4 terabytes (TB) cumulatively. During the FY23 grant cycle the Huntsville Police Department entered into an agreement with Axon Enterprise to utilize a cloud based digital evidence management system with approximately 30 terabytes (TB) of storage capacity to accommodate current and future file storage needs and requirements. The cloud based storage program also allows evidence technicians to monitor and manage destruction of evidence after cases have been disposed and retention periods met.

Sharing evidence is currently a lengthy, time-inefficient process. If the evidence is already on DVD, the officer must go and check out the DVD, put it into a replicator to create a copy, test it to confirm content, then physically deliver to the District Attorney's office. The software we are looking to purchase would allow officers to share the case with the District Attorney's Office and other agencies all from within the platform.

Migration and use of this system will increase and enhance the time management processes of officers archiving and retrieving evidence, while also expanding the technological capabilities of the Department to share information and data with other participating law enforcement agencies which can only be

accessed externally through a CJIS compliant encrypted, secure, and direct link.

The project performance period for an equipment continuation purchase is to be awarded for 12-month grant performance period beginning on October 1, 2024. There are no matching funds required of this grant.

Previous Council Action: Council approved the current year's grant under Contract #4484102, referencing Resolution 2023-3 on February 7, 2023. Continuation of this grant with a new performance budget under Contract #4484103 is a new action.

Financial Implications: If the grant is awarded, Staff will bring a Budget Amendment to Council for approval at the appropriate time.

Approvals:

Aron Kulhavy

Kristy Doll

Associated Information:

1. FY25 CJD Resolution 2024-4

RESOLUTION NO. 2024-4

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HUNTSVILLE, TEXAS, AUTHORIZING THE SUBMISSION OF THE APPLICATION FOR THE FY 2025 CRIMINAL JUSTICE GRANT PROGRAM FOR A CLOUD BASED DIGITAL EVIDENCE MANAGEMENT SYSTEM; AND AUTHORIZING THE CITY MANAGER TO ACT AS THE CITY'S EXECUTIVE OFFICER AND AUTHORIZED REPRESENTATIVE IN ALL MATTERS PERTAINING TO THE CITY'S PARTICIPATION IN THE GRANT PROGRAM.

WHEREAS The City desires to ensure the safety of all its citizens and; the City of Huntsville requires the Huntsville Police Department be charged with this task; and

WHEREAS It is necessary and in the best interest of the City to apply for funding under the FY 2025 Criminal Justice Grant Program.

NOW, THEREFORE, be it resolved by the City Council of the City of Huntsville, Texas, that:

SECTION 1: A Criminal Justice Grant Program application is hereby authorized to be filed on behalf of the City and be placed in competition for funding to the Texas Office of the Governor, Public Safety Office, Criminal Justice Division.

SECTION 2: The application will be for \$42,840.00 to continue the Huntsville Police Department's use of a cloud-based digital evidence management system.

SECTION 3: The Mayor and City Council strongly support this application to address the safety needs of the Community.

SECTION 4: The City agrees that in the event of loss or misuse of the Criminal Justice Division funds, the City assures that the funds will be returned to the Criminal Justice Division in full.

SECTION 5: The City Council directs and designates the City Manager as the City's Chief Executive Officer and Authorized Representative to act in all matters in connection with this application and the City's participation in the FY 2025 Criminal Justice Grant Program.

PASSED AND APPROVED this 6th day of February 2024.

THE CITY OF HUNTSVILLE

Russell Humphrey, Mayor

ATTEST:

APPROVED AS TO FORM:

Kristy Doll, City Secretary

Leonard Schneider, City Attorney



CITY COUNCIL AGENDA

2/6/2024

Agenda Item Number: 1.f.

Agenda Item: Consider Resolution 2024-5 authorizing the City Manager to apply for and accept, if awarded, funding under the FY24 State Homeland Security Program (SHSP) - LETPA Projects to purchase Flock Safety LPRs.

Initiating Department/Presenter: Finance

Presenter:

Ashley Brown, Grants Manager

Recommended Motion: Move to adopt Resolution 2024-5 authorizing the City Manager to apply for and accept, if awarded, funding under the FY24 State Homeland Security Program (SHSP) - LETPA Projects in the amount of \$50,000.00 (\$50,000.00 federal grant share, \$0.00 city match share) to purchase Flock Safety LPRs for two years via subscription.

Strategic Initiative: Goal #7 - Public Safety - Provide safety and security for all citizens.

Discussion: The City population continues to grow and the need for Huntsville Police Department to patrol and maintain a higher level of safety within the community becomes ever greater.

To aid the Huntsville Police Department in achieving this objective, the Department would like to submit a grant application to the Office of the Governor requesting funding to purchase Flock Safety License Plate Readers for two years via subscription. This advanced technological equipment can be used to deter crime and respond to potential terroristic activity threats with an efficiency which will save investigators and analysts a significant and critical amount of time on important cases/investigations.

Purchase of the equipment via subscription will be completed during the first 12 months of funding with a renewal for an additional 12 months one year into the grant, and all funds are anticipated to be spent, and the grant will be closed by September 30, 2026.

The project performance period for an equipment purchase via subscription is to be awarded for a 24-month grant period. There are no matching funds required for this grant.

Previous Council Action: No previous action has been taken.

Financial Implications: If the grant is awarded, Staff will bring a Budget Amendment to Council for approval at the appropriate time.

Approvals:

Steve Ritter

Aron Kulhavy
Kristy Doll

Associated Information:

1. FY24 SHSP Resolution 2024-5

RESOLUTION NO. 2024-5

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HUNTSVILLE, TEXAS, AUTHORIZING THE SUBMISSION OF THE APPLICATION FOR THE 2024 STATE HOMELAND SECURITY PROGRAM (SHSP) – LETPA PROJECTS FOR FLOCK SAFETY LICENSE PLATE READERS; AND AUTHORIZING THE CITY MANAGER TO ACT AS THE CITY’S EXECUTIVE OFFICER AND AUTHORIZED REPRESENTATIVE IN ALL MATTERS PERTAINING TO THE CITY’S PARTICIPATION IN THE GRANT PROGRAM.

WHEREAS The City desires to ensure the safety of all its citizens and; the City of Huntsville requires the Huntsville Police Department be charged with this task; and

WHEREAS It is necessary and in the best interest of the City to apply for funding under the 2024 State Homeland Security – LETPA Projects Program.

NOW, THEREFORE, be it resolved by the City Council of the City of Huntsville, Texas, that:

SECTION 1: A State Homeland Security Program application is hereby authorized to be filed on behalf of the City and be placed in competition for funding to the Texas Office of the Governor, Public Safety Office.

SECTION 2: The application will be for \$50,000.00 to furnish the Huntsville Police Department with Flock Safety License Plate Readers for 24 months.

SECTION 3: The Mayor and City Council strongly support this application to address the information security needs of the Department and the safety needs of the Community.

SECTION 4: The City agrees that in the event of loss or misuse of the Criminal Justice Division funds, the City assures that the funds will be returned to the Criminal Justice Division in full.

SECTION 5: The City Council directs and designates the City Manager as the City’s Chief Executive Officer and Authorized Representative to act in all matters in connection with this application and the City’s participation in the 2024 State Homeland Security – LETPA Projects Program.

PASSED AND APPROVED this 6th day of February 2024.

THE CITY OF HUNTSVILLE

Russell Humphrey, Mayor

ATTEST:

APPROVED AS TO FORM:

Kristy Doll, City Secretary

Leonard Schneider, City Attorney



CITY COUNCIL AGENDA

2/6/2024

Agenda Item Number: 1.g.

Agenda Item: Consider authorizing the City Manager to award a contract for the installation of two 30" Line Stops and one 30" Gate valve at Palm Street Water Plant.

Initiating Department/Presenter: Public Works

Presenter:

Brent Sherrod, Public Works Director

Recommended Motion: Move to authorize the City Manager to award a contract to Branch Construction Company for the installation of two 30" Line Stops and one 30" Gate valve at Palm Street Water Plant for the amount of \$265,000.00.

Strategic Initiative: Goal #4, Infrastructure - Ensure the quality of the City utilities, transportation and physical structures so that the City's core services can be provided in an effective and efficient manner.

Discussion: The City of Huntsville budgeted in the FY 23-24 decision package to have two 30" Line Stops and one 30" Gate valve installed on the 30" Water Main coming into Palm Street Water Plant at 596 Palm Street. This will allow City staff the ability to isolate the 3 million gallon ground storage tank for maintenance and repairs in the future. City staff utilized sealed bid proposals to achieve optimal results at a competitive price. Multiple vendors were invited to bid, along with the invitation to bid being advertised as required. Three (3) bids were received and opened on January 2, 2024. The low bidder, Brazos Valley L4, LLC submitted a bid of \$200,000. Due to Brazos Valley L4, LLC not having any references stating they have done the type of work we require, City staff recommends award to the next lowest bidder, Branch Construction Group. Based on the positive feedback that was received as well as exact experience with prior projects, we recommend approving Branch Construction Group to provide the necessary equipment, as outlined within the bid, for the quoted price of \$265,000.00. City staff had budgeted \$400,000.00 for this project.

Previous Council Action: No previous Council action.

Financial Implications: Item is budgeted: 220-361-55070 In the amount of \$400,000.00.

Approvals:

Brent Sherrod

Leonard Schneider

Aron Kulhavy

Kristy Doll

Associated Information:

1. Bid NO 24-02 Bid Tab & Bids

4-A Bid Tabulation / Abstract

Bid Tabulation

Project Name: NO. 24-02 Palm Street Water Plant Line Stop and Gate Valve Installation

Location: 1212 Avenue M Huntsville, TX 77340

Date: January 9, 2024 Time: 2:00 PM



	Respondent	Lump Sum Amount		Calander Days for Submittals	Calander Days to Mobilize	Calander Days to Complete
1	Branch Construcction Group	\$265,000.00	<u>10</u> % at Milestone 1	10	4	76
			<u>80</u> % at Milestone 2			
			<u>10</u> % at Milestone 3			
2	Brazos Valley L4 LLC	\$200,000.00	<u>10</u> % at Milestone 1	10	10	10
			<u>0</u> % at Milestone 2			
			<u>90%</u> at Milestone 3			
3	Rangeline Utility Services	\$305,751.00	<u>40</u> % at Milestone 1	14	30	30
			<u>30</u> % at Milestone 2			
			<u>30</u> % at Milestone 3			
4			_____ % at Milestone 1			
			_____ % at Milestone 2			
			_____ % at Milestone 3			
5			_____ % at Milestone 1			
			_____ % at Milestone 2			
			_____ % at Milestone 3			
6			_____ % at Milestone 1			
			_____ % at Milestone 2			
			_____ % at Milestone 3			
7			_____ % at Milestone 1			
			_____ % at Milestone 2			
			_____ % at Milestone 3			

Bid Tabulation

Project Name: NO. 24-02 Palm Street Water Plant Line Stop and Gate Valve Installation

Location: 1212 Avenue M Huntsville, TX 77340

Date: January 9, 2024 Time: 2:00 PM



	Respondent	Lump Sum Amount		Calander Days for Submittals	Calander Days to Mobilize	Calander Days to Complete
1	Branch Construction Group	\$265,000	10 % at Milestone 1 80 % at Milestone 2 10 % at Milestone 3	10	4	76
2	Brazos Valley L4 LLC	\$200,000	10 % at Milestone 1 90 % at Milestone 2 % at Milestone 3	10	10	(10)
3	Rangeline Utility Services	\$305,751	40 % at Milestone 1 30 % at Milestone 2 30 % at Milestone 3	14	30	30
4			% at Milestone 1 % at Milestone 2 % at Milestone 3			
5			% at Milestone 1 % at Milestone 2 % at Milestone 3			
6			% at Milestone 1 % at Milestone 2 % at Milestone 3			
7			% at Milestone 1 % at Milestone 2 % at Milestone 3			



CITY COUNCIL AGENDA

2/6/2024

Agenda Item Number: 1.h.

Agenda Item: Consider authorizing the City Manager to enter into an agreement to provide janitorial services for City of Huntsville facilities.

Initiating Department/Presenter: Parks and Leisure

Presenter:

Penny Joiner, Director of Parks and Leisure

Recommended Motion: Motion to authorize the City Manager to enter into an agreement with Metroclean to provide janitorial services for the City of Huntsville facilities.

Strategic Initiative: Goal #1, City Appearance - Provide policies, amenities, and events that enhance the City's already beautiful and historic natural environment.

Discussion: The city contracted with Metroclean on January 2, 2024, in an effort to increase the quality of janitorial services for city buildings, especially as new facilities are coming online. Metroclean is a member of Choice Partners National Purchasing Cooperative. Due to the co-op contract between Metroclean and Choice Partners expiring on February 25, the City of Huntsville will have to enter into a new agreement with the updated co-op contract number on February 26, 2024. We currently do not have the new Choice Partners National Purchasing Cooperative number at this time, but will have it with the new contract. This new contract with Metroclean will be active from February 26, 2024, to December 31, 2024.

Metroclean provides janitorial services for the following facilities: City Hall, City Service Center (two buildings, new and existing), Warehouse offices, Solid Waste Offices, the Wynne Home, Mainstreet Office, and the Sam Houston Statue/Visitor Center. It should be noted that the Police Station and Fire Station #2 are serviced in-house by a full-time staff member.

Previous Council Action: City Council adopted the recommended budget on September 19, 2023, which included funding for janitorial services.

Financial Implications: Total Contract Cost: \$226,250.00

- * Monthly Cleaning Service to include quarterly deep cleaning of each restroom facility: \$212,350.00
- * Additional Floor Services (Stripping, Waxing, Carpet Cleaning): \$5,000.00
- * Additional Funds for backup services for the Police Department and Fire Station #2 (in case the current team member takes leave): \$2,400.00
- * Consumables (paper products, soap, etc.): \$6,500.00

Approvals:

Penny Joiner
Leonard Schneider
Aron Kulhavy
Kristy Doll

Associated Information:

1. Metroclean Pricing 2.6.24
2. Scope of Work

January 10, 2024

Sam Masiel
City of Huntsville
Assistant City Manager

Dear Sam,

It's a pleasure to present Metroclean's capabilities to you. We are excited to provide our pricing based on a customized program that meets your specific needs.

You're choosing the right company when you select Metroclean as your preferred janitorial company. We take pride in keeping your building clean and attractive; thus making your tenants happy and you look good!

Metroclean offers something different — the experience and planning to help save you money while still providing uncompromising, exceptional service. That's a claim we're proud to make! "We're listening to serve you better."



DOCUMENTING REQUESTS ONLINE WITH CleanTelligent

Instantly notify our management team of any issues or requests. CleanTelligent, Metroclean's proprietary and free Web-based work-order system, is perfect for property and facility managers who want immediate attention and a fast response.



THE BEST STATE-OF-THE-ART EQUIPMENT

Metroclean uses only the most advanced, state-of-the-art equipment, including the Kaivac touch-free system that cleans restrooms 60 times better than mopping alone! Because Metroclean cleans for health, we're happy to show our dedication by providing this service to our partners wherever applicable.



METROCLEAN JANITORIAL CERTIFICATION PROGRAM

Before coming to your building, all janitors are required to attend MJCP, Metroclean's Janitorial Certification Program — our hands-on initial program training program. Janitors learn theory and best practices for safety, equipment, chemicals and technique in a classroom setting.



CLEANING INDUSTRY MANAGEMENT STANDARD (CIMS) CERTIFIED

Criteria for CIMS certification is set by ISSA (International Sanitary Supply Association), the cleaning industry's leading trades association. By being CIMS-Green Building Certified with Honors, Metroclean has committed to the delivery of environmentally friendly services that are designed to meet your janitorial needs and expectations.

Thank you for considering our bid, we look forward to hearing from you soon.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Lorenzo Costantini'.

Lorenzo Costantini
Regional Vice President of Business Development
Metroclean



Monthly and Yearly rate for janitorial services for the City of Huntsville include the following:

1. Chemicals
2. Materials
3. Equipment (Kaivacs, Scrubbers and carpet spot extractors)
4. Equipment maintenance
5. Labor

Consumables are at Cost + 0%. Invoice back up from the provider will be attached to invoice.

Service from February 26th to February 29th \$ 3,762.17 plus tax.
Monthly fee for March 1st to December 31st \$ 20,378.42 plus tax.

Locations of Service:

1. Temp City Hall
2. Wynne Home
3. Sam Houston Visitor Center
4. Mainstreet Office
5. Old City Service Center
6. New City Service Center
7. Public Library
8. Waste Management

Back up services for Police Department and Fire Station #2:

Hourly Charge: \$29.76

Porter Service Requested:

If **Supervisor** requested - \$29.76 per hour
If **Cleaner** requested - \$25.79 per hour



Extra services: If flooring is put on a quarterly and semi-annual price can be provided when all floors are measured for accurate pricing.

Strip and Wax - 2,300 s.f. and below = Trip Charge of \$805
2,301 s.f. to 3,000 s.f. = \$.35 s.f.
>3,001 s.f. = \$.30 s.f.

Carpet Extraction 3,500 s.f. and below = Trip Charge of \$720
>3,600 = .20 s.f.

Quarterly All Restroom Kaivac Scrubbing and Disinfection = \$1,200 each Quarter

Sam Masiel
Assistant City Manager
City of Huntsville, Texas

Lorenzo Costantini
Regional Vice President - Business Development
9000 Southwest Freeway
Suite 412
Houston, TX 77074



City of Huntsville Scope of Work

	Daily	Weekly	Monthly	Quarterly	Semi
OFFICE AREAS					
• Empty and damp wipe all receptacles	✓				
• Remove all fingerprints and smudges from gleass	✓				
• Dust and Wipe clean surfaces	✓				
• Carpets - vacuumed	✓				
• Sweep and Damp mop floors	✓				
• Dust and surface clean window sills, fixtures and panels			✓		
RESTROOMS					
• Wash, clean and disinfect undersides of basins, urinals and bowls	✓				
• Disinfect all partitions, tile walls, dispensers and bins	✓				
• Clean mirrors	✓				
• Fill all consumables	✓				
• Clean and disinfect urinals, toilets and sinks	✓				
• Damp mop floors	✓				
• Clean inside of trash receptacles and sanitary receptacles			✓		
• Clean flush meters, piping, toilet seat hinges and other metal work			✓		
• Vacuum louvers and ventilating grills				✓	
Kaivac all common area restrooms per request - Extra Charge					
FLOORS					
• Vacuum all common area carpets	✓				
• Sweep and Damp mop all common area floors	✓				
PUBLIC AREAS					
• Empty and wipe all waste receptacles and ash trays	✓				
• Vacuum entrance mats	✓				
• Wipe clean vending machines		✓			
• Wipe clean all metal hardware and other bright work	✓				
• Get fingerprints and smudges off entrance door, frames and	✓				
• Sweep stairwells and wipe handrails		✓			
• Water Fountains - clean, polish and disinfect	✓				
• Cobwebs - removed		✓			
Common area carpets extracted per request - Extra Charge					
Exterior Windows squeegee per request - Extra Charge					
HIGH DUSTING					
• Dust and/or wash all directory boards	✓				
• Dust picture frames and wall hangings			✓		
• Dust air conditioning diffusers, wall grilles and other louvers			✓		
• Dust blinds				✓	



CITY COUNCIL AGENDA

2/6/2024

Agenda Item Number: 1.i.

Agenda Item: Consider authorizing the City Manager to enter into an agreement for professional engineering services for the FY23-24 CIP Dawson Lake Dam Project.

Initiating Department/Presenter: Engineering

Presenter:

Kathlie Jeng-Bulloch, City Engineer

Recommended Motion: Move to authorize the City Manager to enter into an agreement with Walter P. Moore and Associates, Inc. for professional engineering services for the FY23-24 CIP Dawson Lake Dam Project.

Strategic Initiative: Goal #4, Infrastructure - Ensure the quality of the City utilities, transportation and physical structures so that the City's core services can be provided in an effective and efficient manner.

Discussion: A letter from the Texas Commission of Environmental Quality (TCEQ) was received on November 2, 2022, indicating that during their safety inspection the Dawson Lake Dam (TX07086) was found in poor condition due to the following reasons: downstream slope too overgrown and too steep; lack of erosion protection on the embankment, gullies beneath the siphon pipe and spillways; and the siphon pipe was disconnected and not functional. The correct peak water elevation in the reservoir from the Hydrologic and Hydraulic analysis has not been submitted, which is required for this dam structure as per Title 30 of Texas Administrative Code (TAC) § 299.15. (See attached)

In January 2023, I responded to TCEQ concerning each individual point outlined in their previous letter (See attached), and shared with them the developed "Plan of Action" after receiving their letter.

The City Council has approved (in 2022) to apply for a CDBG-MIT grant (\$50,000), and approved the CIP FY23-24 for Preliminary Engineering for the Dawson Lake Dam Project.

The RFQ for the Dawson Lake Dam Project process was published and four (4) Bids (without dollars provided) were received and opened on January 3, 2024.

The Evaluation Committee consisted of five (5) staff members from three (3) departments. As a result of this process, the top ranked Engineering Company, Walter P. Moore and Associates, Inc. was selected.

The Evaluation Committee agreed that an interview process is not necessary, and recommended awarding this project to Walter P. Moore and Associates, Inc.

After negotiation, the total cost for this agreement is \$49,600.00. The Detail Tasks and the Scope & Fees are summarized in the attached "Walter P Moore Proposal 1 28 2024".

Previous Council Action: The City Council approved to apply for CDBG-MIT grant on December 20,

2022.

The City Council approved the FY 23-24 CIP including the Dawson Lake Dam for \$62,000.00.

Financial Implications: ☐Item is budgeted: In the amount of \$62,000,00.

Approvals:

Kathlie Jeng-Bulloch

Leonard Schneider

Aron Kulhavy

Kristy Doll

Associated Information:

1. Map - Location of Dawson Lake Dam
2. TX07086_CoverLtr
3. Kathlie letter to Trina Lancaster 1 27 2023
4. Walter P Moore Proposal 1 28 2024
5. Draft Eng Agrmnt-attested 1 29 2024



Dawson Lake Dam



Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Toby Baker, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

November 2, 2022

Dr. Kathlie Jeng-Bullock, PE, D.WRE, CFM., City Engineer
City of Huntsville
448 State Highway 75
Huntsville, Texas 77320

Mr. Brent S. Sherrod, PE, Public Works Director
City of Huntsville
448 State Highway 75
Huntsville, Texas 77320

Re: Dam Safety Inspection Report for Dawson Lake Dam (TX07086)
Walker County, Texas

Dear Dr. Jeng-Bullock and Mr. Hereford:

Members of the Texas Commission on Environmental Quality (TCEQ) Dam Safety program performed a safety inspection of the Dawson Lake Dam on Dawson Lake Dam, as part of the regular inspection schedule. A copy of the report is enclosed. The dam was found in poor condition during the inspection, because of the following reasons: the downstream slope was too overgrown and steep to safely inspect it for potential dam safety concerns including, but not limited to, slope instabilities or progressing seepage; and the downstream toe was inaccessible and could not be inspected for potential dam safety issues.

Additional items that need attention include: the lack of erosion protection on the embankment and spillways; erosion gullies beneath the siphon and on the upstream and downstream slopes; surface erosion was removing the soil that was supposed to support the siphon; the plunge pool for the siphon lacked erosion protection; and the float for the siphon pipe was disconnected and not functional.

An accepted Emergency Action Plan (EAP) is required. TCEQ records indicate that a draft was submitted on December 21, 2010. Comments from TCEQ were sent August 25, 2011, but revisions or a response were never received. This is required for this structure as per Title 30 of the Texas Administrative Code (TAC) §299.61. A draft Hydrologic and Hydraulic analysis was submitted on December 21, 2010. However, it based the design storm based on the peak discharge flowrate from the dam, instead of the peak water elevation reach in the reservoir. Therefore, an approved Hydrologic and Hydraulic study is not on file with TCEQ. This is required for this structure as per Title 30 of the TAC §299.15.

Dr. Jeng-Bulloch and Mr. Hereford
November 2, 2022
Page 2 of 2

Please review the attached report and provide our office a written plan of action for addressing each area of concern for the dam by January 31, 2023. Please also submit a plan of action that addresses an update on the anticipated completion date for the EAP, and a date for providing the needed H&H study (an electronic copy is acceptable) that bases its design storm on the peak water level in the reservoir with this letter's response. Please be aware that any engineering reports or plans regarding the dam should be reviewed and approved by TCEQ prior to construction. TCEQ appreciates your assistance in these areas. Your efforts will minimize the owner's liability by reducing the threat to life and property. The TCEQ appreciates the efforts that have been made to improve the safety of dams in Texas. If you have any questions or need assistance, please contact me at (512) 239-4283 or trina.lancaster@tceq.texas.gov.

Sincerely,



Trina Lancaster, PE
Engineer, Dam Safety Section
Critical Infrastructure Division, MC-177

Enclosure: Dam Safety Inspection Report for Dawson Lake Dam (TX07086)



CITY OF
Huntsville

Incorporated in 1845 under the Republic of Texas

January 27, 2023

Trina Lancaster, P.E.
Engineer, Dam Safety Section
Critical Infrastructure Division, MC-177
P.O. Box 13087
Austin, Texas 78711-3087

Re: Dam Safety Inspection Report for Dawson Lake Dam (TX07086), Walker County, Texas

Dear Ms. Lancaster:

I emailed you on Nov. 3rd, 2022, confirming receipt of your Inspection Report dated November 2, 2022, and to let you know that we are developing a plan of action to address each of the items detailed in your inspection report. We will inform you of our progress as we develop the Plan of Action.

We have met with our consulting engineers and have developed the following plan of action to date:

1. Consulting Engineers will review available data, perform field reconnaissance of the site to better understand the physical characteristics of the site and TCEQ concerns, view the downstream reach (hazard), and to determine possible alternatives.
2. Hire a firm to perform a bathymetric survey of the lake and combine that data with LiDAR data to estimate the current volume of the lake (whether the lake currently has 102 acre-feet of storage or something less).
3. Merge the bathymetric data with the latest LIDAR dataset to create a full “picture” of the lake, dam, and surrounding area terrain. Define the drainage area to the dam.
4. Perform a 2D breach analysis to determine whether all of the downstream residential structures at risk would be inundated during a design flood (75% PMF) breach. Identify potential at-risk structures from a dam failure downstream of the dam.
5. Retrofit/Repair the dam by performing an H&H analysis to determine required capacity, peak water elevation reach in the reservoir, and remedial actions such as: modify the spillways and top-of-dam elevation, install a new outlet and a low-level drain, remove excessive vegetation, lay back the downstream slope, etc.
6. Determine funding needed to implement the “Plan of Action” and begin to develop funding resource options.

Engineering Department

448 State Highway North - Huntsville, TX 77320-1118 - (936) 294-5794, Fax (936) 294-5795

Page 2

January 27, 2023

Re: Dam Safety Inspection Report for Dawson Lake Dam (TX07086), Walker County, Texas

The City Council has approved the staff to apply for a CDBG-MIT grant to perform: (1) Bathymetric Survey, (2) 2D Breach analysis, and (3) Hydrologic/Hydraulic Analysis in the total amount of \$50,000. We are presently waiting for the approval of this application.

We will periodically update you concerning the progress of this "Plan of Action". Please let me know if you have any questions.

Sincerely,



Dr. Kathlie S. Jeng-Bullock, P.E., D.WRE, CFM
City Engineer,
Director of Engineering Department

Cc: Aron Kulhavy, AICP, City Manager
Brent S. Sherrod, P.E., Public Works Director

Engineering Department

448 State Highway North - Huntsville, TX 77320-1118 - (936) 294-5794, Fax (936) 294-5795

January 28, 2024

Kathlie S. Jeng-Bulloch, P.E., BC, WRE, CFM
City Engineer
City of Huntsville
448 State Highway 75 North
Huntsville, TX 77320

RE: Dawson Lake Dam Rehabilitation No: 24-10-04
WPM PROPOSAL: 23-3488
Proposal for Professional Services

Dear Kathlie:

This letter and the attached Scope of Services serve as our proposal to provide professional services for the Dawson Lake Dam Rehabilitation as requested and as described in City of Huntsville RFQ #24-09. This proposal is subject to the Agreement between City and Engineer for Professional Services attached when approved and executed by the City of Huntsville (City). We anticipate that this proposal, the Attached Scope of Services, and the attached Agreement, when executed, will serve as our entire Agreement unless superseded by another document signed by both parties.

Project Description: It is our understanding that the project consists of serving as the City's professional consultant in the coordination efforts to address the dam safety inspection report findings by the Texas Commission on Environmental Quality including a simplified dam breach analysis, defining the extent of scope of a plan to rehabilitate/restore the dam, perform a bathymetric survey of the lake impounded by the dam, and coordination/response with TCEQ to address the concerns outlined in the inspection report. Our proposal is based on the project as described. If our understanding of the project scope is inaccurate or the project scope materially changes, we understand that our compensation will be equitably adjusted.

Scope of Services: As defined in the attached Schedule SC09 and this Agreement.

Compensation: Walter P Moore proposes to provide the defined Scope of Services on a Lump Sum Fee basis as follows:

TASK	SUBTOTAL	TASK TOTAL
Data Collection		\$ 19,000
Aqua Strategies	\$ 7,500	
Fugro	\$ 5,225	
Walter P Moore	\$ 6,275	
Data Processing and Recommendations		\$ 7,600
H&H and Breach Analysis		\$ 6,200
Documentation		\$ 11,100
Project Coordination		\$ 5,700
Total		\$ 49,600

Compensation shall be equitably adjusted for changes in the scope of the project as described in the Project Description or changes in the scope of service as described in the Scope of Service.

Project Schedule

Walter P Moore will endeavor to achieve the requirements of a reasonable schedule determined appropriate for the Project. Walter P Moore's fee for the defined Scope of Services is based, in part, upon the Project being executed in a timely manner without significant delays or interruptions.

Terms of Agreement

In accordance with the attached AGREEMENT.

Attachments:

The following attachments are incorporated by reference as if set forth at length:

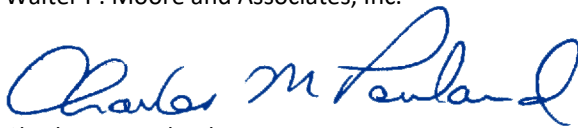
Engineering Agreement between the City of Huntsville and Walter P Moore
SC09 Scope of Water Resources Scope of Services

The following documents are acknowledged and those to be part of the final agreement will be provided when requested:

Non-Collusion Affidavit
Certificate of Interested Parties 1295
Texas Public Information Act Verification
Critical Infrastructure Verification
COH Insurance Guidelines & Requirements
Firearm Verification
Conflict of Interest Questionnaire
Prohibition on Contracts Discriminating Against Energy Companies
Israel Verification
Iran Sudan and Foreign Terrorist Organization Verification

Sincerely,

Walter P. Moore and Associates, Inc.



Charles M. Penland, P.E.
Managing Principal

Enclosure

DRAFT

AGREEMENT BETWEEN CITY AND ENGINEER FOR PROFESSIONAL SERVICES

THIS AGREEMENT made and entered into by and between CITY OF HUNTSVILLE, hereinafter called the OWNER, and WALTER P. MOORE AND ASSOCIATES, INC., hereinafter called ENGINEER, WITNESSETH that whereas the OWNER intends to construct DAWSON LAKE DAM REHABILITATION, PROJECT 24-10-04, hereinafter called the PROJECT. The effective date of this agreement is _____.

NOW, THEREFORE, the OWNER and ENGINEER for the considerations hereinafter set forth, agree as follows:

SECTION 1- RESPONSIBILITY OF THE ENGINEER

The ENGINEER shall serve as the OWNER's professional consultant in the coordination efforts to address the dam safety inspection report findings by the Texas Commission on Environmental Quality including a simplified dam breach analysis, defining the extent of scope of a plan to rehabilitate/restore the dam, perform a bathymetric survey of the lake impounded by the dam, and coordination/response with TCEQ to address the concerns outlined in the inspection report, being the initial work of the PROJECT as outlined in Proposal dated January 29, 2024, from WALTER P. MOORE AND ASSOCIATES, INC. (the proposal is hereinafter referred to as Exhibit 1), and shall give consultation and advice to the OWNER during the performance of its services. In the event of conflict between any provisions in this Agreement and any provisions in Exhibit 1, the provisions in this Agreement will control.

The ENGINEER shall perform services necessary under this AGREEMENT in a competent and professional manner with the professional skill and care ordinarily provided by competent engineers practicing in the same or similar locality and under the same or similar circumstances and professional license, as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer.

The OWNER's approval of drawings, design, specifications, reports incidental engineering services or materials furnished hereunder shall not in any way relieve the ENGINEER of liability for the technical adequacy of its services nor shall the OWNER's approval or acceptance of the ENGINEER's services be construed as a waiver of any rights under this AGREEMENT.

The ENGINEER shall be and shall remain liable, in accordance with applicable law, for ENGINEER's negligent performance of any of the services furnished under this AGREEMENT, except for errors, omissions or other deficiencies to the extent attributable to the OWNER or any third party. The ENGINEER shall not be responsible for any time delays in the PROJECT caused by circumstances beyond its control.

SECTION 2- CHARACTER AND EXTENT OF BASIC SERVICES

2.1. General:

The ENGINEER shall serve as the OWNER's professional consultant in the planning, design, bidding and construction phases (including observation of construction) of the PROJECT as outlined in Exhibit 1, and shall give consultation and advice to the OWNER during the performance of its services.

The OWNER and ENGINEER acknowledge and anticipate that the timing and development of any AUTHORIZED SERVICES may depend on the availability of financing and the needs of the OWNER; therefore, the ENGINEER shall not proceed with any phase of engineering services without specific written authorization by the OWNER.

2.1.1 Copyright or Patent Infringement: The ENGINEER shall indemnify and hold harmless OWNER from actions or claims charging infringement of any copyright or patent by reason of the use or adoption of any designs, drawings or specifications supplied by it, and he shall hold harmless the OWNER from loss or damage resulting therefrom, providing however, that the OWNER within five (5) days after receipt of any notice of infringement or of summons in any action therefor shall have forwarded the same to the ENGINEER in writing.

2.1.2 Insurance: The ENGINEER shall secure and maintain such insurance as will protect it from claims under the Workmen's Compensation Acts and from claims for bodily injury, death, or property damage which may arise from the performance of its services under this Agreement and shall provide a certificate of said insurance to the OWNER to attach to this Agreement. The ENGINEER shall furnish proof of Professional Liability Coverage for the ENGINEER for this PROJECT in the amount of One Million Dollars to the OWNER within 15 days after this Agreement is executed and shall continue to maintain said insurance for this PROJECT. ENGINEER agrees to maintain both types of insurance during the duration of the PROJECT.

2.2 Planning, Designing, Bidding Support and Construction Support.

Refer to Exhibit 1.

SECTION 3- ADDITIONAL SERVICES OF ENGINEER

If authorized in writing by the OWNER, the ENGINEER shall provide Additional Services that are not already a part of Exhibit 1 and these will be paid by the OWNER a fee negotiated between the OWNER and the ENGINEER. It is agreed that if any of the additional services listed in this Section 3 are a part of Exhibit 1, then Exhibit 1 controls. Any additional services authorized (including services in addition to the ones listed below) will be in writing and signed by both Parties and attached to this Agreement:

3.1 Preparation of applications and supporting documents for governmental grants, loans or advances in connection with the PROJECT; preparation or review of environmental assessments

and impact statements; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the PROJECT.

3.2 Services to perform geotechnical investigations, materials testing, engineering surveys or topographic surveys for design, to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by the OWNER.

3.3 Services resulting from significant changes in general scope of the PROJECT or its design including, but not limited to, changes in size, complexity, OWNER's schedule, or character of construction; and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are due to causes beyond the ENGINEER's control.

3.4 Providing renderings or models for the OWNER's use.

3.5 Preparing documents for alternate bids requested by OWNER for work which is not executed or documents for out of sequence work.

3.6 Investigations involving detailed consideration of operations, maintenance and overhead expenses; and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals and valuations; detailed quantity surveys of material, equipment and labor; and audits or inventories required in connection with construction performed by the OWNER.

3.7 Furnishing the services of special consultants for other than the normal civil, structural, mechanical and electrical engineering and normal architectural design incidental thereto, such as consultants for communications, acoustics, and landscaping.

3.8 Services in connection with change orders to reflect changes requested by OWNER if the resulting change in compensation for Basic Services is not commensurate with the additional services rendered, and services resulting from significant delays, changes or price increases occurring as a direct or indirect result of material, equipment or energy shortages.

3.9 Services during out-of-town travel required of the ENGINEER other than visits to the PROJECT site or to regulatory agency offices having jurisdiction over the PROJECT.

3.10 Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of defective or neglected work of any Contractor, (3) prolongation of the contract time of any prime contract by more than sixty (60) days, (4) acceleration of the work schedule involving services beyond normal working hours, and (5) default by any Contractor.

3.11 Construction staking for the PROJECT.

3.12 Land surveys and office computations required to develop plats and metes and bounds descriptions for easement or property acquisition.

3.13 Preparation of operating and maintenance manuals.

3.14 Services after completion of the Construction Phase, such as inspections during any guarantee period and reporting observed discrepancies under guarantees called for in any contract for the PROJECT.

3.15 Preparing to serve or serving as a consultant or witness for OWNER in any litigation, public hearing or other legal or administrative proceeding involving the PROJECT.

3.16 Additional services in connection with the PROJECT, including services normally furnished by the OWNER and services not otherwise provided for in this Agreement.

3.17 If requested by the OWNER or recommended by the ENGINEER and agreed to in writing by the OWNER, a Resident Project Representative and assistants will be furnished and will act as directed by the ENGINEER in order to provide more extensive representation at the PROJECT site during the Construction Phase.

3.18 Through more extensive on site observations of the work in progress and field checks of materials and equipment by the Resident Project Representative (if furnished) and assistants, the ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the work, but the furnishing of such Resident Project Representation will not make the ENGINEER responsible for construction means, methods, techniques, sequences or procedures or for safety precautions or programs, or for Contractor(s)' failure to perform the construction work in accordance with the Contract Documents.

3.19 Reimbursable Services of the ENGINEER:

Reimbursable services shall include the following items when authorized in writing by the OWNER: transportation and subsistence of principals and employees on special trips to the PROJECT or to other locations; long distance telephone and telegraph calls as required to expedite the work of the Contractor; reproduction of drawings and specifications.

SECTION 4- THE OWNER'S RESPONSIBILITIES

4.1. THE OWNER AGREES to provide the ENGINEER with complete information concerning the requirements of the PROJECT and to perform the following services:

4.2 Access to the Work: The OWNER shall guarantee access to and make all provisions for the ENGINEER to enter upon public and private lands as required for the ENGINEER to perform such work as surveys and inspections in the development of the PROJECT.

4.3 Consideration of the ENGINEER's Services: The OWNER, or an agent appointed by OWNER, shall give thorough considerations to all reports, sketches, estimates, drawings, specifications, proposals, and other documents presented by the ENGINEER, and shall inform the ENGINEER of all decisions within a reasonable time so as not to delay the work of the ENGINEER.

4.4 Legal Requirements: The OWNER shall serve all required public and private notices, receive and act upon all protests and fulfill requirements necessary in the development of the PROJECT.

4.5 Proposals: The OWNER shall advertise for Proposals from Bidders, open the Proposals at the appointed time and place and pay all costs incidental thereto.

4.6 Protection of Markers: The OWNER shall protect to the best of its ability, all stakes and other markers set by the ENGINEER prior to the assumption of such responsibility by the Contractor. Replacement of markers or stakes which have been damaged, moved or removed shall be paid for by the OWNER as extra services of the ENGINEER.

4.7 Standards: The OWNER shall furnish the ENGINEER with a copy of any design and construction standards it shall require the ENGINEER to follow in the preparation of Contract Documents for the PROJECT.

4. OWNER's Representative: The OWNER shall designate in writing, by appendix to this Agreement, a single person to act as the OWNER's Representative with respect to the services to be performed under this Agreement. The person designated as OWNER's Representative shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policy and decisions, with respect to the materials, equipment, elements and systems pertinent to the services covered by this Agreement. The OWNER may also appoint, and will notify the ENGINEER of such appointment, a 3rd party to act as the OWNER's agent for consideration of the ENGINEER's services set forth in paragraph 4.3 above.

SECTION 5 - THE OWNER'S PAYMENTS TO THE ENGINEER:

5.1 Definitions of Construction Cost of the PROJECT, as herein referred to, means the total cost of all work designed or specified by the ENGINEER but does not include any payments to the ENGINEER or other consultants.

5.2 Abandoned or Suspended Services: If any services performed by the ENGINEER is abandoned or suspended in whole or in part, the ENGINEER shall be paid for services performed on account of it prior to receipt of written notice from the OWNER of such abandonment or suspension.

5.3 The OWNER will make prompt payments in response to the ENGINEER's detailed statements for all categories of completed services rendered under this AGREEMENT, or as provided in an agreed upon schedule which shall be attached to this AGREEMENT. However, the OWNER, in no circumstance, shall be required to make more than one payment a month. It is understood and agreed that the OWNER is not liable for payment of any fees for Basic Services described in this AGREEMENT until funds are available from bond sales or other lawful source of funds. Non-payment within 60 days of receipt of invoice may, at ENGINEER option, result in the suspension of services upon 5 days notice to OWNER. ENGINEER will resume services upon payment in full of all outstanding undisputed invoices with no liability for such a suspension to OWNER.

5.4. Payments for Additional Services of the ENGINEER: The ENGINEER shall be reimbursed according attached Schedule of Charges for the additional services outlined under Section 3. Payments to the ENGINEER for additional services stipulated in Section 3 will be made monthly by the OWNER, upon presentation of monthly detailed statements by the ENGINEER.

SECTION 6 - THE OWNER AND ENGINEER FURTHER AGREE to the following conditions:

6.1 Termination: This Agreement may be terminated by either party by fourteen (14) days written notice in the event of substantial failure to perform in accordance with the terms hereof by the one party through no fault of the party. If terminated due to the fault of others than the ENGINEER, the ENGINEER shall be paid for services performed to the date of termination, including reimbursements then due. As soon as practicable after receipt of notice of termination, the ENGINEER shall submit a statement, showing in detail the services performed under this AGREEMENT, to the date of termination. The OWNER shall then pay the ENGINEER promptly that proportion of the prescribed charges which the services actually performed under this AGREEMENT bear to total services called for under this AGREEMENT, less such payments on account of the charges as have been previously made. Copies of all completed or partially completed designs, plans and specifications prepared under this AGREEMENT shall be delivered to the OWNER when and if the AGREEMENT is terminated, but subject to the restrictions, as to their use, as set forth in Section 6.3. The Parties agree that neither shall be liable for any consequential damages, including but not limited to loss profits, lost revenue, loss of use or opportunity, loss of goodwill, special damages, indirect, punitive or exemplary damages, or future loss profits if this Agreement is terminated for cause or without cause.

6.2 Disputes: Should a dispute arise during the course of this PROJECT, both parties hereby agree to attempt in good faith to resolve the dispute through mediation prior to seeking relief from any court or through any other legal proceeding.

6.3 Ownership of Documents: Upon execution of this Agreement, the ENGINEER grants to the OWNER a nonexclusive license to reproduce the ENGINEER's completed tracings and master specifications sheets solely for purposes of constructing, using, maintaining, renovating and/or adding onto the PROJECT, provided that the OWNER shall comply with all obligations under this Agreement. The ENGINEER shall obtain similar nonexclusive licenses from the ENGINEER's consultants consistent with this Agreement. Upon termination the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the OWNER to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the PROJECT. Any use or re-use of the Instruments of service for purposes other than related to this Agreement, by OWNER or those authorized by OWNER, shall be at their sole risk and without liability to ENGINEER and OWNER, to the extent allowed by law shall indemnify and hold harmless ENGINEER and its employees and agents from and of any and all losses, demands, penalties, claims, lawsuits, fees (including reasonable attorney fees) that they incur as a result of same. Any modification of the Instruments of Service will be

evidenced on the plans and be signed and sealed by a licensed professional prior to re-use of modified plans.

6.4 Except for the licenses granted in Subparagraph 6.3 above, no other license or right shall be deemed granted or implied under this Agreement. The OWNER shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the ENGINEER.

6.5. Successors and Assigns: This Agreement and all of the covenants hereof shall inure to the benefit of and be binding upon the OWNER and the ENGINEER respectively and its partners, successors, assigns and legal representatives. Neither the OWNER nor the ENGINEER shall have the right to assign, transfer or sublet its interest or obligations hereunder without written consent of the other party. This Agreement and attachments supersedes any previous contracts or oral agreements between the parties and constitutes the entire agreement between the parties.

6.6 Severability. Provisions of this AGREEMENT are severable and if any provision or part of this AGREEMENT or the application thereof to any person or circumstance should ever be held in any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of the AGREEMENT and the application of such provisions or part of this AGREEMENT to other persons or circumstances shall not be effected thereby.

6.7. Jurisdiction and Venue. The laws of the State of Texas apply to this Agreement. Venue of any civil action will be in the County where the PROJECT is located.

6.8 Indemnity. **The OWNER, to the fullest extent permitted by law, will require any Contractor or Subcontractor performing work in connection with Drawings and Specifications produced under this Agreement to hold harmless, indemnify and defend, the OWNER and the ENGINEER, their consultants and each of their officers, agents and employees from liability claims, losses or damage arising out of or alleged to arise from the Contractor's (or Subcontractor's) negligence in the performance of the work described in the Construction Contract Documents, but not including liability that may be due to the sole negligence of the OWNER, the ENGINEER, their consultants or their officers, agents, and employees.**

6.9 Written Notice.

Where written notice is mentioned in the AGREEMENT, it shall be sent by certified mail return receipt requested, or by personal delivery, or by facsimile, to the attention of and to the following addresses:

OWNER Kathlie S. Jeng-Bulloch, P.E., BC.WRE, CFM City Engineer Director of Engineering Department City of Huntsville 448 State Highway 75 North Huntsville, TX 77320 kjengbulloch@huntsvilletx.gov	ENGINEER Charles M. Penland, P.E. Managing Principal Walter P. Moore and Associates, Inc. 1301 McKinney, Suite 1100 Houston, Texas 77010 cpenland@walterpmoore.com
---	---

6.10 Staffing. ENGINEER acknowledges that continuity of staffing is important to the OWNER for the duration of the PROJECT. Accordingly, ENGINEER agrees to assign the following key staff to the PROJECT. No substitution will be made to the assigned key staff without the written consent of the OWNER, provided the identified staff members remain employed by the ENGINEER:

Principal in Charge:	Andrew Yung, P.E. – Chief Hydrologist
Project Manager:	Laurian Cuba – Project Manager

6.11 Design Delays. OWNER and ENGINEER agree that time is of the essence in ENGINEER's work related to the PROJECT, it being acknowledged that ENGINEER shall be provided reasonable time to employ safe and sound engineering practices and the services shall be performed expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer. Accordingly, ENGINEER shall have deducted from any amounts owed a sum of \$0 per calendar day beyond completion dates for the respective design phases of various PROJECT elements established in the agreed upon schedule attached to this AGREEMENT, as may be amended in writing between both parties.

6.12 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, with such counterparts together constituting one and the same instrument. Alternatively, the Parties acknowledge and agree that this Agreement may be, for convenience, executed in duplicate originals, each of which is intended to be and is as valid as its counterpart original.

6.13 Statutory Terms Applicable to State Political Subdivisions. As required by Chapter 2270, Government Code, ENGINEER hereby verifies that it does not boycott Israel and will not boycott Israel through the term of this Agreement. For purposes of this verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

6.14 Open Records Contracting Information. If this Agreement is executed on or after January 1, 2020, and the Agreement is a contract within the scope of Section 552.371, Government Code, then the following shall apply: (a) the requirements of Subchapter J, Chapter 552, Government Code, may apply to this Agreement and Purchaser agrees that this Agreement may be terminated if Purchaser knowingly or intentionally fails to comply with a requirement of that subchapter and (b) without limiting the foregoing, Purchaser agrees to comply with the requirements of Section 552.372, Government Code, including Section 552.372(a)(3)(B), Government Code.

(ii) Prohibition on Contracts with Certain Companies. Purchaser and the person or persons executing this Agreement on behalf of Purchaser, or representing themselves as executing this Agreement on behalf of Purchaser (collectively, the “Signing Entities”), hereby acknowledge that (a) the Signing Entities do not engage in business with Iran, Sudan or any foreign terrorist organization and (b) the Signing Entities are not named on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer’s internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>

<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>

<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>

(iii) If this Agreement is executed on or after January 1, 2020, and the Agreement is a contract within the scope of Section 552.371, Government Code, then the following shall apply: (a) the requirements of Subchapter J, Chapter 552, Government Code, may apply to this Agreement and Purchaser agrees that this Agreement may be terminated if Purchaser knowingly or intentionally fails to comply with a requirement of that subchapter and (b) without limiting the foregoing, Purchaser agrees to comply with the requirements of Section 552.372, Government Code, including Section 552.372 (a) (3) (B), Government Code.

(iv) Companies that Boycott Certain Energy Companies or Discriminate Against the Firearms or Ammunitions Industries. The Developer agrees and represents that the total value of this Agreement shall not exceed the dollar limitation set for in Section 2274.002 (a) (2) of the Texas Government Code (as added by Senate Bill 13, 87th Texas Legislature, Regular Session) and Section 2274.002 (a) (2) of the Texas Government Code (as added by Senate Bill 19, 87th Texas Legislature, Regular Session).

DRAFT

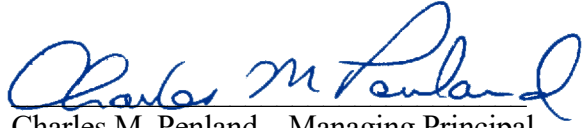
Engineering Agreement w/ Walter P. Moore and Associates, Inc.
Dawson Lake Dam Rehabilitation - #24-10-04
City of Huntsville, TX

IN WITNESS WHEREOF the parties hereto have made and executed this Agreement on the day and year first above written:

OWNER:
CITY OF HUNTSVILLE

ENGINEER:
WALTER P. MOORE AND ASSOCIATES, INC.

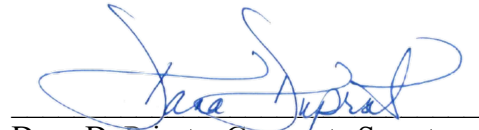
Aron Kulhavy - City Manager


Charles M. Penland – Managing Principal

ATTEST:

ATTEST:

Kristy Doll - City Secretary


Dana DuPriest – Corporate Secretary

APPROVED AS TO FORM:

Leonard Schneider, City Attorney



CITY COUNCIL AGENDA

2/6/2024

Agenda Item Number: 2.a.

Agenda Item: Consider approval of Resolution 2024-1 in support of an application to the Texas Department of Housing and Community Affairs for a 9% housing tax credit to fund a rehabilitation of MillPond Living at Huntsville (formerly known as Cedarwood Apartments) at 2201 Bobby K Marks Drive.

Initiating Department/Presenter: Development Services

Presenter:

Kevin Byal, Director of Development Services

Recommended Motion: Move to approve Resolution 2024-1 in support of an application to the Texas Department of Housing and Community Affairs for a 9% housing tax credit to fund a rehab of MillPond Living at Huntsville (formerly known as Cedarwood Apartments) at 2201 Bobby K Marks Drive.

Strategic Initiative: Goal #3, Economic Development – Promote and enhance a strong and diverse economy.

Discussion: MillPond Living at Huntsville, LP, is proposing to revitalize the former Cedarwood Apartments, a multi-family development situated at 2201 Bobby K. Marks Drive. Although the current property isn't age-restricted, it is already constrained by income and rent restrictions. Due to a nonprofit partner in the ownership structure, the property currently receives a tax abatement. It is intended to continue with that structure and apply for the tax abatement annually. Presently, there is an existing tax credit regulatory agreement that requires the property to remain affordable under the tax credit program through 2048.

The existing structures are two-story apartments featuring a mix of 20 one-bedroom, 40 two-bedroom and 8 three-bedroom units. The upcoming project intentions are to renovate the apartments originally built in 1970 and last renovated in 2008.

MillPond Living at Huntsville, LP, plans to submit an application to the Texas Department of Housing and Community Affairs (TDHCA) Low Income Housing Tax Credit (LIHTC) Program. This program plays a key role in the development and preservation of affordable rental housing for low-income households. Tax credits provide a source of equity financing that multifamily developers can use to create affordable rental housing.

Specifically, the application to TDHCA targets the 9% Low Income Housing Tax Credit round, a highly competitive phase determined by a Regional Allocation Formula (RAF). Additional set-asides exist for developments at risk of losing affordability and subsidies, projects financed through USDA, and those owned by nonprofit entities.

TDHCA evaluates applications based on various criteria, with two pertinent to this resolution. First, points are awarded if the governing body of the municipality supports the development. Second,

additional points are granted if the governing body commits to reducing development fees by no less than \$250.00 (Two hundred and Fifty Dollars).

On February 18, 2020, City Council approved resolution 2020-15 supporting a similar application from this developer for the project known as Fishpond Living at Huntsville, LP, a senior rental housing development located at 176 FM 247. The facility contains approximately 48, 1-story cottage-style apartments with a mix of one- and two-bedroom units.

Previous Council Action: None

Financial Implications: A reduction of development fees by \$250.00 (Two hundred and Fifty Dollars).

Approvals:

Kevin Byal
Leonard Schneider
Aron Kulhavy
Kristy Doll

Associated Information:

1. Reso. 2024-1 - Millpond Support Tax Credit Application
2. Millpond Area Map

RESOLUTION NO. 2024-1

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HUNTSVILLE, TX, IN SUPPORT OF AN AFFORDABLE RENTAL HOUSING DEVELOPMENT TO BE KNOWN AS MILLPOND AT HUNTSVILLE (F.K.A., CEDARWOOD APARTMENTS), AND IN SUPPORT OF AN APPLICATION TO THE TX DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS FOR THE 2024 COMPETITIVE 9% HOUSING TAX CREDITS FOR MILLPOND AT HUNTSVILLE, A DEVELOPMENT LOCATED AT 2201 BOBBY K MARKS DRIVE, HUNTSVILLE, TX, BETTER DESCRIBED AS PROPERTY I.D. 32916 ON THE WALKER COUNTY APPRAISAL DISTRICT, BEING A MULTIFAMILY DEVELOPMENT ON A TRACT OR PARCEL OF LAND CONTAINING APPROXIMATELY 3.3827 ACRES OF LAND, THE APPLICANT BEING MILLPOND LIVING AT HUNTSVILLE, LP; AND AUTHORIZING THE CITY MANAGER TO ACT AS THE EXECUTIVE OFFICER AND AUTHORIZED REPRESENTATIVE IN ALL MATTERS PERTAINING TO THE CITY'S SUPPORT OF THIS DEVELOPMENT

WHEREAS MillPond Living at Huntsville, LP (the "Applicant") has proposed rehabilitation of existing affordable rental housing to be named MillPond at Huntsville (f.k.a., Cedarwood Apartments) in the City of Huntsville, TX, located at 2201 Bobby K Marks Drive, Huntsville, TX, better described as property I.D. 32916 on the Walker County Appraisal District, being a multifamily development on a tract or parcel of land containing approximately 3.3827 acres of land;

WHEREAS there is a need for affordable housing in the City of Huntsville TX;

WHEREAS the Applicant has advised that it intends to submit an application to the TX Department of Housing and Community Affairs for 2024 Competitive 9% Housing Tax Credits for MillPond at Huntsville (TDHCA #24065);

NOW, THEREFORE, be it resolved by the City Council of the City of Huntsville, TX that:

Section 1 The City of Huntsville, acting through its governing body, hereby confirms that it supports the proposed MillPond at Huntsville, located 2201 Bobby K Marks Drive, Huntsville, TX and that this formal action has been taken to put on record the opinion expressed by the City of Huntsville on February 6, 2024.

Section 2 The City of Huntsville, acting through its governing body, hereby approves and authorizes a commitment of development funding to MillPond at Huntsville in the amount of \$250.00 (Two hundred and Fifty Dollars) in the form of reduced fees.

Section 3 The City Manager is designated as the City's Chief Executive Officer and Authorized Representative to act in all matters in connection with this Resolution.

PASSED AND APPROVED this ____ day of _____ 2024.

CITY OF HUNTSVILLE, TEXAS

Russell Humphrey, Mayor

ATTEST:

Kristy Doll, City Secretary

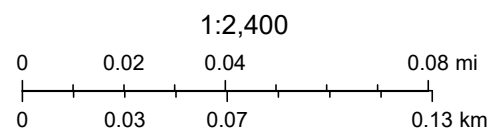
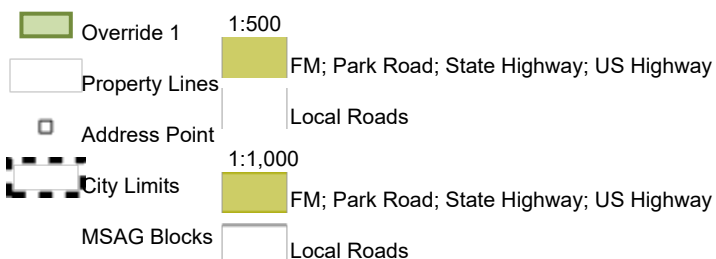
APPROVED AS TO FORM:

Leonard Schneider, City Attorney

Area Map Millpond 2201 Bobby K Marks



1/23/2024, 3:23:58 PM





CITY COUNCIL AGENDA

2/6/2024

Agenda Item Number: 2.b.

Agenda Item: ~~Consider approval of Resolution 2024-2 in support of an application to the Texas Department of Housing and Community Affairs for a 9% housing tax credit to fund the development of Ardent at Huntsville, a multi-family apartment development to be located at 3508 Montgomery Road in Huntsville.~~

Initiating Department/Presenter: Development Services

Presenter:

Kevin Byal, Director of Development Services

Recommended Motion: Not applicable - item removed from agenda

Strategic Initiative: Goal #3, Economic Development – Promote and enhance a strong and diverse economy.

Discussion:

Previous Council Action: None

Financial Implications:

Approvals:

Kevin Byal
Leonard Schneider
Aron Kulhavy
Kristy Doll

Associated Information:



CITY COUNCIL AGENDA

2/6/2024

Agenda Item Number: 2.c.

Agenda Item: Consider a ground lease with Huntsville Hangars, LLC at the Bruce Brothers Huntsville Regional Airport and authorize the City Manager to enter into a ground lease agreement for said hangar.

Initiating Department/Presenter: Development Services

Presenter:

Layne Yeager, Planner

Recommended Motion: Move to approve a ground lease at the Bruce Brothers Huntsville Regional Airport and authorize the City Manager to enter into a ground lease agreement for said hangar.

Strategic Initiative: Goal #4, Infrastructure - Ensure the quality of the City utilities, transportation and physical structures so that the City's core services can be provided in an effective and efficient manner.

Discussion: City staff have been approached by an aviation company interested in constructing three executive hangars with offices. Sizes will range approximately 77-feet by 280-feet, 82-feet by 160-feet and 92-feet by 212-feet at the Bruce Brothers Huntsville Regional Airport. This ground lease will be located within GL-1,3 and 4 identified within the attached survey. Within these hangars a flight school and classrooms will be housed, large open hangars for business class jets, additional rental hangars along with a hangar for an aviation service company. The City currently has three areas that are identified for ground leases within the Airport Master Plan (AMP) and Airport Layout Plan (ALP) that are currently in a ready to build condition.

Within the AMP the forecast of based aircraft and overall flight forecast show an increased need for facilities and improvements at the airport. This hangar is proposed to have the capacity to store several aircraft depending on the overall size of each.

Should the Council move to approve the ground lease, staff will coordinate with the Lessor to construct the hangar located within Ground Lease Numbers 1, 3 and 4 shown on pages 2 and 3. The lease will be for a period of thirty years after which time the lessee will have the right of first refusal to re-lease the leased property.

The staff recommendation is to approve the ground lease to and authorize the City Manager to execute a ground lease agreement with Huntsville Hangars.

Previous Council Action: None

Financial Implications: The City's adopted fee schedule sets the rate for ground leases at the airport at \$0.15 per square foot. Revenue will generate \$7,000 – \$7,500 annual lease payment based off the square footage of the ground lease.

Approvals:

Kevin Byal
Leonard Schneider
Aron Kulhavy
Kristy Doll

Associated Information:

1. Ground Lease COH Clean and Final 2-1-24
2. Huntsville Hangar Aerial Map
3. HANGAR LEASE SURVEY 1-2024

STATE OF TEXAS

§

§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF Walker§

This lease is made and entered into this _____ day of _____, by and between the City of Huntsville, hereinafter referred to as LESSOR and which is the owner of the Bruce Brothers Huntsville Municipal Airport, hereinafter referred to as AIRPORT and _____, hereinafter referred to as LESSEE who covenant and agree as follows:

WHEREAS, Lessor and Lessee are committed to the proper operation, improvement and continued development of the AIRPORT; and

WHEREAS, Lessor deems it advantageous to itself and to the operation of the Airport to lease to Lessee certain land/hangar/building/office as stated herein;

NOW THEREFORE, in accordance with the terms, considerations and privileges listed herein, Lessor and Lessee covenant and agree as follows:

I. LEASED AREA

Lessor, in consideration of the rents, covenants and promises by Lessee herein contained, does hereby lease to Lessee and Lessee does hereby rent and accept from Lessor that real property referred to as the leased premises and more particularly described as Tract No. _____, located on the Airport as shown on Exhibit A attached hereto and incorporated herein by reference.

II. TERM

This Lease shall be for a term of thirty (30) years (the 'lease term') beginning on _____, and ending 30 years from the issuance of the certificate of occupancy, subject to earlier termination as hereinafter provided. At the end of the lease term the Lessee shall have the right of first refusal to re-lease the leased property on terms to be negotiated in good faith by both parties. Upon approval of this ground lease agreement construction of the hanger must commence within one (1) year.

III. GROUNDS FOR TERMINATION

Grounds for termination of this lease at any time by Lessor shall include but not limited to:

1. Non-payment of rental.
2. Violation of any term, condition or promise contained or referenced herein.
3. Violation by Lessee of any provision of Chapter 10, Aviation of the Code of Ordinances of the City of Huntsville as amended, and as amended in the future, all of which is incorporated herein by reference.
4. Violation of Airport Zoning or the lawful rules, regulations, or orders of the City of Huntsville.
5. Violation of the laws, rules, rulings, orders or regulations of the State of Texas, the United States or the Federal Aviation Administration pertaining to the Bruce Brothers Huntsville Municipal Airport or tenants or aircraft operators thereon.
6. Failure to comply with the commencement of construction within the one (1) year period.

Prior to termination under this section, the City of Huntsville shall provide Lessee with written notice of anything deemed to be a violation or cause for lease termination and Lessee shall, except as otherwise set forth herein, have seven (7) days to cease and desist such violation or to remedy such other act or omission. As to any such violation, act or omission deemed by the City Manager or appropriate officers or officials of Lessor to be a source of substantial or imminent danger to the safety of persons or property, including air or ground traffic, Lessee shall, upon written or oral notice from Lessor, immediately and forthwith cease and desist such violation, act or omission or Lessee's leasehold right hereunder shall be subject to immediate oral termination by Lessor. The seven (7) day notice, where applicable, shall further only apply to the first two notifications of violations, acts or omissions by Lessee in any lease term, there being no necessity for such notice before termination thereafter.

IV. CONSIDERATION

1. In consideration for the lease of the Land/Hangar/Building/Office referenced herein, Lessee hereby agrees to pay yearly rental of _____ (**fifteen (\$0.15)** cents per sq. ft.) of lease premises leased to Lessee. The first year's payment shall be prorated to the beginning of the City's next fiscal year and shall be made in advance upon the signing of this lease. Thereafter, all future payments shall

- be billed during the first month of each fiscal year during the term of this contract plus any extensions thereto, and shall be payable within 20 days of billing.
2. Lessee agrees that the lease payment listed herein shall be subject to review annually by Lessor throughout the term of the lease and prior to any extensions granted. Any adjustments to the lease payment shall be based on the United States Consumer Price Index for all Urban Consumers (CPI-U) for the month of June preceding the change date. Any adjustment to the lease fee shall become effective the first day of Lessor's fiscal year and shall not exceed five percent (5%) per year. Such increase in the lease payment shall begin immediately upon request from Lessor and continue at that rate until the next adjustment. Upon review, if the CPI shall have decreased as compared to the previous review date, the lease fee for the subject Land/Hangar/Office/Building shall not be decreased, but shall remain at the same level as was charged during the preceding 1 year period.
 3. Lessee agrees to at all times keep the premises of the Land/Hangar/Building/Office, including the inside and outside of the Hangar/Building/Office, clean and free of trash, litter, tall grass, weeds, junked automobiles, boats and scrap aircraft parts. Lessee shall abide by all applicable rules and regulations of the Environmental Protection Agency, the Texas Natural Resources Conservation Commission, the Texas Department of Agriculture, the Texas Department of Transportation, and any other public agency regarding the use, storage, and disposal of hazardous chemicals, fuel and/or oil. Lessee further agrees to abide by the manufacturer's directions in regards to the use, storage and disposal of all pesticides, herbicides, and other chemicals plus their containers used at the airport. Should Lessee fail to keep the leased premises clean and free of hazards, such failure shall be a ground for termination under this lease. Lessor may, after thirty (30) days written notice, arrange for the clean-up of the littered or hazardous area. Such clean-up shall be charged to Lessee and payable upon demand. Failure to render proper payment for such clean-up and/or general disregard of the considerations and restrictions listed in this lease agreement are grounds for Lessor to terminate this lease.
 4. Lessee agrees to maintain the hangar and improvements located on the leased premises in a good state of repair. Such Lessee shall further keep the leased premises insured with policies of general liability insurance, in an amount of \$1,000,000.00 for each person injured, up to an aggregated \$1,000,000.00 for personal injury in any one accident and \$2,000,000.00 for property damage. Such policy originals shall name the City of Huntsville as additional insured and be paid for and kept in force by Lessee throughout the term of this lease and duplicates of such policies and renewals thereof and changes thereto shall promptly be delivered to Lessor.
 5. Lessee shall be responsible for any and all taxes assessed on improvements placed on leased premises.

V. PERMITTED USE

Lessor covenants and agrees that Lessee, on paying the rent and other charges herein provided for and observing and keeping the covenants, conditions, and terms of this lease on Lessee's part to be kept or performed, shall lawfully and quietly hold, occupy, and enjoy the leased premises during the term of this lease without hindrance or molestation of Lessor or any person claiming under Lessor except such portion of the leased premises, if any, as shall be taken under the power of eminent domain.

In the event the tract herein leased has a hangar or other improvements located thereon or such are subsequently placed thereon, Lessor expressly disclaims any express or implied warranties regarding such structure including soundness, habitability, safety, or condition. Lessor further advises Lessee that it makes no warranties regarding the fitness for purpose of any equipment and fixtures and the like, Lessee taking them As Is and with all faults since this is a ground lease only.

Where allowed by Lessor, Lessee agrees to allow other Lessees of adjoining tracts subsequently constructing hangars to attach to and use Lessee's walls and supports. Consideration for such use to the Lessee of the existing hangar shall be prompt payment by the subsequent hangar Lessee of one-half (1/2) of the actual cost of hangar common walls payable to the current Lessees of the adjoining hangars.

Lessee may store his privately owned property inside the hangar, provided that it meets local fire codes and at least seventy-five (75) percent of the hangar floor area is used for aircraft and aviation related purposes.

Lessee may store aviation related products or equipment inside the hangar for use in his aircraft so long, and only so long, as such products or equipment are contained in marked, approved containers, and are stored in accordance with the Airport Rules and Regulations as amended and incorporated herein by reference. Such storage shall be at the discretion of and with written approval from the Huntsville Fire Marshal certifying such storage is allowed under local fire codes.

Lessor reserves the right to enter the leased premises at all reasonable times to inspect for compliance with this lease and the ordinances, regulations, laws, rules and orders of the Lessor, the State of Texas and of the United States.

At the expiration of the lease term, Lessee shall quit and surrender the leased premises hereby demised in as good state and condition as they were in at the commencement of the term, reasonable use and wear and tear thereof and in accordance with the other terms within this lease.

VI. RESTRICTED USE

Lessee agrees that he will not conduct any commercial activity on the leased premises without permission for such operations being granted in writing by Lessor.

Lessee agrees that, subject to the other terms of this paragraph, the usage of at least seventy-five (75) percent of the hangar floor area shall be limited to aircraft and aviation related purposes. In addition, no personal property, including automobile, bus, truck, or other transportation mode, may be permanently stored on associated apron, paved, or grass area.

A Lessee shall not be deemed to be engaged in commercial operations for purposes of determining whether such person is or should become a Fixed Base Operator engaged in hangar rental if the Lessee:

- A. Allows such storage or parking pursuant to a written sublease agreement on a form provided by the City of Huntsville which requires Sublessee to honor all terms and conditions of the Sublessor's lease with the City, and
- B. Owns, leases or subleases not more than 35 percent of the number of hangars of all types located at the Bruce Brothers Huntsville Municipal Airport, whether or not such hangars are subleased.

The fact that a Lessee or Sublessee is a corporation, partnership, joint venture, limited partnership, or association shall not, of itself, cause the Lessor's or Sublessor's use of the leased premises to be deemed commercial use. Use of the leased premises for purposes other than storage or parking of tenant's aircraft (whether owned or bona fide leased to tenant) and storage and use of aircraft related items such as tools and parts and Lessee's or Sublessee's maintenance on his owned or leased aircraft, or expense sharing as set out in this section, shall be deemed commercial. For purposes of item B above, a Lessee shall be considered to include persons related in the second degree of consanguinity or affinity or a legal entity majority owned or controlled by such person.

If a hangar is not presently located on the leased premises, Lessee represents that Lessee has the present intention of constructing a permanent conforming aircraft hangar on the leased premises and shall begin construction of such hangar within thirty (30) days of obtaining a building permit from the City of Huntsville, which permit shall be obtained within three hundred and sixty-five (365) days after the signing of this Agreement. Such permit shall be sought with due diligence. Hangars shall be completed within two hundred seventy (270) days of the date of beginning of construction. All hangars constructed on the leased premises shall be built to the minimum requirements of the International Building Code, as amended, as adopted by the City of Huntsville and as from time to time amended. Plans, construction, materials, and workmanship of and in such hangar shall be subject to the same approval and inspection and certificates of occupancy by the building inspectors, officials, and sanitarians of the City of Huntsville as if such were located within the corporate limits of the City of Huntsville. Failure to obtain such building permit, to timely commence and complete such hangar construction, or to build such hangar in compliance with the referenced code and requirements or to obtain such inspections and certificate shall be an additional ground for termination of this lease by Lessor.

Nonconforming hangars already built on leased premises shall be allowed to remain unless abandoned for aircraft storage for one (1) year, destroyed or damaged to the extent of fifty percent (50%). Such abandoned, destroyed, or damaged hangars shall be forthwith removed by the Lessee at Lessee's expense. Such abandoned, destroyed, or damaged hangar may be rebuilt in conforming manner as if it were new construction under the terms of Section V above.

Lessee agrees to have an acceptable number of fire extinguishers of acceptable size as determined by the local fire marshal inside the hangar. Such fire extinguishers shall be readily available in the event of fire.

Lessee's agents, employees, invitees, and guests shall be held to the same standards for conduct as Lessee, and their violations, acts or omissions hereunder shall be seen as those of Lessee for the purposes of this lease.

Lessee, in exercising any of the rights or privileges herein granted to it, shall not on the grounds of sex, race, color, or national origin discriminate or permit discrimination against any person or group of persons in any manner prohibited by Part 21 of the Regulations of the Secretary of Transportation, Part 15 of the Federal Aviation Regulations or by the United States or the State of Texas. The Lessor is hereby granted the right to take such action, anything for the contrary notwithstanding, as the United States, State of Texas or their agencies or courts may direct to enforce this nondiscrimination covenant.

VII. SUBLEASE, ASSIGNMENT OR SALE

Lessee agrees not to assign or sublease the leased premises, or any improvements placed on leased premises, or allow any other person except Lessor's agents and employees to occupy the premises, without first obtaining Lessor's written consent. This lease is for the purpose of aviation related business or bona fide leased to Lessee or Sublessee. Upon written consent from Lessor to sublease or assign the leased premises, the proposed Sublessee or assignee shall agree to perform Lessee's duties and responsibilities contained in this Lease Agreement.

Should Lessee or Lessee's assignee in an assignment approved in writing by Lessor, have completed construction on a hangar on the leased premises and Lessee or Lessee's assignee desire to sell such improvements, assign or transfer such leasehold interest herein granted, or such leasehold interest is terminated, then Lessor shall have the first option to purchase such improvements, based upon the following provisions:

- a) Lessee may at his option sell any improvements placed by Lessee on the leased premises. If Lessee has received a bona fide offer to purchase the improvements, then Lessee shall serve written notice to Lessor of such offer, accompanied by an appraisal from a certified appraiser, enclosing a copy of such appraisal and offer which shall be made in writing. Value shall be based upon present value of improvements assuming a ten (10) year lease. Should Lessor elect not to exercise its option to purchase, such sale shall be made subject to approval by Lessor of a new lease to the purchaser of the improvements, (such

approval shall not be unreasonably withheld, and provided such sale shall be subject to the right of first refusal provided above).

- b) Lessee shall not serve written notice of such offer upon Lessor unless Lessee actually intends to accept same.
- c) Upon receipt of such written notice, Lessor shall have the option to purchase Lessee's leasehold interest upon the same terms stated in such bona fide offer.
- d) Lessor shall exercise such option to purchase by serving written notice to Lessee within ten (10) days after receipt of Lessee's written notice of the offer.
- e) If Lessor fails to exercise its option to purchase in the manner provided in this section, Lessor's right to purchase shall terminate and Lessee may assign the remaining portion of the Lease (subject to Lessor's approval which shall not be unreasonably withheld) to the offeror in accordance with the terms of such written offer.
- f) Lessee shall not assign this lease or sell such improvements except as herein provided, and any attempted assignment or sale in violation hereof shall be voidable by Lessor.
- g) If improvements placed on the leased premises by Lessee are determined by Lessor to impede airport improvements or expansions detailed in the Airport Master Plan or Airport Layout Plan approved by the Texas Department of Transportation and the Federal Aviation Administration, Lessor may elect to terminate this lease, or refuse any renewal term upon any proposed sale or assignment by Lessee. Further, Lessor may refuse to negotiate a further lease at the end of the lease term. In the event Lessor refuses renewal of this lease on the grounds stated above, then Lessor shall so notify Lessee in writing and pay Lessee the unamortized portion of appraised value of Lessee's improvements based on the remaining years of this lease in accordance with section h below. The appraised value of the improvements shall be determined by a panel of three certified appraisers. Lessor and Lessee shall each appoint one certified appraiser, and the two appraisers so appointed shall select a third person to serve as appraiser. The appraisers shall be selected by Lessor and Lessee within thirty (30) days after Lessor serves notice upon Lessee of its election not to re-lease the leased premises. Lessor shall pay Lessee the calculated appraised value of such improvements, and Lessee shall transfer and convey such improvements to Lessor within ninety (90) days after Lessor serves notice of its election not to re-lease the leased premises.
- (h) Within 6 months of the termination of this lease the Lessor shall pay to Lessee the unamortized portion of the cost of the permanent structures and fixed improvements constructed and installed there. That amortization is to be computed based on the number of months remaining on the lease from the date the Certificate of Occupancy is issued to the expiration date of the initial term of this agreement.
- (i) In the event of default by Lessee of any term or condition of this lease, and the lease is terminated by Lessor on grounds so specified in this Agreement, or in the event that Lessors and Lessee are unable in the exercise of good faith to agree on the terms of a re-lease of the leased premises at the end of the lease term, then Lessee may at his option either:
 - 1. Within a period of sixty (60) days, upon reasonable advance notice to the Airport Manager, remove all personal property, equipment, or trade fixtures owned by Lessee, with the exception of common walls in hangars, provided that if Lessee elects to remove such improvements he shall restore the leased premises to as good a condition as at the commencement of this Lease, normal use and wear and slab removal excepted. Lessee shall not remove the common wall on any hangars having a common wall. If Lessee so elects to remove such improvements, he shall quit and surrender the leased premises to Lessor on the termination date of the Lease subject to his right of re-entry upon the Leased Premises for the sole purpose of removing such improvements and restoring the leased premises to its original condition.
 - 2. Elect to sell improvements placed on the leased premises. If Lessee elects to sell such improvements, Lessee shall serve written notice of such election upon Lessor within sixty (60) days after the termination of the Lease. Such notice shall be accompanied by payment of rent for a period of one (1) year, together with any rent arrearage owed by Lessee to Lessor. Upon giving notice and paying the rent stipulated above, Lessee shall have a period of one (1) year following the Lease termination date within which to sell such improvements, and upon such termination of such one-year period Lessee shall have an option to extend the time for selling such improvements for additional one-year periods by giving notice and paying one year's rent in the same manner set forth above. During such period of time, not to exceed five (5) years following termination of the Lease, the leased premises shall remain vacant and shall not be used for any purpose by Lessor or Lessee. Upon the sale of such improvements by Lessee, Lessee's right and privilege to use the leased premises for any purpose whatsoever shall terminate, and the ratable portion of rent paid by Lessee for the remainder of the year during which the sale of such improvements is made shall be refunded by Purchaser to Lessee.
- (i) If Lessee fails to remove or sell his improvements on the Leased Premises in the manner provided above, or if Lessee fails to serve such notices on Lessor and pay the rent required above for extending the time within which Lessee may sell such improvements, such improvements shall be deemed abandoned by Lessee sixty (60) days following the Lease termination date, and all

improvements on the Leased Premises shall be forfeited to Lessor as liquidated damages for any past or future default by Lessee in payment of rent under this Agreement, and Lessee's obligation to pay rent hereunder, either arrearages or future rent, shall be terminated.

- (ii) All sublease(s), assignments or sale are subject to the provisions of Article X "Title to Improvements".

**VIII.
INDEMNITY**

Lessee shall indemnify the Lessor, its officers, agents and employees, against all liabilities of and to third persons, excluding liabilities resulting from the primary or active negligence of the Lessor, its officers, agents and employees, arising out of the use or occupancy of the premises by Lessee or others with its consent or out of any other acts or omissions of Lessee, its officers, agents and employees, on the premises or elsewhere on the airport. In the event any claim is made, or action brought that is covered by the above indemnity the Lessor shall give prompt written notice of that claim or action to Lessee and, if requested, Lessee shall attend to the defense of it. The Lessor shall not take any action, including settlement or compromise, which may in any manner adversely affect Lessee's ability to defend against any claim or action, and if the Lessor desires to defend itself without waiving its rights under the indemnity above it shall do so at its own expense and Lessee shall be allowed to participate, at its expense, in the defense.

IX. MAINTENANCE, IMPROVEMENT OF AIRPORT

Lessor has applied for and received or may receive a grant or grants of money from the Federal Aviation Administration pursuant to the Federal Airport Act of 1946, as amended, and/or the Texas Department of Transportation, and the Lessor may in the future apply for and receive other such grants. In connection therewith, Lessor has undertaken and may in the future undertake certain obligations respecting its operation of the airport and activities of its contractors, lessees, and permittees thereon. The performance by Lessee of the covenants, conditions, and obligations contained in this agreement is therefore a special inducement to and consideration for the execution of this lease by Lessor, and Lessee further covenants and agrees that if the Federal Aviation Administration, the Texas Department of Transportation or other governmental body or officer having jurisdiction over the enforcement of the obligations of Lessor in connection with federal or state aid shall make any orders, recommendations, or suggestions respecting the performance by Lessee of its obligations under this agreement, Lessee will promptly comply therewith at the time or when and to the extent that Lessor may direct.

Lessee agrees and understands that Lessor reserves the right to further expand, develop, or improve the airport, including the termination of this lease agreement, in such instance that the continued leasing of the leased premises would have a negative impact on, or impair any proposed development or improvements at the Airport. This contract agreement may be terminated regardless of the desires, wishes or views of Lessee and without interference or hindrance from Lessee, but only so long as such expansion, development or improvements are shown on a Texas Department of Transportation and/or FAA approved Airport Layout Plan or Master Plan. In this case, Lessor shall exercise its right to acquire such improvements as outlined in Section VII above. If the Lessee is unable to utilize the leased space due to improvements and/or repairs to the public use areas of the airport, this lease may be extended by the number of days the leased area is unable to be utilized.

Lessee understands and agrees that Lessor reserves the right, but not the obligation, to maintain the Airport to at least the minimum standards as recommended by the FAA and/or the Texas Department of Transportation. Such right includes the right to maintain and keep in repair all public use areas at the Airport and the right to direct and control all activities necessary at the Airport and may close the Airport at any time and at its own discretion. Such closure shall immediately void this contract and no damages or monies, or other compensation will be owed to Lessee by Lessor.

Lessee shall pay or cause to be paid all charges for water, heat, gas, electricity, sewers and any and all other utilities used on the leased premises throughout the term of this lease, including any connection fees.

X. Title to Improvements

The Lessor solely owns the Leased Premises. Any and all improvements made to the Leased Premises by Lessee shall become the property of Lessor upon the expiration or termination of this Agreement in accordance with Section VII above; provided, however if Lessee is not then in default hereunder, Lessee shall have the right to remove all personal property, equipment, or trade fixtures owned by Lessee from the Leased Premises, but Lessee shall be required to repair any damage to the Leased Premises caused by such removal in a good and workmanlike manner and at Lessee's sole cost and expense. If LESSEE fails or refuses to remove any or all of Lessee's personal property, equipment, and trade fixtures from the Leased Premises on or before the date of the termination of this Agreement, the items which Lessee has failed or refused to remove: (i) shall be considered abandoned by Lessee, (ii) shall become the property of Lessor, and (iii) may be disposed of by Lessor in any manner desired by Lessor in Lessor's unfettered discretion.

XI. EXCLUSIONS

No waiver by Lessor of any default or breach of any covenant, condition, or stipulation herein contained shall be treated as a waiver of any subsequent default or breach of the same or any other covenant, condition, or stipulation hereof.

In the event Lessor or Lessee breaches any of the terms of this agreement whereby the party not in default employs attorneys to protect or enforce its rights hereunder and prevails, then the defaulting party agrees to pay the other party reasonable attorney's fees so incurred by such other party.

The numeric captions and headings are inserted solely for the convenience of reference and are not part of nor intended to govern, limit, or aid in the construction of any provision hereof.

Time is of the essence of this agreement.

For the purpose of this agreement, the singular number shall include the plural and the masculine shall include the feminine and vise-versa, whenever the context so admits or requires.

This agreement shall be binding upon and ensure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this agreement.

This agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Walker County, Texas.

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

This agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the written subject matter.

No amendment, modification, or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

The rights and remedies provided by this lease agreement are cumulative.

This lease entered into this the ____ day of _____

Lessor:

Lessee:

City of Huntsville

City Manager
1212 Avenue M
Huntsville, TX 77340

ATTEST: _____



Huntsville Hangars Lease Locations

Airport Dr

Airport Dr

Airport Dr

Kate E

Line Table		
Line No.	Bearing	Length
L1	S 86°39'09" E	283.85
L2	S 03°20'51" W	44.14
L3	N 86°39'09" W	137.52
L4	S 03°20'51" W	33.27
L5	N 86°39'09" W	146.33
L6	N 03°20'51" E	77.41
L7	S 03°20'51" W	99.37
L8	N 86°39'09" W	91.62
L9	N 03°20'51" E	66.10
L10	N 86°39'09" W	45.91
L11	S 86°39'09" E	91.87
L12	S 03°13'06" W	112.28

Line Table		
Line No.	Bearing	Length
L13	N 86°39'09" W	17.00
L14	N 03°20'51" E	94.17
L15	N 86°39'09" W	75.12
L16	N 03°20'51" E	206.45
L17	S 86°39'09" E	82.24
L18	S 03°20'51" W	160.00
L19	N 86°39'09" W	82.24
L20	N 03°20'51" E	160.00
L21	N 86°39'09" W	82.24
L22	N 03°20'51" E	92.50
L23	S 03°20'51" W	92.50

Notes:

1. All corners of Lease parcels are monumented with 1/2" iron rod with 2" dia. alum. cap stamped "City of Huntsville, L. E. Woods, R.P.L.S. 2524" unless otherwise noted.

2. See metes and bounds descriptions labeled Exhibit "A" prepared concurrently with this plat.

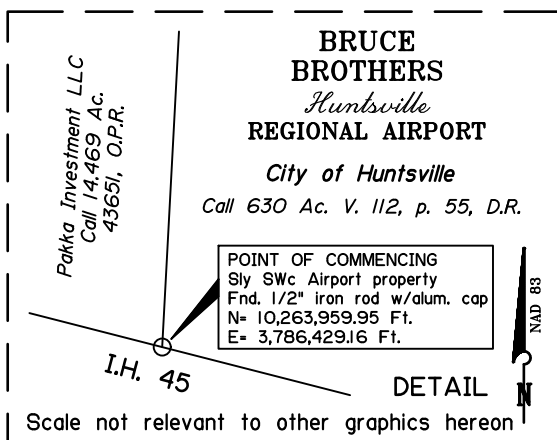
P.O.B. GL-1
N= 10,264,643.28 Ft.
E= 3,787,374.11 Ft.
bears N 54°07'40" E
1,661.3 from Sly SWc of
Airport property

P.O.B. GL-2
N= 10,264,582.64 Ft.
E= 3,787,654.91 Ft.
bears N 63°04'08" E
1,374.84 from Sly SWc of
Airport property

P.O.B. GL-3
N= 10,264,459.22 Ft.
E= 3,787,555.91 Ft.
bears N 66°06'06" E
1,232.41 from Sly SWc of
Airport property

P.O.B. GL-4
N= 10,264,456.19 Ft.
E= 3,787,363.17 Ft.
bears N 62°01'05" E
1,057.65 from Sly SWc of
Airport property

P.O.B. GL-5
N= 10,264,199.32 Ft.
E= 3,787,430.52 Ft.
bears N 76°33'21" E
1,029.57 from Sly SWc of
Airport property



Coordinate System, Basis of Bearings and Linear Units:

Coordinates and bearings hereon are referred to the Texas Coordinate System of 1983, Central Zone, and based on the position of National Geodetic Survey (formerly known as the U. S. Coast & Geodetic Survey) Primary Airport Control Station (PACS) monument designated "T39 A" having published NAD 83 (1993) coordinates of N= 3,128,437.762 Meters and E= 1,154,289.433 Meters. Distances shown hereon are U. S. Survey Feet in "GRID" units and may be converted to "Geodetic Horizontal" units by dividing by a combined scale factor of 0.99988.

I, Leonard E. Woods, certify that this plat represents a survey made on the ground under my direct supervision and that all corners, found or set, are monumented as shown hereon.

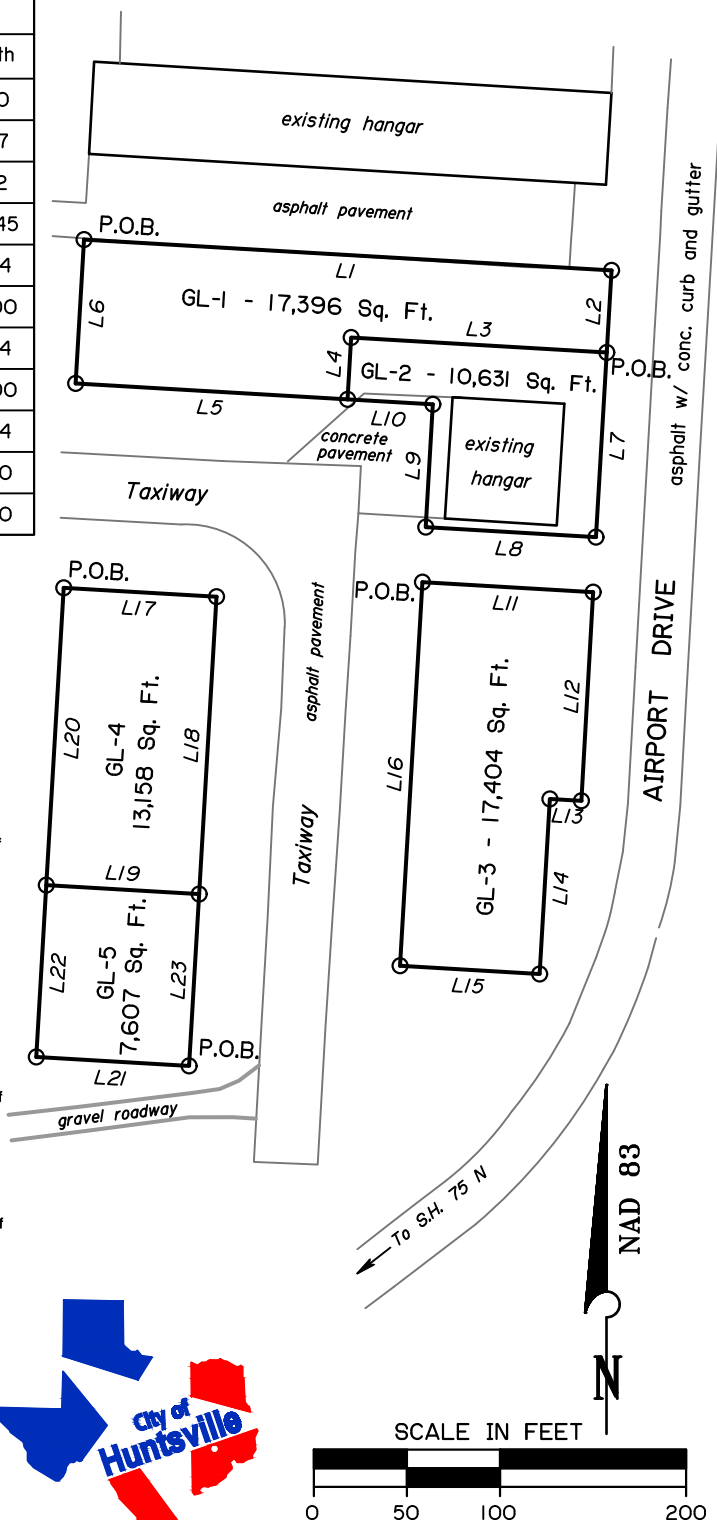
Leonard E. Woods

Leonard E. Woods
Reg. Prof. Land Surveyor No. 2524
FEBRUARY 2024



City of Huntsville
Engineering - Surveying
448 State Hwy. 75 North
Huntsville, Texas 77320
Project No. 12-01-02
Y:\SURVEYORS\PROJECTS\COH2\PS\12-01-02
AIRPORT\NEW HANGAR LEASE\HANGAR LEASE
1-2024.dwg

EXHIBIT "B"



PLAT OF SURVEY OF
GROUND LEASE PARCELS
GL-1, GL-2, GL-3, GL-4 AND GL-5
UPON

CITY OF HUNTSMVILLE, TEXAS PROPERTY
CITY OF HUNTSMVILLE
WARREN BIRDSSELL LEAGUE, A-6
WALKER COUNTY, TEXAS

FEBRUARY 2024



CITY COUNCIL AGENDA

2/6/2024

Agenda Item Number: 2.d.

Agenda Item: Consider a ground lease with Mr. Conrad Liles at the Bruce Brothers Huntsville Regional Airport and authorize the City Manager to enter into a ground lease agreement for said hangar.

Initiating Department/Presenter: Development Services

Presenter:

Layne Yeager, Planner

Recommended Motion: Move to approve a ground lease at the Bruce Brothers Huntsville Regional Airport and authorize the City Manager to enter into a ground lease agreement for said hangar.

Strategic Initiative: Goal #4, Infrastructure - Ensure the quality of the City utilities, transportation and physical structures so that the City's core services can be provided in an effective and efficient manner.

Discussion: City staff have been approached by an individual interested in constructing a 82-foot by 92-foot executive hangar at the Bruce Brothers Huntsville Regional Airport. This ground lease will be located within GL-5 identified within the attached survey. The City currently has three areas that are identified for ground leases within the Airport Master Plan (AMP) and Airport Layout Plan (ALP) that are currently in a ready to build condition.

Within the AMP the forecast of based aircraft and overall flight forecast show an increased need for facilities and improvements at the airport. This hangar is proposed to have the capacity to store several airplanes depending on the overall size of each.

Should the Council move to approve the ground lease, staff will coordinate with the Lessor to construct the hangar located within Ground Lease Number 5 shown on pages 2 and 3. The lease will be for a period of thirty years after which time the lessee will have the right of first refusal to re-lease the leased property.

The staff recommendation is to approve the ground lease to and authorize the City Manager to execute a ground lease agreement with Mr. Conrad Liles.

Previous Council Action: None

Financial Implications: The City's adopted fee schedule sets the rate for ground leases at the airport at \$0.15 per square foot. Revenue will be \$1,100 – \$1,200 annual lease payment based off the square footage of the ground lease.

Approvals:

Kevin Byal

Leonard Schneider
Aron Kulhavy
Kristy Doll

Associated Information:

1. Ground Lease COH Clean and Final 2-1-24
2. Conrad Liles Aerial Map
3. HANGAR LEASE SURVEY 1-2024

STATE OF TEXAS

§

§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF Walker§

This lease is made and entered into this _____ day of _____, by and between the City of Huntsville, hereinafter referred to as LESSOR and which is the owner of the Bruce Brothers Huntsville Municipal Airport, hereinafter referred to as AIRPORT and _____, hereinafter referred to as LESSEE who covenant and agree as follows:

WHEREAS, Lessor and Lessee are committed to the proper operation, improvement and continued development of the AIRPORT; and

WHEREAS, Lessor deems it advantageous to itself and to the operation of the Airport to lease to Lessee certain land/hangar/building/office as stated herein;

NOW THEREFORE, in accordance with the terms, considerations and privileges listed herein, Lessor and Lessee covenant and agree as follows:

I. LEASED AREA

Lessor, in consideration of the rents, covenants and promises by Lessee herein contained, does hereby lease to Lessee and Lessee does hereby rent and accept from Lessor that real property referred to as the leased premises and more particularly described as Tract No. _____, located on the Airport as shown on Exhibit A attached hereto and incorporated herein by reference.

II. TERM

This Lease shall be for a term of thirty (30) years (the 'lease term') beginning on _____, and ending 30 years from the issuance of the certificate of occupancy, subject to earlier termination as hereinafter provided. At the end of the lease term the Lessee shall have the right of first refusal to re-lease the leased property on terms to be negotiated in good faith by both parties. Upon approval of this ground lease agreement construction of the hanger must commence within one (1) year.

III. GROUNDS FOR TERMINATION

Grounds for termination of this lease at any time by Lessor shall include but not limited to:

1. Non-payment of rental.
2. Violation of any term, condition or promise contained or referenced herein.
3. Violation by Lessee of any provision of Chapter 10, Aviation of the Code of Ordinances of the City of Huntsville as amended, and as amended in the future, all of which is incorporated herein by reference.
4. Violation of Airport Zoning or the lawful rules, regulations, or orders of the City of Huntsville.
5. Violation of the laws, rules, rulings, orders or regulations of the State of Texas, the United States or the Federal Aviation Administration pertaining to the Bruce Brothers Huntsville Municipal Airport or tenants or aircraft operators thereon.
6. Failure to comply with the commencement of construction within the one (1) year period.

Prior to termination under this section, the City of Huntsville shall provide Lessee with written notice of anything deemed to be a violation or cause for lease termination and Lessee shall, except as otherwise set forth herein, have seven (7) days to cease and desist such violation or to remedy such other act or omission. As to any such violation, act or omission deemed by the City Manager or appropriate officers or officials of Lessor to be a source of substantial or imminent danger to the safety of persons or property, including air or ground traffic, Lessee shall, upon written or oral notice from Lessor, immediately and forthwith cease and desist such violation, act or omission or Lessee's leasehold right hereunder shall be subject to immediate oral termination by Lessor. The seven (7) day notice, where applicable, shall further only apply to the first two notifications of violations, acts or omissions by Lessee in any lease term, there being no necessity for such notice before termination thereafter.

IV. CONSIDERATION

1. In consideration for the lease of the Land/Hangar/Building/Office referenced herein, Lessee hereby agrees to pay yearly rental of _____ (**fifteen (\$0.15)** cents per sq. ft.) of lease premises leased to Lessee. The first year's payment shall be prorated to the beginning of the City's next fiscal year and shall be made in advance upon the signing of this lease. Thereafter, all future payments shall

- be billed during the first month of each fiscal year during the term of this contract plus any extensions thereto, and shall be payable within 20 days of billing.
2. Lessee agrees that the lease payment listed herein shall be subject to review annually by Lessor throughout the term of the lease and prior to any extensions granted. Any adjustments to the lease payment shall be based on the United States Consumer Price Index for all Urban Consumers (CPI-U) for the month of June preceding the change date. Any adjustment to the lease fee shall become effective the first day of Lessor's fiscal year and shall not exceed five percent (5%) per year. Such increase in the lease payment shall begin immediately upon request from Lessor and continue at that rate until the next adjustment. Upon review, if the CPI shall have decreased as compared to the previous review date, the lease fee for the subject Land/Hangar/Office/Building shall not be decreased, but shall remain at the same level as was charged during the preceding 1 year period.
 3. Lessee agrees to at all times keep the premises of the Land/Hangar/Building/Office, including the inside and outside of the Hangar/Building/Office, clean and free of trash, litter, tall grass, weeds, junked automobiles, boats and scrap aircraft parts. Lessee shall abide by all applicable rules and regulations of the Environmental Protection Agency, the Texas Natural Resources Conservation Commission, the Texas Department of Agriculture, the Texas Department of Transportation, and any other public agency regarding the use, storage, and disposal of hazardous chemicals, fuel and/or oil. Lessee further agrees to abide by the manufacturer's directions in regards to the use, storage and disposal of all pesticides, herbicides, and other chemicals plus their containers used at the airport. Should Lessee fail to keep the leased premises clean and free of hazards, such failure shall be a ground for termination under this lease. Lessor may, after thirty (30) days written notice, arrange for the clean-up of the littered or hazardous area. Such clean-up shall be charged to Lessee and payable upon demand. Failure to render proper payment for such clean-up and/or general disregard of the considerations and restrictions listed in this lease agreement are grounds for Lessor to terminate this lease.
 4. Lessee agrees to maintain the hangar and improvements located on the leased premises in a good state of repair. Such Lessee shall further keep the leased premises insured with policies of general liability insurance, in an amount of \$1,000,000.00 for each person injured, up to an aggregated \$1,000,000.00 for personal injury in any one accident and \$2,000,000.00 for property damage. Such policy originals shall name the City of Huntsville as additional insured and be paid for and kept in force by Lessee throughout the term of this lease and duplicates of such policies and renewals thereof and changes thereto shall promptly be delivered to Lessor.
 5. Lessee shall be responsible for any and all taxes assessed on improvements placed on leased premises.

V. PERMITTED USE

Lessor covenants and agrees that Lessee, on paying the rent and other charges herein provided for and observing and keeping the covenants, conditions, and terms of this lease on Lessee's part to be kept or performed, shall lawfully and quietly hold, occupy, and enjoy the leased premises during the term of this lease without hindrance or molestation of Lessor or any person claiming under Lessor except such portion of the leased premises, if any, as shall be taken under the power of eminent domain.

In the event the tract herein leased has a hangar or other improvements located thereon or such are subsequently placed thereon, Lessor expressly disclaims any express or implied warranties regarding such structure including soundness, habitability, safety, or condition. Lessor further advises Lessee that it makes no warranties regarding the fitness for purpose of any equipment and fixtures and the like, Lessee taking them As Is and with all faults since this is a ground lease only.

Where allowed by Lessor, Lessee agrees to allow other Lessees of adjoining tracts subsequently constructing hangars to attach to and use Lessee's walls and supports. Consideration for such use to the Lessee of the existing hangar shall be prompt payment by the subsequent hangar Lessee of one-half (1/2) of the actual cost of hangar common walls payable to the current Lessees of the adjoining hangars.

Lessee may store his privately owned property inside the hangar, provided that it meets local fire codes and at least seventy-five (75) percent of the hangar floor area is used for aircraft and aviation related purposes.

Lessee may store aviation related products or equipment inside the hangar for use in his aircraft so long, and only so long, as such products or equipment are contained in marked, approved containers, and are stored in accordance with the Airport Rules and Regulations as amended and incorporated herein by reference. Such storage shall be at the discretion of and with written approval from the Huntsville Fire Marshal certifying such storage is allowed under local fire codes.

Lessor reserves the right to enter the leased premises at all reasonable times to inspect for compliance with this lease and the ordinances, regulations, laws, rules and orders of the Lessor, the State of Texas and of the United States.

At the expiration of the lease term, Lessee shall quit and surrender the leased premises hereby demised in as good state and condition as they were in at the commencement of the term, reasonable use and wear and tear thereof and in accordance with the other terms within this lease.

VI. RESTRICTED USE

Lessee agrees that he will not conduct any commercial activity on the leased premises without permission for such operations being granted in writing by Lessor.

Lessee agrees that, subject to the other terms of this paragraph, the usage of at least seventy-five (75) percent of the hangar floor area shall be limited to aircraft and aviation related purposes. In addition, no personal property, including automobile, bus, truck, or other transportation mode, may be permanently stored on associated apron, paved, or grass area.

A Lessee shall not be deemed to be engaged in commercial operations for purposes of determining whether such person is or should become a Fixed Base Operator engaged in hangar rental if the Lessee:

- A. Allows such storage or parking pursuant to a written sublease agreement on a form provided by the City of Huntsville which requires Sublessee to honor all terms and conditions of the Sublessor's lease with the City, and
- B. Owns, leases or subleases not more than 35 percent of the number of hangars of all types located at the Bruce Brothers Huntsville Municipal Airport, whether or not such hangars are subleased.

The fact that a Lessee or Sublessee is a corporation, partnership, joint venture, limited partnership, or association shall not, of itself, cause the Lessor's or Sublessor's use of the leased premises to be deemed commercial use. Use of the leased premises for purposes other than storage or parking of tenant's aircraft (whether owned or bona fide leased to tenant) and storage and use of aircraft related items such as tools and parts and Lessee's or Sublessee's maintenance on his owned or leased aircraft, or expense sharing as set out in this section, shall be deemed commercial. For purposes of item B above, a Lessee shall be considered to include persons related in the second degree of consanguinity or affinity or a legal entity majority owned or controlled by such person.

If a hangar is not presently located on the leased premises, Lessee represents that Lessee has the present intention of constructing a permanent conforming aircraft hangar on the leased premises and shall begin construction of such hangar within thirty (30) days of obtaining a building permit from the City of Huntsville, which permit shall be obtained within three hundred and sixty-five (365) days after the signing of this Agreement. Such permit shall be sought with due diligence. Hangars shall be completed within two hundred seventy (270) days of the date of beginning of construction. All hangars constructed on the leased premises shall be built to the minimum requirements of the International Building Code, as amended, as adopted by the City of Huntsville and as from time to time amended. Plans, construction, materials, and workmanship of and in such hangar shall be subject to the same approval and inspection and certificates of occupancy by the building inspectors, officials, and sanitarians of the City of Huntsville as if such were located within the corporate limits of the City of Huntsville. Failure to obtain such building permit, to timely commence and complete such hangar construction, or to build such hangar in compliance with the referenced code and requirements or to obtain such inspections and certificate shall be an additional ground for termination of this lease by Lessor.

Nonconforming hangars already built on leased premises shall be allowed to remain unless abandoned for aircraft storage for one (1) year, destroyed or damaged to the extent of fifty percent (50%). Such abandoned, destroyed, or damaged hangars shall be forthwith removed by the Lessee at Lessee's expense. Such abandoned, destroyed, or damaged hangar may be rebuilt in conforming manner as if it were new construction under the terms of Section V above.

Lessee agrees to have an acceptable number of fire extinguishers of acceptable size as determined by the local fire marshal inside the hangar. Such fire extinguishers shall be readily available in the event of fire.

Lessee's agents, employees, invitees, and guests shall be held to the same standards for conduct as Lessee, and their violations, acts or omissions hereunder shall be seen as those of Lessee for the purposes of this lease.

Lessee, in exercising any of the rights or privileges herein granted to it, shall not on the grounds of sex, race, color, or national origin discriminate or permit discrimination against any person or group of persons in any manner prohibited by Part 21 of the Regulations of the Secretary of Transportation, Part 15 of the Federal Aviation Regulations or by the United States or the State of Texas. The Lessor is hereby granted the right to take such action, anything for the contrary notwithstanding, as the United States, State of Texas or their agencies or courts may direct to enforce this nondiscrimination covenant.

VII. SUBLEASE, ASSIGNMENT OR SALE

Lessee agrees not to assign or sublease the leased premises, or any improvements placed on leased premises, or allow any other person except Lessor's agents and employees to occupy the premises, without first obtaining Lessor's written consent. This lease is for the purpose of aviation related business or bona fide leased to Lessee or Sublessee. Upon written consent from Lessor to sublease or assign the leased premises, the proposed Sublessee or assignee shall agree to perform Lessee's duties and responsibilities contained in this Lease Agreement.

Should Lessee or Lessee's assignee in an assignment approved in writing by Lessor, have completed construction on a hangar on the leased premises and Lessee or Lessee's assignee desire to sell such improvements, assign or transfer such leasehold interest herein granted, or such leasehold interest is terminated, then Lessor shall have the first option to purchase such improvements, based upon the following provisions:

- a) Lessee may at his option sell any improvements placed by Lessee on the leased premises. If Lessee has received a bona fide offer to purchase the improvements, then Lessee shall serve written notice to Lessor of such offer, accompanied by an appraisal from a certified appraiser, enclosing a copy of such appraisal and offer which shall be made in writing. Value shall be based upon present value of improvements assuming a ten (10) year lease. Should Lessor elect not to exercise its option to purchase, such sale shall be made subject to approval by Lessor of a new lease to the purchaser of the improvements, (such

approval shall not be unreasonably withheld, and provided such sale shall be subject to the right of first refusal provided above).

- b) Lessee shall not serve written notice of such offer upon Lessor unless Lessee actually intends to accept same.
- c) Upon receipt of such written notice, Lessor shall have the option to purchase Lessee's leasehold interest upon the same terms stated in such bona fide offer.
- d) Lessor shall exercise such option to purchase by serving written notice to Lessee within ten (10) days after receipt of Lessee's written notice of the offer.
- e) If Lessor fails to exercise its option to purchase in the manner provided in this section, Lessor's right to purchase shall terminate and Lessee may assign the remaining portion of the Lease (subject to Lessor's approval which shall not be unreasonably withheld) to the offeror in accordance with the terms of such written offer.
- f) Lessee shall not assign this lease or sell such improvements except as herein provided, and any attempted assignment or sale in violation hereof shall be voidable by Lessor.
- g) If improvements placed on the leased premises by Lessee are determined by Lessor to impede airport improvements or expansions detailed in the Airport Master Plan or Airport Layout Plan approved by the Texas Department of Transportation and the Federal Aviation Administration, Lessor may elect to terminate this lease, or refuse any renewal term upon any proposed sale or assignment by Lessee. Further, Lessor may refuse to negotiate a further lease at the end of the lease term. In the event Lessor refuses renewal of this lease on the grounds stated above, then Lessor shall so notify Lessee in writing and pay Lessee the unamortized portion of appraised value of Lessee's improvements based on the remaining years of this lease in accordance with section h below. The appraised value of the improvements shall be determined by a panel of three certified appraisers. Lessor and Lessee shall each appoint one certified appraiser, and the two appraisers so appointed shall select a third person to serve as appraiser. The appraisers shall be selected by Lessor and Lessee within thirty (30) days after Lessor serves notice upon Lessee of its election not to re-lease the leased premises. Lessor shall pay Lessee the calculated appraised value of such improvements, and Lessee shall transfer and convey such improvements to Lessor within ninety (90) days after Lessor serves notice of its election not to re-lease the leased premises.
- (h) Within 6 months of the termination of this lease the Lessor shall pay to Lessee the unamortized portion of the cost of the permanent structures and fixed improvements constructed and installed there. That amortization is to be computed based on the number of months remaining on the lease from the date the Certificate of Occupancy is issued to the expiration date of the initial term of this agreement.
- (i) In the event of default by Lessee of any term or condition of this lease, and the lease is terminated by Lessor on grounds so specified in this Agreement, or in the event that Lessors and Lessee are unable in the exercise of good faith to agree on the terms of a re-lease of the leased premises at the end of the lease term, then Lessee may at his option either:
 - 1. Within a period of sixty (60) days, upon reasonable advance notice to the Airport Manager, remove all personal property, equipment, or trade fixtures owned by Lessee, with the exception of common walls in hangars, provided that if Lessee elects to remove such improvements he shall restore the leased premises to as good a condition as at the commencement of this Lease, normal use and wear and slab removal excepted. Lessee shall not remove the common wall on any hangars having a common wall. If Lessee so elects to remove such improvements, he shall quit and surrender the leased premises to Lessor on the termination date of the Lease subject to his right of re-entry upon the Leased Premises for the sole purpose of removing such improvements and restoring the leased premises to its original condition.
 - 2. Elect to sell improvements placed on the leased premises. If Lessee elects to sell such improvements, Lessee shall serve written notice of such election upon Lessor within sixty (60) days after the termination of the Lease. Such notice shall be accompanied by payment of rent for a period of one (1) year, together with any rent arrearage owed by Lessee to Lessor. Upon giving notice and paying the rent stipulated above, Lessee shall have a period of one (1) year following the Lease termination date within which to sell such improvements, and upon such termination of such one-year period Lessee shall have an option to extend the time for selling such improvements for additional one-year periods by giving notice and paying one year's rent in the same manner set forth above. During such period of time, not to exceed five (5) years following termination of the Lease, the leased premises shall remain vacant and shall not be used for any purpose by Lessor or Lessee. Upon the sale of such improvements by Lessee, Lessee's right and privilege to use the leased premises for any purpose whatsoever shall terminate, and the ratable portion of rent paid by Lessee for the remainder of the year during which the sale of such improvements is made shall be refunded by Purchaser to Lessee.
- (i) If Lessee fails to remove or sell his improvements on the Leased Premises in the manner provided above, or if Lessee fails to serve such notices on Lessor and pay the rent required above for extending the time within which Lessee may sell such improvements, such improvements shall be deemed abandoned by Lessee sixty (60) days following the Lease termination date, and all

improvements on the Leased Premises shall be forfeited to Lessor as liquidated damages for any past or future default by Lessee in payment of rent under this Agreement, and Lessee's obligation to pay rent hereunder, either arrearages or future rent, shall be terminated.

- (ii) All sublease(s), assignments or sale are subject to the provisions of Article X "Title to Improvements".

**VIII.
INDEMNITY**

Lessee shall indemnify the Lessor, its officers, agents and employees, against all liabilities of and to third persons, excluding liabilities resulting from the primary or active negligence of the Lessor, its officers, agents and employees, arising out of the use or occupancy of the premises by Lessee or others with its consent or out of any other acts or omissions of Lessee, its officers, agents and employees, on the premises or elsewhere on the airport. In the event any claim is made, or action brought that is covered by the above indemnity the Lessor shall give prompt written notice of that claim or action to Lessee and, if requested, Lessee shall attend to the defense of it. The Lessor shall not take any action, including settlement or compromise, which may in any manner adversely affect Lessee's ability to defend against any claim or action, and if the Lessor desires to defend itself without waiving its rights under the indemnity above it shall do so at its own expense and Lessee shall be allowed to participate, at its expense, in the defense.

IX. MAINTENANCE, IMPROVEMENT OF AIRPORT

Lessor has applied for and received or may receive a grant or grants of money from the Federal Aviation Administration pursuant to the Federal Airport Act of 1946, as amended, and/or the Texas Department of Transportation, and the Lessor may in the future apply for and receive other such grants. In connection therewith, Lessor has undertaken and may in the future undertake certain obligations respecting its operation of the airport and activities of its contractors, lessees, and permittees thereon. The performance by Lessee of the covenants, conditions, and obligations contained in this agreement is therefore a special inducement to and consideration for the execution of this lease by Lessor, and Lessee further covenants and agrees that if the Federal Aviation Administration, the Texas Department of Transportation or other governmental body or officer having jurisdiction over the enforcement of the obligations of Lessor in connection with federal or state aid shall make any orders, recommendations, or suggestions respecting the performance by Lessee of its obligations under this agreement, Lessee will promptly comply therewith at the time or when and to the extent that Lessor may direct.

Lessee agrees and understands that Lessor reserves the right to further expand, develop, or improve the airport, including the termination of this lease agreement, in such instance that the continued leasing of the leased premises would have a negative impact on, or impair any proposed development or improvements at the Airport. This contract agreement may be terminated regardless of the desires, wishes or views of Lessee and without interference or hindrance from Lessee, but only so long as such expansion, development or improvements are shown on a Texas Department of Transportation and/or FAA approved Airport Layout Plan or Master Plan. In this case, Lessor shall exercise its right to acquire such improvements as outlined in Section VII above. If the Lessee is unable to utilize the leased space due to improvements and/or repairs to the public use areas of the airport, this lease may be extended by the number of days the leased area is unable to be utilized.

Lessee understands and agrees that Lessor reserves the right, but not the obligation, to maintain the Airport to at least the minimum standards as recommended by the FAA and/or the Texas Department of Transportation. Such right includes the right to maintain and keep in repair all public use areas at the Airport and the right to direct and control all activities necessary at the Airport and may close the Airport at any time and at its own discretion. Such closure shall immediately void this contract and no damages or monies, or other compensation will be owed to Lessee by Lessor.

Lessee shall pay or cause to be paid all charges for water, heat, gas, electricity, sewers and any and all other utilities used on the leased premises throughout the term of this lease, including any connection fees.

X. Title to Improvements

The Lessor solely owns the Leased Premises. Any and all improvements made to the Leased Premises by Lessee shall become the property of Lessor upon the expiration or termination of this Agreement in accordance with Section VII above; provided, however if Lessee is not then in default hereunder, Lessee shall have the right to remove all personal property, equipment, or trade fixtures owned by Lessee from the Leased Premises, but Lessee shall be required to repair any damage to the Leased Premises caused by such removal in a good and workmanlike manner and at Lessee's sole cost and expense. If LESSEE fails or refuses to remove any or all of Lessee's personal property, equipment, and trade fixtures from the Leased Premises on or before the date of the termination of this Agreement, the items which Lessee has failed or refused to remove: (i) shall be considered abandoned by Lessee, (ii) shall become the property of Lessor, and (iii) may be disposed of by Lessor in any manner desired by Lessor in Lessor's unfettered discretion.

XI. EXCLUSIONS

No waiver by Lessor of any default or breach of any covenant, condition, or stipulation herein contained shall be treated as a waiver of any subsequent default or breach of the same or any other covenant, condition, or stipulation hereof.

In the event Lessor or Lessee breaches any of the terms of this agreement whereby the party not in default employs attorneys to protect or enforce its rights hereunder and prevails, then the defaulting party agrees to pay the other party reasonable attorney's fees so incurred by such other party.

The numeric captions and headings are inserted solely for the convenience of reference and are not part of nor intended to govern, limit, or aid in the construction of any provision hereof.

Time is of the essence of this agreement.

For the purpose of this agreement, the singular number shall include the plural and the masculine shall include the feminine and vise-versa, whenever the context so admits or requires.

This agreement shall be binding upon and ensure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this agreement.

This agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Walker County, Texas.

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

This agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the written subject matter.

No amendment, modification, or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

The rights and remedies provided by this lease agreement are cumulative.

This lease entered into this the ____ day of _____

Lessor:

Lessee:

City of Huntsville

City Manager
1212 Avenue M
Huntsville, TX 77340

ATTEST: _____



36

Liles Ground Lease 92'x82'

Airport Dr

Kate Barr Ross Park

75

Line Table		
Line No.	Bearing	Length
L1	S 86°39'09" E	283.85
L2	S 03°20'51" W	44.14
L3	N 86°39'09" W	137.52
L4	S 03°20'51" W	33.27
L5	N 86°39'09" W	146.33
L6	N 03°20'51" E	77.41
L7	S 03°20'51" W	99.37
L8	N 86°39'09" W	91.62
L9	N 03°20'51" E	66.10
L10	N 86°39'09" W	45.91
L11	S 86°39'09" E	91.87
L12	S 03°13'06" W	112.28

Line Table		
Line No.	Bearing	Length
L13	N 86°39'09" W	17.00
L14	N 03°20'51" E	94.17
L15	N 86°39'09" W	75.12
L16	N 03°20'51" E	206.45
L17	S 86°39'09" E	82.24
L18	S 03°20'51" W	160.00
L19	N 86°39'09" W	82.24
L20	N 03°20'51" E	160.00
L21	N 86°39'09" W	82.24
L22	N 03°20'51" E	92.50
L23	S 03°20'51" W	92.50

Notes:

1. All corners of Lease parcels are monumented with 1/2" iron rod with 2" dia. alum. cap stamped "City of Huntsville, L. E. Woods, R.P.L.S. 2524" unless otherwise noted.

2. See metes and bounds descriptions labeled Exhibit "A" prepared concurrently with this plat.

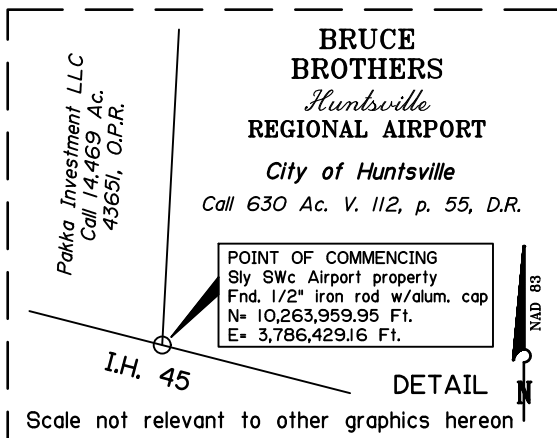
P.O.B. GL-1
N= 10,264,643.28 Ft.
E= 3,787,374.11 Ft.
bears N 54°07'40" E
1,661.3 from Sly SWc of
Airport property

P.O.B. GL-2
N= 10,264,582.64 Ft.
E= 3,787,654.91 Ft.
bears N 63°04'08" E
1,374.84 from Sly SWc of
Airport property

P.O.B. GL-3
N= 10,264,459.22 Ft.
E= 3,787,555.91 Ft.
bears N 66°06'06" E
1,232.41 from Sly SWc of
Airport property

P.O.B. GL-4
N= 10,264,456.19 Ft.
E= 3,787,363.17 Ft.
bears N 62°01'05" E
1,057.65 from Sly SWc of
Airport property

P.O.B. GL-5
N= 10,264,199.32 Ft.
E= 3,787,430.52 Ft.
bears N 76°33'21" E
1,029.57 from Sly SWc of
Airport property



Coordinate System, Basis of Bearings and Linear Units:

Coordinates and bearings hereon are referred to the Texas Coordinate System of 1983, Central Zone, and based on the position of National Geodetic Survey (formerly known as the U. S. Coast & Geodetic Survey) Primary Airport Control Station (PACS) monument designated "T39 A" having published NAD 83 (1993) coordinates of N= 3,128,437.762 Meters and E= 1,154,289.433 Meters. Distances shown hereon are U. S. Survey Feet in "GRID" units and may be converted to "Geodetic Horizontal" units by dividing by a combined scale factor of 0.99988.

I, Leonard E. Woods, certify that this plat represents a survey made on the ground under my direct supervision and that all corners, found or set, are monumented as shown hereon.

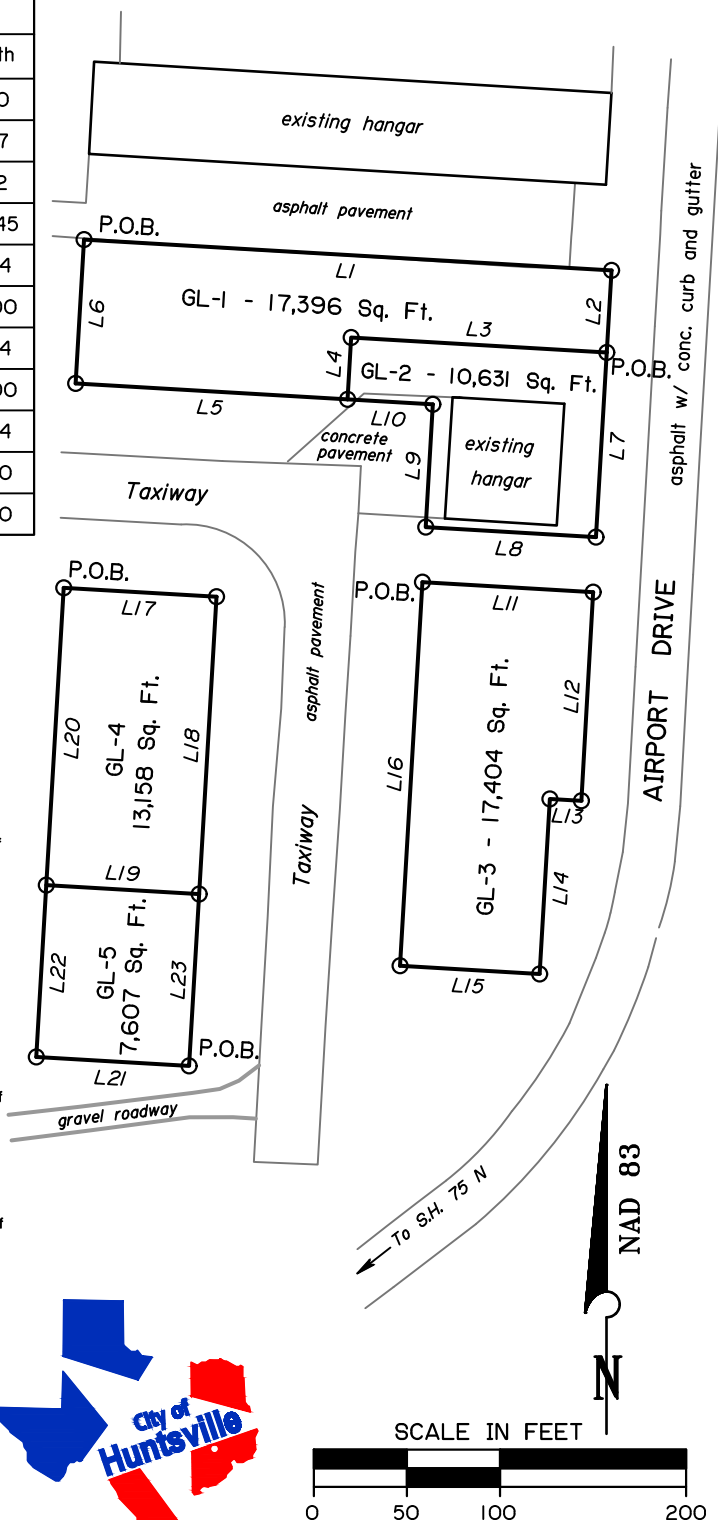
Leonard E. Woods

Leonard E. Woods
Reg. Prof. Land Surveyor No. 2524
FEBRUARY 2024



City of Huntsville
Engineering - Surveying
448 State Hwy. 75 North
Huntsville, Texas 77320
Project No. 12-01-02
Y:\SURVEYORS\PROJECTS\COH2\PS\12-01-02
AIRPORT\NEW HANGAR LEASE\HANGAR LEASE
1-2024.dwg

EXHIBIT "B"



PLAT OF SURVEY OF
GROUND LEASE PARCELS
GL-1, GL-2, GL-3, GL-4 AND GL-5
UPON

CITY OF HUNTSVILLE, TEXAS PROPERTY
CITY OF HUNTSVILLE
WARREN BIRSELL LEAGUE, A-6
WALKER COUNTY, TEXAS

FEBRUARY 2024



CITY COUNCIL AGENDA

2/6/2024

Agenda Item Number: 2.e.

Agenda Item: Consider approving Resolution No. 2024-6, a resolution consenting to the creation of a Municipal Utility District to be known as "Evergreen Hills Municipal Utility District No. 1 of Walker County".

Initiating Department/Presenter: Development Services

Presenter:

Kevin Byal, Director of Development Services

Recommended Motion: Move to approve resolution No. 2024-6, a resolution consenting to the creation of a Municipal Utility District to be known as "Evergreen Hills Municipal Utility District No. 1 of Walker County" contingent upon receipt of lienholder, Austin Bank, consent and approval.

Strategic Initiative: Goal #4, Infrastructure - Ensure the quality of the City utilities, transportation and physical structures so that the City's core services can be provided in an effective and efficient manner.

Discussion: SPJR Properties, LLC is the owner and developer of approximately 86.855 acres of land, the entirety of which is located in the City limits. The site is north of FM 2821 between American Legion Dr. and Quality Blvd and is planned for a single-family residential community. This resolution is the next step in the creation of the MUD and gives the developer consent to move forward with the process of creating the MUD for the purpose of funding the infrastructure for the development.

Previous Council Action:

- November 21, 2023 – City Council held a public hearing and first reading of Ordinance 2023-26 to change the Development District from Management (M) to Planned Development (PD).
- December 5, 2023 – City Council approved Ordinance 2023-26 to change the Development District from Management (M) to Planned Development (PD).

Financial Implications: The development, when complete, will add to the ad valorem tax base of the City.

Approvals:

Kevin Byal
Leonard Schneider
Aron Kulhavy
Kristy Doll

Associated Information:

1. Consent Resolution_2024-6

-
2. Exhibit A_Evergreen Hills MUD #1 Petition_Rev
 3. Exhibit B MUD Consent Conditions
 4. Certificate of Ownership

RESOLUTION NO. 2023-6

A RESOLUTION OF THE CITY OF HUNTSVILLE, TEXAS CONSENTING TO THE CREATION OF A MUNICIPAL UTILITY DISTRICT TO BE KNOWN AS EVERGREEN HILLS MUNICIPAL UTILITY DISTRICT NO. 1 OF WALKER COUNTY

WHEREAS SPJR Properties, LLC ("Developer") is or will be the owner of approximately 86.855 acres of land (the "Tract"), the entirety of which is located in the City limits; and

WHEREAS Developer has submitted to the City a Petition for Consent to the Creation of a Municipal Utility District, requesting the City's consent to the creation of a municipal utility district over the boundaries of the Tract, as described therein.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HUNTSVILLE:

Section 1. The facts and recitations set forth in the preamble of this Resolution are hereby found to be true and correct.

Section 2. The Petition for Consent to the Creation of a Municipal Utility District is attached hereto as Exhibit "A" and made a part hereof for all purposes.

Section 3. The City Council of the City hereby specifically gives its written consent to the creation of a municipal utility district over the Tract subject to the condition that Petitioner fully comply with the conditions set forth in Exhibit "B" attached hereto and incorporated herein, as well as subject to such other provisions of the Code of Ordinances of the City, as may be applicable.

Section 4. The City Council officially finds, determines, recites and declares that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by Chapter 551, Texas Government Code; and that this meeting had been open to the public as required by law at all times during which this Resolution and the subject matter hereof has been discussed, considered and formally acted upon. The City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

Section 5. In addition to the conditions and requirements otherwise set out herein and unless otherwise agreed to in writing or a variance is expressly granted by City Council, the Consent as herein provided shall be conditioned on the owners of the real property within the Tract fully complying with all rules, regulations, and requirements that may be in existence or later provided as the same relates to any construction, configuration, or use of the Tract, whether directly expressed or provided by the City in such other agreements and documents that may be

executed for the development or use of Tract.

Section 6: Should any paragraph, sentence, clause, phrase or section of this Resolution be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Resolution as a whole or any part or provision thereof, other than the part so declared to be invalid, illegal or unconstitutional.

Section 7: This Resolution shall become effective from and after the date of its final passage, and it is accordingly so ordained.

PASSED AND APPROVED this ____ day of _____ 2024.

CITY OF HUNTSVILLE, TEXAS

Russell Humphrey, Mayor

ATTEST:

Kristy Doll, City Secretary

APPROVED AS TO FORM:

Leonard Schneider, City Attorney

PETITION FOR CONSENT TO CREATION OF
EVERGREEN HILLS MUNICIPAL UTILITY DISTRICT NO. 1 OF WALKER COUNTY

THE STATE OF TEXAS §

COUNTY OF WALKER §

TO THE HONORABLE MAYOR AND CITY COUNCIL OF THE CITY OF HUNTSVILLE:

The undersigned (the "Petitioner"), acting pursuant to the provisions of Chapters 49 and 54 of the Texas Water Code, respectfully petition this Honorable Council for its consent to the creation of a municipal utility district, and for cause would respectfully show the following:

I.

The name of the proposed District shall be "Evergreen Hills Municipal Utility District No. 1 of Walker County" (the "District").

II.

The District shall be organized under the terms and provisions of Article III, Section 52, and Article XVI, Section 59, of the Texas Constitution, Chapters 49 and 54 of the Texas Water Code, together with all amendments and additions thereto.

III.

The District shall contain a total area of approximately 86.855 acres of land, situated within Walker County, Texas, described by metes and bounds in Exhibit "A" attached hereto and incorporated herein (the "Property"). The Property is located wholly within the corporate limits of the City of Huntsville, Texas.

IV.

The undersigned constitutes a majority in value of the holders of title to the Property, as shown by the tax rolls and conveyances of record since the date of preparation of said county tax rolls. There are no lienholders on the Property, except Austin Bank.

V.

The proposed District shall be organized for the following purposes:

- (1) provide a water supply for the District for municipal and domestic uses;
- (2) collect, transport, process, dispose of and control all domestic, industrial, or communal wastes whether in fluid, solid, or composite state;
- (3) gather, conduct, divert and control local storm water or other local harmful excesses of water in the District;

- (4) construct, acquire, improve, maintain and operate macadamized, graveled, or paved roads and turnpikes, or other improvements in aid of those roads; and
- (5) such other construction, installation, maintenance, purchase, and operation of such additional facilities, systems, plants and enterprises as shall be consistent with the purposes for which the District is organized.

The aforementioned purposes may be accomplished by any mechanical and chemical means and processes incident, necessary or helpful to such purposes, to the extent authorized by law and the creation of the District, to the end that public health and welfare may be conserved and promoted, and the purity and sanitary condition of the State's waters protected, effected and restored.

VI.

The general nature of the work anticipated to be done by the District at the present time is: (i) the construction of a water distribution system for domestic purposes; (ii) the construction of a sanitary sewer system; (iii) the control, abatement and amendment of the harmful excess of waters and the reclamation and drainage of overflowed lands within the District; (iv) the construction and financing of macadamized, graveled, or paved roads and turnpikes, or improvements in aid of those roads; and (v) such other construction, installation, maintenance, purchase and operation of such other facilities, systems, plants and enterprises as shall be consistent with the purposes for which the District is organized, all to the extent authorized by law from time to time.

VII.

There is a necessity for the improvements above described because the District is located within an area which will experience a substantial and sustained residential growth within the foreseeable future, is urban in nature and is not supplied with adequate water, sanitary sewer, drainage facilities and services, and roads. The health and welfare of the future inhabitants of the District require the provision of adequate water, storm and sanitary sewer facilities and services and roads.

The provisions of such water, storm and sanitary sewer facilities and services and roads will conserve and preserve the natural resources of this State by promoting and protecting the purity and sanitary condition of the State's waters, and will promote and protect the public health and welfare of the community; therefore, a public necessity exists for the organization of said District.

The property cannot be developed without the creation of the District to finance the water, sanitary sewer, and drainage facilities and services, and roads; therefore, a public necessity exists.

VIII.

The proposed improvements are practicable and feasible, in that the terrain of the territory to be included in the proposed District is of such nature that water, storm and sanitary sewer facilities and services, and roads can be constructed or provided at a reasonable cost; and said territory will be rapidly developed for residential use.

IX.

A preliminary investigation has been instituted to determine the cost of the proposed improvements to be constructed by the District on the Property, and it is now estimated by those filing this petition, from such information as they have at this time, that the ultimate cost of such improvements will be approximately \$12,600,000.

X.

WHEREFORE, the undersigned respectfully pray that this Petition be granted in all respects and that the City Council of the City of Huntsville, Texas, adopt a resolution giving its written consent to the creation of the District to include the Property.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

RESPECTFULLY SUBMITTED this the 13th day of December, 2023.

PETITIONER:

SPJR PROPERTIES, LLC.
a Texas limited liability company

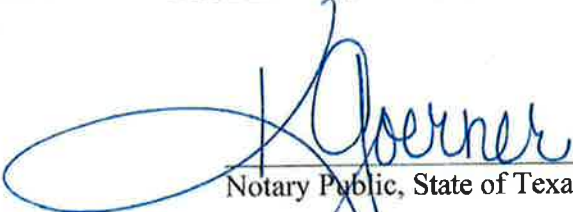
By: 
Name: Stefan Pardoe
Its: Managing Member

STATE OF TEXAS

§
§
§

COUNTY OF Montgomery

This instrument was acknowledged before me on the 13th day of December, 2023, by Stefan Pardoe, Managing Member of SPJR PROPERTIES, LLC., a Texas limited liability company, on behalf of said entity.



Notary Public, State of Texas

(SEAL)

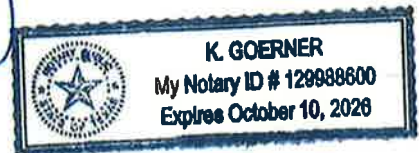


EXHIBIT "A"

EXHIBIT "B"

CONSENT CONDITIONS

The City Council hereby finds, determines, and declares that it is to the best interests of the City of Huntsville ("City") and of the territory within its City corporate limits and extraterritorial jurisdiction ("ETJ"), that the proponents of any municipal utility district ("District") or any other political subdivision having as one of its purposes the supplying of fresh water for domestic or commercial uses, the furnishing of sanitary sewer service, or the furnishing of drainage and/or flood control services when such District is sought to be created within the area of the City Limits or ETJ of the City, shall as a prerequisite to the written consent of the City, agree and covenant in writing, to adhere to the following rules, regulations and standards:

(1) Bonds may be issued by the District only for the purpose of purchasing and constructing, or purchasing or constructing, or under contract with the City, or otherwise acquiring waterworks systems, sanitary sewer collection systems, lift stations, and treatment facilities, storm sewer systems and drainage facilities, levee facilities, recreational facilities, roads, fire protection facilities or parts of such systems or facilities, and to make any and all necessary purchases, construction, improvements, extensions, additions and repairs thereto, and to purchase or acquire all necessary lands, rights-of-way, easements, sites, equipment, buildings, plants, structures, and facilities therefore, and maintain same and to sell water, sanitary sewer, and other services within or outside the boundaries of the District. Such bonds of the District shall only be sold after taking public bids therefore. All District bonds shall provide that the District shall reserve the right to redeem said bonds on any interest payment date on a date no later than the fifteenth anniversary of the date of issuance without premium. No bonds, other than refunding bonds, shall be sold at less than ninety-five (95) percent 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 bond, will not exceed two (2) 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 (45) days after the notice of sale of the bonds is given.

The maximum term of any debt issuance shall be no greater than forty (40) years from the date of issuance. The minimum par amount of any bonds issued, except a final issue, shall be one million dollars (\$1,000,000.00). Each issue of bonds shall be structured to achieve either level principal payments or level debt service payments, excluding the first two (2) years of debt service. Prior to issuance of the bonds, the District shall submit to the City a copy of the Preliminary Official Statement evidencing a District tax rate (both maintenance and operations rate and interest and sinking rate combined) not to exceed one dollar and fifty cents (\$1.50) per one hundred dollars (\$100.00) assessed valuation. Each bond issue shall not include more than two (2) years of capitalized interest. The resolution authorizing the issuance of the District's bonds will contain a provision that any pledge of the revenues from the operation of the District's water and sewer and/or drainage system to the payment of the District's bonds will terminate when and if the City annexes the District, takes over the assets of the District, and assumes all of the obligations of the District. No land will be added or annexed to the District until the City has given its written consent

by resolution or ordinance of the City Council to such addition or annexation. Refunding bonds shall comply with the City's ordinance on refunding bonds, as it may be amended from time to time.

(2) Before the commencement of any construction within the District, the District or developer developing property located therein will enter into a Development Agreement or Agreement to Construct Public Improvements, as applicable, with the City detailing, among other things, platting requirements, City review and approval of plans and specifications, utility service to the District and billing related thereto, and compliance with regulatory requirements.

(3) The District shall levy a debt service tax no later than the annual tax levy following the first installment of bonds and continue a tax levy until such bonds are paid in full unless revenues of the system are adequate to discharge such bonds.

(4) No bonds or notes of the District shall be issued or sold unless the District is in compliance with Paragraph (1) above and prior to advertisement of the sale of the bonds, the District provides the City with: (i) a copy of the draft notice of sale; (ii) a copy of the draft Resolution to be adopted by the District's Board of Directors authorizing the sale of the bonds; (iii) a copy of the Preliminary Official Statement; and (iv) if applicable, a copy of the TCEQ Order approving the project and bonds. Item (iv) in the preceding sentence shall not be required for the issuance of road bonds. In the event that the District is in compliance with the entirety of these Consent Conditions and timely submits the documentation set forth in this Paragraph 4, no further City approval shall be necessary prior to selling and issuing the bonds. However, should the District seek any variance or modification from these Consent Conditions, the issuance of that series of bonds by the District must be approved by the City Council of the City.

(5) The petitioner shall pay all costs related to the consent and creation of the District.

(6) The District shall post notice of the meetings of its Board of Directors in accordance with Section 49.063 of the Texas Water Code. The District's Board of Directors shall hold its meetings at a location accessible to its residents. At all times after the District has one hundred (100) residential water connections, it shall hold the meetings of its Board of Directors at a location within the corporate limits of the City or within the boundaries of the District; provided however, that this geographical limitation shall not apply if the District provides telephone or virtual access to its meetings to all members of the public.

(7) The official office for recordkeeping of the District must be accessible to the District residents.

(8) The District shall comply with all applicable requirements of the TCEQ regarding the display of signage at entrances into the District.

CERTIFICATE OF OWNERSHIP

THE STATE OF TEXAS §

COUNTY OF WALKER §

WALKER COUNTY APPRAISAL DISTRICT §

Re: Ownership of 86.855 Acres

I, Stacey M. Poteete, Chief Appraiser of the Walker County Appraisal District, hereby certify that: (1) I have reviewed the property description contained in Exhibit "A" attached hereto; and (2) according to the appraisal rolls of Walker County, on December 12, 2023, title to the land described in Exhibit "A" was held by SPJR Properties LLC. The appraised value of the property was \$1,887,320.

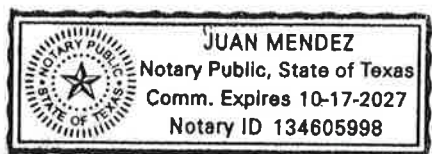


Stacey M. Poteete, Chief Appraiser

THE STATE OF TEXAS §

COUNTY OF WALKER §

This instrument was acknowledged before me on this 18th day of January, 2024, by Stacey M. Poteete, Chief Appraiser of the Walker County Appraisal District.



(NOTARY SEAL)



Notary Public in and for the State of Texas



CITY COUNCIL AGENDA

2/6/2024

Agenda Item Number: 2.f.

Agenda Item: Consider authorizing the City Manager to enter into a Development Agreement with SPJR Properties, LLC., for the development of an approximately 86.855-acre development for a single-family master planned community.

Initiating Department/Presenter: Development Services

Presenter:

Kevin Byal, Director of Development Services

Recommended Motion: Move to authorize the City Manager to enter into a Development Agreement with SPJR Properties, LLC., for the development of an approximately 86.855-acre development for a single-family master planned community contingent upon receipt of lienholder, Austin Bank, consent and approval.

Strategic Initiative: Goal #4, Infrastructure - Ensure the quality of the City utilities, transportation and physical structures so that the City's core services can be provided in an effective and efficient manner.

Discussion: Late last year the City was approached by SPJR Properties, LLC., the developer of an approximately 86.855-acre tract, located between American Legion Dr and Quality Blvd., about the creation of a single-family master planned community comprised of smaller than average homes on small lots.

The developer petitioned the Planning Commission and City Council with a zone change request of a Planned Development to allow for lots smaller than that permitted by right in the development code. The initial zone change was approved at the December 5, 2023 City Council meeting.

City staff has been negotiating a development agreement with the developer and have reached a mutual agreement concerning the content of the agreement. The purpose of this agenda item is to authorize the City Manager to enter into a Development Agreement with SPJR Properties, LLC., the owner and developer of approximately 86.855 acres of land for a single-family master planned community.

The developer has indicated that there is a lienholder on the property. The lienholder has indicated that they will participate in execution of the agreement, but their information is not included in the draft copy provided in the packet. If approved by Council, the agreement will not be fully executed until signed and acknowledged by the lienholder.

Previous Council Action:

- November 21, 2023 – City Council held a public hearing and first reading of Ordinance 2023-26 to change the Development District from Management (M) to Planned Development (PD).

-
- December 5, 2023 – City Council approved Ordinance 2023-26 to change the Development District from Management (M) to Planned Development (PD).

Financial Implications: The development, when complete, will add to the ad valorem tax base of the City.

Approvals:

Kevin Byal
Leonard Schneider
Aron Kulhavy
Kristy Doll

Associated Information:

1. Development Agreement (Evergreen Hills MUD) Final W-Exhibits_Rev

DEVELOPMENT AGREEMENT BETWEEN THE CITY OF HUNTSVILLE, TEXAS, AND SPJR PROPERTIES, LLC.

This Development Agreement (the "Agreement") is made and entered into on the day of _____, 2024 (the "Effective Date"), by and between THE CITY OF HUNTSVILLE, TEXAS, a home rule municipality located in Walker County, Texas (the "City"), and SPJR PROPERTIES, LLC., a Texas limited liability company (the "Developer"). The City and the Developer shall be individually referred to herein as a "Party" and collectively as the "Parties."

RECITALS

The City is a home rule city and municipal corporation that provides a full-range of governmental services to its citizens.

The Developer is the owner of approximately 86.855 acres of land (the "Tract"), more particularly described in **Exhibit A**, which is located wholly within the City's corporate limits in Walker County, Texas.

The Developer desires to develop a single-family planned community on the Tract; however, the Developer represents that the feasibility of the development of the Tract requires that the City consent to the creation of a municipal utility district that will enable the financing of the various water, sewer, and drainage facilities, roads, that will serve the Tract.

The City and Developer agree that the development of the Tract and the design, construction, and installation of the public infrastructure necessary to provide water, sewer, drainage and roads can best proceed pursuant to this Agreement.

It is the intent of this Agreement to establish certain restrictions and commitments imposed and made in connection with the development of the Tract. The City and the Developer are proceeding in reliance on the enforceability of this Agreement.

AGREEMENT

NOW THEREFORE, for and in consideration of the mutual agreements, covenants, and conditions contained herein, and other good and valuable consideration, the City and the Developer agree as follows:

ARTICLE I DEFINITIONS

Section 1.01 Terms. Unless the context requires otherwise, and in addition to the terms defined above, the following terms and phrases used in this Agreement shall have the meanings set out below:

City means the City of Huntsville, Texas.

City Council means the City Council of the City or any successor governing body.

Commission means the Texas Commission on Environmental Quality and its successors.

Construction Costs means costs associated with any particular construction project under the terms of this Agreement, including, but not limited to, costs of construction, acquisition, and installation; engineering fees and expenses; costs of advertising; costs of acquiring necessary licenses, permits, waste control orders, discharge permits or amendments thereto; fiscal, legal, and administrative costs; material-testing costs; site, easement, and permit costs; and all other costs and expenses directly relating to the foregoing, together with an amount for contingencies or estimated Construction Costs of fifteen percent (15%) of the foregoing, provided that no contingency amount shall be included in "Construction Costs" regarding a particular construction project once that project is complete.

Developer means SPJR Properties, LLC., a Texas limited liability company, and its successors or assigns.

Development Code means the City's ordinances regulating the development of subdivisions, including any design criteria to property located in the City limits.

Development Plan means the plan for the proposed development of the Tract, substantially as described in the attached **Exhibit B**, as it may be revised from time to time in accordance with the terms of this Agreement.

District means the proposed Evergreen Hills Municipal Utility District No. 1 of Walker County, encompassing the Tract.

District Petition means the Petition for Consent to Creation of Evergreen Hills Municipal Utility District No. 1 of Walker County, signed by the Developer, requesting the City's consent to the creation of a municipal utility district encompassing the Tract.

Facilities means and includes the water distribution, wastewater collection, drainage and detention systems, parks and recreational facilities, and road facilities (including storm sewer located in the road right-of-way) 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, including any pro rata interest or share owned by the District in such facilities, together with all contract rights, permits, licenses, properties, rights-of-way, easements, sites, and other interests related thereto.

HOA means the homeowners association(s) for the homes within the Tract.

Material Change shall mean any change to the Development Plan that impacts the intended land use of the Tract (i.e. modifying the land use from single family residential to commercial or industrial).

Person means any individual, partnership, association, firm, trust, estate, public or private corporation, or any other legal entity whatsoever.

TCEQ means the Texas Commission on Environmental Quality.

Tract means all the land described in the attached **Exhibit A**.

Ultimate Consumer means the purchaser of a lot within the Tract who does not intend to resell, subdivide, or develop the lot in the ordinary course of business.

Section 1.02 Exhibits. The following exhibits are attached to this Agreement as though fully incorporated herein:

Exhibit A	The Tract
Exhibit B	Development Plan
Exhibit C	City Consent Resolution

ARTICLE II

CONSENT TO CREATION OF MUNICIPAL UTILITY DISTRICT

Section 2.01 Introduction. The feasibility of the development of the Tract by Developer is dependent on certain actions being taken by Developer and the City. For the purposes hereafter set forth, a municipal utility district must be created over the Tract.

Section 2.02 Consent to District Creation. Developer has previously submitted the District Petition to the City. Concurrently with the City's approval of this Agreement, the City intends to adopt a Resolution substantially in the form attached hereto as Exhibit C, consenting to the creation of the District ("Consent Resolution").

Section 2.03 Deposit. The Developer shall deposit with the City \$10,000 to cover the City's reasonably necessary expenses incurred by legal counsel, engineers, accountants, financial advisors, or other consultants and advisors for the preparation and review of the documents related to this Agreement and the consent to the creation of the District in addition to those fees established in the adopted fee schedule as established by ordinance from time to time for the preparation and review of the documents related to the development and for the preparation and review of any other documents contemplated by this Agreement related to the development of the Tract.

ARTICLE III

DESIGN AND CONSTRUCTION STANDARDS AND FACILITIES

Section 3.01 Regulatory Standards and Development Quality. The land uses within the Tract shall be typical of a master planned community with residential and recreational facilities and will require approximately 520 connections for water and wastewater service. The City and the Developer agree that one of the primary purposes of this Agreement is to provide for the quality of, and certainty as to the applicable regulatory requirements for, development of the Tract throughout the development process. Feasibility of the development of the Tract is dependent upon a predictable regulatory environment and stability in the projected land uses. In exchange for Developer's performance of the obligations under this Agreement, the City agrees that Developer may develop the Tract in accordance with the Development Code in effect on the date hereof and will not be required to comply with any amendments or changes to such Development Code

subsequently adopted by the City; provided, however, any development of the Tract not completed ten (10) years after the date of this Agreement shall adhere to the then current Development Code, including any future amendments and changes thereto. The City and the Developer agree that, except for the Development Code, any City ordinance, whether heretofore or hereafter adopted, that directly addresses matters which are covered by this Agreement shall not be enforced by the City within the Tract, to the extent expressed in this Agreement, and that the provisions of this Agreement shall govern development of the Tract unless otherwise required by law.

Section 3.02 Planned Development District.

(a) The Developer shall submit appropriate documents for City consideration, and not later than 180 days after the Effective Date, the City agrees to take all requisite steps to consider adopting a planned development ("PD") for the Tract, substantially in the form attached hereto as **Exhibit B**. Developer acknowledges that the PD is established by legislative act of the City Council and is therefore not guaranteed.

(b) Criteria for the development of the Tract shall be in compliance with the PD and the Development Code.

(c) The City shall be provided a copy of the draft HOA declarations and by-laws as to the ownership and operation of the dedicated amenities. Owner shall cause deed restrictions to be recorded and enforced against the Tract, including any property owned or maintained by the HOA or the District, that require all construction and/or development on the Tract to comply with the PD or applicable Development Code.

Section 3.03 Design Standards for Public Improvements.

(a) The Developer shall provide streets, drainage, utilities, roads, and parks and recreational facilities according to the Development Plan and PD at Developer's sole cost; provided, however, the Developer may receive reimbursement of certain eligible costs from the District.

(b) All streets, drainage, water and wastewater facilities, and parks and recreational facilities and all offsite utility extensions and internal utilities to serve the Tract shall be designed and constructed by or on behalf of the District in accordance with all rules and regulations of the City applicable to the construction of such facilities, including the Development Code, and in accordance with this Agreement. The City may inspect all facilities at its sole cost and expense, including those facilities under construction, at all reasonable times.

(c) When the District determines, in its sole discretion, that it is necessary and economically feasible to construct the Facilities, the District shall proceed to award a construction contract for the Facilities based upon the approved plans. The Facilities shall be installed, construction contracts shall be awarded, and payment and performance bonds obtained all in accordance with the general law for municipal utility districts. In addition to any other construction contract provisions, any construction contract for the Facilities shall include the contractor's one (1) year warranty of work performed under the contract. The District shall file all required documents related to the construction of the Facilities with the City and the TCEQ.

(d) The Developer shall provide written certification to the City from a professional engineer licensed in the state of Texas that the City's criteria set forth in the Development Code or the PD for such streets, drainage, water, wastewater, and park and recreational improvements have been met. Subject to such certification from a licensed professional engineer and approval of the plans by the City as provided for in the Development Code, no approval by City Council shall be required.

(e) In the event the City requires additional access to the Tract in accordance with the City's transportation plan and comprehensive plan, the City will be responsible for acquisition of any necessary right of ways between the Tract and roads owned or maintained by the City. If the development of the Tract necessitates additional access, the Developer shall be responsible for acquiring any other right of way which is not required by the City and necessary for any facilities that will be constructed on lands not owned by the City or Developer. The City agrees to use its best efforts to assist Developer in its acquisition of any such right of way, including eminent domain, provided that Developer shall be responsible for the cost to acquiring such right- of-way for such additional access, including costs of the eminent domain proceedings.

(f) Developer shall be responsible for complying with any bidding or bonding requirements that may apply to projects intended to be reimbursed by the District and shall provide copies of construction plans and bid documents to the City.

(g) Upon completion of the Facilities, the District shall require the District Engineer to certify that the Facilities have been completed in substantial compliance with the approved plans, and the District shall certify that all bills and sums of money due in connection with the construction and installation of the Facilities have been fully paid and that the Facilities are free of any and all liens and claims, all according to the certification of the construction contractor. The District shall accept the construction of the Facilities in writing from the construction contractor. The District shall then convey the Facilities (except for parks and recreational facilities and storm water detention facilities) to the City in accordance with the City's procedure for acceptance.

Section 3.04 Capacity in and Conveyance and Maintenance of Facilities.

(a) The City recognizes that Developer is constructing certain facilities so that treated water service and wastewater treatment service are available to serve Developer's development in the District. The parties acknowledge and agree the construction of such facilities and the provision of such services, among other things, will be governed by Development Code and this Agreement.

(b) The City agrees to timely provide approximately 520 equivalent single-family connections ("ESFCs") for water and wastewater services to serve the Tract. The water and wastewater services provided by the City under this Agreement shall be equivalent in quality to the water and wastewater services and provided at the same rates and charges for services as the City provides to other City customers. The City shall, upon reasonable request, issue a letter of assurance that the Developer or District, as appropriate, is entitled to the use and benefit of such water and wastewater capacity. The letter of assurance shall provide for the use and benefit of quantities of services of the capacities as provided for herein. All capacity may be allocated or

reallocated by the Developer or District, as appropriate, through the issuance of commitment letters for water and wastewater capacities, at its discretion and without prior approval by the City, to serve various land uses within the Tract. The Developer or District, as appropriate, shall have the right to assign all or part of its reserved capacity to landowner(s) and developer(s) within the Tract.

(c) The streets (including storm sewer located in the road right-of-way) within the Tract shall be built to City specifications. The City's acceptance of such streets may be withheld for failure to comply with any applicable regulations and requirements associated with its acceptance of public streets.

(d) The City agrees that Developer may make provisions for public park and recreational facilities to serve the Tract to be financed, developed, and maintained by the District, to the extent authorized by state law. Developer agrees that any such amenities may be dedicated to the District or the HOA for ownership and operation and shall not be the responsibility of the City.

(e) Storm water detention systems shall be owned, operated, and maintained by the District. Upon dissolution of the District, the storm water detention system shall be maintained by the HOA.

(f) In the event the City requires any of the facilities necessary to serve the Tract to be oversized to serve land other than the Tract, the City shall pay the cost of such oversizing as such facilities are being built.

Section 3.05 Termination. The City shall have the right to terminate this Agreement, upon which action it shall be of no further force and effect, if the Developer has not initiated construction of any infrastructure within the Tract within three (3) years after the Effective Date. Either Party shall have the right to terminate this Agreement, upon which action it shall be of no further force and effect, if establishment of a PD for the Tract fails to occur within 180 days of the Effective Date of this Agreement. Notwithstanding the foregoing, a Party cannot elect to terminate this Agreement if the act(s) or omission(s) of such Party resulted in any such failure.

Section 3.06 Qualified Voter Housing. Notwithstanding any other provision of this Agreement to the contrary, up to three (3) HUD-certified manufactured homes may be temporarily located within the Tract for the creation or administration of the District and for providing qualified voters within the District or qualifying persons to serve on the board of directors of the District ("Qualified Voter Housing"). A private well and septic system may be installed, operated, and maintained for the use of such Qualified Voter Housing. Qualified Voter Housing may be located on the Tract for one (1) year after the first purchase of a lot by an Ultimate Consumer. Developer will notify the City of the location of, make and model of, HUD number for, and 911 address of the Qualified Voter Housing within thirty (30) days after such home is occupied. Qualified Voter Housing permitted by this Agreement: (i) is not required to be located on a platted lot; (ii) does not require a building permit; (iii) does not require a certificate of substantial completion; (iv) does not otherwise have to comply with the Development Code; (v) except for utility connections, if any, does not require any permit or other approval by the City except for a placement permit; and (vi) will be promptly removed when no longer needed for the creation, administration, or development of the District.

Section 3.07 Director Qualifying Lots. Notwithstanding any other provision of this

Agreement to the contrary, the conveyance, from time to time, of any portion of the Tract, whether described by metes and bounds or otherwise, to any person for the purpose of qualifying such person to be a member of the board of directors of the District shall not be considered a subdivision of land requiring a plat or otherwise requiring the approval of the City; provided, however, no structure, other than Qualified Voter Housing authorized by Section 3.06, shall be constructed on any property conveyed for such purpose unless and until a plat of such portion of the Tract has been approved by the City in accordance with this Agreement and the City's subdivision regulations, as currently adopted or amended prior to submittal of a preliminary plat to the City.

ARTICLE IV PROVISIONS FOR DESIGNATED MORTGAGEE

Section 4.01 Notice to Designated Mortgagee. Pursuant to Section 4.03, any Designated Mortgagee shall be entitled to simultaneous notice any time that a provision of this Agreement requires notice to Developer.

Section 4.02 Right of Designated Mortgagee to Cure Default. Any Designated Mortgagee shall have the right, but not the obligation, to cure any default in accordance with the provisions of Section 4.03 and Article IV.

Section 4.03 Designated Mortgagee. At any time after execution and recordation in the Real Property Records of the County of any mortgage, deed of trust, or security agreement encumbering the Tract or any portion thereof, the Developer (i) shall notify the City in writing that the mortgage, deed of trust, or security agreement has been given and executed by the Developer, and (ii) may change the Developer's address for notice pursuant to Section 8.01 to include the address of the Designated Mortgagee to which it desires copies of notice to be provided.

At such time as a full and final release of any such lien is filed in the County's Real Property Records, and the Developer gives notice of such release to the City as provided herein, all rights and obligations of the City with respect to the Designated Mortgagee under this Agreement shall terminate.

The City agrees that it may not exercise any remedies of default hereunder unless and until the Designated Mortgagee has been given thirty (30) days written notice and opportunity to cure (or commences to cure and thereafter continues in good faith and with due diligence to complete the cure) the default complained of. Whenever consent is required to amend a particular provision of this Agreement or to terminate this Agreement, the City and the Developer agree that this Agreement may not be so amended or terminated without the consent of such Designated Mortgagee; provided, however, consent of a Designated Mortgagee shall only be required to the extent the lands mortgaged to such Designated Mortgagee would be affected by such amendment or termination other than termination provided by Section 3.05.

Upon foreclosure (or deed in lieu of foreclosure) by a Designated Mortgagee of its security instrument executed by the Developer encumbering the Tract, such Designated Mortgagee (and its affiliates) and their successors and assigns shall not be liable under this Agreement for any defaults that are in existence at the time of such foreclosure (or deed in lieu of foreclosure). Furthermore, so long as such Designated Mortgagee (or its affiliates) is only maintaining the Tract and marketing it for sale and is not actively involved in the development of the Tract, such Designated Mortgagee

(and its affiliates) shall not be liable under this Agreement. Upon foreclosure (or deed in lieu of foreclosure) by a Designated Mortgagee, any development of the property shall be in accordance with this Agreement.

If the Designated Mortgagee, and/or any of its affiliates or their respective successors and assigns, undertakes development activity, they shall be bound by the terms of this Agreement. However, under no circumstances shall such Designated Mortgagee ever have liability for matters arising either prior to, or subsequent to, its actual period of ownership of the Tract, or a portion thereof, acquired through foreclosure (or deed in lieu of foreclosure).

ARTICLE V PROVISIONS FOR DEVELOPER

Section 5.01 Waiver of Actions Under Private Real Property Rights Preservation Act. The Developer hereby waives its right, if any, to assert any causes of action against the City accruing under the Private Real Property Rights Preservation Act, Chapter 2007, Texas Government Code (the "Act"), that the City's execution or performance of this Agreement or any authorized amendment or supplements thereto may constitute, either now or in the future, a "Taking" of Developer's, Developer's grantee's, or a grantee's successor's "Private Real Property," as such terms are defined in the Act, provided, however, that this waiver does not apply to, and the Developer and Developer's grantees and successors do not waive their rights under the Act to assert a claim under the Act for any action taken by the City beyond the scope of this Agreement which otherwise may give rise to a cause of action under the Act.

Section 5.02 Developer's Right to Continue Development. The City and the Developer hereby agree that, subject to Section 7.05 of this Agreement, the Developer may sell all or a portion of the Tract to one or more Persons who shall be bound by this Agreement and perform the obligations of Developer hereunder relative to the portion of the Tract acquired by such Persons, provided that the Developer shall retain ultimate responsibility for complying with the terms of this Agreement unless the City agrees in writing that the purchaser shall be responsible for and perform the Developer's obligations, which such consent shall not be unreasonably delayed, conditioned, or withheld. The City shall be provided with a written copy of any assignment made under this section.

Section 5.03 Assignment of Obligations. Developer agrees that regarding any of Developer's obligations in this Agreement that are contemplated to ultimately become obligations of the District, Developer shall assign to the District such obligations upon creation and confirmation of the District.

ARTICLE VI MATERIAL BREACH, NOTICE, AND REMEDIES

Section 6.01 Material Breach of Agreement. It is the intention of the parties to this Agreement that the Tract be developed in accordance with the terms of this Agreement, the PD, and the Development Code, and that Developer follow the development plans substantially as set out in the Development Plan.

(a) The parties acknowledge and agree that any material deviation from the Development Plan and the concepts of development contained therein and any material deviation by 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 Developer shall be deemed to have occurred in any of the following instances:

1. Developer's failure to develop the Tract in compliance with the approved Development Plan, as from time to time amended; or Developer's failure to secure the City's approval of any material modification or amendment to the Development Plan; or

2. Failure of the Developer to substantially comply with the provisions of this Agreement; or

3. The parties agree that nothing in this Agreement can compel the Developer to proceed or continue to develop the Tract within any time period.

(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 any of the following instances:

1. The imposition or attempted imposition of any moratorium on building or growth on the Tract prohibited by State law or this Agreement unless necessitated by public emergency;

2. The imposition of a requirement to provide regionalization or oversizing of public utilities through some method substantially or materially different than the plan set forth in this Agreement, unless agreed to in writing by the Parties;

3. An attempt by the City to require modification or amendment of the Development Plan where it complies with the requirements of this Agreement; or

4. An attempt by the City to unreasonably withhold approval of a plat of land within the Tract that complies with the requirements of this Agreement and the Development Code.

If 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 VI shall provide the remedies for such default.

Section 6.02 Notice of Developer's Default.

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

(b) The City shall determine (i) whether a failure to comply with a provision has

occurred; (ii) whether such failure is excusable; and (iii) whether such failure has been cured or will be cured by the alleged defaulting Developer or a Designated Mortgagee. The alleged defaulting Developer shall make available to the City, if requested, any records, documents, or other information necessary to make such determination.

(c) In the event that the City determines that such failure has not occurred, or that such failure either has been or will be cured in a manner and in accordance with a schedule reasonably satisfactory to the City, or that such failure is excusable, such determination shall conclude the investigation.

(d) If the City determines that a failure to comply with a provision has occurred and that such failure is not excusable and has not been or will not be cured by the alleged defaulting Developer or a Designated Mortgagee in a manner and in accordance with a schedule reasonably satisfactory to the City, then the City Council may proceed to mediation under Section 6.04 and subsequently may exercise the applicable remedy under Section 6.05.

Section 6.03 Notice of City's Default.

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

(b) The Developer shall determine (i) whether a failure to comply with a provision has occurred; (ii) whether such failure is excusable; and (iii) whether such 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.

(c) In the event that the Developer determines that such failure has not occurred or that such failure either has been or will be cured in a manner and in accordance with a schedule reasonably satisfactory to the Developer, or that such failure is excusable, such determination shall conclude the investigation.

(d) If the Developer determines that a failure to comply with a provision has occurred and that such 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 the Developer, then the Developer may proceed to mediation under Section 6.04 and subsequently exercise the applicable remedy under Section 6.05.

Section 6.04 Mediation. In the event the parties to this Agreement cannot, within a reasonable time, resolve their dispute pursuant to the procedures described in Sections 6.02 or 6.03, the parties agree to submit the disputed issue to non-binding mediation. The parties shall participate in good faith, but in no event shall they be obligated to pursue mediation that does not resolve the issue within fourteen (14) days after the mediation is initiated or thirty (30) days after mediation is requested. The parties participating in the mediation shall share the costs of the mediation equally.

Section 6.05 Remedies.

(a) In the event of a determination by the City that the Developer has committed a material breach of this Agreement that is not resolved in mediation pursuant to Section 6.04, the City may file suit in a court of competent jurisdiction and seek any relief available at law or in equity.

(b) In the event of a determination by a Developer that the City has committed a material breach of this Agreement that is not resolved in mediation pursuant to Section 6.04, the Developer may file suit in a court of competent jurisdiction and seek any relief available at law or in equity, including, but not limited to, specific enforcement of this Agreement.

ARTICLE VII

BINDING AGREEMENT, TERM, AMENDMENT, AND ASSIGNMENT

Section 7.01 Beneficiaries. This Agreement shall bind and inure to the benefit of the City and the Developer and their respective successors and assigns. In addition to the City and the Developer, Designated Mortgagees and their successors or assigns shall also be deemed beneficiaries to this Agreement. The terms of this Agreement shall constitute covenants running with the land comprising the Tract and shall be binding on all future developers and owners of any portion of the Tract, other than Ultimate Consumers. Notwithstanding the foregoing statement, an Ultimate Consumer shall be bound by the Developer's submittal of the District Petition, to the extent allowed by law, and shall be bound by the Developer's waiver of rights described in Section 5.01.

Section 7.02 Liability of Ultimate Consumer. Ultimate Consumers shall have no liability for the failure of the Developer to comply with the terms of this Agreement and shall only be liable for their own failure to comply with the recorded declaration of restrictive covenants and land use restrictions applicable to the use of their tract, or lot.

Section 7.03 Term. This Agreement shall bind the parties and continue for fifteen (15) years from the Effective Date of this Agreement, unless terminated on an earlier date pursuant to other provisions of this Agreement or by express written agreement executed by the City and Developer.

Section 7.04 Termination Filing. In the event this Agreement is terminated as provided in this Agreement or is terminated by mutual agreement of the parties, upon request by a party, the parties shall promptly execute and file of record, in the County Clerk's Official Records, a document confirming the termination of this Agreement, and such other documents as may be appropriate to reflect the basis upon which such termination occurred.

Section 7.05 Assignment or Sale. All covenants and agreements contained by or on behalf of a party in this Agreement shall bind its successors and assigns and shall inure to the benefit of the other parties and their successors and assigns. The parties may assign their rights and obligations under this Agreement or any interest herein. If the Developer proposes to sell all or substantially all of the Tract owned at such time by the Developer, the Developer shall provide prior written notice of such sale to the City. Any person who acquires the Tract or any portion of the Tract, except for an Ultimate Consumer whose liability is defined in Section 7.01 and 7.02 above, shall take the Tract subject to the terms of this Agreement and shall provide written acknowledgment to an assignment of said terms, receipt of which by the City shall constitute its consent for purposes of Section 5.02 of this Agreement.

ARTICLE VIII MISCELLANEOUS PROVISIONS

Section 8.01 Notice. The parties contemplate that they will engage in informal communications with respect to the subject matter of this Agreement. However, any formal notices or other communications ("Notice") required to be given by one party to another by this Agreement shall be given in writing addressed to the party to be notified at the address set forth below for such party (a) by delivering the same in person; (b) by depositing the same in the United States Mail, certified or registered, return receipt requested, postage prepaid, addressed to the Party to be notified; or (c) by depositing the same with Federal Express or another nationally recognized courier service guaranteeing "next day delivery," addressed to the party to be notified. Any notice required to be given by a party to a Designated Mortgagee shall be given as provided above at the address designated upon the identification of the Designated Mortgagee. Notice deposited in the United States mail in the manner herein above described shall be deemed effective from and after three (3) days after the date of such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties, until changed as provided below, shall be as follows:

City: City of Huntsville
Attn: City Manager
1212 Avenue M
Huntsville, TX 77340

With copy to: City Attorney
1212 Avenue M
Huntsville, TX 77340

Developer: SPJR Properties, LLC.
Attn: _____

With copy to: Coats Rose, P.C.
Attn: Laken Jenkins Kilgore
9 Greenway Plaza, Ste. 1000
Houston, TX 77046

The parties shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by giving at least five (5) days written notice to the other parties. A Designated Mortgagee may change its address in the same manner by written notice to all of the parties. If any date or any period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating the notice shall be extended to the first business day following such Saturday, Sunday or legal holiday.

Section 8.02 Time. Time is of the essence in all things pertaining to the performance of

this Agreement.

Section 8.03 Severability. If any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws, then it is the intention of the parties hereto that the remainder of this Agreement shall not be affected.

Section 8.04 Waiver. Any failure by a party hereto to insist upon strict performance by the other party of any material provision of this Agreement shall not be deemed a waiver thereof or of any other provision hereof, and such party shall have the right at any time thereafter to insist upon strict performance of any and all of the provisions of this Agreement.

Section 8.05 Applicable Law and Venue. The construction and validity of this Agreement shall be governed by the laws of the State of Texas without regard to conflicts of law principles. Venue shall be in Walker County, Texas.

Section 8.06 Reservation of Rights. To the extent not inconsistent with this Agreement, each party reserves all rights, privileges, and immunities under applicable laws.

Section 8.07 Further Documents. The parties agree that at any time after execution of this Agreement, they will, upon request of another party, execute and deliver such further documents and do such further acts and things as the other party may reasonably request in order to effectuate the terms of this Agreement.

Section 8.08 Incorporation of Exhibits and Other Documents by Reference. All Exhibits and other documents attached to or referred to in this Agreement are incorporated herein by reference for the purposes set forth in this Agreement.

Section 8.09 Conflicts. In the event of any conflict between this Agreement and any other ordinance, rule, regulation, standard, policy, order, guideline, or other City-adopted or City-enforced requirement, whether existing on the Effective Date or hereinafter adopted, this Agreement shall control, except as otherwise expressly provided in this Agreement. In the event of any conflict between any provision of the Agreement and the Development Code, the provisions of the Agreement shall control.

Section 8.10 Effect of State and Federal Laws. Notwithstanding any other provision of this Agreement, Developer and its successors or assigns, shall comply with all applicable statutes or regulations of the United States and the State of Texas, as well as any City ordinances not in conflict with this Agreement, and any rules implementing such statutes or regulations.

Section 8.11 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 Charter, City ordinances, and the laws of the State of Texas. The Developer hereby certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with the certificate of formation and company agreements of such entity.

Section 8.12 Multiple Counterparts. This Agreement may be executed in multiple original counterparts, and such counterparts, when taken together, shall have the full force and effect of an original, fully executed instrument.

Section 8.13 Texas Government Code Chapter 2271. The City is prohibited from contracting with any "company" for goods and services unless the following verification is included in this contract. If Developer qualifies as a "company", then Developer verifies that it: (a) does not "boycott Israel"; and (b) will not "boycott Israel" during the term of this Agreement. For the purposes of this section only, the terms "company" and "boycott Israel" have the meaning assigned by Section 2271.001, Texas Government Code. Developer's obligations under this section, if any exist, will automatically cease or be reduced to the extent that the requirements of Chapter 2271, Texas Government Code are subsequently repealed, reduced, or declared unenforceable or invalid, in whole or in part, by any court or tribunal of competent jurisdiction or by the Texas Attorney General, without any further impact on the validity or continuity of this Agreement.

Section 8.14 Foreign Terrorist Organizations. Pursuant to Chapter 2252, Texas Government Code, at the time of execution of this Agreement, if Developer qualifies as a "company" as defined by Section 2270.0001 of the Texas Government Code, then Developer verifies it is not a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201 or 2252.153 of the Texas Government Code.

Section 8.15. Companies that Boycott Certain Energy Companies or Discriminate Against the Firearms or Ammunitions Industries. The Developer agrees and represents that the total value of this Agreement shall not exceed the dollar limitation set forth in Section 2274.002(a)(2) of the Texas Government Code (as added by Senate Bill 13, 87th Texas Legislature, Regular Session) and Section 2274.002(a)(2) of the Texas Government Code (as added by Senate Bill 19, 87th Texas Legislature, Regular Session).

Section 8.16 Form 1295. Pursuant to Texas Government Code Section 2252.908, the City hereby acknowledges that Developer has delivered to the City a signed and completed Texas Ethics Form 1295 and certifications of filing with the Texas Ethics Commission.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the undersigned parties have executed this Development Agreement to be effective as of the Effective Date first written above.

CITY OF HUNTSVILLE, TEXAS

MAYOR

ATTEST:

APPROVED AS TO FORM:

CITY SECRETARY

CITY ATTORNEY

STATE OF TEXAS §
 §
COUNTY OF WALKER §

This instrument was acknowledged before me on the _____ day of _____, 2024, by Russell Humphrey, Mayor of the City of Huntsville, Texas, in the capacity therein stated.

Notary Public, State of _____

(SEAL)

DEVELOPER:

SPJR PROPERTIES, LLC.

a Texas limited liability company

By: _____

Name: Stefan Pardoe

Its: Managing Member

STATE OF TEXAS

§

COUNTY OF _____

§

§

This instrument was acknowledged before me on the _____ day of _____, 2024, by Stefan Pardoe, Managing Member of SPJR PROPERTIES, LLC., a Texas limited liability company, on behalf of said entity.

Notary Public, State of _____

(SEAL)

EXHIBIT A
THE TRACT
[attached]

[illegible]

EXHIBIT B

DEVELOPMENT PLAN

[attached]

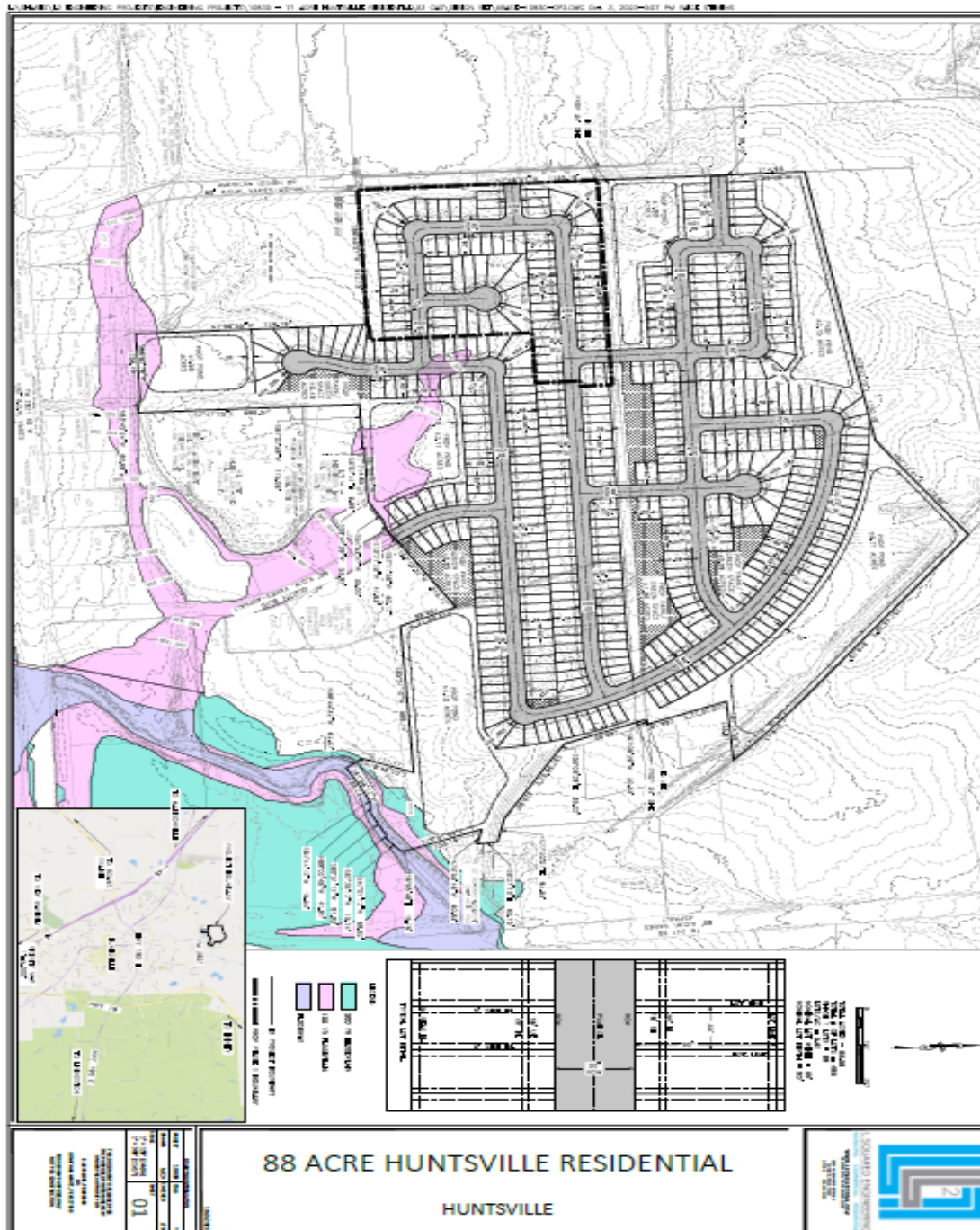


EXHIBIT C
CITY CONSENT
RESOLUTION

RESOLUTION NO. 2023-6

**A RESOLUTION OF THE CITY OF HUNTSVILLE, TEXAS
CONSENTING TO THE CREATION OF A MUNICIPAL UTILITY
DISTRICT TO BE KNOWN AS EVERGREEN HILLS MUNICIPAL
UTILITY DISTRICT NO. 1 OF WALKER COUNTY**

WHEREAS SPJR Properties, LLC ("Developer") is or will be the owner of approximately 86.855 acres of land (the "Tract"), the entirety of which is located in the City limits; and

WHEREAS Developer has submitted to the City a Petition for Consent to the Creation of a Municipal Utility District, requesting the City's consent to the creation of a municipal utility district over the boundaries of the Tract, as described therein.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HUNTSVILLE:

Section 1. The facts and recitations set forth in the preamble of this Resolution are hereby found to be true and correct.

Section 2. The Petition for Consent to the Creation of a Municipal Utility District is attached hereto as Exhibit "A" and made a part hereof for all purposes.

Section 3. The City Council of the City hereby specifically gives its written consent to the creation of a municipal utility district over the Tract subject to the condition that Petitioner fully comply with the conditions set forth in Exhibit "B" attached hereto and incorporated herein, as well as subject to such other provisions of the Code of Ordinances of the City, as may be applicable.

Section 4. The City Council officially finds, determines, recites and declares that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by Chapter 551, Texas Government Code; and that this meeting had been open to the public as required by law at all times during which this Resolution and the subject matter hereof has been discussed, considered and formally acted upon. The City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

Section 5. In addition to the conditions and requirements otherwise set out herein and unless otherwise agreed to in writing or a variance is expressly granted by City Council, the Consent as herein provided shall be conditioned on the owners of the real property within the Tract fully complying with all rules, regulations, and requirements that may be in existence or later provided as the same relates to any construction, configuration, or use of the Tract, whether directly expressed or provided by the City in such other agreements and documents that may be

executed for the development or use of Tract.

Section 6: Should any paragraph, sentence, clause, phrase or section of this Resolution be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Resolution as a whole or any part or provision thereof, other than the part so declared to be invalid, illegal or unconstitutional.

Section 7: This Resolution shall become effective from and after the date of its final passage, and it is accordingly so ordained.

PASSED AND APPROVED this ____ day of _____ 2024.

CITY OF HUNTSVILLE, TEXAS

Russell Humphrey, Mayor

ATTEST:

Kristy Doll, City Secretary

APPROVED AS TO FORM:

Leonard Schneider, City Attorney

Exhibit A

PETITION FOR CONSENT TO CREATION OF EVERGREEN HILLS MUNICIPAL UTILITY DISTRICT NO. 1 OF WALKER COUNTY

THE STATE OF TEXAS §

COUNTY OF WALKER §

TO THE HONORABLE MAYOR AND CITY COUNCIL OF THE CITY OF HUNTSVILLE:

The undersigned (the "Petitioner"), acting pursuant to the provisions of Chapters 49 and 54 of the Texas Water Code, respectfully petition this Honorable Council for its consent to the creation of a municipal utility district, and for cause would respectfully show the following:

I.

The name of the proposed District shall be "Evergreen Hills Municipal Utility District No. 1 of Walker County" (the "District").

II.

The District shall be organized under the terms and provisions of Article III, Section 52, and Article XVI, Section 59, of the Texas Constitution, Chapters 49 and 54 of the Texas Water Code, together with all amendments and additions thereto.

III.

The District shall contain a total area of approximately 86.855 acres of land, situated within Walker County, Texas, described by metes and bounds in Exhibit "A" attached hereto and incorporated herein (the "Property"). The Property is located wholly within the corporate limits of the City of Huntsville, Texas.

IV.

The undersigned constitutes a majority in value of the holders of title to the Property, as shown by the tax rolls and conveyances of record since the date of preparation of said county tax rolls. There are no lienholders on the Property, except Austin Bank.

V.

The proposed District shall be organized for the following purposes:

- (1) provide a water supply for the District for municipal and domestic uses;
- (2) collect, transport, process, dispose of and control all domestic, industrial, or communal wastes whether in fluid, solid, or composite state;
- (3) gather, conduct, divert and control local storm water or other local harmful excesses of water in the District;

- (4) construct, acquire, improve, maintain and operate macadamized, graveled, or paved roads and turnpikes, or other improvements in aid of those roads; and
- (5) such other construction, installation, maintenance, purchase, and operation of such additional facilities, systems, plants and enterprises as shall be consistent with the purposes for which the District is organized.

The aforementioned purposes may be accomplished by any mechanical and chemical means and processes incident, necessary or helpful to such purposes, to the extent authorized by law and the creation of the District, to the end that public health and welfare may be conserved and promoted, and the purity and sanitary condition of the State's waters protected, effected and restored.

VI.

The general nature of the work anticipated to be done by the District at the present time is: (i) the construction of a water distribution system for domestic purposes; (ii) the construction of a sanitary sewer system; (iii) the control, abatement and amendment of the harmful excess of waters and the reclamation and drainage of overflowed lands within the District; (iv) the construction and financing of macadamized, graveled, or paved roads and turnpikes, or improvements in aid of those roads; and (v) such other construction, installation, maintenance, purchase and operation of such other facilities, systems, plants and enterprises as shall be consistent with the purposes for which the District is organized, all to the extent authorized by law from time to time.

VII.

There is a necessity for the improvements above described because the District is located within an area which will experience a substantial and sustained residential growth within the foreseeable future, is urban in nature and is not supplied with adequate water, sanitary sewer, drainage facilities and services, and roads. The health and welfare of the future inhabitants of the District require the provision of adequate water, storm and sanitary sewer facilities and services and roads.

The provisions of such water, storm and sanitary sewer facilities and services and roads will conserve and preserve the natural resources of this State by promoting and protecting the purity and sanitary condition of the State's waters, and will promote and protect the public health and welfare of the community; therefore, a public necessity exists for the organization of said District.

The property cannot be developed without the creation of the District to finance the water, sanitary sewer, and drainage facilities and services, and roads; therefore, a public necessity exists.

VIII.

The proposed improvements are practicable and feasible, in that the terrain of the territory to be included in the proposed District is of such nature that water, storm and sanitary sewer facilities and services, and roads can be constructed or provided at a reasonable cost; and said territory will be rapidly developed for residential use.

IX.

A preliminary investigation has been instituted to determine the cost of the proposed improvements to be constructed by the District on the Property, and it is now estimated by those filing this petition, from such information as they have at this time, that the ultimate cost of such improvements will be approximately \$12,600,000.

X.

WHEREFORE, the undersigned respectfully pray that this Petition be granted in all respects and that the City Council of the City of Huntsville, Texas, adopt a resolution giving its written consent to the creation of the District to include the Property.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

RESPECTFULLY SUBMITTED this the 13th day of December, 2023.

PETITIONER:

SPJR PROPERTIES, LLC.

a Texas limited liability company

By: 

Name: Stefan Pardoe

Its: Managing Member

STATE OF TEXAS

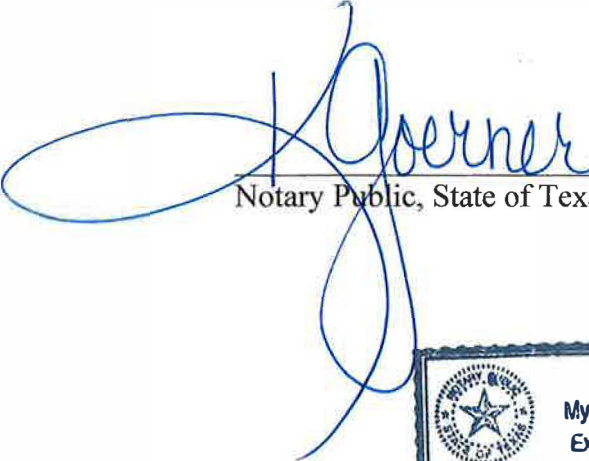
§

COUNTY OF Montgomery

§

§

This instrument was acknowledged before me on the 13th day of December, 2023, by Stefan Pardoe, Managing Member of SPJR PROPERTIES, LLC., a Texas limited liability company, on behalf of said entity.



Notary Public, State of Texas

(SEAL)

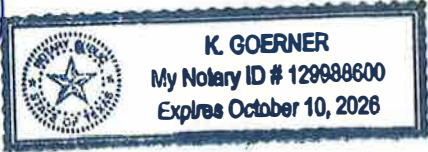


EXHIBIT "A"



EXHIBIT "B"

CONSENT CONDITIONS

The City Council hereby finds, determines, and declares that it is to the best interests of the City of Huntsville ("City") and of the territory within its City corporate limits and extraterritorial jurisdiction ("ETJ"), that the proponents of any municipal utility district ("District") or any other political subdivision having as one of its purposes the supplying of fresh water for domestic or commercial uses, the furnishing of sanitary sewer service, or the furnishing of drainage and/or flood control services when such District is sought to be created within the area of the City Limits or ETJ of the City, shall as a prerequisite to the written consent of the City, agree and covenant in writing, to adhere to the following rules, regulations and standards:

(1) Bonds may be issued by the District only for the purpose of purchasing and constructing, or purchasing or constructing, or under contract with the City, or otherwise acquiring waterworks systems, sanitary sewer collection systems, lift stations, and treatment facilities, storm sewer systems and drainage facilities, levee facilities, recreational facilities, roads, fire protection facilities or parts of such systems or facilities, and to make any and all necessary purchases, construction, improvements, extensions, additions and repairs thereto, and to purchase or acquire all necessary lands, rights-of-way, easements, sites, equipment, buildings, plants, structures, and facilities therefore, and maintain same and to sell water, sanitary sewer, and other services within or outside the boundaries of the District. Such bonds of the District shall only be sold after taking public bids therefore. All District bonds shall provide that the District shall reserve the right to redeem said bonds on any interest payment date on a date no later than the fifteenth anniversary of the date of issuance without premium. No bonds, other than refunding bonds, shall be sold at less than ninety-five (95) percent 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 bond, will not exceed two (2) 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 (45) days after the notice of sale of the bonds is given.

The maximum term of any debt issuance shall be no greater than forty (40) years from the date of issuance. The minimum par amount of any bonds issued, except a final issue, shall be one million dollars (\$1,000,000.00). Each issue of bonds shall be structured to achieve either level principal payments or level debt service payments, excluding the first two (2) years of debt service. Prior to issuance of the bonds, the District shall submit to the City a copy of the Preliminary Official Statement evidencing a District tax rate (both maintenance and operations rate and interest and sinking rate combined) not to exceed one dollar and fifty cents (\$1.50) per one hundred dollars (\$100.00) assessed valuation. Each bond issue shall not include more than two (2) years of capitalized interest. The resolution authorizing the issuance of the District's bonds will contain a provision that any pledge of the revenues from the operation of the District's water and sewer and/or drainage system to the payment of the District's bonds will terminate when and if the City annexes the District, takes over the assets of the District, and assumes all of the obligations of the District. No land will be added or annexed to the District until the City has given its written consent

by resolution or ordinance of the City Council to such addition or annexation. Refunding bonds shall comply with the City's ordinance on refunding bonds, as it may be amended from time to time.

(2) Before the commencement of any construction within the District, the District or developer developing property located therein will enter into a Development Agreement or Agreement to Construct Public Improvements, as applicable, with the City detailing, among other things, platting requirements, City review and approval of plans and specifications, utility service to the District and billing related thereto, and compliance with regulatory requirements.

(3) The District shall levy a debt service tax no later than the annual tax levy following the first installment of bonds and continue a tax levy until such bonds are paid in full unless revenues of the system are adequate to discharge such bonds.

(4) No bonds or notes of the District shall be issued or sold unless the District is in compliance with Paragraph (1) above and prior to advertisement of the sale of the bonds, the District provides the City with: (i) a copy of the draft notice of sale; (ii) a copy of the draft Resolution to be adopted by the District's Board of Directors authorizing the sale of the bonds; (iii) a copy of the Preliminary Official Statement; and (iv) if applicable, a copy of the TCEQ Order approving the project and bonds. Item (iv) in the preceding sentence shall not be required for the issuance of road bonds. In the event that the District is in compliance with the entirety of these Consent Conditions and timely submits the documentation set forth in this Paragraph 4, no further City approval shall be necessary prior to selling and issuing the bonds. However, should the District seek any variance or modification from these Consent Conditions, the issuance of that series of bonds by the District must be approved by the City Council of the City.

(5) The petitioner shall pay all costs related to the consent and creation of the District.

(6) The District shall post notice of the meetings of its Board of Directors in accordance with Section 49.063 of the Texas Water Code. The District's Board of Directors shall hold its meetings at a location accessible to its residents. At all times after the District has one hundred (100) residential water connections, it shall hold the meetings of its Board of Directors at a location within the corporate limits of the City or within the boundaries of the District; provided however, that this geographical limitation shall not apply if the District provides telephone or virtual access to its meetings to all members of the public.

(7) The official office for recordkeeping of the District must be accessible to the District residents.

(8) The District shall comply with all applicable requirements of the TCEQ regarding the display of signage at entrances into the District.



CITY COUNCIL AGENDA

2/6/2024

Agenda Item Number: 2.g.

Agenda Item: Consider first amendment to the development agreement between the City of Huntsville and Forestar Real Estate group for development of property in the Extra-Territorial Jurisdiction (ETJ).

Initiating Department/Presenter: City Manager

Presenter:

Aron Kulhavy, City Manager

Recommended Motion: Recommended motion to be provided in advance of consideration of this item.

Strategic Initiative: Goal #4, Infrastructure - Ensure the quality of the City utilities, transportation and physical structures so that the City's core services can be provided in an effective and efficient manner.

Discussion: The City was approached by Forestar (USA) Real Estate Group, Inc., the developer of an approximately 226.5-acre tract in the City's Extra Territorial Jurisdiction (ETJ), about their plans for a new 600+/- lot single-family master planned community on FM 1374 near the Robinson Creek wastewater treatment plant. Discussion with the developer included their intent to connect to the City of Huntsville sanitary sewer system and construct a water line extension necessary to serve the development with City water.

In December of 2023, the City entered into a development agreement with the owner for the development of the property. In summary, the developer agrees to maintain the ETJ status of the property, develop the necessary infrastructure in accordance with the adopted Development Code and design standards, and construct the off-site waterline to the development from the existing infrastructure location with sufficient capacity. The City ensures that it will reserve utility capacity for the development and support the creation of the MUD.

In the original agreement, the developer is required to construct the off-site waterline extension from the existing system and to improve a section of existing waterline from 8" to 12". The existing waterline inside the City limits is within the FM 1374 right-of-way. The desire of the City and the developer is to improve this existing line and the extension, preferably within easements, but within the ROW if easements are not obtainable.

The developer has actively been working on obtaining the necessary easement for the project and also the approval of TxDOT for any improvements in which easements cannot timely be obtained. Staff has been assisting in the process where needed; however, definitive answers from TxDOT and agreements for the necessary easements have not been secured as of the end of January.

The developer has approached the City for consideration of an amendment to the original development agreement. In summary, the developer still intends to move forward with attempting to extend the water line, but has concerns that securing the permissions cannot be done timely in order to move the

project forward. As such, the proposed amendment would allow the developer to move forward with the construction of their own water well and plant within the subdivision. Upon completion, the improvements would be offered to the City for dedication and acceptance to become part of the overall water system of the City.

The attached amendment is in draft form and revisions are still being discussed between the City and the Developer. Because of deadlines the developer has on closing the property, the item must be on the February 6th agenda and a final draft and recommendation will be presented to the Council in advance of or at the meeting.

Previous Council Action: The Council approved entering into a development agreement with Forestar Real Estate group on December 19, 2023 for the development of the property.

Financial Implications:

Approvals:

Leonard Schneider

Aron Kulhavy

Kristy Doll

Associated Information:

1. 1164348 (Clean) draft for packet
2. MUD No. 2 Vacinity Map (3)

**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT BY AND AMONG
THE CITY OF HUNTSVILLE, TEXAS, AND FORESTAR (USA) REAL ESTATE
GROUP, INC.**

This First Amendment to Development Agreement (the “Amendment”) is made and entered into as of _____, by the **CITY OF HUNTSVILLE, TEXAS**, a home rule municipality located in Walker County, Texas and **FORESTAR (USA) REAL ESTATE GROUP, INC.**, a Delaware corporation (the “Developer”). The City and Developer shall be individually referred to herein as a “Party” and collectively as the “Parties.”

RECITALS:

WHEREAS, the City and the Developer entered into that certain Development Agreement dated effective as of December 19, 2023 (the “Development Agreement”); and

WHEREAS, the City represents that the Spring Lake Water Plant Facility currently has water supply capacity to serve the Tract (as defined in the Development Agreement); and

WHEREAS, pursuant to Section 3.03 of the Development Agreement, such water supply and distribution services from the Spring Lake Water Plant Facility will require the removal and replacement of existing water trunklines followed by the design and construction of twelve-inch water trunklines to extend from the Spring Lake Water Plant Facility to the boundary of the Tract; and

WHEREAS, pursuant to Section 3.03 of the Development Agreement, the Developer agreed to design and construct the Trunkline Extension Project (as defined in the Development Agreement) and is responsible for the acquisition of any and all right of way required to complete the Trunkline Extension Project at its sole cost and expense; and

WHEREAS, pursuant to Section 3.03 of the Development Agreement, the City agreed to cooperate and support Developer’s efforts to acquire the right of way required to complete the Trunkline Extension Project and, if such required right of way is not fully acquired by February 29, 2024, the City agreed to timely exercise its eminent domain authority to acquire the remaining portion of such right of way required to complete the Trunkline Extension Project, with such reasonable and necessary costs to be borne by the Developer; and

WHEREAS, while it is the Parties’ mutual desire and preference to complete the Trunkline Extension Project as provided for in the Development Agreement, the Parties recognize that acquiring the right of way required to complete the Trunkline Extension

Projects through the exercise of eminent domain would delay development of the Tract and the provision of timely water supply and distribution services; and

WHEREAS, the Parties desire to amend the Development Agreement to: (i) alter the terms by which the Developer is required to complete the Trunkline Extension Project; and (ii) provide for Developer's ability to, under certain circumstances, design and construct a water plant within the boundaries of the Tract in lieu of the Trunkline Extension Project to provide water supply and distribution services to the Tract.

NOW THEREFORE, for and in consideration of the mutual agreements, covenants, and conditions contained herein, and other good and valuable consideration, the parties agree as follows:

AGREEMENT:

1. Section 1.01 is hereby amended to include the following definition:

"District Water Plant Facility means the water supply Facilities to be designed and constructed by the Developer within the boundaries of the Tract pursuant to Section 3.03, including, but not limited to, at least two (2) water wells, plants, storage tanks, pumps, lines, valves, meters and vaults.

2. Sub-section 3.02(g) is hereby amended by deleting the last sentence in its entirety and substituting the following in lieu thereof:

"The District shall then convey the Facilities (except for parks and recreational facilities, storm water detention facilities, roads, and, unless otherwise designated for conveyance by the City pursuant to Section 3.03 of this Agreement, the District Water Plant Facility) to the City in accordance with the City's procedure for acceptance."

3. Section 3.03 is hereby amended by deleting Section 3.03 in its entirety and substituting the following in lieu thereof:

"Water Supply and Wastewater Collection Facilities. The City hereby represents that its wastewater collection and treatment facility located in the general proximity of the Tract at 4420 FM 1374, Huntsville, Texas 77340 (the "Robinson Creek Wastewater Treatment Plant Facility") currently has capacity to serve the Tract at full build-out. The Parties hereby agree that the Developer shall be allowed to connect to the City's existing thirty-six inch wastewater line located along the western boundary of the Tract for the provision of wastewater collection and treatment services, as shown more specifically on the attached **Exhibit D**. Similarly, the City represents that its water supply and distribution facility located in the general proximity of the Tract at 3391 Autumn Road, Huntsville, Texas

77340 (the “Spring Lake Water Plant Facility”) currently has capacity to serve the Tract. However, such water supply and distribution services will require the removal and replacement of existing six- and eight-inch water trunklines followed by the design and construction of twelve-inch water trunklines to extend from the Spring Lake Water Plant Facility to the boundary of the Tract (the “Trunkline Extension Project”), as shown more specifically on the attached **Exhibit D**. The Developer hereby agrees to cause the design and construction of the Trunkline Extension Project as provided for herein and shall be initially responsible for the acquisition of any and all right of way required to complete the Trunkline Extension Project at its sole cost and expense, with such acquisition expected to occur no later than January 31, 2024. The City agrees to reasonably cooperate and support Developer’s effort to acquire the right of way required to complete the Trunkline Extension Project; provided, however, that if the acquisition of the aforementioned right of way is not fully acquired by February 29, 2024, then, upon written request by the Developer, the City will timely exercise its eminent domain authority to acquire the remaining portion of the right of way required to complete the Trunkline Extension Project. The Developer hereby agrees to pay the City’s reasonable and necessary costs—in an amount not to exceed \$XXXXXX.—to exercise its eminent domain authority to complete the Trunkline Extension Project, including the cost of any acquired easements, the terms of which will be memorialized in a separate written agreement between the Developer and the City with mutually agreeable terms. In exchange for the Developer’s completion of the Trunkline Extension Project, the City hereby agrees to reserve 625 ESFCs in the Trunkline Extension Project to be solely utilized by the Developer to serve the Tract. Should the Trunkline Extension Project be constructed as an “Oversized Facility” pursuant to Sub-section 4.01(b) of this Agreement, the Parties hereby agree that the Construction Costs for same shall be calculated pursuant to Sub-section 4.01(b) of this Agreement and agree further that the City will own all capacity in all ESFCs derived from the Trunkline Extension Project in excess of 625 ESFCs. It is the Parties’ mutually preferred option to complete the Trunkline Extension Project pursuant to the terms provided for above. However, if by April 30, 2024: (i) the Texas Department of Transportation has not provided all written approvals required to fully complete the Trunkline Extension Project; and (ii) the Developer has not obtained written agreements with all landowners from whom all approvals are necessary for the acquisition of easements required to fully complete the Trunkline Extension Project and/or the City has not acquired the easements required to complete the Trunkline Extension Project through the exercise of its eminent domain authority, then the Developer may, at its sole discretion, cause the design and construction of the District Water Plant Facility in lieu of completing the Trunkline Extension Project. The Parties hereby agree that

any oversizing of the Trunkline Extension Project or District Water Plant Facility performed at the request of the City will be constructed and funded pursuant to Sub-section 4.01(b) of this Agreement. The Developer shall submit plans for the Trunkline Extension Project or District Water Plant Facility, as appropriate, to the City for review and approval and the City hereby agrees to review and comment on such plans within forty-five (45) days of receipt of same. Upon submission of plans for the District Water Plant Facility to the City for review and approval, the City will provide notice in its first round of comments as to whether or not the District Water Plant Facility should be conveyed to the City for ownership, operation, and maintenance, with such conveyance taking place in accordance with Section 3.05 of this Agreement. If in its first round of comments the City elects not to have the District Water Plant Facility conveyed to the City for ownership, operation, and maintenance, then the City agrees to, as soon as practicable but no later than the date by which the District Water Plant Facility is completed and operational, have caused the Tract to be released from the certificate of convenience and necessity ("CCN") that it currently holds over the boundaries of the Tract, and thereafter the District shall serve the Tract with water from the District Water Plant Facility. The Developer may freely assign its surplus capacity in the Trunkline Extension Project or the District Water Plant Facility to adjacent property; provided, however, that the Developer must provide written notice of such to the City. Capacity in such Facilities shall be provided as set forth in Section 3.04 below."

4. Sub-section 3.04(b) is hereby amended by adding the following sentence at the end of the Sub-section:

"If the Developer, pursuant to Section 3.03 of this Agreement, elects not to construct and complete the Trunkline Extension Project and instead elects to construct the District Water Plant Facility, then all obligations of the City to reserve and provide water supply capacity to the Tract as provided herein shall cease."

5. Section 3.05 is hereby amended by adding the following sentence at the end of the Section:

"Notwithstanding the foregoing, this Section shall not apply to the District Water Plant Facility if the City does not elect to have the District Water Plant Facility conveyed in accordance with Section 3.03 of this Agreement."

6. Except as specifically amended in this Amendment, the Development Agreement shall remain in full force and effect in accordance with its original terms and conditions.

7. Capitalized terms used herein and not otherwise defined shall have the same meaning given in the Development Agreement.

[SIGNATURE PAGES FOLLOW]

DRAFT

IN WITNESS WHEREOF, the undersigned parties have executed this Development Agreement to be effective as of the Effective Date first written above.

CITY OF HUNTSVILLE, TEXAS

CITY MANAGER

ATTEST:

APPROVED AS TO FORM:

CITY SECRETARY

CITY ATTORNEY

THE STATE OF TEXAS

§

§

COUNTY OF WALKER

§

This instrument was acknowledged before me on _____,
2024, by Aron Kulhavy, City Manager of the City of Huntsville, Texas, in the capacity
therein stated.

(SEAL)

Notary Public in and
for the State of Texas

IN WITNESS WHEREOF, the undersigned parties have executed this Development Agreement to be effective as of the Effective Date first written above.

FORESTAR (USA) REAL ESTATE
GROUP INC.,

a Delaware corporation

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS

§

§

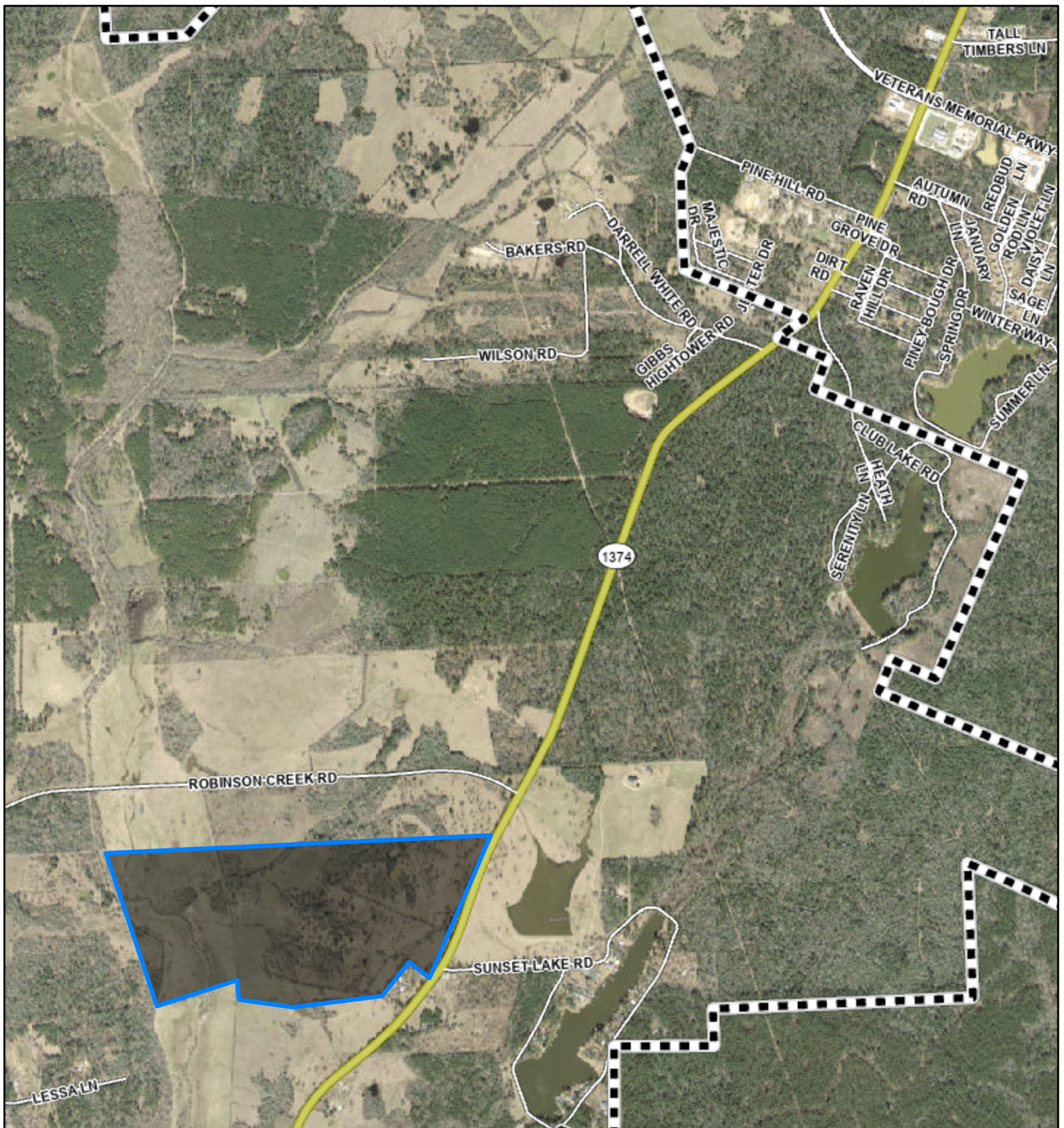
COUNTY OF _____

§

This instrument was acknowledged before me on _____, 2024,
by _____ of Forestar (USA) Real Estate
Group Inc., a Delaware corporation, on behalf of said corporation.

Notary Public in and for
the State of Texas

MUD No. 2



12/14/2023, 10:07:02 AM



ETJ



City Limits

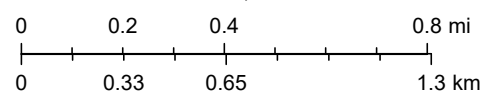
MSAG Blocks

1:500

FM; Park Road; State Highway; US Highway

Local Roads

1:24,000





CITY COUNCIL AGENDA

2/6/2024

Agenda Item Number: 6.a.

Agenda Item: City Council will convene in closed session as authorized by Texas Government Code, Chapter 551, Section 551.071 to receive legal advice on Cause No. 2230703, City of Huntsville vs. Architects Design Group/ADG, Inc. in the 278th District Court, Walker County, Texas.

Initiating Department/Presenter: City Attorney

Presenter:

Leonard Schneider, City Attorney

Recommended Motion: Not Applicable

Strategic Initiative:

Discussion:

Previous Council Action:

Financial Implications:

Approvals:

Leonard Schneider

Aron Kulhavy

Kristy Doll

Associated Information: