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I hereby certify that this instrument was filed for record in my office on the date and time stamped hereon and was recorded on the volume and page of the named records of Hays County, Texas

A handwritten signature in cursive script that reads "Liz Q. Gonzalez".

Liz Q. Gonzalez, County Clerk

**ANNEXATION AND DEVELOPMENT AGREEMENT
FOR
NANCE-BRADSHAW RANCH**

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STATE OF TEXAS §

COUNTY OF HAYS §

ANNEXATION AND DEVELOPMENT AGREEMENT

FOR

NANCE-BRADSHAW RANCH

This Annexation and Development Agreement for the Nance-Bradshaw Ranch is made by and among the **CITY OF KYLE, TEXAS**, a home rule city and municipal corporation (the "**City**") and Robert Scott Nance, Jason Bradshaw and Joel Bradshaw (collectively, the "**Owners**") The term "Parties" or "Party" means the City and the Owners collectively or singularly.

RECITALS

WHEREAS, the Owners jointly own approximately 2,973.583 acres of land as described in the attached Exhibit "A" ("**Nance-Bradshaw Property**");

WHEREAS, the Nance-Bradshaw Ranch has been owned by the Nance family since the 1840s;

WHEREAS, Robert Scott Nance, individually, owns approximately 295.02 acres, as described in the attached Exhibit "A-1" ("**Nance Property**");

WHEREAS, the Nance-Bradshaw Ranch and the Nance Property are collectively referred to herein as either the "**Nance-Bradshaw Ranch**" or the "**Property**";

WHEREAS, the City is located in a rapidly growing metropolitan area for which new construction and land development can positively or negatively impact the future character and finances of the City;

WHEREAS, the Property is located in the extra-territorial jurisdiction ("**ETJ**") of the City and come under development pressures;

WHEREAS, the Owners, as stewards of the Property, seek to protect and enhance the beauty, heritage and economic value of the Property;

WHEREAS, the Owners on or about February 25, 2016 submitted to the City a request for voluntary annexation with respect to the Property, which request was conditioned on the execution of this Agreement and a copy of which is attached hereto as Exhibit "G"; and

WHEREAS, the City Council has found that the development of the Property in compliance with this Agreement will serve a public purpose and benefit the economy of the City and the best interests and welfare of the public.

NOW, THEREFORE, for and in consideration of the above stated recitals, which are made a part of this Agreement, the benefits described below, plus the mutual promises expressed herein, the sufficiency of which is hereby acknowledged by the Parties, the Parties hereby contract, covenant and agree as follows:

1. PURPOSES, AUTHORITY, AND CONSIDERATION

1.01 **Municipal Planning**. The City is located in a rapidly growing metropolitan area for which new construction and land development can positively or negatively impact the future character and finances of the City. The City finds development agreements to promote master-planned communities are an appropriate way of establishing land use controls, planning for and constructing appropriate and necessary utility and roadway infrastructure, encouraging orderly economic growth, protecting the environment, and promoting the welfare of present and future citizens of the area. The Parties agree that the extension of centralized utilities to new developments provides superior environmental protections than those available from individual water wells and septic systems.

1.02 **Authority**. Authority for the Owners and the City to enter into this Agreement exists under the City Charter of the City, Article III, Section 52-a of the Texas Constitution; *Chapt. 212, Subchapt. E, Tex. Loc. Gov't. Code, ("Subchapter E")*, *Chapt. 212, Subchapt. G, Tex. Local Gov't Code, ("Subchapter G")*; *Chapt. 43, Subchapter A, Tex. Local Gov't Code, ("Chapter 43")*, *Chapt. 245, Tex. Local Gov't Code, ("Chapter 245")*, *Chapter 380, Tex. Local Gov't Code ("Chapter 380")*, *Chapter 395, Tex. Local Gov't Code ("Chapter 395")*, *Chapter 311, Tex. Tax Code ("Chapter 311")*, and such other statutes as may be applicable.

1.03 **Benefits**.

(a) The City desires to enter into this Agreement to enhance the City's ability to plan for, coordinate and control development over the Property and adjacent Properties that are simultaneously being annexed by the City. The City acknowledges that such enhanced planning ability will stimulate economic growth in the future, provide for more efficient and cost effective extension of public infrastructure and serve a valuable public purpose for the citizens of the City. The City desires to enter into this Agreement to enhance its tax base by the timely performance of the City's obligations hereunder, and to address certain contingencies if the City Council approves one or more Public Improvement Districts.

(b) The Owners, their grantees, successors and assigns, will benefit from the development certainty provided by this Agreement, the commitments of the City with respect to the planning, funding and provision of public infrastructure, and the certainty that municipal services, including adequate utility improvements and connections to the City utility system, will be sufficient to serve the Project when requested by Owners.

(c) This Agreement provides: (i) for the uniform review and approval of plats and development permits for the Project; (ii) alternative standards under certain City ordinances for the benefit of the Project; (iii) the City's commitment to provide water and wastewater service to the Project; (iv) preliminary terms for the financing and construction of public

improvements necessary for the development of the Project; and (v) judicially enforceable obligations of the City with respect to the City's provision of water and wastewater service to the Property in accordance with the terms of this Agreement. The City's execution of this Agreement constitutes a valid and binding obligation of the City under State Law. Owners' execution of this Agreement constitutes a valid and binding obligation of the Owners.

1.04 **Control of Development.** Owners may develop the Property in a time and in a manner as determined in the sole discretion of the Owners. It shall also be at the sole discretion of the Owners to determine that the Project adequately enhances and accommodates the Owners' conservation of the property and its environmental amenities.

1.05 **Consideration.** The benefits to the Parties set forth in the Recitals and herein, plus the mutual promises expressed herein, are good and valuable consideration for this Agreement, the sufficiency of which is hereby acknowledged by the Parties.

1.06 **Term.** The term of this Agreement will commence on the Effective Date and continue for twenty (20) years thereafter, unless sooner terminated under this Agreement as provided herein, (the "**Initial Term**"). Prior to the end of the Initial Terms, the Owners, any of their respective successors and assigns, may extend this Agreement for a period of fifteen (15) years (the "**First Extension**") if the Owners are not in material breach of this Agreement. Prior to the end of the First Extension, the Owners, any of their respective successors and assigns, may extend this Agreement for a period of ten (10) years (the "**Second Extension**") if the Owners are not in material breach of this Agreement and development within Phase 2 has begun. Extension of this Agreement requires the delivery of a written notice to the City prior to the expiration of the then-current term or extension ("**Notice of Extension**"). Notice of Extension applies only to land owned by the Owners sending said notice.

2. DEFINITIONS

The following words, terms and phrases, when used in this Agreement shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Words defined in other sections of this Agreement shall have the meaning given in that definition wherever and whenever used in this Agreement, unless specifically provided otherwise. Words used in the present tense include the future tense. Words used in the plural number include the singular, and words in the singular include the plural. The word "shall" is always mandatory. The word "herein" means in this Agreement. The word "regulations" means the provisions of any applicable ordinance, rule, regulation or policy. The word "person" means any human being or legal entity and includes a corporation, a partnership, and an incorporated or unincorporated association. The words "used" or "occupied" as applied to any land or building shall be construed to include the words intended, arranged, or designed to be used or occupied.

2.01 **Agreement.** This Annexation and Development Agreement for the Nance-Bradshaw Ranch between the City and Owners.

2.02 **Applicable Rules.** The City Code, City ordinances, rules, and regulations in effect and made applicable to the Project as of May 3, 2016, and as specifically modified in their application to the Project by this Agreement, including the Ranch Development Plan and the Ranch Development Plan Map.

2.03 **Authorized Uses.** Land uses and limitations set forth in this Agreement and the exhibits attached hereto that control the development of the Property.

2.04 **City.** The City of Kyle, Texas, a Texas home rule city with a Council/City Manager form of government.

2.05 **City Manager.** The city manager of Kyle, Texas.

2.06 **City Council.** The city council of Kyle, Texas.

2.07 **City Engineer.** The engineer for Kyle, Texas or an entity assigned to perform the duties thereof with respect to the Project.

2.08 **City Improvements.** The additional water and wastewater utility infrastructure, including, water and wastewater treatment capacity and utility improvements, if any, that the City is obligated to construct for the City to provide 9,000 LUEs of water and wastewater service to the Property, in accordance with the terms of this Agreement.

2.09 **City Rules.** The entirety of the City's ordinances, rules and duly adopted regulations, as amended from time to time.

2.10 **City Utility Service Plan.** See Section 8.05.

2.11 **Co-Owned Property.** An approximately 292 acre parcel of real property jointly owned as tenants in common by BRI and Nance, which is more particularly described in the attached Exhibit "A-5". The Co-Owned Property is subject to the Development Agreement between the City of Kyle, Texas and Blanco River Investments, Ltd. ("**BRI**") dated May 3, 2016 ("**BRI Development Agreement**").

2.12 **Development Application.** An application for any type of permit, authorization or approval required or necessary for the development of the Property or any part thereof, including, applications for preliminary plats, final plats, replats, site development plans and building permits.

2.13 **Effective Date.** The effective date of this Agreement is May 3, 2016.

2.14 **Encumbered Account.** A separate non-interest-bearing account established by the City for the deposit of the Sales Tax Rebate Amount and the Property Tax Rebate Amount.

2.15 **Lot.** A parcel of land described by a subdivision plat recorded in the Official Public Records of Hays County, Texas.

2.16 **Outparcel.** The 13.86 acre parcel of land conveyed by Robert Nance and wife Ruth P. Nance to Janet Ruth Nance Bradshaw by Gift Deed dated September 10, 1980 recorded in Volume 373 at Page 196 of the Hays County Deed Records. The Outparcel was not included in the Annexation Petitions attached hereto as **Exhibit "G"** and is not subject to the terms of this Agreement.

2.17 **Phase 1.** The portion of the Property located east and north of the Blanco River comprised of approximately 282.413 acres, including a 13.87 acre parcel owned by Nance, as described or depicted in the attached **Exhibit "A-2"**.

2.18 **Phase 2.** The portion of the Property located mostly west and south of the Blanco River containing approximately 2,986.04 acres comprised of an approximately 2,602.84 acre parcel and an approximately 102.2 acre parcel owned by Owners and a 281.00 acre parcel owned by Nance, as described in the attached **Exhibit "A-3"**. The portion of the 102.2 acre parcel lies north and east of the Blanco River will be part of Phase 1 upon the completion of future surveys and subdivision plats that describe this portion of the 102.2 acre parcel.

2.19 **Planning and Zoning Commission.** The duly appointed Planning and Zoning Commission of the City.

2.20 **Project Approvals.** All approvals, variances, and waivers by the City that are necessary or required for the development of the Project, including, preliminary plats, final plats, site plans, development permits, building permits, this Agreement and other future regulatory approvals issued by the City.

2.21 **Property.** Approximately 3,268.6 acres of land, more or less, in Hays County, Texas, described on the attached **Exhibit "A" and "A-1"**.

2.22 **Public Improvement District or PID.** Public Improvement District(s) that the City may approve, as authorized by Chapter 372, Texas Local Government Code.

2.23 **Ranch Development Plan.** The development standards, Authorized Uses, regulations, limitations set forth in the attached **Exhibit "B"**, including the Ranch Development Plan Map, which together constitute a plan for development under *Subchapter G*.

2.24 **Ranch Development Plan Map.** The map attached to and part of the Ranch Development Plan that depicts a conceptual layout of the Project of the Property.

2.25 **Reimbursable Costs.** See Section 9.10. The definition of "reimbursable cost" in Section 9.10 applies to all City Improvements subject to Article 9 and the costs of public improvements subject to reimbursement under Article 12.

2.26. **Sales Tax**. The City one cent sales tax that is remitted to the State of Texas by Owners and other occupants of the Property, for sales of taxable items on the Property, and that is actually paid to the City by the State of Texas.

2.27. **State Law**. The laws of the State of Texas duly adopted, including but not limited to the City Charter of the City, *Chapter 245, Texas Local Government Code, Chapter 43, Texas Local Government Code, Chapt. 212, Subchapt. E, Tex. Loc. Gov't. Code Chapter 212, Subchapter G, Texas Local Government Code, Chapter 395, Local Government Code, Chapter 380, Texas Local Government Code, and Chapter 311, Texas Tax Code*. In the event of a conflict between *Subchapter G* and *Chapter 245*, Subchapter G shall control.

2.28. **Subdivision Infrastructure**. All streets, roads, sidewalks, drainage, water and wastewater lines and facilities and all other infrastructure within the Property to be constructed and dedicated and conveyed to the City.

2.29. **Tax Increment Reinvestment Zone or TIRZ**. A Tax Increment Reinvestment Zone that the City may create pursuant to Chapter 311 of the Texas Tax Code.

2.30. **TCEQ**. Texas Commission on Environmental Quality, or its successor agencies.

2.31. **Utility Services**. Sufficient water and wastewater services delivered to the Property to allow water meters and service connections for buildings located within the Property.

2.32. **Vest, Vested, or Vested Rights**. Means the legal entitlements pursuant to State Law to develop the Project subject to the terms of this Agreement and the Applicable Rules. Such entitlements shall, under no circumstances, extend to a purchaser or owner of a subdivided lot after the City has issued a certificate of occupancy to occupy a building on the subdivided lot.

2.33. **Vesting Date**. The Vesting Date for all purposes shall be May 3, 2016.

3. THE PROJECT, PLATTING, AUTHORIZED USES, AND ZONING

3.01 Project

(a) The Project established by the Agreement includes a master-planned, development that may include single family lots, condominium sites, multi-family sites, commercial and office sites, mixed use sites, amenity area(s) with recreational facilities, public parks, open space and space for civic uses. The Project, includes, the subdivision of the Property, the construction of off-site road and utility facilities and Subdivision Infrastructure (defined below) to be dedicated and conveyed to the City, the construction of a bridge or bridges across the Blanco River, and other infrastructure adequate for the development of the Project, and the construction of homes, businesses, public facilities and other structures consistent with this Agreement and the Applicable Rules ("**Project**").

(b) The Project may include multiple phases for platting and construction purposes. Owners intend to develop the Property under the name Nance-Bradshaw Ranch (“**Ranch**”) and when used in this Agreement, the term “Ranch” shall mean and include the Project.

(c) The Parties further stipulate that so long as Owners do not increase the allowable total level of development, as measured by water and wastewater service connections, Owners may amend approved preliminary plans and approved final plats to alter the layout of lots and on-site infrastructure to serve the Project in compliance with this Agreement and the Applicable Rules without waiving or revoking any of the provisions of this Agreement or the legal status of “project” or any Vested Rights. Notwithstanding the foregoing or any other provision herein, the Vested Rights under this Agreement shall terminate on a lot by lot basis for detached single family houses upon the issuance of a certificate of occupation for a building on such subdivided lot and shall terminate for development requiring a site plan upon the issuance of a certificate of occupancy for the last building shown on the site plan. Approved preliminary plats shall expire on the latter of the expiration of this Agreement or the date established by the Applicable Rules.

3.02 **Ranch Development Plan.** The Ranch Development Plan Map attached to this Agreement as Exhibit “C” is a conceptual pictorial depiction of the project; provided, however, that said depictions do not define the project for purposes of vesting. The Ranch Development Plan and the Ranch Development Plan Map attached incorporated herein for all purposes is a “development plan” under state law, including *Subchapter G*. This stipulated protection for the project, initially approved with the Agreement, is in addition to any subsequently acquired legal entitlements to vest under state law. The parties further stipulate that the project, as defined herein, constitutes a “project” under state law. The total allowable level of development of the property shall be limited by the number of living unit equivalents as measured for water and wastewater service connections. Development within the property shall not exceed nine thousand (9,000) living unit equivalents (“**LUEs**”)’s, but shall not be restricted by the City to less than 9,000LUE’s.

3.03 **Authorized Uses.** The allowable uses of the Property are set forth in the attached Exhibit “B”. The Parties agree that Owners may use and develop the Property in accordance with this Agreement and Owners shall be entitled to use and develop the Property before and after the annexation of the Property by the City, pursuant to Section 212.172(b)(8), *Tex. Local Gov’t Code*. The Authorized Uses shall be and remain in effect during the term of this Agreement whether or not the Property has been annexed. If during the term of this Agreement, any portion of the Property is not permanently zoned by the City Council in compliance with this Agreement, or pursuant to a zoning request made by the Owners, the Authorized Uses set forth in Exhibit “B” shall be and remain in effect during the term of this Agreement and the Property may be developed in accordance with the Authorized Uses. For any portions of the Property for which a Final Plat has been approved prior to the expiration of this Agreement, after the expiration of this Agreement the Authorized Uses set forth in the attached Exhibit “B” shall remain in effect as if zoned for the Authorized Uses therefore by the City Council.

3.04 **Zoning.** Upon annexation of the Property, the City intends to adopt a zoning district of “agriculture” for the Property. At any time during the term of this Agreement, the Owner may initiate the process to zone the Property or any portion of the Property consistent with the terms of this Agreement. The City agrees that all zoning applications will go through the zoning process and will be considered and shall be subject to the discretion of the City Council. Further, the City Council will, in good faith, consider all zoning applications to determine whether such applications comply with this Agreement. In the event of any conflict between this Agreement and any zoning ordinance adopted by the City Council relating to the Property, this Agreement will prevail except as expressly provided herein or agreed in writing by the Owners of the Property, or portion thereof as applicable. The City agrees that all zoning requests shall not unreasonably delay consideration of the applications once submitted.

3.05 **Concept Plan.** Notwithstanding any provision of the City’s Plat and Subdivision Regulations, the Concept Plan for the Property shall be limited to the following elements: (a) the boundaries of approved preliminary plats; (b) within areas with an approved preliminary plats, the Concept Plan will show roads, lot lines, drainage ways, Area boundaries, and water and wastewater lines to be dedicated to the City; (c) the boundaries of a proposed preliminary plat; (d) the approximate location of water and wastewater infrastructure and lines outside of the proposed preliminary plat application area required to serve the development within the preliminary plat application area; (e) the approximate location of the street(s) that will connect the land within each preliminary plat application to collectors and arterials that provide or will provide access to the land within a pending preliminary plat application; (f) the approximate location of the street(s) that connect(s) one preliminary plat area to another preliminary plat area, if any, and (g) for phases or sections of the Project for which a final plat has been approved, the final location of all phase or section boundaries, the boundaries for and between non-residential, multi-family, parks, single family developments, lot lines, and the location of all roads and streets, drainage ways, water and wastewater lines within the phase or section. Land outside of area subject to an approved preliminary plat and proposed preliminary plat application may be identified on the Concept Plan as “future development” or “future phases”.

3.06 **Preliminary Plans and Subdivision Plats.** Preliminary Plan applications may be submitted to and approved by the City for one or more portions of the Property. Preliminary plans shall be generally consistent with the approved Concept Plan.

3.07 **Fiscal Required.** With respect to the recording of plat prior to the construction of the Subdivision Infrastructure for said plat, cash or a letter of credit in lieu of cash (such letter of credit to be in a standard form reasonably acceptable to the City shall be deposited with the City in an amount determined under the Applicable Rules. The security required by the Applicable Rules to be posted by Owners prior to recording a final plat for a parcel of land prior to construction and acceptance of the required infrastructure shall be decreased by the dollar amount of TIRZ and PID funds, if any, held in trust pursuant to the terms and conditions of the trust agreement, financing agreement and related PID or TIRZ financing documents for the development and construction of said Subdivision Infrastructure required for the land included in the final plat. If cash is posted for the fiscal, the City will

keep the funds in a separate trust account identified as fiscal for the specified Subdivision Infrastructure.

3.08 **Historic Uses of Property Prior to Annexation.**

(a) Notwithstanding any provision of the City Rules, Owners may continue to use the Property and any structures, wells, improvements or other appurtenances to the land, in the manner in which the Property and such structures, wells, improvements or other appurtenances have historically been used on or before the date the City annexes the Property, including uses related to agricultural and wildlife management, hunting, fishing, timber harvesting, tree and brush removal, fire burning and existing residential structures (“**Historic Uses**”). Owners may continue all such Historic Uses of the Property without obtaining a permit or approval from the City.

(b) The City will not enforce any provisions of the City Code, regulations or other ordinances that interfere with the Historic Uses of the Property for hunting, fishing, fire burning, timber harvesting, tree removal, or any agriculture and wildlife management purposes. However, hunting using and discharging rifles or any other firearms and fire burning will not be allowed within 500 feet of adjacent residential dwellings. All other Historic Uses of the Property shall be grandfathered for the Term of this Agreement until such grandfathering expires under the terms of this Section 3.08. The City agrees to treat the Historic Uses as if the Property had continued to be in the City’s ETJ for so long as this Section 3.08 continues in effect with respect to the Property.

(c) The Owners may construct, repair, or renovate buildings or other structures on the Property that are consistent with its agricultural use, including barns, storage facilities and without obtaining a building permit. Further, the Owners may construct an accessory structure to an existing single-family dwelling or existing buildings used for agricultural use. The construction and repair of roadways for agricultural use access to residential structures do not constitute development under the Applicable Rules and such activities do not require any approval or permit from the City. This Section 3.08 expires as to a portion of the Property upon the approval of a subdivision application by the City for the land located within said Final Plat and the commencement of development activities pursuant to the recorded Final Plat.

3.09 **Property Descriptions.** The Parties acknowledge and agree that some of the descriptions describing portions of the Property are based on surveys conducted decades ago. New surveys prepared for development applications will provide more accurate descriptions. The definition of the Property will adjust as the new surveys are incorporated into future subdivision plats and other City approvals. The Property does not include the Outparcel.

3.10 **Other Fees and Future Adjustment to Fees.** Except for fees or expenses otherwise specifically provided for in this Agreement, all fees required by the Code will be paid in accordance with the Code. Any fees specified by this Agreement or the Code shall remain fixed at the same level as in effect on the Effective Date for a period of five (5) years from the Effective Date. Thereafter, the level fees shall be adjusted on the fifth anniversary of

the Effective Date to be the same level as in effect city-wide on the fifth anniversary of the Effective Date and shall be adjusted each subsequent 5th anniversary of the Effective Date to be the same level as in effect city-wide on such subsequent 5th anniversary of the Effective Date.

4. REGULATORY CERTAINTY

4.01 **Statutory Protections.** The terms, conditions and provisions of this Agreement shall be interpreted and construed in accordance with the rules of statutory construction and applied consistent with municipal law, including but not limited to the law of contracts. The rights of Owners regarding land development and land usage, as set forth in this Agreement, are subject to the provisions of Chapter 212, *Subchapter G*, which rights are independent of the statutory protections of *Chapter 245*, and *Chapter 43*. The Project, as defined herein, constitutes a “project” for purposes of *Chapter 245 and Chapter 43*. The City acknowledges and agrees that this Agreement, including the Ranch Development Plan and the Ranch Development Plan Map constitute the initial permit for the Project and provide the City fair notice of the Project for purposes of *Chapter 245*. This Agreement shall not terminate or be modified in the event that one or all of the state statutes referenced in this Section 4.01 shall be repealed or modified. Notwithstanding any other provision of this Agreement or the Applicable Rules, the City hereby waives the applicability of Section 245.005, Texas Local Government Code to the Project.

4.02 **Applicable Rules.** During the Term of this Agreement the Applicable Rules will apply to and govern the requirements for the development of the Property, including, land use, concept plans, preliminary plat, subdividing and recording final plats; site development plans; replats; utilities; and building permits. Except as otherwise provided in this Agreement, no City Rule adopted after the Effective Date of this Agreement that amend, add to, or alter the Applicable Rules, whether by means of an ordinance, resolution, policy, order, interpretation, or otherwise, will modify or amend the rights of the Owners to develop the Property as provided in this Agreement, unless (a) mandated by State Law; (b) Owners elect by a specific written notice to the City to have all or some of the Project become subject to a subsequently adopted change to an Applicable Rule; or (c) the application of the amended, added or altered Applicable Rules is agreed to, in writing, by all the Owners and the City. The City’s review and approval of permit applications by Owners with respect to plats, utilities, and other Project Approvals, that are compliant with this Agreement, will not be unreasonably conditioned, withheld or delayed by the City. If there is any conflict between the Applicable Rules and the specific terms of this Agreement, the specific terms of this Agreement will control as State Law allows. If there is a conflict between the terms of this Agreement and any of the exhibits attached hereto, the terms of this Agreement shall control. In the event of any conflict between this Agreement and any City Rule, regulation, standard, policy, order, guideline or other City adopted or City enforced requirement adopted after the Effective Date of this Agreement, this Agreement shall control. In the event of any conflict between any final plat or preliminary plat and any other City requirement, the approved preliminary plat and approved plat shall control. Owners reserve the right to make application for and, as appropriate, obtain approval to re-plat any portion of the Property without loss of Vested Rights, provided neither State Law nor this Agreement otherwise

limits the right to re-plat. So long as this Agreement remains in effect, re-platting complying with this Section shall be deemed controlled by the Applicable Rules as if the same were an original platting under the terms of this Agreement.

4.03 **Approvals and Appeals.** The City agrees that it will timely comply with all statutory and internal City time frames for reviewing development applications. The City will approve applications for preliminary plans, final plats and site development plans if such applications comply with the Applicable Rules and this Agreement. If a Development Application that complies with the Applicable Rules and this Agreement is not approved, the City will meet and confer with Owners and, as reasonably necessary, provide written comments to Owners specifying in detail all of the changes that will be required for the approval of the submittal. The City further agrees that if, at any time, Owners believes that an impasse has been reached with the City staff on any issue affecting the Project or if Owners wish to appeal any decision of the City staff regarding the Project, then Owners may appeal in writing to the City Council requesting a resolution of the impasse at the next scheduled City Council meeting, subject to compliance with all timetables required by the Open Meeting Act. To the fullest extent not inconsistent with State law, such disputes and appeals will be resolved by the City Council and the Owners by an approved amendment to this Agreement or other written document.

4.04 **Expiration of Applications and Approvals.** Applications for preliminary plats, final plats, subdivision construction plans and site development plans do not expire; provided, however, if an application has been inactive for more than two years, then the City may require the payment of new review fees. Preliminary plats, final plats, subdivision construction plans and site development plans approved pursuant to this Agreement, and any subsequent approved modifications or amendments to such approvals and permits will be effective for five years or the end of Initial Term of this Agreement, whichever is later in time. Any permit or approval granted by the City pursuant to, or in accordance with this Agreement during the First Extension will be effective for five years or until the end of First Extension of this Agreement, whichever is later in time. Any permit or approval granted by the City pursuant to, or in accordance with this Agreement during the Second Extension will be effective for five years or until the end of Second Extension of this Agreement, whichever is later in time. Recorded final plats shall not expire unless vacated.

4.05 **Extension of Permits and Approvals.** Any permit or approval granted by the City pursuant to, or in accordance with this Agreement shall be extended for any period during which performance by Owners are prevented or delayed, through no fault of Owners, by the City, an action of a court or state or federal agency, or Owners are delayed due to failure to receive a governmental permit despite timely application and demonstrable diligent and complete efforts to obtain said permit.

4.06 **Project Approvals and Entitlements.** The Project Approvals and Applicable Rules have been approved by the City Council, and are granted by the City with respect to the development and use of the Property. This Agreement shall serve as guidance for the review and approval of additional approvals, variances or other municipal authorizations hereafter required or requested by Owners. Upon the expiration or termination of this Agreement, this

Agreement will be of no further force and effect; except that such expiration or termination will not affect any right or obligation arising (i) under State Law; (ii) from Project Approvals granted during the Term of this Agreement; and (iii) for completion of infrastructure for approved final platted section(s).

4.07 **Effect of Recorded Plat.** If a Final Plat is approved pursuant to the Applicable Rules and is recorded, the Applicable Rules associated with said Final Plat shall run with the Plat and be and remain in full force and effect until the thereof, or the Owners of a Lot therein, otherwise makes application for and obtains approval of a change of the use or occupancy to a use or occupancy not permitted by the permanent zoning of the Lot or the land within the Plat, or the Plat or a portion thereof is vacated or replatted without a vacation; provided any changes to the or any Lot within the Plat shall comply with the City Rules.

4.08 **Reservation of Rights.** This Agreement constitutes a “permit” within the meaning of Chapter 245, *Tex. Local Gov’t Code*. Except as provided in this section, Owners do not, by entering into this Agreement, waive (and Owners expressly reserves) any right that Owners may now or hereafter have with respect to any claim that Owners may now or hereafter have with respect to any claim: (A) of “vested” or “protected” development or other property rights arising from Chapter 43 or 245, *Tex. Local Gov’t code*, as amended, or otherwise arising from common law or other state or federal laws; or (B) that an action by the City constitutes a “taking” or inverse condemnation of all or any portion of the Property. The City further reserves all rights it may have under the applicable law, and with respect to the foregoing, the interpretation and application of *Subchapter G, Chapter 245, Chapter 43*, and state, federal and common law.

4.09 **Right to Continue Development.** The City agrees that, during the term of this Agreement, it will not impose or attempt to impose: (a) any moratorium on building or development within the Property, including utilities, or (b) any land use or development regulation that limits the rate or timing of land use approvals, whether affecting preliminary plats, final plats, site plans, building permits, certificates of occupancy or other necessary approvals, except as applicable to the entirety of the City, or as reasonably necessary for the area of the City within which the Property is located. No City-imposed moratorium, growth restriction, or other limitation affecting the rate, timing or sequencing of development or construction of all or any part of the Property will apply to the Property if such moratorium, restriction or other limitation conflicts with this Agreement or would have the effect of increasing Owners’ obligations or decreasing Owners’ rights and benefits under this Agreement; provided that this Section 4.09 will not apply to temporary moratoriums uniformly imposed throughout the City or within the area of the City in which the Property is located due to insufficient water or wastewater facilities, or an emergency constituting a threat to the public health or safety, and that continues only during the duration of the emergency or the period when insufficient water or wastewater capacity. However, nothing in this Agreement is intended or should be construed as Owners waiving any of its rights under, *Subchapter E*, or the City waiving any rights or authority that it may have under the Applicable Rules, or under State or Federal law then in effect.

5. OBLIGATIONS OF THE CITY

5.01 **City Approvals and Authorizations.** To implement the timely approval of the development of the Property, subject to the terms, conditions and provisions of this Agreement, the City:

- (a) will, within one hundred eighty (180) days of the Effective Date of this Agreement, amend the City's Comprehensive Plan to incorporate the terms of this Agreement;
- (b) will, within one (1) year of the Effective Date of this Agreement, amend the City's utility plan, as described in Chapter 395, to identify the water and wastewater facilities necessary to comply with the requirements of Section 8.05.
- (c) will, within eighteen (18) months of the Effective Date of this Agreement, amend the City's road/transportation plan to include the roads necessary to provide sufficient access to the Property to reasonably accommodate traffic when the Project is completely built out.
- (d) hereby approves and establishes the alternative development standards for the Project that are listed in Exhibit "B";
- (e) hereby approves the Authorized Uses pursuant to *Subchapter G* agrees that Owners are entitled to use and develop the Property in substantial compliance with the Authorized Uses set forth in Exhibit "B" after the annexation of the Property; and
- (f) any specific timelines required by this subsection, may be extended by mutual agreement of the Parties.

5.02 **Timely Action by City.** To facilitate the timely development of the Project, the City will:

- (a) timely act upon any petition by the Owners to create one or more Tax Increment Reinvestment Zones on the Property pursuant to Chapter 311 of the Texas Tax Code;
- (b) timely act upon any petition to create one or more Public Improvement Districts on the Property pursuant to Chapter 372 of the Texas Local Government Code;
- (c) timely act upon any Owners' request to identify public improvements to be funded in whole or in part with TIRZ funds or bond proceeds; or PID funds or PID bond proceeds;

- (d) accept, timely review and approve applications, in accordance with State law, for preliminary plats, final plats and site development permits for land within the Property if such application complies with this Agreement and the Applicable Rules;
- (e) cause the City Engineer, or a consulting engineer, to provide a timely review and comments on the design, plans and specifications submitted for Subdivision Infrastructure;
- (f) provide timely inspections of the work and construction performed by or on behalf of Owners on all Subdivision Infrastructure and other public improvements;
- (g) provide timely inspections of the work and construction performed on all permitted buildings and structures in the Project;
- (h) subject to Article 14, after completion and final approval of the construction of water and wastewater lines, drainage facilities, public parks and public park facilities, public streets and other Subdivision Infrastructure to City standards that are required to be dedicated to the City, finally accept such improvements and Subdivision Infrastructure for ownership, operation and maintenance by the City;
- (i) timely provide water and wastewater service to Lots within the Project, and will connect each residential unit, or building for another Authorized Use, to the City's water and wastewater system upon payment OF the applicable fees and a certificate of occupancy being issued for the residential unit or building, and provide water and wastewater service for the residential unit or building on the same terms and conditions as provided to all other areas of the City;
- (j) timely process and act upon the issuance of building permits for buildings to be constructed within a portion of the Property for which the City has approved a final plat. This authorization does not waive otherwise applicable requirements that the completed subdivision phase infrastructure be accepted by City prior to issuance of a certificate of occupancy;
- (k) Timely perform the duties and obligations of the City provided in Section 5.01 above.

6. ANNEXATION

6.01 **Request for Annexation.** The City acknowledges that Owners are, in requesting voluntary annexation, acting in reliance upon the City's representation that the City has the legal authority under State law to: a) enter into this Agreement; b) to be bound by the terms of this Agreement; and c) perform the City's obligations under this Agreement. Owners and the City agree that the parties have negotiated a municipal service plan, Exhibit "D". The City intends to annex the Property within ninety (90) days after the date of the first reading on

the ordinance annexing the Property. The proposed ordinance for annexing the Property is attached as Exhibit "E". The City agrees that this Agreement will remain in full force and effect following annexation of the Property.

7. REGIONAL AND SUBDIVISION INFRASTRUCTURE

7.01 **Rerouting of FM 150.** Owners agree to negotiate in good faith with Hays County and the City regarding the rerouting of FM 150 through the Property and the sale or transfer of the right of way for FM 150 so long as (a) the rerouted FM 150 is no larger than four lanes (plus turning lanes at intersections and driveways) with a design speed not to exceed forty five miles per hour (45 mph); (b) the right of way for FM 150 is at least 450 feet from the Outparcel; and (c) FM 150 right of way remains within the Corridor C for FM 150 prepared by K. Friese & Associates for Hays County, as depicted on the attached Exhibit "H." The City will support the configuration and location of FM 150 as described in this Section 7.01 or as subsequently proposed by Owners in any negotiations with Hays County, the City and the Texas Department of Transportation.

7.02 **Realignment and Extension of Cypress.**

- (a) The alignment of Cypress Road east of the Blanco River on the Property will remain in its current configuration unless the Owners approve the realignment. The alignment of Cypress Road west of the Blanco River, as shown on the attached Ranch Development Plan, is conceptual and may change during the platting process.
- (b) The City acknowledges and agrees that the extension of Cypress Road across the Blanco River including the Nance Bridge, as shown on the Ranch Development Plan Map, will significantly enhance regional mobility and will provide an evacuation route during natural disasters for present and future residents living west and south of the Blanco River. Cypress Road west of its intersection with FM 150 will be designed and constructed as a Major Thoroughfare as defined by Exhibit "B." The term "Cypress Road" does not include the Nance Bridge.
- (c) Owners will donate up to 120 feet of right of way width for Cypress Road west of its intersection with FM 150 and for the Nance Bridge. Owners will fund the preparation of construction plans for Cypress Road as a Major Thoroughfare, excluding plans for Nance Bridge. Owners will be responsible for funding the construction costs of Cypress Road as collector, as defined in Exhibit "B". If the Owners fund the construction of Cypress Road as a road larger than a collector, then the difference in costs between constructing Cypress Road as a collector and the costs of the larger road will be reimbursed by Tax Rebate Payments.
- (d) The City further acknowledges and agrees that the cost of designing, engineering and constructing the Nance Bridge across the Blanco River should not be borne solely by the Owners and the adjoining BRI Land. The City and Owners agree to negotiate in good faith to create a Tax Increment Reinvest Zone for the Property or similar financing structure to help fund the design, engineering and construction of the Nance Bridge and

Cypress Road west of FM 150. The Parties also agree to work cooperatively to locate and secure local, county, state and federal funding for the Nance Bridge.

7.03 **Subdivision Infrastructure.** All streets, roads, sidewalks, drainage, water and wastewater lines and facilities and all other infrastructure within the Property will be constructed by Owners to meet City Rule standards and will be dedicated and conveyed to the City. The City may not impose any traffic, roadway or subdivision infrastructure related requirements, fees or obligations other than those set forth in this Agreement or the Applicable Rules. In conjunction with the conveyance of Subdivision Infrastructure to the City the Owner will execute easements allowing the City to own and maintain the Subdivision Infrastructure in accordance with the City's customary easement forms reasonably promulgated by the City in accordance with City Rules.

7.04 **TIRZ, PID and Similar Funding.** With respect to any public improvement or Subdivision Infrastructure to be funded in whole or in part by proceeds from the sale of PID Bonds, TIRZ Bonds or similar public financing mechanism ("**Bond Improvements**"), subject to applicable state bidding requirements and the terms, conditions and provisions of financing agreement and related documents approved and executed with respect to such public financing, Owners shall procure bids or best value options in accordance with State law for the construction of the Bond Improvement. If requested by the City, Owner shall provide copies of the bids to the City. The Bond Improvements shall be bid based on the construction plans and specifications approved by the City or its designee, and contracts for construction shall be let based on bids approved by the City which approval shall not be unreasonably denied, delayed or conditioned. If the City Manager refuses to approve a bid, change order, form of the contract or any other aspect affecting the award of a construction contract for a Bond Improvement, the Owners may appeal such determination to the City Council. Such appeal shall be heard by the City Council no later than twenty (20) days after an appeal is submitted to the City. Unless required by federal or state statute, Owners may, at their sole discretion, not include a prevailing wage provisions in a construction contract for a Bond Improvement.

7.05 **Public Improvement Costs Subject to Reimbursement.** Unless public bidding is required by Subchapter C, Chapter 212, Texas Local Government Code or other State Law, any public improvement or Subdivision Infrastructure project cost subject to a reimbursement payment pursuant to Article 12 of this Agreement will be bid in accordance with Section 7.04.

8. UTILITY FACILITIES AND UTILITY SERVICES

8.01 **Intent of the Parties Regarding Utility Services.** As of the Effective Date, the City has sufficient water and wastewater treatment capacity to allow service connections for 9,000 LUEs water and wastewater service to the Project; however, the City may not have sufficient utility treatment capacity to meet all of the City's utility service commitments for the full build out of Project and the full build out of all other proposed development projects within the corporate limits of the City. The City represents that the City has rights to sufficient raw water to meet the City's overall service obligations, including, providing 9,000 LUEs of

water service to the Property in accordance with the terms of this Agreement. The Parties acknowledge that the Project will build out over a number of years and that the City may decide to incrementally construct additional treatment capacity over time. Owners acknowledge that it is the City's responsibility to determine if the City's utility system needs to be expanded and how the City will expand the City's utility system to enable the City to meet its utility service obligations under this Agreement. Owners further acknowledge the City's desire to retain flexibility on deciding which City utility system improvements, if any, are necessary for the City to timely meet its utility service obligations under this Agreement. The City acknowledges that Owners require certainty regarding the City's plans for meeting the City's utility service obligations under this Agreement, including, if necessary, the expansion or enhancement of the City's water and wastewater utility systems for the purpose of the City meeting its Utility Service obligations, including the provision of Utility Service to the Project in accordance with the terms of this Agreement. The Parties acknowledge that the delivery of an operational Utility Improvement to the City can require two or more years of planning, engineering and construction. The Parties further acknowledge the delivery of an operational Utility Improvement requires a significant financial investment.

8.02 Communications. The Parties will communicate and consult on a regular basis (not less frequently than once a year) regarding (i) the Owners' best estimate of the Owners' schedule for filing future preliminary plat and final plat applications and requests for TIRZ or PID financing during each successive two year periods so that the City will have at least a two year planning horizon for the construction of City Improvements; and (ii) the City's Utility Service Plan.

8.03 Utility Service Obligations Defined. This Agreement provides for three types of Utility Service commitments that the City can make:

(a) General commitment to provide 9,000 LUEs of Utility Service to the Property pursuant to the terms of this Agreement;

(b) Specific service commitment to deliver a specific number of LUEs of Utility Service to the Property by a specific date so that Owners may record subdivision plats subject only to the construction of Subdivision Infrastructure for such plat; and

(c) Reservation of capacity within the City's utility system at the time a subdivision plat is recorded so that upon the City's acceptance of Subdivision Infrastructure for said subdivision plat, the City will sell utility connections for Lots within said subdivision plat area.

8.04 General Service Commitment.

(a) The City has no obligation to provide water service to any area within the Property that is currently in the Certificate of Convenience and Necessity ("CCN") for water service of another municipality or utility service provider. The City has no obligation to

provide waste water service to any area within the Property that is currently in the CCN for waste water service of another municipality or utility service provider. The City agrees to apply to the Texas Public Utility Commission to amend the boundaries of its water and wastewater CCNs to include all portions of the Property not within the CCN of another municipality or other utility service provider within one (1) year following the Effective Date. In the event Owner seeks to transfer to the City's CCN any portion of the Property that is currently within the CCN of another municipality or other utility service provider, the City agrees to cooperate with and support such transfer. Nothing in this Agreement, or the inclusion of any part of the Property into the City's CCN, shall be construed to prohibit, modify or diminish Owner's current or future water rights associated with the Property or any wells now or in the future located on the Property. The City acknowledges and agrees that the Owner may use such water for purposes associated with the Grandfathered Uses or any other use allowed under state law, including but not limited to irrigation of common areas or land owned by the POA or PID, landscaping, amenities or similar uses ancillary to the development and stewardship of the Property. Owner acknowledges and agrees that in the event the Project at full development requires less than the Maximum LUEs of water and/or wastewater capacity then the City need only provide the actual LUEs of capacity needed by the Project at full development and not the Maximum LUEs.

(b) Subject to Owners' compliance with the terms and conditions of this Article 8, the City shall timely provide the Owners and subsequent owners of land within the Project with water and wastewater service required for the development of the Project and, upon payment to the City of the City's applicable tap fees and impact fees and compliance with the city's requirements for the initiation of service or transfer of service, allow connections to the City's utility system for each LUE of service requested. Notwithstanding the foregoing sentence, the City is not obligated to provide a total of more than 9,000 LUEs of water service and 9,000 LUEs of wastewater service to the Project. This subsection constitutes the terms and conditions of the City's general commitment of Utility Service to the Property. The City makes no representation that 9,000 LUEs of water and wastewater service will be sufficient for the full development of the Project if such development is more intense or is otherwise materially different from the development described in the Ranch Development Plan.

8.05 **City Utility Service Plan.** No later than one year after the Effective Date, the City shall adopt and, thereafter maintain at all times, the City's plan to meet the City's overall utility service obligations, including the City's general commitment of Utility Service to the Project in accordance with the terms of this Agreement. ("**City Utility Service Plan**"). The City Utility Service Plan will include the following: a) status and amount of raw water availability; b) status of water treatment capacity; c) status of groundwater available to be produced based upon groundwater production permits held by City; d) status of water available for purchase by City; e) status of City's ability to use reclaimed water to supply landscape irrigation needs status of wastewater treatment capacity; or f) the status of any other City utility system improvements or enhancements approved by the City. The Parties will collaborate with each other and adjacent landowners to identify the raw water, water treatment and wastewater treatment facilities to be constructed by the City ("**City Improvements**") and the off-site water and wastewater line facilities to be constructed by Owners and adjacent landowners necessary to provide Utility Service to each Phase of the

Project and adjacent properties ("**Owner Improvements**"). The term "Owner Improvements" includes the oversizing of water and wastewater lines. The Parties acknowledge and agree that the Applicable Rules require the Owners to a) construct off-site water and wastewater lines necessary to serve the Project; and b) oversize all off-site water and wastewater lines, if requested by the City. The City will reasonably require third parties to oversize water and wastewater lines that will ultimately provide Utility Service to the Property.

8.06 **Specific Service Commitments.**

(a) The Parties shall consult, if requested by any Party, regarding the details and timing relating to a Specific Service Commitment Request. It is the Parties' intent to act in good faith to work collaboratively to agree on the terms of the City's response to a Specific Service Commitment Request. Notwithstanding the Parties entering into the consultation process described in Section 8.02, the City shall formally respond in writing to a Specific Service Commitment Request within forty five (45) days of receipt of such a request ("**City Response**"). A City Response shall include one or more of the following, as applicable: (i) the number of LUEs in the City's existing utility systems that City commits to hold and allocate for use in the Project; (ii) if the City does not commit to hold and allocate all of the LUEs requested by Owners within the City's existing utility system, then the City Response shall describe the City Improvements that the City will complete to be able to deliver the LUEs requested in the Specific Service Commitment Request by the date additional services are required as set forth in the Specific Service Commitment; and (iii) the Owner Improvements, if any, that must be constructed and operational for the City to deliver the additional Utility Service capacity to the Property; provided that, unless the City Response states that a required City Improvement may be delivered at an earlier date, no such City Improvement shall be required to be available within less than two years for the date of the Specific Service Commitment Request.

(b) The initial request for a Specific Service Commitment may not exceed four hundred (400) LUEs.

(c) Upon the recording of subdivision plats containing at least two hundred fifty (250) Lots and the City having issued building permits within the Project for buildings that would use not less than one hundred (100) LUEs of water and wastewater, then Owners may request that the City provide a second specific service commitment for additional Utility Service to the Project; provided, however, that such request shall be for no more than 400 LUEs of additional service ("**Second Specific Service Commitment Request**"). The Second Specific Service Commitment Request must provide a date by which Owners estimate the additional Utility Service will be required to be available to the Property for the development of a Phase of the Project; provided, however, that such future date will provide the City at least two years advance notice of when the development of the Project will require Utility Service connections using more than the initial 400 LUEs of Utility Service.

(d) After the Second Specific Service Request, Owners may make additional Specific Service Commitment Requests in accordance with this Section 8.06 ("**Subsequent**

Specific Service Commitment Requests”). Owners may submit a Subsequent Service Commitment Request for additional Utility Service to the Project when the total number of LUEs subject to a Specific Service Commitment falls below 200 LUEs. Upon the recording of a subdivision plat, the LUEs attributed to each Lot in the subdivision plat will no longer be considered subject to a Specific Service Commitment and will be considered Reserved Capacity. Subsequent Specific Service Commitment Requests may not request more than 400 LUEs and may not set a date required for the delivery of additional Utility Service that is less than 2 years from the date of the Subsequent Specific Service Request. For purposes of providing an example regarding how this subsection 8.06(b) operates, if Owners request 400 LUEs in the Second Specific Service Commitment Request (total number LUEs subject to a Specific Service Commitment would be 800 LUEs) and Owners record subdivision plats containing a total of 700 Lots (Reserved Capacity), the remaining number of LUEs subject to a Specific Service Commitment would be 100 LUEs.

(e) Any City Response that identifies City Improvements to be constructed will describe each City Improvement by including the type of utility improvement and proposed capacity of the City Improvement. Additionally, the City’s Response will include the City’s good faith estimate for the date of the completion and operation of the City Improvement. The description of the City Improvements shall be in reasonable detail so that, if necessary, Owners may have construction plans prepared to bid and construct the City Improvements pursuant to Article 9.

(f) The City Response shall constitute the City’s determination of how the City will operationally provide the amount of water and wastewater services described in a Specific Service Commitment Request by the date additional services is required that is set forth in the Specific Service Commitment Request and shall constitute the terms and conditions of the City’s Specific Service Commitment; provided, that absent agreement by the City, no date for which additional service is required in a Specific Service Commitment Request shall be less than two years from the date of said request. The City Response shall, upon delivery to Owners, be a binding and enforceable obligation of the City to (i) sell, upon request, utility connections for the number of LUEs that the City commits to hold and allocate in the City’s existing utility system; and (ii) to construct and complete the City Improvements, if any, by the date additional service is required as set forth in the Specific Service Commitment Request. The City’s performance of the obligations described in the preceding sentence shall be subject to Owners’ compliance with this Article 8. The City acknowledges that Owners will rely on the City’s Response in proceeding with the development of the Project. The City further acknowledges that in identifying the City Improvements the City is obligated to complete the construction of the City Improvements or purchase the City Improvements pursuant to Article 9. Therefore, the City may not modify or change any aspect of the City Response without the prior notice to the Owners; provided that such changes or modifications do not extend or delay the delivery time required for a City Improvement.

8.07 Update to City Response. Based on the schedule included in the City Response, Owners may, from time to time, request the City to provide a written status report on the City’s progress in completing the City Improvements, including, the design,

engineering, land acquisition, funding, and construction (“**Owner Inquiry**”). The City shall provide to Owners a written response to an Owner Inquiry within twenty (20) working days.

8.08 City Non-Performance of a Specific Service Commitment.

(a) If one of the following have occurred: (i) the City states in either a City Response described in Section 8.06 or an update response described in Subsection 8.07 that the City will not construct and complete the City Improvements within the time required by Section 8.06(a); (ii) the City refuses to respond to an Owner Inquiry pursuant to Section 8.07 and City has not cured such breach after Owners have sent a Notice of Breach pursuant to Article 11; or (iii) the City has failed to initiate or complete one or more of the tasks described in the City Response so that the City cannot reasonably be expected to comply with the delivery date required for the number of LUEs of Utility Service requested in a Specific Service Commitment Request and City has not cured such breach after Owners have sent a Notice of Breach pursuant to Article 11, then, in addition to the pursuing any or all Article 11 remedies, Owners may notify the City of Owners’ intention to construct the City Improvements pursuant to Article 9 (“**Owner Notice of Intent to Construct City Improvements**”).

(b) Within ninety (90) days of the City's receipt of either the Owner Notice of Intent to Construct City Improvements or the Owner Notice of Intent to Request Disannexation, as provided in Section 11.03, the City may notify the Owners that the City has (i) revised the City Response to commit the City to hold and allocate all of the LUEs requested by Owners within the City’s existing utility system, or (ii) decided to proceed with the construction of the City Improvements identified in the Owner Notice of Intent to Construct City Improvements (“**City Notice to Proceed**”). A City Notice to Proceed is not effective unless it contains the following information: (i) the estimated date by which the City will award the construction contract; (ii) the estimated number of days to be included in the construction contract for the completion of the City Improvements; and (iii) the date by which the City intends to have the City Improvements operating. Upon the delivery to Owners of the City Notice to Proceed, the City Notice to Proceed shall replace and supersede the City Response; provided, however, the City Notice to Proceed shall not alter the number of LUE’s or the required date for delivery established pursuant to Section 8.06(a). The schedules and commitments included in the City Notice to Proceed shall be deemed and shall constitute binding obligations of the City that Owners may enforce under this Agreement.

(c) If the City does not deliver the City’s Notice to Proceed in compliance with Subsection 8.08(b), then the City shall be deemed to have made the decision, at its sole discretion, to effectuate and be bound by the terms of Article 9, as applicable, for the construction, use and acquisition of the City Improvements if Owners deliver to the City a notice that Owners will proceed with the design, engineering and/or construction of the City Improvements pursuant to the terms of Article 9 (“**Owner Notice to Proceed**”).

(d) Neither the delivery of Owner’s Notice To Proceed to the City nor the Owners’ construction of the City Improvements (“Facilities” in Article 9) shall release the City of the City’s obligations under this Agreement to have funded and constructed such City

Improvements or any future City Improvements identified by the City in any future City Response.

8.09 **Service Units Defined.** The number of LUEs per meter to be accounted for hereunder shall be based on the chart in the attached Exhibit "F".

8.10 **General Conditions For Connections to the City Utility System.**

(a) The Parties acknowledge that the City cannot deliver water and wastewater services to a Lot within the Project unless the requisite Utility Improvements, as described in the City's Utility Plan and requisite Subdivision Infrastructure are constructed in accordance with City approved plans and specifications, and then accepted by the City. The City acknowledges that Owners are relying on the City's performance of the City's obligation to timely provide 9,000 LUEs of water and wastewater service to the Property in accordance with the terms of this Agreement.

(b) If the City modifies: (i) the definition of a LUE as compared to the LUE definition incorporated into this Agreement; (ii) water pressure requirements for a service connection to land within the Project; (iii) fire flow requirements; (iv) a Utility or Owner Improvement required for the City to provide water and wastewater service to a section of the Project; or (v) any other aspect of water and wastewater service standards, the City shall be responsible for the timely design and construction of any additional utility facilities that would be necessary for the City to meet its water and wastewater service obligations under this Agreement, unless such modification by the City is in response to requests by the Owners or is mandated by federal or state statute. If the modifications described in the preceding sentence are required by federal or State Law or regulations, the Parties shall consult regarding a reasonable resolution to funding such modifications.

8.11 **Engineering and Construction Plans.** Owners shall be responsible for funding the preparation of construction plans and specifications for the Owner Improvements. The City shall be responsible for funding the preparation of construction plans and specifications for the City Improvements. City approval is required for all such plans and specifications.

8.12 **Approval of Construction Plans.** The City shall timely review, approve and sign, or disapprove and return with an explanation, as appropriate, construction plans for an Owner Improvement (the "Plans"). The City shall review and approve, or disapprove, on a timely basis the Plans as they are submitted to the City. The term "timely basis" shall be interpreted in light of the development schedule, as presented to the City by Owners, provided that in no event shall the City have fewer than 30 calendar days and no more than 45 calendar days for the City's initial review of submitted Plans. If the City disapproves any submitted Plans, the City shall provide a written explanation of the reasons for such disapproval so that if the Plans are revised in accordance with City's comments, the Plans will comply with the Applicable Rules and can be approved. The City shall, on a timely basis, review and comment on updates to re-submitted Plans. The term "timely basis" in the preceding sentence shall be interpreted that in no event shall the City have fewer than 15 calendar days and no

more than twenty five (25) calendar days for the City to review and provide comments to any set of Plans that have been revised or updated based on previous comments from the City. Construction plans approved by the City are referred to as the "**Approved Plans.**"

8.13 **Use of City Property and Easements.** The City hereby consents, at no cost to the Owners, to the use of any and all appropriate and available City rights-of-way, sites or easements that may be reasonably necessary to construct an Owner Improvement, or for the Owners to perform their respective obligations under this Agreement; provided, however, that the City's consent is subject to City approval of the location of a Utility Improvement within the right-of-ways and easements and avoidance of utility facilities existing in such rights of way and easements. The City agrees to cooperate and support Owners' acquisition of necessary easements from third parties; provided, the City's support does not require the expenditure of funds.

8.14 **Easement Acquisition.** The Utility Facilities and related easements are necessary and required by the City for the City to provide water and wastewater service to Project, and for Owners to comply with the City Rules and obtain approval for the development of the Project. The Owners shall pay costs of the acquisition (including the City's costs of such acquisition by condemnation or conveyance in lieu thereof) of any easements or land necessary for the construction of the Owner Improvements. The City Council has found the development of the Project in compliance with this Agreement will serve a public purpose and benefit the economy of the City and the public welfare. Therefore, if it is deemed necessary for the City to use its eminent domain powers to acquire property or an interest in property to install a Utility Improvement required by the City pursuant to this Agreement, Owners will make a request to the City to proceed with the acquisition of the easement in compliance with applicable law and in accordance with Section 8.15. In any such event, the City proceeding to acquire such easement shall be subject to a finding by the City Council that such easement is required by the City and is necessary to accomplish a public purpose. The Parties agree to work cooperatively toward allowing the initiation of construction on an Owner Improvement on an easement being acquired by the City at the earliest time lawfully permitted.

8.15 **Eminent Domain.** The City Council of the City hereby declares that: (a) there exists a public necessity for the construction of the Utility Facilities; (b) subject to all of the terms and conditions of this Agreement, the Utility Facilities will be accepted by the City for ownership, operation and maintenance; (c) the City agrees, if the City Council finds the easement is necessary and required to accomplish a public purpose, to use its power of eminent domain to acquire such lands or easements in the circumstances provided herein; provided, however, the City will not use the power of eminent domain until there has been a commercially reasonable effort by Owners to negotiate and acquire the necessary property rights. If Owners have failed to obtain such lands or easements, then Owners may request the City to use its power of eminent domain to acquire said property rights. The City will review and make a determination that the use of eminent domain accomplishes a public purpose and once such a determination has been made, the City will act within 60 calendar days. The City shall control all eminent domain proceedings in accordance with state law and shall pay all costs associated with any such eminent domain proceedings. Owners shall reimburse the City

for all reasonable costs associated with such proceedings within 60 calendar days of being provided documentation of such costs. The City will timely proceed with eminent domain proceedings in accordance with State law in order to obtain the right of possession as soon as lawfully as possible. The City will use reasonable efforts to file eminent domain proceedings within thirty (30) days of the City Council's adoption of an ordinance authorizing eminent domain and use its efforts to take possession of the property as soon as lawfully possible.

8.16 **Changes to Approved Plans; City Inspections.** The City shall timely review, approve and sign, or disapprove and return with specific comments, as appropriate, any requested changes to Approved Plans. For purposes of reviewing changes to Approved Plans, the term "timely" shall mean ten (10) business days. Owners shall cooperate with the City to assure the City is provided full opportunity to inspect the work and construction of the Owner Improvements, as construction progresses, the City shall timely inspect the construction of each Utility Improvement. For purposes of inspecting construction, the term "timely" shall mean no more than five (5) business days after the day on which a request for inspection is made. The City shall provide the contractor written notice within two (2) business days of any deficiency identified during an inspection.

8.17 **Fiscal Required.** If the Parties enter into a Financing Agreement in conjunction with the selling of PID bonds, TIRZ bonds or similar debt financing mechanism, then this provision shall be non-applicable to any Owner Improvement or Subdivision Infrastructure funded in whole or in part with funds from the PID. With respect to the construction of any of the Owner Improvements, cash or a letter of credit in lieu of cash (such letter of credit to be in a standard form reasonably acceptable to the City) shall be deposited with the City in an amount sufficient to fund the restoration of the area of construction to a safe, pre-construction condition, including, if necessary, removing or securing facilities or other improvements, filling trenches, revegetating, and capping lines. If construction of an Owner Improvements is abandoned and disturbed areas are not restored within 30 days after demand by the City, then the City may draw upon the fiscal security to restore such areas. If cash is posted for the fiscal, the City will keep the funds in a separate trust account identified as fiscal for the construction project.

8.18 **Contract and Bid Requirements.** Except as provided by Sections 7.04 and 7.05, Owners shall be solely responsible for the selection of contractors, the negotiation of construction contracts and the management of the construction contracts for the Owner Improvements, and pay all applicable plan review and construction inspection fees required by City ordinance or this Agreement. All construction contracts for Owner Improvements shall require the contractor to post the legally mandated payment and performance bonds and a two-year warranty/maintenance bond.

8.19 **Satisfactory Completion of Owner Improvements.** Upon completion of construction of each of the Owner Improvements, Owners shall provide the City with final "record" drawings of the Owner Improvements. Owners' engineer shall provide a certificate of completion to the City and the City shall conduct a final inspection of the Owner Improvements within five (5) business days of receipt of said certificate of completion. The City shall, within two (2) business of conducting the final inspection provide a list of

deficiencies found in the inspection so that if the deficiencies are corrected, the Owner Improvements will meet the requirements for acceptance by the City for ownership, operation and maintenance. The Owners shall be responsible for having those deficiencies remedied. Upon request, the City shall then re-inspect the Owner Improvement within five (5) business days, and if all deficiencies have been remedied to the City's satisfaction, the City shall furnish a Letter of Satisfactory Completion to Owners stating that the Owner Improvement has been constructed in substantial compliance with the Approved Plans, meets all applicable testing requirements and otherwise complies with the requirements of the City to accept the Owner Improvement for ownership, operation and maintenance.

8.20 City Acceptance of Owner Improvements.

(a) As a precondition to the City's final acceptance of an Owner Improvement, the following shall be delivered to the City: executed all bills paid affidavits, bills of sale, assignments, or other instruments of transfer reasonably requested by the City, in a form and content reasonably acceptable to the City and the City Attorney, to evidence the City's ownership of same. Contemporaneously therewith, all bonds, warranties, guarantees, and other assurances of performance, record drawings, easements, project manuals and all other documentation related to the Owner Improvement to be accepted will also be delivered to the City. Utility easements for water and wastewater lines and other utility facilities within the Property may be conveyed by plat dedication or separate agreement and must be conveyed or dedicated to the City prior to the City's acceptance of the Owner Improvement.

(b) Upon the City issuing a Letter of Satisfactory Completion and the resolution of all Chapter 53, Texas Property Code claims, Owners shall dedicate the Owner Improvement to the City. The City shall accept each such completed Owner Improvement for ownership, operation and maintenance within thirty (30) calendar days of Owners' dedication of the Owner Improvement to the City. The City shall not unreasonably deny, delay, or condition its acceptance of such Owner Improvement. The Owners shall obtain a two year maintenance bond from the contractor and assign said bond to the City as a condition of the City's acceptance of the said Owner Improvement. The Owner shall certify that no Chapter 53, Texas Property Code claims have been filed and that all known claims have been resolved or bonded against.

8.21 City to Own, Operate, and Maintain Owner Improvements. From and after the time of the City's final acceptance of an Owner Improvement, the City will own, operate, and maintain each Utility Improvement as part of the City's utility system and shall be responsible for all costs associated with same. Upon the City's acceptance of all the Utility Improvements within a particular Utility Facility Phase and the City's acceptance of water and wastewater service lines within a recorded final plat, Owners shall be allowed to connect to the accepted water and wastewater service lines in such a manner to serve lots within the recorded plat; provided that City's applicable utility and connection fees are paid and that such connections meet the City's ordinance and technical requirements. The City's maintenance obligations shall be subject to the warranty and maintenance bond posted by the contractor.

9. OWNER CONSTRUCTION OF CITY IMPROVEMENTS

9.01 **Applicability.** The provisions of this Article 9 shall become applicable upon the delivery to the City of the Owner Notice to Proceed, as provided in Section 8.08(c). The provisions of this Article 9 shall apply to the City Improvements described in the Owner Notice to Proceed and shall control the construction of said City Improvements and the City's operation, use and acquisition of same. For purposes of this Article 9, the term "City Improvements" is limited to arrangements and facilities that increase or maintain the City's supply of raw water for water treatment purposes, water treatment facilities and wastewater treatment facilities. In no event shall an Owner Improvement or any Subdivision Infrastructure be considered a City Improvement for purposes of Article 9. Said City Improvements are referred to as "**Facilities**" for purposes of Article 9. In the event of a conflict between the terms of this Article 9 and any other term or provision of this Agreement, the terms of this Article 9 shall control. The provisions of this Article 9 shall constitute a contract for goods and services. The terms and binding obligations of this Article 9 shall survive the termination of the Agreement for any Facilities built, to be built or under construction pursuant to an Owner Notice to Proceed delivered to the City prior to the termination of the Agreement.

9.02 **Construction Process, Contracts.** The Owners will take all steps necessary for construction of the Facilities including, causing construction drawings and plans and specifications to be prepared, obtaining all necessary governmental approvals, publicly inviting and advertising for construction bids, and awarding a contract or contracts with payment and performance bonds and two-year maintenance bonds after completion. Sections 8.11 through 8.16, 8.19 and 8.20 of this Agreement apply to Owners' activities pursuant to this Article 9 except that the term "Facilities" shall be substituted for the term "Owner Improvements."

9.03 **Plans and Specifications.** Upon the delivery of the Owner Notice to Proceed to the City, the City shall be deemed to have assigned to Owners the right to use and, if necessary, modify all construction plans and specifications, whether or not completed and approved by the City, pertaining to the City Improvements as then owned or held by the City; provided, however, that Owners shall not assume or be deemed to have assumed financial responsibility for the payment of any fees due or owing with respect to said plans and specifications. The City shall cause the delivery of such plans, as the City may have or control, to Owners within ten (10) working days of Owners' request for said plans. If the City has no plans and specifications, Owners shall cause such plans and specifications to be prepared. The plans and specifications for the Facilities shall be prepared by either the City's engineers or a qualified, registered professional engineer. Plans and specifications for the Facilities are subject to the approval of the City and the City's Engineer, and such approval, which shall not be unreasonably withheld or delayed, is required to be obtained by Owners prior to construction.

9.04 **Payment for Construction of Facilities.** Owners shall make, in a timely fashion, all payments on the contracts awarded by it for the construction of the Facilities. Owners shall, prior to making any payment, provide copies of all invoices and certifications recommending payment to the City.

9.05 **City Acceptance of Facilities.** Upon the City issuing a Letter of Satisfactory Completion, Owners shall tender delivery of the Facilities to the City for control, operation and maintenance. The City shall accept each said Facility control, operation and maintenance within fifteen (15) calendar days of said tender of delivery to the City. The City shall not unreasonably deny, delay, or condition its acceptance of such Facilities. The Owners shall obtain a two year maintenance bond from the contractor and assign said bond to the City as a condition of the City's acceptance of the said Facility.

9.06 **Operation and Maintenance of Facilities.** The City shall, upon acceptance of the Facilities take possession of the Facilities and assume full responsibility for the operation and maintenance of such Facilities. However, the City shall not own the Facilities constructed by Owners until the Facilities have been purchased and conveyed to the City by Owners as provided herein. The City shall operate and maintain the Facilities in good order and condition and to the extent reasonably practical, in a manner that will not interfere with the delivery of utility services for new service connections. Until such time as the Facilities are purchased by the City, the City shall maintain adequate insurance or self-insurance to repair or replace the Facility should they be damaged or injured by insurable casualty risks. All such insurance proceeds shall be used by the City to repair and restore the Facilities to maintain the delivery of the LUEs quantified in the Owner Service Request relating to the Facilities. The costs of such insurance shall be borne by the City. Until such time as the City has purchased the Facilities from the Owners, the City shall require the insurer to name Owners as "additional insureds" under all insurance policies relating to the Facilities.

9.07 **Purchase of Facilities by City.** Within thirty (30) days of the City's acceptance of the Facilities pursuant to Section 9.05, Owners shall deliver notice to the City stating that the Owners are ready, able and willing to sell and convey the Facilities to the City pursuant to this Article 9. The City shall provide a written response to said notice stating whether the City is willing to proceed with the Purchase of the Facilities. Such purchase shall be made and close within one (1) year of Owners' notice of being ready willing and able to sell and convey the Facilities unless time is extended by mutual agreement of the Parties. The purchase price shall be the Reimbursable Costs, as defined below. The City and the applicable Owner shall split all closing costs.

9.08 **Limitation of Source of Payment.** The City's obligation to purchase the Facilities under this Agreement is limited to funds from water and wastewater rates, impact fees, other fees and other revenues collected by the City from the City's water and wastewater utility systems, including, water and wastewater utility revenue bonds or obligations (collectively "**Utility Revenue**"). No obligation of the City created pursuant to this Article 9 shall be payable from taxes or other money of the City other than the Utility Revenues which are actually collected by the City; provided, however, the City may, in its sole discretion, use any other source of funding it chooses. If the City issues utility revenue bonds after the delivery of the Owner Notice to Proceed, then such bonds will contain funds for the purpose of fully reimbursing the Reimbursable Costs to Owners.

9.09 **Conveyance of Facilities.** Concurrently with the purchase of the Facilities by the City, the Owners shall transfer and convey title to the Facilities to the City by special

warranty deed or other appropriate instrument, free and clear of all liens, claims, encumbrances, options, charges, assessments, restrictions, limitations, and reservations, including liens for ad valorem taxes for past and current years, payments due to construction contractors, laborers, or materialmen. The Owners shall provide such proof of title and proof that no such liens, claims, and encumbrances exist as may reasonably be required by the City. The conveyance or conveyances shall include all easements where the collection, distribution, and drainage systems are located (where such easements have not been dedicated to the public) and which are necessary to own, operate, and maintain the Facilities, and fee simple title to any sites, together with the necessary right-of-way thereto, and all licenses, franchises, and permits for the Facilities. The Owners shall also assign in writing all of its contractors' and materialmen's warranties and guaranties relating to the Facilities, otherwise, the City shall accept the Facilities on an "as is where is" basis without any warranty from Owners.

9.10 **Reimbursable Costs**. "Reimbursable Costs" means the documented dollar amount actually expended for constructing the Facilities, provided the bids and change orders are approved in advance by the City Manager; provided, the City Manager shall not unreasonably deny, delay, or condition its acceptance of such Facilities. The Reimbursable Costs shall also include the reasonable, total cost of the following:

- (a) the surveying costs;
- (b) the cost of soils and materials testing;
- (c) the engineering fees relating to the Facilities;
- (d) advertising and other costs associated with public bidding and award of construction contracts;
- (e) the documented cost of required easements, lots, sites and rights-of-way located outside of the Property, but not including any easement or right-of-way required on any land within the Property;
- (f) Construction management fee equal to four percent (4%) of the total of the other components of the Reimbursable Costs; and
- (g) any other necessary out-of-pocket costs expended in connection with constructing and installing the Facilities;

provided that all such sums and amounts shall be reasonably required for the Facilities and documented to and approved by the City Manager which approval may not be unreasonably denied, delayed or conditioned. If the City Manager does not approve of a cost, the City Manager shall provide a written explanation of the basis for not approving such cost within fifteen (15) calendar days of Owners' submittal of said cost for approval. If the City Manager refuses to approve a bid, change order, or cost described above, Owners may appeal such determination to the City Council. The City will schedule a hearing on the appeal no later than the next regularly scheduled City Council meeting for which timely notice may be given.

If the City and Owners do not agree upon the costs being appealed, then any Party may send a Notice of Breach and proceed with Article 11 remedies.

9.11 **Failure to Purchase by Initial Closing Date.** If the City does not purchase the Facilities within one (1) year of Owners' notice to the City pursuant to Section 9.07, then Owners may pursue the remedies set forth in Article 11 of the Agreement. Upon the City's failure to purchase the Facilities within the one (1) year period, the Reimbursable Costs shall bear a per annum interest equal to the prime rate published in the Wall Street Journal plus 2.5%, accruing on a monthly basis. The one year period may be extended by mutual agreement of the Parties. The initial rate shall be calculated based on the prime rate published in the Wall Street Journal on the 366th day following Owners' notice pursuant to Section 9.07 or the first business thereafter. The interest rate will adjust on each subsequent anniversary date equal to the prime rate published in the Wall Street Journal plus 2.5%, accruing on a monthly basis. Interest will accrue beginning on the 366th day following Owners' notice pursuant to Section 9.07. Interest shall accrue until title to the Facilities is conveyed to the City.

10. ASSIGNMENT OF COMMITMENTS AND OBLIGATIONS; SUCCESSORS

10.01 **Agreement Binding on Assigns.** Pursuant to *Subchapter G*, this Agreement shall be binding upon the Parties, their grantees, successors, assigns, and subsequent purchasers. This Agreement is intended to, and hereby does, create covenants running with the land, binding on future owners of the Property, except as provided in Section 212.172(f) of *Subchapter G*. In the event of an assignment of fee ownership, in whole or in part, of the Property by Owners, only the grantees and assignees and then current owners of such portion of the Property so assigned shall be liable under this Agreement for any subsequent default occurring after the conveyance and affecting only the portion or portions of the Property so assigned. Any reference to Owners or City shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Agreement shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

10.02 **Assignment of Rebate Payments.** In addition to the provisions of Section 13.10(a), Owners may assign to a third party or otherwise encumber rights to Tax Rebate Payments and Fee Rebates Payments, provided the City is notified by Owners of the name and address of such assignee or lienholder.

10.03 **Special Provisions Regarding the Co-Owned Land.** In the event BRI and Nance partition the Co-Owned Property, Nance may, by delivery of written notice to the City, withdraw the portion of the Co-Owned Property solely owned by Nance (the "**Nance Parcel**") from the BRI Development Agreement and thereafter the Nance Parcel shall be governed exclusively by this Agreement.

11. BREACH, DEFAULT, REMEDY, AND TERMINATION RIGHTS

11.01 **Default Generally.** If any Party breaches the terms of this Agreement and fails to cure such breach after receipt of a Notice of Breach pursuant to Section 11.02, such breach shall be an event of default. In that event, the non-defaulting Party to this Agreement may pursue the remedies described in Section 11.03.

11.02 **Notice and Opportunity to Cure.**

(a) No Party shall be deemed to be in default hereunder until i) receipt from another party of a written notice of breach that specifies the nature of the breach, including the provision of the Agreement that has been breached ("**Notice of Breach**"); and ii) the passage of thirty (30) calendar days after receipt of the Notice of Breach without cure of the breach. If the cure of the breach requires more than thirty (30) calendar days and the breaching Party has begun to cure the breach, then the breaching party shall be deemed to have cured the breach so long as the breaching party diligently, continuously and timely cures said breach. Upon the passage of thirty (30) calendar days without cure of the breach, such Party shall be deemed to have defaulted for purposes of this Agreement and the non-defaulting Party may pursue the remedies allowed under Articles 8 and 9 and 11 of this Agreement. A Notice of Breach delivered to the City shall be deemed to fulfill the notice requirements set forth in Section 13.02 of the City Charter.

(b) In no event shall the preparation and delivery to Owners of any of the following ever be considered or deemed to require more than thirty (30) calendar days to cure unless the time is extended by the mutual agreement of the involved parties: (i) the City Utility Plan, (ii) a City Response, (iii) a City Notice To Proceed, (iv) review comments for Plans submitted to the City pursuant to Section 8.12; (v) review comments for Approved Plans submitted to the City pursuant to Section 8.16; (vi) any City obligation described in Section 8.21, (vii) final inspection report pursuant to Section 8.19; (viii) City acceptance of an Owner Improvement pursuant to Section 8.21; (ix) City review, inspection or action relating to any public improvement pursuant to Section 5.02; (x) City review, inspection or action relating to a Facility pursuant to Sections 9.02, 9.03 and 9.05; and (xi) a payment due under Article 9.

11.03 **Remedies.**

(a) **City** If Owners fail to cure a breach after receiving a Notice of Breach from the City, the City may pursue all available legal and equitable remedies regarding said default, including specific performance; provided, however, the City shall never have the right to unilaterally terminate this Agreement under any circumstances.

(b) **Owners.**

(i) If the City fails to cure a breach after receiving a Notice of Breach, other than a breach of an Article 5, 8 or 9 obligation, Owners may terminate this Agreement and/or

pursue all available equitable remedies, including specific performance and mandamus regarding said default.

(ii) If the City fails to cure a breach under any provision of Article 5 or any provision of Article 8, after receiving a Notice of Breach, then Owners may send to the City an Owners Notice of Intent to Request Disannexation. Within ninety (90) days of the City's receipt of an Owners Notice of Intent to Request Disannexation, the City will disannex that portion of the Property described in the Owners Notice of Intent to Request Disannexation. Further, the City agrees that it will not involuntarily annex any disannexed portion of the Property for at least ten (10) years from the effective date of disannexation unless Owners petition for annexation. Upon disannexation of all or any portion of the Property, the Owners of the disannexed portion of the Property, at their sole discretion, may by written notice to the City, terminate the applicability of any or all provisions of the Agreement to the disannexed portion of the Property.

(iii) If the City fails to cure a breach under any provision of Article 9 after receiving a Notice of Breach, then Owners may terminate this Agreement and/or pursue all available legal and equitable remedies, including specific performance and mandamus regarding said default.

11.04 **Material Provisions.** The following are material obligations of the City that have induced Owners to enter into this Agreement: (i) the terms of this Article 11; and (ii) the representations set forth in Article 6.

11.05 **Waiver.** Any failure by a Party to insist upon strict performance by another Party of any provision of this Agreement will not, regardless of the length of time during which that failure continues, be deemed a waiver of that Party's right to insist upon strict compliance with all terms of this Agreement. In order to be effective as to the Owners, any waiver of a City breach or default under this Agreement by the Owners must be in writing and signed by all the Owners of the portion of the Property affected by the City's breach and a written waiver will only be effective as to the specific breach or default and as to the specific period of time set forth in the written waiver. In order to be effective as to the City, any City waiver of an Owners' breach or default under this Agreement must be in a writing and authorized by the City Council and signed by the City Manager or the Mayor, and a written waiver will only be effective as to the specific breach or default and as to the specific period of time set forth in the written waiver. A written waiver will not constitute a waiver of any subsequent breach or default, or of the right to require performance of any provision of this Agreement in the future.

11.06 **Amendment by Agreement.** This Agreement may be amended as to all of the Property at any time only by the mutual written consent of the City and all the Owners. The Agreement may be amended as to a portion of the Property by the mutual written consent of the City and the all of Owners as to that portion or portions of the Property affected by the amendment.

12. REIMBURSEMENTS AND TAX ABATEMENTS.

12.01 Tax Reimbursements.

(a) The Sales Tax Rebate Amount and the Property Tax Rebate Amount are sometimes referred to collectively herein as the “Tax Rebates.” The Tax Rebates will accrue and be paid only as provided in this Article 12. Phase 1 and Phase 2 of the Project will be subject to separate property tax rebate programs.

(b) The Phase 1 Tax Rebate Term shall begin on first January 1st following the beginning of the First Extension or January 1st of the year following the year in which the first water meter for a building is installed in Phase 1 of the Project, whichever occurs first (“Phase 1 Tax Rebate Term Beginning Date”). The Phase 1 Tax Rebate will terminate and expire ten (10) years after the Phase 1 Tax Rebate Term Beginning Date (“Phase 1 Tax Rebate Term”).

(c) Sections 12.01 through 12.06 become legally effective as to Phase 2 only if the City does not approve the formation of a TIRZ or similar funding mechanism to help fund the engineering, permitting and construction of the Nance Bridge and the Construction of Cypress Road west of FM 150 as a Major Thoroughfare. The Phase 2 Tax Rebate Term shall begin on first January 1st following the year in which the Nance Bridge is completed and opened to the public (“Phase 2 Tax Rebate Term Beginning Date”). The Phase 2 Tax Rebate will terminate and expire ten (10) years after the Phase 2 Tax Rebate Term Beginning Date (“Phase 2 Tax Rebate Term”).

(d) For purposes of this Article 12, the costs of public improvements eligible for Tax Rebates include, Nance Bridge, construction costs of Cypress Road, as described in Section 7.02, oversized water and wastewater lines, and such other public improvements as the Parties may agree upon.

12.02 Encumbered Account Deposits and Withdrawals. For the length of time authorized under state law, the City will deposit the Sales Tax Rebate Amount and the Property Tax Rebate Amount into the Encumbered Account as provided in this Article 12, as received by the City. Funds may not be withdrawn from the Encumbered Account except as provided in this Article 12.

12.03 Sales Tax Rebate Amount.

(a) During a Rebate Term, the Sales Tax Rebate Amount will be paid as provided in this Section 12.03 and at the times provided in Section 12.05.

(b) The Sales Tax Rebate Amount will be paid to Owners beginning the first calendar quarter after the applicable Rebate Term Beginning Date and will continue for a period of forty (40) calendar quarters. The Sales Tax Rebate Amount will be three fourths of the Sales Tax. The payments to Owners shall be made at the times provided in Section 12.05. The last Sales Tax Rebate Amount payment equal to three-fourths of the Sales Tax will be payable by the City on or before forty-five (45) days after the date on which the State of

Texas pays the City the Sales Tax for the twentieth calendar quarter after the applicable Rebate Term Beginning Date.

(c) The Sales Tax Rebate Amount that will be paid to Owners for the period that begins the twenty-first (21st) calendar quarter after the applicable Rebate Term Beginning Date and continues for a period of twenty calendar quarters will be one-fourth of the Sales Tax. The payments to Owners shall be made at the times provided in Section 12.05. The last Sales Tax Rebate payment equal to one-fourth of the Sales Tax will be payable by the City on or before forty-five days after the date on which the State of Texas pays the City the Sales Tax for the fortieth (40th) calendar quarter following the Rebate Term Beginning Date.

12.04 Property Tax Rebate Amount.

(a) The Property Tax Rebate Amount shall be established for each calendar year beginning the year after the applicable Tax Rebate Term Beginning Date. The first Property Tax Rebate Amount that will be deposited into the Encumbered Account pursuant to this Agreement will be collected by the City on the increase in the assessed taxable value of the applicable Phase, including all buildings and other improvements that become a part of the real property, over the assessed taxable value of the applicable Phase on the January 1st occurring two years prior to the applicable Tax Rebate Term Beginning Date ("Base Year"). As an example, if the Phase 1 Tax Rebate Term Beginning Date occurs on January 1, 2022, then the Base Year would be January 1, 2020.

(b) The first Property Tax Rebate Amount will be calculated by subtracting the assessed taxable value of the applicable Phase on January 1st of the Base Year from the assessed taxable value of the applicable Phase on January 1st of the calendar year following the applicable Tax Rebate Term Beginning Date, then multiplying the resulting increase by the City's then ad valorem tax rate, and then multiplying the resultant amount of taxes by forty-five percent (45%). The Property Tax Rebate Amount for each subsequent tax year will be determined by subtracting the Base Year assessed taxable value of the applicable Phase from the assessed taxable value on January 1st of such subsequent tax year and multiplying the result by the City's ad valorem tax rate and then multiplying the resultant tax amount by forty-five percent (45%). The Property Tax Rebate Amount paid to Owners for any calendar year shall never exceed the actual amount of the Property Tax Rebate Amount that is actually paid to and received by the City; provided that funds includable in the Property Tax Rebate Amount for one year that are paid to and received by the City in a subsequent tax year will be paid to the Owners when the Property Tax Rebate Amount for such subsequent tax year is paid to the City. As an example, if the City ad valorem tax rate is sixty cents (\$0.60) per \$100.00 assessed valuation, the assessed taxable value of the applicable Phase on January 1st of the Base Year is \$5,000,000.00, and on January 1, 2022 the assessed value of the Phase is \$17,000,000.00, the 2022 City ad valorem tax on the \$12,000,000.00 increase in assessed value would be \$72,000.00, and 45% of the \$72,000.00 (\$32,400.00), would be paid to the Encumbered Account. The Property Tax Rebate Amount for each tax year will be deposited into the Encumbered Account when such ad valorem tax payments are received by the City. The Property Tax Rebate Amount is separate and distinct from the rollback tax payments described in Section 12.12 below.

(c) The Property Tax Rebate Amount will be paid to the Owners for the calendar year beginning the year after the Tax Rebate Term Beginning Date, as provided in this Section 12.04 and in Section 12.05.

(d) The Property Tax Rebate Amount for the sixth calendar year through tenth calendar year after the Rebate Term Beginning Date will be deposited into the Encumbered Account and paid to Owners only to the extent required to reimburse Owners the amount of the Eligible Reimbursable Costs actually incurred by Owners.

12.05 Dates for Payment of Rebate Amounts.

(a) The Property Tax Rebate Amount that becomes payable pursuant to Section 12.04 and that are paid to the City will be paid to Owners on or before April 15th of the year following the tax year for which Property Tax Rebate Amounts were paid, and each subsequent April 15th thereafter, until Owners have been paid the Property Tax Rebate Amount for each year within the applicable Tax Rebate Term; provided that, after the payment of the Property Tax Rebate Amount for the fifth year following the applicable Tax Rebate Term Beginning Date, the payment of the Property Tax Rebate Amount to Owners in any year thereafter shall not exceed the previously un-reimbursed Eligible Reimbursable Costs paid by the Owners. If at the time Owners are paid the Property Tax Rebate Amount for a tax year beginning on or after January 1st of the sixth year following the applicable Tax Rebate Term Beginning Date, the Property Tax Rebate Amount exceeds the un-reimbursed Eligible Reimbursable Costs, such excess amount shall be retained in the Encumbered Account and shall be paid by City to Owners upon the subsequent funding or completion by Owners and acceptance by the City of one or more public improvements with Eligible Reimbursable Costs.

(b) The Sales Tax Rebate Amounts that become payable pursuant to Section 12.03 and that are paid to the City will be paid to Owners on or before the 15th day of each April, July, October and January following the date the City receives the Sales Tax from the State of Texas. The payments will be in an amount equal to the applicable Sales Tax Rebate Amount collected by City during the three (3) calendar months preceding the month the scheduled payment is due and payable.

12.06 Limitation and Termination of Tax Rebate Payments. The Sales Tax Rebate Amount shall be and remain payable to Owners for the applicable Tax Rebate Term, and the Property Tax Rebate Amount shall be and remain payable to Owners as provided in Section 12.04. Except as otherwise provided in Section 12.04, the Sales Tax Rebate Amount and Property Tax Rebate Amount shall be payable on the dates provided in Section 12.05. The following terms shall be applicable on the expiration of the applicable Tax Rebate Term:

(a) No Sales Tax Rebate Amounts or Property Tax Rebate Amounts will be deposited into the Encumbered Account for any calendar year that begins after the expiration of this Agreement.

(b) The terms of this Article 12 shall survive the expiration of this Agreement only as to Sales Tax Rebate Amounts and Property Tax Rebate Amounts accrued prior to the expiration of this Agreement and that are payable pursuant to this Agreement. Any obligation of City to pay Owners a Sales Tax Rebate Amount or a Property Tax Rebate Amount prior to the expiration of the applicable Tax Rebate Term shall survive the expiration of such Tax Rebate Term only to the extent of funds: (i) on deposit in the Encumbered Account on the expiration of the applicable Tax Rebate Term; and (ii) Sales Tax Rebate Amounts and Property Tax Rebate Amounts due and payable for a tax year that ends prior to the expiration of the applicable Tax Rebate Term but that are not received until after the expiration of the applicable Tax Rebate Term.

12.07 **Payment of Impact Fees.** Owners, their grantees, successors, assigns, and subsequent purchasers of any portion of the Property, agree that each lot, tract, parcel or building site within the Property that will be provided water service or wastewater service by the City shall be required to pay the City's water impact fee (the "**Water Impact Fee**") and wastewater impact fee (the "**Wastewater Impact Fee**"), established pursuant to Chapter 395 of the Texas Local Government Code, in the amount that is established by the City Capital Improvements Plan and City ordinance, as amended, from time to time. The Water Impact Fee and Wastewater Impact Fee are referred to collectively as the "**Impact Fees.**" The Impacts Fee shall be payable with respect to a lot, tract, parcel, or building site at the time the building permit for each building or structure is applied for or, if no building permit is required, then upon the first to occur of the following: (a) the date construction of the building or structure is first commenced, (b) the date an application is made to the City for a water connection to serve the building or structure, or (c) the date water service is requested for the lot, tract or parcel of land.

12.08 **Impact Fee Credits.** If the City requests that any Owner Improvement be oversized and Owner pays for the costs associated with such oversizing, then Owner shall be entitle to a credit against future impact fees otherwise payable pursuant to Section 12.07 (the "**Impact Fee Credits**"). An Impact Fee Credit may only be applied toward an Impact Fee of the same type of utility improvement. For example, a credit for oversizing a wastewater line may only be applied toward a Wastewater Impact Fee. An Impact Fee Credit may applied toward one hundred percent (100%) of the applicable Impact Fee. Impact Fee Credits do not terminate on the expiration of this Agreement and will continue after the termination of this Agreement until all Eligible Reimbursement Costs have been paid. The City may at any time, in its sole discretion, pay the Owners all or a portion of the Eligible Reimbursable Costs for oversized Owner Improvements from any source of funds available to the City in one or more lump sum payments.

12.09 **Definition of Oversized.** The term "oversized" means a water or wastewater line that has greater capacity than needed to provide Utility Services to the Property. For example, if the development of the Property or a portion of the Property requires a sixteen inch (16") water line and City requires a twenty four inch (24") water line to be constructed, then the water line has been oversized by eight inches (8") to provide Utility Services to land that is not part of the Property. The reimbursement amount will be based on the additional

construction costs to build the oversized aspect of the line. As further clarification, if the additional capacity is needed to provide Utility Services to another portion of the Property, then the additional capacity does not constitute oversizing and the cost associated with oversizing such a line will not be an Eligible Reimbursable Cost for purposes of Article 12.

12.10 **Eligible Reimbursable Costs.** For purposes of this Article 12, “Eligible Reimbursable Costs” are the same as those costs described in subsections 9.10(a)-(g).

12.12 **Refund of Certain City Real Property Taxes.** City acknowledges that Owner has agreed to voluntary annexation of the Property at the request of the City and far in advance of the date that the Owner otherwise anticipated the Property would be annexed or expects to commence development on the Property. The City finds that such annexation fulfills a valuable public purpose by enhancing the City’s ability to plan the future of the Property and surrounding areas and such annexation will provide for significant efficiency and reduction in costs in connection with the extension of utilities. The City finds that the Property is predominantly open and if the Property remained outside the corporate limits of the City it would substantially impair the sound growth of the City. The City further finds that if Owner had not voluntarily agreed to the City’s request to annex the Property, the Owner would have had no obligation to pay City taxes until annexation and therefore the refund of 100% of certain ad valorem taxes collected by the City (“**Property Taxes**”) for a period of time is fair and equitable. In further consideration of Owner’s agreement to permit the annexation of the Property, the City agrees to reimburse to Owner one hundred percent (100%) of roll back taxes received by the City with respect to the Property during the applicable Phase 1 or Phase 2 Tax Rebate Term.

13. MISCELLANEOUS PROVISIONS

13.01 **Force Majeure.**

(a) The term “force majeure” shall mean, without limitation, acts of God; strikes, lockouts, or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States, the State of Texas or any civil or military authority, including the City; insurrections, riots, epidemic, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people; civil disturbances; explosions, breakage, or accidents to machines, pipelines, or canals; or other causes not reasonably within the control of the party claiming such inability.

(b) If, by reason of force majeure, any party hereto shall be rendered wholly or partially unable to carry out its obligations under this Agreement, then such party shall give written notice of the full particulars of such force majeure to the other party within thirty (30) days after the occurrence thereof. The obligations of the party giving such notice, to the extent effected by the force majeure, shall be suspended during the continuance of the inability claimed, except as hereinafter provided, but for no longer period, and the party shall endeavor to remove or overcome such inability with all reasonable dispatch. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be

remedied with all reasonable dispatch shall not require that the settlement be unfavorable in the judgment of the party having the difficulty.

13.02 **Notices.** Any notice required or permitted to be delivered hereunder shall be in writing and shall be deemed received on the earlier of (i) actual receipt by mail, Federal Express or other delivery service, fax or hand delivery; (ii) three (3) business days after being sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to Seller or Purchaser, as the case may be, at the address stated below; or (iii) one business day after being sent by email.

Any notice mailed to Owners shall be addressed:

Robert Scott Nance and Lana Nance
205 Live Oak Drive
Mountain City, Texas 78610

Joel Russell Bradshaw
5420 LBJ Freeway, Ste. 1600,
Dallas, Texas 75240

Jason Scott Bradshaw
1122 Lausanne Avenue
Dallas, Texas 75205

With copy to:

Robert Kleeman
Sneed, Vine & Perry, PC
900 Congress Ave, Ste. 300
Austin, Texas 78701

Any notice mailed to the City shall be addressed:

City of Kyle
Attn: City Manager
100 W. Center Street
Kyle, Texas 78640

Any party may change the address for notice to it by giving notice of such change in accordance with the provisions of this paragraph.

13.03 **Multiple Originals.** The Parties may execute this Agreement in one or more duplicate originals, each of equal dignity.

13.04 **Entire Agreement.** This Agreement, together with any exhibits attached hereto, constitutes the entire agreement between Parties with respect to its subject matter. There are no other agreements, oral or written, except as expressly set forth herein.

13.05 **Recording of Agreement.** Owners and the City will record a copy of this Agreement in the Official Public Records of Hays County, Texas within thirty (30) days of the Effective Date, but in any event prior to the execution of any mortgage financing documents by Owners.

13.06 **Time of the Essence.** It is acknowledged and agreed by the Parties that time is of the essence in the performance of only those obligations in this Agreement that are explicitly stated to be “timely” performed.

13.07 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. In the event of partial invalidity, the balance of the Agreement shall remain in full force and effect. This Agreement is performable in Hays County, Texas.

13.08 **Cooperation and Third-Party Litigation.**

(a) The Parties agree to execute such further documents or instruments as may be necessary to evidence their agreements hereunder.

(b) In the event of any third party lawsuit or other claim relating to the validity of this Agreement or any actions taken by the Parties hereunder, Owners and City agree to cooperate in the defense of such suit or claim, and to use their respective best efforts to resolve the suit or claim without diminution of their respective rights and obligations under this Agreement. The filing of any third party lawsuit relating to this Agreement or the development of the Property will not delay, stop or otherwise affect the development rights or the City’s processing or issuance of any approvals or permits pursuant to this Agreement, unless otherwise required by a court of competent jurisdiction.

(c) The City agrees to cooperate, as appropriate, at no cost to the City, with Owners in connection with any waivers or approval owners may be required to obtain from other governmental authorities in connection with the development of the Project; provided, however, the City shall not be obligated to cooperate if Owners is challenging the applicability or legality of the rule with regard to which the waiver or approval is sought.

(d) In the event of any third party lawsuit or other claim relating to the validity of this Agreement or any actions taken by the Parties pursuant to this Agreement, Owners and the City will cooperate in the defense of such suit or claim, and use their respective best efforts to resolve the suit or claim without diminution of their respective rights and obligations under this Agreement. The City’s participation in the defense of such a lawsuit is expressly conditioned on the discretion of the City Council. The filing of any third party lawsuit relating to this Agreement or the development of the Project will not delay, stop or otherwise affect the development of the Owner Improvements or the City Improvements, or

the City's processing or issuance of any approvals for the Owner Improvements, unless otherwise required by a court order.

13.09 INDEMNIFICATION. OWNER COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS THE CITY AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE BROUGHT BY ANY THIRD PARTY AND ARISING FROM OWNER'S AGREEMENTS OR DEALINGS WITH THIRD PARTIES RELATING TO THE PROPERTY OR TO CONSTRUCTION CLAIMS ARISING FROM THE CONSTRUCTION OF SUBDIVISION INFRASTRUCTURE OR OWNER IMPROVMENTS. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE CITY AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. OWNER SHALL PROMPTLY ADVISE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST CITY, AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT OWNER'S COST TO THE EXTENT REQUIRED UNDER THE INDEMNITY IN THIS PARAGRAPH. CITY SHALL HAVE THE RIGHT, AT THEIR OPTION AND AT THEIR OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING OWNER OF ANY OF OWNER'S OTHER OBLIGATIONS UNDER THIS PARAGRAPH.

13.10 Mediation. If a dispute arises out of or relates to this Agreement or the breach thereof, the Parties shall first in good faith seek to resolve the dispute through negotiation between the upper management of each respective Party. If such dispute cannot be settled through negotiation, the Parties agree to try in good faith to settle the dispute by mediation before resorting to arbitration, litigation, or some other dispute resolution procedure; provided that a Party may not invoke mediation unless it has provided the other Party with written notice of the dispute and has attempted in good faith to resolve the dispute through negotiation. All costs of negotiation and mediation, collectively known as alternate dispute resolution ("ADR") shall be assessed equally between the City and Owner with each Party bearing their own costs for attorney's fees, experts and other costs of ADR and any ensuing litigation.

13.11 Construction of Agreement. All exhibits attached to this Agreement are incorporated into and made a part of this Agreement for all purposes. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs. Wherever appropriate, words of the masculine gender may include the feminine or neuter, and the singular may include the plural, and vice-versa. Each of the Parties has been actively and equally involved in the negotiation of this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting Party will not be employed in interpreting this Agreement or its exhibits. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument.

13.12 Mortgagee Protection.

(a) This Agreement will not affect the right of Owners to encumber all or any portion of the Property or Owners' rights under this Agreement by mortgage, deed of trust, assessment lien or other instrument to secure financing for the Project. The City understands that a lender, prospective lender, bondholder or prospective bondholder providing financing for the Project (collectively "**Lender**") may require interpretations of or modifications to this Agreement and agrees to cooperate with Owners and its Lenders' representatives in connection with any reasonable requests for interpretations or modifications. The City agrees not to unreasonably condition, withhold or delay its action upon any requested interpretation or modification if the interpretation or modification is consistent with the intent and purposes of this Agreement. The City agrees as follows:

(i) The City will, upon written request of a Lender given in compliance herewith, provide the Lender with a copy of any written notice of default given to Owners under this Agreement within ten (10) days of the date such notice is given to Owners .

(ii) In the event of default by Owners under this Agreement, a Lender may, but will not be obligated to, cure any default during any cure period extended to Owners , either under this Agreement or under the notice of default.

(iii) Any Lender who comes into possession, control or ownership of any portion of the Property by foreclosure or deed in lieu of foreclosure will take such property subject to the terms of this Agreement. Any person or entity who comes into possession, control or ownership of any portion of the Property by foreclosure or deed in lieu of foreclosure will take such property subject to the terms of this Agreement, such Lender, person or entity will not be liable for any defaults or monetary obligations of Owners arising prior to the acquisition of title; provided further that such Lender, person or entity will not be entitled to obtain any permits or approvals with respect to that property until all delinquent fees and other obligations of Owners under this Agreement that relate to the property in question have been paid and/or performed.

(b) Within thirty (30) days of written request by a Party given in accordance with this Agreement, the non-requesting Parties will execute and deliver to the requesting Party a statement certifying that: (a) this Agreement is unmodified and in full force and effect or, if there have been modifications, that this Agreement is in full force and effect as modified and stating the date and nature of each modification; (b) there are no current uncured defaults under this Agreement, or specifying the date and nature of each default; and (c) any other information that may be reasonably requested.

13.13 Severability, Equivalent Substitute Obligation. If any provision of this Agreement is held to be illegal, invalid, or unenforceable by a final judgment entered by a court of competent jurisdiction 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 that in lieu of each provision of this

Agreement that is illegal, invalid, or unenforceable, there be automatically added as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible, and be legal, valid, and enforceable that will most nearly preserve each Party's overall contractual benefit under this Agreement. If any Party is unable to meet an obligation under this Agreement due to a court order invalidating all or a portion of this Agreement, preemptive state or federal law, an imminent and bona fide threat to public safety that prevents performance or requires different performance, or subsequent conditions that would legally excuse performance under this Agreement, the Parties agree to revise this Agreement to provide for an equivalent substitute right or obligation as similar in terms to the illegal, invalid, or unenforceable provision as is possible and is legal, valid and enforceable, or other additional or modified rights or obligations that will most nearly preserve each Party's overall contractual benefit under this Agreement.

13.14 **Authorization.** The City certifies, represents, and warrants that the execution of this Agreement has been duly authorized by the City Council and that this Agreement has been approved in conformity with City ordinances and other applicable legal requirements. Owners certify, represent and warrant that the execution of this Agreement is duly authorized in conformity with their respective authority.

13.15 **Certificate of Compliance.**

Within thirty (30) days of written request by any Party requesting a statement of compliance with this Agreement, the other Party will execute and deliver to the requesting Party a statement certifying that:

(i) this Agreement is unmodified and in full force and effect or, if there have been modifications, that this Agreement is in full force and effect as modified and stating the date and nature of each modification;

(ii) there are no current uncured defaults under this Agreement, or specifying the date and nature of each default; and

(b) Any other information that may be reasonably requested. The City Manager will be authorized to execute any requested statement on behalf of the City; provided such statement relates only to general information about the Project or (i) and (ii) above.

13.16 **No Third Party Beneficiary.** The provisions of this Agreement are and will be for the benefit of the Parties only and are not for the benefit of any third party and, accordingly, no third party shall have the right to enforce the provisions of this Agreement.

13.17 **No Partnership or Joint Venture.** Nothing in this agreement or any related document should be construed to create any form of partnership or joint venture among the Parties, between an Owner and the City, or between the Owners.

13.18 **Exhibits.** All Exhibits and other documents attached to this Agreement are incorporated into this Agreement for all purposes. The exhibits to this Agreement are as follows:

Exhibit A-1 – Description of Nance-Bradshaw Property
 Exhibit A-2 -- Description of Nance Property
 Exhibit A-3 – Description of Phase 1
 Exhibit A-4 – Description of Phase 2
 Exhibit A-5 –Description of Co-Owned Property
 Exhibit A-6 – Map of Nance-Bradshaw Property
 Exhibit B – Ranch Development Plan
 Exhibit C – Ranch Development Plan Map
 Exhibit D – Municipal Service Plan
 Exhibit E – Annexation Ordinance
 Exhibit F – LUE Determination Chart
 Exhibit G – Annexation Petitions
 Exhibit H – FM 150 Alignment

14. PARKS AND PROPERTY OWNERS ASSOCIATIONS

14.01 Property Owners Association to Be Established. Owners will create one or more property owners associations for the Property (collectively the “**Association**”), and shall establish bylaws, rules, regulations and restrictive covenants (collectively the “**Association Regulations**”) to assure the Association performs and accomplishes the duties and purposes required to be performed by the Association pursuant to this Agreement. The owner of each Lot within the Property shall be required to be a member of the Association, and unpaid dues or assessments shall be and constitute a lien on the lot for which they are assessed. The Association Regulations will establish periodic Association dues and assessments, to be charged and paid by the lot owners in within the Property, that are and will be sufficient to maintain (i) the private streets within the Property, if any, (the “**Private Streets**”); (ii) all landscaping, upgraded or decorative street lights, and enhanced signage within the right-of-way or median of any public street or roadway (“**Street Landscaping**”); (iii) any part or portion of the Property, including greenbelts and natural buffer areas, POA owned and operated private parks, that is dedicated to the Association (the “**Common Area**”); (iv) detention ponds constructed by Owners (“**Detention Ponds**”); and (v) upgrades or replacement of surface and above ground facilities and/or equipment (playground equipment, sports field goals, bleachers, tennis court nets) in neighborhood public parks established within the Property (“**Park Equipment**”). The Association will have no obligation to upgrade Park Equipment. Further, the Association will have no obligation or responsibility for upgrading or replacing Park Equipment in regional sized public park facilities, including sport complexes or any public park located on the banks of the Blanco River. The Association Regulations will require the periodic dues and assessments to be increased from time to time as necessary to provide the funds required for the maintenance of Private Streets, Street Landscaping, Detention Ponds and Common Areas, and to provide funds required for the management and operation of the Association.

14.02 Dues and Assessments. The Association dues and assessments required to be established, maintained and collected by the Association pursuant to this Agreement shall be in addition to, and not in lieu of, any and all other taxes, fees, charges and assessments that will be applicable to the Property.

14.03 City Approval of Documents and Covenants. The Certificate of Formation and Association Regulations, and the applicable restrictive covenants for each Section of the Property shall require the Association to operate, maintain, repair and refurbish Private Streets; to maintain Street Landscaping, Common Areas and Detention Ponds; and to replace Park Equipment, and to assess and collect sufficient dues and fees to fund and pay the cost and expenses for such responsibilities. The articles of incorporation and bylaws for the Association and the restrictive covenants applicable to the each Section or Phase of the Property shall authorize the City to enforce the obligations of the Association to: (i) maintain, clean, repair and refurbish Private Streets, (ii) maintain Street Landscaping, Detention Ponds, and Common Areas; (iii) replace Park Equipment; and (iv) assess and collect sufficient fees and charges to fund such maintenance, cleaning, repair, refurbishment, and replacement responsibilities. The articles of incorporation and bylaws for the Association and the restrictive covenants applicable to the each Section or Phase of the Property shall be subject to approval by the City, which approval shall not be unreasonably denied, delayed or conditioned; provided, that the scope of the City's review and approval shall be strictly limited to the requirements of this Article 14. Nothing in this Article 14 is intended or shall be construed as obligating the Owners to construct or establish Private Streets, and Street Landscaping and Common Areas or to upgrade Park Equipment.

EXECUTED in multiple originals as of the date set out below and effective as of May 3, 2016.

CITY OF KYLE, TEXAS

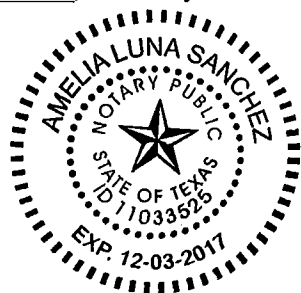
Attest:

By: Amelia Luna Sanchez
Name: Amelia Sanchez
Title: City Secretary
Date: 5/6/16

By: R. T. Webster
Name: R. T. Webster
Title: Mayor
Date: 5-6-16

THE STATE OF TEXAS §
 §
COUNTY OF HAYS §

This instrument was acknowledged before me on the 6th day of May, 2016 by R. T. Webster, the Mayor of the CITY OF KYLE, TEXAS, a home rule city, on behalf of said city.



Amelia Luna Sanchez
NOTARY PUBLIC, State of Texas
My Commission Expires: 12/03/17

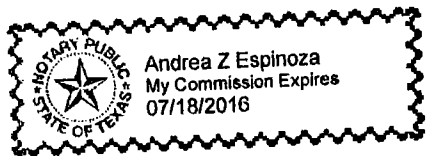
OWNERS :

Robert Scott Nance

Robert Scott Nance

THE STATE OF TEXAS §
 §
COUNTY OF HAYS §

This instrument was acknowledged before me on the 5th day of May, 2016 by Robert Scott Nance.



Andrea Z Espinoza
NOTARY PUBLIC, State of Texas
My Commission Expires: 07/18/2016

Jason Bradshaw

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of May, 2016 by Jason Bradshaw.

NOTARY PUBLIC, State of Texas
My Commission Expires: _____

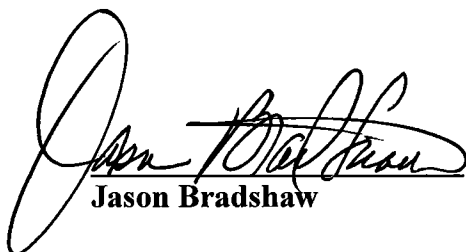
OWNERS :

Robert Scott Nance

THE STATE OF TEXAS §
 §
COUNTY OF HAYS §

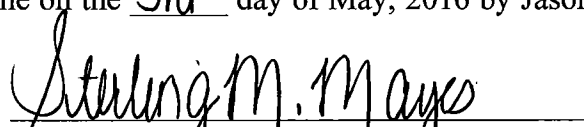
This instrument was acknowledged before me on the _____ day of May, 2016 by Robert Scott Nance.

NOTARY PUBLIC, State of Texas
My Commission Expires: _____


Jason Bradshaw

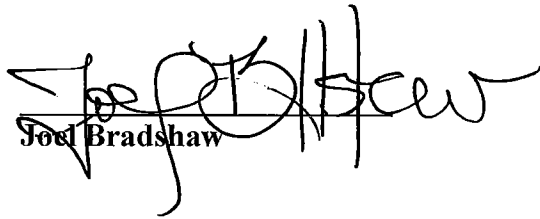
THE STATE OF TEXAS §
 §
COUNTY OF Dallas §

This instrument was acknowledged before me on the 3rd day of May, 2016 by Jason Bradshaw.



NOTARY PUBLIC, State of Texas
My Commission Expires: 4/20/2017




Joel Bradshaw

THE STATE OF TEXAS §
 §
COUNTY OF Dallas §

This instrument was acknowledged before me on the 3rd day of May, 2016 by Joel Bradshaw.



NOTARY PUBLIC, State of Texas
My Commission Expires: 10-29-16

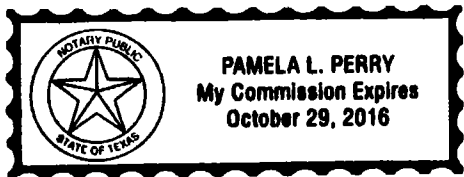


EXHIBIT "A-1"

DESCRIPTION OF THE NANCE-BRADSHAW PROPERTY

Approximately 2,973.583 acres of land located in Hays County, Texas comprised of the following Tracts:

Tract One – 2,602.84 acres being the remainder of a 2,997 acre tract of land conveyed by Mrs. M.J. Nance and the Estate of Ezekiel Nance to Walter Scott Nance and Robert Gates Nance by a warranty deed dated September 10, 1902 recorded in Volume 44 at Page 1 of the Hays County Deed Records (HCDR). Tract One being the aggregate of:

- the remainder of the 1,514 acre parcel being the Northwest part of said 2,997 acre tract set apart to Robert Gates Nance by a Partition Deed dated September 21, 1921 recorded in Volume 82 at Page 183 HCDR; and
- that certain 1,484 acre parcel being the Southeast part of said 2,997 acre tract set apart to Walter Scott Nance by a Partition Deed dated September 21, 1921 recorded in Volume 82 at Page 183 HCDR, the South boundary of said 1,484 acre parcel having been established by Boundary Line Agreement between Robert Nance, Mary Anne Hood, Trustee, and the Texas Veterans Land Board dated April 12, 1984 and recorded in Volume 575 at Page 303 of the Hays County Real Property Records (HCRPR).

Tract Two – The "Mill Tract" being that 102.2 acre tract of land conveyed by W.S. Nance to R.G. Nance and designated as "Tract No. One" in the Warranty Deed dated June 1, 1946 and recorded in Volume 135 at Page 77 HCDR.

Tract Three – Approximately 232.39 acres being the remainder of the 260.12 acre tract of land conveyed by R.G. Nance by W.S. Nance and designated as "Tract No. Two" in the Deed dated June 14, 1946 and recorded in Volume 135 at Page 77 HCDR less the following two parcels:

-13.87 acre parcel of land conveyed by Robert Nance and wife Ruth P. Nance to Robert Scott Nance by the Gift Deed dated September 10, 1980 recorded in Volume 373 at Page 193 HCDR; and

-13.86 acre parcel of land conveyed by Robert Nance and wife Ruth P. Nance to Janet Ruth Nance Bradshaw by Gift Deed dated September 10, 1980 recorded in Volume 373 at Page 196 HCDR.

Tract Four- 3.023 acre triangle of land conveyed by Ky-Tex Properties, Inc. to Robert Gates Nance, Jr. by Quitclaim Deed dated May 7, 2003 recorded in Volume 2214 at Page 82 of the Hays County Official Public Records.

Tract Five- An approximately 33.13 acre tract of land comprised of the following parcels:

- 30.00 acre parcel set apart to Robert Nance and designated as "Tract No. Three" in the Partition Deed dated August 20, 1946 recorded Volume 135 Page 516 HCDR;

- 2.99 acre parcel conveyed by Bernard Kuhn et ux to Robert Nance and designated as "First Tract" in the Warranty Deed dated July 6, 1956 recorded in Volume 168 at Page 539 HCDR; and

- 0.14 acre parcel conveyed by Bernard Kuhn et ux to Robert Nance and designated as "Second Tract" in the Warranty Deed dated July 6, 1956 recorded in Volume 168 at Page 539 HCDR.

EXHIBIT "A-2"

DESCRIPTION OF THE NANCE PROPERTY

Approximately 295.02 acres of land located in Hays County, Texas comprised of the following Tracts:

Tract One –13.87 acre parcel of land conveyed by Robert Nance and wife Ruth P. Nance to Robert Scott Nance by Gift Deed dated September 10, 1980 recorded in Volume 373 at Page 193 HCDR.

Tract Two- 281.15 ac. tract of land also known as "the Mohler Pasture" being that same land conveyed by W.S. Nance to Robert Scott Nance by Deed dated October 19, 1957 recorded in Volume 184 at Page 363 HCDR.

EXHIBIT "A-3"

DESCRIPTION OF PHASE 1 PROPERTY

Approximately 282.413 acres of land located east of the Blanco River in Hays County, Texas comprised of the following Tracts:

Tract One – Approximately 232.39 acres being the remainder of the 260.12 acre tract of land conveyed by R.G. Nance by W.S. Nance and designated as "Tract No. Two" in the Deed dated June 14, 1946 and recorded in Volume 135 at Page 77 HCDR less the following two parcels

-13.87 acre parcel of land conveyed by Robert Nance and wife Ruth P. Nance to Robert Scott Nance by Gift Deed dated September 10, 1980 recorded in Volume 373 at Page 193 HCDR; and

-13.86 acre parcel of land conveyed by Robert Nance and wife Ruth P. Nance to Janet Ruth Nance Bradshaw by Gift Deed dated September 10, 1980 recorded in Volume 373 at Page 196 HCDR.

Tract Two – 13.87 ac. tract of land conveyed by Robert Nance and wife Ruth P. Nance to Robert Scott Nance by Gift Deed dated September 10, 1980 and recorded in Volume 373 at Page 193 HCDR

Tract Three – 3.023 acre triangle of land conveyed by Ky-Tex Properties, Inc. to Robert Gates Nance, Jr. by Quitclaim Deed dated May 7, 2003 recorded in Volume 2214 at Page 82 of the Hays County Official Public Records.

Tract Four- An approximately 33.13 acre tract of land comprised of the following parcels:

- 30.00 acre parcel set apart to Robert Nance and designated as "Tract No. Three" in the Partition Deed dated August 20, 1946 recorded Volume 135 Page 516 HCDR;

- 2.99 acre parcel conveyed by Bernard Kuhn et ux to Robert Nance and designated as "First Tract" in the Warranty Deed dated July 6, 1956 recorded in Volume 168 at Page 539 HCDR; and

- 0.14 acre parcel conveyed by Bernard Kuhn et ux to Robert Nance and designated as "Second Tract" in the Warranty Deed dated July 6, 1956 recorded in Volume 168 at Page 539 HCDR

EXHIBIT "A-4"

DESCRIPTION OF PHASE 2 PROPERTY

Approximately 2,986.19 acres of land located west and south of the Blanco River in Hays County, Texas comprised of the following Tracts:

Tract One – 2,602.84 acres being the remainder of a 2,997 acre tract of land conveyed by Mrs. M.J. Nance and the Estate of Ezekiel Nance to Walter Scott Nance and Robert Gates Nance by a warranty deed dated September 10, 1902 recorded in Volume 44 at Page 1 of the Hays County Deed Records (HCDR). Tract One being the aggregate of:

- the remainder of the 1,514 acre parcel being the Northwest part of said 2,997 acre tract set apart to Robert Gates Nance by a Partition Deed dated September 21, 1921 recorded in Volume 82 at Page 183 HCDR; and

- that certain 1,484 acre parcel being the Southeast part of said 2,997 acre tract set apart to Walter Scott Nance by a Partition Deed dated September 21, 1921 recorded in Volume 82 at Page 183 HCDR, the South boundary of said 1,484 acre parcel having been established by Boundary Line Agreement between Robert Nance, Mary Anne Hood, Trustee, and the Texas Veterans Land Board dated April 12, 1984 and recorded in Volume 575 at Page 303 of the Hays County Real Property Records (HCRPR).

Tract Two - 281.15 ac. tract of land also known as "the Mohler Pasture" being that same land conveyed by W.S. Nance to Robert Scott Nance by Deed dated October 19, 1957 recorded in Volume 184 at Page 363 HCDR.

Tract Three – The "Mill Tract" being that 102.2 ac. tract of land conveyed by W.S. Nance to R.G. Nance and designated as "Tract No. One" in the Warranty Deed dated June 1, 1946 and recorded in Volume 135 at Page 77 HCDR.

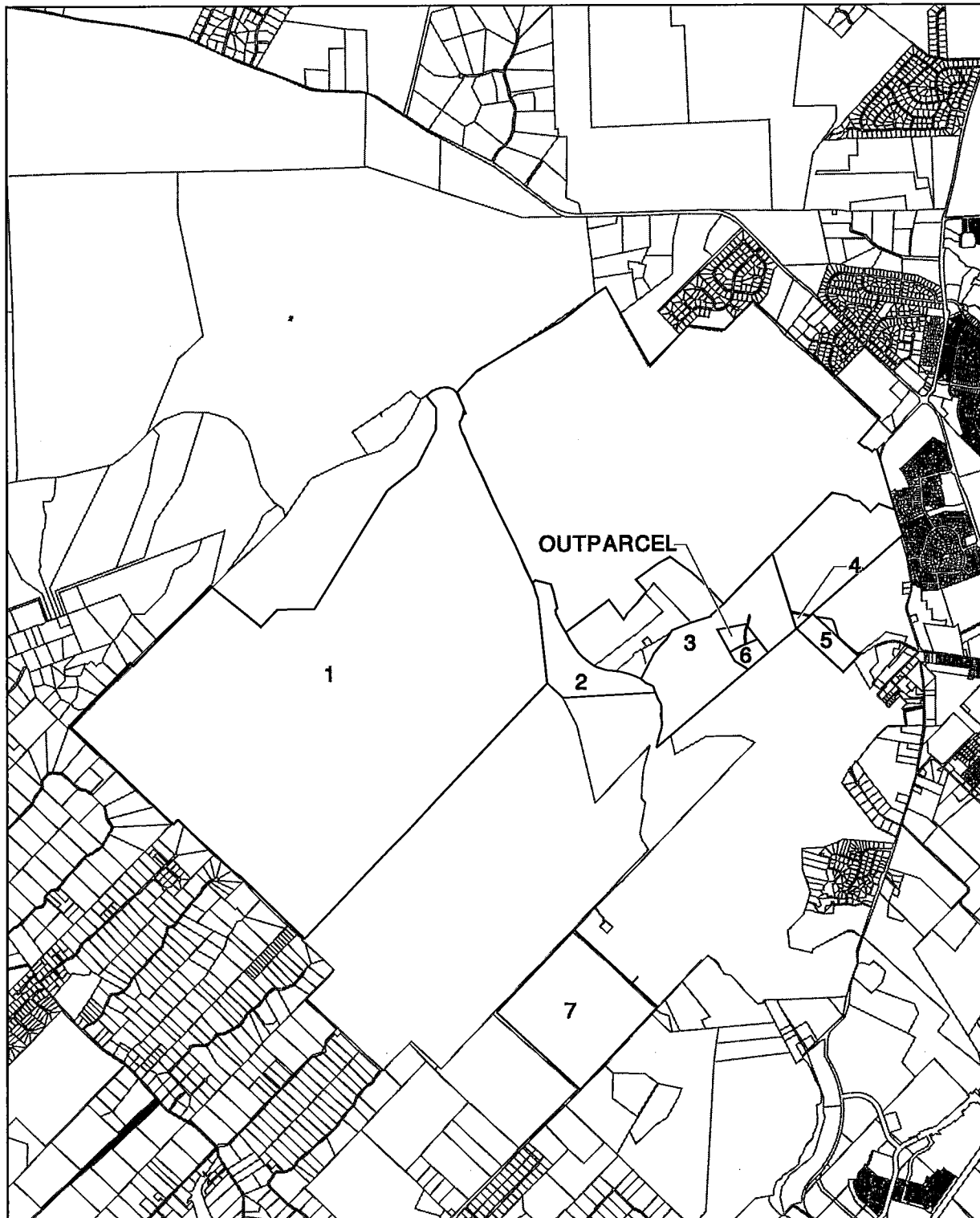
EXHIBIT "A-5"

DESCRIPTION OF CO-OWNED PROPERTY

THOSE PORTIONS OF THE WILLIAM DUTY SURVEY NO. 4, F.M. STEUSSY SURVEY NO. 18, THE WILLIAM WARD SURVEY, AND Z. HINTON SURVEY, COMPRISING APPROXIMATELY 292 ACRES AS DEPICTED ON EXHIBIT B AND A-3 HEREIN, AND AS MORE FULLY DESCRIBED IN THE FOLLOWING DEEDS RECORDED IN THE DEED RECORDS OF HAYS COUNTY, TEXAS (D.R.H.C.T.) AND IN THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS (O.P.R.H.C.T.):

HAYS COUNTY DEED/OFFICIAL PUBLIC RECORDS INFORMATION:

-Approximately 292.05 acres described in volume 804, page 205 D.R.H.C.T.



SUMMARY

TRACT IDENTIFIER	DESCRIPTION	ACREAGE
(1) NB	REMAINDER OF 2,997 AC TRACT	2,602.84 AC
(2) NB	"THE MILL TRACT"	102.2 AC
(3) NB		232.39 AC
(4) NB	TRIANGLE TRACT	3.023 AC
(5) NB		33.13 AC
(6) N		13.87 AC
(7) N	"THE MOHLER PASTURE"	281.15 AC
		3,268.6 AC

PROPERTY EXHIBIT

NANCE BRADSHAW RANCH

KYLE, TEXAS

EXHIBIT A-6



Scale: 1" = 3,000'
Date: April 28, 2016



SEC Planning, LLC
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SHEET FILE: R1140030-BRINCA08-PLANING-Exhibit-Nance Property Exhibit.dwg
Base mapping compiled from best available information. All map data should be considered as preliminary, in need of verification, and subject to change. This land plan is conceptual in nature and does not represent any regulatory approval. Plan is subject to change.

EXHIBIT "B"**RANCH DEVELOPMENT PLAN
DEVELOPMENT STANDARDS****A. Purpose and objectives**

The purpose and intent of the Ranch Development Plan is to provide flexible, alternative procedures and standards to encourage imaginative and innovative designs for the development of Property consistent the overall land use and development regulations as set forth in this Exhibit "B". The Ranch Development Standards are designed: (i) to allow development which is harmonious with nearby areas; (ii) to enhance and preserve areas which are unique or have outstanding scenic, environmental, cultural or historic significance; (iii) to provide an alternative for more efficient use of land, resulting in smaller utility networks, safer streets, more open space, and lower construction and maintenance costs; (iv) to encourage harmonious and coordinated development, considering natural features, community facilities, circulation patterns and surrounding properties and neighborhoods; (v) to facilitate the analysis of the effect of development upon the tax base, the local economy, population, public facilities and the environment; (vi) to provide and result in an enhanced residential and/or work environment for those persons living and/or working within the district; and (vii) to require the application of professional planning and design techniques to achieve overall coordinated mixed-use developments and avoid the negative effects of piecemeal, segregated, or unplanned development.

B. Applicable Rules

All aspects regarding the development of the Property shall comply with the City of Kyle Code of Ordinances, as amended as of May 3, 2016, and as modified by the Annexation and Development Agreement for the Nance-Bradshaw Ranch ("Development Agreement") and the Development Standards in this Exhibit "B" ("Development Standards") (collectively, the "Applicable Rules").

Base land use districts are based on the specific City zoning districts described below ("Land Use Districts"). The Land Use Districts are illustrated on the Ranch Development Plan Map attached to the Development Agreement as Exhibit "C". The Land Use Districts are as follows:

- | | |
|------------------------------|-------|
| 1. Single Family Residential | R-1-2 |
| 2. Multi-Family Residential | R-3-3 |
| 3. Commercial/Mixed Use | RS |

This Development Agreement allows the flexibility to mix various residential and commercial land uses and to define boundaries of the applicable Base Land Use Districts

during the platting process. Each plat or site plan submitted to the City will identify the Land Use District applicable to the lots or development within the final plat or site development plan. All development within the Property will comply with the Applicable Rules as modified by Development Standards in this Exhibit "B". In the case that this Exhibit does not address a specific City requirement, the Applicable Rules will control. In the event of a conflict between this Exhibit and the land use and site development regulations for each referenced base zoning district as defined in the Code of Ordinances on May 3, 2016, this Exhibit "B" shall control. Section 53-35(b) of the Code of Ordinances is waived and permits will be issued in accordance with the Applicable Rules.

C. Authorized Uses

The uses allowed within the Project shall comply with the list of allowed and prohibited uses defined in Code of Ordinances Chapter 53 for each base zoning district identified above as modified by the Applicable Rules, including the addition of the following allowed uses and any other uses described in this Exhibit "B" for each base district:

1. Single Family Residential R-1-2
 - a. Uses defined in Code of Ordinances Sections 53-64 and 53-89
 - b. Amenity Facilities
 - c. Golf Course
 - d. Private Parks
 - e. School, College or University
 - f. Civic Uses Including:
 - Emergency service station
 - Government offices
 - Postal office
 - Indoor religious assembly facilities
 - Library
 - g. Single Family Detached Condominium
 - h. Two Family (duplex)
 - i. Townhouse
2. Multi-Family Residential R-3-3
 - a. Allowed uses are defined in Code of Ordinances Section 53-292
3. Commercial/Mixed Use RS

Allowed uses are defined in Code of Ordinances Section 53-1230. All land uses identified as Primary Zoning, Secondary Zoning and Third Zoning as allowable within the RS district shall be allowed uses.

The purpose of the Mixed Use District is to accommodate mixed-use buildings with neighborhood-serving retail, service, and other uses on the

ground floor and residential units above the nonresidential space. This district is designed to encourage development that exhibits the physical design characteristics of pedestrian-oriented, storefront-style shopping streets.

In addition to vertically mixed development, mixed land use development may occur within the Mixed Use District. While such development will not be vertically integrated, development will be designed in a manner to enhance land use integration and encourage walkability.

Allowable uses may include:

- a. Single Family Detached
- b. Single Family Condominium (detached and attached)
- c. Single Family, Attached
- d. Two Family (duplex)
- e. Townhouse
- f. Multi-Family Residential
- g. Multi-Family Residential above retail/office

Prohibited uses are:

- a. Boat dealers

4. Open space type uses allowed in all Land Use Districts:

- a. Cemeteries (with conditional use permit issued by the city council);
- b. Conservation areas;
- c. Golf courses;
- d. Outdoor recreational and athletic facilities;
- e. Outdoor swimming pools;
- f. Parks, playgrounds and playfields;
- g. Wildlife sanctuaries;
- i. Streams, lakes, impounded waterways, or their drainageways; and
- j. Restoration and maintenance of wetlands and wetlands mitigation banks.

D. Impervious Cover

The term “Impervious Cover” means the total area of any surface that prevents the infiltration of water into the ground, such as roads, parking areas, concrete and buildings, but excluding the following:

- 1. Sidewalks in a public right-of-way or public easement
- 2. Multi-use trails open to the public or residents of a POA

3. Water quality controls
4. Detention basins
5. Unpaved drainage swales and conveyances
6. Water surface area of ponds, swimming pools and fountains
7. Areas with gravel placed over pervious surfaces that are used only for landscaping or by pedestrians and are not constructed with compacted base
8. For porous pavers or pavement, 50 percent (50%) of the horizontal area covered by the porous pavers or pavement
9. For an uncovered wood deck that has drainage spaces between the deck boards and that is located over a pervious surface, 50 percent (50%) of the horizontal area of the deck.
10. Any other area that under the Code, any City criteria manual interpreting same, or the then current policies of the City or a determination by the Planning Director is entitled to a full or partial exclusion.

The overall Project Impervious Cover (excluding commercial tracts) will be set at a maximum of thirty-nine percent (39%). The calculation of the impervious cover shall be measured as a whole based upon the entire property excluding lands within the Commercial/Mixed Use Land Use Districts. For purposes of clarifying the preceding sentence, the impervious cover on an individual final plat may exceed the 39% limit on impervious cover so long as the cumulative total of impervious cover on all final plats (excluding commercial tracts) ultimately recorded on the Property does not exceed the specified limit on impervious cover. Table D.1, Residential Development Standards within the Project, establishes impervious cover limits on a per residential lot basis. Those maximum per residential lot limits will be used to create an impervious cover table for each submitted plat within the Property. The table shall also list the cumulative tabulation of the community impervious cover based upon the total gross acreage of the site excluding the commercial lands.

Commercial tracts will comply with the limits established in the Code of Ordinance. Said commercial tracts shall not count towards the overall community impervious cover limits.

E. Single Family Residential Development Standards

1. The Project may include a variety of residential product types and sizes from detached single family homes to townhomes. Detailed design standards are included within this Exhibit, Table D.1, Single Family Residential Development Standards., based upon the type of residential product.
2. Residential lot widths shall be measured from the front setback building line as established within Table D.1, Single Family Residential Development Standards.
3. Building height shall be measured as the vertical distance from the front door threshold to the highest point of the roof. Chimneys, vents, and mechanical equipment are excluded from the measurement of height. In measuring the height of a building having

a roof inclining more than one inch (1”) per foot (1’), the highest point of the building shall be the mean height level of the top of the roof and the highest eave.

4. For purposes of this Exhibit D, the term “Developable Acre” means the total land area not prohibited from residential improvements due to the following:
 - a. Federal or state restriction
 - b. Buffer yards as required by the Code
 - c. Required stormwater treatment and containment facilities.

To ensure a variety and mix of residential product types within the Project, the following standards have been established:

Maximum Residential Units

The development of the Property will not exceed 7,300 dwelling units.

Single family Residential Product Type Requirements

1. Single Family Residential

- The maximum number of narrow single family detached residential lots (Narrow Lots) allowed to be subdivided on the Property will be twenty-five percent (25%) of the total number of the Single Family Detached residential lots shown on the total of all preliminary plans approved for the Property. Narrow Lots shall be defined as those lots with a width less than 65 feet. For purposes of clarifying the preceding sentence, there is no limit to the number of Narrow Lots that may be contained in an individual final plat so long as the cumulative total of Narrow Lots contained in all final plats ultimately recorded on the Property do not exceed twenty-five percent (25%) of all single family detached lots shown on all of the approved preliminary plans for the Property.
- Single Family Estate Lots (Estate Lots) shall be those residential lots designed and platted at a minimum of one (1) acre in size. Estate Lots may not be subdivided into smaller lots unless the Estate Lot plat is vacated.

2. Single Family Residential Alley Product

- Maximum of 1,460 units (20% of total platted residential lots)

3. Single Family Residential Attached (Condominium and Townhome)

- Maximum of 2,820 units (40% of total platted residential lots)

Single Family Residential development will comply with the development standards set forth in Table D.1, Single Family Residential Development Standards.

Table D.1 – Single Family Residential Development Standards

	RESIDENTIAL USES			
	DETACHED	ALLEY	ATTACHED Townhome/ Condominium	DETACHED Condominium
Impervious Cover (maximum)	45% or 65% ¹	70%	75%	70%
Lot Width (minimum) ²	45 ft.	35 ft.	22 ft.	--
Front Setback (minimum)	25 ft.	10 ft.	15/20 ft. ³	20 ft. ⁴
Side Setback (minimum)	5 ft. or 7.5 ft. ⁷	5 ft.	0 ft. ⁵	5 ft. ⁵
Corner Setback (minimum)	15 ft.	10 ft.	10 ft.	10 ft. ⁴
Rear Setback (minimum)	10 ft.	5 ft.	15 ft. ⁶	10 ft. ⁶
Building Height (maximum)	35 ft.	35 ft.	35 ft.	35 ft.
Lot Area (minimum)	4,900 s.f.	3,500 s.f.	2,000 s.f.	5 acres
Maximum Development Density	4.7 units per Developable Acre	8 units per Developable Acre	10 units per Developable Acre	8 units per Developable Acre
Units per structure (max.)	--	--	Townhome: 8	--

1. Single Family Detached Residential lots with a lot area greater than 15,000 square feet shall have a maximum Impervious Cover of 45%. Single Family Detached Residential lots with a lot area equal to or less than 15,000 square feet shall have a maximum Impervious Cover of 65%.
2. See allowable percentage of narrow lots as defined in Section D of this Exhibit.
3. The front setback shall be 20ft. for front loaded townhome/condominium product.
4. Setback from private drives.
5. Minimum 10 feet between buildings.
6. Building to building separation.
7. Single Family Detached Residential lots with a lot area greater than 15,000 square feet shall have a minimum side set back of 7.5 feet. Single Family Detached Residential lots with a lot area equal to or less than 15,000 square feet shall have a minimum side set back of 5 feet.

F. Multi-Family Residential Lot Design Standards

The Project will include Multi-Family Residential as identified on the Ranch Development Plan Map. Detailed design standards are included within this Exhibit, Table E.1, Multi-Family Residential Development Standards.

Table E.1 – Multi-Family Residential Development Standards

Front setback	25 ft.
Side setback	7 ft.
Corner setback	15 ft.
Rear setback	25 ft.
Minimum lot width	90 ft.
Minimum lot area	12,000 sq. ft. plus 1,500 sq. ft. for each residential unit
Building height limit	45 ft. three stories
Maximum building coverage	50%
Maximum impervious cover	70%
Maximum density (per Developable Acre)	20 dwelling units per developable acre ²

Building height shall be measured as the vertical distance from the front door threshold to the highest point of the roof. Chimneys, vents, mechanical and elevator equipment are excluded from the measurement of height. In measuring the height of a building having a roof inclining more than one inch (1”) per foot (1’), the highest point of the building shall be the mean height level of the top of the roof and the highest eave.

G. Vehicular Circulation

1. Block length shall not exceed 1,000 feet; provided that block length excludes areas associated with creeks, natural drainageways, open space and steep topography.
2. Cul-de-sac maximum length shall not exceed 800 feet (measured from center of turnaround to centerline of connecting road) unless the land serviced by the cul-de-sac is (a) contains creeks, natural drainageways, steep topography and external property boundaries. A maximum 50 dwelling units may be serviced from all cul-de-sacs.
3. A rural lane roadway section may be used subdivisions of Estate Lots as defined in Section C.1 of this Exhibit. The roadway section shall be a roll curb with swale cross section. Curb and gutter will not be required.
4. Roadway Standards

Standard Category	Pavement Width	Right-Of-Way	Horizontal Curve
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Major thoroughfare	66-70 ft.	100 – 120 ft.	1,000 ft.
Arterial street	44 – 48 ft.	80 ft.	750 ft.
Collector street	38 ft.	60 ft.	350 ft.
Cypress Road*	38 ft.	70 ft.	500 ft.
Local street	30 ft.	50 ft.	250 ft.
Residential lane	28 ft.	50 ft.	180 ft.
Rural lane	28 ft.	60 ft.	180 ft.

*Cypress Road east of FM 150 may be designed at a design speed of 35 miles per hour (35 MPH).

5. Alleys shall be used in the design and development of alley loaded residential subdivisions. Alleys shall be designed for one way traffic and meet the following alley design roadway standards:

Design Speed	5 MPH (miles per hour)
Right-of-Way width	15 ft.
Pavement width	12 ft.
Intersection curb radius	5 ft.
Permitted alley parking	none

6. SECTION 41-136(C) - Lot depth to average lot width ratio is waived.
7. SECTION 41-137(D) - Offset intersection spacing along collector, local and residential lane streets shall be a minimum of 125 ft. measured from roadway centerline to roadway centerline. Such intersections along arterials shall be 180 ft. Offset intersections along major thoroughfares shall be reviewed and approved by the City on a case by case basis.
8. Flag lots must have a minimum of 20 feet of width measured at the right-of-way substantially perpendicular to the right of way.

H. Environmental

Environmental features: The natural topography, soils, environmental features, waterways and vegetation should be conserved and used where possible, through careful location and design of circulation ways, buildings and other structures, parking areas, recreation areas, open space, utilities and drainage facilities. To enhance the living and working environment, buffer zones, greenbelt parks and open space areas should be provided within the Project where practical.

Except as provided in Section 3.08 of the Development Agreement and this Exhibit "B", development within the Property will comply with Ordinance 891 adopted on February 16, 2016.

The Owner may construct temporary construction haul roads as reasonably possible to reduce heavy construction traffic on improved roadways. In situations where reasonable haul road options are not possible, the Owner shall work with the City to identify alternatives for reducing construction traffic impact to existing residential neighborhoods.

Except for a TPDES storm water pollution prevention plan that complies with the City's MS4 requirements, no City approvals will be required in connection with the location of customary construction staging areas, storage yards, construction hauls roads, use or storage of on-site stone, gravel or similar materials for construction on the Property.

Cut and/or fill slopes within the Property shall not exceed six feet (6') in height without a variance. All cut and fill variances in the Property may be approved administratively by the concurrence of the City Staff and City Engineer provided the cut and fill slopes greater than four feet (4') are appropriately sloped, terraced, or through installation of retaining walls to control erosion and sedimentation. All cut slopes must be stabilized in accordance with an approved geotechnical analyses provided to the City by a Professional Engineer. Site grading shall comply with accepted engineering practices, the Americans with Disability Act, and any other applicable federal, state, or regional regulations.

Except as provided in the TCEQ rules regulating development over the Edwards Aquifer, there are no setbacks from critical environmental features. Flood plain modification will be regulated solely by state and federal law.

The Applicable Rules do not contain any tree preservation ordinances, rules or other type of requirement. Notwithstanding any other provision of the Development Agreement or this Exhibit "B", tree mitigation will not be required for the removal or harming of any tree.

I. Construction Field Offices

A development and construction field office is permitted within the Project. The Owner will prepare and submit applicable City applications for said facility. Once approval is secured, the Owner will receive a 24 month term permit with unlimited renewals.

J. Residential Sales Centers

The Owner is allowed to construction Sales Centers within the Project. Each Sales Center may include a sales building, model homes (not to exceed 10) operational models at the same time) and associated parking facility. The Sales Center will be accessible from a paved, improved street. A Temporary Use Permit will be submitted to the City for said facility. Once approved, the Sales Center Permit shall remain in place until the final residential building permit application has been submitted to the City for said subdivision within the Project. At such time, the Owner will have six (6) months to convert the models and other facilities to their permanent permitted uses.

K. Final Plats

Sections 41-53(f) & (g) are waived.

L. Park Land

The park land dedication provisions of Section 41-147(c) are modified as follows:

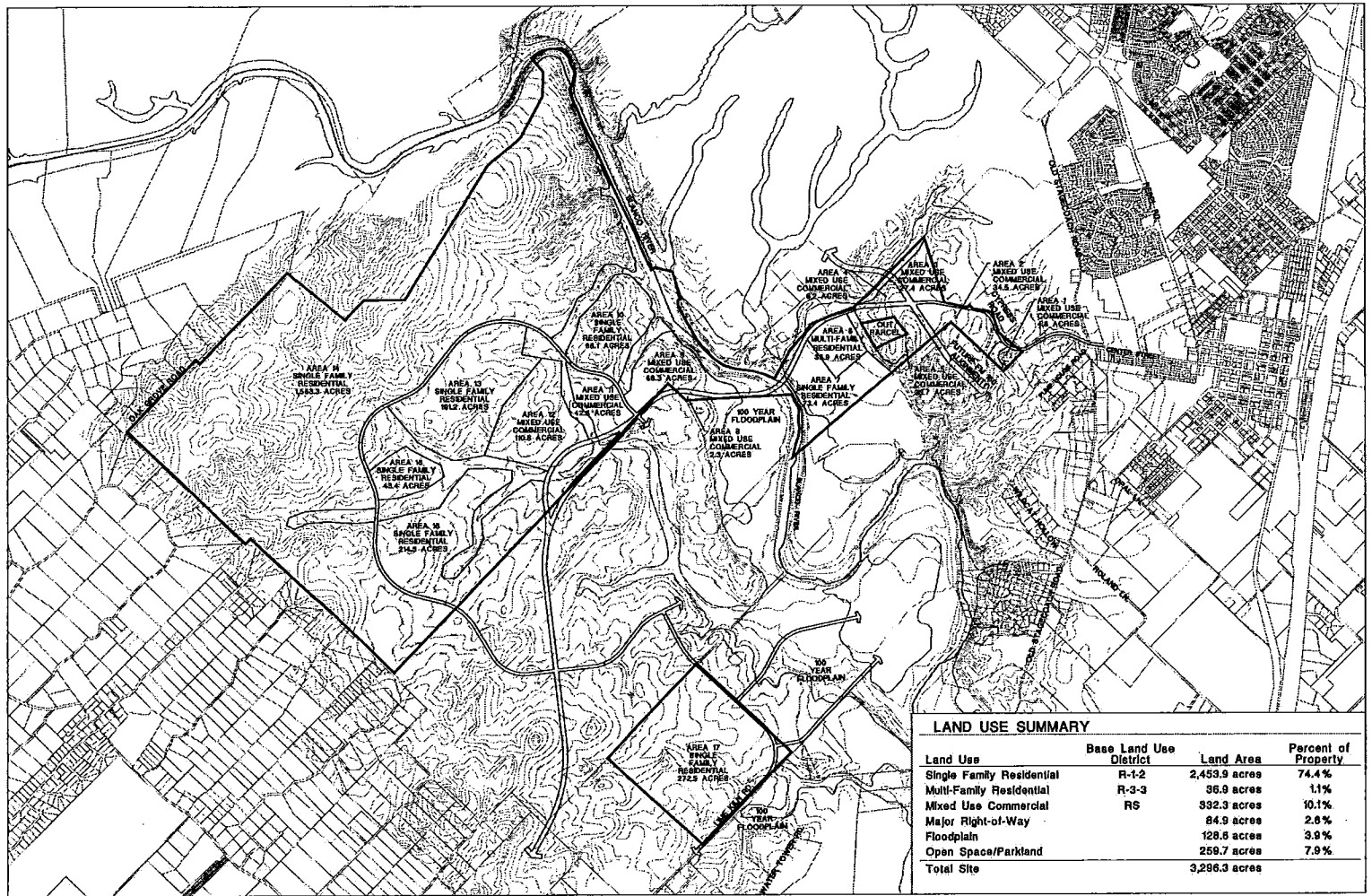
- a. A park located along or adjacent to the western bank of the Blanco River containing at least 15 acres will dedicated and conveyed to the City prior to the approval of the subdivision plat containing the 500th residential Lot in Phase 2 of the Project. Due to the regional significance of a City park located on the Blanco River, each acre of said park will meet the parkland dedication requirements for 125 dwelling units. The requirement of Section 41-147(h)(1)(a) is waived for this park. Land within the 100 year flood plain will count toward the size of the park.
- b. A park containing at least 30 acres will dedicated and conveyed to the City prior to the approval of the subdivision plat containing the 1,000th residential Lot in Phase 2 of the Project. Each acre of said park will meet the parkland dedication requirements for 100 dwelling units.
- c. Land dedicated for hike and bike trails will meet parkland dedication requirements at a ratio of 50 dwelling units per acre dedicated. The five acre minimum area requirement of Section 41-147(c)(2)(b) is waived for land dedicated for hike and bike trails.

M. Propane and Dry Utilities

1. Notwithstanding any other provision of the City Code, the City approves installation of a propane or natural gas distribution system to serve platted lots within the Property, subject to approval of construction plans and acceptance of the completed propane system, in phases, by the City Engineer, and any necessary state regulatory approvals. The owner and operator of the propane or natural gas distribution system shall be required to obtain a franchise from the City prior to the installation and operation of the propane or natural gas distribution system. The franchise shall provide standard terms and provisions and for the payment to the City of a City franchise fee.
2. In areas where it may be inappropriate to cut the dry utility trench through rock, Owner shall provide the City plans for placing the dry utilities in an above-ground conduit covered by sufficient soil and vegetation to avoid exposure of the conduit. The City Manager or his designee may approve dry utilities at minimum depths per utility suppliers' standards, which approvals may include requirements to cap conduits in concrete.

EXHIBIT "C"

DEVELOPMENT PLAN MAP



LAND USE SUMMARY			
Land Use	Base Land Use District	Land Area	Percent of Property
Single Family Residential	R-1-2	2,453.9 acres	74.4%
Multi-Family Residential	R-3-3	86.9 acres	1.1%
Mixed Use Commercial	RS	592.3 acres	10.1%
Major Right-of-Way		84.9 acres	2.6%
Floodplain		128.6 acres	3.9%
Open Space/Parkland		259.7 acres	7.9%
Total Site		3,286.3 acres	

Nance-Bradshaw Ranch Development Agreement

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Exhibit C
Ranch Development Plan Map

 Scale: 1" = 3,500'
 Date: April 8, 2018

© 2018 SEC Planning, LLC. All rights reserved. No part of this document may be reproduced without the prior written consent of SEC Planning, LLC. The developer has reserved the right, without notice, to make changes to this map and other aspects of the development to comply with governmental requirements and to fulfill its marketing objective.

EXHIBIT "D"

MUNICIPAL SERVICE PLAN

Exhibit "D"

**MUNICIPAL SERVICES PLAN
FOR PROPERTY TO BE
ANNEXED TO THE CITY OF KYLE**

WHEREAS, the City of Kyle, Texas (the "City") intends to institute annexation proceedings for a tract of land described more fully hereinafter (referred to herein as the "Property");

WHEREAS, *Section 43.056, Loc. Gov't. Code*, requires a municipal service plan be adopted with the annexation ordinance;

WHEREAS, the Property is not included in the municipal annexation plan and is exempt from the requirements thereof;

WHEREAS, infrastructure provided for herein and that are existing are sufficient to service the Property on the same terms and conditions as other similarly situated properties currently within the City limits and no capital improvements by the City are required to offer municipal services on the same terms and conditions as other similarly situated properties within the City;

WHEREAS, it is found that all statutory requirements have been satisfied and the City is authorized by *Chapt. 43, Loc. Gov't. Code*, to annex the Property into the City; and

WHEREAS, the Property will benefit from the City's development restrictions and zoning requirements, as well as other municipal services provided by the City, which are good and valuable consideration for this service plan

NOW, THEREFORE, the City agrees to provide the following municipal services for the Property on the effective date of annexation:

(1) **General Municipal Services.** Pursuant to this Plan, the following municipal services shall be provided immediately from the effective date of the annexation:

A. Police protection as follows:

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.

B. Fire protection and Emergency Medical Services as follows:

Fire protection by the present personnel and equipment of the City volunteer fire fighting force with the limitations of water available. Radio response for Emergency Medical Services with the personnel serving the area and equipment.

C. Solid waste collection services as follows:

Solid waste collection and services as now being offered to the citizens of the City.

D. Animal control as follows:

Service by present personnel, equipment and facilities or by contract with a third party, as provided within the City.

E. Maintenance of parks and playgrounds within the City.

F. Inspection services in conjunction with building permits and routine City code enforcement services by present personnel, equipment and facilities.

G. Maintenance of other City facilities, buildings and service.

H. Land use regulation as follows:

On the effective date of annexation, the zoning jurisdiction of the City shall be extended to include the annexed area, and the use of all property therein shall be grandfathered; and shall be temporarily zoned Agricultural District "A" with the intent to rezone the Property upon request of the landowner(s) or city staff. The Planning & Zoning Commission and the City Council will consider rezoning the Property at future times in response to requests submitted by the landowner(s) or requested by city staff.

(2) **Scheduled Municipal Services.** Depending upon the Property owner's plans and schedule for the development of the Property or redevelopment of the Property, the following municipal services will be provided on a schedule and at increasing levels of service as provided in this Plan:

A. Water service and maintenance of water facilities as follows:

(i) Inspection of water distribution lines or wells as provided by statutes of the State of Texas.

(ii) In accordance with the rules and regulations for water service extension, water service will be provided by the utility holding a water certificate of convenience and necessity ("CCN") for the Property, or absent a utility holding a CCN, in whose jurisdiction the Property is located, in accordance with all the ordinances, regulations, and policies of the City in effect from time to time for the extension of water service. If connected to the City's system, the Property owner(s) shall construct the internal water lines and pay the costs of water line extension and necessary facilities to service the Property as required in City ordinances at the time of the request. The Property owner(s) agree the Property in its current state has adequate water service and no capital improvements by the City are required. The Property owner(s) agree as the Property develops and water services are sought from the utility holding the CCN for the Property that the City's ordinances, policies, or agreements between the City and the Property owner(s) shall govern the extension of water services to the Property and the City shall have no obligation to service in another CCN.

B. Wastewater service and maintenance of wastewater service as follows:

(i) Inspection of sewer lines or septic systems as provided by statutes of the State of Texas.

(ii) The Property owner(s) shall construct the internal and off-site sewer lines and facilities (the "Sewer System") and pay the costs of line extension and facilities as required in City ordinances. Upon acceptance of the Sewer System, sewer 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 Sewer System will be accepted and maintained by the City in accordance with its usual policies. Requests for new sewer extensions will be installed and extended upon request under the same costs and terms as with other similarly situated customers of the City. The City ordinances, policies, and agreements between the City and the Property owner(s) in effect at the time a request for additional service is submitted shall govern the costs and request for service.

C. Maintenance of public streets and rights-of-way as appropriate as follows:

(i) Provide maintenance services on public streets within the Property that are dedicated and finally accepted by the City. The maintenance of such public streets and roads will be limited as follows:

(A) Emergency maintenance of streets, repair of hazardous potholes, measures necessary for traffic flow, etc.;

(B) Routine maintenance as presently performed by the City; and

(C) The Property owner(s) have specifically agreed that maintenance services will be of little benefit and will not be required or needed on the Property, prior to the Property owner(s), its grantees, successors and assigns completing the construction and dedication of streets to the City in compliance with City subdivision regulations.

(ii) Following installation of the roadways, including any required traffic signals, traffic signs, street markings, other traffic control devices and street lighting, the City will maintain the public streets, roadways and rights-of-way within the boundaries of the Property if dedicated and accepted, as follows:

(A) As provided in C(i)(A)&(B) above;

(B) Reconstruction and resurfacing of streets, installation of drainage facilities, construction of curbs, gutters and other such major improvements as the need therefore is determined by the governing body under City policies;

(C) 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; and

(D) Installation and maintenance of street lighting in accordance with established policies of the City;

(iii) The outer boundaries of the Property abut existing roadways. The Property owner(s) agree that no City improvements are required on such roadways to service the Property. If the owner(s) develop the Property so as to impact abutting roadways pursuant to the City's subdivision regulation, the owner(s) agree to comply with such ordinances.

(3) **Special Services and Actions.** Although the City reserves all its governmental authority, powers and discretion, if the City shall unreasonably refuse to grant the permits and approvals above provided in (2)(A), (B) & (C), then in that event the owner(s) may request and obtain disannexation of the Property pursuant to this service plan; provided that if the City shall, in the exercise of its discretion and authority, approve the permits and events set forth in (2)(A), (B) & (C) above, the Property shall be and remain within the corporate limits of the City.

(4) **Capital Improvements.** Construction of the following capital improvements shall be initiated after the effective date of the annexation: None. Upon development of the Property or redevelopment, the landowner(s) will be responsible for the development costs the same as a developer or landowner in a similarly situated area under the ordinances in effect at the time of development or redevelopment. No additional capital improvements are necessary at this time to service the Property. The Property owner(s) for itself, its grantees, successors, and assigns agree that no capital improvements are required to service the Property the same as similarly situated properties already within the City.

(5) **Term.** If not previously expired, this service plan expires at the end of ten (10) years.

(6) **Property Description.** The legal description and map of the Property are as set forth in Exhibits "A" and "B" that are attached to the Ordinance to which this negotiated municipal service plan is attached as Exhibit "C".

Exhibit "E"

ANNEXATION ORDINANCE

EXHIBIT "E"

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KYLE, TEXAS, ANNEXING APPROXIMATELY 6,517 ACRES OF LAND LOCATED IN HAYS COUNTY, TEXAS ALL OF WHICH ARE LYING WITHIN THE CITY'S EXTRATERRITORIAL JURISDICTION AND TO INCORPORATE SUCH PROPERTIES INTO THE CITY OF KYLE, AS SHOWN IN THE ATTACHED EXHIBIT; MAKING FINDINGS OF FACT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR OPEN MEETINGS AND OTHER RELATED MATTERS.

WHEREAS, the City of Kyle, Texas, (herein the "City") is a home rule municipality authorized by State law and the City Charter to annex territory lying adjacent and contiguous to the City; and

WHEREAS, the property owners (herein the "Petitioners"), being the owners of approximately 6,517 acres of land located within Hays County, Texas have petitioned the City for annexation of said tracts into the city limits; and

WHEREAS, the properties are adjacent and contiguous to the present city limits and within the City's extraterritorial jurisdiction; and

WHEREAS, the City Council heard and has decided to grant the owners requests that the City annex said properties; and

WHEREAS, two separate public hearings were conducted prior to consideration of this Ordinance in accordance with §43.063 of the *Tex. Loc. Gov't. Code*; and

WHEREAS, the hearings were conducted and held not more than forty (40) nor less than twenty (20) days prior to the institution of annexation proceedings; and

WHEREAS, notice of the public hearings was published in a newspaper of general circulation in the City and the territory proposed to be annexed not more than twenty (20) nor less than ten (10) days prior to the public hearings; and

WHEREAS, the Petitioners have agreed and consented to the negotiated municipal service plan and the annexation of the properties by the City and further agreed to be bound by all acts, ordinances, and all other legal action now in force and effect within the corporate limits of the City and all those which may be hereafter adopted; and

WHEREAS, the City intends to provide services to the properties to be annexed according to the Service Plan attached hereto as Exhibit "C".

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

SECTION 1. That all of the above premises and findings of fact are found to be true and correct and are incorporated into the body of this Ordinance as if copied in their entirety.

SECTION 2. That the following described properties (hereinafter referred to as the “Annexed Property”), is hereby annexed into the corporate limits of the City of Kyle:

All those certain tracts or parcels being approximately 6,517 acres of land, located in Hays County, Texas, and being more particularly described in Exhibit “A” and shown in Exhibit “B”, attached hereto and incorporated herein for all purposes.

SECTION 3. That the Service Plan submitted herewith is hereby approved as part of this Ordinance, made a part hereof and attached hereto as Exhibit “C”.

SECTION 4. That the future owners and inhabitants of the Annexed Properties shall be entitled to all of the rights and privileges of the City as set forth in the Service Plan attached hereto as Exhibit “C”, and are further bound by all acts, ordinances, and all other legal action now in full force and effect and all those which may be hereafter adopted.

SECTION 5. That the official map and boundaries of the City, heretofore adopted and amended, be hereby amended so as to include the Annexed Properties as part of the City.

SECTION 6. That the Annexed Properties shall be temporarily zoned Agricultural District “A” as provided in the City Zoning Ordinance, as amended, until permanent zoning is established therefore.

SECTION 7. That the Annexed Properties shall be assigned to Council District No. 4.

SECTION 8. That if any provision of this Ordinance or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 9. That this Ordinance shall take effect immediately from and after its passage in accordance with the provisions of the *Tex. Loc. Gov't. Code*.

SECTION 10. That it is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, *Chapt. 551, Tex. Gov't. Code*.

PASSED AND APPROVED on First Reading the _____ day of April, 2016.

FINALLY PASSED AND APPROVED on Second Reading this ____ day of May, 2016.

ATTEST:

CITY OF KYLE, TEXAS

Amelia Sanchez, City Secretary

R. Todd Webster, Mayor

Exhibit "F"**LUE DETERMINATION TABLE**

LUE Determination Table				
Estimated Maximum Expected Flow Rate (gpm)	Displacement & Multi-jet SRII & PMM	Compound C702. Table 1.	Turbine C701. Table 2. OMNI C2 & WR*	Living Unit Equivalents (LUEs)
10	5/8" x 3/4"			1
15	3/4"			1.5
25	1"			2.5
50	1.5"			5
80	2"	2"	1.5"	8
100			2"	10
160		3"		16
240			3"	24
250		4"		25
420			4"	42
500		6"		50
800		8"		80
920			6"	92
1600			8" *	160
*The WR turbine meter is for 8" size only and does not have low flow accuracy capability.				

EXHIBIT "G"

ANNEXATION PETITIONS

February 25, 2016

Howard J. Koontz, AICP
Director of Planning and Community Development
City of Kyle
100 W. Center Street
Kyle, TX 78640

Dear Howard:

I own approximately 294.87 acres located within the City of Kyle Extra Territorial Jurisdiction (ETJ). The property is comprised of several Hays County Appraisal District (CAD) tax parcels as outlined on the attached summary. As discussed during our meeting on February 24, 2016 at the city of Kyle offices, the CAD parcel boundaries are slightly different from survey work underway by my family. Once complete, the survey data will reflect the surveyed boundary of our family's property. In the meantime, attached is a subject tract exhibit illustrating the property boundary based on the survey work conducted.

I am submitting this letter and attached Application for Voluntary Annexation of the 294.87 acre property located generally along Cypress Road with the Hays CAD Property ID Numbers on the attached list of properties. As we have discussed, this request for voluntary annexation is conditioned on reaching agreement on a mutually approved form of development agreement for the property and may be withdrawn in whole or in part at any time prior to the completion of the annexation proceedings.

I look forward to hearing from you once City staff outlines a schedule for the requested voluntary annexation. In the meantime, please do not hesitate to contact Peter Verdichio, the Project Agent, or me with any questions.

Sincerely,


R. Scott Nance

APPLICATION & CHECKLIST – VOLUNTARY ANNEXATION APPLICATION

Project Name/Address: Cypress Rd, Kyle, TX 78640

(Submittal Date)

REQUIRED ITEMS FOR SUBMITTAL PACKAGE:

The following items are required to be submitted to the Planning Department in order for the application to be accepted for review.

- ___ 1. Letter requesting annexation, signed and dated by all property owners and detailing the following information:
 - a. The name of the property owner(s)
 - b. The street address of the property
 - c. Tax appraisal district property ID number(s)
 - d. Acknowledgement that the property is contiguous to the current city limits.
 - e. Identify the number of residents living on the property.
 - f. Current use of the property.
 - g. Proposed use of the property
- ___ 2. Map of the subject property
- ___ 3. A legal description of the property (including a survey, field notes or legal description – subdivision, lot, and block) - label as Exhibit A.
- ___ 4. Ownership Documents. Clean copy of recorded warranty deed or other document(s) conveying ownership of all the property to be annexed. If the property is owned by a partnership, corporation, trust, or other entity, documents demonstrating signatory's authority to sign Petition on behalf of entity must be included.
- ___ 5. Application Fee: \$850.00 + \$190.21 (Newspaper Notification Fee)

Property Information

Owners: Nance, Robert Scott

Address: See Attached

Phone: 512.262.2136 **Email:** lhance@verizon.net

Acceage: 294.87 **Property ID (R#)** See Attached

Legal Description: See Attached

Number of lots and proposed use: _____

Agent: Peter Verdicchio, RLA SEC Planning, LLC

Phone: 512.246.7003 Email: PeterV@SECPlanning.com Fax Number: N/A

Please Note: The signature of owner authorizes City of Kyle staff to visit and inspect the property for which this application is being submitted. The signature also indicates that the applicant or his agent has reviewed the requirements of this checklist and all items on this checklist have been addressed and complied with. **Note:** The agent is the official contact person for this project and the single point of contact. All correspondence and communication will be conducted with the agent. If no agent is listed, the owner will be considered the agent.

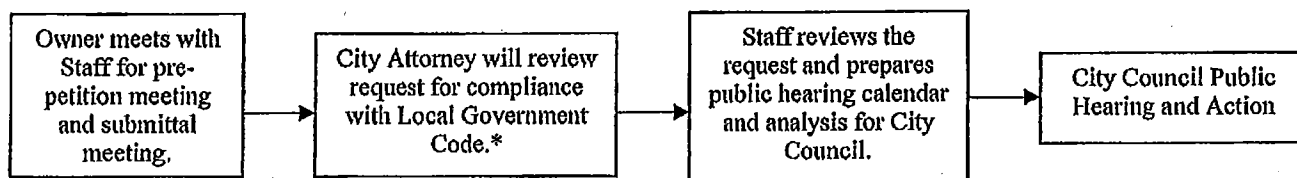
(Check One)

I will represent my application before city staff and the City Council.

I hereby authorize the person named below to act as my agent in processing this application before city staff and city council.

Robert Scott Nance	512.262.2136		
Owner's Name (printed)	Phone	Fax	
205 Live Oak Drive	Mountain City	TX	78610
Owner's Address	City	State	Zip
<i>Robert Scott Nance</i>	<i>2-26-16</i>		lhance@verizon.net
Owner's Signature	Date		Email Address
Agent's Name: Peter Verdicchio, RLA			
Company: SEC Planning, LLC			
Mailing Address: 4201 W Parmer Lane, Bldg A, Ste 220	Austin	TX	78727
Street	City	State	Zip
512.246.7003	N/A		PeterV@SECPlanning.com
Phone	Fax		Email address

GENERAL PROCESS

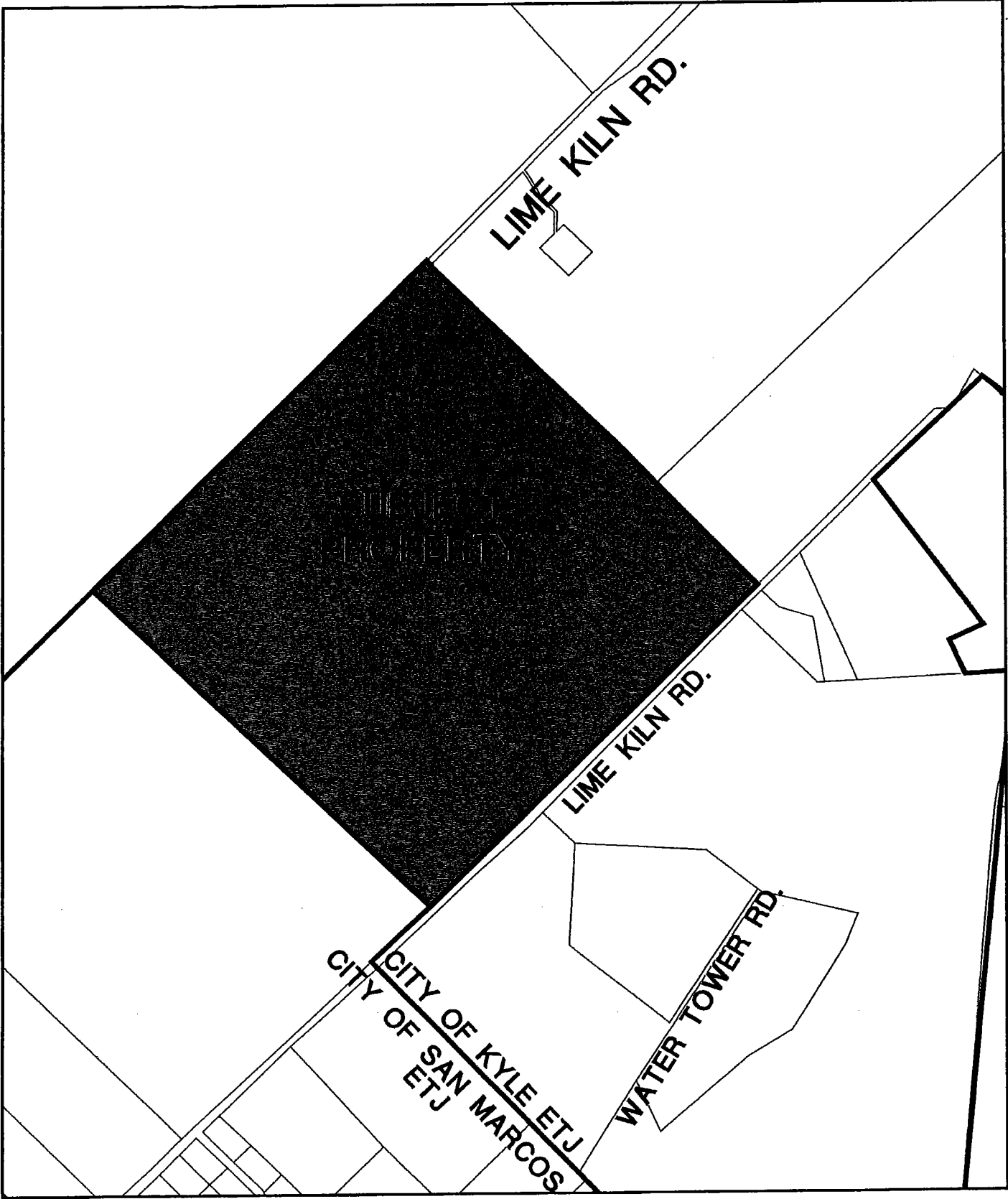


**If the City Attorney determines the requested annexation does not meet the requirements of the local government code the applicant will be notified in writing and the request for annexation will not proceed.*

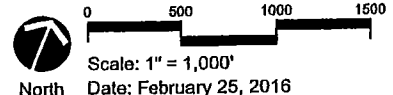
R. Scott Nance Property List
Annexation Request: Property ID and Legal Description

Property ID	Address	Legal Description
R17015	CYPRESS RD, KYLE, TX 78640	ABS 361 JOHN PHARASS SURVEY 13.87 AC GEO#90617291
R17303	CYPRESS RD, KYLE, TX 78640	A0369 PENNINGHOUSE SURVEY, ACRES 281.00

**This information is subject to final review. Refer to Subject Property Annexation Exhibit for depiction of land owned by Applicant.*



**SUBJECT PROPERTY-VOLUNTARY
ANNEXATION EXHIBIT**



SEC Planning, LLC
Land Planning • Landscape Architecture • Community Branding
 AUSTIN, TEXAS
 + (512) 220-7043 • + (512) 220-7044
 www.secplanning.com • info@secplanning.com

SCOTT NANCE PROPERTY
 KLYE, TEXAS

SHEET FILE: R:\140030-BRINCad\es\PLANNING\Submittal\Annexation\Nance Properties.dwg
 Base mapping compiled from best available information. All map data should be considered as preliminary, in need of verification, and subject to change. This land plan is conceptual in nature and does not represent any regulatory approval. Plan is subject to change

February 26, 2016

Howard J. Koontz, AICP
Director of Planning and Community Development
City of Kyle
100 W. Center Street
Kyle, TX 78640

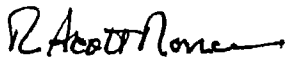
Dear Howard:

The R. Scott Nance Family, the Joel R. Bradshaw Family and Jason Bradshaw, together own approximately 2,860.66 acres located within the City of Kyle Extra Territorial Jurisdiction (ETJ). The property is comprised of several Hays County Appraisal District (CAD) tax parcels as outlined on the attached summary. As discussed during our meeting on February 24, 2016 at the City of Kyle offices, the CAD parcel boundaries are slightly different from survey work underway by our family. Once complete, the survey data will reflect the surveyed boundary of our family's property. In the meantime, attached is a subject tract exhibit illustrating the property boundary based on the survey work conducted.

On behalf of the Nance and Bradshaw families (property owners) we are submitting this letter and attached Application for Voluntary Annexation of the 2,860.66 acre property located generally along Cypress Road with the Hays CAD Property ID Numbers on the attached list of properties. As we have discussed, this request for voluntary annexation is conditioned on reaching agreement on a mutually approved form of development agreement for the property and may be withdrawn in whole or in part at any time prior to the completion of the annexation proceedings.

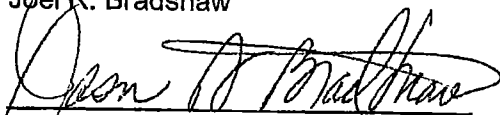
We look forward to hearing from you once City staff outlines a schedule for the requested voluntary annexation. In the meantime, please do not hesitate to contact Peter Verdicchio, the Project Agent, or me with any questions.

Sincerely,



R. Scott Nance

Joel R. Bradshaw



Jason S. Bradshaw

February 26, 2016

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Director of Planning and Community Development
City of Kyle
100 W. Center Street
Kyle, TX 78640

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We look forward to hearing from you once City staff outlines a schedule for the requested voluntary annexation. In the meantime, please do not hesitate to contact Peter Verdicchio, the Project Agent, or me with any questions.

Sincerely,

R. Scott Nance



Joel R. Bradshaw

Jason S. Bradshaw

APPLICATION & CHECKLIST – VOLUNTARY ANNEXATION APPLICATION

Project Name/Address: Cypress Rd, Kyle, TX 78640

(Submittal Date)

REQUIRED ITEMS FOR SUBMITTAL PACKAGE:

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 - f. Current use of the property.
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- ___ 2. Map of the subject property
- ___ 3. A legal description of the property (including a survey, field notes or legal description – subdivision, lot, and block) - label as Exhibit A.
- ___ 4. Ownership Documents. Clean copy of recorded warranty deed or other document(s) conveying ownership of all the property to be annexed. If the property is owned by a partnership, corporation, trust, or other entity, documents demonstrating signatory's authority to sign Petition on behalf of entity must be included.
- ___ 5. Application Fee: \$850.00 + \$190.21 (Newspaper Notification Fee)

Property Information

Owners: Nance, Robert Scott & Joel R. and Jason S. Bradshaw

Address: See Attached

Phone: 512.262.2136 **Email:** lhance@verizon.net

Acceage: 2,860.66 **Property ID (R#)** See Attached

Legal Description: See Attached

Number of lots and proposed use: _____

Agent: Peter Verdicchio, RLA SEC Planning, LLC

Phone: 512.246.7003

Email: PeterV@SECPlanning.com Fax Number: N/A

Please Note: The signature of owner authorizes City of Kyle staff to visit and inspect the property for which this application is being submitted. The signature also indicates that the applicant or his agent has reviewed the requirements of this checklist and all items on this checklist have been addressed and complied with. **Note:** The agent is the official contact person for this project and the single point of contact. All correspondence and communication will be conducted with the agent. If no agent is listed, the owner will be considered the agent.

(Check One:)

I will represent my application before city staff and the City Council.

I hereby authorize the person named below to act as my agent in processing this application before city staff and city council.

Robert Scott Nance

512.262.2136

Owner's Name (printed)
205 Live Oak Drive

Phone
Mountain City

Fax
TX 78610

Owner's Address

City

State Zip

Robert Scott Nance

2-26-16

lnnance@verizon.net

Owner's Signature

Date

Email Address

Agent's Name: Peter Verdicchio, RLA

Company: SEC Planning, LLC

Mailing Address: 4201 W Parmer Lane, Bldg A, Ste 220
Street

Austin
City

TX 78727
State Zip

512.246.7003

N/A

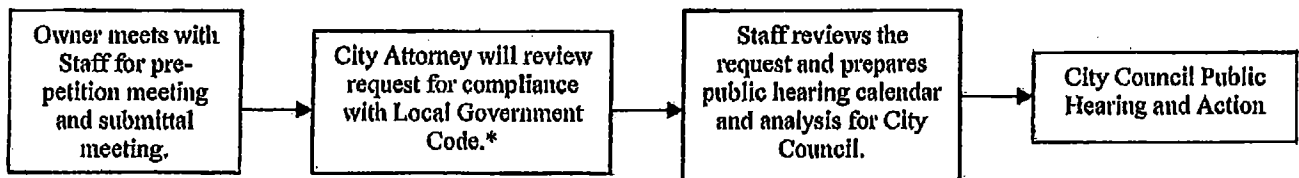
PeterV@SECPlanning.com

Phone

Fax

Email address

GENERAL PROCESS



**If the City Attorney determines the requested annexation does not meet the requirements of the local government code the applicant will be notified in writing and the request for annexation will not proceed.*

APPLICATION & CHECKLIST – VOLUNTARY ANNEXATION APPLICATION

Project Name/Address: Cypress Rd, Kyle, TX 78640

_____ (Submittal Date)

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Owners: Nance, Robert Scott & Joel R. and Jason S. Bradshaw

Address: See Attached

Phone: _____ **Email:** _____

Acreeage: 2,860.66 **Property ID (R#)** See Attached

Legal Description: See Attached

Number of lots and proposed use: _____

Agent: Peter Verdicchio, RLA SEC Planning, LLC

Phone: 512.246.7003 Email: PeterV@SECPlanning.com Fax Number: N/A

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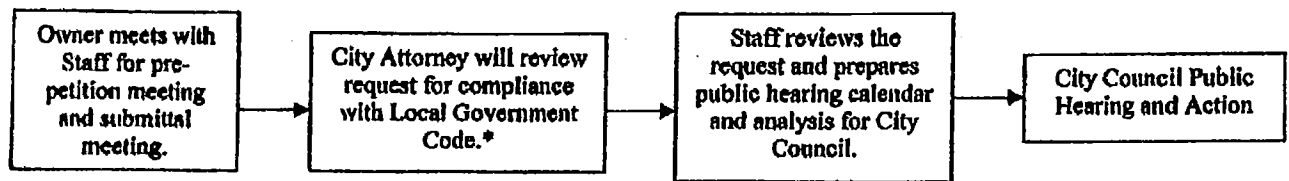
(Check One:)

- I will represent my application before city staff and the City Council.
- I hereby authorize the person named below to act as my agent in processing this application before city staff and city council.

Joel R. Bradshaw

Owner's Name (printed) 5420 LBJ Freeway, Suite 1600		Phone Dallas	Fax TX	75240
Owner's Address		City	State	Zip
Owner's Signature <i>Joel R. Bradshaw</i>		Date 02/25/2016	Email Address jrbradshaw2000@yahoo.com	
Agent's Name: Peter Verdicchio, RLA				
Company: SEC Planning, LLC				
Mailing Address: 4201 W Parmer Lane, Bldg A, Ste 220		Austin	TX	78727
Street		City	State	Zip
512.246.7003	N/A	PeterV@SECPlanning.com		
Phone	Fax	Email address		

GENERAL PROCESS



**If the City Attorney determines the requested annexation does not meet the requirements of the local government code the applicant will be notified in writing and the request for annexation will not proceed.*

APPLICATION & CHECKLIST – VOLUNTARY ANNEXATION APPLICATION

Project Name/Address: Cypress Rd, Kyle, TX 78640

_____ (Submittal Date)

REQUIRED ITEMS FOR SUBMITTAL PACKAGE:

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 - g. Proposed use of the property

- ___ 2. Map of the subject property

- ___ 3. A legal description of the property (including a survey, field notes or legal description – subdivision, lot, and block) - label as Exhibit A.

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Address: See Attached

Phone: _____ **Email:** _____

Acceage: 2,860.66 **Property ID (R#)** See Attached

Legal Description: See Attached

Number of lots and proposed use: _____

Agent: Peter Verdicchio, RLA SEC Planning, LLC

Phone: 512.246.7003 Email: PeterV@SECPlanning.com Fax Number: N/A

Please Note: The signature of owner authorizes City of Kyle staff to visit and inspect the property for which this application is being submitted. The signature also indicates that the applicant or his agent has reviewed the requirements of this checklist and all items on this checklist have been addressed and complied with. **Note:** The agent is the official contact person for this project and the single point of contact. All correspondence and communication will be conducted with the agent. If no agent is listed, the owner will be considered the agent.

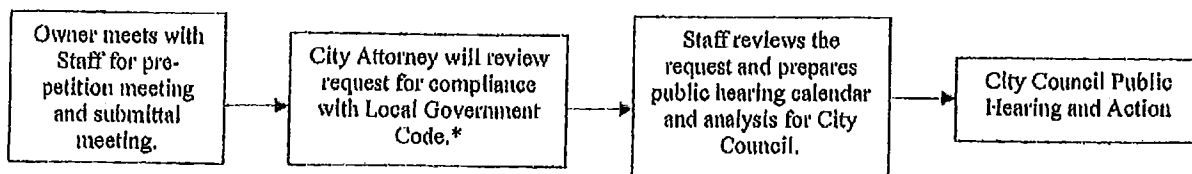
(Check One:)

- I will represent my application before city staff and the City Council.
- I hereby authorize the person named below to act as my agent in processing this application before city staff and city council.

Jason S. Bradshaw

Owner's Name (printed)	Phone	Fax
1122 Lausanne Avenue	Dallas	TX 75208
Owner's Address	City	State Zip
<i>Jason S. Bradshaw</i>	2/28/16	jsb1219@hotmail.com
Owner's Signature	Date	Email Address
Agent's Name: Peter Verdicchio, RLA		
Company: SEC Planning, LLC		
Mailing Address:	Austin	TX 78727
4201 W Parmer Lane, Bldg A, Ste 220	City	State Zip
512.246.7003	N/A	PeterV@SECPlanning.com
Phone	Fax	Email address

GENERAL PROCESS

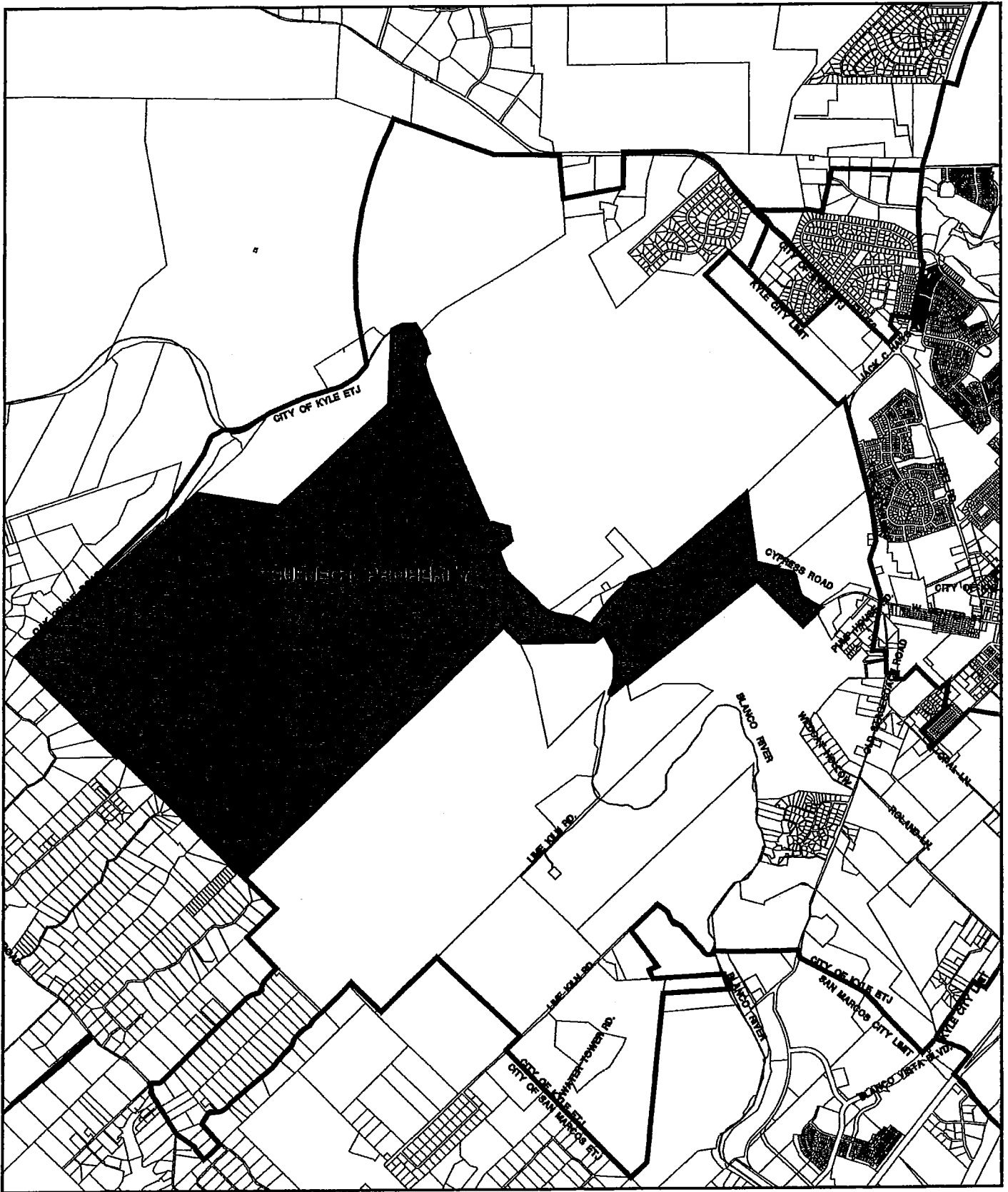


**If the City Attorney determines the requested annexation does not meet the requirements of the local government code the applicant will be notified in writing and the request for annexation will not proceed.*

Nance/Bradshaw Property List
Annexation Request: Property ID and Legal Description

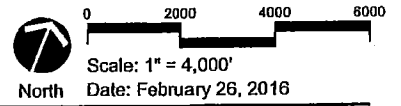
Property ID	Address	Legal Description
R12736	CYPRESS RD, KYLE, TX 78640	ABS 32 SEABORN BERRY SURVEY 60.635 ACRES
R12737	CYPRESS RD, KYLE, TX 78640	ABS 32 SEABORN BERRY SURVEY 60.635 ACRES
R12738	CYPRESS RD, KYLE, TX 78640	ABS 32 SEABORN BERRY SURVEY 100 AC
R12739		ABS 32 SEABORN BERRY SURVEY, 100 AC
R12740	CYPRESS RD, KYLE, TX 78640	ABS 32 SEABORN BERRY SURVEY 279.016 AC GEO#90600812
R12741	CYPRESS RD, KYLE, TX 78640	ABS 32 SEABORN BERRY SURVEY 331.984 AC
R13401	CYPRESS RD, KYLE, TX 78640	ABS 99 JOHN COOPER SURVEY 7.00 AC
R13402	CYPRESS RD, KYLE, TX 78640	ABS 99 JOHN COOPER SURVEY 7.00 AC
R13731	CYPRESS RD, KYLE, TX 78640	A0146 WILLIAM DUTY SURVEY, ACRES 70.14
R14273	CYPRESS RD, KYLE, TX 78640	ABS 180 J W FOGG SURVEY 348.16 AC GEO#90619834
R14274	CYPRESS RD, KYLE, TX 78640	ABS 180 J W FOGG SURVEY 291.84 AC GEO#90601435
R16551	CYPRESS RD, KYLE, TX 78640	ABS 313 R MILLS SURVEY 16.345 AC
R16552	CYPRESS RD, KYLE, TX 78640	ABS 313 R MILLS 16.345 AC
R16902	CYPRESS RD, KYLE, TX 78640	A0360 SAMUEL PHARASS SURVEY, ACRES 0.50
R16903	CYPRESS RD, KYLE, TX 78640	A0360 SAMUEL PHARASS SURVEY, ACRES 32.023
R16904	CYPRESS RD, KYLE, TX 78640	ABS 360 SAMUEL PHARASS SURVEY 4.25 AC GEO#90602806
R16905	CYPRESS RD, KYLE, TX 78640	ABS 360 SAMUEL PHARASS SURVEY 0.50 AC GEO#90617651
R16976	CYPRESS RD, KYLE, TX 78640	ABS 361 JOHN PHARASS SURVEY 1.565 AC (UDI OF 3.13 AC TRACT) GEO#90602880
R16977	CYPRESS RD, KYLE, TX 78640	ABS 361 JOHN PHARASS SURVEY 1.565 ACRES (UDI OF 3.13 AC TRACT)
R16978	CYPRESS RD, KYLE, TX 78640	A0361 JOHN PHARASS SURVEY, ACRES 158.00
R17720	CYPRESS RD, KYLE, TX 78640	ABS 409 THOMAS C SNAILM SURVEY 135.712 AC GEO#90619832
R17724	CYPRESS RD, KYLE, TX 78640	A0409 THOMAS C SNAILM SURVEY, ACRES 51.02
R17725	CYPRESS RD, KYLE, TX 78640	ABS 409 THOMAS C SNAILM SURVEY 112.288 AC GEO#90603366
R18209	CYPRESS RD, KYLE, TX 78640	ABS 427 R B SMITH SURVEY 311.56 AC
R18210	CYPRESS RD, KYLE, TX 78640	ABS 427 R B SMITH SURVEY 311.56 ACRES
R138547		A0409 A0409 - Thomas C Snailm Survey, ACRES 51.02

**This information is subject to final review. Refer to Subject Property Annexation Exhibit for depiction of land owned by Applicant.*



**SUBJECT PROPERTY-VOLUNTARY
ANNEXATION EXHIBIT**

**NANCE BRADSHAW
PROPERTIES**
KLYE, TEXAS

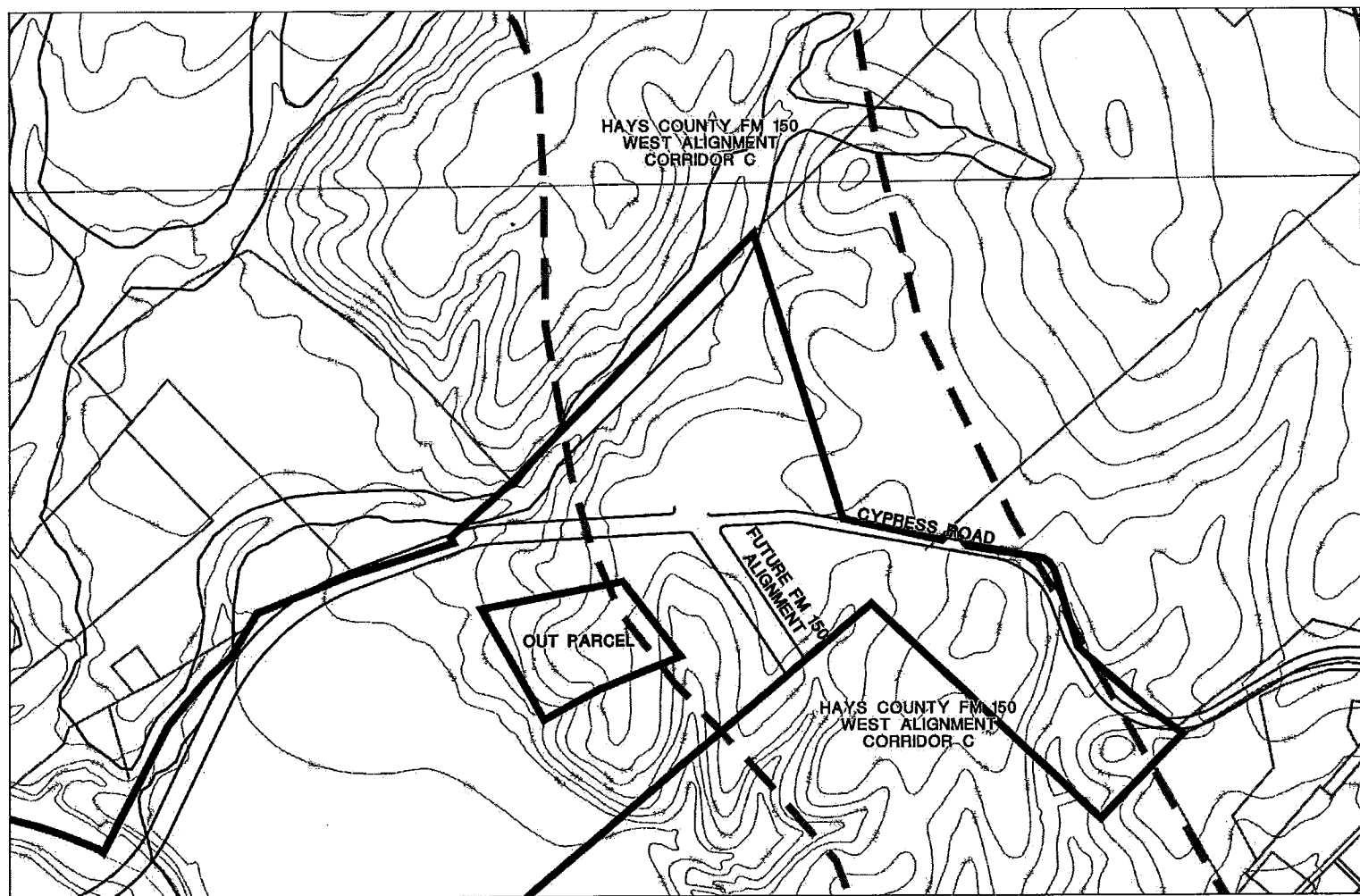


SEC Planning, LLC
Land Planning + Landscape Architecture + Community Branding
AUSTIN, TEXAS
1512.216.7703 • 1512.216.7703
www.secplanning.com • info@secplanning.com

SHEET FILE: R:\140030-BRIN\Cadd\PLANNING\Submittal\Annexation\Nance Bradshaw Properties.dwg
Base mapping compiled from best available information. All map data should be considered as preliminary, in need of verification, and subject to change. This land plan is conceptual in nature and does not represent any regulatory approval. Plan is subject to change.

EXHIBIT "H"

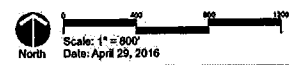
FM 150 EXHIBIT



FM 150 Exhibit H

Nance-Bradshaw Ranch Development Agreement

SEC Planning, LLC
 Earth Planning • Landscape Architecture • Community Planning
 AUSTIN, TEXAS
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 www.secplanning.com • info@secplanning.com



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