



COUNCIL MEETING PROCEDURES DURING DISASTER PERIOD

COVID-19 (Coronavirus) provides a unique concern in that gathering members of the public, City Council, and City staff within a physical setting constitutes a public health risk. The Texas Open Meetings Act (Ch. 552, Tx. Gov't Code) does not contemplate an instance where a governing body meeting might be completely virtual to avoid further spread of COVID-19. However, on March 16, 2020, the Texas Governor suspended certain requirements of the Open Meetings Act to permit open meetings to occur in a fully virtual setting (e.g., telephonic or videoconference meeting).

Based upon the above stated concerns and actions from the state government, the City Council will temporarily hold its meetings subject to the following:

- The public, City Council, and City staff can engage in self-isolation and social distancing as recommended by the Centers for Disease Control and the State of Texas;
- The public can hear open deliberations by City Council; and
- The public can interact with City Council during public comment.

The following provides a basic framework with which City Council will hold its meetings. Please keep in mind the following:

1. Please be patient as City staff implements the process and technology involved;
2. Understand that the process may change moving forward.
3. Should you wish to participate in the meeting, the earlier the better. For example, you may wish to email City Council prior to the meeting. Should you wish to speak to Council, the earlier that you can call and line-up to speak the better.

Here then is the process that City Council will use for its meetings:

1. Any person who wishes to speak on an agenda item must call by telephone between 5:00 pm and 5:30 pm. A speaker must register with the Moderator by providing a first and last name, an address, and identify the item to address. Anyone calling after 5:45 pm will not be registered to speak. After registering, the speaker must remain on hold and the call will be muted until the appropriate time. The speaker will be able to hear the meeting. At some point, the speaker will be prompted to enter the discussion by stating your full name and address. The speaker may speak for up to three minutes. Should the speaker get disconnected, it is the speaker's responsibility to call back.
2. Any person who wishes to submit a written comment on an agenda item may do so in one of the following ways. Comments must include a name, address, and the relevant item. Comments that do not include such information will not be read.
 - a. Comments may be dropped off at the City Hall Utility Payments Drop-Box by 5:30 pm the evening of the meeting.
 - b. Alternatively, comments can be email to cmcdonald@marblefallstx.gov and must be received by 5:30 pm the evening of the Council Meeting.



**ALTERNATIVE CITIZEN/PUBLIC PARTICIPATION GUIDELINES
(Due to COVID-19 Pandemic Disaster Declaration)**

Despite the necessity to restrict public access to Marble Falls City Council Meetings in the interest of public health during COVID-19 pandemic, citizens and visitors are welcome to participate in Marble Falls City Council Meetings in an alternative way as outlined below.

Instructions for Callers:

Dial the following number:

1-346-248-7799

When your call is answered you will hear "Welcome to Zoom, enter the Meeting ID followed by pound." Enter the Meeting ID below followed by the pound sign (#).

The Meeting ID is **523-092-091**

If the moderator has not started the meeting yet, you will hear "The meeting has not started yet, please hold or call back later." If you decide to call back later, please do so before 5:45 pm.

Once you have called into the meeting, your microphone will be placed on mute and your call will be placed in the call queue. At this point, you will hear silence on the phone. Please do not hang up. The moderator will unmute your microphone as he/she is going down the list. Once the meeting has started, you will be able to listen to proceedings even if your microphone is muted.

The moderator will be accepting calls starting at 5:00 pm. Please place your call before the 5:45 pm deadline to participate in order to allow time for calls to be loaded and queued. Calls made after this time will not be answered.

Instructions for written comments:

Written comments will be read into record, and can be provided in two different ways:

OPTION 1 by hard copy – Comments may be dropped off at the City Hall Utility Payments Drop-Box on the west side of City Hall by 5:30 pm the evening of the Council Meeting. You are required to provide your first and last name, address, and identify the item you wish to comment on.

OPTION 2 by email – Comments can be emailed to cmcdonald@marblefallstx.gov and must be received by 5:30 pm the evening of the Council Meeting. You are required to provide your first and last name, address and identify the item you wish to comment on.

For either option, please provide **all required information** in order for your comments to be accepted. Thank you for your participation!



NOTICE OF MEETING
GOVERNING BODY OF MARBLE FALLS, TEXAS
Tuesday, April 7, 2020 – 6:00 PM
TELEPHONIC MEETING
DIAL IN TO PARTICIPATE: 1-346-248-7799
MEETING ID: 523-092-091

In accordance with the order of the Office of the Governor issued March 16, 2020, the Marble Falls City Council will meet in regular session at **6:00 PM on April 7, 2020 by telephone conference** in order to advance the public health goal of limiting face-to-face meetings (also called “social distancing”) to slow the spread of the Coronavirus (COVID-19). **There will be no physical location for the meeting.** The meeting agenda and packet are posted online at www.marblefallstx.gov.

The public dial-in number to participate in the meeting is **1-346-248-7799**
The Meeting ID to the public meeting is **523-092-091**

The public will be permitted to offer public comments telephonically as provided by the agenda and as permitted by the presiding officer during the meeting. A recording of the telephonic meeting will be made and will be available to the public in accordance with the Open Meetings Act upon written request.

This notice is posted pursuant to the Texas Government Code, Chapter §551-Open Meetings.

1. **CALL TO ORDER AND ANNOUNCE QUORUM IS PRESENT**
2. **INVOCATION**
3. **PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES AND TO THE TEXAS FLAG.**
“Honor the Texas Flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible.”
4. **UPDATES, PRESENTATIONS, PROCLAMATIONS AND RECOGNITIONS**
5. **CITIZEN COMMENTS.** *This is an opportunity for citizens to address the City Council concerning an issue of community interest that is not on the agenda. Comments on a specific agenda item must be made when the agenda item comes before the Council. The Mayor may place a time limit on all comments. Any deliberation of an issue raised during Citizen Comments is limited to a statement of fact regarding the item; a statement concerning the policy regarding the item or a proposal to place the item on a future agenda.*
6. **CONSENT AGENDA.** *The items listed are considered to be routine and non-controversial by the Council and will be approved by one motion. There will be no separate discussion of these items unless a Councilmember so*

requests, in which case the item will be removed from the Consent Agenda prior to a motion and vote. The item will be considered in its normal sequence on the Regular Agenda.

- (a) Approval of the minutes of the March 17, 2020 special meeting and regular meeting and the March 26, 2020 special meeting and joint special meeting. *Christina McDonald, City Secretary*
- (b) Approval of Resolution 2020-R-04A, a Resolution responding to the application of ATMOS Energy Corporation – MidTex Division, to increase rates under the gas reliability infrastructure program, suspending the effective date of the application for forty-five days, authorizing the city to continue to participate in a coalition of cities known as the “ATMOS Texas Municipalities”. *Mike Hodge, City Manager*

7. REGULAR AGENDA. *Council will individually consider and possibly take action on any or all of the following items:*

- (a) Discussion and Action on Ordinance 2020-O-04B regarding acceptance of petitions to extend the City of Marble Falls’ Extra-Territorial Jurisdiction (ETJ) boundary to include an additional 88 acres, more or less, which is a portion of a 187.21-acre tract of land already located within the ETJ out of the F.S. Early Survey No. 15, and a 40.258-acre and a 9.824-acre tract of land out of the John Harper Survey No. 14, Abstract No. 393, and including certain adjacent right-of-way, being real property contiguous to the existing ETJ boundary; and accepting a right of way annexation agreement for future annexation into the city limits of certain right of way adjacent to the 187.21 acre tract, all of which property is generally located east of the city limits on FM 1431 on County Road 342. *Valerie Kreger, Director of Development Services*
- (b) Discussion and Action regarding a Development Agreement between the City of Marble Falls, the Jenkins Organization, Inc., and Leslie and Deana Holt and Dennis and Martha Sells (landowners) for development of two tracts of land with Conceptual Land Plan within the City’s Extra-Territorial (ETJ) east of the city limits located on County Road 342 and authorizing the City Manager to execute said agreement. *Valerie Kreger, Director of Development Services*
- (c) Discussion and Action authorizing the Mayor to enter into an Economic Development Agreement between the City of Marble Falls, the Marble Falls Economic Development Corporation and R. Cockrell Enterprises LLC, providing financial support related to development costs associated with the Marble Falls Putters and Gutters location. *Caleb Kraenzel, Assistant City Manager*

8. CITY MANAGER’S REPORT

- Update on COVID-19 response in Burnet County
- Update on EDC Small Business Loans in connection with Coronavirus Pandemic

9. EXECUTIVE SESSION

10. RECONVENE INTO OPEN SESSION FOR POSSIBLE ACTION RESULTING FROM ITEMS DISCUSSED IN EXECUTIVE SESSION

11. ANNOUNCEMENTS AND FUTURE AGENDA ITEMS

12. ADJOURNMENT

“The City Council reserves the right to adjourn into Executive Session at any time during the course of this meeting to discuss any matters listed on the agenda, as authorized by the Texas Government Code, including, but not limited to, Sections 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices), 551.087 (Economic Development), 418.183 (Deliberations about Homeland Security Issues) and as authorized by the Texas Tax Code, Section 321.3022 (Sales Tax Information).”

In compliance with the Americans with Disabilities Act, the City of Marble Falls will provide for reasonable accommodations for persons attending City Council Meetings. To better serve you, requests should be received 24 hours prior to the meeting. Please contact Ms. Christina McDonald, City Secretary at (830) 693-3615.

Certificate of Posting

I, Christina McDonald, City Secretary for the City of Marble Falls, Texas, do certify that this Notice of Meeting was posting at City Hall, in a place readily accessible to the general public at all times, on the 2nd day of April, 2020 at 9:00 am and remained so posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Christina McDonald

Christina McDonald, TRMC
City Secretary

April 7, 2020

6. CONSENT AGENDA

- (a) Approval of the minutes of the March 17, 2020 joint special meeting and regular meeting and the March 26, 2020 special meeting and joint special meeting. *Christina McDonald, City Secretary*
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STATE OF TEXAS
COUNTY OF BURNET
CITY OF MARBLE FALLS

On this the 17th day of March 2020 the Council of the City of Marble Falls convened in regular session at 6:00 pm at the City Hall Council Chambers located at 800 Third Street, Marble Falls, Texas, with notice of meeting giving time, place, date, and subject having been posted as described in Chapter 551 of the Texas Government Code.

PRESENT:

John Packer	Mayor
Richard Westerman	Mayor Pro-Tem
William (Dee) Haddock	Councilmember
Craig Magerkurth	Councilmember
Celia Merrill	Councilmember
Reed Norman	Councilmember
Dave Rhodes	Councilmember

ABSENT: None

STAFF:

Mike Hodge	City Manager
Caleb Kraenzel	Assistant City Manager
Christina McDonald	City Secretary
Patty Akers	City Attorney
Baron Sauls	Director of Finance
Mark Whitacre	Chief of Police
Glenn Hanson	Assistant Chief of Police
Valerie Kreger	Director of Development Services
Russell Sander	Fire Chief

VISITORS: Connie Swinney (The Highlander), Rene Rosales (Council Elect Place 3)

1. **CALL TO ORDER AND ANNOUNCE QUORUM IS PRESENT.** Mayor Packer called the meeting to order at 6:00 pm.
2. **INVOCATION.** Councilmember Haddock gave the invocation.
3. **PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES AND TO THE TEXAS FLAG.** Mayor Packer led the pledges.
4. **UPDATES, PRESENTATIONS, PROCLAMATIONS AND RECOGNITIONS.** There were no updates, presentations, proclamations or recognitions.
5. **CITIZEN COMMENTS.** There were no citizen comments.

6. CONSENT AGENDA.

(a) Approval of the minutes of the March 3, 2020 regular meeting.

(b) Approval of the Fiscal Year 2020-2021 Budget Planning Calendar.

Councilmember Haddock made a motion to approve the consent agenda. The motion was seconded by Councilmember Magerkurth. The motion carried by a vote of 7-0.

7. REGULAR AGENDA.

(a) Public Hearing, Discussion and Action on Ordinance 2020-O-03D regarding zoning text amendments to City of Marble Falls Code of Ordinances, Chapter 20, Signs, Section 20-3, Definitions, and Section 20-10, Temporary Signs; and Appendix B, Development Code, Article 3, Land Use, Article 4, General Development Regulations; and Article 14, Definitions and Interpretations. Valerie Kreger, Director of Development Services addressed Council. Mayor Packer opened the public hearing. After some discussion, Mayor Packer closed the public hearing and read the ordinance caption. Councilmember Rhodes made a motion to continue the public hearing and action on the ordinance to a future date. Councilmember Norman seconded the motion. The motion carried by a unanimous vote (7-0).

(b) Discussion and Action on authorizing the expenditure of funds to Motorola for the City of Marble Falls' portion of upgrades to the Western Region Radio System. Glenn Hanson, Assistant Chief of Police addressed Council. Councilmember Haddock made a motion to authorize the expenditure of funds to Motorola. Councilmember Norman seconded the motion. The motion carried by a vote of 7-0.

8. CITY MANAGER'S REPORT. Mike Hodge, City Manager gave an update on the TxDOT Highway 281 project, the Buena Vista properties. Fire Chief Russell Sander provided an update on COVID-19.

9. EXECUTIVE SESSION. Council did not convene to Executive Session.

10. RECONVENE INTO OPEN SESSION FOR POSSIBLE ACTION RESULTING FROM ITEMS DISCUSSED IN EXECUTIVE SESSION. No action taken.

11. ANNOUNCEMENTS AND FUTURE AGENDA ITEMS. The draft agenda for the April 7 regular meeting was reviewed.

12. ADJOURNMENT. There being no further business to discuss, Councilmember Norman made a motion to adjourn which was seconded by Councilmember Merrill. The meeting was adjourned at 7:00 pm.

John Packer, Mayor

ATTEST:

**Christina McDonald, TRMC
City Secretary**

DRAFT

**STATE OF TEXAS
COUNTY OF BURNET
CITY OF MARBLE FALLS**

On this the 17th day of March 2020 the City Council convened in joint special session with the Marble Falls Economic Development Corporation at 4:00 pm at the Lakeside Pavilion located at 307 Buena Vista Drive, with notice of meeting giving time, place, date, and subject having been posted as described in Chapter 551 of the Texas Government Code.

PRESENT:

John Packer	Mayor
Richard Westerman	Mayor Pro-Tem
William (Dee) Haddock	Councilmember
Craig Magerkurth	Councilmember
Celia Merrill	Councilmember
Reed Norman	Councilmember
Dave Rhodes	Councilmember

ABSENT: None

STAFF:

Mike Hodge	City Manager
Caleb Kraenzel	Assistant City Manager
Christian Fletcher	Executive Director
Midge Dockery	Business Development Coordinator
Patty Akers	City Attorney

VISITORS: Representatives from Cooper Carry and affiliates

1. **CALL TO ORDER AND ANNOUNCE QUORUM IS PRESENT.** Mayor Packer called the meeting to order at 4:02 pm.
2. **EXECUTIVE SESSION**
Close Open Session and Convene Executive Session pursuant to §551.087 (*Economic Development*), §551.071 (*Private Consultation between the Board and its Attorney*), §551.072, and (*Deliberation Regarding the Purchase, Exchange, Lease or Value of Real Property*) of the Open Meetings Act. *Tex. Gov't Code*, Council will meet in Executive Session to discuss the following:
 - Discuss Hotel/Conference Center, negotiations regarding real property and consult with attorney re: legal authority and responsibilities

**4:03 pm Convened to Executive Session. Note: Councilmember Haddock arrived at 4:04 pm.
4:58 pm Returned to Open Session**

3. **RECONVENE TO OPEN SESSION FOR POSSIBLE ACTION RESULTING FROM ITEMS DISCUSSED IN EXECUTIVE SESSION.** No action was taken.
4. **ADJOURNMENT.** There being no further business to discuss, Mayor Pro-Tem Westerman made a motion to adjourn. The motion was seconded by Councilmember Merrill and the meeting was adjourned at 4:59 pm.

John Packer, Mayor

ATTEST:

**Christina McDonald, TRMC
City Secretary**

DRAFT

**STATE OF TEXAS
COUNTY OF BURNET
CITY OF MARBLE FALLS**

On this the 26th day of March 2020 the City Council convened in joint special session at 4:00 with the Marble Falls Economic Development Corporation by telephone conference in accordance with the Order of the Office of the Governor issued March 16, 2020, in response to COVID-19, with notice of meeting giving time, place, date, and subject having been posted as described in Chapter 551 of the Texas Government Code.

PRESENT: John Packer Mayor
Richard Westerman Mayor Pro-Tem
William (Dee) Haddock Councilmember
Craig Magerkurth Councilmember
Celia Merrill Councilmember
Reed Norman Councilmember
Dave Rhodes Councilmember

ABSENT: None

EDC PRESENT: Steve Reitz President
Mark Mayfield Vice President
William (Dee)Haddock Director
Judy Miller Director
Ryan Nash Director
John Packer Director
Lindsay Plante Director

STAFF: Mike Hodge City Manager
Caleb Kraenzel Assistant City Manager
Christina McDonald City Secretary
Christian Fletcher Executive Director
Midge Dockery EDC Business Development Coordinator
Baron Sauls Director of Finance
Erin Burks Downtown Coordinator
Russell Sander Fire Chief
Mark Whitacre Police Chief
Patty Akers City Attorney
Monte Akers EDC Attorney

VISITORS: Connie Swinney (The Highlander), Alex Copeland (Daily Trib), Susan Patton (LCRA)

1. **CALL TO ORDER AND ANNOUNCE QUORUM IS PRESENT.** Mayor Packer and President Reitz called the meeting to order at 4:20 pm and announced the presence of a quorum by roll call.
2. **DISCUSSION AND ACTION ON PROVIDING EDC SMALL BUSINESS LOANS IN CONNECTION WITH THE CORONAVIRUS PANDEMIC.** EDC Executive Director Christian Fletcher addressed the Council and EDC Board. After some discussion regarding the intent of the loan program, application process and applicant qualifications, the loan term and interest rates, EDC Director Packer made a motion to approve Phase 1 of the COVID-19 Loan Program authorizing up to \$100,000 at 0% interest for three years, instruct EDC staff to amend the loan application as discussed and assign the EDC Finance Committee with the task of reviewing and approving the loan applications. Director Mayfield seconded the motion. The motion carried by a vote of 7-0.

Councilmember Haddock made a motion to approve the COVID-19 EDC Loan Program as discussed. Councilmember Norman seconded the motion. The motion carried by a unanimous vote (7-0).

3. **ADJOURNMENT.** There being no further business to discuss, EDC Director Plante made a motion to adjourn the EDC Meeting. Director Miller seconded the motion. Councilmember Norman made a motion to adjourn the Council Meeting was seconded by Councilmember Rhodes. The joint special meeting was adjourned at 4:56 pm.

John Packer, Mayor

ATTEST:

**Christina McDonald, TRMC
City Secretary**

**STATE OF TEXAS
COUNTY OF BURNET
CITY OF MARBLE FALLS**

On this the 26th day of March 2020 the City Council convened in special session at 4:00 pm by telephone conference in accordance with the Order of the Office of the Governor issued March 16, 2020, in response to COVID-19, with notice of meeting giving time, place, date, and subject having been posted as described in Chapter 551 of the Texas Government Code.

PRESENT:

John Packer	Mayor
Richard Westerman	Mayor Pro-Tem
William (Dee) Haddock	Councilmember
Craig Magerkurth	Councilmember
Celia Merrill	Councilmember
Reed Norman	Councilmember
Dave Rhodes	Councilmember

ABSENT: None

STAFF:

Mike Hodge	City Manager
Caleb Kraenzel	Assistant City Manager
Christina McDonald	City Secretary
Christian Fletcher	Executive Director
Baron Sauls	Director of Finance
Erin Burks	Downtown Coordinator
Valerie Kreger	Director of Development Services
Russell Sander	Fire Chief
Mark Whitacre	Police Chief
Patty Akers	City Attorney
Monte Akers	EDC Attorney

VISITORS: Connie Swinney (The Highlander), Alex Copeland (Daily Trib), Susan Patton (LCRA)

1. **CALL TO ORDER AND ANNOUNCE QUORUM IS PRESENT.** Mayor Packer called the meeting to order at 4:05 pm via telephone conference and announced the presence of a quorum via roll call.
2. **DISCUSSION AND ACTION ON RESOLUTION 2020-R-03B CONTINUING THE DISASTER DECLARATION PREVIOUSLY ISSUED BY MAYOR JOHN PACKER ON MARCH 19, 2020 IN RESPONSE TO THE SPREAD OF COVID-19.** Councilmember Merrill made a motion to act favorably on Resolution 2020-R-03B continuing the Disaster Declaration until April 21, 2020. Councilmember Norman seconded the motion. The motion carried by a unanimous vote (7-0).

3. **ADJOURNMENT.** There being no further business to discuss, Mayor Pro-Tem Westerman made a motion to adjourn. The motion was seconded by Councilmember Merrill and the meeting was adjourned at 4:12 pm.

John Packer, Mayor

ATTEST:

**Christina McDonald, TRMC
City Secretary**

DRAFT

April 7, 2020

6. CONSENT AGENDA

- (b) Approval of Resolution 2020-R-04A, a Resolution responding to the application of ATMOS Energy Corporation – MidTex Division, to increase rates under the gas reliability infrastructure program, suspending the effective date of the application for forty-five days, authorizing the city to continue to participate in a coalition of cities known as the “ATMOS Texas Municipalities”. *Mike Hodge, City Manager*
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Council Agenda Item Cover Memo
April 7, 2020

Agenda Item No.: 6(b)
Presenter: Mike Hodge, City Manager
Department: Administration
Legal Review:

AGENDA CAPTION

Approval of Resolution 2020-R-04A, a Resolution responding to the application of ATMOS Energy Corporation – MidTex Division, to increase rates under the gas reliability infrastructure program, suspending the effective date of the application for forty-five days, authorizing the city to continue to participate in a coalition of cities known as the “ATMOS Texas Municipalities”.

BACKGROUND INFORMATION

ATMOS TEXAS MUNICIPALITIES

The City is a member of the Atmos Texas Municipalities (“ATM”). The ATM group was organized by a number of municipalities served by Atmos Energy Corporation – MidTex Division (“Atmos Energy”) and has been represented by the law firm of Herrera Law & Associates, PLLC to assist in reviewing applications to change rates submitted by Atmos Energy.

“GRIP” RATE APPLICATION

Under section 104.301 of the Gas Utility Regulatory Act (GURA), a gas utility is allowed to request increases in its rates to recover a return on investments it makes between general rate cases. This section of GURA is commonly referred to as the “GRIP” statute, that is, the “Gas Reliability Infrastructure Program.”

Under a decision by the Supreme Court of Texas, the Court concluded that a filing made under the GRIP statute permitted gas utilities the opportunity to recover return on capital expenditures made during the interim period between general rate cases by applying for an interim rate adjustment and that proceedings under the GRIP statute did not contemplate either adjudicative hearings or substantive review of utilities' filings for interim rate adjustments. Instead, the Court concluded, the GRIP statute provides for a *ministerial* review of the utility’s filings to ensure compliance with the GRIP statute and the Railroad Commission’s rules, and that it is within the Railroad Commission’s authority

to preclude cities from intervening and obtaining a hearing before the Railroad Commission.

ATMOS ENERGY’S “GRIP” APPLICATION

On or about February 28, 2020 Atmos Energy filed for an increase in gas utility rates under the Gas Reliability Infrastructure Program (“GRIP”). Atmos Energy’s application if approved by the Commission will result in an increase in the monthly customer charges as shown below:

Rate Schedule	Current Customer Charge	Proposed 2018 Interim Rate Adjustment	Adjusted Customer Charge	Increase Per Bill
Rate R – Residential Sales	\$21.74 per customer per month	\$4.71 per customer per month	\$26.45 per customer per month	\$4.71
Rate C – Commercial Sales	\$52.26 per customer per month	\$14.54 per customer per month	\$66.80 per customer per month	\$14.54
Rate I (Industrial) & Rate T (Transportation)	\$939.80 per customer per month	\$261.93 per customer per month	\$1,201.73 per customer per month	\$261.93

Atmos Energy’s application, if approved by the Railroad Commission, will result in a systemwide increase in Atmos Energy’s revenue of about \$113.06 million, of which ATM’s portion is about \$11.15 million. Atmos Energy proposed an effective date of April 28, 2020.

On March 27, 2020, Atmos Energy informed ATM’s Special Counsel that it would delay implementation of its GRIP increase in rates to September 1, 2020. However, it does not appear Atmos Energy has withdrawn its pending GRIP application.

REVIEW AND ACTION RECOMMENDED

In light of the Texas Supreme Court’s opinion, the City’s ability to review and effectuate a change in Atmos Energy’s requested increase is limited. Nonetheless, and even though Atmos Energy has stated that it will delay implementation of its increase in rates under GRIP to September 1, 2020, to allow for a limited review of Atmos Energy’s GRIP application, and given the limited authority cities have in GRIP cases, it is recommended that the City suspend Atmos Energy’s proposed effective date of April 28, 2020 for forty-five days as allowed by state law, so that the City may evaluate whether the data and calculations in Atmos Energy’s rate application are correctly done.

Therefore, ATM's Special Counsel, the law firm of Herrera Law & Associates, PLLC (through Alfred R. Herrera) recommends that the City adopt a resolution suspending Atmos Energy's proposed effective date for 45 days. Assuming a proposed effective date of April 28, 2020 Atmos Energy's proposed effective date is suspended until June 12, 2020.

RESOLUTION NO. 2020-R-04A

A RESOLUTION BY THE CITY OF MARBLE FALLS, TEXAS, ("CITY") RESPONDING TO THE APPLICATION OF ATMOS ENERGY CORPORATION – MIDTEX DIVISION, TO INCREASE RATES UNDER THE GAS RELIABILITY INFRASTRUCTURE PROGRAM; SUSPENDING THE EFFECTIVE DATE OF THIS RATE APPLICATION FOR FORTY-FIVE DAYS; AUTHORIZING THE CITY TO CONTINUE TO PARTICIPATE IN A COALITION OF CITIES KNOWN AS THE "ATMOS TEXAS MUNICIPALITIES;" DETERMINING THAT THE MEETING AT WHICH THE RESOLUTION WAS ADOPTED COMPLIED WITH THE TEXAS OPEN MEETINGS ACT; MAKING SUCH OTHER FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, on or about February 28, 2020 Atmos Energy Corporation – MidTex Division (“Atmos Energy”) filed for an increase in gas utility rates under the Gas Reliability Infrastructure Program (“GRIP”), which if approved, results in an increase in the monthly customer charges as follows:

Rate Schedule	Current Customer Charge	Proposed 2018 Interim Rate Adjustment	Adjusted Customer Charge	Increase Per Bill
Rate R – Residential Sales	\$21.74 per customer per month	\$4.71 per customer per month	\$26.45 per customer per month	\$4.71
Rate C – Commercial Sales	\$52.26 per customer per month	\$14.54 per customer per month	\$66.80 per customer per month	\$14.54
Rate I (Industrial) & Rate T (Transportation)	\$939.80 per customer per month	\$261.93 per customer per month	\$1,201.73 per customer per month	\$261.93

WHEREAS, Atmos Energy’s application, if approved by the Railroad Commission, will result in a systemwide increase in Atmos Energy’s revenue of about \$113.06 million, of which ATM’s portion is about \$11.15 million; and

WHEREAS, the City has a special responsibility to exercise due diligence with regard to rate increases of monopoly utilities who operate within its boundaries; and

WHEREAS, the application to increase rates by Atmos Energy is complex; and

WHEREAS, the effective date proposed by Atmos Energy is April 28, 2020 but a suspension by the City will mean that the rate increase cannot go into effect prior to June 12, 2020; and

WHEREAS, on March 27, 2020, Atmos Energy informed ATM's Special Counsel that it would delay implementation of its GRIP increase in rates to September 1, 2020, but Atmos Energy has not withdrawn its pending GRIP application; and

WHEREAS, it is necessary to suspend the effective date for the increase in rates for forty-five days, so that the City can assure itself that the data and calculations in Atmos Energy's rate application are correctly done and are in conformity with section 104.301 of the Gas Utility Regulatory Act.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARBLE FALLS, TEXAS THAT:

Section 1. That the statements and findings set out in the preamble to this resolution are hereby in all things approved and adopted.

Section 2. The City suspends the requested effective date by Atmos Energy for forty-five days pursuant to the authority granted the City under Section 104.301 of the Texas Utilities Code. The City finds that additional time is needed in order to review the data and calculations that provide the basis for the rate increase application.

Section 3. The City shall continue to act jointly with other cities that are part of a coalition of cities known as the Atmos Texas Municipalities ("ATM").

Section 4. The City authorizes the law firm of Herrera Law & Associates, PLLC, to act on its behalf in connection with Atmos Energy's application to increase rates.

Section 5. To the extent Atmos Energy's application to increase rates under section 104.301 of the Gas Utility Regulatory Act ("GURA") is considered a ratemaking proceeding, Atmos Energy is ordered to reimburse the City's reasonable rate case expenses incurred in response to Atmos Energy's rate increase application within 30 days of receipt of invoices for such expenses to the extent allowed by law.

Section 6. A copy of this resolution shall be sent to Mr. Christopher A. Felan, Vice President, Rates & Regulatory Affairs, Atmos Energy Corporation, 5420 LBJ Freeway, Suite 1862, Dallas, Texas 75240; and to Mr. Alfred R. Herrera, Herrera Law & Associates, PLLC, 4400 Medical Pkwy., Austin, Texas 78756.

Section 7. The meeting at which this resolution was approved was in all things conducted in compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

Section 8. This resolution shall be effective immediately upon passage.

PASSED AND APPROVED this 7th day of April 2020.

John Packer, Mayor

ATTEST:

Christina McDonald, City Secretary

April 7, 2020

7. REGULAR AGENDA

- (a) Discussion and Action on Ordinance 2020-O-04B regarding acceptance of petitions to extend the City of Marble Falls' Extra-Territorial Jurisdiction (ETJ) boundary to include an additional 88 acres, more or less, which is a portion of a 187.21-acre tract of land already located within the ETJ out of the F.S. Early Survey No. 15, and a 40.258-acre and a 9.824-acre tract of land out of the John Harper Survey No. 14, Abstract No. 393, and including certain adjacent right-of-way, being real property contiguous to the existing ETJ boundary; and accepting a right of way annexation agreement for future annexation into the city limits of certain right of way adjacent to the 187.21 acre tract, all of which property is generally located east of the city limits on FM 1431 on County Road 342. *Valerie Kreger, Director of Development Services*
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Council Agenda Item Cover Memo
April 7, 2020

Agenda Item No.: 7(a)
Presenter: Valerie Kreger, Director of Development Services
Department: Development Services
Legal Review:

AGENDA CAPTION

Discussion and Action on Ordinance 2020-O-04B regarding acceptance of petitions to extend the City of Marble Falls' Extra-Territorial Jurisdiction (ETJ) boundary to include an additional 88 acres, more or less, which is a portion of a 187.21-acre tract of land already located within the ETJ out of the F.S. Early Survey No. 15, and a 40.258-acre and a 9.824-acre tract of land out of the John Harper Survey No. 14, Abstract No. 393, and including certain adjacent right-of-way, being real property contiguous to the existing ETJ boundary; and accepting a right of way annexation agreement for future annexation into the city limits of certain right of way adjacent to the 187.21 acre tract, all of which property is generally located east of the city limits on FM 1431 on County Road 342.

BACKGROUND INFORMATION

This item is consideration of an ordinance accepting petitions to include several tracts of land equaling roughly 88-acres plus adjacent right of way into the City of Marble Falls extraterritorial jurisdiction upon request of the property owners. The properties are located on CR 342A (also known as Cimarron Ranch Rd.), which is just off of RM 1431 east of the current City Limits and just outside the City's current ETJ boundary. The property owners, Holt, Sells, and Malkemus, have requested for their properties to be included in the City's ETJ in order to allow for development of the Holt and Sells properties and agreement with the City of Marble Falls for extension of the City's water services. The petitions and the property surveys are attached to the ordinance accompanying this memo. The Malkemus property is partially located in the City's ETJ currently, this petition would put the remaining acreage, as well as the adjacent ROW into the ETJ to allow for the inclusion of the Holt and Sells properties as well as the adjacent ROW.

Per Section 42.021 of the Texas Local Government Code, the ETJ of a City with a population of between 5,000 and 24,999 extends one mile beyond the City's corporate limits. Section 42.022 allows a municipality to expand the ETJ beyond that distance if the area to be included is contiguous with the existing ETJ, the area is not within

another municipality's ETJ, and the extension is at the request of the property owner(s).

Section 43.0671 and Section 43.1055 of the Texas Local Government Code require that right-of-way must be annexed by consent of the landowners or by request of the governmental entity that maintains the right of way. Landowner, Malkemus, has submitted a consent agreement for annexation of the right of way adjacent to his property in the future when the city limit boundaries become contiguous to the right-of-way. Acceptance of this agreement by the City will enable the 50 acres opposite the right of way to be contiguous to future city limit boundaries and therefore eligible for annexation pursuant to the development agreement described in the next agenda item.

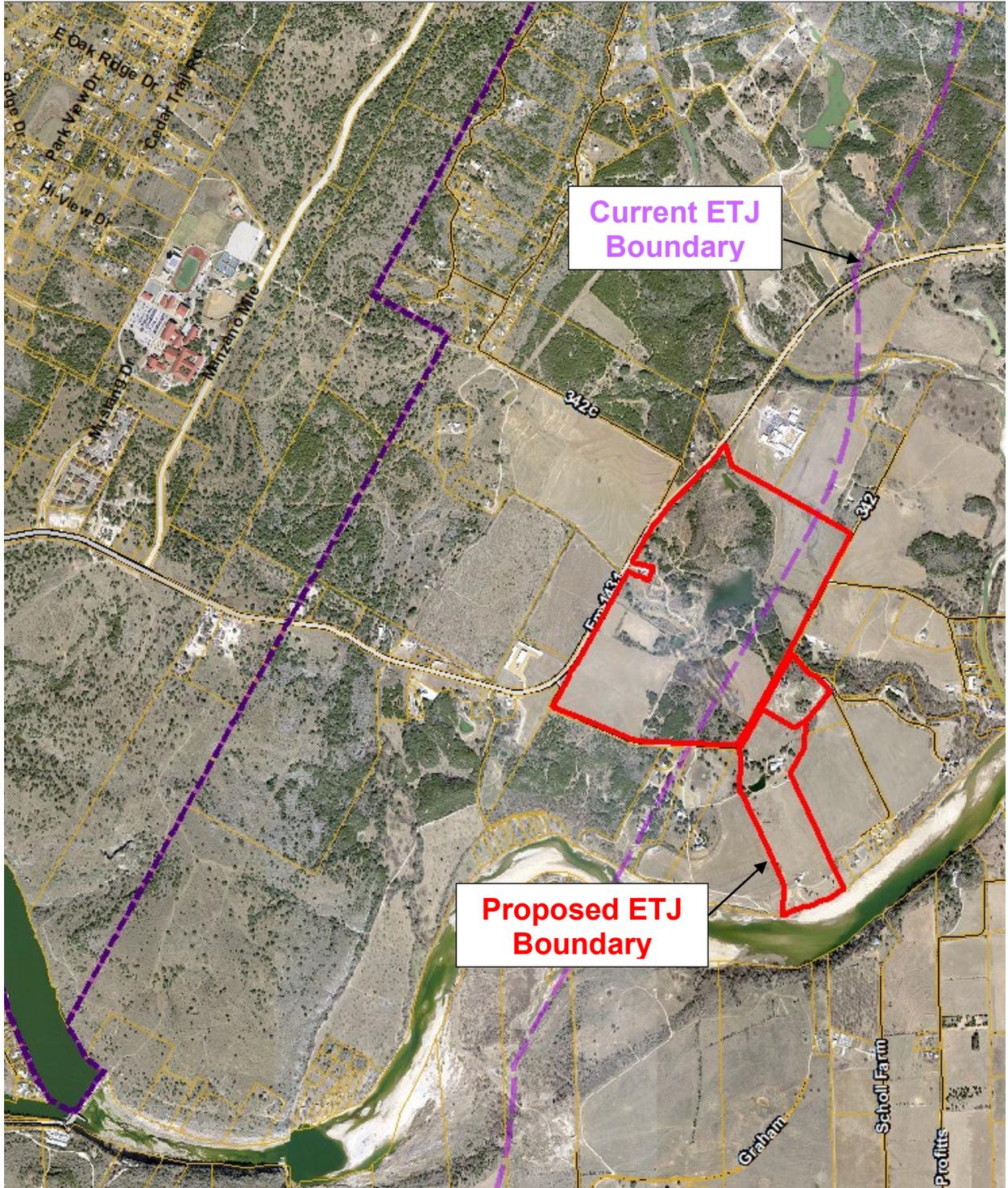
RECOMMENDATION

Approval of Ordinance 2020-O-04B extending the City of Marble Falls extraterritorial jurisdiction subject to approval of the associated Development Agreement.

Memo Contents:

- | | |
|---|---------------|
| • Location Map | Page 3 |
| • Ordinance 2020-O-04B | Pages 4 - 21 |
| • Exhibit "A" Holt Petition | Pages 7 - 10 |
| • Exhibit "B" Sells Petition | Pages 11 - 16 |
| • Exhibit "C" Malkemus Petition | Pages 17 - 20 |
| • Exhibit "D" Malkemus ROW Annex Petition | Pages 21 - 23 |

LOCATION MAP



ORDINANCE NO. 2020-O-04B

AN ORDINANCE OF THE CITY OF MARBLE FALLS, TEXAS, EXTENDING THE EXTRATERRITORIAL JURISDICTION (“ETJ”) OF THE CITY OF MARBLE FALLS, TEXAS, ON PETITION OF THE LAND OWNERS TO INCLUDE THE PROPERTIES DESCRIBED WITHIN EXHIBITS “A”, “B”, AND “C” (“THE PROPERTIES”); ACCEPTING A RIGHT OF WAY ANNEXATION AGREEMENT; PROVIDING FOR REPEALER; SEVERABILITY; PROPER NOTICE AND MEETING; AND EFFECTIVE DATE.

WHEREAS, LGC Section 42.022(b) permits a municipality to expand its extraterritorial jurisdiction beyond the distance limitations imposed by Section 42.021 to include an area contiguous to the otherwise existing extraterritorial jurisdiction of the municipality if the owners of the area request the expansion; and

WHEREAS, the City of Marble Falls received Petitions for Voluntary ETJ Expansion (“Petitions”), pursuant to Section 42.022(b) of the LGC, from land owners as listed in Exhibits “A”, “B”, and “C” (“Petitioners”) requesting the acceptance of land into the ETJ of the City of Marble Falls, Burnet County, Texas, being those properties described in Exhibits “A”, “B”, and “C” attached hereto;

WHEREAS, the City has reviewed said petitions and has determined that the facts therein stated are true and correct and the Petitioners are the owners of The Properties described in Exhibits “A”, “B”, and “C” attached hereto; and

WHEREAS, The Properties are contiguous to the otherwise existing ETJ of the City of Marble Falls; and

WHEREAS, at the time of adoption of this Ordinance, The Properties are not within the corporate limits or ETJ of any other municipality; and

WHEREAS, the City has determined that it will be in the best interest of the City if the City extends and expands its extraterritorial jurisdiction to include The Properties; and

WHEREAS, the City has received a consent agreement for future annexation of right of way from the landowner whose property is adjacent to certain right of way described in Exhibit “D”, attached hereto; and

WHEREAS, the City is authorized pursuant to section 43.0671 and section 43.1055, Texas Local Government Code to annex right of way upon the consent of the landowner; and

WHEREAS, the City has determined that it will be in the best interest of the City to annex the right of way described in Exhibit “D” when in the future the city limits

become contiguous to such right of way and that the City should therefor accept the annexation consent agreement.

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

SECTION 1. PREAMBLE. All of the above premises are hereby found to be true and correct legislative and factual findings of the City of Marble Falls and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

SECTION 2. EXTRATERRITORIAL JURISDICTION. That the various petitions for expansion of the City ETJ are hereby accepted and The Properties described in Exhibits "A", "B", and "C", attached hereto, are hereby included in the ETJ of the City of Marble Falls, Burnet County, Texas, and that the extraterritorial limits of the City of Marble Falls are hereby extended to include The Properties.

SECTION 3. MAPS. That the Official Map showing the boundaries of the City and its extraterritorial jurisdiction shall be immediately corrected to include The Properties in the City's ETJ.

SECTION 4. ANNEXATION OF RIGHT OF WAY. That the annexation consent agreement from landowner Malkemus described in Exhibit "D", attached hereto, is hereby accepted by the City and the City shall consider annexation of such right of way when in the future the right of way or any portion thereof becomes contiguous to the city limits of the City.

SECTION 5. SEVERABILITY. That if any provision of this Ordinance or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Ordinance and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Ordinance would have been enacted without such invalid provision.

SECTION 6. REPEALER CLAUSE. The provisions of this Ordinance shall be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein, provided, however, that all prior ordinance or parts of ordinances inconsistent or in conflict with any of the provisions of this Ordinance are hereby expressly repealed to the extent that such inconsistency is apparent. This Ordinance shall not be construed to require or allow any act which is prohibited by any other ordinance.

SECTION 7. NOTICE AND MEETING CLAUSE. It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Local Government Code.

SECTION 8. EFFECTIVE DATE. This Ordinance shall take effect immediately after its date of approval.

PASSED AND APPROVED this 7th day of April, 2020, by the City Council of the City of Marble Falls, Texas.

John Packer, Mayor

ATTEST:

Christina McDonald, City Secretary

(SEAL)

APPROVED AS TO FORM:

Patty L. Akers, City Attorney

Exhibit "A" (1 of 4)

STATE OF TEXAS §
 §
COUNTY OF BURNET §

**PETITION FOR VOLUNTARY EXPANSION
OF THE EXTRATERRITORIAL JURISDICTION
OF THE CITY OF MARBLE FALLS**

To the Mayor and City Council of the City of Marble Falls, Texas:

The undersigned owner(s) of the tract of land described herein hereby request and petition the City of Marble Falls ("City"), pursuant to Section 42.022(b), Texas Local Government Code, to extend the present extraterritorial jurisdiction ("ETJ") of the City to include the property described on Exhibit "A" (the "Tract"), which is attached and incorporated herein for all purposes, and the adjacent right of way along Cimarron Ranch Rd.

I/We certify and swear that:

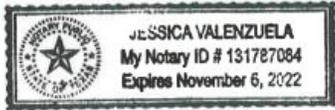
1. I/We are the sole owners of the Tract;
2. A portion of the Tract is contiguous (i.e., adjacent) to the City's ETJ;
3. The tract is not located within the corporate limits or ETJ of any other municipality; and
4. This request for inclusion of the Tract in the Marble Falls ETJ is made voluntarily.

I/We certify and swear that this petition is signed and acknowledged by each and every person and corporation owning said tract, or having an interest in any part thereof.

Leslie Pierce Holt
 Printed Name:
Leslie Pierce Holt
 Signature
 Address: 575 Cimarron Ranch Rd.
Marble Falls TX.
 Date: 3-11-20

STATE OF TEXAS §
COUNTY OF Tom Green §

This instrument was sworn to, signed and acknowledged before me by on this, the 11 day of March, 2020



Jessica Valenzuela
 Notary Public, State of Texas
 My commission expires: 11-6-2022

Exhibit "A" (2 of 4)

Leslie Pierce Holt
Printed Name
Leslie Pierce Holt
Signature

Address: 575 Cimarron Rd. Rd.
Marble Falls, TX
78654

Date: 3-11-20

Exhibit "A" - Property Description

ABS A0393 JOHN HARPER, TRACT 16A, 36.279 ACRES
And
ABS A0393 JOHN HARPER, TRACT 16A, 3.987 ACRES
City of Marble Falls – Petition for Expansion of City Extra-Territorial Jurisdiction

Page 2 of 7

Exhibit "A" (4 of 4)
Annexation of Adjacent Right-of-Way

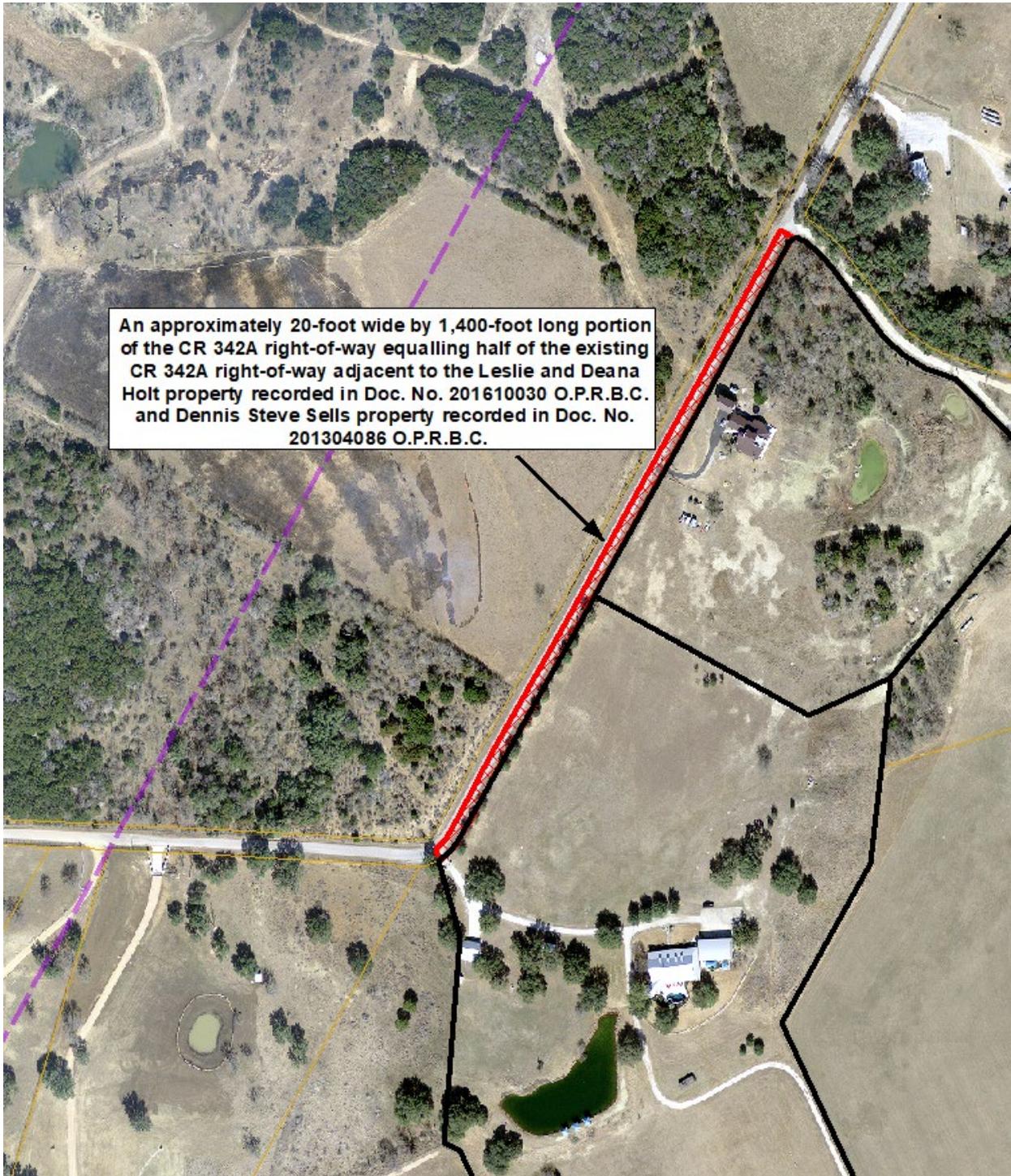


EXHIBIT "B" (1 of 6)

STATE OF TEXAS §
 §
COUNTY OF BURNET §

**PETITION FOR VOLUNTARY EXPANSION
OF THE EXTRATERRITORIAL JURISDICTION
OF THE CITY OF MARBLE FALLS**

To the Mayor and City Council of the City of Marble Falls, Texas:

The undersigned owner(s) of the tract of land described herein hereby request and petition the City of Marble Falls ("City"), pursuant to Section 42.022(b), Texas Local Government Code, to extend the present extraterritorial jurisdiction ("ETJ") of the City to include the property described on Exhibit "A" (the "Tract"), which is attached and incorporated herein for all purposes, and the adjacent right of way along Cimarron Ranch Rd.

I/We certify and swear that:

- 1. I/We are the sole owners of the Tract;
- 2. A portion of the Tract is contiguous (i.e., adjacent) to the City's ETJ;
- 3. The tract is not located within the corporate limits or ETJ of any other municipality; and
- 4. This request for inclusion of the Tract in the Marble Falls ETJ is made voluntarily.

I/We certify and swear that this petition is signed and acknowledged by each and every person and corporation owning said tract, or having an interest in any part thereof.

Dennis Spivey Sells
Printed Name
[Signature]
Signature
Address: 593 Cimarron Ranch Rd
Marble Falls, TX 78654
Date: 3/11/10

EXHIBIT "B" (2 of 6)

Oklahoma
STATE OF ~~TEXAS~~ §
COUNTY OF Creek §

This instrument was sworn to, signed and acknowledged before me by on this, the 11th day of March, 2020

Tonya Miller

Notary Public, State of ~~Texas~~ Oklahoma

My commission expires: 2/19/2024



OFFICIAL SEAL
TONYA MILLER
NOTARY PUBLIC OKLAHOMA
COMM. NO. 18001349
EXPIRES: 02-09-24

Tonya Miller
Printed Name

Signature

Address: 104 S Main
Bristow OK 74010

Date: 3/11/2024

EXHIBIT “B” (3 of 6)

Exhibit “A” - Property Description

ABS A0393 JOHN HARPER, TRACT 16, 9.822 ACRES

EXHIBIT "B" (4 of 6)

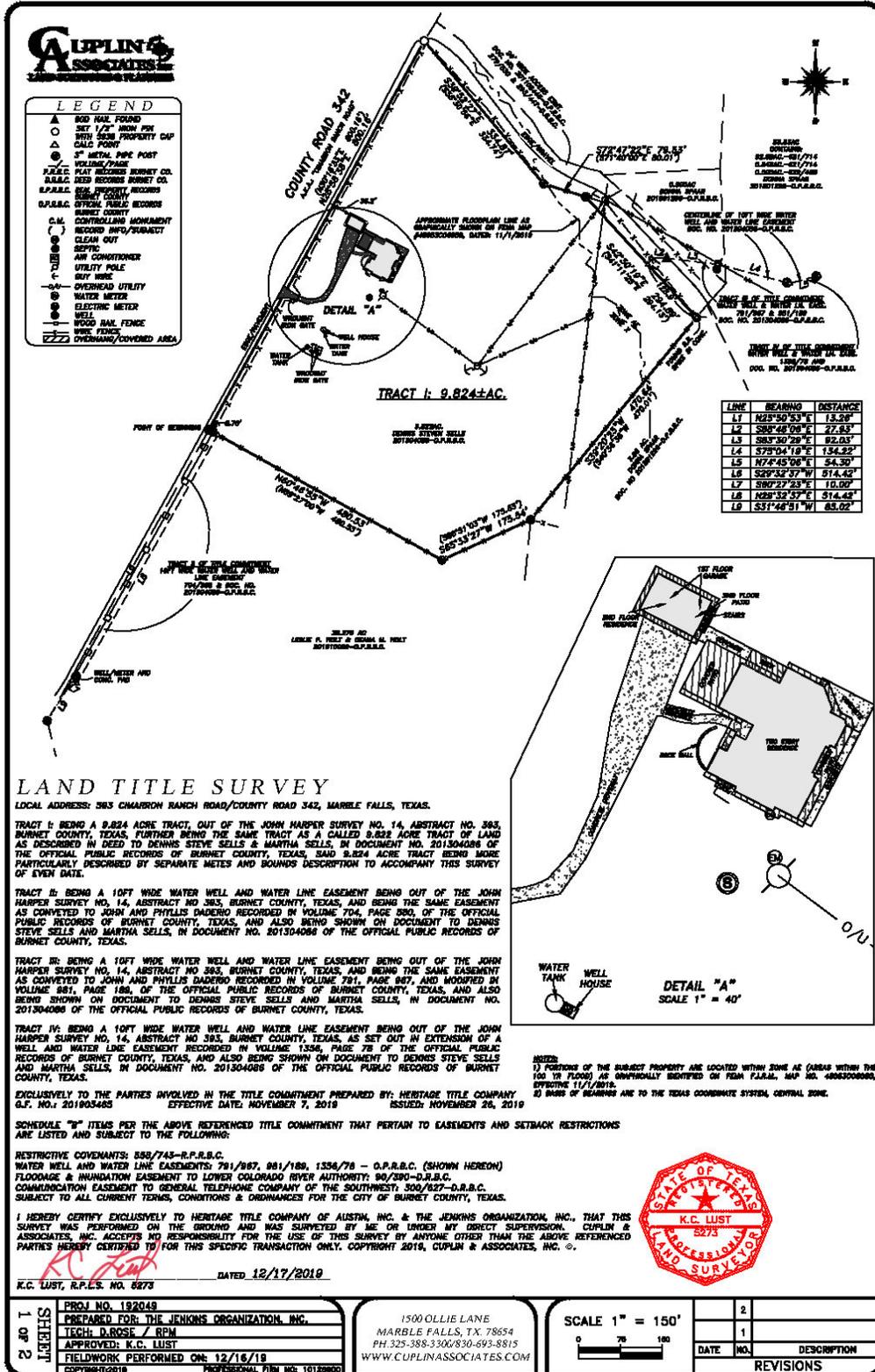


Exhibit "B" (5 of 6)

CUPLIN & ASSOCIATES, Inc.
land surveyors & planners

Prepared For: The Jenkins Organization, Inc.
Project No.: 192049
Date: 12/17/2019

BEING A 9.824 ACRE TRACT, OUT OF THE JOHN HARPER SURVEY NO. 14, ABSTRACT NO. 393, BURNET COUNTY, TEXAS, FURTHER BEING THE SAME TRACT AS A CALLED 9.822 ACRE TRACT OF LAND AS DESCRIBED IN DEED TO DENNIS STEVE SELLS & MARTHA SELLS, IN DOCUMENT NO. 201304086 OF THE OFFICIAL PUBLIC RECORDS OF BURNET COUNTY, TEXAS, SAID 9.824 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS DESCRIPTION AS FOLLOWS:

BEGINNING at a 1/2" iron pin found at the north corner of a called 36.279 acre tract as shown on document to Leslie & Deana Holt, recorded in Document No. 201610029, Official Public Records of Burnet County, Texas, along the easterly line of County Road 342 (also known as Cimarron Ranch Road), at the southwest corner of said Sells tract, and hereof;

THENCE North 28°58'38" East, along the easterly line of said County Road 342 (not with a fence), a distance of 800.16' to a 1/2" iron pin set at a northwesterly corner of a called 53.83 acre tract as shown document to Donna Spaar in Document No. 201801296 of the Official Public Records of Burnet County, the most northerly corner of said Sells tract, and hereof;

THENCE along a northwesterly line of said 53.83 acre tract, the northeasterly line of said Sells tract, and hereof, the following courses and distances;

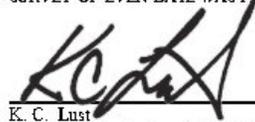
- 1) South 39°52'27" East, not with fence, a distance of 334.87' to a 3" metal pipe post for corner;
- 2) South 72°47'22" East, generally along a wire fence a distance of 79.53' to a 1/2" iron pin found;
- 3) South 42°30'19" East, leaving said fence, a distance of 294.89' to a rail road spike found near the base of a 3" metal pipe post in concrete along the northwesterly line of a called 3.00 acre tract as shown on document to the Donna Spaar in Document No. 201801296 of the Official Public Records of Burnet County, at the most easterly corner of said Sells tract, and hereof;

THENCE South 39°20'23" West, generally along a wire fence, a distance of 470.64' to a 3" metal pipe post for corner at the southwesterly corner of said 3.00 acre tract, the northeasterly corner of said 36.279 acre tract;

THENCE South 65°33'27" West, generally along a wire fence, along the northerly line of said 36.279 acre tract, the southerly line of said Sells tract, and hereof, a distance of 175.54' to a 3" metal pipe post for corner at the northeasterly corner of said 36.279 acre tract, and a southeast corner hereof;

THENCE North 60°46'55" West, generally along a wire fence, the northeasterly line of said 36.279 acre tract, the southwesterly line of said Sells tract, and hereof, passing a 3" metal pipe post at a distance of 471.83', for a total distance of 480.53' to the **Point of Beginning**, containing 9.824 acres, more or less.

I HEREBY CERTIFY EXCLUSIVELY TO HERITAGE TITLE COMPANY AND THE JENKINS ORGANIZATION, INC. THAT THIS SURVEY WAS PERFORMED ON THE GROUND AND WAS SURVEYED BY ME OR UNDER MY DIRECT SUPERVISION SUPERVISION. CUPLIN & ASSOCIATES, INC. ACCEPTS NO RESPONSIBILITY FOR THE USE OF THIS SURVEY BY ANYONE OTHER THAN THE ABOVE REFERENCED PARTIES HEREBY CERTIFIED TO FOR THIS SPECIFIC TRANSACTION ONLY. COPYRIGHT 2019, CUPLIN & ASSOCIATES, INC. © A PLAT OF SURVEY OF EVEN DATE WAS PREPARED AS IS INTENDED TO ACCOMPANY THE ABOVE DESCRIBED TRACT OF LAND.


K. C. Lust

Registered Professional Land Surveyor No. 5273

Dated: 12/17/2019



1500 Ollie Lane, Marble Falls, Texas 78654
PH: 325.388.3300 Fax: 325.388.3320 Prof. Firm No. 10126900
www.cuplinassociates.com

Page 2 of 2

Exhibit "B" (6 of 6)
Annexation of Adjacent Right-of-Way

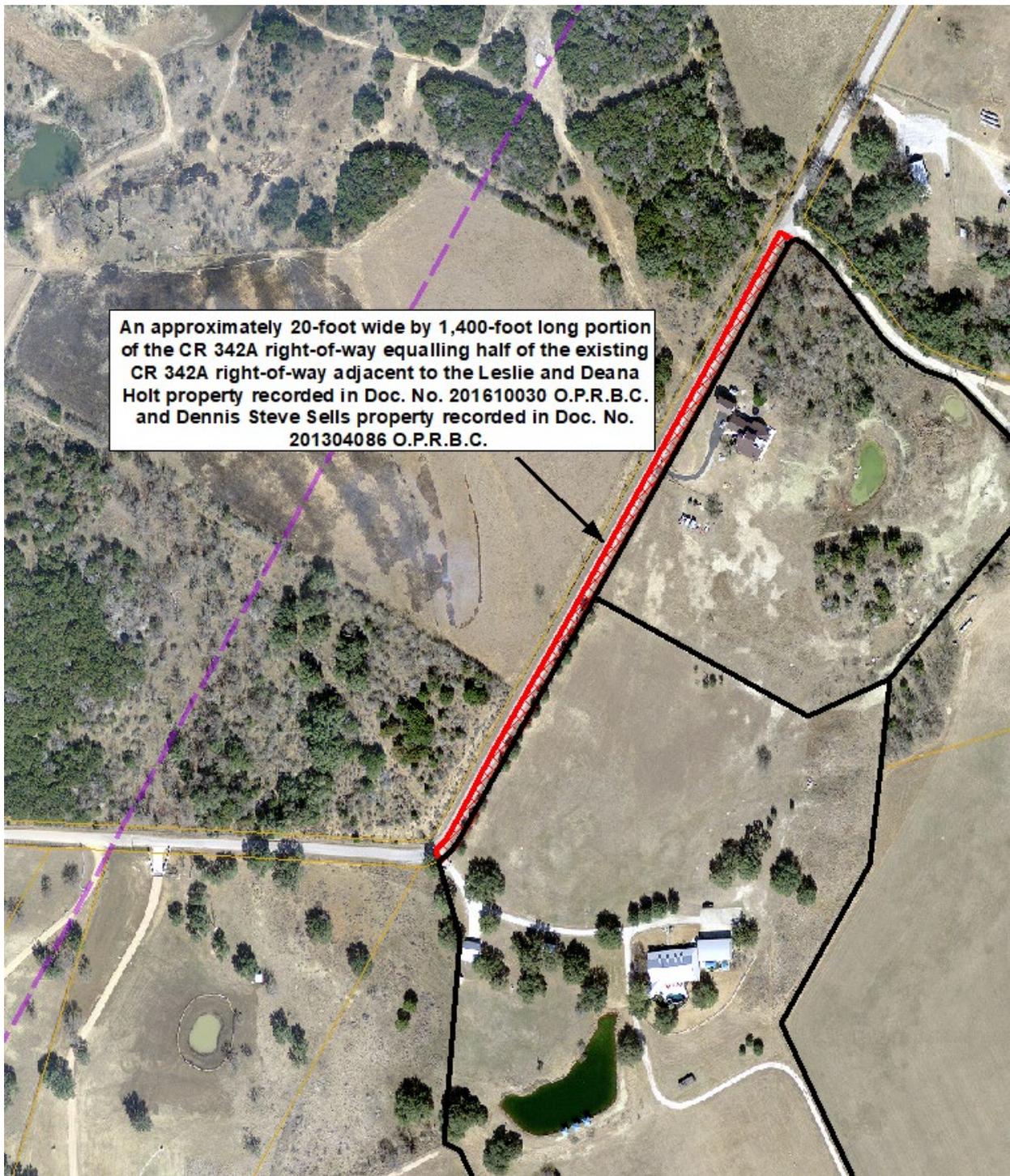


Exhibit "C" (1 of 4)

STATE OF TEXAS §
 §
COUNTY OF BURNET §

**PETITION FOR VOLUNTARY EXPANSION
OF THE EXTRATERRITORIAL JURISDICTION
OF THE CITY OF MARBLE FALLS**

To the Mayor and City Council of the City of Marble Falls, Texas:

The undersigned owner(s) of the tract of land described herein hereby request and petition the City of Marble Falls ("City"), pursuant to Section 42.022(b), Texas Local Government Code, to extend the present extraterritorial jurisdiction ("ETJ") of the City to include the property described on Exhibit "A", and the adjacent right of way along Cimarron Ranch Rd to the center line of said right of way, as depicted in Exhibit "A1" (collectively the "Tract"), which exhibits are attached hereto and incorporated herein for all purposes.

I/We certify and swear that:

- 1. I/We are the sole owners of the Tract;
- 2. A portion of the Tract is contiguous (i.e., adjacent) to the City's ETJ;
- 3. The tract is not located within the corporate limits or ETJ of any other municipality; and
- 4. This request for inclusion of the Tract in the Marble Falls ETJ is made voluntarily.

I/We certify and swear that this petition is signed and acknowledged by each and every person and corporation owning said tract, or having an interest in any part thereof.

Renny Whitkewels
Printed Name
[Signature]
Signature
Address: 413 Olympic Fields
Date: 3/20/2020

Exhibit "C" (2 of 4)

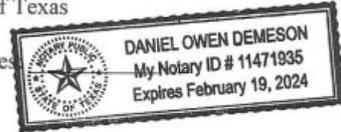
STATE OF TEXAS §
COUNTY OF Burnet §

This instrument was sworn to, signed and acknowledged before me by on this, the 20 day of March, 2020.



Notary Public, State of Texas

My commission expires



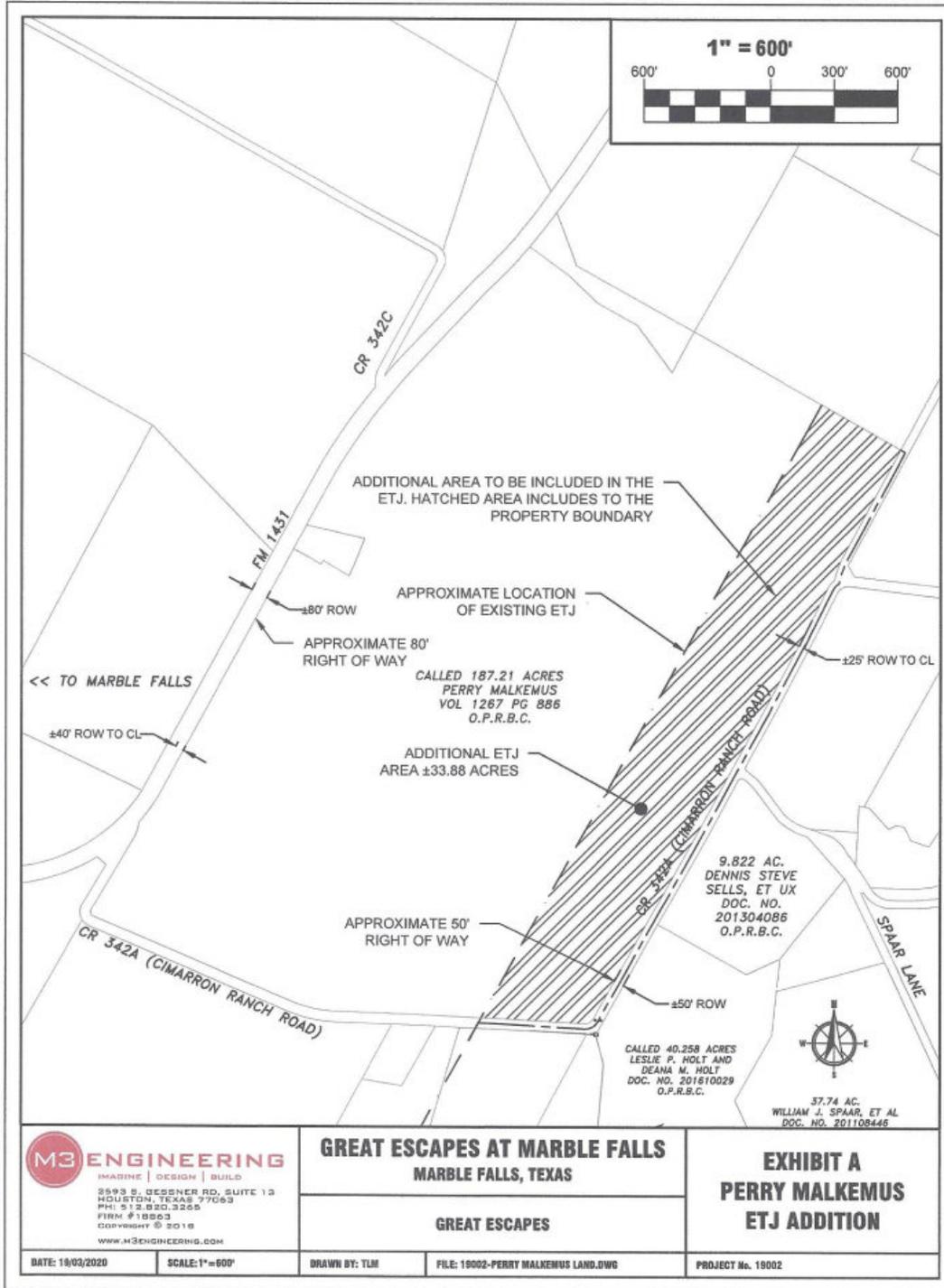
Penny Markens
Printed Name

[Signature]
Signature

Address: 913 Aquaria Fields

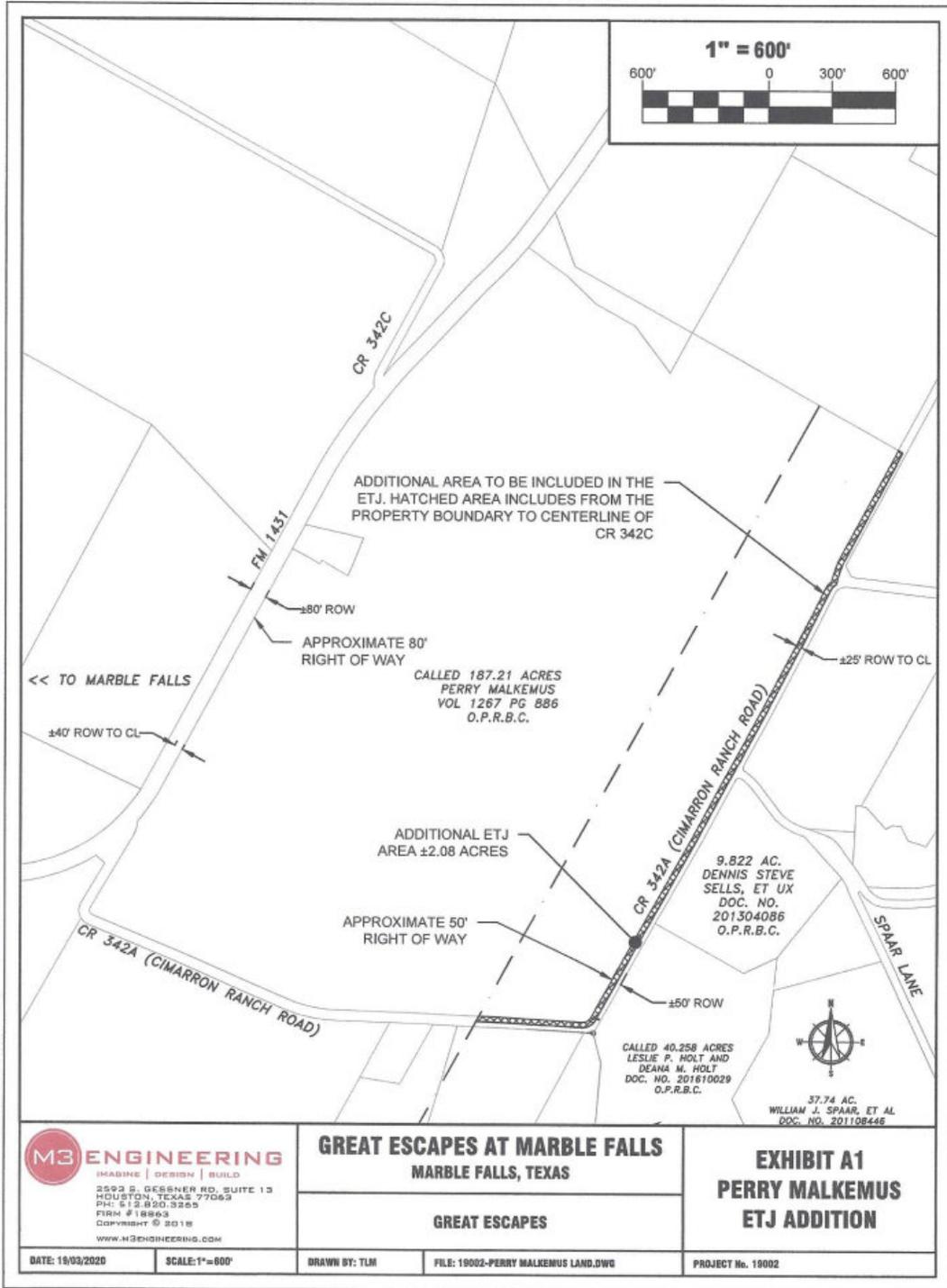
Date: 3/20/2020

Exhibit "C" (3 of 4)



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Exhibit "C" (4 of 4)



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Exhibit "D" (1 of 3)

STATE OF TEXAS §
 §
COUNTY OF BURNET §

**PETITION AND AGREEMENT FOR VOLUNTARY ANNEXATION OF ADJACENT
RIGHT OF WAY
INTO THE CITY LIMITS OF THE CITY OF MARBLE FALLS**

To the Mayor and City Council of the City of Marble Falls, Texas:

The undersigned fee owner(s) underlying the county right of way described herein hereby request, consent, and petition the City of Marble Falls ("City"), pursuant to Section 43.1055 and Section 43.0671, Texas Local Government Code, to annex the Right of Way described in Exhibit "A", attached hereto and incorporated herein, when in the future the city limits of the City expands to become contiguous to the boundary of said Right of Way.

THE OWNER AND ALL FUTURE OWNERS OF ALL OR ANY PORTION OF THE RIGHT OF WAY HEREIN DESCRIBED HEREBY REQUEST, CONSENT AND AGREE TO THE FULL PURPOSE ANNEXATION OF THE RIGHT OF WAY INTO THE CORPORATE LIMITS OF THE CITY AND WAIVE ALL OBJECTIONS AND PROTESTS TO SUCH ANNEXATION. THIS AGREEMENT SHALL SERVE AS THE PETITION OF OWNER AND ALL FUTURE OWNERS OF THE RIGHT OF WAY FOR FULL PURPOSE ANNEXATION PURSUANT TO SECTION 43.0671 AND SECTION 43.1055, TEXAS LOCAL GOVERNMENT CODE, AND IN ACCORDANCE WITH THIS AGREEMENT.

I/We certify and swear that as to the Right of Way described herein:

1. I/We are the sole owners of property located adjacent of the Right of Way, and as such own the fee title underlying the right of way to the center line of such right of way;
2. The Right of Way is not located within the corporate limits of any other municipality; and
3. This request for annexation of the Right of Way into the city limits of Marble Falls is made voluntarily.

I/We certify and swear that this petition is signed and acknowledged by each and every person or entity owning property adjacent to the said Right of Way.

Exhibit "D" (2 of 3)

Penny Markcar
Printed Name

[Signature]
Signature

Address: 2130 W. 11th St

Date: 3/20/2020

STATE OF TEXAS §
COUNTY OF Burket §

This instrument was sworn to, signed and acknowledged before me by on this, the 20 day of March, 2020

[Signature]

Notary Public, State of Texas

My commission expires

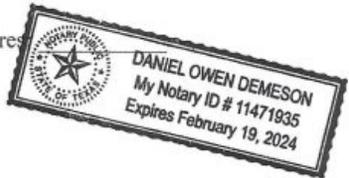
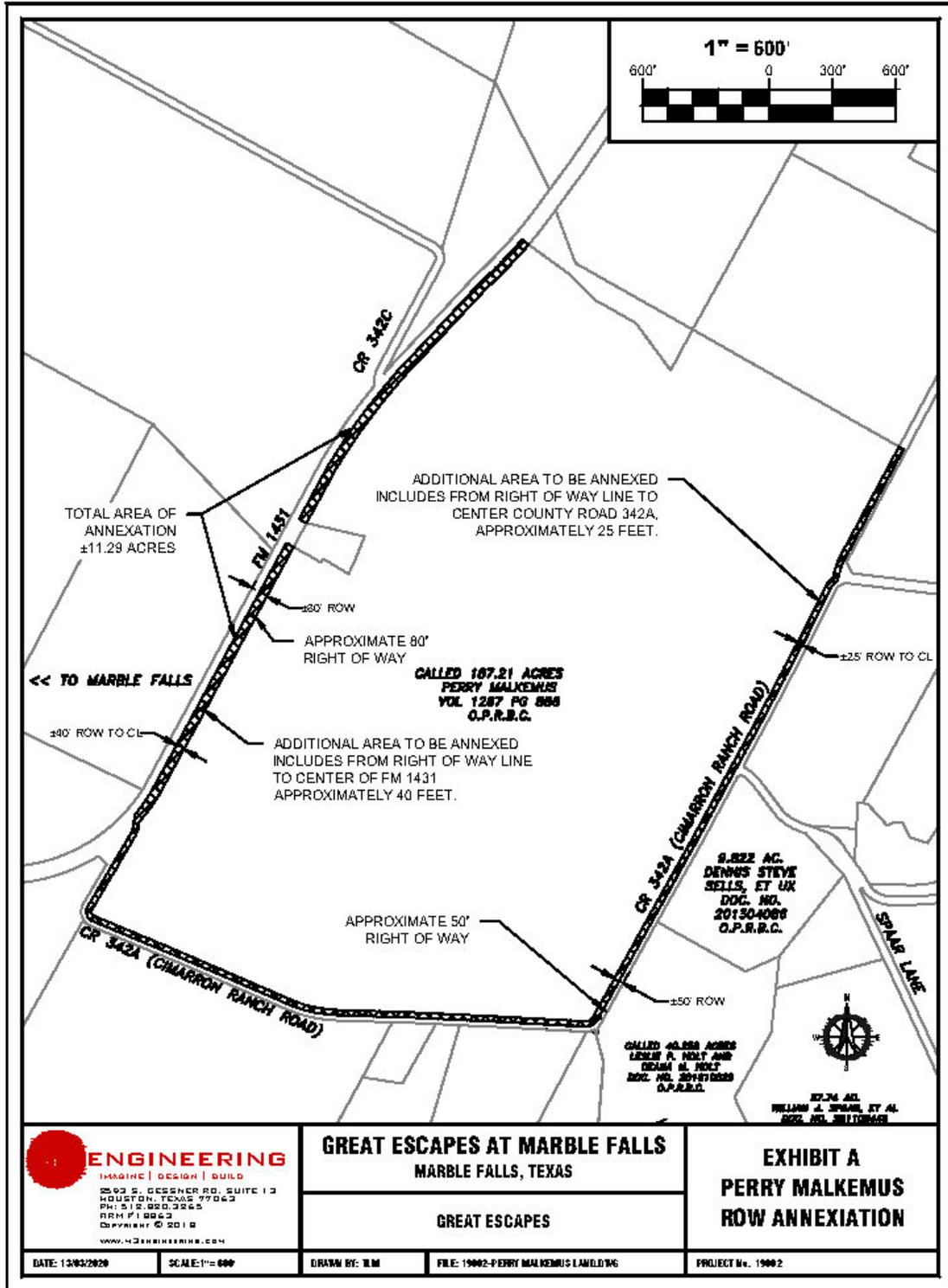


Exhibit "D" (3 of 3)



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April 7, 2020

7. REGULAR AGENDA

- (b) Discussion and Action regarding a Development Agreement between the City of Marble Falls, the Jenkins Organization, Inc., and Leslie and Deana Holt and Dennis and Martha Sells (landowners) for development of two tracts of land with Conceptual Land Plan within the City's Extra-Territorial (ETJ) east of the city limits located on County Road 342 and authorizing the City Manager to execute said agreement. *Valerie Kreger, Director of Development Services*
-



Council Agenda Item Cover Memo
April 7, 2020

Agenda Item No.: 7(b)
Presenter: Valerie Kreger, Director of Development Services
Department: Development Services
Legal Review:

AGENDA CAPTION

Discussion and Action regarding a Development Agreement between the City of Marble Falls, the Jenkins Organization, Inc., and Leslie and Deana Holt and Dennis and Martha Sells (landowners) for development of two tracts of land with Conceptual Land Plan within the City's Extra-Territorial (ETJ) east of the city limits located on County Road 342 and authorizing the City Manager to execute said agreement.

BACKGROUND INFORMATION

This item is regarding a Development Agreement with the Jenkins Organization, Inc., and Leslie and Deana Holt and Dennis and Martha Sells (landowners) for development of two tracts of land in the City's ETJ. The two properties subject to the agreement are located on CR 342A (also known as Cimarron Ranch Rd.), which is just off of RM 1431 east of the current City Limits and presumably accepted into the City's ETJ by the previous agenda item. The developer intends to develop an RV Park in the ETJ and would like City water service. In order to get the City's water service, the property must be in the City's ETJ. A development agreement is required in order for the developer to extend the City's water line while meeting certain performance standards.

The developer intends to construct a 270-unit RV Park on the approximately 50 acres. The project will include approximately 50 park model RV units as stay in place cabins to be rented and approximately 215 rentable RV spaces. Amenities will include facilities such as water/swimming entertainment, walking trail, playgrounds, picnic areas, pavilion, benches, dog parks, and clubhouse. Additionally, there will be on-site retail sales providing necessities for the guests, an area for food trucks, and a permanent residence for the park manager. The project also includes an indoor/outdoor event center for use by the general public.

The proposed development standards for the RV park are as follows:

1. The RV park shall be planned cohesively through a Site Development Plan.
2. This RV park shall take access from CR 342A with two points of access a minimum of 30 feet wide.
3. A single recreational vehicle is allowed per space.

4. RVs shall be placed on a permanent parking pad at least 10 feet in width and 24 feet in depth constructed of concrete, asphalt, or similar material approved by the City.
5. Each RV space shall have adequate frontage width on an access drive to allow for loading/unloading maneuvering space.
6. Common Area Amenities shall be required at a rate of one amenity per every 50 spaces/units allotted per this agreement and shall meet or exceed those shown on Exhibit "D" (*Conceptual Site Plan for Project*), attached hereto.
7. Passive outdoor recreation facilities shall be provided in accordance with those shown on Exhibit "D" (*Conceptual Site Plan for Project*), attached hereto.
8. All spaces shall provide connections to potable water, sanitary sewer, and electrical power.
9. The RV park shall provide and maintain a centralized solid waste collection facility.
10. A permanent marker identifying the space number is required to be clearly visible day and night for emergency vehicles.
11. The following lot & building standards shall apply to all buildings and RV spaces/units in this development:
 - a. The minimum lot area shall be 5 acres.
 - b. The minimum lot width shall be 100 feet.
 - c. The minimum lot frontage shall be 100 feet.
 - d. The minimum front setback shall be 15 feet.
 - e. The minimum interior and street side setback shall be 10 feet.
 - f. The minimum rear setback shall be 15 feet.
 - g. The maximum impervious cover shall be limited to 75%.
 - h. The maximum height of buildings shall be limited to 35 feet.
 - i. The following parking requirements are applicable to this Project:
 - i. Campground Store and Office: One space per 2,000 square feet of retail or office area.
 - ii. Bathhouses: Bathhouses are considered accessory to the primary use. No parking is required.
 - iii. RV spaces: Two spaces for each RV pad. Parking for RV maybe incorporated into the RV pad.
 - iv. Park Models RVs: Two spaces for each Park Model.
 - v. Event Center: One space per 300 square feet of gross floor area.

The developer will be responsible for the cost, construction and extension of the City's water line along RM 1431 to the project's location on CR 342A. A twenty foot (20') wide utility easement is required to extend the utility to the facility, which the developer has acquired or will acquire. The 20-foot wide utility easement described in Exhibit "C", will be assigned to the City upon completion of construction by the developer and upon inspection and acceptance by the City.

This item is for consideration of a Development Agreement. No notification of adjacent property owners is required. Developer and current landowners, as part of the Development Agreement consent to future annexation of the property by the City.

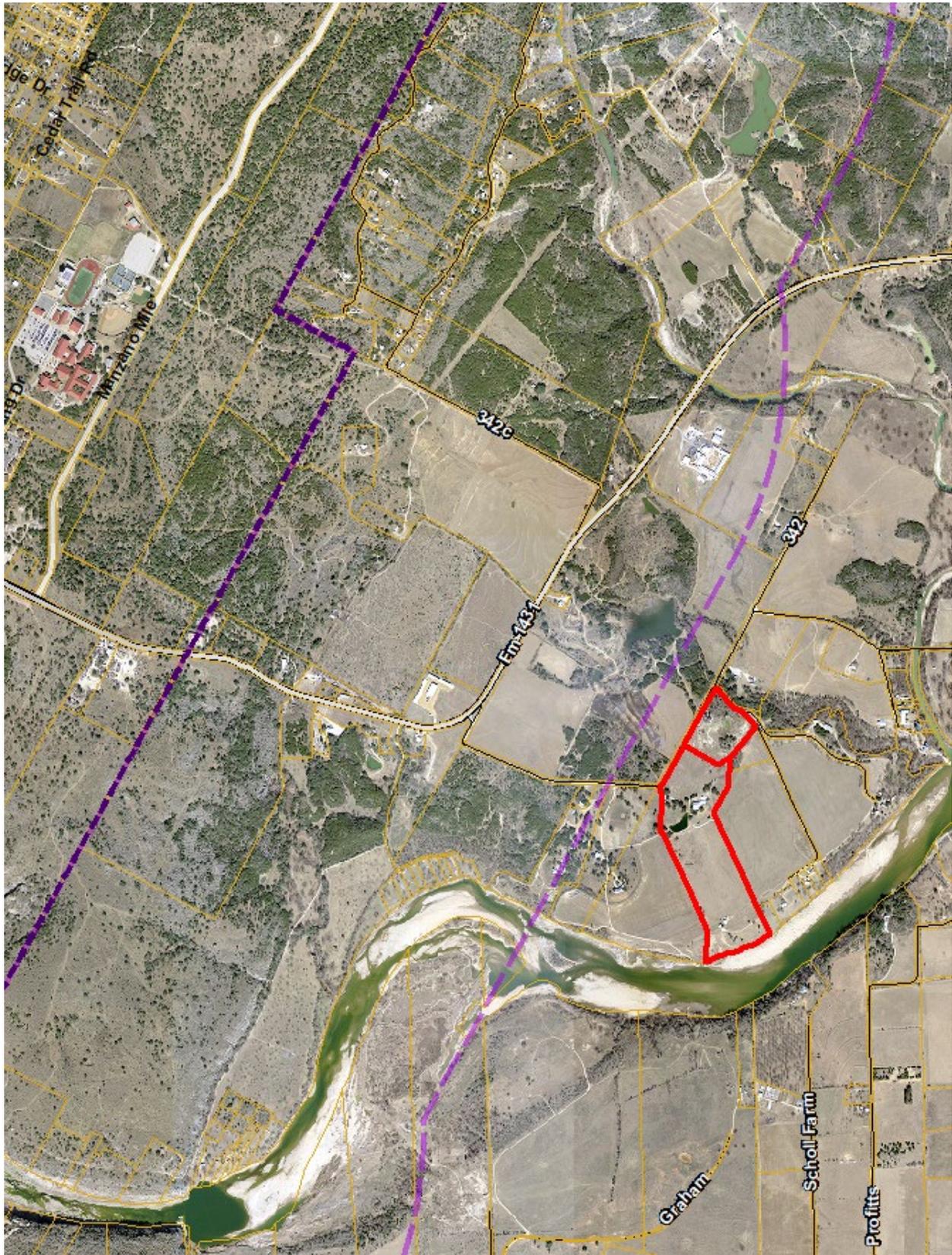
RECOMMENDATION

Approval of the Development Agreement with the Jenkins Organization for development of an RV park and extension of City water services.

Memo Contents:

- Location Map Page 4
- Development Agreement Pages 5 - 48
 - Exhibit A Legal Description of Property Pages 23 – 27
 - Exhibit A1 Description of Adjoining Right of Way Page 28
 - Exhibit B Utility Extension Facilities Page 29
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LOCATION MAP



**DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF MARBLE FALLS, TEXAS
AND
THE JENKINS ORGANIZATION, INC.**

**THE STATE OF TEXAS §
 §
COUNTY OF BURNET §**

This Development Agreement (the “**Agreement**”) is entered into effective as of April 8, 2020, by and among the **CITY OF MARBLE FALLS, TEXAS**, a home rule municipal corporation located in Burnet County, Texas (the “**City**”), **THE JENKINS ORGANIZATION, INC.**, a Texas Corporation (the “**Developer**”) and Leslie and Deana Holt and Dennis and Martha Sells (“**Owners**”). The Owners are a limited party to this Agreement for the purpose of consenting to annexation of the Property into the city limits as described in Section 2.09 and providing an acknowledgment of ownership per Section 2.14. City and Developer are sometimes individually referred to as a “Party” and collectively referred to as the “Parties.”

RECITALS

WHEREAS, the City is a home-rule municipal corporation, and a political subdivision of the State of Texas;

WHEREAS, the Developer is a real estate investment and development corporation based in Austin, Texas and intends to be the owner of the Property on or before _____ and Leslie and Deana Holt and Dennis and Martha Sells are the current Owners of the Property;

WHEREAS, the Developer intends to develop a 270-unit RV Park (the “**Project**”) on that certain property, which is currently comprised of two separate tracts totaling approximately 50 acres of real property located in Burnet County, which property is depicted and described by metes and bounds on the attached **Exhibit “A”** (the “**Property**”);

WHEREAS, the Property is not currently served with centralized water service of the City and no other water service provider has a water service area or CCN that encompasses the Property;

WHEREAS, the Property shall be located within the extraterritorial jurisdiction (“**ETJ**”) of the City on the Effective Date of this Agreement, but is located outside the corporate limits of the City;

WHEREAS, the Property is not located in the ETJ or city limits of any other municipality or special district;

WHEREAS, City ordinances applicable to water customers located within the water service area of the City require that an Developer who is not served with water service, but wishes to acquire water service, to pay the costs of extending water facilities and lines of the City in order for the City to provide water service to the Developer's property;

WHEREAS, Developer wishes to extend water lines and facilities of the City (the "**Utility Extension Facilities**") as described in **Exhibit "B"** at its sole cost and expense and intends to comply with Applicable Ordinances that govern the extension of water service and facilities and the corresponding terms and conditions of water service;

WHEREAS, Developer intends to submit for review all necessary plans to the City as outlined in this agreement in order to receive Construction Permits from the City that will authorize the Developer to construct the Utility Extension Facilities from the Property to the City's current water line to provide water service to the Property;

WHEREAS, the Developer has agreed to construct the Utility Extension Facilities at Developer's sole cost and expense which costs have been estimated as set out in **Exhibit "B"**, attached hereto; and

WHEREAS, the Developer agrees to design and construct the Project as generally depicted in **Exhibit "D"**, attached hereto and incorporated herein for all purposes and in conformance with the requirements of the Construction Permits and this Agreement.

NOW, THEREFORE, in consideration of these premises, the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the City, and the Developer, and the Owners as to Section 2.09 and 2.14 only, agree as follows:

ARTICLE I DEFINITIONS

In addition to the terms defined elsewhere in this Agreement or in City ordinances the following terms and phrases used in this Agreement will have the meanings set out below:

Annexation Services Plan means the services plan attached hereto as **Exhibit "E"** and agreed to by the Parties as required by Texas Local Gov't Code Section 43.0672.

Applicable Ordinances means the portion of the City's Code of Ordinances that shall apply to the Property or the Project and includes all ordinances that are applicable in the City's ETJ and all ordinances expressly referred to herein. Upon annexation of

the Property into the city limits, the term shall refer to all of the City's Code of Ordinances.

City means the City of Marble Falls, a Texas home-rule municipal corporation situated in Burnet County, and includes its representatives, agents, assigns, inspectors, contractors, employees and consultants.

Common Area Amenities means including but not limited to playgrounds, picnic areas, pavilions, benches, walking trails, dog parks, clubhouse, swimming pool, sport courts, residential convenience services, and water park and associated equipment for the guests.

Construction Permits means the permits required for the construction of public or private property improvements related to the Project or the Utility Extension Facilities, including but not limited to City Site Development Permits, Driveway Permits, Plumbing Permits, and Sign Permits, but not including building permits.

Cost Estimate means the estimate of construction costs necessary to construct the Utility Extension Facilities as described in **Exhibit "B"**.

Code of Ordinances means the City's ordinances.

Developer means the Jenkins Organization, Inc., a Texas Corporation, its successors, its assigns, its representatives, agents, contractors, employees, and consultants. Upon acquisition of the Property, the term Developer also means the Owners.

Development Code means the portion of the City's Code of Ordinances related to land development regulations contained within Appendix B and in effect as of the date of execution of this agreement.

Easement means the twenty foot (20') wide utility easement described in **Exhibit "C"**, to be acquired by Developer and to be assigned to the City without cost per the Agreement attached as **Exhibit "C1"**, together with the Utility Expansion Facilities upon Developer's completion of construction and upon inspection and acceptance of the Utility Expansion Facilities by the City.

Effective Date means the date on which the Property has been accepted by the City into its Extra-territorial Jurisdiction.

Owners means Leslie and Deana Holt and Dennis and Martha Sells. Upon acquisition of the Property, the term Developer also means the Owners.

Project means a 270-unit RV Park with amenities, water served by extension and connection of City water, and wastewater by an on-site system permitted by TCEQ and maintained by the Developer located on approximately 50 acres of real property located in Burnet County as depicted in **Exhibit "D"**.

Property means the Owners' property described in **Exhibits "A and A1"**.

Notice means any formal notice or communication required or permitted to be given by one Party to another by this Agreement.

Parties means the City and the Developer.

Park Model RV means a type of towable RV designed to provide temporary living quarters for recreational, seasonal, camping or travel use. Park Models are built on a single trailer chassis, mounted on wheels and have a gross trailer area not exceeding 400 square feet of floor space. Park Models are certified by their manufacturers to comply with the American National Standards Institute (ANSI) A119.5 Park Model Recreational Vehicle Standard.

Recreational Vehicle (RV) means a motorized or towable vehicle that combines transportation and temporary living quarters for travel, recreation, and camping. Types of RVs include motorhomes, campervans, travel trailers, camper trailers, fifth-wheel trailers, popup campers, and truck campers.

Subdivision Plats means the Preliminary and Final Plats, or a Development Plat, as required by the City's Development Code.

Utility Extension Facilities means the water lines and associated facilities necessary to extend 270 LUEs of water service to the Property from the City's existing water system, being generally described in **Exhibit "B"**.

ARTICLE II PARTIES' OBLIGATIONS

Section 2.01. Developer agrees to submit the appropriate applications to the City for the subdivision and development of the Property in accordance with the Development Code, this Agreement, and the Applicable Ordinances and to record the Final Plat or Development Plat, as applicable and associated easements with Burnet County. The Parties agrees that this Agreement shall also be recorded.

Section 2.02. Developer shall design and construct the Utility Extension Facilities in accordance with all applicable governmental rules and regulations, the Applicable Ordinances and the terms of this Agreement. The Developer agrees to submit to the City for review and approval the Utility Extension Facilities design prior to issuance of any Construction Permit. Developer further agrees that it shall be solely responsible for payment of any and all costs, including but not limited to design and construction costs, including labor and materials, easement acquisition, or other cost arising from the construction of the Utility Extension Facilities, except as otherwise provided herein. The Project shall be served by a single City master water meter.

Section 2.03. Developer agrees to design and construct the Project in accordance with all applicable federal, state and local laws including all Applicable Ordinances, codes and regulations, City Construction permits and the terms of this Agreement. The Developer agrees to submit to the City for review and approval the Project design prior to issuance of any Construction Permit. Developer further agrees to grant the City entry to the Project and schedule with the City for inspections of any site or public improvements for which Construction or Site Permits were required.

Section 2.04. The Developer shall comply with all applicable federal, state and local laws including all City ordinances, codes and regulations in the design and construction of the Utility Extension Facilities. As the Utility Extension Facilities will ultimately be owned and maintained by the City, prior to beginning construction of the Utility Extension Facilities, the Developer shall submit plans and material specifications to the City for review and approval. Failure to obtain the City's final approval prior to construction or failure to comply with all applicable federal, state and local law including all City ordinances, codes and regulations shall constitute a material breach of this Agreement. In addition, Developer shall obtain all permits and inspections required by the City and shall be solely responsible for any costs associated with obtaining such permits and inspections.

Section 2.05. Any work performed by a contractor or consultant of the Developer will not, under any circumstances, relieve Developer of its responsibilities and obligations under this Agreement. All work performed by the Developer or its agent shall be done in a good and workmanlike manner satisfactory to the City. Any contractor or consultant hired by Developer shall have sufficient skills and experience to properly perform the work described in the approved Construction Permit and as shown on the approved construction plans, and shall provide adequate supervision to assure competent performance of the work.

Section 2.06. During construction of the Utility Extension Facilities, the City shall be granted entry to the construction site at reasonable times to inspect the progress and quality of the construction of the Utility Extension Facilities and to test the construction as necessary to confirm compliance with Section 6.4.9 of Appendix B (Development Code) of the City's Code of Ordinances, and any other Applicable Ordinances, rules and regulations. Developer shall provide to the City a copy of all test results performed by the Developer. Developer shall provide copies of any TCEQ permits associated with the Project or the Utility Expansion Facilities.

Section 2.07. The Developer shall commence construction of the Utility Extension Facilities no later than one hundred eighty (180) days from the issuance of the Texas Commission on Environmental Quality (TCEQ) approval of the Project. Upon satisfactory completion and prior to acceptance by the City of the Utility Extension Facilities and no later than thirty (30) days after completion of the construction of the Utility Extension Facilities, the Developer shall submit a written report or other written evidence of satisfactory payment by the Developer to all subcontractors, agents or vendors supplying material and/or equipment, as applicable for the construction of the Utility Extension Facilities. Construction of the Project shall not commence prior to

commencement of the construction of the Utility Extension Facilities nor prior to issuance of City permits or approvals as required by the Development Code. The construction of the Utility Extension Facilities shall be completed in full conformance with the Construction Permits, as evidenced by City acceptance of the Utility Extension Facilities, within 365 days of commencement, or unless mutually agreed upon by the City and the Developer.

Section 2.08. Developer agrees that City shall be entitled to copies of any studies, tests, surveys, reports and examinations related to the Utility Extension Facilities conducted by the Developer and affecting the Utility Extension Facilities.

Section 2.09. Annexation

A. Owners and Developer agree and acknowledge that a material inducement to the City entering this Agreement is the Owners' and Developer's consent to voluntary annexation of the Property as agreed to herein, as authorized by Sec. 212.172(7). Owners and Developer agree that execution of this agreement shall constitute a petition, request and consent for annexation into the city limits of the City when in the future the city limits of the City expands to become contiguous to the Property's boundary. Upon annexation into the city limits of the City, the Property shall be subject to the ordinances, rules and regulations then in effect with respect to the City and residents shall have the rights of citizens of the City.

B. The Parties agree that Developer may use and develop the Property in accordance with this Agreement prior to annexation of the Property by the City. If the City annexes the Property, Developer shall submit to the City for its approval an ordinance zoning the Property and creating a Planned Development District consistent with this Agreement or City may do so on its own.

C. OWNERS, DEVELOPER, AND ALL FUTURE OWNERS OF ALL OR ANY PORTION OF THE PROPERTY HEREBY REQUEST AND CONSENT TO THE FULL PURPOSE ANNEXATION OF THE PROPERTY INTO THE CORPORATE LIMITS OF THE CITY PURSUANT TO SECTION 43.0671, TEXAS LOCAL GOVERNMENT CODE, AND IN ACCORDANCE WITH THIS AGREEMENT AND WAIVE ALL OBJECTIONS AND PROTESTS TO SUCH ANNEXATION. THIS AGREEMENT SHALL SERVE AS THE PETITION OF OWNERS, DEVELOPER, AND ALL FUTURE OWNERS OF THE PROPERTY FOR FULL PURPOSE ANNEXATION OF THE PROPERTY PURSUANT TO SECTION 43.0671, TEXAS LOCAL GOVERNMENT CODE, AND IN ACCORDANCE WITH THIS AGREEMENT.

D. Agreement Regarding Services. The City, Developer and Owners agree that this Agreement constitutes an agreement for the provision of services to the Property as required by Section 43.0672, Texas Local Government Code, and that this Agreement specifies the services that will be provided to the Property, as set out in **Exhibit "E"** on the effective date of annexation and a schedule of when the City will provide each service if not provided on the effective date of the annexation. The Parties and Owners further agree that execution of this Agreement shall fully satisfy the

requirements of Section 43.0672.

E. Section 2.09 shall survive termination of this Agreement.

Section 2.10. The City may seek a Certificate of Convenience and Necessity (“CCN”) that includes the Property and Developers agree to cooperate with the City in its CCN application. By execution of this Agreement Developer hereby consents to the City’s acquisition of a CCN for water and wastewater services for the Property in the event that City chooses to obtain a CCN.

ARTICLE III PERMITTED USES

Section 3.01. The following land uses and development shall be permitted by right within the Property in accordance with Exhibit “D”:

- Recreational Vehicle Park allowing for the placement of travel trailers, park model RVs, and motor homes. Recreational Vehicle Park shall not provide for the placement of Mobile Homes or Manufactured Homes.
- Event Center allowing for the temporary use of facilities for an indoor and/or outdoor venue that provides space for a social gathering that is available for public use, for a fee, by various groups for activities such as public assemblies, meetings, retreats, parties, and receptions. This use includes dance halls.

Section 3.02. The following land uses shall be allowed as accessory uses to the primary use of the property as a Recreational Vehicle Park:

- Retail sales, totaling less than 2,000 square feet combined;
- Common Area Amenities;
- Food truck court;
- Passive outdoor recreation;
- Support structures and uses to the main use such as sanitary facilities, storage and maintenance buildings, and/or management offices; and
- Permanent residence for park manager.

Section 3.03. Temporary structures for uses incidental to construction on the premises, such as construction trailers, which said buildings shall be removed upon the completion or abandonment of construction work.

Section 3.04. Development of the Property shall be in accordance with Exhibit “D” and this Agreement and no other uses or changes to the development standards shall be authorized unless same are included in an amendment to this Agreement, or unless such changes are considered Minor as such term is defined in the Development Code.

ARTICLE IV DEVELOPMENT STANDARDS

Section 4.01. Physical development located within the Property shall comply with development standards and limitations as set forth in this Agreement and the Applicable Ordinances. The following standards shall be applicable:

1. The RV park shall be planned cohesively through a Site Development Plan.
2. This RV park shall take access from CR 342A with two points of access a minimum of 30 feet wide.
3. A single recreational vehicle is allowed per space.
4. RVs shall be placed on a permanent parking pad at least 10 feet in width and 24 feet in depth constructed of concrete, asphalt, or similar material approved by the City.
5. Each RV space shall have adequate frontage width on an access drive to allow for loading/unloading maneuvering space.
6. Common Area Amenities shall be required at a rate of one amenity per every 50 spaces/units allotted per this agreement and shall meet or exceed those shown on **Exhibit "D" (Conceptual Site Plan for Project)**, attached hereto.
7. Passive outdoor recreation facilities shall be provided in accordance with those shown on **Exhibit "D" (Conceptual Site Plan for Project)**, attached hereto.
8. All spaces shall provide connections to potable water, sanitary sewer, and electrical power.
9. The RV park shall provide and maintain a centralized solid waste collection facility.
10. A permanent marker identifying the space number is required to be clearly visible day and night for emergency vehicles.
11. The following lot & building standards shall apply to all buildings and RV spaces/units in this development:
 - a. The minimum lot area shall be 5 acres.
 - b. The minimum lot width shall be 100 feet.
 - c. The minimum lot frontage shall be 100 feet.
 - d. The minimum front setback shall be 15 feet.
 - e. The minimum interior and street side setback shall be 10 feet.
 - f. The minimum rear setback shall be 15 feet.
 - g. The maximum impervious cover shall be limited to 75%.
 - h. The maximum height of buildings shall be limited to 35 feet.
 - i. The following parking requirements are applicable to this Project:
 - i. Campground Store and Office: One space per 2,000 square feet of retail or office area.
 - ii. Bathhouses: Bathhouses are considered accessory to the primary use. No parking is required.
 - iii. RV spaces: Two spaces for each RV pad. Parking for RV maybe incorporated into the RV pad.
 - iv. Park Models RVs: Two spaces for each Park Model.
 - v. Event Center: One space per 300 square feet of gross floor area.

Section 4.02. In addition to the development standards as set forth, the development shall generally comply with **Exhibit “D” (Conceptual Site Plan for Project)**, attached hereto. Minor deviations and/or changes from the Conceptual Site Plan that comply with the general standards set forth in this Agreement may be approved by the City Manager or designee. Major deviations and/or changes from the Conceptual Site Plan shall constitute an amendment to this Agreement and shall be submitted to the City Council for approval.

ARTICLE V SPECIAL STANDARDS

1. RV Pads shall be allowed within the 100-yr floodplain if allowed by FEMA.
2. Water quality and detention facilities and/or drainage features shall be allowed to be contained within the 100-year floodplain as defined by FEMA and if allowed by FEMA.
3. All spaces/units shall be served with potable water, sanitary sewer, and electrical power, which shall be designed and installed in accordance with Section 6.2.8, Utility Services; and Section 6.2.9, Water and Wastewater Facility Design; and any other current City ordinance or technical manual in effect as of the date of this Agreement.
4. A monument sign shall be allowed on the property within the building setback along CR 342A, but setback at least 10-feet from the property line. The sign shall be a maximum of 12’ long and a maximum of 8’ tall measured from the finished ground elevation.
5. All beer and wine sales shall be limited to the campground store and event center and shall comply with the Texas Alcoholic Beverage Code. The sale and consumption of alcoholic beverages at locations other than the campground store and event center are authorized within the Project in accordance with the requirements of the Texas Alcoholic Beverage Commission.

ARTICLE VI EASEMENTS FOR UTILITY EXTENSION FACILITIES

Section 6.01. The Developer agrees to negotiate with any third party property Developers with intervening property between the Property and the current location of the City’s water facilities (located at the intersection of County Road 342C and FM 1431, on the south side of FM 1431) to obtain a water line easement (a minimum of 20 feet in width) in substantially the form attached hereto as Exhibit “C” from such Developers, thus allowing for treated water service to be provided by the City to the Property. All conveyances of easements shall be subject only to the exceptions to title approved by the City. Developer shall obtain a subordination agreement, in recordable form, executed by the Lender(s) of any liens existing at the time of conveyance, in which it subordinates its lien rights to the Developers rights under the easements. The Easement shall be assigned to the City upon completion of construction and upon inspection and acceptance by the City. Assignment of the easement and the Utility

Extension Facilities shall be at no charge to the City. The recommended route of the utility easement that provides the shortest distance to the boundaries of the Property is depicted on **Exhibit "B"**, attached hereto. If the Developer is not able to enter into an agreement with the private property Developers to acquire the aforementioned easements from the private property Developers within three (3) months of the Effective Date of this Agreement, the Developer or City may terminate this Agreement in writing.

ARTICLE VII TERM

Section 7.01. Unless terminated earlier as provided for herein, this Agreement shall terminate in accordance with Section 12.02 of this Agreement.

Section 7.02. If the City determines that the City's specifications or any requirements under the law or the Construction Permit have not been met and the Utility Extension Facilities cannot be accepted by the City, then Developer shall be solely responsible for any necessary corrections and alterations and all costs associated with any necessary corrections and alterations. The City shall not be responsible nor participate in any costs incurred in such instance. If Developer does not complete the construction of the Utility Extension Facilities in accordance with the terms herein, the City may elect to terminate this Agreement or complete the construction and assess the Developer with any costs to complete the construction of the Utility Extension Facilities or exercise its rights under the performance bond or other fiscal security.

Section 7.03. In addition, Developer agrees to give a warranty on its work (and assign any warranties provided by the Developer's contractor) and shall provide a one-year Maintenance Bond on the Utility Extension Facilities in accordance with the current requirements of the City's Code of Ordinances.

ARTICLE VIII BOND AND INSURANCE REQUIRED

Section 8.01. The Developer must execute prior to commencement of construction of the Utility Extension Facilities, an irrevocable performance bond, cash bond, letter of credit or other fiscal security satisfactory to the City and equal to one hundred (100%) percent of the total estimated construction cost of the Utility Extension Facilities to secure fulfillment of all of the Developer's obligations under this Agreement. The performance bond or other fiscal security must be in a form acceptable to the City, and once executed a copy shall be provided to the City prior to commencement of construction of the Utility Extension Facilities. The bond, or if applicable any other fiscal security, must be executed by a corporate surety in accordance with Chapter 2253, Texas Government Code and identify the City as the named Obligee, and the City shall be notified of termination of such fiscal security if prior to the completion of the Utility Extension Facilities. Any power of attorney used to execute the bond or other fiscal security shall be executed by a person or entity that is a resident of Texas.

Section 8.02. The Developer shall require its Contractor to acquire and maintain a general liability policy with minimum liability limits of \$500,000 per occurrence with aggregate coverage of \$1,000,000 and name the City as an additional insured. Proof of coverage shall be provided to the City. Coverage shall be maintained until such time as the City inspects and accepts the Utility Extension Facilities.

ARTICLE IX INCREASED COSTS

Section 9.01. It may be anticipated that additional costs may arise regarding construction of the Utility Extension Facilities through site conditions or latent defects; however, Developer agrees that it will be solely responsible for payment of all costs for the Utility Extension Facilities whether known at the time of execution of this Agreement or discovered after execution of the Agreement.

ARTICLE X NOTICE OF DEFAULT; OPPORTUNITY TO CURE; REMEDIES

Section 10.01. Should any Party allege that the other has defaulted in the performance of any obligation hereunder, it will provide at least thirty (30) days' written notice to the other Party specifying the nature of the alleged default and providing an opportunity to cure the default before exercising any remedy related to the alleged default.

Section 10.02. Upon the failure of either Party to comply with the provisions of this Agreement, which failure continues beyond the thirty (30) day notice and cure period provided above, the other Party shall have the right to enforce the terms and provisions of this Agreement by specific performance, or by such other legal or equitable relief to which the non-defaulting Party may be entitled. Provided however, if the Party in default commences with performance of a cure within the 30 day period and diligently pursues correction of any deficiencies or the default, then the 30 day period shall be automatically extended for a reasonable period of time to allow the Party the opportunity to completely correct and cure the default.

Section 10.03. Any remedy or relief described in this Agreement shall be cumulative of and in addition to any other remedies and relief available at law or in equity.

Section 10.04. The foregoing notwithstanding, should Developer fail to comply with the City's Applicable Ordinances, the City may do any one, or all, of the following: terminate this Agreement, withhold or discontinue water service, withhold Construction Permits for the Utility Extension Facilities or for development of the Property. Developer shall remain responsible for all cost to construct and complete the Utility Extension Facilities and this obligation shall survive termination of this Agreement, except for termination related to failure to acquire the Easements as described in Section 6.01.

Section 10.05. No prior written notice of an inspection shall be required if there is an imminent threat to the public health, safety and welfare, and the City may take any and all actions as necessary to mitigate the immediate threat and assess the costs to the Developer.

Section 10.06. Notwithstanding any language herein to the contrary, the City may exercise all rights granted to it under the fiscal security and as provided in the Applicable Ordinances in lieu of or in addition to the remedies set out herein.

ARTICLE XI ETJ AND CITY SERVICES

Section 11.01. The Developer and each intervening landowner have requested voluntary inclusion into the City's ETJ. This Agreement shall not become effective until such time as the Property has been accepted into the City's ETJ. Upon acceptance into the ETJ, the Property shall be subject to the rules, regulations and ordinances then in effect and applicable to the ETJ in addition to the Applicable Ordinances and the obligations set out in this Agreement. In the event, that the Property is not included within the City's ETJ prior to October 7, 2020, then this Agreement shall expire and be of no further force or effect.

ARTICLE XII MISCELLANEOUS PROVISIONS

Section 12.01 Recitals. The recitals above are true, correct, and incorporated for all purposes as part of this Agreement.

Section 12.02 Term of Agreement. The term of this Agreement will commence on the Effective Date and shall continue for twenty (20) years thereafter, unless terminated on an earlier date under other provisions of this Agreement, terminated by mutual written agreement executed by the Parties, or unless such term is extended by the Parties. Section 2.09 shall survive termination of this Agreement.

Section 12.03 Termination, Amendment, and Extension. This Agreement may be terminated or amended as to all of the Property at any time by mutual written consent of City and Developer, or may be terminated or amended only as to a portion of the Property by the mutual written consent of City, the landowners of the portion of the Property affected by the amendment or termination, and Developer. In the event that the Agreement is terminated as to the Property, or if applicable, a portion of the Property, for any reason other than City's default, then any future development on the Property or applicable portion of the Property subject to the termination shall not have any vested right of development.

Section 12.04 Assignments. The rights of Developer may be assigned by the Developer to a subsequent Developer of the Property. Any assignment shall be in writing and shall set forth the assigned rights and duties and be executed by the proposed assignee. Upon assignment by Developer, the rights and duties of any

assignee and Developer are severable, and the Developer shall not be held liable for any nonperformance of the assignee.

Section 12.05 Purchasers. Purchasers, successors or assignees of the Property, or any portion thereof, shall be subject to the terms and conditions of this Agreement; and in particular the provisions related to the consent to inclusion of the Property into the ETJ and the city limits through Annexation by the City.

Section 12.06 Remedies. Upon default of this Agreement, an affected party may seek specific performance, damages, or other remedy in the court of appropriate jurisdiction. If any of the parties defaults, the prevailing party or parties shall be entitled to recover reasonable attorney's fees, expenses, and costs of court from the non-prevailing party or parties.

Section 12.07 Cooperation. The Parties agree to execute such further documents or instruments as necessary to evidence such agreements hereunder.

Section 12.08 Notice. Any notice given under this Agreement must in writing and may be given (i) by depositing it in the United States mail, certified, with return receipt requested, addressed to the party to be noticed and with all charges prepaid; or (ii) by depositing it with Federal Express or other similar service guaranteeing next day delivery, addressed to the party to be notified and with all charges prepaid; or (iii) by personally delivering it to the party, or any agent of the party listed in this Agreement; or (iv) by electronic mail, with a confirming copy sent by one of the other described methods of notice set forth above or (v) by confirmed facsimile, with a confirming copy sent by one of the other described methods of notice set forth above. Notice by United States mail will be effective on the earlier of the date of receipt or three (3) days after the date of mailing. Notice given in any other manner will be effective only when received. For purposes of giving notice, the addresses of the parties will be as follows and each party shall notify the other parties of any change of address via one of the methods described above:

CITY OF MARBLE FALLS

City of Marble Falls
City Hall
800 Third Street
Marble Falls, TX 78654
Attn: City Manager
Email: mhodge@marblefallstx.gov

DEVELOPER:

The Jenkins Organization, Inc.
2539 S. Gessner, Suite 13
Houston, TX 77063
Attn: Ricky Jenkins
Email: rjenkins@jenkinsorg.com

WITH COPY TO:

Zeeshan Malik
Metcalf Wolff Stuart & Williams, LLP

221 W. 6th Street, Suite 1300
Austin, Texas 78701
Email: zmalik@mwswtexas.com

Section 12.09 Severability. If any provision of this Agreement is deemed illegal, invalid or unforeseeable under present or future laws, it is the intention of the Parties that the remaining terms and provisions of this Agreement remain valid and enforceable and that each party shall perform all remaining valid and enforceable functions and duties set forth in this Agreement.

Section 12.10 Waiver. Any failure by a party to insist upon strict performance by the other party of any material provision set forth in this Agreement shall not be deemed a waiver thereof or a waiver of any other provision, and an affected party may at any time thereafter demand strict performance of any and all of the provisions of this Agreement.

Section 12.11 Applicable Law and Venue. The performance and enforcement of this Agreement is governed by the laws of the State of Texas and venue will be in a court of appropriate jurisdiction in Burnet County, Texas.

Section 12.12 Entire Agreement. This Agreement and the associated Exhibits attached hereto contain the entire agreement of the Parties hereto and any other agreements between the parties shall be in a separate, written agreement duly executed by the Parties. This Agreement supersedes all other agreements between the parties concerning the subject matter set forth herein.

Section 12.13 Force Majeure. If by reason of force majeure, including but not limited to: Acts of God, strikes, lockouts, acts of public enemy, public emergency; natural disaster, civil disturbance, order of the United States government, order of the State of Texas, order of any court or agency of competent jurisdiction, or catastrophic event, one of the Parties hereto is rendered unable, in whole or in part, to carry out its obligations set forth in this Agreement, the party whose performance is affected must give notice and an explanation of such force majeure reason to the other parties to this Agreement within a reasonable time after occurrence of the event or cause relied on. The party claiming force majeure shall endeavor to remove or overcome an inability with all reasonable effort.

Section 12.14 Authority to Execute. The City certifies, represents, and warrants, that the execution of this Agreement is in accordance with and duly authorized by its City Charter and applicable City Ordinances. The Developer certifies, represents, and warrants that the execution of this Agreement is in accordance with and duly authorized by any articles of incorporation, bylaws, or partnership agreements executed by the entity. The Parties each certify that the officer, employee, or representative is a duly authorized individual to execute and sign such agreements on behalf of the party. Developer warrants and represents it has full power and authority to execute this Agreement without the consent or joinder of any other person or entity, and that all authorizations required for consent have been obtained. Developer shall obtain a

subordination agreement, in recordable form, executed by the Lender(s) of any liens existing on the Property and subordinating their rights to the terms of this Agreement. Owners certifies and represents that there are no other parties or entities, other than Owners, with an ownership interest in the Property and that Owners has full authority to execute this Agreement for the limited purposes herein stated without the joinder or consent of any other person or entity.

Section 12.15 Exhibits. The following exhibits are attached to this Agreement, and made a part hereof for all purposes:

EXHIBIT A	Legal Description of Property
EXHIBIT A1	Description of adjoining Right of Way
EXHIBIT B	Utility Extension Facilities
EXHIBIT C	Utility Easement
EXHIBIT C1	Easement Assignment Agreement
EXHIBIT D	Conceptual Site Plan for Project
EXHIBIT E	Annexation Service Plan

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement on the dates provided below:

CITY:

CITY OF MARBLE FALLS, TEXAS

By: _____

Name: _____

Title: City Manager

Date: _____

ATTEST:

Christina McDonald, City Secretary

APPROVED AS TO FORM:

Patty L. Akers, City Attorney

STATE OF TEXAS §
§
COUNTY OF BURNET §

This instrument was acknowledged before me the ____ day of _____, 20__, by Mike Hodge, City Manager of the City of Marble Falls, Texas, a home rule municipality, on behalf of the City.

Notary Public Signature

DEVELOPER:

THE JENKINS ORGANIZATION, INC.,
A Texas Corporation

By: _____

Name: Ricky Jenkins

Title: President

Date _____

STATE OF TEXAS

§
§
§

COUNTY OF

This instrument was acknowledged before me the ____ day of _____, 20__ by _____, _____ of _____, __, a _____, on behalf of said _____.

Notary Public Signature

OWNERS:

By: _____
Name: Leslie Holt
Title:
Date _____

STATE OF TEXAS

§
§
§

COUNTY OF

This instrument was acknowledged before me the ____ day of _____, 20__ by _____, _____ of _____, __, a _____, on behalf of said _____.

OWNERS:

By: _____
Name: Dennis Sells
Title:
Date _____

STATE OF TEXAS

§
§
§

COUNTY OF

This instrument was acknowledged before me the ____ day of _____, 20__ by _____, _____ of _____, __, a _____, on behalf of said _____.

EXHIBIT A

Property

(see following pages)



- LEGEND**
- 1/2" IRON PIN FOUND (UNLESS NOTED)
 - STEEL PIPE FENCE POST
 - SET 1/2" IRON PIN WITH 5938 PROPERTY CAP
 - ▲ CALC. POINT
 - VOLUME/PAGE
 - P.R.B.C. PLAT RECORDS BURNET CO.
 - O.P.R.B.C. DEED RECORDS BURNET CO.
 - R.P.R.B.C. REAL PROPERTY RECORDS BURNET COUNTY
 - O.P.R.B.C. OFFICIAL PUBLIC RECORDS BURNET COUNTY
 - C.M. CONTROLLING INSTRUMENT
 - () RECORD INFO/SUBJECT
 - [] RECORD INFO/ADJOINER
 - AC AIR CONDITIONER
 - U UTILITY HOLE
 - GUY WIRE
 - O— OVERHEAD UTILITY
 - EM ELECTRIC METER
 - ⊙ CLEAN OUT
 - WELL
 - TELEPHONE PEDESTAL
 - CHAIN LINK FENCE
 - WOOD PRIVACY FENCE
 - WIRE FENCE
 - /// OVERTHROW COVERED AREA
 - I.P. TANK

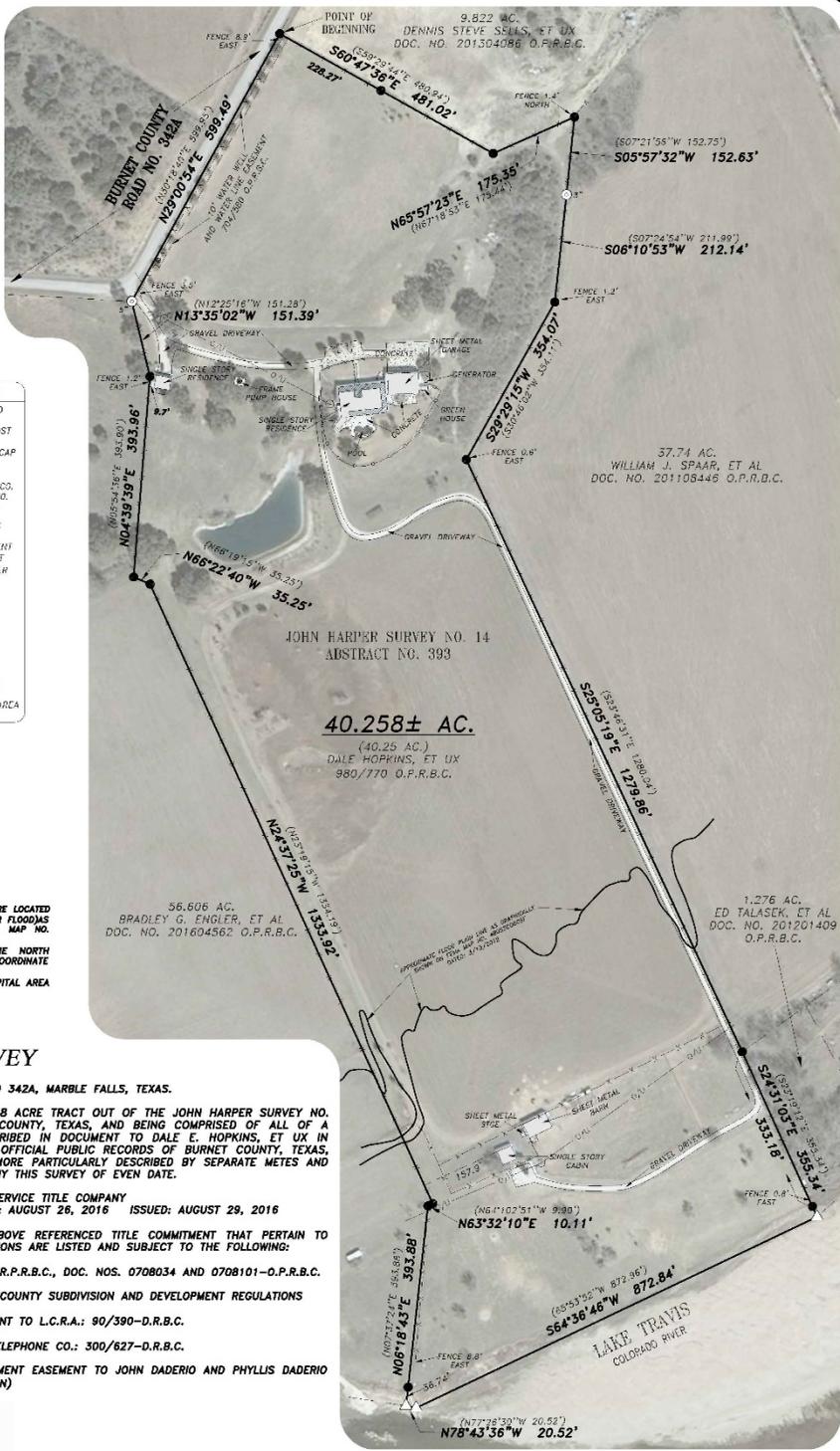
NOTES:
 1) PORTIONS OF THE SUBJECT PROPERTY ARE LOCATED WITHIN ZONE AE (AREAS WITHIN THE 100 YR FLOODZONES GRAPHICALLY IDENTIFIED ON FEMA F.I.A.M., MAP NO. 4805300605F, EFFECTIVE 3/15/2012.
 2) BASIS OF BEARINGS ARE TO THE NORTH AMERICAN DATUM OF 1983, TEXAS COORDINATE SYSTEM, CENTRAL ZONE.
 3) 2011 AERIAL IMAGE PROVIDED BY CAPITAL AREA COUNCIL OF GOVERNMENTS.

LAND TITLE SURVEY

LOCAL ADDRESS: 575 COUNTY ROAD 342A, MARBLE FALLS, TEXAS.
 LEGAL DESCRIPTION: BEING A 40.258 ACRE TRACT OUT OF THE JOHN HARPER SURVEY NO. 14 ABSTRACT NO. 393, BURNET COUNTY, TEXAS, AND BEING COMPRISED OF ALL OF A CALLED 40.25 ACRE TRACT DESCRIBED IN DOCUMENT TO DALE E. HOPKINS, ET UX IN VOLUME 980, PAGE 770 OF THE OFFICIAL PUBLIC RECORDS OF BURNET COUNTY, TEXAS, SAID 40.258 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY SEPARATE METES AND BOUNDS DESCRIPTION TO ACCOMPANY THIS SURVEY OF EVEN DATE.
 TITLE COMMITMENT PREPARED BY: SERVICE TITLE COMPANY
 G.F. NO.: 38110 EFFECTIVE DATE: AUGUST 26, 2016 ISSUED: AUGUST 29, 2016
 SCHEDULE "B" ITEMS PER THE ABOVE REFERENCED TITLE COMMITMENT THAT PERTAIN TO EASEMENTS AND SETBACK RESTRICTIONS ARE LISTED AND SUBJECT TO THE FOLLOWING:
 RESTRICTIVE COVENANTS: 558/743-R.P.R.B.C., DOC. NOS. 0708034 AND 0708101-O.P.R.B.C.
 SUBJECT TO ALL CURRENT BURNET COUNTY SUBDIVISION AND DEVELOPMENT REGULATIONS
 FLOODAGE AND INUNDATION EASEMENT TO L.C.R.A.: 90/390-D.R.B.C.
 10' WIDE EASEMENT TO GENERAL TELEPHONE CO.: 300/627-D.R.B.C.
 WATER WELL AND WATER LINE EASMENT EASEMENT TO JOHN DADERIO AND PHYLLIS DADERIO 704/580-O.P.R.B.C. (SHOWN HEREON)



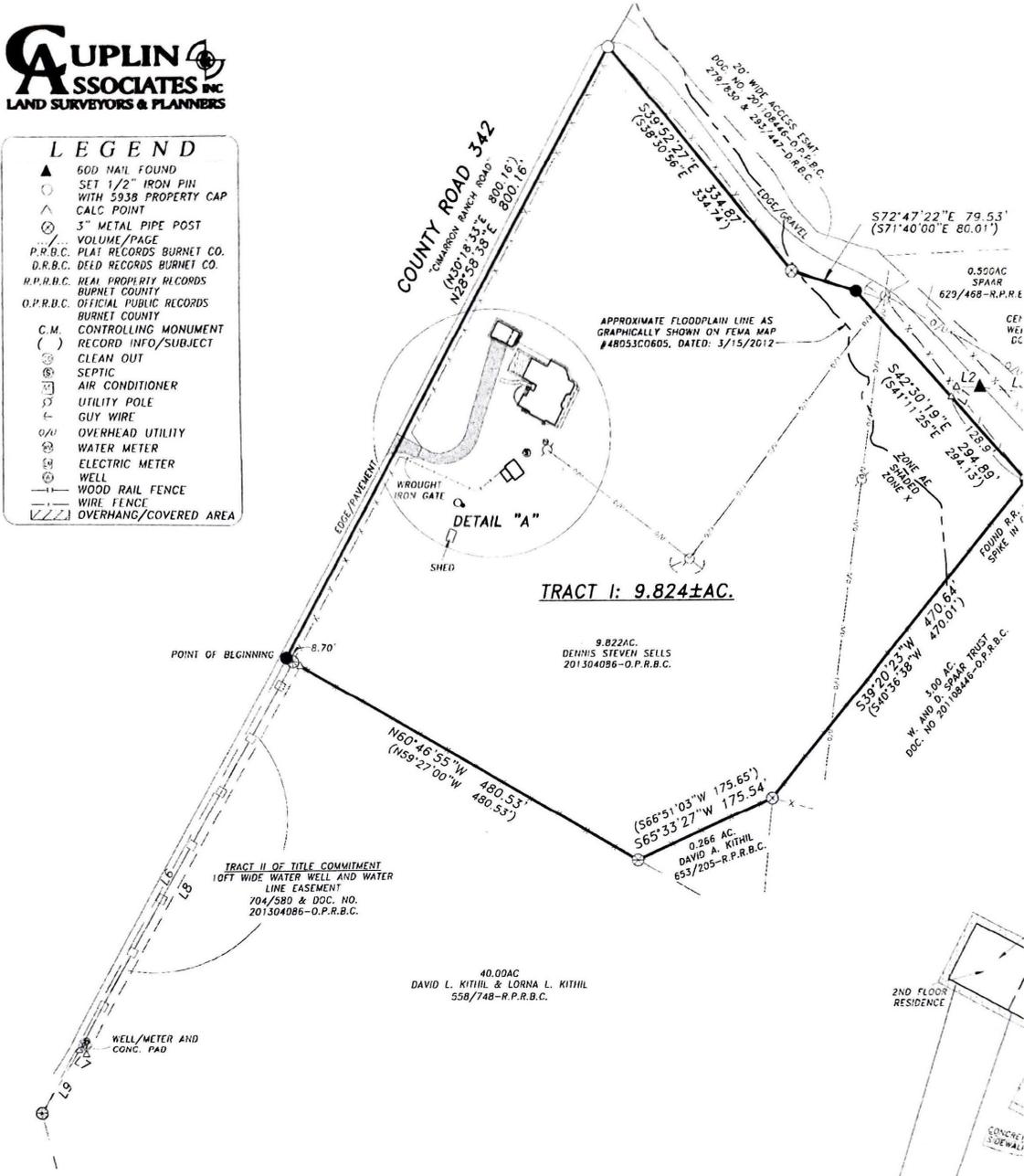
I HEREBY CERTIFY THAT THIS SURVEY WAS PERFORMED ON THE GROUND AND WAS SURVEYED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT THIS PROFESSIONAL SERVICE MEETS OR EXCEEDS THE CURRENT MINIMUM STANDARDS OF PRACTICE AS ESTABLISHED BY THE TEXAS BOARD OF PROFESSIONAL LAND SURVEYING.
K.P. Cuplin DATED 9/21/2016
 KYLE P. CUPLIN, R.P.L.S. NO. 5938



SHEET 1 OF 3	PROJ. NO. 161102	1500 OLLIE LANE MARBLE FALLS, TX 78654 PH. 325-388-3300/830-693-8815 WWW.CUPLINASSOCIATES.COM	SCALE 1" = 200'	2	
	PREPARED FOR: LESLIE P. HOLT AND DEANA M. HOLT			1	
	TECH: P. BERGMAN APPROVED: K. CUPLIN FIELDWORK PERFORMED ON: 9/19/16 COPYRIGHT 2016 PROFESSIONAL FIRM NO: 01269500			DATE	NO.
				REVISIONS	

LEGEND

- ▲ 60D NAIL FOUND
- SET 1/2" IRON PIN WITH 5938 PROPERTY CAP
- △ CALC. POINT
- ⊙ 3" METAL PIPE POST
- VOLUME/PAGE
- P.R.B.C. PLAT RECORDS BURNET CO.
- D.R.B.C. DEED RECORDS BURNET CO.
- R.P.R.B.C. REAL PROPERTY RECORDS BURNET COUNTY
- O.P.R.B.C. OFFICIAL PUBLIC RECORDS BURNET COUNTY
- C.M. CONTROLLING MONUMENT
- () RECORD INFO/SUBJECT
- ⊕ CLEAN OUT
- ⊕ SEPTIC
- ⊕ AIR CONDITIONER
- ⊕ UTILITY POLE
- ⊕ GUY WIRE
- ⊕ OVERHEAD UTILITY
- ⊕ WATER METER
- ⊕ ELECTRIC METER
- ⊕ WELL
- WOOD RAIL FENCE
- WIRE FENCE
- ▨ OVERHANG/COVERED AREA



LAND TITLE SURVEY
LOCAL ADDRESS: 593 CIMARRON RANCH ROAD/COUNTY ROAD 342, MARBLE FALLS, TEXAS.

TRACT I: BEING A 9.824 ACRE TRACT, OUT OF THE JOHN HARPER SURVEY NO. 14, ABSTRACT NO. 393, BURNET COUNTY, TEXAS, FURTHER BEING THE SAME TRACT AS A CALLED 9.822 ACRE TRACT OF LAND AS DESCRIBED IN DEED TO DENNIS STEVE SELLS & MARTHA SELLS, IN DOCUMENT NO. 201304086 OF THE OFFICIAL PUBLIC RECORDS OF BURNET COUNTY, TEXAS, SAID 9.824 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY SEPARATE METES AND BOUNDS DESCRIPTION TO ACCOMPANY THIS SURVEY OF EVEN DATE.

BEING A 40.258 ACRE TRACT OUT OF THE JOHN HARPER SURVEY NO. 14, ABSTRACT NO. 393, BURNET COUNTY, TEXAS, FURTHER BEING ALL OF TRACT ONE AS DESCRIBED IN DOCUMENT TO LESLIE P. HOLT AND DEANA M. HOLT, RECORDED IN DOCUMENT NO. 201610029 OF THE OFFICIAL PUBLIC RECORDS OF BURNET COUNTY, TEXAS, SAID 40.258 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS DESCRIPTION AS FOLLOWS:

BEGINNING at a 1/2" iron pin found at the northwest corner of said Holt tract and the southwest corner of a called 9.822 acre tract described in document to Dennis Steve Sells, Et Ux in Document No. 201304086 of the Official Public Records of Burnet County, Texas, and along the southeast line of Burnet County Road No. 342A, for the northwest corner hereof;

THENCE along the north line of said Holt tract and hereof, and the south line of said Sells tract the following courses and distances:

- 1) South 60°47'36" East, at 8.9' pass a fence corner post, and continuing along a fence, at a distance of 228.27' pass a 1/2" iron pin found, and for a total distance of 481.02' to a 1/2" iron pin found;
- 2) North 65°57'23" East, generally along a fence, a distance of 175.35' to a 1/2" iron pin found at the southeast corner of said Sells tract, the northeast corner of said Holt tract, and a westerly corner of a called 37.74 acre tract described in document to William J. Spaar, Et Al in Document No. 201108446 of the Official Public Records of Burnet County, Texas, for the Northeast corner hereof;

THENCE along the east line of said Holt tract and hereof, and the west line of said Spaar tract and then the west line of a called 1.276 acre tract described in document to Ed Talasek, Et Al in Document No. 201201409 of the Official Public records of Burnet County, Texas, generally along a fence, the following courses and distances:

- 1) South 05°57'32" West, a distance of 152.63' to a 3" steel pipe fence post;
- 2) South 06°10'53" West, a distance of 212.14' to a 1/2" iron pin found;
- 3) South 29°29'15" West, a distance of 354.07' to a 1/2" iron pin found;
- 4) South 25°05'19" East, a distance of 1279.86' to a 1/2" iron pin found at the common west corner of said Spaar tract and said Talasek tract;
- 5) South 24°31'03" East, at a distance of 330.0', pass 0.8' west of the end of said fence, at 333.18' pass a 1/2" iron pin found, for a total distance of 355.34' to a calculated point along the north bank of the Colorado River, inundated by the waters of Lake Travis, at the southeast corner of said Holt tract and the southwest corner of said Talasek tract, for the Southeast corner hereof;

THENCE with the north bank of said river and the south line of said Holt tract, and hereof, the following courses and distances:

- 1) South 64°36'46" West, a distance of 872.84' to a calculated point;

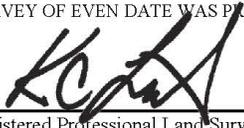
- 2) North 78°43'36" West, a distance of 20.52' to a calculated point at the southeast corner of a called 56.606 acre tract described in document to Bradley G. Engler, Et Al in Document No. 201604562 of the Official Public Records of Burnet County, Texas, for the southwest corner hereof;

THENCE along the west line of said Holt tract and hereof, and the east line of said Engler tract, the following courses and distances:

- 1) North 06°18'43" East, a distance of 393.88' to a 1/2" iron pin found;
- 2) North 63°32'10" East, a distance of 10.11' to a 1/2" iron pin found;
- 3) North 24°37'25" West, generally along a fence, a distance of 1333.92' to a 1/2" iron pin found;
- 4) North 66°22'40" West, generally along a fence, a distance of 35.25' to a 1/2" iron pin found;
- 5) North 04°39'39" East, generally along a fence, a distance of 393.96' to a 1/2" iron pin found;
- 6) North 13°35'02" West, generally along a fence, a distance of 151.39' to a 5" steel pipe fence post at the northeast corner of said Engler tract and a westerly corner of said Holt tract, along the southeast line of said County Road, for a westerly corner hereof;

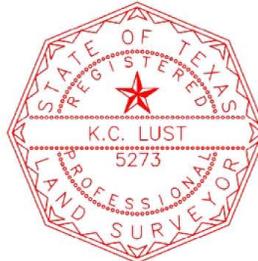
THENCE North 29°00'54" East, along the southeast line of said County Road, with a westerly line of said Holt tract and hereof, a distance of 599.49', to the **POINT OF BEGINNING**, and containing 40.258 acres, more or less.

I HEREBY CERTIFY EXCLUSIVELY TO HERITAGE TITLE COMPANY AND THE JENKINS ORGANIZATION, INC. THAT THIS SURVEY SUBSTANTIALLY COMPLIES WITH THE CURRENT TEXAS SOCIETY OF PROFESSIONAL SURVEYORS STANDARDS AND SPECIFICATIONS FOR A CATEGORY 1A, CONDITION II SURVEY. THIS SURVEY WAS PERFORMED ON THE GROUND AND WAS SURVEYED BY ME OR UNDER MY DIRECT SUPERVISION. CUPLIN & ASSOCIATES, INC. ACCEPTS NO RESPONSIBILITY FOR THE USE OF THIS SURVEY BY ANYONE OTHER THAN THE ABOVE REFERENCED PARTIES HEREBY CERTIFIED TO FOR THIS SPECIFIC TRANSACTION ONLY. COPYRIGHT 2019, CUPLIN & ASSOCIATES, INC. ©. BASIS OF BEARINGS ARE TO THE NORTH AMERICAN DATUM OF 1983, TEXAS COORDINATE SYSTEM, CENTRAL ZONE. A PLAT OF SURVEY OF EVEN DATE WAS PREPARED AS IS INTENDED TO ACCOMPANY THE ABOVE DESCRIBED TRACT OF LAND.



Registered Professional Land Surveyor No. 5273

Dated: 8/16/2019



1500 Ollie Lane, Marble Falls, Texas 78654
PH: 325.388.3300 Fax: 325.388.3320 Prof. Firm No. 10126900
www.cuplinassociates.com

Page 2 of 3

EXHIBIT A1



EXHIBIT C

Utility Easement

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS; YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

UTILITY EASEMENT

STATE OF TEXAS §
 §
 §
COUNTY OF BURNET §

KNOW ALL BY THESE PRESENT:

That _____ (hereinafter "Grantor"), whose address is _____, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration paid by the below named Grantee to Grantor, the receipt and sufficiency of which are hereby, acknowledged, does hereby, give, grant and convey to the, a Texas _____ whose address is _____, Travis County, a perpetual and exclusive easement in, upon, under and across that certain _____ acre tract of land as set forth in the attached Exhibit A (the "Easement Property"), to (a) construct, reconstruct, and perpetually maintain, repair and operate water mains, pipelines, sanitary sewer mains, storm sewer mains and other utilities, including but not limited to, telecommunication facilities with all necessary appurtenances thereto, together with the right to make connections and such other construction and improvements incidental to the construction, maintenance, operation and repair of such lines, and (b) together with the right to use roads, driveways, and access ways and the right of ingress and egress at all times across the Easement Property.

TO HAVE AND TO HOLD the same perpetually to Grantee and its successors and assigns, together with the right and privilege at any and all times to enter said premises, or any part thereof, by its employees, agents or third parties authorized by the Grantee for the purpose of construction, installation, operation, maintenance, replacement, upgrade, repair and removal of utilities and all related appurtenances; all upon the conditions that Grantee will at all times, after doing any work in connection with the Easement restore said premises to the condition in which same were found before such work was undertaken, and that in the use of said rights and privileges herein granted Grantee will not create a nuisance or do any act that will be detrimental to said premises.

Grantor reserves the right to enter upon and use the surface of the Easement Property in any manner that is not inconsistent with the rights granted to Grantee herein, but in no event shall Grantor place, erect or maintain on the Easement Property (a) any permanent structures, including, but not limited to, any habitable structures such as homes or offices, or (b) any

structure, including but not limited to, drainage, filtration or detention ponds, or make changes in grade, elevation, or contour of the land which would impair Grantee's use of the Easement Property.

This Utility Easement is made and accepted subject to all validly existing easements right of ways, and validly existing and recorded instruments, other than conveyances of the surface fee estate, that affect the Easement property.

Except where the context otherwise requires, Grantor includes Grantor's heirs, successors, and assigns and Grantee includes heirs, successors, and assigns; and where the context requires, singular nouns and pronouns include the plural.

This instrument was prepared based on information furnished by the parties, and no independent title search has been made.

Executed to be effective as of _____, 2020.

GRANTOR

By: _____

THE STATE OF TEXAS §
 §
COUNTY OF BURNET §

This instrument was acknowledged before me on the _____ day of _____, 2020, by _____.

Notary Public, State of Texas

Agreed and Accepted:

GRANTEE

By:
Title:

THE STATE OF TEXAS §
 §
COUNTY OF BURNET §

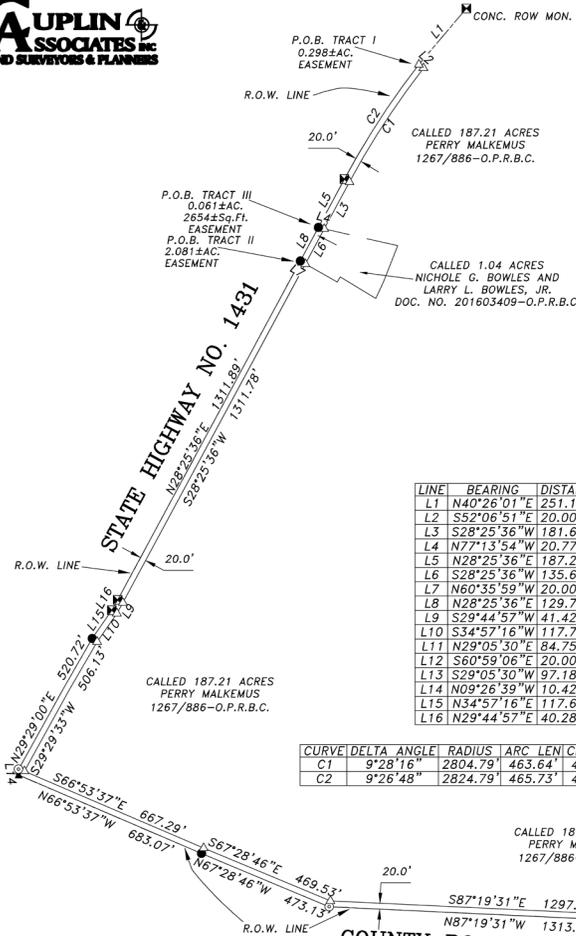
This instrument was acknowledged before me on the _____ day of _____,
2020, by _____, as _____ of _____.

Notary Public, State of Texas

EXHIBIT A

Easement Properties

(see following pages)



LEGEND	
△	CALC POINT
●	1/2" IRON PIN FOUND (UNLESS NOTED)
⊙	2" IRON PIPE FENCE POST
▲	60D NAIL FOUND
⊠	TXDOT TYPE I CONC. R.O.W. MONUMENT FND.
...	VOLUME/PAGE
D.R.B.C.	DEED RECORDS BURNET CO.
O.P.R.B.C.	OFFICIAL PUBLIC RECORDS BURNET COUNTY



LINE	BEARING	DISTANCE
L1	N40°26'01"E	251.13'
L2	S52°06'51"E	20.00'
L3	S28°25'36"W	181.62'
L4	N77°13'54"W	20.77'
L5	N28°25'36"E	187.22'
L6	S28°25'36"W	135.68'
L7	N60°35'59"W	20.00'
L8	N28°25'36"E	129.74'
L9	S29°44'57"W	41.42'
L10	S34°57'16"W	117.76'
L11	N29°05'30"E	84.75'
L12	S60°59'06"E	20.00'
L13	S29°05'30"W	97.18'
L14	N09°26'39"W	10.42'
L15	N34°57'16"E	117.69'
L16	N29°44'57"E	40.28'

CURVE	DELTA ANGLE	RADIUS	ARC LEN	CHD LEN	CHD BRG
C1	9°28'16"	2804.79'	463.64'	463.11'	S33°09'01"W
C2	9°26'48"	2824.79'	465.73'	465.21'	N33°09'42"E

EASEMENT EXHIBIT
 LOCAL ADDRESS: F.M. HWY. 1431 AND COUNTY ROAD NO. 342A, BURNET COUNTY, TEXAS.

TRACT I: BEING A 0.298 ACRE EASEMENT ACROSS A CALLED 183.21 ACRE TRACT DESCRIBED IN DOCUMENT TO PERRY MALKEMUS, RECORDED IN VOLUME 1267, PAGE 886, OFFICIAL PUBLIC RECORDS OF BURNET COUNTY, TEXAS, SAID 0.298 ACRE BEING MORE FULLY DESCRIBED BY METES AND BOUNDS OF EVEN DATE TO ACCOMPANY THIS SURVEY.

TRACT II: BEING A 2.081 ACRE EASEMENT ACROSS A CALLED 183.21 ACRE TRACT DESCRIBED IN DOCUMENT TO PERRY MALKEMUS, RECORDED IN VOLUME 1267, PAGE 886, OFFICIAL PUBLIC RECORDS OF BURNET COUNTY, TEXAS, SAID 2.081 ACRE BEING MORE FULLY DESCRIBED BY METES AND BOUNDS OF EVEN DATE TO ACCOMPANY THIS SURVEY.

TRACT III: BEING A 0.061 ACRE (2654 SQ.FT.) EASEMENT ACROSS A CALLED 1.04 ACRE TRACT DESCRIBED IN DOCUMENT TO NICOLE & LARRY BOWLES, RECORDED IN DOCUMENT NO. 201603409, OFFICIAL PUBLIC RECORDS OF BURNET COUNTY, TEXAS, SAID 0.061 ACRE BEING MORE FULLY DESCRIBED BY METES AND BOUNDS OF EVEN DATE TO ACCOMPANY THIS SURVEY.

I HEREBY CERTIFY EXCLUSIVELY TO KYLE JENKINS THAT THIS SURVEY WAS PERFORMED ON THE GROUND AND WAS SURVEYED BY ME OR UNDER MY DIRECT SUPERVISION. CUPLIN & ASSOCIATES, INC. ACCEPTS NO RESPONSIBILITY FOR THE USE OF THIS SURVEY BY ANYONE OTHER THAN THE ABOVE REFERENCED PARTIES HEREBY CERTIFIED TO FOR THIS SPECIFIC TRANSACTION ONLY. COPYRIGHT 2020, CUPLIN & ASSOCIATES, INC. ©.

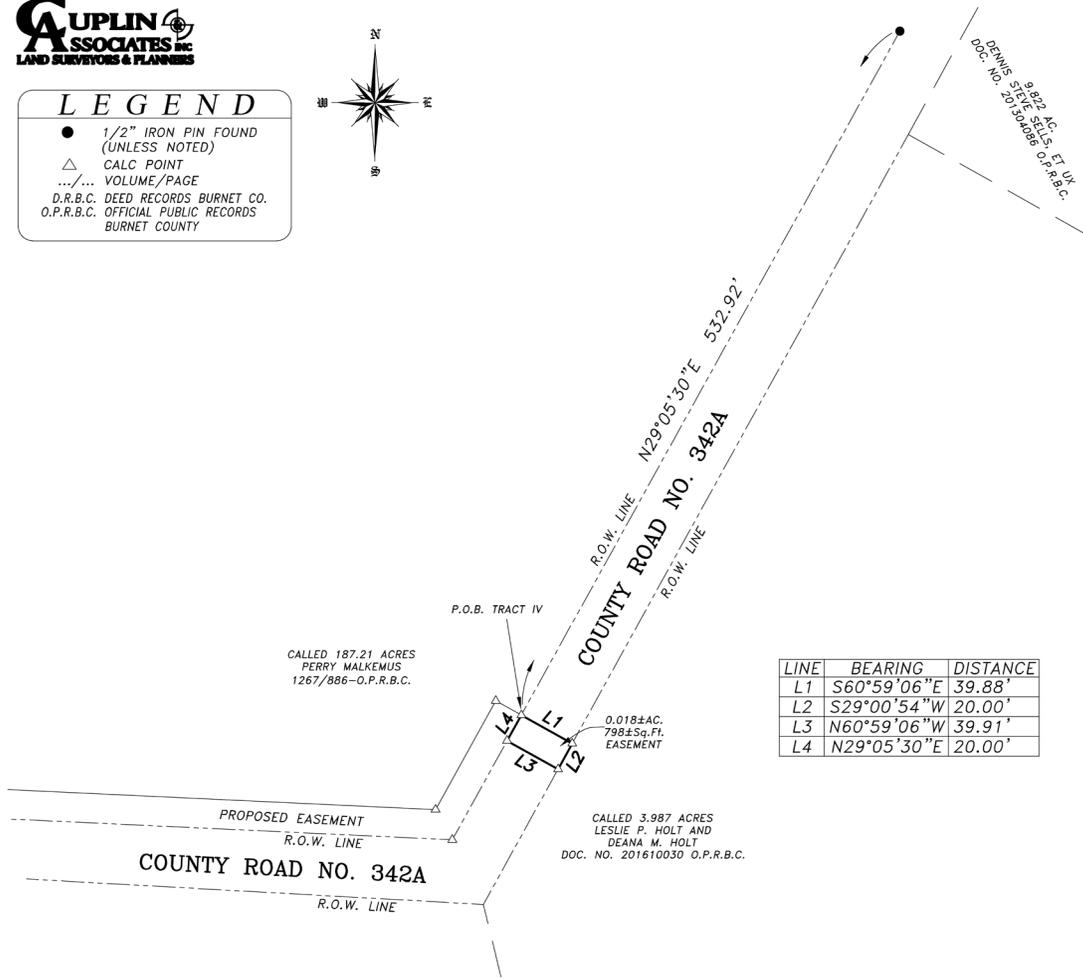
K.C. LUST
 K.C. LUST, R.P.L.S. NO. 5273 DATED 03/20/2020



SHEET 1 OF 4	PROJ. NO. 191901	1500 OLLIE LANE MARBLE FALLS, TX. 78654 PH. 325-388-3300/830-693-8815 WWW.CUPLINASSOCIATES.COM	SCALE 1" = 500'	2	
	PREPARED FOR: KYLE JENKINS		0 250 500	1	
	TECH: KCL			DATE	NO.
	APPROVED: K.C. LUST			REVISIONS	
FIELDWORK PERFORMED ON: NOVEMBER, 2019	COPYRIGHT: 2020 PROFESSIONAL FIRM NO: 10126900				



LEGEND	
●	1/2" IRON PIN FOUND (UNLESS NOTED)
△	CALC POINT
.../...	VOLUME/PAGE
D.R.B.C.	DEED RECORDS BURNET CO.
O.P.R.B.C.	OFFICIAL PUBLIC RECORDS BURNET COUNTY



LINE	BEARING	DISTANCE
L1	S60°59'06"E	39.88'
L2	S29°00'54"W	20.00'
L3	N60°59'06"W	39.91'
L4	N29°05'30"E	20.00'

EASEMENT EXHIBIT

LOCAL ADDRESS: F.M. HWY. 1431 AND COUNTY ROAD NO. 342A, BURNET COUNTY, TEXAS.

TRACT IV: BEING A 0.018 OF AN ACRE (798 SQ.FT.) EASEMENT ACROSS COUNTY ROAD NO. 342A, A DEDICATED COUNTY ROAD IN BURNET COUNTY, SAID EASEMENT BEING MORE COMPLETELY DESCRIBED BY METES AND BOUNDS OF EVEN DATE TO ACCOMPANY THIS SURVEY.

I HEREBY CERTIFY EXCLUSIVELY TO KYLE JENKINS THAT THIS SURVEY WAS PERFORMED ON THE GROUND AND WAS SURVEYED BY ME OR UNDER MY DIRECT SUPERVISION. CUPLIN & ASSOCIATES, INC. ACCEPTS NO RESPONSIBILITY FOR THE USE OF THIS SURVEY BY ANYONE OTHER THAN THE ABOVE REFERENCED PARTIES HEREBY CERTIFIED TO FOR THIS SPECIFIC TRANSACTION ONLY. COPYRIGHT 2020, CUPLIN & ASSOCIATES, INC. ©.

K.C. Lust

DATED 03/20/2020

K.C. LUST, R.P.L.S. NO. 5273



SHEET 2 OF 4	PROJ. NO. 191901	1500 OLLIE LANE MARBLE FALLS, TX. 78654 PH.325-388-3300/830-693-8815 WWW.CUPLINASSOCIATES.COM	SCALE 1" = 100'	2	
	PREPARED FOR: KYLE JENKINS		0 50 100	1	
	TECH: KCL			DATE	NO.
	APPROVED: K.C. LUST			REVISIONS	
FIELDWORK PERFORMED ON: NOVEMBER, 2019	COPYRIGHT:2020	PROFESSIONAL FIRM NO: 10126900			

- 5) North 09°26'39" West, a distance of 10.42' to a 2" pipe fence corner found;
- 6) North 29°29'00" East, a distance of 520.72' to a 1/2" iron pin found;
- 7) North 34°57'16" East, a distance of 117.69' to a concrete right-of-way monument found;
- 8) North 29°44'57" East, a distance of 40.28' to a concrete right-of-way monument found;
- 9) North 28°25'36" East, a distance of 1311.89' to the **POINT OF BEGINNING**, containing 2.081 acres, more or less.

TRACT III: BEING A 0.061 ACRE (2654 SQ.FT.) EASEMENT ACROSS A CALLED 1.04 ACRE TRACT DESCRIBED IN DOCUMENT TO NICHOLE AND LARRY BOWLES, RECORDED IN DOCUMENT NO. 201603409, OFFICIAL PUBLIC RECORDS OF BURNET COUNTY, TEXAS, SAID 0.061 ACRE (2654 SQ.FT.) EASEMENT BEING MORE COMPLETELY DESCRIBED BY METES AND BOUNDS DESCRIPTION AS FOLLOWS:

BEGINNING at a 1/2" iron pin found at the northwest corner of said 1.04 acres and along the east right-of-way line of S.H. 1431;

THENCE South 77°13'54" East, a distance of 20.77' to a calculated point in the north line of said 1.04 acres;

THENCE South 28°25'36" West, over and across said 1.04 acres, a distance of 135.68' to a calculated point in the south line of said 1.04 acres;

THENCE North 60°35'59" West, a distance of 20.00' to a 1/2" iron pin found at the southwest corner of said 1.04 acres;

THENCE North 28°25'36" East, along the east right-of-way line of said S.H. 1431a distance of 129.74' to the **POINT OF BEGINNING**, containing 0.061 acres (2654 square feet), more or less.

TRACT IV: BEING A 0.018 OF AN ACRE (798 SQ.FT.) EASEMENT ACROSS COUNTY ROAD NO. 342A, A DEDICATED COUNTY ROAD IN BURNET COUNTY, SAID EASEMENT BEING MORE COMPLETELY DESCRIBED BY METES AND BOUNDS DESCRIPTION AS FOLLOWS:

BEGINNING at a calculated point along the east line of a called 187.21 acres described in document to Perry Malkemus, recorded in Volume 1267, Page 886, Official Public Records of Burnet County, Texas, and along the west right-of-way line of County Road No. 342A, from whence a 1/2" iron pin with 'Maples' cap found in the west right-of-way line of said County Road bears North 29°05'30" East, a distance of 532.92'

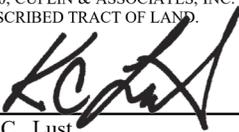
THENCE South 60°59'06" East, across said right-of-way, a distance of 39.88' to a calculated point along the east right-of-way line of said County Road, and along the west line of a called 3.987 acre tract described in document to Leslie and Deana Holt, recorded in Document No. 201610030, Official Public Records of Burnet County, Texas;

THENCE South 29°00'54" West, along the west line of said Holt tract, the east right-of-way line of said county road, and hereof, a distance of 20.00' to a calculated point;

THENCE North 60°59'06" West, across said county road right-of-way, a distance of 39.91' to a calculated point in the east line of said Malkemus tract, and in the west right-of-way line of said county road;

THENCE North 29°05'30" East, a distance of 20.00' to the **POINT OF BEGINNING**, containing 0.018 of an acre (798 square feet), more or less.

I HEREBY CERTIFY EXCLUSIVELY TO KYLE JENKINS THAT THIS SURVEY WAS PERFORMED ON THE GROUND AND WAS SURVEYED BY ME OR UNDER MY DIRECT SUPERVISION. CUPLIN & ASSOCIATES, INC. ACCEPTS NO RESPONSIBILITY FOR THE USE OF THIS SURVEY BY ANYONE OTHER THAN THE ABOVE REFERENCED PARTIES HEREBY CERTIFIED TO FOR THIS SPECIFIC TRANSACTION ONLY. COPYRIGHT 2020, CUPLIN & ASSOCIATES, INC. © A PLAT OF SURVEY OF EVEN DATE WAS PREPARED AS IS INTENDED TO ACCOMPANY THE ABOVE DESCRIBED TRACT OF LAND.


K. C. Lust

Dated: 3/20/2020

Registered Professional Land Surveyor No. 5273



1500 Ollie Lane, Marble Falls, Texas 78654
PH: 325.388.3300 Fax: 325.388.3320 Prof. Firm No. 10126900
www.cuplinassociates.com

Page 4 of 4

EXHIBIT C1

CONVEYANCE, ASSIGNMENT AND ASSUMPTION OF EASEMENTS

THE STATE OF TEXAS

COUNTY OF BURNET

WHEREAS, the Jenkins Organization, Inc., a Texas Corporation, (“Jenkins”) and the City of Marble Falls, Texas, a home rule municipal corporation (“City”) entered into that certain "Development Agreement", dated __, 2020 (the "Agreement");

WHEREAS, Jenkins was conveyed and granted various temporary and permanent easements for the construction of certain public improvements as described in the Agreement;

WHEREAS, on or about _____, construction of the public improvements was completed by Jenkins and the City has inspected and accepted the public improvements;

WHEREAS, the Agreement provides that upon completion of the construction of the public improvements and acceptance of such improvements by the City, that Jenkins shall assign and convey to the City and City shall accept the Easements granted to Jenkins;

WHEREAS, Jenkins now desires to assign, transfer and convey all of Jenkins’s right, title and interest in and to the Easements and the associated Easement Property to City, and City desires to acquire from Jenkins such right, title and interest in the Easements and Easement Property. Unless otherwise provided herein, all capitalized words and terms in this Assignment shall have the same meanings ascribed to such words and terms as in the Agreement.

NOW, THEREFORE, Jenkins, for and in consideration of the premises and the agreement set forth herein, together with the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid and delivered by City to Jenkins, the receipt and sufficiency of which are hereby acknowledged by Jenkins, does hereby CONVEY, ASSIGN, TRANSFER AND DELIVER to City all of it rights, title, and interest in and to the Easements described in the Burnet County Deed Records described in Exhibit “A”, attached hereto and covering the Easement Property described in Exhibit “B”, attached hereto, together with all utility facilities, lines, and equipment therein constructed.

By its execution hereof, City hereby accepts the conveyance and assignment of the right, title, and interest of Jenkins in and to the Easements and the Easement Property, together with all such utility facilities, lines and equipment therein constructed, and hereby assumes and agrees to perform and discharge all duties and obligations to be performed and/or discharged by Jenkins under each Easement from and after the date of this instrument.

EXECUTED by the undersigned effective as of the __ day of _____, 2020.

(Signatures follow)

JENKINS:

a _____

By: _____

Name: _____

Title: _____

Date Signed: _____

STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 20____, by _____, as _____ of _____, a _____, on behalf of said _____.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE _____ DAY OF _____, 2016.

Notary Public Signature

Address:

CITY:

City of Marble Falls,

a home rule municipal corporation

By: _____

Name: _____

Title: _____

Date Signed: _____

STATE OF _____ §
 §
COUNTY OF BURNET §

This instrument was acknowledged before me on the _____ day of _____, 20____, by _____, as _____ of _____, a _____, on behalf of said _____.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE _____ DAY OF _____, 2020.

Notary Public Signature

Address:

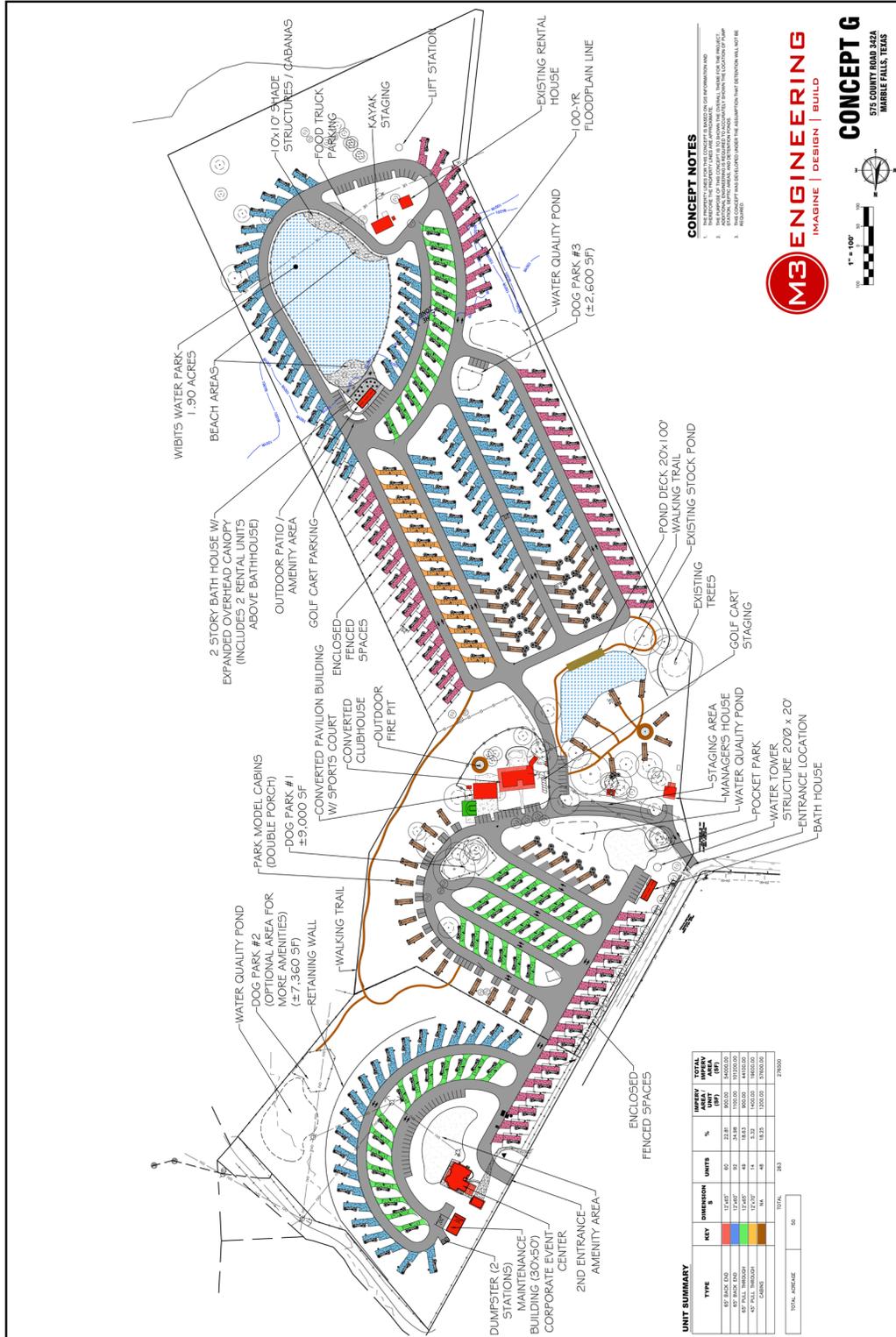
Exhibit "A"

LIST OF EASEMENTS/RECORDING INFO

Exhibit "B"
EASEMENT PROPERTY

EXHIBIT D

Conceptual Site Plan for Project



CONCEPT G
525 COUNTY ROAD 348A
MARBLE FALLS, TEXAS

DRAWING FILE: 1000-9-PROJ.rvt

M3 ENGINEERING
IMAGINE | DESIGN | BUILD

1" = 100'

EXHIBIT “E”

Annexation Services Plan

MUNICIPAL SERVICE PLAN

FOR PROPERTY TO BE

ANNEXED TO THE CITY OF MARBLE FALLS

WHEREAS, the City of Marble Falls, Texas (the “City”) has instituted annexation proceedings for tracts of land described more fully hereinafter (referred to herein as the “Property”); and,

WHEREAS, Chapter 43, Texas Local Government Code, (referred to herein as “TLGC”) requires a service plan be adopted with the annexation ordinance; and,

WHEREAS, it is found that all statutory requirements have been satisfied and the City is authorized by Chapter 43, TLGC, to annex the subject property into the City;

NOW, THEREFORE, by execution hereof, the City agrees to provide, at its sole cost and expense the following services for the subject property on the effective date annexation:

1. Police Protection as follows:
 - a. Routine patrols of areas, radio response to calls for police service and all other police services now being offered to the citizens of the City.
2. Fire Protection and Emergency Medical Services as follows:
 - a. Fire protection by the present personnel and equipment of the City fire department with the limitations of water available. Radio response for Emergency Medical Services with the present personnel and equipment.
3. Solid Waste Collection services as follows:
 - a. Solid waste collection and services as now being offered to the citizens of the City.
4. Water service and maintenance of water facilities as follows:
 - a. Centralized water service is already constructed and available within the Annexed Area. The cost of extending water service to individual property owners within the Annexed Area not already

receiving service or requiring service above that which is currently provided shall be at the landowner's cost and in accordance with the City's utility extension ordinance and subdivision ordinance. Water service will be provided by the City utility department on the same terms, conditions and requirements as are applied to all similarly situated areas and customers of the City, subject to all the ordinances, regulations, and policies of the City in effect from time to time. The system will be accepted and maintained by the City in accordance with its usual acceptance and maintenance policies.

- b. Developed tracts within the Annexed Area that are not yet connected to City water systems and are currently being served by water wells shall be permitted to continue to utilize the same until such time, if ever, that City water is requested or such persons become required by operation of law to connect to the City's water system. New development on lots or tracts of sufficient size to support on-site water wells shall be allowed to install water wells unless City water lines have been constructed to that location. Operation and maintenance of water facilities that are not within the service area of another water utility will be provided by the Marble Falls Utility Department on the same basis and at the same level of service as provided throughout the City with comparable topography, land use and population density in accordance with existing Ordinances; including Ordinances governing the extension of water utilities and subdivisions in effect on the date of annexation or as amended from time to time which require a landowner, at the landowner's cost, to extend and install water lines.
 - c. Pay the costs of over-sizing of any water facilities within the subject property to a capacity greater than reasonably required to service the subject property, at the time of subdivision of land when necessary and as applicable.
 - d. Inspection, maintenance, and repair of water distribution lines as provided by the statutes of the State of Texas.
 - e. Provide the necessary improvements to its water system to accommodate the flows needed to provide water service to the Annexed Area.
 - f. Provide required water supply demands for firefighting needs in a manner to be determined by the City.
5. Wastewater services and maintenance of wastewater service as follows:
- a. Extension of wastewater collections lines to the boundary of the subject Property no later than thirty (30) months or two and one half

(2½) years from the date of annexation. The cost of extending centralized wastewater service to individual property owners within the Annexed Area not already receiving service or requiring service above that which is currently provided shall be at the landowner's cost and in accordance with the City's utility extension ordinance and subdivision ordinance.

- b. Centralized wastewater or on-site sewer service shall be provided by the same means by which the City of Marble Falls extends such services to any other area within the City limits and shall at no time be at a lower level of service than currently provided in the Annexed Area. Persons currently receiving such service(s) from the City shall continue to receive the same, consistent with City ordinances in effect on the date of annexation and as amended from time to time. Persons utilizing on-site septic systems shall be permitted to continue to utilize the same until such time, if ever, that centralized wastewater service is requested from the City or such persons become required by operation of law to connect to the City's wastewater system. New development on lots or tracts of sufficient size to support on-site septic systems shall be allowed to install septic systems unless City centralized wastewater lines have been constructed to that location. Operation and maintenance of wastewater facilities that are not within the service area of another wastewater utility will be provided by the Marble Falls Utility Department on the same basis and at the same level of service as provided throughout the City with comparable topography, land use and population density in accordance with existing Ordinances; including Ordinances governing the extension of wastewater utilities and subdivisions in effect on the date of annexation or as amended from time to time which require a landowner, at the landowner's cost, to extend and install wastewater lines.
- c. Pay the costs of over-sizing of any wastewater facilities within the subject property to a capacity greater than reasonably required to service the subject property, at the time of subdivision of land when necessary and as applicable.
- d. Inspection, maintenance, and repair of sewer lines as provided by the statutes of the State of Texas.
- e. Sewer service provided by the City utility department on the same terms, conditions and requirements as are applied to all similarly situated areas and customers of the City, subject to all the ordinances, regulations, and policies of the City in effect from time to time.

- f. Provide the necessary improvements for its wastewater collection system and wastewater treatment system necessary to accommodate the flows designed at the time of the subdivision of the land.
 - g. Provide specifications for grinder pumps to be installed by the developer of any subdivision of land and thereafter to provide routine maintenance and repair services for said grinder pumps.
- 6. Maintenance of streets and rights-of-way as appropriate as follows:
 - a. Emergency maintenance of streets, repair of hazardous potholes, measures necessary for traffic flow, etc.
 - b. Routine maintenance as presently performed with the City.
 - c. Reconstruction and resurfacing of streets, installation of drainage facilities, construction of curbs, gutters and other such improvements as need therefore is determined by the City Council under City policies.
 - d. Installation and maintenance of traffic signals, traffic signs, street markings and other traffic control devices as the need therefore is established by appropriate study and traffic standards.
 - e. Maintenance of street lighting in accordance with established policies of the City.
- 7. Animal control as follows:
 - a. Service by present personnel, equipment and facilities or by contract with a third party, as provided within the City.
- 8. Maintenance of parks and playgrounds within the City.
- 9. Inspection services in conjunction with building permits and routine City code enforcement services by present personnel, equipment and facilities.
- 10. Maintenance of other City facilities, buildings and service.
- 11. Land Use regulations as follows:
 - a. On the effective date of the annexation, the zoning jurisdiction of the city shall be extended to include the annexed area and all property therein shall be zoned Farm and Ranch (FR) District with the appropriate regulations established by the City or hereinafter amended.

12. Construction of any Capital Improvements

Section 43.056(e) of the Texas Local Government Code requires that the City include a program under which the City will initiate after the effective date of the annexation the acquisition or construction of capital improvements necessary for providing municipal services adequate to serve the Annexed Area. Any capital improvements to be constructed in the area being annexed shall be constructed pursuant to the terms of the City's Ordinances and policies. No capital improvements are contemplated or necessary at this time. However, if it becomes necessary to construct capital improvements to implement this Service Plan, the City shall provide such service no later than four and one-half (4½) years after the effective date of the annexation. The City reserves the right to amend this service plan to extend the period of construction in a manner that ensures that construction proceeds with all deliberate speed consistent with generally accepted engineering and architectural standards and practices and consistent with comparable topography, land use and population density, and service needs existing as of the date of this annexation.

13. Future Capital Improvements

Construction of other capital improvements shall be considered by the City in the future as the need dictates on the same basis as such capital improvements are considered throughout the City in accordance with Ordinances of the City, including Ordinances which require a developer to install or construct such capital improvements including but not limited to roads, streets, water and sewer lines.

14. Uniform level of services may not be required

Nothing in this Service Plan shall require the City to provide a uniform level of full municipal services to each area of the City, including the Annexation Area, if different characteristics of topography, land use, and population density are considered a sufficient basis for providing different levels of service.

15. Term

This service plan shall be valid for a term of ten (10) years.

April 7, 2020

7. REGULAR AGENDA

- (c) Discussion and Action authorizing the Mayor to enter into an Economic Development Agreement between the City of Marble Falls, the Marble Falls Economic Development Corporation and R. Cockrell Enterprises LLC, providing financial support related to development costs associated with the Marble Falls Putters and Gutters location. *Caleb Kraenzel, Assistant City Manager*
-



Council Agenda Item Cover Memo
April 7, 2020

Agenda Item No.: 7(c)
Presenter: Caleb Kraenzel
Department: Administration
Legal Review:

AGENDA CAPTION

Discussion and Action authorizing the Mayor to enter into an Economic Development Agreement between the City of Marble Falls, the Marble Falls Economic Development Corporation and R. Cockrell Enterprises LLC, providing financial support related to development costs associated with the Marble Falls Putters and Gutters location.

BACKGROUND INFORMATION

This item is being presented to City Council for approval for the City of Marble Falls (City) to enter into an economic development agreement as it pertains to the new family entertainment facility, Putters and Gutters 2. Both the City and the Marble Falls Economic Development Corporation (MFEDC) are in support of an economic incentive package for the 42,062 square foot project that is valued at over \$4,000,000 and is slated to create 85 jobs.

Section 380.01 of the Texas Local Government Code and the City's Economic Development Policy authorize the City to enter into this type of an agreement while the MFEDC is authorized by Chapter 505 of the Texas Local Government Code.

The proposed terms of the agreement are the City will pay the Developer a financial incentive inclusive of a portion of annual sales tax generated solely by the project for a period of five years not to exceed \$250,000, whichever occurs first. The annual financial incentive payment will be allocated to ninety percent (90%) of sales tax generated the first year, eighty percent (80%) the second year, seventy percent (70%) the third year, sixty percent (60%) the fourth year and fifty percent (50%) the fifth year.

The MFEDC will pay the Developer a financial incentive inclusive of a one-time payment of \$75,000 upon receipt of the project after obtaining a Certificate of Occupancy in addition to a portion of annual sales tax generated solely by the project for a period of five years not to exceed \$80,000, whichever occurs first. The annual financial incentive payment will be allocated similarly to the City, a percentage of sales tax generated annually year for five years.

It is staff's recommendation to support the agreement for the purpose of supporting local economic development and commercial activity by generating sales tax, ad valorem taxes and increased employment.

The EDC Board will act on their portion of the proposed agreement at the Special EDC meeting scheduled for 5:00 PM, Tuesday, April 7.

Attached please find the draft Economic Development Agreement.

ECONOMIC DEVELOPMENT AGREEMENT

This ECONOMIC DEVELOPMENT AGREEMENT (“Agreement”) is made by and between the **CITY OF MARBLE FALLS, TEXAS**, a Home Rule municipality located in Burnet County, Texas (“City”), acting by and through John Packer, its duly authorized Mayor, and **R. COCKRELL ENTERPRISES, LLC** (“DEVELOPER”), a registered limited liability corporation. This **ECONOMIC DEVELOPMENT AGREEMENT** is also made by and between the **MARBLE FALLS ECONOMIC DEVELOPMENT CORPORATION**, a Type B Economic Development Corporation (“MFEDC”) by and through its President, Steve Reitz, and the **DEVELOPER**.

RECITALS

WHEREAS, the City adopted Resolution No.2010-R-10D establishing a comprehensive economic development policy and program for economic development activities (the “Economic Development Policy”) pursuant to Chapter 380 of the Texas Local Government Code; and

WHEREAS, the MFEDC Board finds that the Project as herein described and carried out is an “Authorized Project” as that term is defined in Chapter 505 of the Texas Local Government Code, as amended; and that it will promote new or expanded business development in the City; and

WHEREAS, as required by law, the MFEDC published notice on August 2, 2013, and conducted a public hearing on August 7, 2013, at which it approved the providing of financial incentives for projects to support business retention and expansion as authorized by the Development Corporation Act and industry sectors related to resort-related attractions and amenities; and

WHEREAS, Developer has determined to construct a family entertainment center at an estimated investment of \$4,000,000.00 or greater, and which is expected to create 85 jobs (the “Project”) at 4300 US Hwy 281N. in Marble Falls, Texas (the “Property”), all as described in greater detail in the attached and incorporated Exhibit “A”, hereto; and

WHEREAS, pursuant to the requirements of Chapter 505, Texas Local Government Code, Developer and MFEDC desire to enter into this Economic Development Agreement with regard to the Project, which Agreement shall be considered to be a performance agreement for the purposes of Sec. 501.158, Texas Local Government Code; and

WHEREAS, the City Council and MFEDC recognize the positive economic impact the proposed Project, developed within the terms of this Agreement, will have on the community and desires to enter into this Agreement for the purpose of offering incentives to develop the Project which in turn will promote local economic development, stimulate business and commercial activity in the City generating sales tax, ad valorem taxes and increased employment in the area.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I. AUTHORITY OF CITY

The City Council finds and determines that this Agreement is authorized and governed by Section 380.001 of the Texas Local Government Code and by the City's Economic Development Policy. All recitals applicable to the City are hereby found to be true and correct legislative and factual findings of the City and are hereby approved and incorporated into the body of this Agreement as if copied in their entirety.

ARTICLE II. AUTHORITY OF MFEDC

The MFEDC finds and determines that this Agreement is authorized by Sections 505.152, 505.155, and 505.158, Texas Local Government Code, and that the MFEDC has complied with all prerequisite requirements for providing economic development funding for the Project. All recitals applicable to the MFEDC are hereby found to be true and correct factual findings of the MFEDC and are hereby approved and incorporated into the body of this Agreement as if copied in their entirety.

ARTICLE III. DEFINITIONS

“Annual Portion-City” shall mean the percentage of the City's sales tax allocated to the City Financial Incentive each year which shall be ninety percent (90%) the first year, eighty percent (80%) the second year, seventy percent (70%) the third year, sixty percent (60%) the fourth year and fifty percent (50%) the fifth year.

“Annual Portion-MFEDC” shall mean the percentage of the MFEDC sales tax allocated to the MFEDC Financial Incentive each year which shall be ninety percent (90%) the first year, eighty percent (80%) the second year, seventy percent (70%) the third year, sixty percent (60%) the fourth year and fifty percent (50%) the fifth year.

“City Financial Incentive” shall mean the Annual Portion of the City's annual local sales tax of one and one-half percent (1.5%) generated solely by the Project for a period up to five years, and not to exceed \$250,000.00 (two-hundred and fifty-thousand dollars) whichever event occurs first.

“MFEDC Financial Incentive” shall mean a sum equivalent to the Annual Portion of the MFEDC one-half percent (.50%) of the MFEDC's annual local sales tax generated solely by the Project for a period up to five years and not to exceed \$80,000.00 (eighty thousand dollars) whichever event occurs first; plus the sum of \$75,000.00 (seventy five thousand dollars).

“Effective Date” shall mean the date this Agreement is duly executed by the last party to the Agreement.

“Project” means Developer's construction of the family entertainment center at 4300 US Hwy 281 N. in the City as described herein and as depicted in Exhibit “A”.

“Substantial Construction” means that one hundred percent (100%) of the foundation has been laid.

ARTICLE IV. TERM

This Agreement shall commence on the effective date, and unless sooner terminated pursuant to the provisions of this Agreement, shall end as to the City upon the payment by the City of the City Financial Incentives. This Agreement shall commence on the Effective Date, and unless sooner terminated pursuant to the provisions of this Agreement, shall end as to the MFEDC upon the payment by the MFEDC of the MFEDC Financial Incentive. In the event Developer has not commenced Substantial Construction of the Project within twelve (12) months of the effective date of this Agreement, then this Agreement shall automatically terminate and be null and void.

ARTICLE V. CONDITIONS PRECEDENT TO CITY CHAPTER 380 PAYMENTS

The City and Developer agree that as a condition precedent for the Financial Incentives described in Section VII below, development of the Project must be performed in compliance with the City’s Ordinances and in conformance with the Project requirements set out herein and as depicted in Exhibit “A”.

ARTICLE VI. CONDITIONS PRECEDENT TO MFEDC PAYMENTS

The MFEDC and Developer agree that as a condition precedent for the Financial Incentives described in Section VIII below, development of the Project must be performed in compliance with the City’s Ordinances and in conformance with the Project requirements set out herein and as depicted in Exhibit “A”. Developer must invest a minimum of \$4,000,000.00 (four million dollars) in the Project and the entertainment facilities must be 42,062 square feet or greater and include the amenities described in Article IX. Developer must obtain a certificate of occupancy for the entertainment facilities prior payment of the \$75,000.00 portion of the MFEDC Financial Incentive.

ARTICLE VII. CITY FINANCIAL INCENTIVES

Subject to, and conditioned upon the satisfaction of all of the Conditions Precedent to the Financial Incentives set forth in Article V, the City hereby authorizes and agrees to pay Developer the City Financial Incentive in an amount not to exceed \$250,000.00 (two hundred fifty thousand dollars). The Annual Portion of the City Financial Incentive will be paid until the amount paid to Developer reaches \$250,000.00 or City has made five (5) years of payments at the respective Annual Portion, whichever event occurs first. The first City Financial Incentive payment will be due and payable to Developer one year after the date the City first receives and collects sales tax generated by the Project. Thereafter, the Annual Portion of the City Financial Incentive payment shall be due on the same date as the first payment until a total of five (5) payments at the respective Annual Portion have been made, or until Developer has been paid \$250,000.00, whichever occurs first. In addition, nothing in this Agreement shall require the City to make Economic Development Incentive Payments from revenue sources other than local sales taxes actually generated by the Project and actually collected and received by the City.

ARTICLE VIII. MFEDC FINANCIAL INCENTIVES

Subject to, and conditioned upon the satisfaction of all of the Conditions Precedent to the Financial Incentives set forth in Article VI, the MFEDC hereby authorizes and agrees to pay Developer the MFEDC Financial Incentive in an amount not to exceed \$80,000.00 (eighty thousand dollars). The Annual Portion of the MFEDC Financial Incentive will be paid until the amount paid to Developer reaches \$80,000.00 or MFEDC has made five (5) years of payments at the respective Annual Portion, whichever event occurs first. The first MFEDC Financial Incentive payment will be due and payable to Developer one year after the date the MFEDC first receives and collects sales tax generated by the Project. Thereafter, the Annual Portion of the MFEDC Financial Incentive payment shall be due on the same date as the first payment until a total of five (5) payments at the respective Annual Portion have been made, or until Developer has been paid \$80,000.00, whichever occurs first. In addition, nothing in this Agreement shall require the MFEDC to make Economic Development Incentive Payments from revenue sources other than local sales taxes actually generated by the Project and actually collected and received by the MFEDC. In addition, MFEDC agrees to make a one-time payment of \$75,000.00 (seventy-five thousand dollars) within 30 days from the date that the City issues a certificate of occupancy ("CO") for the entertainment center.

ARTICLE IX. DEVELOPER PERFORMANCE REQUIREMENTS

In consideration of the Financial Incentive provided by City and MFEDC, Developer has represented and hereby agrees to develop a certain property located at 4300 US Hwy 281 N, in the City, by constructing a new 42,062 square foot family entertainment center inclusive of bowling lanes, a miniature golf course, a music venue, and a roller-skating rink. Developer represents that this Project will be constructed for the benefit of the community and in accordance with the Project as described herein and as depicted in Exhibit "A".

ARTICLE X. MUTUAL ASSISTANCE

Developer and the City and Developer and the MFEDC shall do all things necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out the terms and provisions hereof.

ARTICLE XI. DEFAULT AND REMEDIES

If a party should default (the "Defaulting Party") with respect to any of its obligations hereunder and should fail, within thirty (30) days after delivery of written notice of such default from another party (the "Complaining Party") to cure such default (plus such additional time as is reasonably necessary so long as the Defaulting Party is diligently pursuing such compliance), the Complaining Party may terminate this Agreement, and by action or proceeding at law or in equity, may be awarded its damages and/or specific performance for such default. A default by the MFEDC shall not be considered as a default by the City. A default by the City shall not be considered as a default by the MFEDC. A default by the Developer as to an obligation to the City shall not constitute a default as to the MFEDC. A default by the Developer as to an obligation to

the MFEDC shall not constitute a default as to the City. The City and the MFEDC shall have no duties or obligations under this Agreement to each other, other than an obligation to notify the other in the event of a Developer default.

ARTICLE XII. MISCELLANEOUS PROVISIONS

- (i) **Notice and Payments.** Any notice and/or statement required and permitted to be delivered shall be deemed delivered by depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses, or at such other addresses provided by the parties in writing:

City: City of Marble Falls
Attn: Mike Hodge, City Manager
800 Third Street
Marble Falls, Texas, 78654
Phone (830) 693-3615

MFEDC: Marble Falls Economic Development Corporation
Attn: Christian Fletcher, Executive Director
801 Fourth Street
Marble Falls, Texas, 78654
Phone (830)798-7079

Developer: Roy Cockrell Enterprises, LLC
Attn: Roy Cockrell, Owner
PO Box 383
Lampasas, Texas 76550
Phone (512)564-5224

- (ii) **Severability.** In the event that any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws, then, and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.
- (iii) **No Joint Venture.** Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties.
- (iv) **Applicable Law and Venue.** This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas and venue shall lie in Burnet County, Texas.

- (v) **Attorneys' Fees.** In the event any legal action or process is commenced to enforce or interpret provisions of this Agreement, the prevailing party in any such legal action shall be entitled to recover its necessary and reasonable attorneys' fees and expenses incurred by reason of such action.
- (vi) **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the transaction contemplated herein.
- (vii) **No Contractual Obligation to Perform Conditions.** The provisions of Article V or Article VI, of this Agreement set forth the conditions the Developer must meet in order to receive the Financial Incentive, but do not otherwise constitute any kind of contractual obligation by Developer to develop the Project, or meet any of the other conditions herein. The failure of Developer to perform the conditions of Article V or Article VI of this Agreement shall excuse the City and/or the MFEDC from providing the applicable Financial Incentive, and may trigger termination of the Agreement, but shall not constitute the breach of any contractual obligation by Developer set out in this Agreement.
- (viii) **No Third-Party Beneficiaries.** This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.
- (ix) **Termination.** This Agreement shall automatically terminate in the event that (i) Developer has not commenced substantial construction of the Project on or before twelve (12) months from the Effective Date of this Agreement.
- (x) **Force Majeure.** In the event that performance by a party to this Agreement of any of the parties' obligations under the terms of this Agreement shall be interrupted or delayed by litigation or by the occurrence of any event beyond the control of the parties hereto, that party shall be excused from such performance for the same amount of time as such occurrence shall have lasted or such period of time as is reasonably necessary after such occurrence abates for the effects thereof to have dissipated.

Approval by City of Marble Falls, Texas. This Agreement was approved by the City Council at its meeting on _____, 2020.

Approval by Marble Falls Economic Development Corporation, Marble Falls, Texas. This Agreement was approved by the MFEDC at its meeting on _____, 2020.

The undersigned parties have executed this Agreement on the dates indicated below.

ROY COCKRELL ENTERPRISES, LLC
a Texas Limited Liability Corporation

By: _____
Name: Roy Cockrell, Owner

Date: _____

CITY OF MARBLE FALLS
a Home Rule Municipality

By: _____
Name: John Packer, Mayor
Date: _____

ATTEST:

By: _____
Christina McDonald, City Secretary

APPROVED AS TO FORM:

By: _____
Patty L. Akers, City Attorney

MARBLE FALLS ECONOMIC DEVELOPMENT CORPORATION
A Chapter 505 economic development corporation

By: _____
Name: Steve Reitz, Board President MFEDC
Date: _____

ATTEST:

By: _____
Christina McDonald, MFEDC Secretary

APPROVED AS TO FORM:

By: _____
Monte E. Akers, MFEDC Attorney

Exhibit A

