

**DEVELOPMENT AGREEMENT
RUTHERFORD NORTH**

STATE OF TEXAS
COUNTY OF HAYS

This Development Agreement ("Agreement") is between the City of Dripping Springs, (the "City"), and Mike G. Rutherford and Mike G. Rutherford, Jr., as individuals, (collectively as "Owner"). In this Agreement, the City and Owner are sometimes individually referred to as a "Party" and collectively referred to as the "Parties".

RECITALS

WHEREAS, Owner own approximately 781.23 acres of land (the "Land") and/or ("Rutherford North") located primarily within the extraterritorial jurisdiction (ETJ) of the City and in the Hays County, Texas (the "County"), which is more fully described on the attached Exhibit A; and

WHEREAS, Owner or Assigns intend to develop the Land as a master-planned residential community, together with open space and environmental preservation areas to benefit the residents and property Owner of the community, as well as other residents of the City, the City's ETJ, and the County; and

WHEREAS, in this Agreement, the Land, as it will be developed, is sometimes referred to as the "Project;" and

WHEREAS, the City is located in a rapidly growing area of the County and new construction and land development may impact the future character of the City; and

WHEREAS, the City has adopted a Comprehensive Plan to guide the City in planning for future growth and development and the City Council finds that this Development Agreement is consistent with the Comprehensive Plan; and

WHEREAS, the City has determined that development agreements with Owners of master-planned communities such as the Project will benefit the City by establishing land use controls; providing for the construction of appropriate and necessary utility, roadway and drainage infrastructure; encouraging economic development; and promoting the welfare of the citizens of the City and its ETJ; and

WHEREAS, the City and Owner are striving to achieve balance between the pressures of urbanization and the shared desires to protect the public safety, and conserve the hill country scenery and native habitat; and

WHEREAS, the City and Owner desire that the entire Land be governed by this Agreement.

WHEREAS, this Agreement grants the Owner a measure of predictability in terms of applicable municipal regulations; and

WHEREAS, Owner and the City wish to enter into this Agreement to provide an alternative to the City's typical regulatory process for development; encourage innovative and comprehensive master-planning of the Land; provide a level of certainty of regulatory requirements throughout the term of this Agreement; and provide assurances of a responsible development that will benefit the present and future residents of the City, the City's ETJ and the County; and

WHEREAS, this Agreement *runs with the land*, and thus shall be notarized, then filed in and among the land records of Hays County, and is binding upon subsequent purchasers of the Property, or any portions thereof; and

WHEREAS, the City is statutorily authorized to enter into such agreements with Owner of property located in the City's ETJ pursuant to Texas Local Government Code Section 212.172 and Article No. 22.02, et seq. of the Code of City Ordinances; and

WHEREAS, the City has conducted numerous public hearings and received broad public input regarding the proposal contained within this Agreement.

ARTICLE 1. DEFINITIONS

- 1.1 General:** Words and phrases used in this Agreement shall have the meanings set in this section. Terms that are not defined below, but are defined in the City's Code of Ordinances, shall be given the meanings set forth in the Code. Words and phrases not defined in the Code of Ordinances shall be given their common, ordinary meaning unless the context clearly requires otherwise. When not inconsistent with the context, words used in the present tense shall include the future tense; words in the plural number shall include the singular number (and *vice versa*); and words in the masculine gender shall include the feminine gender (and *vice versa*). The word "shall" is always mandatory, while the word "may" is merely directory.
- 1.2 Agreement:** This contract between the City of Dripping Springs, Texas and Owner, including all exhibits, which are incorporated herein for all intents and purposes.
- 1.3 Applicable Fees:** The fees and charges to be paid by Owner to the City with respect to the development of the land.
- 1.4 Applicable Rules:** The City's Code of Ordinances, regulations, and policies that, as modified by the Project Approvals and variances, existed on the Effective Date of this Agreement will be applicable to the development of the Property for the term of this Agreement. This term does not include Zoning, Building Codes, Landscaping,

Lighting, Sign or Exterior Design standards, as those regulations may apply or hereafter be applied to *non-residential* properties. The term does not include regulations mandated by state law, or that are necessary to prevent imminent harm to human safety or property.

- 1.5 Association:** A community group that is organized with respect to the Land in which individual Owner of lots share common interests and responsibilities for costs and upkeep of common space or facilities. The group may take the form of a Property Owner Association or Home Owner Association. The project may allow for more than one Association.
- 1.6 Building Code:** The most recent versions of the following building codes adopted by the City by ordinance: International Building Code, International Residential Code, National Electrical Code, International Plumbing Code, International Mechanical Code, International Energy Conservation Code, and the International Fire Code.
- 1.7 Building Height:** The vertical distance from the average line of the highest and lowest finished grade points of that portion of the lot covered by the building (i.e., newly-established grade after construction) to the highest point of the building. The term shall not include the height of chimneys, spires, towers, and mechanical appurtenances.
- 1.8 City:** The City of Dripping Springs, an incorporated Type A, general-law municipality located in Hays County, Texas.
- 1.9 City Administrator:** The chief administrative officer of the City of Dripping Springs, Texas. The term also includes the Deputy City Administrator.
- 1.10 City Council:** The governing body of the City of Dripping Springs, Texas.
- 1.11 City Engineer:** The person or firm designated by the City Council as the engineer for the City of Dripping Springs, Texas.
- 1.12 Community Parkland:** Community parkland serves a broader purpose than other types of parks. The main focus is on meeting community-based recreation needs, as well as preserving unique landscapes and open spaces. The location of such parks is determined by the quality and suitability of the site.
- 1.13 Conceptual Plan:** The conceptual plan of the Project attached as *Exhibit B*, as it may be amended from time to time in accordance with this Agreement.
- 1.14 County:** Hays County, Texas.
- 1.15 Districts(s):** The Legacy Municipal Utility District No. 1, a conservation and reclamation district authorized pursuant to Texas Constitution Articles III,

Section 52, or Article XVI, Section 59, possessing the powers under Chapter 49 and 54, Acts 84th Legislature, Regular Session 2015, that includes the Land or portions thereof and any subsequent district or districts.

- 1.16 Dwelling Unit:** Real property improved with a house apartment, condominium, duplex, or similar improvement that provides basic living accommodations including sleeping space, bathroom and cooking facilities.
- 1.17 Effective Date:** The latest date upon which all Parties have executed this Agreement.
- 1.18 Impervious Cover:** Buildings, parking areas, roads, and other impermeable man-made improvements covering the natural land surface that prevents infiltration. For further clarification on what is considered impervious cover under this Agreement, the TCEQ's Optional Enhanced Measures for the Protection of Water Quality in the Edwards Aquifer (Revised) shall be utilized by the Parties. Additionally, impervious cover assumptions for residential tracts, identified in the TCEQ publication RG 348A, shall be utilized to determine impervious cover on residential lots.
- 1.19 Impervious Cover Percentage:** The percentage calculated by dividing the total acres of impervious cover on the Land by the total number of acres included in the Land. In the calculation of impervious cover, the following shall be characterized as *pervious* for all purposes: open space, greenbelt, mitigation land, parkland, irrigation field, flood plain, unlined water quality and/or drainage facility and/or area, unlined detention facility, effluent holding pond, swale, irrigation area, playground, athletic fields, trails and sidewalks constructed of pervious materials as determined by the City Engineer adjacent to public rights-of-way, recreational facilities, and open space.
- 1.20 Land:** Approximately 781.23 acres of land, in Hays County, Texas, more fully described on the attached *Exhibit A*.
- 1.21 Open Space:** A tract of real property not occupied by any structures or impervious surfaces. A tract of real property designated by a public or private entity as accessible by the public for active or passive recreation shall qualify as Open Space. Property included within the confines of individual residential lots shall *not* qualify as Open Space under this Agreement.
- 1.22 Owner(s):** Mike G. Rutherford and Mike G. Rutherford, Jr. and any subsequent owner(s).
- 1.23 P&Z:** The Planning and Zoning Commission, a volunteer citizen advisory board of the City of Dripping Springs that has been granted specific land use and development regulatory authority pursuant to City ordinances and state statutes.

- 1.24 Project:** The Land use and development endeavor Owner proposes for the Property as provided by this Agreement and generally depicted on *Exhibit B*. The Project may include multiple phases for platting purposes.
- 1.25 Project Approvals:** The approvals, variances, alternative standards, waivers and exceptions to the Applicable Rules approved by the City with respect to the development of the Land, as set forth on the attached *Exhibit C*.
- 1.26 Recreation:** Leisure time activities. Active Recreation involves active or energetic activities that are often performed with others, involves the use of equipment, and takes place at prescribed places, sites or fields (including, but not limited to, playground activities, swimming, hiking, and cycling). Passive Recreation involves activities that are relatively inactive or less energetic (including, but not limited to, board games, picnicking, and walking).
- 1.27 TCEQ:** Texas Commission on Environmental Quality, or its predecessor or successor agencies.
- 1.28 TxDOT:** Texas Department of Transportation, or its successor agencies.
- 1.29 TCSS Manual:** The City's Technical Construction Standards and Specifications Manual.
- 1.30 Signature Validity:** Unless agreed to and accepted with sixty (60) days following submittal ("Agreement Period"), this agreement shall expire. The "Agreement Period" may be extended per written agreement to extend.
- 1.31 210 Beneficial Reuse:** an economic use of wastewater in accordance with the purposes, applicable requirements, and quality criteria of Chapter 210 of the Texas Commission on Environmental Quality Regulations, and which takes the place of potable and/or raw water that could otherwise be needed from another source. The use of reclaimed water in a quantity either less than or the economically optimal amount may be considered a beneficial use as long as it does not constitute a nuisance.

ARTICLE 2. PUBLIC BENEFITS, INFRASTRUCTURE & AMENITIES

- 2.1 Orderly Growth:** The City desires that development within its ETJ occur in an orderly manner in order to protect the health, safety and welfare of the City's present and future citizens; preserve the environment; enhance property values; and provide for expansion of the City's tax base and municipal boundaries. This Agreement will benefit the City by facilitating the development of a master-planned community within an appropriate area of the City's ETJ and its municipal boundaries, which will allow for thoughtful and high-quality planning, the development of necessary roadways and utility facilities, the provision of required fire protection services, and the development of a balanced community that includes residential and recreational uses. Through this Agreement, the City is furthering its land planning

objectives by imposing in the ETJ components of the City's rules for Zoning, Lighting, Building, Exterior Design (for Commercial tracts), Landscaping, for which it otherwise could not.

2.2 Provision of Housing: The development of the Land under this Agreement is intended to provide a range of housing prices for the City's present and future citizens and, as currently contemplated by the City's Comprehensive Plan, to allow the development of housing that will minimize negative environmental impacts and promote the aesthetic enhancement of the City and its ETJ. Further, the development of housing in accordance with this Agreement will promote safe and attractive housing conditions.

2.3 Water & Wastewater Infrastructure:

2.3.1 Water: Owner will comply with TCEQ rules and standards regarding retail water service. This may entail combining with an existing water system or developing groundwater on site.

2.3.2 LEGACY MUD NO. 1 Wastewater: Owner's current plan is to obtain the required TCEQ permit(s) and authorizations. Since Project is in Recharge Zone, the manner of disposal will be irrigation and 210 Beneficial Reuse.

2.4 Parks, Open Space, & Recreation: The City has established goals of increasing the availability of park and recreational facilities to serve the residents of the area and enhancing the attractiveness of the City. The development of the Project, as contemplated by this Agreement, will further these current City goals in the following ways:

2.4.1 Open Space: The Project will include approximately 50.1 acres of community parkland as shown on *Exhibit B*. In addition, the Project will have other open space, that may include (among other items) greenbelts, irrigation, active recreational areas, mitigation land and conservation easements. At the discretion of Owner, portions may be dedicated to the City with the City's acceptance and approval, the County, a homeowner's association with assessment powers, or the District. The Conceptual Plan attached as *Exhibit B* describes the open space usage.

2.4.2 Operation & Maintenance: The operation and maintenance of the dedicated open space shall be the responsibility of the District, or other non-city sources approved by the City until such open space is dedicated to another entity for operations and maintenance as approved by the City.

2.4.3 Public Access: The Owner and the City may agree to designate certain portions of Open Space as open to the public for environmental or safety purposes as shown on *Exhibit B* (Conceptual Plan) and identified in the

Master Parks & Open Space Plan.

- 2.4.4 Master Parks & Open Space Plan; Parkland Dedication:** Owner agrees to comply with the City's Parkland Dedication Ordinance. Owner agrees to submit a Master Parks & Open Space Plan ("MP & OS Plan"), subject to the City's approval, governing all parkland and open space within the Project at the time of submittal of application of preliminary plat.
- 2.5 Fees:** In consideration of the City's covenants and concessions contained within this Agreement, and in order to assure that the City does not incur uncompensated expenses in connection with this Agreement and the development of the Land under this Agreement, Owner agree to pay to City certain development fees (as herein defined) as follows:
- 2.5.1 Administrative and Professional Fees:** Owner has established an initial deposit of the Administrative & Professional Fees of \$2,500.00 dollars with the City, which is intended to cover all actual City costs comprised of legal, architectural, land planning and engineering fees and related administrative expenses, directly associated with the evaluation, negotiation and drafting of the Agreement and the City's consent to the creation of the District within the City's extraterritorial jurisdiction. If the initial deposit proves to be insufficient, Owner or assigns shall remit additional funds as directed and deemed necessary by the City. Excess funds in escrow will be credited toward other fees owed by Owner to City (if any). Any final balance remaining in escrow shall be refunded to the Owner upon completion of the Project.
- 2.5.2 Development Agreement Fee:** Owner paid the Development Agreement Fee of \$63,650.00 in September 2017.
- 2.5.3 Subsequent Development Fees:** Fees for all other applications or portions of applications not covered by Section 2.6.2 for the Project shall be subject to the current applicable City fee schedules and charges at the time of application submittal.
- 2.6 Environmental Protection:** Owner will comply with the following natural resource laws and regulations, to the extent applicable and consistent with the TCEQ and regarding the Edwards Aquifer Recharge Zone:
- 2.6.1 Aquifer Protection:** The Land lies within the Barton Springs Segment of the recharge zone to the Edwards Aquifer. Accordingly, Owner will comply with all applicable TCEQ, including but not limited to Edwards Aquifer Rules, 30 TAC 213, as may be amended.
- 2.6.2 Waterway Protection:** Owner shall obtain authorization from and

comply with rules and regulations established by federal, state, and local governmental entities regarding waterway protection.

- 2.6.3 Stormwater Controls:** Owner will prepare and implement a stormwater pollution prevention plan in compliance with the TCEQ's Texas Pollution Discharge Elimination System stormwater general permit, or the National Pollution Discharge Elimination System general permit, for construction related stormwater discharges.
- 2.6.4 Endangered Species:** Owner will seek to ensure that the Project will not jeopardize the continued existence of listed endangered species or destroy or adversely modify their critical habitat in accordance with the federal Endangered Species Act. Owner must provide City with documentation verifying the Project's compliance with the TCEQ Optional Enhanced Measures prior to construction.
- 2.6.5 Voluntary Measures:** Once development commences, Owner will implement numerous voluntary environmental protection measures for the benefit of the Project including:
- (a) Owner Education:** Owner will implement an education program to further the protection of the environmental resources in the Project. The program shall include, but shall not be limited to, the dissemination of pamphlets and newsletters to educate residents and property Owner within the Project about the natural resources of the area and methods of environmental resource protection. Specifically, the educational program will address watershed protection; water conservation; native landscaping; species preservation; rain water harvesting; the dangers of using pesticides, fertilizers, and herbicides in the Onion Creek watershed; the promotion of organic fertilizers and herbicides; and the proper disposal of wastes.
 - (b) Public Education:** Owner agree to collaborate with the City, the County, WTCPUA, USFWS and local school districts to explore the opportunities for public education regarding preservation of the environment using the Project as an example.
- 2.6.6 Required Measures:** Owner shall implement numerous environmental protection measures for the benefit of the Project, including:
- (a) Buffering:** In order to protect water quality, Owner shall provide buffering of sensitive drainage areas within the Project in accordance with TCEQ's Recharge Zone measures. The approximate location of all buffer zones required by TCEQ shall be identified on *Exhibit D*.

- (b) **Landscaping; Landscapes:** Owner shall require residential areas to comply with the City's Landscape Ordinance. Owner agrees that the use of native and/or adapted species of plant materials will be utilized throughout the Project. Turf grasses on any lot within the Project shall be limited to Zoysia, Buffalo hybrid Bermuda or other approved native grass mixes. The City Administrator may approve other grasses for lots utilizing drip irrigation systems. In no event may St. Augustine grass be used.
- 2.6.7 **Wells; Water Conservation Plan:** City agrees that water wells are permitted to be drilled on the property so long as such wells are consistent with state law.
- 2.6.8 **City of Dripping Springs' environmental ordinances and regulations:** District and Owner shall also comply with the City of Dripping Springs' environmental ordinances and regulations to the extent such development activities impact the City's corporate limits and do not conflict with this Agreement.
- 2.7 **Water Quality Protection:** The District and Owner shall comply with the standards in TCEQ's RG-348A publication in lieu of the Performance Standards in Section 22.05.015(a) through (c) and (e) of the City's Water Quality Protection Ordinance. Except as City allows by variance and as provided in Section 2.6.8 above, Owner shall comply with the Optional Enhanced Measures for the Protection of Water Quality in the Edwards Aquifer and City of Dripping Springs' Water Quality Ordinance to the extent development activities impact the City's corporate limits.

As indicated in *Exhibit D* (Buffer Zones), the Project's water quality protection plan will include the establishment of natural buffer areas adjacent to streams and natural drainage ways to help maintain predevelopment water quality. The natural buffer areas will also provide an area to filter overland flow from adjacent development. Therefore, streams shall have a native vegetation buffer on each side as follows:

- Streams draining 640 or more acres (one square mile) shall have a minimum buffer of 300 feet from the centerline on each side of the stream,
- Streams draining less than 640 acres, but 320 or more acres shall have a minimum buffer of 200 feet from the centerline on each side of the stream.
- Streams draining less than 320 acres, but 128 or more acres shall have a minimum buffer of 100 feet from the centerline on each side of the stream.
- Streams or swales draining less than 128 acres, but 40 or more acres shall have a minimum buffer of 50 feet from the centerline on each side

of the drainage.

- Streams or swales draining less than 40 acres, but 5 or more acres shall have a minimum buffer of 25 feet from the centerline on each side of the drainage.

Additionally, in an effort to achieve a higher pollutant load removal than required by the TCEQ's Optional Enhanced Measures and to demonstrate to the City the Owner's interest in preserving water quality, rather than just providing one water quality best management practice (BMP), the Owner shall operate 2 or 3 BMPs in series to help preserve water quality. The following table lists the BMPs proposed to be operated in series to satisfy both the TCEQ's and the City's water quality protection requirements.

Proposed BMPs Operating in Series		
1 st BMP	2 nd BMP	3 rd BMP (if applicable)
Sand Filtration	Engineered Filter Strip	Natural Filter Strip
Wet Pond or Batch Detention	Engineered Filter Strip	None
Bio-retention	Engineered Filter Strip	None
Engineered Filter Strip	Grassy Swale	None
Engineered Filter Strip	Natural Filter Strip	None
Grassy Swale	Sand Filtration	Natural Filter Strip
Grassy Swale	Wet Pond or Batch Detention	Natural Filter Strip
Grassy Swale	Bio-retention	Natural Filter Strip
Extended Detention	Bio-retention	Natural Filter Strip

Storm water runoff from the project will be treated by a combination of the water quality treatment strategies identified above. For residential lots draining away from roadways and sheet flowing onto adjacent open areas, natural buffers areas, or natural filter strips, no further treatment or water quality easements will be necessary. Given that the project is subject to an Integrated Pest Management (IPM) plan, adequate water quality treatment for these residential lots will be achieved by the vegetated pervious areas located within each respective lot and/or the adjacent open areas, natural buffers areas, or natural filter strips lying down gradient.

- 2.8 Agreement Contingent:** This Agreement and all obligations on both parties are specifically contingent on Owner or its assigns commencing development activities. By way of example, Owner may continue ranching activities without complying with any new obligations that may be created by this Agreement, including those contained in Sections 3.8, 3.9, etc. until development activities commence.

ARTICLE 3. PROPERTY DEVELOPMENT

- 3.1 Governing Regulations:** For purposes of any vesting analysis, the Parties agree that the date of initial submittal of Development Agreement on September 19, 2017 shall control, in accordance with Texas Local Government Code Chapter 245, as may be amended. The Applicable Rules as of the Effective Date of this Agreement shall govern the Project, unless otherwise expressly provided in this Agreement. For the term of this Agreement, the development and use of the Land will be controlled by the terms of this Agreement, the Project Approvals and the Applicable Rules. If there is any conflict between the Applicable Rules and the terms of this Agreement, the terms of this Agreement will control. Further, in the event of a conflict between the terms in the Agreement and in the Exhibits, the two will be read together. If that fails due to an irreconcilable conflict, the terms in the Exhibits control.

Owner initiated the subdivision and development permit process for the Project upon submission of Development Agreement on September 19, 2017. The City agrees that in accordance with Chapter 245, Local Government Code, the City will consider the approval of any further approvals necessary for the Project based solely on the Applicable Rules, as modified by the Project Approvals and this Agreement. Further, the City agrees that, upon the Effective Date, Owner has authority to develop the Property in accordance with the Applicable Rules, as modified by any exceptions contained in the Project Approvals and this Agreement.

3.2 Project Approvals & Entitlements:

3.2.1 Project Approvals & Variances; Future Modifications: The Project Approvals set forth in *Exhibit C* (the "Project Approvals"), and the variances, special exceptions and alternative standards also in *Exhibit C*, upon approval by all required City boards and commissions and the City Council, will be granted by the City with respect to the development of the Land. Any additional variance affecting and relevant to this Project shall be subject to any and all applicable ordinary City variance approval procedures. Future modifications to this Agreement mutually agreed upon by City and Owner shall not subject any other portion of this Agreement to modifications.

3.2.2 Conceptual Plan: The City confirms that the Conceptual Plan attached as *Exhibit B* has been approved by all requisite City departments, boards and commissions and by the City Council. The City approves the land uses, densities, and reservations of land for public purposes, exceptions, utility and other matters shown on the Conceptual Plan. The City's execution of this Agreement shall be deemed to be the approval of the Conceptual Plan, *Exhibit B*.

3.2.3 Density of Development:

- (a) **Residential:** Owner will have the right to develop no more than 1,252 Single-Family residential lots on the Land within the area identified on the Conceptual Plan as *Residential*.

3.2.4 Land Use: For purposes of this Agreement the following shall be allowed within areas noted as residential areas: single-family residences and related structures; duplex residential units; townhomes; parks, and playground facilities; community centers; wastewater facilities; amenities centers; and similar type uses (the "Residential Uses). Open space will include the open space/landscape areas. Areas classified as street right-of-way (R.O.W.) will include all public street R.O.W., shared access drive easements within the final plat.

3.2.5 Impervious Cover: By variance, owner may develop the Project with an Impervious Cover Percentage that does not exceed cumulatively and in the aggregate 15% over the entire Project. Owner shall have the right to apportion impervious cover limits on a lot by lot or use by basis and may apportion such limits as it deems desirable so long as the overall limitation herein specified is not exceeded. Areas within City limits upon execution must comply with the City's impervious coverage regulations in place at time of execution.

3.2.6 Phasing of Development: The calculation of impervious cover, parkland requirements, lot averaging and similar requirements shall be determined and calculated on an entire project basis. Each plat filed with the City shall contain a chart indicating the amount associated with prior platted areas and the amount associated with the area subject to such plat. The chart shall also show the average lot size computation for the Land as a whole and resulting from the plat and prior platted areas.

3.2.7 Replatting: Any portion of the Property may be replatted to change the use or designation of that previously platted portion so long as the entire platted portion of the Property meets the requirements of this Agreement, the Applicable Rules, and state law. No replat shall result in the project increasing the density as defined in Section 3.2.3, unless approved by the City. Such replatting shall be deemed controlled by this Agreement as if the same were an original platting of such replatted portions.

3.3 Further Approvals:

3.3.1. Upon the Effective Date of this Agreement, Owner has the authority to develop the Land consistent with the Project Approvals and in accordance with this Agreement. Any future approvals granted in writing by the City for such development, as well as any written amendments to the Project Approvals, will become a part of the Project Approvals.

3.3.2. Construction plans consistent with this Agreement and the Applicable Rules can be approved prior to approval of Final Plat.

3.4 **Standard for Review:** The City's review and approval of any submissions by Owner will not be unreasonably withheld, conditioned, or delayed. The City will review any plans, plat or other filing by Owner in accordance with the applicable City's ordinances, state law and this Agreement. Therefore, the City agrees that it will comply with all statutory and internal City time frames for development reviews. If any submittal is not approved, the City will provide written comments to Owner specifying in detail all of the changes that will be required for the approval of the submittal. Owner shall provide documents or information necessary for such approval. If Owner fails to provide the specified documents or information within 45 days of the City's written request, the application of the submittal shall expire.

3.5 **Conceptual Plan Amendments:**

3.5.1. **Changes.** To provide flexibility with respect to certain details of the development of the Project, Owner may seek changes in the location and configuration of the use classifications shown on the Conceptual Plan, including changes within the proposed residential and parkland areas shown on the Conceptual Plan. Subject to the terms below, such changes may require an administrative amendment.

3.5.2. **Minor Changes.** Minor Changes may be made to the Conceptual Plan, by Owner submitting an application and with City Administrator's ("Administrator") approval without consent or action of the City Council or Planning & Zoning Commission, as allowed by law. "Minor Change" shall include any changes that do not meet the definition of "Major Change", for example, but not limited to, minor adjustments to the street and drive alignments, minor changes to any matters depicted on the attached exhibits that are intended to be substantially accurate, but approximate according to density, or impervious cover as set forth in this Agreement and which do not require a Major Change of this Ordinance. The Owner may change development parcel lines and interior streets upon receipt of written approval from the City Administrator or City Engineer. Any dispute between the Owner and City Administrator regarding whether a change is "Minor Change" shall be referred to the Planning & Zoning Commission for recommendation and the City Council for final approval.

3.5.3. **Major Changes.** Major Changes shall only be (i) those that increase the overall number of Dwelling Units specified in Section 3.2.3, (ii) a change to the Conceptual Plan that converts the land uses permitted on a given development parcel to a land use that is not permitted within the specific development parcel, or (iii) increase in impervious cover of the Project, as specified in Section 3.2.5. Major Changes to the Conceptual Plan shall

require an Amendment to this Development Agreement with recommendation by the Planning and Zoning Commission and final approval by the City Council.

- 3.6 Term of Approvals:** The Conceptual Plan, the Project Approvals, and any preliminary plat or final plat approved pursuant to this Agreement will be effective for the term of this Agreement unless otherwise agreed by the Parties.
- 3.7 Extension of Permits & Approvals:** In no instance shall any permits or approvals be extended beyond the duration of this Agreement; however, any permit or approval under this Agreement or granted by the City pursuant to, or in accordance with, this Agreement shall be extended for any period during which performance by any Owner is prevented or delayed by action of a court or administrative agency, or an Owner is delayed due to failure to receive a governmental permit despite demonstrable diligent efforts to obtain said permit.
- 3.8 Initial Brush Removal:** Owner may mechanically remove brush without material soil surface disruption prior to receiving approval of plats in order to determine the location of roads, lots utilities and drainage areas with regard to preservation of environmental features. Prior to the phase plat approval, Owner may remove any tree with a trunk having a diameter less than six (6") inches measured four (4) feet above the base (ground elevation) of the tree. Prior to that plat approval, Owner will not materially alter the existing drainage patterns prior to receiving City approval for Construction Plans. Owner shall ensure that as much area as possible is left undisturbed for as long as reasonably possible.
- 3.8.1** The use of track vehicles is acceptable provided that a preconstruction conference is held on-site with the Owner (or Owner' representative as Developer), contractor, and City Administrator. During the conference the Owner will provide the City with the following information:
- (a) The area to be cleared.
 - (b) A current aerial photograph that is 3"-pixel resolution with Texas State Plane Coordinate, South Central Zone, NAO 83, survey feet is an adequate substitute for a ground tree survey.
 - (c) The area to be cleared having been marked on a survey with the Water Quality Buffer Zones (WQBZ) and other environmental features marked out for being avoided.
 - (d) An erosion control plan must be submitted showing what will be in place to manage stormwater runoff, to include silt fencing, rock berms, etc.
- 3.8.2** Work within a WQBZ must be limited to rubber-tired vehicles or hand-

clearing only taking care to stay out of the stream itself. A written plan for work to be done within a WQBZ must be submitted to and approved by City staff prior to any work, describing: (a) work methods (b) proposed equipment, (c) scope of work, and (d) restoration plans for once work is done.

3.9 Oak Wilt:

3.9.1 During construction of streets, drainage and utilities, Owner will utilize reasonable measures to prevent the spread of Oak Wilt caused by the fungus *Ceratocystis Fagacearum*. Tree removal will be in accordance with generally accepted best practices. Owner will include the requirement to utilize reasonable Oak Wilt measures in all agreements for construction of streets, drainage and utilities for the Project.

3.9.2 Deed restrictions for all plats of the Property will include covenants imposing reasonable Oak Wilt prevention measures on all subsequent Owners of the Property.

3.10 Building Code: Owner agrees that all buildings shall be constructed in accordance with all building or construction codes that have been adopted by the City. Builders shall pay fees for all building permits or building inspections by the City or the City's designee under this section. Building permit and building inspection fees are not included among the fees specifically listed in this Agreement.

3.11 Fiscal Security for Improvements: The Owner shall be required to provide fiscal security prior to recording the associated approved final plat. In lieu of providing fiscal security, the Owner may secure approval of the final plat and construction plans and then construct the improvements in accordance with the approved construction plans. Only once the improvements are constructed and accepted for maintenance, the Owner may then record the approved final plat. The City Administrator recognizes that the County and/or District may require construction and maintenance bonds for improvements.

3.12 Deed Restrictions: Owner agrees that all restrictive covenants for the Project shall reinforce the provisions of this section and be applied to all builders and subsequent buyers and shall be appropriately drafted and filed to effectuate this intent and Agreement. Deed restrictions shall not be construed to replace or supersede the Applicable Rules.

3.13 Option for Private Gated Section(s): The Owner and the City hereby agree that the Owner may elect to develop one or more sections of the Projects as private, gate sections, under the following conditions.

3.13.1 The City or County shall not be responsible for the Ownership or maintenance of private streets within such sections; and

3.13.2 Streets within such sections shall be owned and maintained by the HOA, a District, or such other entity as chosen by the Owner and approved by the City.

3.14 Slope Protection & Treatment: The Property has bands of existing slopes that exceed fifteen percent (15%). Owner has minimized the construction in these areas; however, development will necessitate some construction in these areas in order to develop the site. Construction may occur on slopes that exceed 15% if the following criteria and design standards are met:

3.14.1 Designs shall be based on commonly accepted Geotechnical, Structural, Drainage and Water Quality Engineering practices, including local design criteria.

3.14.2 Designs and aesthetic treatments shall be consistent throughout the Project. Aesthetic treatments of exposed graded slopes, retaining walls and foundations shall be designed and graded in accordance with generally accepted engineering practices. To the extent reasonably practical, Owner will require builders to shield exposed retaining walls and foundations with vegetation and/or fencing or other methods where reasonably practical or desirable to shield view of the exposed retaining wall or foundation. The methods will be included by the Owner in the subject to Deed Restrictions/CCRs.

3.14.3 Plans shall be reviewed and approved by the City Engineer before the construction occurs.

ARTICLE 4. ADDITIONAL MATTERS

4.1 Fire Protection: Upon consultation with Emergency Services Districts (ESD) 2 and 8, Owner shall submit to City plans for emergency access points (e.g., crash gates)-if any-during the platting phase of each development.

4.2 Lighting: Compliance with Article 24.06 of the City Code, the Lighting Ordinance ("Outdoor Lighting Ordinance"), as in effect at the time of any submittal of site development application, all building permit applications, and all sign permit applications, shall be mandatory for all development on the Property. To the extent any portion of the Agreement or Design Guidelines conflicts or is inconsistent with the Outdoor Lighting Ordinance, the Outdoor Lighting Ordinance shall control.

4.3 Signage: Owner will submit a Master Signage Plan for approval by the P&Z and City Council within one year of the effective date of this Agreement or upon submittal of preliminary plat, whichever occurs first. Any provisions not included in the Master Sign Plan shall be governed by the Sign Ordinance in effect at the time of any sign application.

- 4.4 Infrastructure Construction & Inspections:** The District will be responsible for construction, construction inspection, operation, and maintenance of all water, wastewater and drainage infrastructure within its boundaries except as provided in this Agreement. The District will have the right to review and approve all plans and specifications for water system infrastructure, and to inspect all such infrastructure during construction and prior to acceptance for operation and maintenance. In order to avoid duplication of effort and unnecessary costs, no City review of water plans and specifications will be required. However, the City, may, at its option, review plans and specifications for infrastructure other than the water system, sewer system and drainage, and provide comments to the District within thirty (30) days of requesting the plans and specifications to review. The District shall consider all comments promptly provided by the City. The City will collect no related fees other than those fees provided elsewhere in this Agreement and the City shall be reimbursed for any costs for third-party consultant review. A copy of each set of approved plans and specifications and a copy of all inspection certificates will be filed with the City. All water, wastewater, and drainage infrastructure within the Land shall be designed and built in accordance with the rules, regulations and specifications of the TCEQ, which rules, regulations and specifications are adopted as the governing rules, regulations and specifications for the water utility infrastructure constructed to serve the Land.

ARTICLE 5. AUTHORITY

5.1 Term:

- 5.1.1 Initial Term.** The Term of this Agreement will commence on the Effective Date and continue for fifteen (15) years thereafter ("Initial Term"), unless sooner terminated under this Agreement. After the Initial Term, the Agreement may be extended for up to three successive five (5) year periods by Owner, with City's approval, by delivering written notice of such election to the City on or before the expiration of the then-current term.
- 5.1.2 Extensions.** In order to extend the term of this Agreement beyond the Initial Term and the three five-year extension periods described in 5.1.1, Owner must notify the City in writing at least one hundred eighty (180) days prior to the last day of the then-current term that it wishes to renew this Agreement. The City will then place the renewal of this Agreement on the agenda for the next regularly scheduled meeting of the City Council for consideration. The renewal of this Agreement by the City after the Initial Term and three (3) five (5) year extension periods will be at both the City's and Owner's discretion, and the parties agree that neither the City nor Owner is under any obligation to renew this Agreement after the Initial Term. The total duration of this Agreement and any successive renewals shall not exceed thirty (30) years.
- 5.1.3 Expiration.** After the Initial Term and any extension, this Agreement will

be of no further force and effect, except that termination will not affect any right or obligation arising from Project Approvals previously granted.

5.1.4 Termination or Amendment. This Agreement may be terminated or amended as to all of the Land at any time by mutual written consent of the City and Owner or may be terminated or amended only as to a portion of the Land by the mutual written consent of the City and the Owner of only the portion of the Land affected by the amendment or termination.

5.2 Authority: This Agreement is entered under the statutory authority of Section 212.172 of the *Local Government Code*. The Parties intend that this Agreement guarantee the continuation of the extraterritorial status of portions of the Land as provided in this Agreement; authorize certain land uses and development on the Land; provide for the uniform review and approval of plats and development plans for the Land; provide exceptions to certain ordinances; and provide other terms and consideration, including the continuation of land uses and zoning upon annexation of any portion of the Land to the City.

5.3 Applicable Rules: As of the effective date of the approval of this Agreement, Owner has initiated the subdivision and development permit approvals for the Project. The City agrees that, in accordance with Chapter 245, *Local Government Code*, the City will consider the approval of any further approvals necessary for the Project based solely on the Applicable Rules, as modified by the project Approvals and this Agreement. Further, the City agrees that, upon the Effective Date, Owner has vested authority to develop the Land in accordance with the Applicable Rules, as modified by any exceptions contained in the Project Approvals and this Agreement.

5.4 Right to Continue Development: In consideration of Owner' agreements hereunder, the City agrees that, during the term of this Agreement, it will not impose or attempt to impose: (a) any moratorium on building or development within the Project, or (b) any land use or development regulation that limits the rate or timing of land use approvals, whether affecting preliminary plans, final plats, site plans, building permits, certificates of occupancy or other necessary approvals, within the Project. No City-imposed moratorium, growth restriction, or other limitation affecting the rate, timing or sequencing of development or construction of all of any part of the Project will apply to the Land if such moratorium, restriction or other limitation conflicts with this Agreement or would have the effect of increasing Owner' obligations or decreasing Owner' rights and benefits under this Agreement. This Agreement on the part of the City will not apply to temporary moratoriums uniformly imposed throughout the City and ETJ due to an emergency constituting an imminent threat to the public health or safety, provided that the temporary moratorium continues only during the duration of the emergency.

5.5 Equivalent Substitute Obligation: If either Party is unable to meet an obligation under this Agreement due to a court order invalidating all or a portion of this

Agreement, preemptive state or federal law, an imminent and bona fide threat to public safety that prevents performance or requires different performance, subsequent conditions that would legally excuse performance under this Agreement, or, the Parties agree to cooperate to revise this Agreement to provide for an equivalent substitute right or obligation as similar in terms to the illegal, invalid, or unenforceable provision as is possible and is legal, valid and enforceable, or other additional or modified rights or obligations that will most nearly preserve each Party's overall contractual benefit under this Agreement. The City agrees to adopt any subsequent ordinances, variances, or other approvals that may be necessary to implement this Section.

5.6 **Cooperation:**

5.6.1 The City and Owner each agree to execute such further documents or instruments as may be necessary to evidence their agreements hereunder.

5.6.2 The City will not unreasonably hinder, and, at the City's discretion, may agree to cooperate with Owner in connection with any waivers or approvals Owner may desire or require to obtain from the County in connection with the development of the Land, specifically including approval of road district powers for the District covering the Land to assist in financing the roadways required for the Project and a deferral of the County's plat and plan approval powers to the City for all plats and public infrastructure within the Project, other than roadway infrastructure within the Project, other than roadway infrastructure that will be dedicated to the County for operation and maintenance after construction. Roads shall be subject to County review, inspection and approval prior to dedication to the County, unless the City annexed the property in which case the City would maintain the roads.

5.6.3 The City acknowledges that the District(s) may in the future seek State or federal grant matching funds to finance certain park, recreational and environmental facilities within the Project. The City agrees to cooperate with and support these efforts to obtain grant funding that do not interfere with or conflict with the City's efforts to secure similar funding, including entering into joint use agreements with the District, in furtherance of the City's goal of making additional park, environmental and recreational facilities available to the area. Provided, however, the City will have no financial obligation associated with this activity.

5.6.4 Owner, the District, and the City agree to cooperate in granting each other easements, as necessary, for water and wastewater transmission lines, or other utility easements to effectuate the purpose of this Agreement.

5.7 **Indemnification:** INDEMNIFICATION and HOLD HARMLESS. THE OWNER, INCLUDING ITS RESPECTIVE SUCCESSORS AND ASSIGNS, HEREBY

COVENANT AND AGREE TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, AND ITS OFFICIALS, EMPLOYEES, OFFICERS, REPRESENTATIVES, AND AGENTS (IN THIS SECTION THE "CITY") AGAINST AND FROM, AND WILL PAY TO THE CITY, THE AMOUNT OF ALL ACTIONS, DAMAGES, CLAIMS, LOSSES, OR EXPENSE OF ANY TYPE, WHETHER OR NOT INVOLVING A THIRD-PARTY CLAIM (COLLECTIVELY, "DAMAGES"), ARISING DIRECTLY OR INDIRECTLY FROM (i) THE BREACH OF ANY PROVISION OF THIS AGREEMENT BY THE OWNER; OR (ii) ANY THIRD PARTY CLAIMS RELATING TO ANY PUBLIC IMPROVEMENT ACQUIRED UNDER THIS AGREEMENT, INCLUDING ANY CLAIM RELATING TO THE CONCURRENT OR SOLE NEGLIGENCE OF THE CITY. THE OWNER WILL DEFEND THE CITY AGAINST ALL SUCH CLAIMS AND THE CITY WILL REASONABLY COOPERATE AND ASSIST IN PROVIDING SUCH DEFENSE. THE CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY THE OWNER IN FULFILLING ITS OBLIGATIONS HEREUNDER. THE CITY RESERVES THE RIGHT, BUT IS NOT REQUIRED, TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE AT ITS OWN EXPENSE. THE OWNER SHALL RETAIN CITY-APPROVED DEFENSE COUNSEL WITHIN 10 BUSINESS DAYS OF WRITTEN NOTICE THAT THE CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION AND IF THE OWNER DOES NOT DO SO, THE CITY MAY RETAIN ITS OWN DEFENSE COUNSEL AND THE OWNER WILL BE LIABLE FOR ALL REASONABLE SUCH COSTS. THIS SECTION SURVIVES THE TERMINATION OF THIS AGREEMENT INDEFINITELY, SUBJECT TO APPROPRIATE STATUTES OF LIMITATIONS, AS THEY MAY BE TOLLED OR EXTENDED BY AGREEMENT OR OPERATION OF LAW. THE OWNER, INCLUDING ITS RESPECTIVE SUCCESSORS AND ASSIGNS, FURTHER COVENANTS AND AGREES TO RELEASE, DEFEND, HOLD HARMLESS, AND INDEMNIFY, THE CITY AGAINST ANY AND ALL CLAIMS BY ANY PERSON CLAIMING AN OWNERSHIP INTEREST IN THE PROPERTY WHO HAS NOT SIGNED THIS AGREEMENT IF SUCH CLAIMS RELATE IN ANY MANNER OR ARISE IN CONNECTION WITH: (1) THE CITY'S RELIANCE UPON THE OWNER'S REPRESENTATIONS IN THIS AGREEMENT; (2) THIS AGREEMENT OR OWNERSHIP OF THE PROPERTY; OR (3) THE CITY'S APPROVAL OF ANY TYPE OF DEVELOPMENT APPLICATION OR SUBMISSION WITH RESPECT TO THE PROPERTY.

At no time shall the City have any control over or charge of the Owner's design, construction or installation of any of the public infrastructure, nor the means, methods, techniques, sequences or procedures utilized for said design, construction or installation. This Agreement does not create a joint enterprise or venture between the City and Owner.

ARTICLE 6. GENERAL PROVISIONS

6.1 Assignment & Binding Effect:

- 6.1.1** This Agreement, and the rights and obligations of Owner hereunder, may be assigned by Owner to a subsequent purchaser of all or a portion of the undeveloped property within the Project provided that the assignee assumes all of the obligations hereunder. Any assignment must be in writing, specifically describe the property in question, set forth the assigned rights and obligations and be executed by the proposed assignee. A copy of the assignment document, or Memorandum of Assignment, must be delivered to the City and recorded in the real property records as may be required by applicable law. Upon any such assignment, the assignor will be released of any further obligations under this Agreement as to the property sold and obligations assigned.
- 6.1.2** The provisions of this Agreement will be binding upon, and inure to the benefit of the Parties, and their respective successors and assigns. This Agreement will not, however, be binding upon, or create any encumbrance to title as to, any ultimate consumer who purchases a fully developed and improved lot within the Project.
- 6.1.3** Owner agrees that all restrictive covenants for the Project shall reinforce this Agreement. Owner further agrees to memorialize the terms of this Agreement through inclusion in the plat notes. The Agreement ***shall be recorded*** in the ***Hays County*** land records to place subsequent purchasers on notice.
- 6.2** **Severability:** If any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws, it is the intention of the Parties that the remainder of this Agreement not be affected, and, in lieu of each illegal, invalid, or unenforceable provision, that a provision be added to this Agreement which is legal, valid, and enforceable and is as similar in terms to the illegal, invalid or enforceable provision as is possible.
- 6.3** **Governing Law, Jurisdiction & Venue:** This Agreement shall be governed by and constructed in accordance with the laws of the State of Texas, as it applies to contracts performed within the State of Texas and without regard to any choice of law rules or principles to the contrary. The parties acknowledge that this Agreement is performable in ***Hays County***, Texas and hereby submit to the jurisdiction of the courts of that County, and hereby agree that any such Court shall be a proper forum for the determination of any dispute arising hereunder.
- 6.4** **No Third-Party Beneficiary:** This Agreement is not intended, nor will it be constructed to create any third-party beneficiary rights in any person or entity who is not a Party, unless expressly otherwise provided.
- 6.5** **Mortgagee Protection:** This Agreement will not affect the right of Owner to encumber all or any portion of the Land by mortgage, deed of trust or other instrument to secure financing for the Project. The City understands that a lender providing

financing for the Project ("Lender") may require interpretations of or modifications to this Agreement and agrees to cooperate with Owner and its Lenders' representatives in connection with any requests for interpretations or modifications. The City agrees not to unreasonably withhold or delay its approval of any requested interpretation or modification if the interpretation or modification is consistent with the intent and purposes of this Agreement. The City agrees as follows:

- 6.5.1 Neither entering into this Agreement, nor any breach of this Agreement, will affect any lien upon all or any portion of the Land.
 - 6.5.2 The City will, upon written request of a Lender given in compliance with Section 6.17, consider providing the lender with a copy of any written notice of default given to Owner under this Agreement within ten (10) days of the date such notice is given to Owner.
 - 6.5.3 In the event of default by Owner under this Agreement, a Lender may, but will not be obligated to, cure any default during any cure period extended to Owner, either under this Agreement or under notice of default.
 - 6.5.4 Any Lender who comes into possession of any portion of the Land by foreclosure or deed in lieu of foreclosure will take such property subject to the monetary obligations of Owner arising prior to the Lender's acquisition of title, but a Lender will not be entitled to obtain any permits or approvals with respect to that property until all delinquent fees and other obligations of Owner under this Agreement that relate to the property in question have been paid or performed.
 - 6.5.5 The City hereby consents to Owner collaterally assigning to such lender Owner's interest in this Agreement as additional security for such loan and will execute and deliver to such lender such consents to assignment as such lender may reasonably require.
- 6.6 **Certificate of Compliance:** Within thirty (30) days of written request by either Party given accordance with Section 6.16, the other Party will execute and deliver to the requesting Party a statement certifying that: (a) this Agreement is unmodified and in full force and effect or, if there have been modifications, that this Agreement is in full force and effect as modified and stating the date and nature of each modification; (b) there are no current uncured defaults under this Agreement, or specifying the date and nature of each default; and (c) any other information that may be reasonably requested. A Party's failure to deliver a requested certification within this 30-day period will conclusively be deemed to constitute a confirmation that this Agreement is in full force without modification, and that there are no uncured defaults on the part of the requesting Party. The City Administrator will be authorized to execute any requested certificate on behalf of the City.

- 6.7 Default:** If either Party defaults in its obligations under this Agreement, the other Party must, prior to exercising a remedy available to that Party due to the default, give written notice to the defaulting Party, specifying the nature of the alleged default and the manner in which it can be satisfactorily cured, and extend to the defaulting party at least thirty (30) days from receipt of the notice to cure the default. If the nature of the default is such that it cannot reasonably be cured within the thirty (30) day period and the diligent prosecution of the cure to completion will be deemed a cure within the cure period. The City may issue Stop Work Orders for violations arising under this Agreement or the regulations applied herein.
- 6.8 Remedies for Default:** If either Party defaults under this Agreement and fails to cure the default within the applicable cure period, the non-defaulting Party will have all rights and remedies available under this Agreement or applicable law, including the right to institute legal action to cure any default, to enjoy any threatened or attempted violation of this Agreement or to enforce the defaulting Party's obligations under this Agreement by specific performance or writ of mandamus, or to terminate this Agreement. The City acknowledges that any refusal of or delay by the City to perform its obligations under this Agreement may have a substantial and material impact of Owner, and its ability to exercise its rights and perform its obligations under this Agreement. In the event of a default by the City, Owner will be entitled to seek a writ of mandamus, in addition to seeking any other available remedies. All remedies available to a Party will be cumulative and the pursuit of one remedy will not constitute an election of remedies or a waiver of the right to pursue any other available remedy.
- 6.9 Reservation of Rights:** To the extent not inconsistent with this Agreement, each party reserves all rights, privileges, and immunities under applicable laws.
- 6.10 Attorneys' Fees:** The prevailing Party in any dispute under this Agreement will be entitled to recover from the non-prevailing Party its reasonable attorneys' fees, expenses and court costs in connection with any original action, any appeals, and any post-judgment proceedings to collect or enforce a judgment.
- 6.11 Waiver:** Any failure by a Party to insist upon performance by the other Party of any provision of this Agreement will not, regardless of the length of time during which that failure continues, be deemed a waiver of that Party's right to insist upon compliance with all terms of this Agreement. In order to be effective as to a Party, any waiver of default under this Agreement must be in writing, and a written waiver will only be effective as to the specific default and as to the specific period of time set forth in the written waiver. A written waiver will not constitute a waiver of any subsequent default, or of the right to require performance of the same or any other provision of this Agreement in the future.
- 6.12 Exhibits, Headings, Construction & Counterparts:** All exhibits attached to this Agreement are incorporated into and made a part of this Agreement for all purposes.

The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs. Wherever appropriate, words of the masculine gender may include the feminine or neuter, and the singular may include the plural, and *vice-versa*. Each of the Parties has been actively and equally involved in the negotiation of this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting Party will not be employed in interpreting this Agreement or its exhibits. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument. This Agreement will become effective only when one or more counterparts, individually or taken together, bear the signatures of all of the Parties.

- 6.13 Time:** Time is of the essence of this Agreement. In computing the number of days for purposes of this Agreement, all days will be counted, including Saturdays, Sundays and legal holidays; however, if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day will be deemed to be the next day that is not a Saturday, Sunday or legal holiday.
- 6.14 Authority for Execution:** The City certifies, represents, and warrants that the execution of this Agreement has been duly authorized and that this Agreement has been approved in conformity with City ordinances and other applicable legal requirements. Owner certifies, represents, and warrants that the execution of this Agreement is duly authorized in conformity with their authority.
- 6.15 Jurisdictional Compliance:** Owner understands and agrees it shall comply with all regulations of each entity having authority over any portions of the Project.
- 6.16 Notices:** Any notices or approvals under this Agreement must be in writing may be sent by hand delivery, facsimile (with confirmation of delivery) or certified mail, return receipt requested, to the Parties at the following addresses or as such addresses or as such addresses may be changed from time to time by written notice to the other Parties:

CITY:

Original: City Administrator
City of Dripping Springs
P.O. Box 384
Dripping Springs, TX 78620
Fax: (512) 858 – 5646

Copy to: Bojorquez Law Firm PC
Attention: Alan J. Bojorquez
12325 Hymeadow Dr. Ste, 2-100
Austin, TX 78750

Fax: (512) 250-0749

OWNER:

Original: Mike G. Rutherford, Jr.
8 Greenway Plaza, Suite 1400
Houston, TX 77046
Copy to: Andrew N. Barrett
Andy Barrett and Associates, PLLC
3300 Bee Cave Road, Suite 650 #189
Austin, TX 78746

Either City or Owner may change its mailing address at any time by giving written notice of such change to the other in the manner provided herein at least ten days prior to the date such change is affected. All notices under this Agreement will be deemed given on the earlier of the date personal delivery is affected or on the delivery date or attempted delivery date shown on the return receipt or facsimile confirmation.

6.17 Exhibits: The following exhibits are attached to this Agreement, and made a part hereof for all purposes:

Exhibit A- Metes and Bounds Description of the Land
Exhibit B - Conceptual Plan
Exhibit C- Project Approvals, including Variances, Exceptions, Alternative Standards
Exhibit D- Buffer Zones

STATE OF TEXAS

x

COUNTY OF HAYS

x

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement on the dates indicated below, to be effective on the date the last party signs.

CITY OF DRIPPING SPRINGS

By: _____

Todd Purcell, Mayor

Date: _____

ATTEST:

Andrea Cunningham, City Secretary

This instrument was executed by **Todd Purcell** before me on this, the _____ day of _____ 2018.

Notary Public, State of Texas

STATE OF TEXAS

x

COUNTY OF HAYS

x

OWNER, Mike G Rutherford

By: _____

Its: _____

Date: _____

This instrument was executed by **Todd Purcell** before me on this, the _____ day of _____ 2018.

Notary Public, State of Texas

STATE OF TEXAS

x

COUNTY OF HAYS

x

OWNER, Mike G Rutherford

By: _____

Its: _____

Date: _____

This instrument was executed by **Mike G. Rutherford** before me on this, the _____ day of _____ 2018.

Notary Public, State of Texas

Exhibit “A” – Metes and Bounds

Exhibit “B” – Concept Plan

Exhibit “C” – Project Approvals, including Variances, Exceptions, Alternative Standards

Comments on Ex. C:

1-Maximum Impervious Cover- See memo.

#5-#7-Signs-Not necessary since signs will be covered in Master Sign Plan. Otherwise, project must comply with Sign Ordinance.

#10-I see no need for 3,000 ft blocks.

#12-Reason and justification for lots this small is needed.

#13-Sidewalks-I’m not sure if they are trying to say here that if there are open drainage ditches on a collector or arterial street, that no sidewalk or trail will be required at all, even on the other side of the street. Please clarify if this is what is meant. If that is the case, then this is not possible.

#14-Sidewalks, residential streets-No. Required on both sides.

#15-No, Performance Guarantees will be required per 30.2.

#18-flag lots-will need ESD and City Engineer to review. 20’ frontage may not be enough for emergency access.

#19-Tree requirements-this will need to be reviewed by landscaping consultant. Also, in justification, take out reference to Conservation Design Ordinance since the project is not compliant

#20-Parkland dedication-needs to be reviewed by parkland consultant along with Master Parks and Open Space Plan. Need to know how much is publicly accessible because credit is allotted differently for public v private parkland and open space.

#21-Landscape buffers-verify with landscape consultant.

#25-#30-These will be county roads. City cannot grant variance to county standards.

Exhibit “D” – Buffer Zones

EXHIBIT "A"
RUTHERFORD NORTH

Being 781.23 acres out of the S.D. Gervais League, No. Eight (8), Hays County, Texas, described as follows, to-wit:

BEGINNING at a nail in fence corner post in the North line of FM Road 967 as described in deed from E.R.L. Wroe to The State of Texas recorded in Volume 163, Page 536 of the Deed of Records of Hays County, Texas, said point being the relocated Southwest corner of that certain 1200 acre tract conveyed to E.R.L. Wroe by deed recorded in Volume 139, Page 602 of the Deed of Records of Hays County, Texas, for the southwest corner of the tract herein described and being the Southeast corner of the P.R. Rutherford Greenhaw tract, from which the original Southwest corner of the said Wroe 1200 acre tract bears S 0 deg. 40'W. 114 ft., more or less;

THENCE with the fence along the West line of the said Wroe tract and East line of the said Rutherford tract, being also the West line of said S.D. Gervais League and the East line of the Thos. F. Gray League, N 0 deg. 40'E a distance of 4869.91 ft. to a fence corner post at the occupied Northwest corner of the Wroe tract, for the Northwest corner of this tract;

THENCE with the fence along occupied North line of the said Wroe 1200 acre tract with the courses and distances as follows: S 89 deg. 30'E. 267.84 ft., N 87 deg. 56'E. 128.56 ft., S 89 deg. 45'E 442.77 ft., N 89 deg. 17'E. 135.15 ft., S 89 deg. 51'E 954.73 ft., S 89 deg. 36'E 1299.82 ft., N 89 deg. 35'E 1099.83 ft., S 89 deg. 55'E 2482.80 ft., for the Northeast corner of the tract;

THENCE with the East line of this tract, over and across said Wroe tract, DUE South 4981.60 feet to an iron stake set for the Southeast corner of this tract;

THENCE with the fence along the North right-of-way line of FM 967 and the relocated South line of the said Wroe tract, S 89 deg, 56'W. 1003.37 ft., N 89 deg.

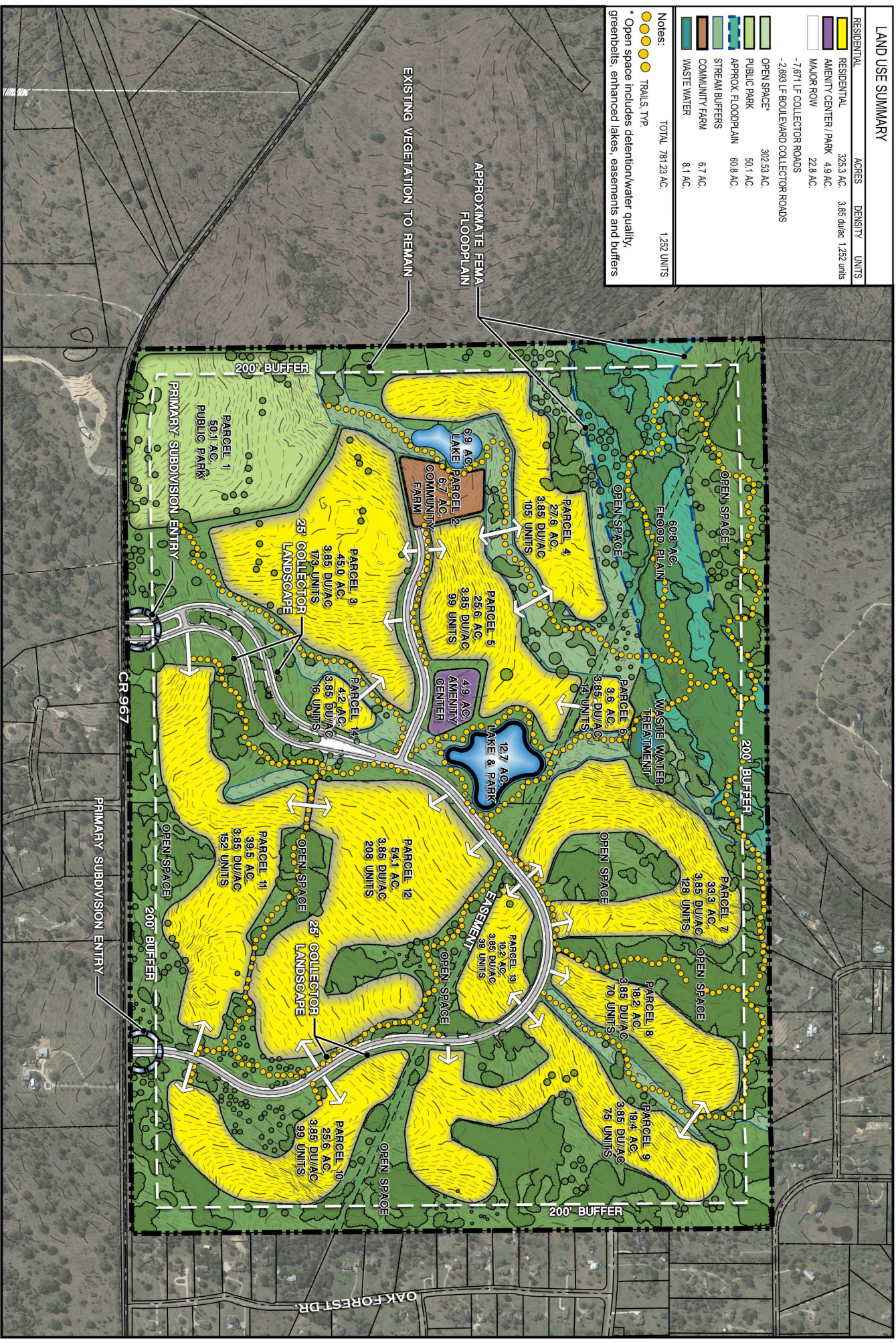
47'W. 5321.17 ft. to a concrete right-of-way monument at point of curve to the right, the radius of which is 1585.35 ft., for an angle point in this tract;

THENCE with the fence along the curving North line of the said road to the right, an arc distance of 555.46 ft., the cord of which bears N 79 deg. 45'W 552.61 ft. to the Place of Beginning, containing 781.23 acres of land, more or less.

LAND USE SUMMARY

RESIDENTIAL	ACRES	DENSITY	UNITS
RESIDENTIAL	325.3 AC.	3.85 DU/AC	1,252 UNITS
AMENITY CENTER / PARK	4.9 AC.		
MAJOR ROW	22.8 AC.		
- 7.67 LF COLLECTOR ROADS			
- 2.693 LF BOULEVARD COLLECTOR ROADS			
OPEN SPACE*	302.53 AC.		
PUBLIC PARK	50.1 AC.		
APPROX. FLOODPLAIN	60.8 AC.		
STREAM BUFFERS	6.7 AC.		
COMMUNITY FARM	6.7 AC.		
WASTE WATER	8.1 AC.		
Notes:	TOTAL 781.23 AC.		1,252 UNITS

Notes:
 ●●●●● TRAILS, TYP.
 * Open space includes detention/water quality, greenbelts, enhanced lakes, easements and buffers



SEC Planning, LLC
 Land Planning + Landscape Architecture + Community Branding
 AUSTIN, TEXAS
 www.secplanning.com + info@secplanning.com

EXHIBIT B
CONCEPTUAL PLAN
RUTHERFORD RANCH
 BUDA, TEXAS



North
 Scale: 1" = 1,000'
 Date: July 26, 2017

SHEET FILE: K117004-MAJORCONCEPTPLANNSGSLD Planning - Base Concept Plan, C.dwg
 Base mapping compiled from best available information. All map data should be considered as preliminary, in need of verification, and subject to change. This land plan is conceptual in nature and does not represent any regulatory approval. Plan is subject to change.

EXHIBIT C- LIST OF VARIANCES & ALTERNATIVE STANDARDS					
#	Ordinance	Description	Requirement	Requested Variance	Justification
<i>Chapter 22, Water Quality Protection</i>					
1	22.05.016(a)(2)	Maximum Impervious Cover	Sets maximum impervious cover for site development plans within the Edwards Aquifer Recharge Zone and the ETJ to 10%	Maximum impervious cover for site development plans within the Edwards Aquifer Recharge Zone and the ETJ will be 25%	Overall project impervious cover to be 25% maximum; area surrounding is mostly conservation property that will not be developed. Even with 25% impervious cover on this property, impervious cover in area will be >5%.
<i>Chapter 23, Zoning</i>					
2	3.11.4(b)	Building Setbacks	Minimum front yard= 25' Minimum rear yard= 25' Minimum side yard= 25' Minimum side yard adjacent to public street = 25'	For Residential Use: Minimum front yard= 20' Minimum rear yard= 15' Minimum side yard= 5' Minimum side yard adjacent to public street = 15'	To have the ability to respond to evolving and diversified housing market. To provide a variety of housing types with variety of lot sizes.
3	3.11.4(a),(2)&(3)	Lot Widths and Depths	Width = 100' Depth = 150'	For Residential Use: Width= 50' Depth= 120'	
4	3.11.4(a)(1)	Minimum Lot Area	20,000 sf	For Residential use: 6,000 sf	
<i>Chapter 24, Building Regulations</i>					
5	24.06.006 (e&f)	Shielding and Total Outdoor Light Output Standards	Government owned street lights in public rights-of-way and outdoor recreation facilities are not included in the total lumens per site.	Lighting for signage and landscaping are excluded from total lumens count per site.	To have the ability to create a master planned community that includes lighting improvements that generally do not occur in typical subdivisions.

#	Ordinance	Description	Requirement	Requested Variance	Justification
<i>Chapter 26, Signs</i>					
6	26.01.005	Sign Area	When referring to area limitations of monument signs, area and signable area refers to an area within a continuous perimeter that includes the sign structure as well as the lettering, illustrations, ornamentalions, or other figures. Maximum of 32 s.f. and 6 ft. in height.	The definition of Sign Area as applied to the subdivision identification sign (aka, monument sign for subdivisions) will not include the monument sign's base. "Subdivision Monument Sign" standards, as currently defined in the DS code shall apply to internal neighborhood entries, parks and amenity centers within the development. Add a new sign category for Rutherford called "Subdivision Primary Entry Monument" sign with a height maximum of 10 feet. Primary Entry Monuments may include sign structures such as an architectural tower or other vertical design elements which shall not exceed 20 feet in height. Community logo may be attached to the tower or vertical design feature. The total square footage will not exceed 150 sq. ft.	Prepare a Sign Master Plan to include in DA to indicate the location and type of signs requested. A sign of this size provides more safety on a road such as CR 967 than does a sign the size required in existing ordinance.

#	Ordinance	Description	Requirement	Requested Variance	Justification
7	26.06.064	Number	Only one monument sign is permitted for each entrance to a subdivision from a public right-of-way.	Two subdivision Identification Sign features can be incorporated into the subdivision entry monumentation and architectural features at the project's entrances. One allowed at amenity center and each park. See Master Sign Plan.	
8	26.01.005 (b)	Height (3)	Height will be measured from the highest attached component of the sign or of its supporting structure (whichever is higher) and the increased grade.	Height will be measured from the highest component of the sign and the average grade of the road measured from the pavement edges.	To have the ability to provide the appropriate entry signage required in creating a true master planned community.

#	Ordinance	Description	Requirement	Requested Variance	Justification
			<i>Chapter 28, Subdivisions and Site Development</i>		
9	(Exhibit A), 3.13	Lapse of plat approval	Final plat approved by the City Council but not yet filed with Hays County - All materials necessary to file the plat at the County, including plat mylars, filing fees, etc., shall be submitted to the City within thirty (30) calendar days of the date of final approval (The thirty-day period shall commence upon County approval of final plat if the property is in the ETJ).	Final plat approved by the City Staff but not yet filed with Hays County - All materials necessary to file the plat at the County, including plat mylars, filing fees, etc., shall be submitted to the City within three hundred and sixty five (365) calendar days of the date of final approval.	Allows time for the construction of infrastructure improvements prior to recordation of plats.
10	(Exhibit A), 11.13.2	Frontage on Residential Collector Streets	Shall not exceed 20%	Applicable only to major collectors, minor arterials, and major arterials.	To showcase the lively neighborhood character with homes fronting streets where possible.
11	(Exhibit A), 11.21.1	Residential block lengths	Shall not exceed one thousand two hundred (1,200) feet between centerlines of street intersections	Shall not exceed three thousand (3,000) feet between centerlines of street intersections	To respond to topographic conditions.
12	(Exhibit A), 13.2	Intersecting Streets	Blocks shall not be less than four hundred feet (400') in length	Blocks shall not be less than two hundred feet (200') in length	Considering unique topographic conditions that may reduce intersection distances.
13	(Exhibit A), 14.6	Minimum Lot Sizes	For lots using central wastewater system and public water supply is 1.5 acres	For lots using organized water and public wastewater system is 4,000 square feet with a minimum lot width of 40 feet.	To have the ability to respond to evolving and diversified housing market. To provide a variety of housing types with variety of lot sizes. Further, smaller lots use less water on yards than do larger lots.
14	(Exhibit A), 15.1	Sidewalks	Required on both sides of collector and arterial streets without open ditch drainage	Sidewalks and/or trails will be provided on both sides of collector and arterial streets without open ditch drainage. Alternatively, an 8' sidewalk/trail can be provided on one side. If collector or arterial street has an open drainage ditch, then no sidewalks or trail is required.	To fuse the hill country character within the community.

#	Ordinance	Description	Requirement	Requested Variance	Justification
15	(Exhibit A), 20.1.3(g)	Sidewalks	Both sides of street in both residential and non-residential developments utilizing curb (not open ditch drainage). Required in conjunction with sewer line installation	One side of street in both residential and non-residential developments utilizing curb (not open ditch drainage). Constructed by the home builders at the time of home construction	To fuse the hill country character within the community.

#	Ordinance	Description	Requirement	Requested Variance	Justification
16	(Exhibit A), 30.2	Performance Guarantees	Required for public improvements	No performance guarantees will be required for public improvements to be owned and maintained by Hays County, the Dripping Springs Water Supply Corporation, or Hays County Development District No. 1.	Performance standards will be provided to owner/user of public improvements.
17		Subdivision related cuts and fills	No provision	Residential lots: 6' cut/14' fill Stormwater Facilities: 20' cut/10' fill Effluent Pond: 20' cut/10' fill	No subdivision ordinance requirements. Self-imposed limitations.
18	28.04.018	Cuts and fills	No fill or cut on any building site shall exceed a maximum of six (6) feet of depth	Improvements requiring a site development permit will be held to no more than 10' of cut and/or fill.	To respond to topographic conditions.
19	(Exhibit A), 14.3	Irregular-Shaped lots	flag lots shall be avoided	No more than five flag lots with minimum 20 foot ROW frontage, per occurrence	To respond to topographic conditions.


#	Ordinance	Description	Requirement	Requested Variance	Justification
20	28.06.051 (a&b)	Residential & Non-Residential Street Tree Requirements	<p>Street trees to be planted adjacent to or near street right-of-way per associated zoning classification. Code calls for 2, 4 inch trees per lot on SF2. I would use this requirement for our SF lots but add a provision that if existing trees exist in the front yard that meet or exceed 8 inches in diameter, no additional trees are required.</p>	<ul style="list-style-type: none"> • Saved Type 1 and Type 2 Trees within the Open Spaces, Rights of Way or Lots (pre-home construction) be given credit toward meeting the street tree requirements. • For example, a typical likely scenario might be – Saved trees over 100 lf of street = 100". The requirement according to the Ordinance is 32". • The cumulative effect of this would be that over the development, there will be more flexibility to create a landscape and streetscape that will supplement the natural hill country. • The developer will measure inches of saved trees (wherever located within the project) and meet the required minimum of inches by either saved trees or supplemental installed street trees at locations of the developer's discretion to meet 32" per 100 lf of right of way. For internal street trees: <ul style="list-style-type: none"> • The builders are required to provide a landscape in accordance with the _____ Architectural Guidelines. • Whenever possible, the developer is leaving the lots in a natural condition. This offers the builder flexibility to creatively work around existing trees. For individual lots, 2, 4 inch caliper trees required. I would 	<p>Rutherford Ranch is a hybrid project more in line with the City's Conservation Design (28.05.002) than a typical suburban development. The clustering of lots, sensitive road alignments and saving of trees is more in line with the allowed Conservation Development requirements. Street trees requirements internal to the development will be the builder's responsibility fostered by contractual obligations to save or plant trees within lots.</p>

#	Ordinance	Description	Requirement	Requested Variance	Justification
21	28.03.006	Park Dedication	1 acre per 25 LUES	Providing 50 acre, unimproved park site (based on approx. 1,200 lots)	Rutherford fulfilling parkland requirement through 50 acre park along CR967. Include master parks plan exhibit to illustrate park location and configuration.
22	28.06.052	Landscape Buffers	1, 4 inch shade tree per 50', 1, 2 inch ornamental tree per 25 feet; 1, 5 gallon shrub per 6 feet; 1, 3 gallon shrub per 3 feet. SF-2 requires 25' buffer along collector road.	Require a minimum 25 foot landscape buffer on each side of our internal collector measured from right of way to back of lot and planted per current requirements. Existing trees preserved in the buffers may count toward the inches of trees required. Provide a 200' buffer along the perimeter of the project, all 4 sides, to be maintained in natural state except for enhanced landscaping as decided by developer. No additional plantings are required within the 200 foot buffers.	Encouragement of preservation of existing trees and creation of attractive, internal collector roadway. Rutherford plan intended to be good neighbor and provide ample buffer separation from any existing development or homes. Maintaining scenic, rural appearance along CR967 by keeping any future development a minimum of 200' from the road. This also promotes water conservation since newly planted trees require considerable amounts of water.

#	Ordinance	Description	Requirement	Requested Variance	Justification
			TCSS		
23	Section 2.3.2, Hays Cnty Dev. Regs Table 721.02	Design Speed	Minor Collector= 35 mph Major Collector= 45 mph Minor Arterial= 55 mph	Minor Collector= 30 mph Major Collector= 35 mph Minor Arterial= 35 mph	Enhance Transportation Safety. Do we know what our collector street will be classified as? Do we even need to address "arterial" streets? May want to keep it at 35 to 45 mph.... discuss
24	Section 2.3.2, Hays Cnty Dev. Regs Table 721.02	Minimum Centerline Radius	Urbanized Local = 200 feet Minor Collector = 375 feet Major Collector= 675 feet Minor Arterial= 975 feet	Urbanized Local = 180 feet Minor Collector = 300 feet Major Collector= 500 feet Minor Arterial= 500 feet	Complies with AASHTO standards relative to proposed design speeds. Preserves natural character by minimizing impacts to existing topography.
25	Section 2.3.2, Hays Cnty Dev. Regs Table 721.02	Minimum Tangent Length	Major Collector= 300 feet Minor Arterial= 500 feet	Major Collector= 150 feet Minor Arterial= 200 feet	Complies relative to proposed design speed.
26	Section 2.3.2, Hays Cnty Dev. Regs Table 721.02	Minimum Lot Frontage	Minor Collector= 100 feet	Minor Collector= 60 feet	To have the ability to respond to evolving and diversified housing market. Provide a variety of housing types and lot sizes.
27	Section 2.3.2, Hays Cnty Dev. Regs Table 721.02	Minimum Drive Spacing	Minor Collector= 75 feet	Minor Collector= 60 feet	To have the ability to respond to evolving and diversified housing market. Provide a variety of housing types and lot sizes.
28	Section 2.3.2, Hays Cnty Dev. Regs Table 721.02	Width of Shoulder	Minor Arterial = 8' Major Collector = 6' Minor Collector = 5'	Minor Arterials = No Shoulder Major Collector = 3' Minor Collector = 4'	Minor Arterials - second lane available for passing stopped vehicles. Major/Minor Collectors-reduced speeds.
29	Section 2.3.2, Hays Cnty Dev. Regs Table 721.02	Cul-de-sac ROW/ Pavement Radius (feet)	70/45 for Urbanized Local and Minor Collector	60/48 for Urbanized Local and Minor Collector. Islands are allowed in the cul-de-sac.	To preserve the natural character of the site by minimizing roadway impacts.
30		Knuckles	No provision	Knuckles are allowed. Minimum ROW radius is 50 feet. Minimum pavement radius is 40 feet.	Preserves natural character by minimizing roadway impacts and concentrating residential density.
31	Section 9.2.2(a)(1)	Side slopes on swales	No steeper than 1 vertical to 6 horizontal	No steeper than 1 vertical to 3 horizontal	Complies with City of Austin, Drainage Criteria Manual 6.4.1.D

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LEGEND

-  APPROX. FLOODPLAIN
-  DRAINAGE BUFFERS

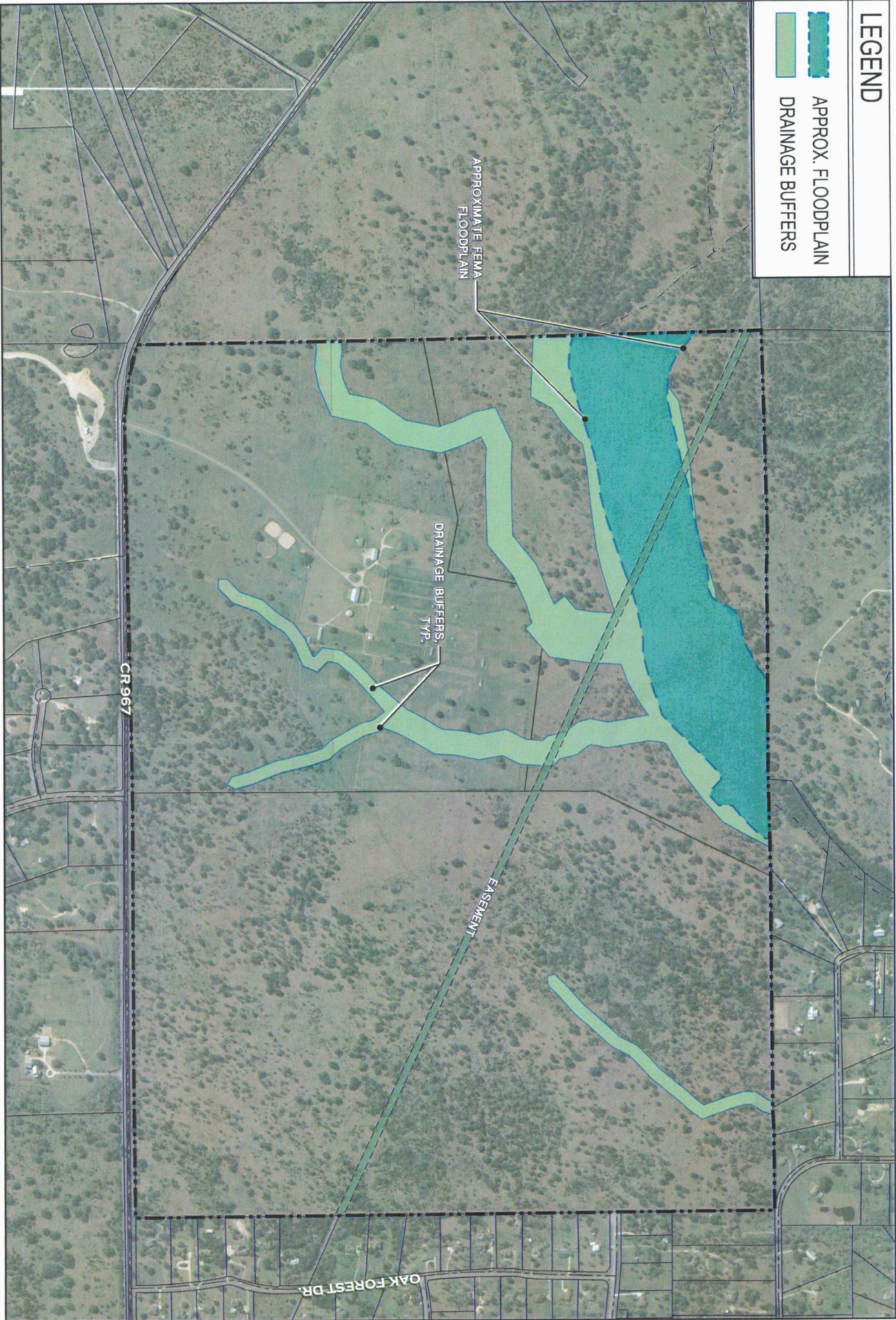


EXHIBIT D BUFFER ZONES RUTHERFORD RANCH DRIPPING SPRINGS, TEXAS

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 Base mapping compiled from best available information. All map data should be considered as preliminary, in need of verification, and subject to change. This land plan is conceptual in nature and does not represent any regulatory approval. Plan is subject to change.