



CITY OF WEST LAKE HILLS, TEXAS  
NOTICE OF CITY COUNCIL REGULAR MEETING  
Wednesday, March 8, 2023 at 7:00 PM

Notice is hereby given that the City Council of the City of West Lake Hills, Texas, will hold a Regular Meeting on the 8th day of March 2023 at 7:00 p.m., in the Council Chambers, Municipal Building, 911 Westlake Drive, West Lake Hills, Texas, at which time the following items will be discussed, to-wit:

**REMOTE ACCESS:**

Due to the COVID-19 status in Travis County, any citizens or applicants that wish to speak at the meeting are encouraged to attend virtually, as the number of people in the chambers will be limited due to physical distancing. Facial Coverings are not required, but highly recommended, and will be available for any that need one.

Join Zoom Meeting:

<https://us02web.zoom.us/j/3499549035>

Meeting ID: 349 954 9035

If you wish to listen to the meeting via telephone: Dial (346) 248-7799, Meeting ID 349 954 9035.

If you wish to speak during the meeting or provide written comments, please email your name, phone number, comments, and the item number you wish to speak/comment on to [citysec@westlakehills.gov](mailto:citysec@westlakehills.gov) by 1:00 P.M. on March 8, 2023.

1. Call to Order
2. Citizen Communications The City Council welcomes public comments at this point on any issue. If the issue is listed on the agenda, the speaker may choose to comment during the Public Comment period or when the specific agenda item is taken up by the Council later in the meeting. The Council cannot respond to or discuss matters not listed on the agenda. The Council may provide factual information, refer the item to a staff member, or request the item be added to a future meeting agenda. Speakers shall limit their comments to five (5) minutes each.
3. Consent Agenda All Consent Agenda items listed are considered to be routine by the City Council and will be enacted by one (1) motion. No separate discussion or action on any of

the items is necessary unless requested by a Council Member.

- a. Approval of the February 22, 2023 Regular Meeting Minutes.
  - b. Approval of the February 22, 2023 Special Meeting Minutes.
4. **Land Use 103 Yaupon Valley:** Discuss and consider action on variances to remove 5 trees with diameters larger than 14 inches and three building setback encroachments for the construction of a new single family residence (Sections 22.03.304 and 22.03.281 of the West Lake Hills Code). Applicants Ashton and Erica Weinberger.
  5. **Administration** Discuss and consider a resolution authorizing the Mayor to execute a Non-Exclusive Public ROW License Agreement with Google Fiber Texas LLC for the installation of Network Facilities.
  6. **Administration** Discuss and consider action on a report from the city administrator regarding contracts and expenditures for debris and brush removal services associated with Winter Storm Mara.
  7. **Administration** Discuss and consider action to approve a professional services agreement with Walter P. Moore to serve as the City Engineer.
  8. **Administration** Discuss and consider action to approve a professional services agreement with SpawGlass Contractors, Inc to serve as Construction Manager at Risk for the new Municipal Complex.
  9. **Executive Session** In accordance with Texas Government Code, Section 551.001, et seq, the City Council will recess in Executive Session (closed meeting) to discuss the following:
    - Section 551.071: Consultation with the attorney regarding pending or contemplated litigation, or settlement offer; or on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act, re: City of West Lake Hills v. the following:
      1. Jaffe - 1405 Wildcat Hollow;
      2. Alvarez - 1505 Wildcat Hollow;
      3. Lambert - 1600 Westlake Drive; and
      4. 1836 Real Estate, LLC - 707 Butler Cove.
  10. **Executive Session** Reconvene into Open Session and take action if and as deemed appropriate in the City Council's discretion regarding consultation with attorney.
  11. Adjournment

Approved by: Linda Anthony, Mayor

Certificate

I certify that the above Notice of the March 8, 2023 City Council Regular Meeting was posted on the bulletin board at the Municipal Building, 911 Westlake Drive, West Lake Hills, Texas on Friday, March 3, 2023 by 5:00 pm. and will remain posted continuously until said meeting is convened.

Signed by: Terry Blanchard, City Secretary

*The City of West Lake Hills is committed to compliance with the Americans with Disabilities Act. Reasonable accommodations and equal access to communications will be provided upon request.*

*All items on the agenda are for discussion and/or action. City Council reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed above, as authorized by Texas Government Code Sections 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices), and 551.086 (Economic Development).*

CITY OF WEST LAKE HILLS, TEXAS  
MINUTES OF A CITY COUNCIL REGULAR MEETING  
Wednesday, February 22, 2023 at 7:00 PM

1. Call to Order

**With a quorum present, Mayor Anthony called the meeting to order at 7:28 p.m.**

**CITY COUNCIL PRESENT:**

Mayor Linda Anthony  
Mayor Pro Tem Gordon Bowman  
James Vaughan  
Beth South

**CITY STAFF PRESENT:**

City Administrator Trey Fletcher  
City Secretary Terry Blanchard  
Director of BDS Ashby Grundman  
Chief of Police Scott Gerdes  
Asst. City Attorney Nicole Warren

2. Citizen Communications The City Council welcomes public comments at this point on any issue. If the issue is listed on the agenda, the speaker may choose to comment during the Public Comment period or when the specific agenda item is taken up by the Council later in the meeting. The Council cannot respond to or discuss matters not listed on the agenda. The Council may provide factual information, refer the item to a staff member, or request the item be added to a future meeting agenda. Speakers shall limit their comments to five (5) minutes each.

**Mayor Anthony opened the meeting for public comments. Hearing none, the public comment section was closed.**

3. Consent Agenda All Consent Agenda items listed are considered to be routine by the City Council and will be enacted by one (1) motion. No separate discussion or action on any of the items is necessary unless requested by a Council Member.
  - a. Approval of the February 8, 2023 Regular Meeting Minutes.
  - b. Approval of a temporary license agreement between the City of West Lake Hills and John Curtis.

**MOTION: Upon a motion made by Councilmember South and a second by Councilmember Bowman, the Council voted three (3) for and none (0) opposed to approve the consent agenda as presented. Motion carried.**

4. Administration Discuss and consider a recommendation to select a firm for a Construction Manager-At-Risk (CMAR) Services contract and authorize negotiation of a professional services agreement scope and fee.

Bart Kleiman with AG|CM gave a brief summary of the CMAR process. He stated that



SpawGlass ranked highest consistently.

**MOTION: Upon a motion made by Councilmember Vaughan and a second by Councilmember Bowman, the Council voted three (3) for and none (0) opposed to authorize contract negotiations with SpawGlass. Motion carried.**

5. Administration Discuss and consider action on authorization for the city administrator to execute contracts for debris and brush removal with the following contractors:
  - a. Katy Tree Services
  - b. Heritage Tree Care
  - c. Doyle Massa
  - d. The Urban Foresters

Mayor Anthony gave a brief summary. Council authorization is required for contracts that exceed \$50,000. Councilmember Vaughan requested that future contracts include a requirement for contractors to take before and after photos of areas worked.

Special thanks were extended to:

- Doyle Massa and his crew for their help in keeping the streets cleared during the storm and their on-going clean-up efforts;
- Linda Anthony and Trey Fletcher for their continued efforts to assist the citizens; and
- Ashby Grundman, Alex Sanchez and Rick Rogers for their hard work to keep the process moving.

**MOTION: Upon a motion made by Councilmember Bowman and a second by Councilmember Vaughan, the Council voted three (3) for and none (0) opposed to authorize the city administrator to execute and continue contracts with Katy Tree Services, Heritage Tree Care, Doyle Massa, and The Urban Foresters and to use the Brush Pick Up Fund and the Contingency Fund as funding sources with the understanding that the city administrator will provide reports to Council regarding these expenditures. Motion carried.**

6. Administration Discussion and update on bond items regarding Proposition A (new municipal complex) and Proposition B (street and drainage projects).

Trey Fletcher gave a brief update on Proposition B. Currently we are in the easement acquisition phase. There are four (4) critical signatures needed at this point.

7. Executive Session In accordance with Texas Government Code, Section 551.001, et seq, the City Council will recess in Executive Session (closed meeting) to discuss the following:
  - Section 551.071: Consultation with the attorney regarding pending or contemplated litigation, or settlement offer; or on a matter in which the duty of the attorney to the

governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act, re: City of West Lake Hills v. the following:

- a. Jaffe - 1405 Wildcat Hollow;
- b. Alvarez - 1505 Wildcat Hollow;
- c. Lambert - 1600 Westlake Drive; and
- d. 1836 Real Estate, LLC, (in rem) - 707 Butler Cove.

**Council convened into Executive Session at 8:01 p.m.**

Mayor Anthony left at 8:09 p.m.

- 8. Executive Session Reconvene into Open Session and take action if and as deemed appropriate in the City Council's discretion regarding consultation with attorney.

**Council reconvened in Open Session at 8:13 p.m.**

**MOTION: Upon a motion made by Councilmember Vaughan and a second by Councilmember South, the Council voted three (3) for and none (0) opposed to authorize the city attorney to utilize the tools provided in Chapter 54 of the Local Government Code to file a case in District Court regarding 1836 Real Estate, LLC (in rem) for property located at 707 Butler Cove. Motion carried.**

- 9. Adjournment

**MOTION: Upon a motion made by Councilmember Vaughan and a second by Councilmember South, the Council voted three (3) for and none (0) opposed to adjourn the meeting at 8:14 p.m. Motion carried.**

Respectfully submitted,

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LINDA ANTHONY, MAYOR

ATTEST:

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Terry Blanchard, TRMC  
City Secretary

These minutes were approved on March 8, 2023.

CITY OF WEST LAKE HILLS, TEXAS  
MINUTES OF A CITY COUNCIL SPECIAL MEETING  
Wednesday, February 22, 2023 at 6:00 PM

1. Call to Order

**With a quorum present, Mayor Anthony called the meeting to order at 6:00 p.m.**

**CITY COUNCIL PRESENT:**

Mayor Linda Anthony  
Mayor Pro Tem Gordon Bowman  
James Vaughan  
Beth South  
Darin Walker

**CITY STAFF PRESENT:**

City Administrator Trey Fletcher  
City Secretary Terry Blanchard  
Director of BDS Ashby Grundman  
Chief of Police Scott Gerdes  
Asst. City Attorney Nicole Warren

2. Administration Presentation and discussion regarding the proposed new municipal complex located at 4010 Bee Cave Road.

Mayor Anthony gave a brief history of the project. Don Greer with BSW gave a presentation. Questions and comments were received as follows:

- Site is already a community gathering spot. Would like to continue and expand on this concept.
- When not being used for a City function, the Community Room will be available for use by citizens/groups.
- Display space will be available in the lobby to display artwork by local artists. Schedule could be set to rotate work each quarter.
- Landscape will be used as a teaching opportunity for the community. QR codes will be added for all native plants used in landscaping so that residents may learn more about the plants.
- Received a question about the new building being able to handle future expansion if necessary.
- Concerns about the challenge of aligning intersection access, security issues with or without fencing, and glass on room used for Council Executive Session.
- Erica Alejandro - Concerned about the noise and light pollution. Currently, they have issues with noise from dumpsters being serviced early in the mornings. Asked about lighting for the Police Department parking area.
- Robin Braun - Concerned about the retention ponds. Asked that plans and schematics be made available for public review.
- Teal Van Eman - Concerned about fencing and the chaos caused during construction.
- Reagan Smith - Asked if the Council will be amenable to fence height variances to create a buffer between the municipal complex and private properties.
- Chief Gerdes addressed concerns regarding Police Department and their procedures.

- Mayor Anthony requested contact information from the residents on Westhaven Drive so that they may be apprised of information regarding the planning and construction of the municipal complex.

**MOTION: Upon a motion made by Councilmember Walker and a second by Councilmember South, the Council voted four (4) for and none (0) opposed to approve the schematic design as presented. Motion carried.**

3. Adjournment

**Mayor Anthony adjourned the meeting at 7:27 p.m.**

Respectfully submitted,

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LINDA ANTHONY, MAYOR

ATTEST:

---

Terry Blanchard, TRMC  
City Secretary

These minutes were approved on March 8, 2023.



# City of West Lake Hills

## City Council

# AGENDA REPORT

|               |                                   |                  |      |
|---------------|-----------------------------------|------------------|------|
| Meeting Date: | March 8, 2023                     | Item Number:     | 4    |
| Department:   | Building and Development Services |                  |      |
| Prepared By:  | Ashby Grundman                    | Cost / Budget:   | None |
| Exhibits:     | See Attached                      | Source of Funds: | N/A  |

### Subject

**103 Yaupon Valley Road:** Discuss and consider action on a variance request for the removal of three trees with trunk diameters of 14 inches or for the construction of a new single-family residence (Sections 22.03.304 of the West Lake Hills Code). Applicants Ashton and Erica Weinberger.

### Recommendation

Staff recommends approval of the variances as proposed. The site is constrained with larger setbacks even though it is barely over half an acre, so the buildable area is severely restricted.

Zoning and Planning Commission voted to recommend denial unanimously (5-0) for lack of hardship.

The City Council shall consider the following conditions for granting a variance:

#### **Sec. 38.05.032 Conditions required for granting variance**

No variance shall be granted unless the following conditions are fulfilled:

- (1) The applicant has established by competent evidence that:
  - (A) The strict or literal enforcement of the terms of this chapter, because of special conditions, will result in unnecessary hardship to the applicant.
  - (B) There will not be unreasonable disruption of the natural terrain or unreasonable destruction of existing flora.
  - (C) There is no reasonable alternative to the requisite variance that will alleviate the difficulty or hardship complained of.
  - (D) The variance will not be greater than the minimum required to alleviate the difficulty or hardship complained of.

### Discussion

**Property Information, Zoning & Site Characteristics:**

Owner: Erica and Ashton Weinberger  
 Legal Description: Lot 2 McCasland Subdivision  
 Lot Size: 0.5148 acres (22,424.69 square feet)  
 Zoning: R1 – One Family Residential

The site is surrounded by a single-family residential property on all sides.

**Background & Analysis:**

This item was postponed at the February BOA/Council meeting to allow the applicant an opportunity to amend the request through an effort of minimization. The applicant has withdrawn the setback variance requests and has reduce the number of trees down from five to three. Those are T253, T266 and T269, two 18-inch Cedars and one 16-inch Cedar. This will require a replacement of 78 inches per code.

*At the November ZAPCO meeting, this item was postponed giving the applicant time to provide additional information. The applicant has provided additional plans, elevations, and tree assessments. There are two emails of opposition included in the packet.*

*103 Yaupon Valley Road is currently an undeveloped lot. The applicant has submitted a variance for three setback encroachments, two side setbacks and a rear setback, and the removal of five trees with trunk diameters of fourteen inches or greater. As the lot is over half an acre, the larger setbacks apply, meaning a 50-foot front setback, 25-foot side setbacks and a 30-foot rear setback.*

*The five trees requested are:*

*T253 – 18-Inch Cedar  
 T262 – 18-Inch Cedar  
 T263 – 14-Inch Cedar  
 T266 – 18-Inch Cedar  
 T269 – 16-Inch Cedar*

*This is a total of 84 inches, which require a replacement value of 126 inches of replacement. Being on a currently undeveloped lot, there is larger amounts of tree removal requested than if this was a tear down. They worked to avoid some of the larger trees, including T246, a 33-Inch Oak.*

**Variance Criteria Review:**

*When applying for a variance, the applicant has established by competent evidence that:*

- *The strict or literal enforcement of the terms of this chapter, because of special conditions, will result in unnecessary hardship to the applicant.*  
*There is a slope at the front of the property that pushes any development further from the road  
 The size of the property being 0.5148 acres triggers more restrictive setbacks which are already a challenge due to the unique shape of the property. Due to the amount of trees on site we picked a location with the least tree disturbance. And the location of the home was chosen on the the most flat*

*part of the property. There is a greater slope that runs the full length of the north Side Yard and Front Yard of the property.*

- *There will not be unreasonable disruption of the natural terrain or unreasonable destruction of existing flora.*  
*We believe our option preserves the natural terrain of the property and preserves more of the trees than other options. For the uniqueness of the shape of the property, The home size and location has the least disturbance non the terrain and flora.*
- *There is no reasonable alternative to the requisite variance that will alleviate the difficulty or hardship complained of.*  
*Several other options were considered, and we found this proposed home had the least effect on the tree displacement.*
- *The variance will not be greater than the minimum required to alleviate the difficulty or hardship complained of.*  
*The placement of the home and style of home will naturally blend with the various style of neighboring homes. The shape of this property creates hardships and challenges.*
- *The variance does not violate the intent of the Zoning Ordinance or goals of the Comprehensive Plan.*  
*The proposal is for a Single Family Residence.*
- *The variance will not adversely affect neighboring properties or interfere with the enjoyment of these properties by their owners.*  
*Since most trees are preserved around the home, there won't be much of a change from the view of the street. The style of the home and the minimum disturbance to the trees around the home on the property provides little change from the street view.*

### **Outdoor Lighting**

Outdoor lighting is not proposed with this variance request. Any outdoor lighting will need to comply with the City's Code.

### **Compliance with Adopted Uniform Building Code**

The property and future construction will have to comply with all applicable City codes.

### **Subdivision**

There are no changes to the subdivision with this proposal.

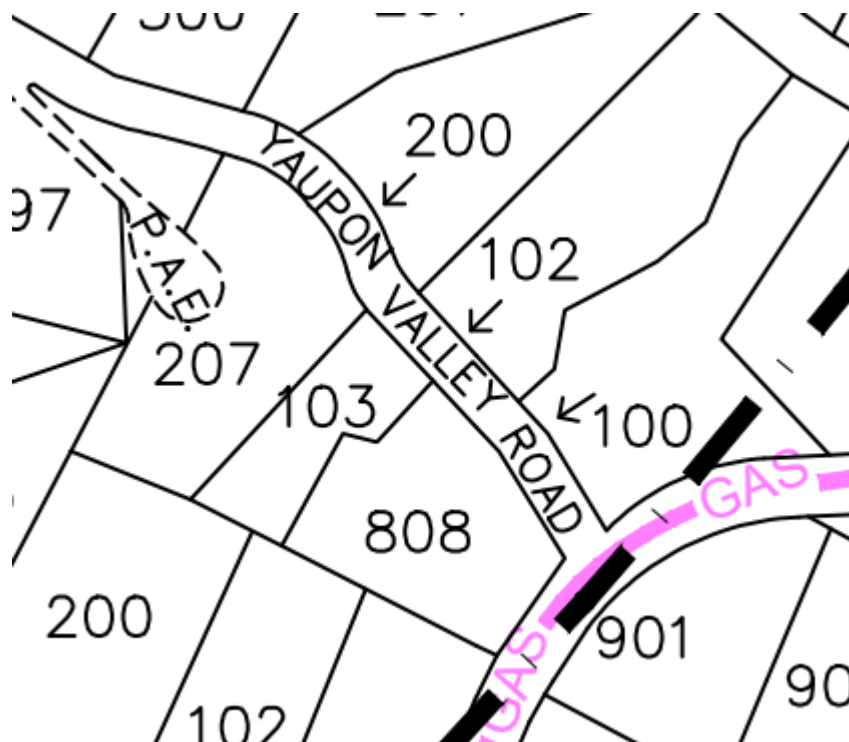
### **Comprehensive Planning Analysis**

The existing and future land use is in conformance with the City of West Lake Hills Master Plan.

### **Links to Relevant Code:**

- [Sec. 22.03.281 Schedule of Regulations](#)
- [Chapter 36 Subdivisions](#)
- [Texas Local Government Code Chapter 212 Municipal Regulation of Subdivisions](#)

Zoning:





Aerial:



Approved By

Signature

Date

Department Head

Signature

Date

**City Administrator**



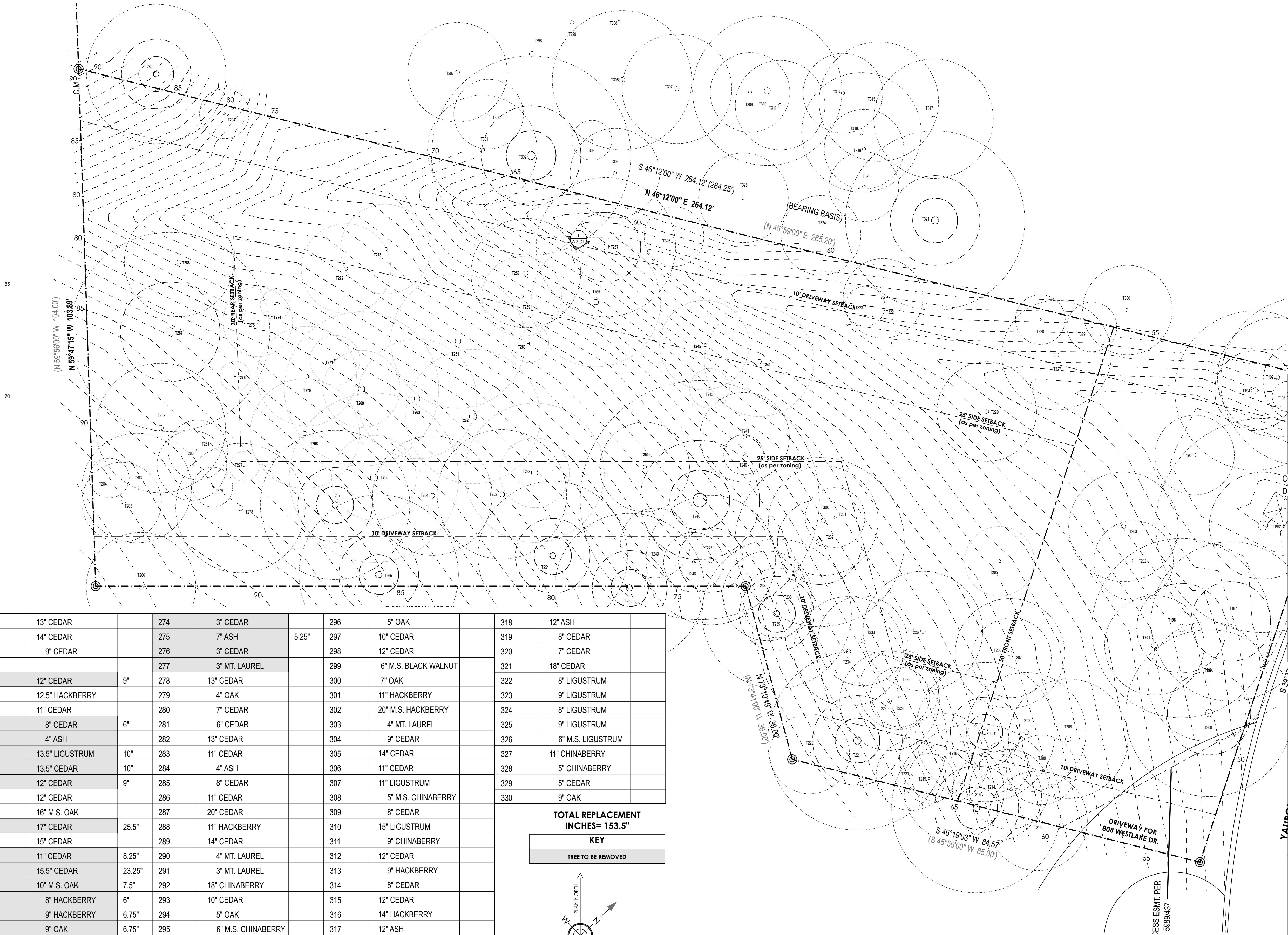
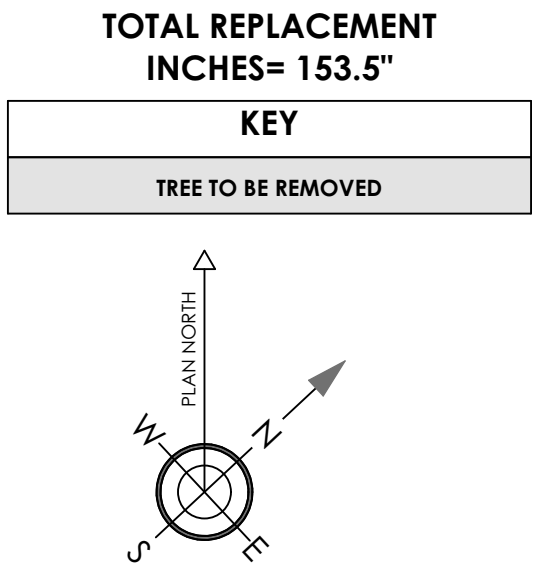
This tree location survey certifies the size and location of the trees depicted hereon. B&G Surveying, LLC, nor the undersigned, certify the Species/Genus of these trees. For exact Species/Genus contact a Certified Arborist.

| TAG NO. | TREE DESCRIPTION  | REPL. IN. |
|---------|-------------------|-----------|
| 191     | 17" OAK           |           |
| 192     | 12" LIGUSTRUM     |           |
| 193     | 3" ASH            |           |
| 194     | 16" CEDAR         |           |
| 195     | 8" M.S. LIGUSTRUM |           |
| 196     | 21.5" HACKBERRY   |           |
| 197     | 16" LIGUSTRUM     |           |
| 198     | 18" OAK           |           |
| 199     | 12" LIGUSTRUM     |           |
| 200     | 18" M.S. CEDAR    |           |
| 201     | 15" CEDAR         |           |
| 202     | 8" OAK            |           |
| 203     | 11" CEDAR         |           |

|     |                |       |
|-----|----------------|-------|
| 205 | 7" HACKBERRY   | 5.25" |
| 206 | 11" LIGUSTRUM  |       |
| 207 | 8" OAK         |       |
| 208 | 14" CHINABERRY |       |
| 209 | 7" CHINABERRY  |       |
| 210 | 12" LIGUSTRUM  |       |
| 211 | 14" OAK        |       |
| 212 | 5" LIGUSTRUM   |       |
| 213 | 8" LIGUSTRUM   |       |
| 214 | 9" LIGUSTRUM   |       |
| 215 | 10" CEDAR      |       |
| 216 | 17" HACKBERRY  |       |
| 217 | 10" CEDAR      |       |
| 218 | 9" CEDAR       |       |
| 219 | 5" LIGUSTRUM   |       |
| 220 | 7" LIGUSTRUM   |       |
| 221 | 18" OAK        |       |
| 222 | 8" CHINABERRY  |       |
| 223 | 10" CEDAR      |       |
| 224 | 6" LIGUSTRUM   |       |
| 225 | 8" LIGUSTRUM   |       |
| 226 | 12" CEDAR      |       |

|     |                |       |     |                 |        |     |                    |       |     |                      |  |                                                                                                                                     |                   |  |
|-----|----------------|-------|-----|-----------------|--------|-----|--------------------|-------|-----|----------------------|--|-------------------------------------------------------------------------------------------------------------------------------------|-------------------|--|
| 229 | 10" CEDAR      |       |     |                 |        |     |                    |       |     |                      |  |                                                                                                                                     |                   |  |
|     |                |       | 252 | 13" CEDAR       |        | 274 | 3" CEDAR           |       | 296 | 5" OAK               |  | 318                                                                                                                                 | 12" ASH           |  |
| 231 | 6" OAK         |       | 253 | 14" CEDAR       |        | 275 | 7" ASH             | 5.25" | 297 | 10" CEDAR            |  | 319                                                                                                                                 | 8" CEDAR          |  |
| 232 | 17" CEDAR      |       | 254 | 9" CEDAR        |        | 276 | 3" CEDAR           |       | 298 | 12" CEDAR            |  | 320                                                                                                                                 | 7" CEDAR          |  |
| 233 | 9" LIGUSTRUM   |       |     |                 |        | 277 | 3" MT. LAUREL      |       | 299 | 6" M.S. BLACK WALNUT |  | 321                                                                                                                                 | 18" CEDAR         |  |
| 234 | 11" CEDAR      |       | 256 | 12" CEDAR       | 9"     | 278 | 13" CEDAR          |       | 300 | 7" OAK               |  | 322                                                                                                                                 | 8" LIGUSTRUM      |  |
| 235 | 15" CHINABERRY |       | 257 | 12.5" HACKBERRY |        | 279 | 4" OAK             |       | 301 | 11" HACKBERRY        |  | 323                                                                                                                                 | 9" LIGUSTRUM      |  |
| 236 | 7" CEDAR       |       | 258 | 11" CEDAR       |        | 280 | 7" CEDAR           |       | 302 | 20" M.S. HACKBERRY   |  | 324                                                                                                                                 | 8" LIGUSTRUM      |  |
| 237 | 8" CEDAR       |       | 259 | 8" CEDAR        | 6"     | 281 | 6" CEDAR           |       | 303 | 4" MT. LAUREL        |  | 325                                                                                                                                 | 9" LIGUSTRUM      |  |
|     |                |       | 260 | 4" ASH          |        | 282 | 13" CEDAR          |       | 304 | 9" CEDAR             |  | 326                                                                                                                                 | 6" M.S. LIGUSTRUM |  |
|     |                |       | 261 | 13.5" LIGUSTRUM | 10"    | 283 | 11" CEDAR          |       | 305 | 14" CEDAR            |  | 327                                                                                                                                 | 11" CHINABERRY    |  |
| 240 | 4" ASH         |       | 262 | 13.5" CEDAR     | 10"    | 284 | 4" ASH             |       | 306 | 11" CEDAR            |  | 328                                                                                                                                 | 5" CHINABERRY     |  |
| 241 | 9" OAK         |       | 263 | 12" CEDAR       | 9"     | 285 | 8" CEDAR           |       | 307 | 11" LIGUSTRUM        |  | 329                                                                                                                                 | 5" CEDAR          |  |
|     |                |       | 264 | 12" CEDAR       |        | 286 | 11" CEDAR          |       | 308 | 5" M.S. CHINABERRY   |  | 330                                                                                                                                 | 9" OAK            |  |
| 243 | 4" ASH         |       | 265 | 16" M.S. OAK    |        | 287 | 20" CEDAR          |       | 309 | 8" CEDAR             |  | <div> <div>TOTAL REPLACEMENT<br/>INCHES= 153.5"</div> <div> <div>KEY</div> <div>TREE TO BE REMOVED</div> </div> <div> </div> </div> |                   |  |
| 244 | 11" HACKBERRY  | 8.25" | 266 | 17" CEDAR       | 25.5"  | 288 | 11" HACKBERRY      |       | 310 | 15" LIGUSTRUM        |  |                                                                                                                                     |                   |  |
| 245 | 9" CEDAR       | 6.75" | 267 | 15" CEDAR       |        | 289 | 14" CEDAR          |       | 311 | 9" CHINABERRY        |  |                                                                                                                                     |                   |  |
| 246 | 24" OAK        |       | 268 | 11" CEDAR       | 8.25"  | 290 | 4" MT. LAUREL      |       | 312 | 12" CEDAR            |  |                                                                                                                                     |                   |  |
| 247 | 13 " LIGUSTRUM |       | 269 | 15.5" CEDAR     | 23.25" | 291 | 3" MT. LAUREL      |       | 313 | 9" HACKBERRY         |  |                                                                                                                                     |                   |  |
| 248 | 6" OAK         |       | 270 | 10" M.S. OAK    | 7.5"   | 292 | 18" CHINABERRY     |       | 314 | 8" CEDAR             |  |                                                                                                                                     |                   |  |
| 249 | 7" CEDAR       |       | 271 | 8" HACKBERRY    | 6"     | 293 | 10" CEDAR          |       | 315 | 12" CEDAR            |  |                                                                                                                                     |                   |  |
| 250 | 15" CHINABERRY |       | 272 | 9" HACKBERRY    | 6.75"  | 294 | 5" OAK             |       | 316 | 14" HACKBERRY        |  |                                                                                                                                     |                   |  |
| 251 | 15" HACKBERRY  |       | 273 | 9" OAK          | 6.75"  | 295 | 6" M.S. CHINABERRY |       | 317 | 12" ASH              |  |                                                                                                                                     |                   |  |

SCALE: 1" = 10'



JAY  
COR  
DER  
ARC  
HIT  
ECT

2700 W. ANDERSON LN.  
SUITE 309  
AUSTIN, TX 78757

JAYCORDER.COM

[illegible]

103 YAUPON VALLEY RD  
WEST LAKE HILLS  
TEXAS 78746

FOR REVIEW ONLY

**THIS DOCUMENT  
IS INCOMPLETE  
AND MAY NOT BE  
USED FOR  
REGULATORY  
APPROVAL,  
PERMITTING OR  
CONSTRUCTION**

|        |        |
|--------|--------|
| DATE:  | 3/2/23 |
| PM:    | SW     |
| DRAWN: | JC, SW |

SHEET IS FORMATTED  
TO 22"x34". SCALES  
ARE ONE HALF OF  
NOTED WHEN PRINTED  
AT HALF SIZE (11x17)

## A1.01

## EXISTING- SITE PLAN



This tree location survey certifies the existence and location of the trees depicted here. B&G Surveying, LLC, nor the undersigned, certify the Species/Genus of these trees. For exact Species/Genus, contact a Certified Arborist.

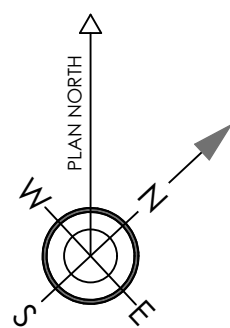
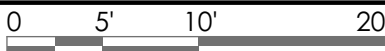
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|---------|-------------------|
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| 203     | 11" CEDAR         |

|     |                |
|-----|----------------|
| 205 | 7" HACKBERRY   |
| 206 | 11" LIGUSTRUM  |
| 207 | 8" OAK         |
| 208 | 14" CHINABERRY |
| 209 | 7" CHINABERRY  |
| 210 | 12" LIGUSTRUM  |
| 211 | 14" OAK        |
| 212 | 5" LIGUSTRUM   |
| 213 | 8" LIGUSTRUM   |
| 214 | 9" LIGUSTRUM   |
| 215 | 10" CEDAR      |
| 216 | 17" HACKBERRY  |
| 217 | 10" CEDAR      |
| 218 | 9" CEDAR       |
| 219 | 5" LIGUSTRUM   |
| 220 | 7" LIGUSTRUM   |
| 221 | 18" OAK        |
| 222 | 8" CHINABERRY  |
| 223 | 10" CEDAR      |
| 224 | 6" LIGUSTRUM   |
| 225 | 8" LIGUSTRUM   |
| 226 | 12" CEDAR      |

|     |                |     |                 |     |                    |     |                      |     |                   |
|-----|----------------|-----|-----------------|-----|--------------------|-----|----------------------|-----|-------------------|
| 229 | 10" CEDAR      |     |                 |     |                    |     |                      |     |                   |
| 231 | 6" OAK         | 252 | 13" CEDAR       | 274 | 3" CEDAR           | 296 | 5" OAK               | 318 | 12" ASH           |
| 232 | 17" CEDAR      | 253 | 14" CEDAR       | 275 | 7" ASH             | 297 | 10" CEDAR            | 319 | 8" CEDAR          |
| 233 | 9" LIGUSTRUM   | 254 | 9" CEDAR        | 276 | 3" CEDAR           | 298 | 12" CEDAR            | 320 | 7" CEDAR          |
| 234 | 11" CEDAR      |     |                 | 277 | 3" MT. LAUREL      | 299 | 6" M.S. BLACK WALNUT | 321 | 18" CEDAR         |
| 235 | 15" CHINABERRY | 256 | 12" CEDAR       | 278 | 13" CEDAR          | 300 | 7" OAK               | 322 | 8" LIGUSTRUM      |
| 236 | 7" CEDAR       | 257 | 12.5" HACKBERRY | 279 | 4" OAK             | 301 | 11" HACKBERRY        | 323 | 9" LIGUSTRUM      |
| 237 | 8" CEDAR       | 258 | 11" CEDAR       | 280 | 7" CEDAR           | 302 | 20" M.S. HACKBERRY   | 324 | 8" LIGUSTRUM      |
|     |                | 259 | 8" CEDAR        | 281 | 6" CEDAR           | 303 | 4" MT. LAUREL        | 325 | 9" LIGUSTRUM      |
|     |                | 260 | 4" ASH          | 282 | 13" CEDAR          | 304 | 9" CEDAR             | 326 | 6" M.S. LIGUSTRUM |
|     |                | 261 | 13.5" LIGUSTRUM | 283 | 11" CEDAR          | 305 | 14" CEDAR            | 327 | 11" CHINABERRY    |
| 240 | 4" ASH         | 262 | 13.5" CEDAR     | 284 | 4" ASH             | 306 | 11" CEDAR            | 328 | 5" CHINABERRY     |
| 241 | 9" OAK         | 263 | 12" CEDAR       | 285 | 8" CEDAR           | 307 | 11" LIGUSTRUM        | 329 | 5" CEDAR          |
|     |                | 264 | 12" CEDAR       | 286 | 11" CEDAR          | 308 | 5" M.S. CHINABERRY   | 330 | 9" OAK            |
| 243 | 4" ASH         | 265 | 16" M.S. OAK    | 287 | 20" CEDAR          | 309 | 8" CEDAR             |     |                   |
| 244 | 11" HACKBERRY  | 266 | 17" CEDAR       | 288 | 11" HACKBERRY      | 310 | 15" LIGUSTRUM        |     |                   |
| 245 | 9" CEDAR       | 267 | 15" CEDAR       | 289 | 14" CEDAR          | 311 | 9" CHINABERRY        |     |                   |
| 246 | 24" OAK        | 268 | 11" CEDAR       | 290 | 4" MT. LAUREL      | 312 | 12" CEDAR            |     |                   |
| 247 | 13 " LIGUSTRUM | 269 | 15.5" CEDAR     | 291 | 3" MT. LAUREL      | 313 | 9" HACKBERRY         |     |                   |
| 248 | 6" OAK         | 270 | 10" M.S. OAK    | 292 | 18" CHINABERRY     | 314 | 8" CEDAR             |     |                   |
| 249 | 7" CEDAR       | 271 | 8" HACKBERRY    | 293 | 10" CEDAR          | 315 | 12" CEDAR            |     |                   |
| 250 | 15" CHINABERRY | 272 | 9" HACKBERRY    | 294 | 5" OAK             | 316 | 14" HACKBERRY        |     |                   |
| 251 | 15" HACKBERRY  | 273 | 9" OAK          | 295 | 6" M.S. CHINABERRY | 317 | 12" ASH              |     |                   |

## PROPOSED- SITE PLAN

SCALE: 1" = 10'



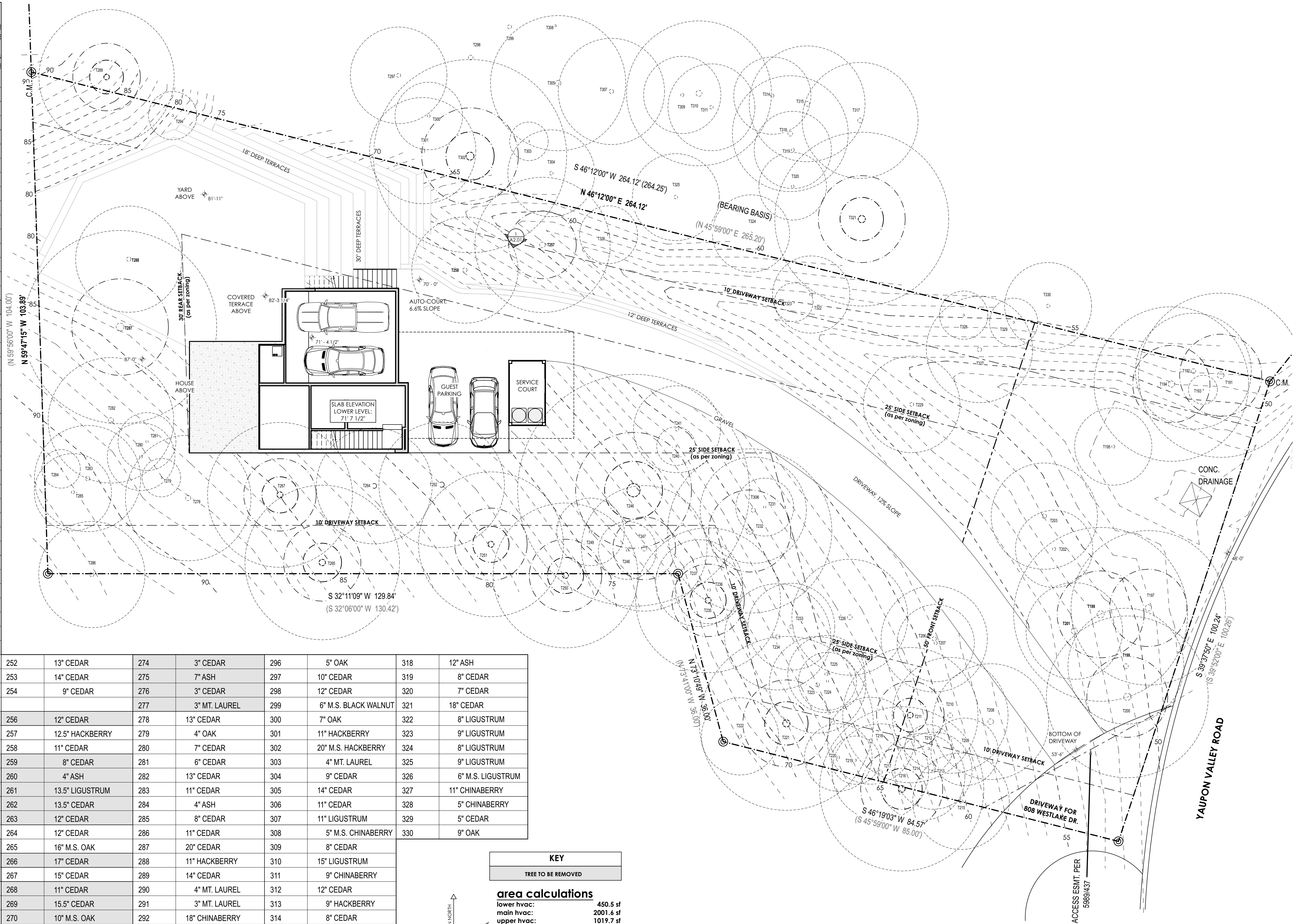
## KEY

**TREE TO BE REMOVED**

### area calculations

|             |           |
|-------------|-----------|
| lower hvac: | 450.5 sf  |
| main hvac:  | 2001.6 sf |
| upper hvac: | 1019.7 sf |
| total hvac: | 3471.8 sf |
| garage:     | 516.0 sf  |

impervious cover: 4501.1 sf  
site: 22,329 sf  
ic percent: 20.2%



JAY  
COR  
DER  
ARC  
HIT  
ECT

JAY **CORDER** ARCHITECT  
[512] 243.8507

2700 W. ANDERSON LN.  
SUITE 309  
AUSTIN, TX 78757

JAYCORDER.COM

[illegible]

# WEINBERGER RESIDENCE

103 YAUPON VALLEY RD  
WEST LAKE HILLS  
TEXAS 78746

FOR REVIEW ONLY

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|--------|--------|
| DATE:  | 3/2/23 |
| PM:    | SW     |
| DRAWN: | JC, SW |

SHEET IS FORMATTED  
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# A1.02

# PROPOSED- SITE PLAN



[illegible]

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WEST LAKE HILLS  
TEXAS 78746

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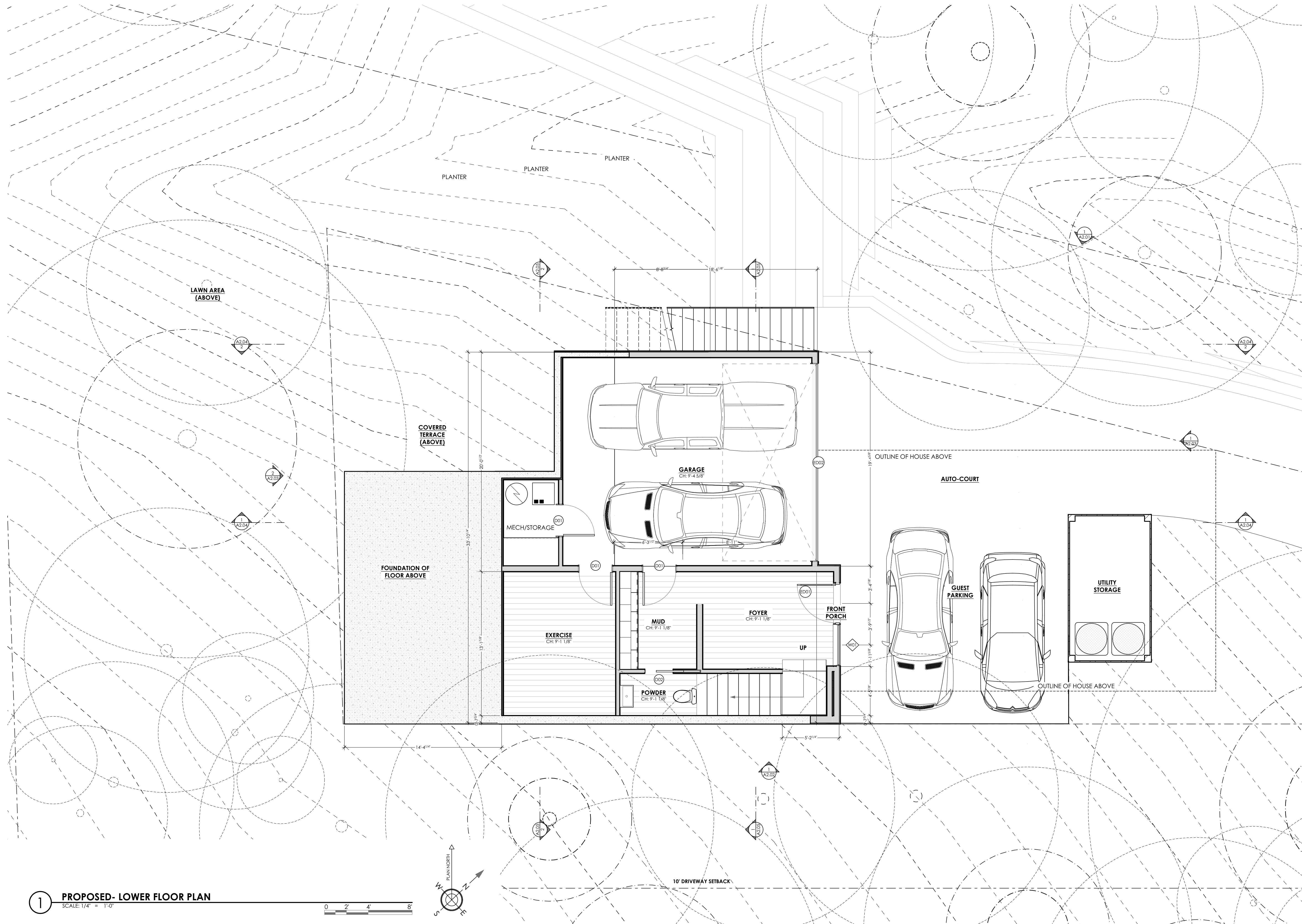
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| DRAWN: | JC, SW |

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## A1.03

PROPOSED- LOWER FLOOR PLAN





[illegible]

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WEST LAKE HILLS  
TEXAS 78746

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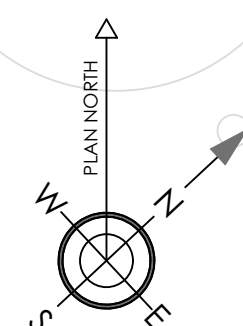
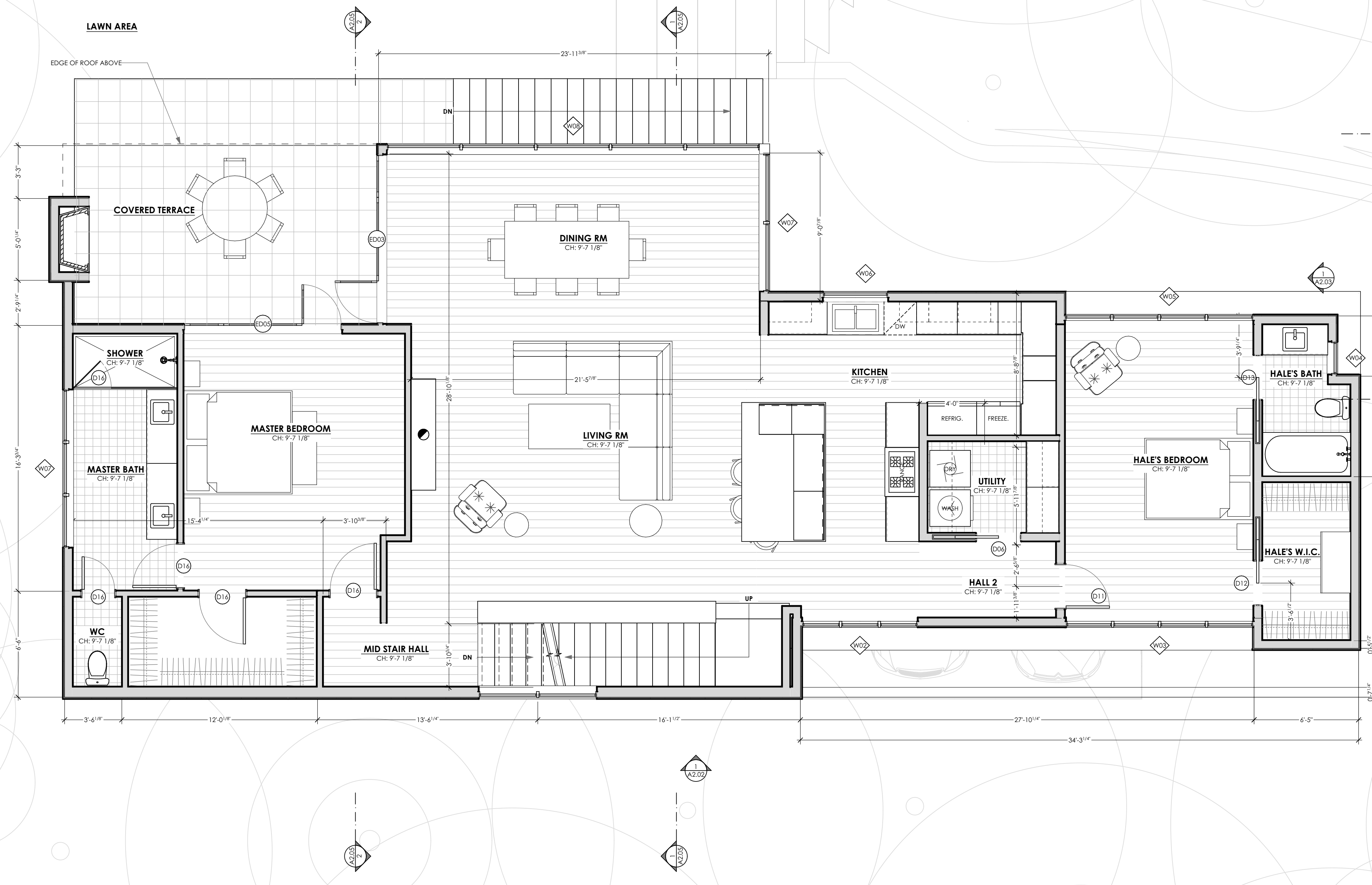
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|        |        |
|--------|--------|
| DATE:  | 3/2/23 |
| PM:    | SW     |
| DRAWN: | JC, SW |

SHEET IS FORMATTED  
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ARE ONE HALF OF  
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AT HALF SIZE (11x17)

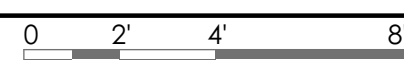
## A1.04

## PROPOSED- MAIN FLOOR PLAN



**1 PROPOSED- MAIN FLOOR PLAN**

SCALE: 1/4" = 1'-0"





[illegible]

103 YAUPON VALLEY RD.  
WEST LAKE HILLS  
TEXAS 78746

FOR REVIEW ONLY

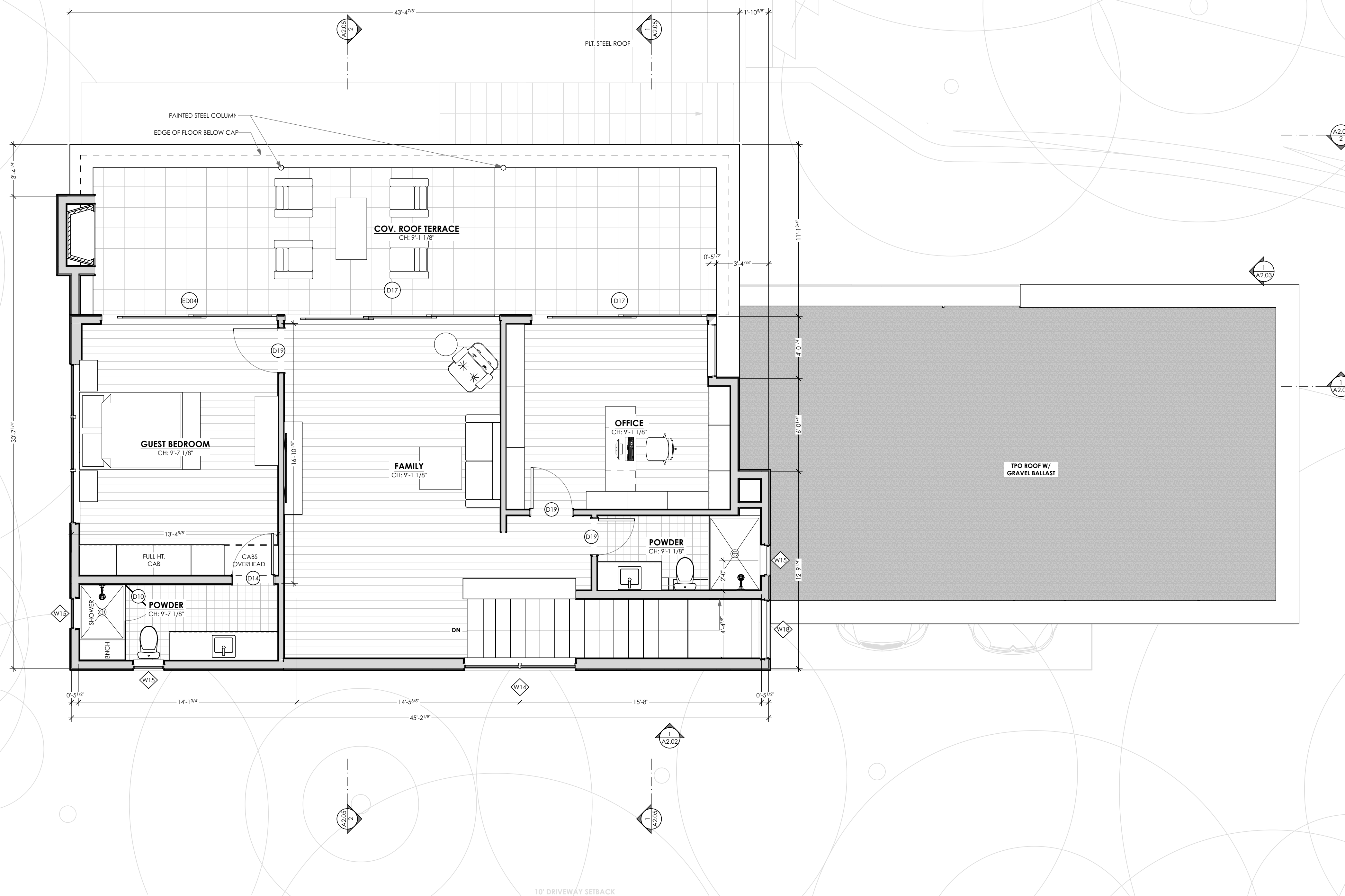
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| DATE:  | 3/2/23 |
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| DRAWN: | JC, SW |

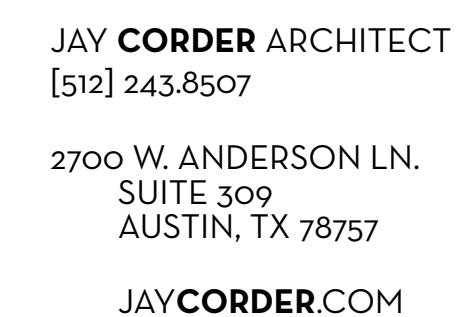
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## A1.05

PROPOSED- UPPER LEVEL PLAN







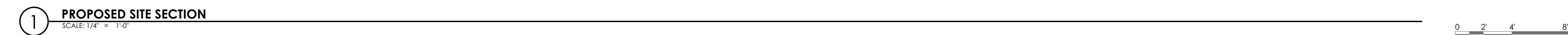
**WEINBERGER  
RESIDENCE**

103 YAUPON VALLEY RD.  
WEST LAKE HILLS  
TEXAS 78746

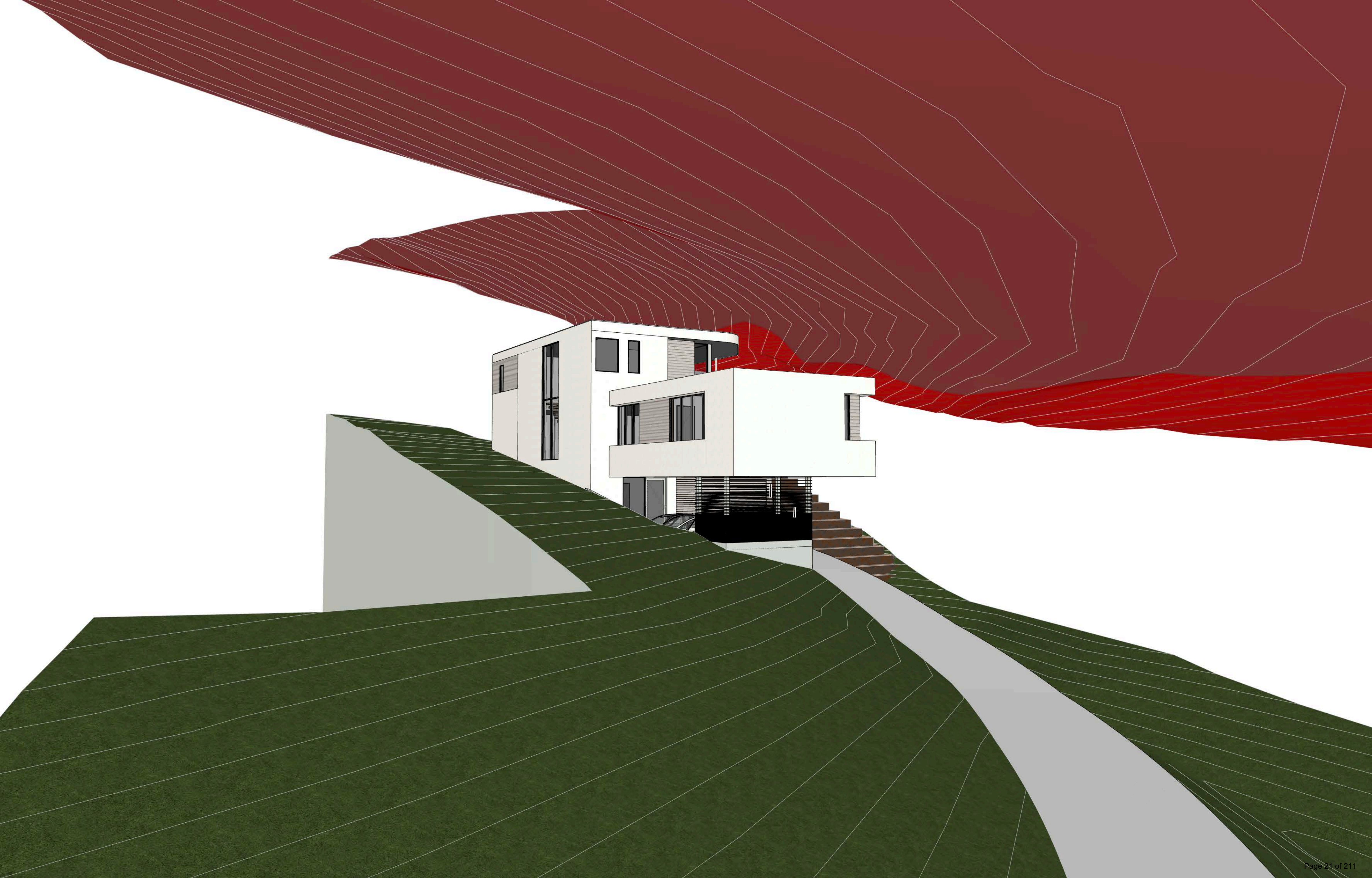
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SHEET IS FORMATTED  
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NOTED WHEN PRINTED  
AT HALF SIZE (11x17)

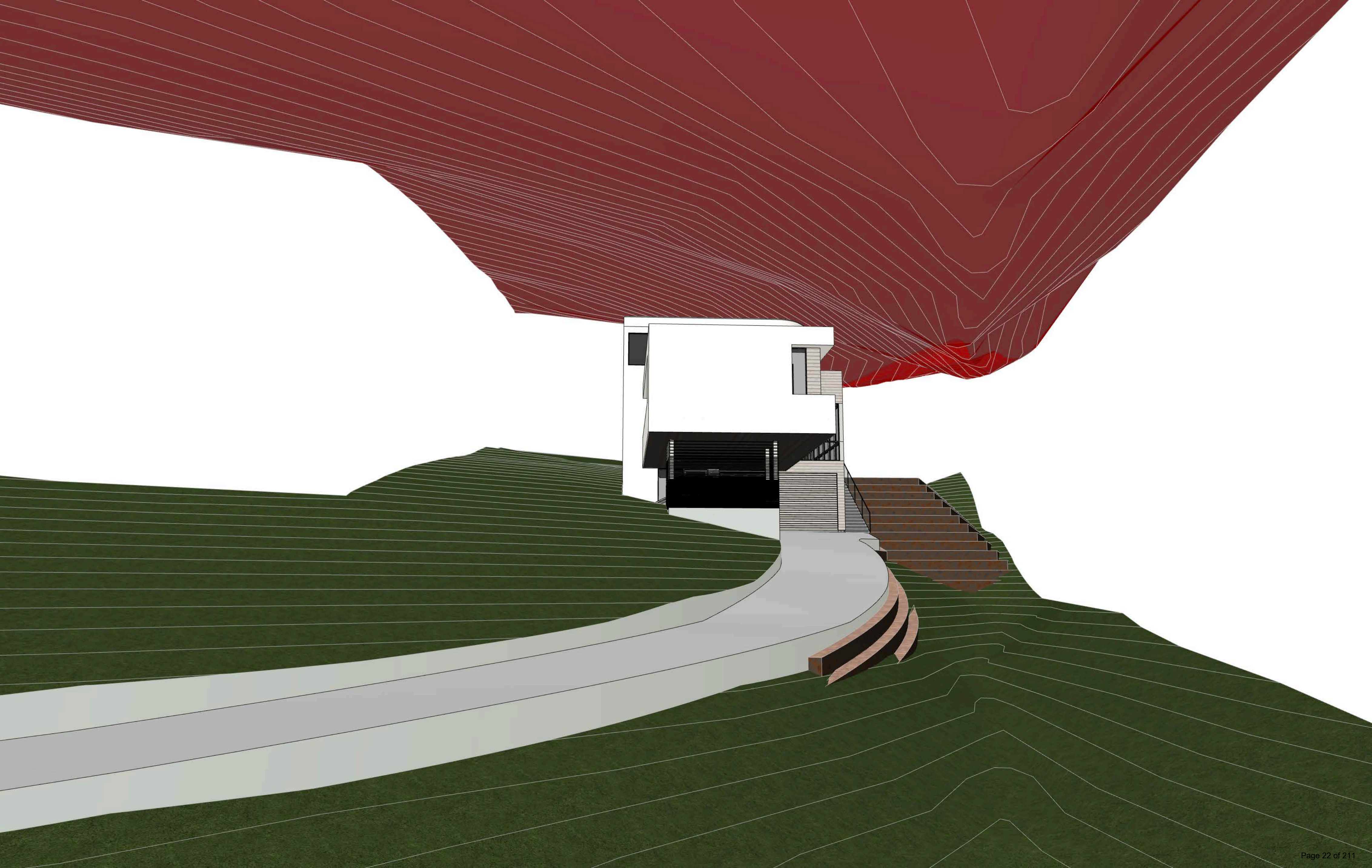
SITE SECTION



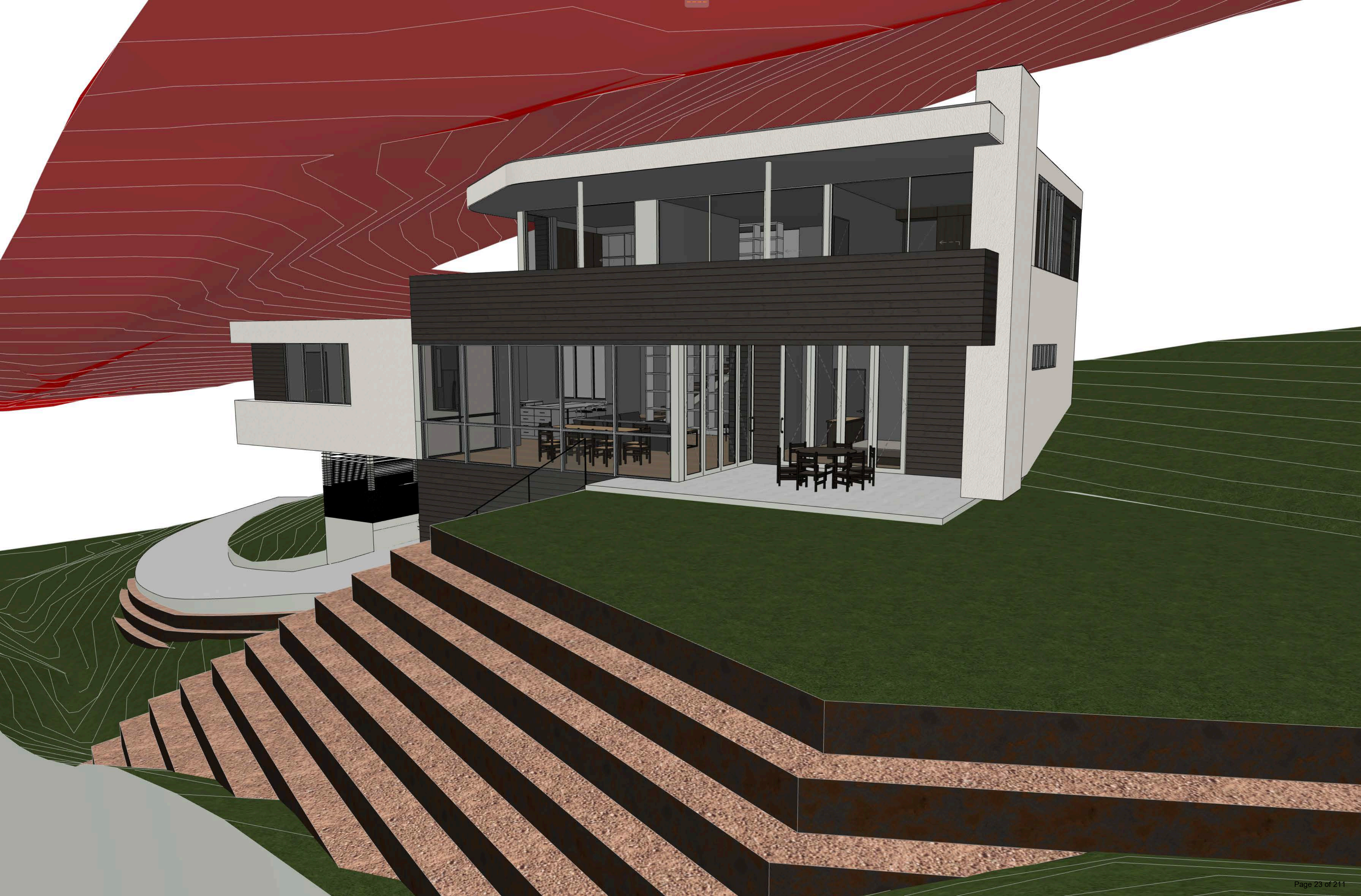




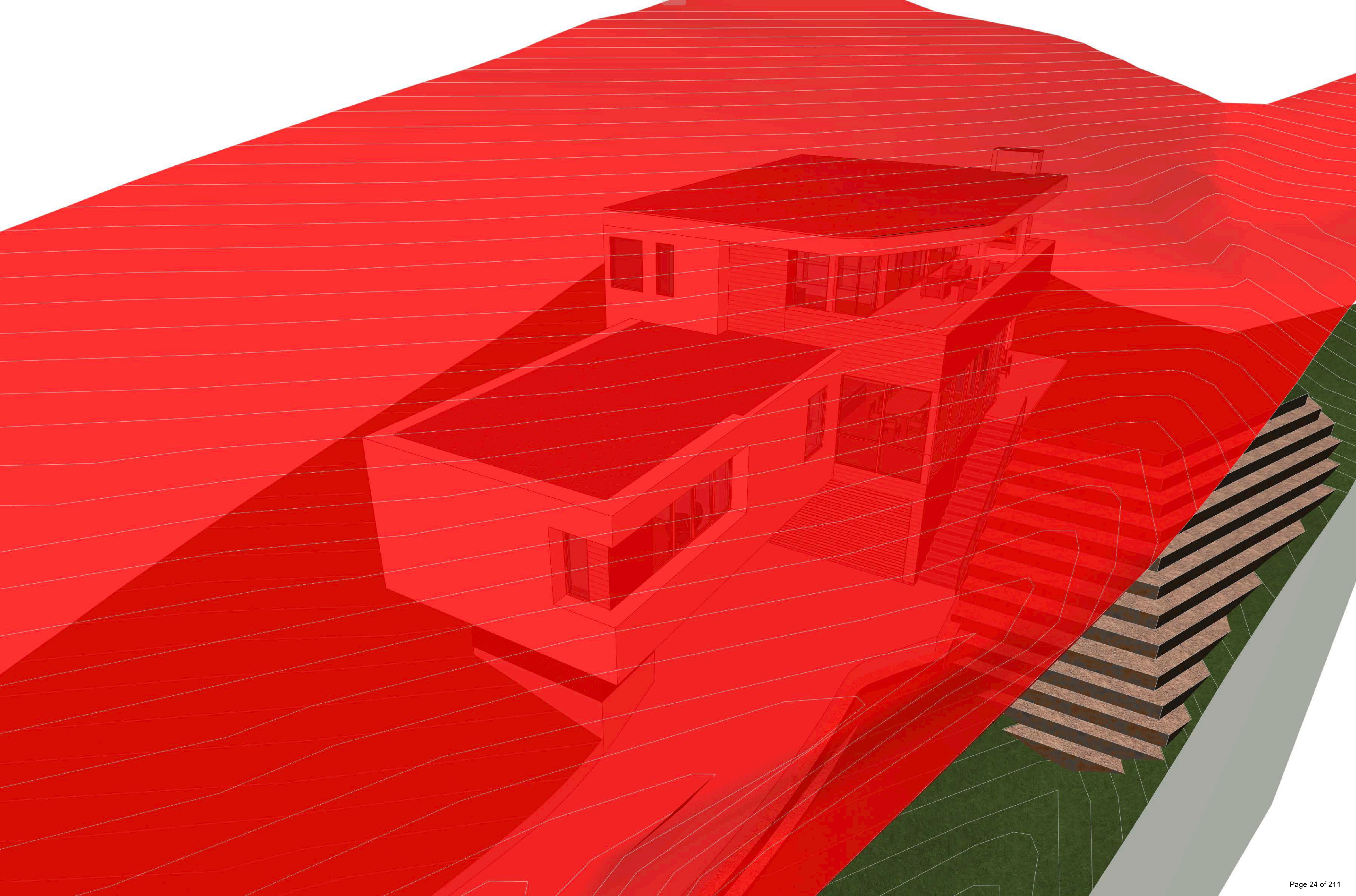














**OLD VERSION OF  
VARIANCE REQUEST  
FOLLOWS.  
  
FOR INFORMATION  
ONLY.**



## Architectural Summary: 103 Yaupon Valley Road

### Introduction

Jay Corder Architects have recommended our clients, Erica and Ashton Weinberger, seek variances for trees and side setbacks on their challenging site at 103 Yaupon Valley Road. Any concerns their neighbors have about square footage, height, or drainage are valid, and we will respond to them sensitively moving forward. However, they are not within the scope of the variances we seek.

### Setbacks

The City of West Lake Hills requires smaller side setbacks for lots under half an acre than it does for larger lots: 20 feet instead of 25. The Weinbergers' property is just 549 square feet over half an acre, equivalent to a 23x23' square. The neighbors at 808 Westlake Drive have an access easement--which their actual driveway overruns-- of approximately 475 square feet. There is not a drainage easement designated around the gully on the north side of the property, but it is only reasonable and responsible to design as if there was. Finally, the lot is shaped like a bowtie, only 68' wide in the middle. Zoning would hold our development to a width of just 14' once the setbacks are applied. A considerable portion of the lot is effectively unusable and that is why we ask to use the setbacks of a slightly smaller lot.

### Siting

The western side of the site is the most desirable for building, as it is larger and has better views than the downhill side. Even if we are allowed to use 20' setbacks, the slope and number of trees make development there difficult. As currently permitted, the maximum pad size is just 23x35', half the required minimum size for a residence in West Lake Hills.

No driveway can reach that pad without variances. It must thread the bottleneck, protected trees, existing culvert, gully and easements, with a functional turning radius and at a maximum of 15% slope. The natural grade there is more than double that, and the retaining walls cannot be more than 18" in the side setback. It is not mathematically possible to satisfy all of those requirements.

At least one protected tree must be removed just to reach the site, so an arborist was engaged and their report has been provided. That tree has signs of failure, and we are requesting the removal of one more poor tree and two fair trees in order to satisfy the other demands of the site. All four are cedars.

### Improper Tree Removal

The contractor inadvertently removed four trees after the contractor was told repeatedly to only clear brush. Two of the trees were to be preserved per the Architectural Site Plan, so this was not an attempt to cheat the system. The contractor promptly self-reported the mistake to The City of Westlake Hills. The landowner went before the Municipal Court, and the fines have been paid.



**Conclusion**

The Weinbergers and Jay Corder Architects want to be the best possible neighbors. Our design is smaller than some of our neighbors, and the variances will allow it to fit far back from the street and preserve 19 of the 23 protected trees.



**Sec. 22.03.281 Schedule of regulations**

- (a) Where the slope gradient exceeds 25 percent nonresidential development is not permitted.
- (b) Dimensional regulations for listed zoning districts:

| Dimensional Minimums of Lots                                  |              |              |     |      |       |       |       |         |      |
|---------------------------------------------------------------|--------------|--------------|-----|------|-------|-------|-------|---------|------|
| Dimension/Zoning                                              | R-1          | R-2          | R-3 | O    | GUI   | B-1   | B-2   | B-3     | MU-1 |
| Acreage (acres) (A)                                           | 1            | 1            | 2   | 1.5  | 2     | 1.5   | 2     | 20      | 30   |
| Depth (feet)                                                  | 150          | 150          | 400 | 200  | 200   | 200   | 200   | 500     | (C)  |
| Width (feet) (B)                                              | 150          | 150          | 400 | 150  | 150   | 150   | 150   | 500     | (C)  |
| Minimum Building Setback Distance in Feet From Front Lot Line |              |              |     |      |       |       |       |         |      |
| Lot Size/Zoning                                               | R-1          | R-2          | R-3 | O    | GUI   | B-1   | B-2   | B-3     | MU-1 |
| Greater than or equal to .5 acre                              | 50           | 50           | 50  | 50   | 50    | 50    | 50    | (IV)(a) | (C)  |
| Less than .5 acres                                            | 30           | 30           | N/A | 30   | 30    | 30    | 30    | N/A     | N/A  |
| Minimum Building Setback Distance in Feet From Rear Lot Line  |              |              |     |      |       |       |       |         |      |
| Lot Size/Zoning                                               | R-1          | R-2          | R-3 | O    | GUI   | B-1   | B-2   | B-3     | MU-1 |
| Greater than or equal to .5 acre                              | 30           | 30           | 50  | 40   | 40    | 40    | 40    | (IV)(c) | (C)  |
| Less than .5 acres, greater than or equal to .375 acres       | 25           | 25           | N/A | 30   | 30    | 30    | 30    | N/A     | N/A  |
| Less than .375 acres—zero                                     | 15 (F, E)/20 | 15 (F, E)/20 | N/A | 30   | 30    | 30    | 30    | N/A     | N/A  |
| Minimum Building Setback Distance in Feet From Side Lot Lines |              |              |     |      |       |       |       |         |      |
| Lot Size/Zoning                                               | R-1          | R-2          | R-3 | O    | GUI   | B-1   | B-2   | B-3     | MU-1 |
| Greater than or equal to .5 acre                              | 25           | 25           | 50  | (I)  | (I)   | (I)   | (I)   | (IV)(c) | (C)  |
| Less than .5 acres, greater than or equal to .375 acres       | 20           | 20           | N/A | (II) | (II)  | (II)  | (II)  | N/A     | N/A  |
| Less than .375 acres—zero                                     | 15 (F, E)/20 | 15 (F, E)/20 | N/A | (II) | (II)  | (II)  | (II)  | N/A     | N/A  |
| Maximum Impervious Cover in Percent of Lot Area               |              |              |     |      |       |       |       |         |      |
| Lot Size/Zoning                                               | R-1          | R-2          | R-3 | O    | GUI   | B-1   | B-2   | B-3     | MU-1 |
| Greater than or equal to .5                                   | 25%          | 25%          | 25% | (IX) | (III) | (III) | (III) | (V)     | (C)  |

|                                                       |      |      |     |      |       |       |       |     |     |
|-------------------------------------------------------|------|------|-----|------|-------|-------|-------|-----|-----|
| acre                                                  |      |      |     |      |       |       |       |     |     |
| Less than .5 acres, greater than or equal to .2 acres | *, † | *, † | 25% | (IX) | (III) | (III) | (III) | (V) | (C) |

\* The following formula applies:

$$P = (\text{size of acre expressed as a whole number and decimal}) \times (.5) - (.5)$$

Example:

$$P = (.25 \text{ acres}) (.5) - .5$$

$$P = (.125) - .5 = -.375\%$$

$$P = 37.5\% \text{ allowable impervious cover for a .25 acre lot}$$

† In order to receive and increase in allowable impervious cover over 25%, the property must be connected to the city's wastewater service.

| Dimensions of Structures                                                                                                      |       |       |     |           |           |           |           |           |        |
|-------------------------------------------------------------------------------------------------------------------------------|-------|-------|-----|-----------|-----------|-----------|-----------|-----------|--------|
| Dimension/Zoning                                                                                                              | R-1   | R-2   | R-3 | O         | GUI       | B-1       | B-2       | B-3       | MU-1   |
| Maximum height (feet)                                                                                                         | 30    | 25    | 30  | 30 (VIII) | 30 (VIII) | 30 (VIII) | 30 (VIII) | 37 (VIII) | (D)    |
| Minimum floor area of each dwelling unit (square feet) (total square footage of each dwelling unit)                           | 1,600 | 1,000 | 600 | N/A       | N/A       | N/A       | N/A       | N/A       | (C)    |
| Maximum floor area per building or single use occupancy (square feet) (total square footage of the footprint of the building) | N/A   | N/A   | N/A | 15,000    | 20,000    | 15,000    | 20,000    | (VI)(b)   | 60,000 |
| Minimum separation between buildings (linear feet)                                                                            | N/A   | N/A   | N/A | 30        | 30        | 30        | 30        | (VI)(c)   | (C)    |

(A) Land donated/dedicated to and accepted by the city shall be credited to the area of the lot/tract from which the donated land originated.

(B) For residential lots on culs-de-sac, the minimum lot width at the front street property line shall be 33 feet measured along the chord of the arc.

(C) See [section 38.03.040](#) et seq.

(D) Residential 30 feet; nonresidential 37 feet.

(E) No portion of the structure in an extended setback shall be taller than 16' above natural grade.

(F) If the proposed building is a one-story structure, the lesser setback distance applies. If any portion of the building is a two-story structure, the greater setback distance applies.

Footnotes:

(I) The sum of 50 feet with neither side less than 25 feet, except a minimum of 40 feet for any side that adjoins R-1, R-2, and R-3.

(II) The sum of 40 feet with neither side less than ten feet except a minimum of 25 feet for any side that adjoins R-1,



R-2, and R-3.

(III) The improvements constructed on a project site within a B-1, B-2 or GUI zoning district shall meet the following impervious cover requirements provided that for parcels of land with GUI zoning, the minimum lot size shall be two acres:

(a) A maximum of 35 percent of the total site area shall be permitted to be impervious cover. Up to six percent impervious cover shall be allowed for common driveways, governmental facilities and fire access driveways in the rear and at the sides of buildings; provided, however, if such driveways or facilities total less than six percent of the impervious cover, the percentage allowed shall be the actual percentage of impervious cover required by the driveways or facilities. This six percent increase shall not be counted in computing the maximum impervious cover. A developer may be permitted to increase the maximum impervious cover to 47 percent, as approved by the city council, by selecting from the following weighted incentives:

Incentive items.

- a. Provide off-site public sewage disposal system: 8% increase in impervious cover.
- b. Increase landscaping or setbacks (front and one side or rear) by more than 50 percent of ordinance requirements. Setback increases applicable only if unaffected by natural features, topography, creekbeds, etc. Landscaping should provide for using predominantly native plants and grasses to minimize the use and impact of pesticides, herbicides and fertilizers: 2% increase in impervious cover.
- c. Construct detention basins with sedimentation/filtration basins in addition to required detention basins: 2% increase in impervious cover.
- d. Provide primarily ten feet or greater landscaped separations between parking aisles: 2% increase in impervious cover.
- e. Provide 75 percent or more of the required vehicle parking underneath and/or to the side or rear of the building: 2% increase in impervious cover.
- f. Maintain natural state of site in excess of 25 percent requirement:
  1. If 30 percent in natural state: 1% increase in impervious cover.
  2. If 35 percent in natural state: 2% increase in impervious cover.
  3. If 40 percent or more in natural state: 3% increase in impervious cover.
- g. Use of low water consumption plumbing fixture: 1% increase in impervious cover.
- h. Donation of right-of-way (ROW): 2% increase in impervious cover.
- i. Based on the evaluation by the zoning and planning commission and the city council, an increase in allowable impervious cover ranging from one percent to five percent may be approved for a project that demonstrates highly innovative architecture, site planning and land use techniques of a caliber not previously utilized in the city's area and/or of such a quality as to set an excellent example for subsequent developments.

The criteria for evaluation shall include, but not be limited to, the following:

1. Reduction of building mass by breaking up buildings.
2. Techniques to enhance the pedestrian scale of the project, including sidewalks and covered walkways.
3. Measurable efforts to preserve greenbelts at the expense of street visibility.
4. Construction of berms to block off-street visibility of pavement and parking areas.
5. Noise abatement efforts to adjoining sites by providing solid walls and dense planting.
6. Other provisions to lessen the visual impact of the project on surrounding properties.

7. Revegetation of strategic, previously open setback areas with mature, indigenous landscaping.

8. Other unscheduled project design elements may be considered in this incentive item.

(IV) (a) See [section 22.03.275](#)(a).

(b) The sum of 100 feet with neither side less than 50 feet, except as noted in subsection (IV)(d) below.

(c) Fifty feet except as noted in [section 22.03.275](#)(a) or subsection (IV)(d) below.

(d) If B-3 use abuts R-1, R-2 or R-3 use on the rear or side property line, a minimum building setback of 75 feet shall be required. Fifty feet of this setback shall be a densely planted buffer. Parking, driveways, walks, steps, trash storage and disposal fields are permissible within this setback area as long as these permissible improvements are not within the planted buffer. Disposal fields constructed in this area shall be revegetated to as much of its natural and undisturbed appearance as possible.

(V) The improvements constructed on a project site within a B-3 zoning district shall meet the following impervious cover requirements:

(a) At least 25 percent of the total site area shall remain in its natural, undisturbed state. Streambeds and other natural features shall be designated as open space. Areas used to buffer development in the B-3 district from other adjacent properties shall also be designated as open space. If large, natural, indigenous trees are utilized, or undisturbed natural knolls, undisturbed outcroppings or other areas of natural beauty are incorporated into the site design, the undisturbed, natural state requirement of 25 percent may be reduced to 20 percent of the total site area.

(b) A maximum of 40 percent of the total site area shall be permitted to be impervious cover. Up to three percent impervious cover shall be allowed for common driveways, governmental facilities and fire access driveways in the rear and at the sides of buildings; provided, however, if such driveways or facilities total less than three percent of the impervious cover, the percentage allowed shall be the actual percentage of impervious cover required by the driveways or facilities. This three percent increase shall not be counted in computing the maximum impervious cover. A developer may be permitted to increase the maximum impervious cover to 52 percent, as approved by the city council, by selecting from the following weighted incentives:

(1) Incentive items:

a. Provide off-site public sewage disposal system: 8% increase in impervious cover.

b. Increase landscaping or setbacks (front and one side or rear) by more than 50 percent of ordinance requirements. Setback increase applicable only if unaffected by natural features, topography, creekbeds, etc. Landscaping should provide for using predominantly native plants and grasses to minimize the use and impact of pesticides, herbicides and fertilizers: 2% increase in impervious cover.

c. Construct detention basins with sedimentation/filtration basins in addition to required detention basins: 2% increase in impervious cover.

d. Provide primarily 20 feet or greater landscaped separations between parking aisles: 2% increase in impervious cover.

e. Provide a major piece of sculptural art, continuously available for public view: 1% increase in impervious cover.

f. Maintain natural state of site in excess of 25 percent requirement:

1. If 30 percent in natural state: 1% increase in impervious cover.

2. If 35 percent in natural state: 1% increase in impervious cover.

3. If 40 percent or more in natural state: 3% increase in impervious cover.

g. Construct a hike and bike or nature trail for public use: 2% increase in impervious cover.

h. Use of low water consumption plumbing fixtures: 1% increase in impervious cover.



- i. Based on evaluation by the zoning and planning commission and the city council, an increase in allowable impervious cover ranging from one percent to five percent may also be approved for a project that demonstrates highly innovative architecture, site planning and land use techniques of a caliber not previously utilized in the city's area and/or of such a quality as to set an excellent example for subsequent developments.

The criteria for evaluation shall include, but not be limited to, the following:

1. Reduction of building mass by breaking up buildings.
2. Techniques to enhance the pedestrian scale of the project, including sidewalks and covered walkways.
3. Measurable efforts to preserve greenbelts at the expense of street visibility.
4. Construction of berms to block off-street visibility of pavement and parking areas.
5. Noise abatement efforts to adjoining sites by providing solid walls and dense planting.
6. Other provisions to lessen the visual impact of the project on surrounding properties.
7. Revegetation of strategic, previously open setback areas with mature, indigenous landscaping.

(c) The balance of the project may be landscaped using mostly indigenous trees and shrubs, used for stormwater detention, used for private sewage disposal systems, or otherwise disturbed so long as the surface of the area remains pervious.

(VI) The improvements constructed within a B-3 zoning district shall meet the following dimensional requirements:

(a) Each property shall be individually site-planned according to the terrain, traffic and sewage disposal considerations.

(b) Single occupancy use sizes in a B-3 use district shall be limited as follows:

(1) On a 40-acre or larger site three major single occupancy uses up to 65,000 square feet each may be constructed within the project in accordance with subsection (VI)(c) below. All other single occupancy uses shall not exceed 20,000 square feet.

(2) On a 20-acre to 40-acre site two major occupancy uses up to 65,000 square feet each may be constructed within the project in accordance with subsection (VI)(c) below. All other single use occupancy uses shall not exceed 20,000 square feet.

(3) Buildings joined by a weather protected passageway shall not be considered separate structures if more than 25 percent of their common facing walls are joined by the passageway.

(c) In order to utilize the site topography and preserve open space areas on other portions of the site, including setback buffers, single occupancy uses may be joined in a common structure when divided by a fire separation wall built in accordance with the International Building Code and International Fire Code, current adopted edition. Otherwise, the minimum building separation shall be 30 feet.

(VII) Repealed. Any reference to footnote (VII) in the chart in [section 22.03.281](#)(b) should be disregarded.

(VIII) Height adjustments.

(a) An increase of seven feet in the height limitation of buildings in zoning district O, B-1, B-2, B-3 and GUI may be granted when all of the following conditions are met:

1. Fifty percent or more of the required vehicle parking is provided underneath and/or to the side or rear of the building.
2. The parking provided in subsection (a)1. of this subsection is not visible from an abutting street.
3. All required parking is on slopes of 25 percent or less.
4. The building does not exceed a maximum of two stories, excluding the vehicle parking level.

5. Impervious cover does not exceed the requirement of this article.

6. The roof line is a pitch, shed or modification thereof as approved by the city council.

(IX) The improvements constructed on a project site within an “O” zoning district shall meet the following impervious cover requirements:

(a) A maximum of 30 percent of the total site shall be permitted to be impervious cover for the “O” office zoning districts. A developer may be permitted to increase the maximum impervious cover to 42 percent, as approved by the city council, by selecting from the following weighted incentives:

(1) Provide off-site public sewage disposal systems and donation of sewer right-of-way easement to the city. 8%

(2) Donation of right-of-way for street purposes. 2%

(3) Donation of easement for greenbelt of parkway. 2%

**(Ordinance 361 adopted 3/28/18)**



## Tree Condition Assessment

103 Yaupon Valley Rd. West Lake Hills, TX 78746

### Introduction:

Tree identification, measurement, inspection, and arboriculture consultation were performed by a board-certified master arborist team who through related training and experience are familiar with the techniques and equipment used in such operations.

TMS was contacted regarding a property being studied for construction. The team wanted a better understanding of trees on site and their potential impacts/benefits to the project.

### Assignment:

Tree Mann Solutions to inspect, identify, measure DBH, and provide condition rating with supportive notes for designated trees. TMS to review provided documents and make preservation/removal/care recommendations, where warranted. Summary report with photos provided for team use.

### Summary:

- **T196**, a 21.5" hackberry, was found to be in fair to low fair condition. It is a marginal to poor preservation candidate due to a history of previous failures, species profile, and existing/proposed impacts. TMS recommends removal and replacement of this tree which will allow for greater flexibility and respect of adjacent red oak CRZs.
- **T230**, a 12.5" Ashe juniper, was found to be in fair to low fair condition; preserve if convenient.
- **T246**, a 24" multi-stem red oak, was found to be in fair condition. It had a cavity at the union with decent response growth and no active decay observed TMS recommends cabling and pruning to reduce weight if tree is preserved.
- **T253**, a 14" Ashe juniper, was found to be in fair condition; preserve if convenient.
- **T255**, a 14" Ashe juniper, was found to be in poor condition due to previous failures and is not recommended for preservation.
- **T261**, a 13.5" ligustrum, is an invasive species and should be removed.
- **T262**, a 13.5" Ashe juniper, was found to be in poor condition, and is not recommended for preservation.
- **T263**, a 12" Ashe juniper, was found to be in poor condition, and is not recommended for preservation.
- **T266**, a 17" Ashe juniper, was found to be in poor condition due to a splitting union and significantly diminished canopy. This tree is not recommended for preservation.
- **T269**, a 15.5" Ashe juniper, was found to be in fair condition and is a decent preservation candidate.

TMS recommends designing with good data, maintaining compliance with municipal tree regulations, and promoting healthy urban canopy through quality preservation and/or mitigation with new, well-planned plantings. If you have any questions and/or concerns regarding tree assessment on this site, please reach me at (512)470-9073 or [REDACTED] We are here to help!

Respectfully,



Joe Zaniewski | Lead Project Manager

**Tree Mann Solutions, LLC**

Board Certified Master Arborist TX-4294B

Tree Risk Assessment Qualified (TRAQ)

Texas Oak Wilt Qualified #155 (TXOWQ)

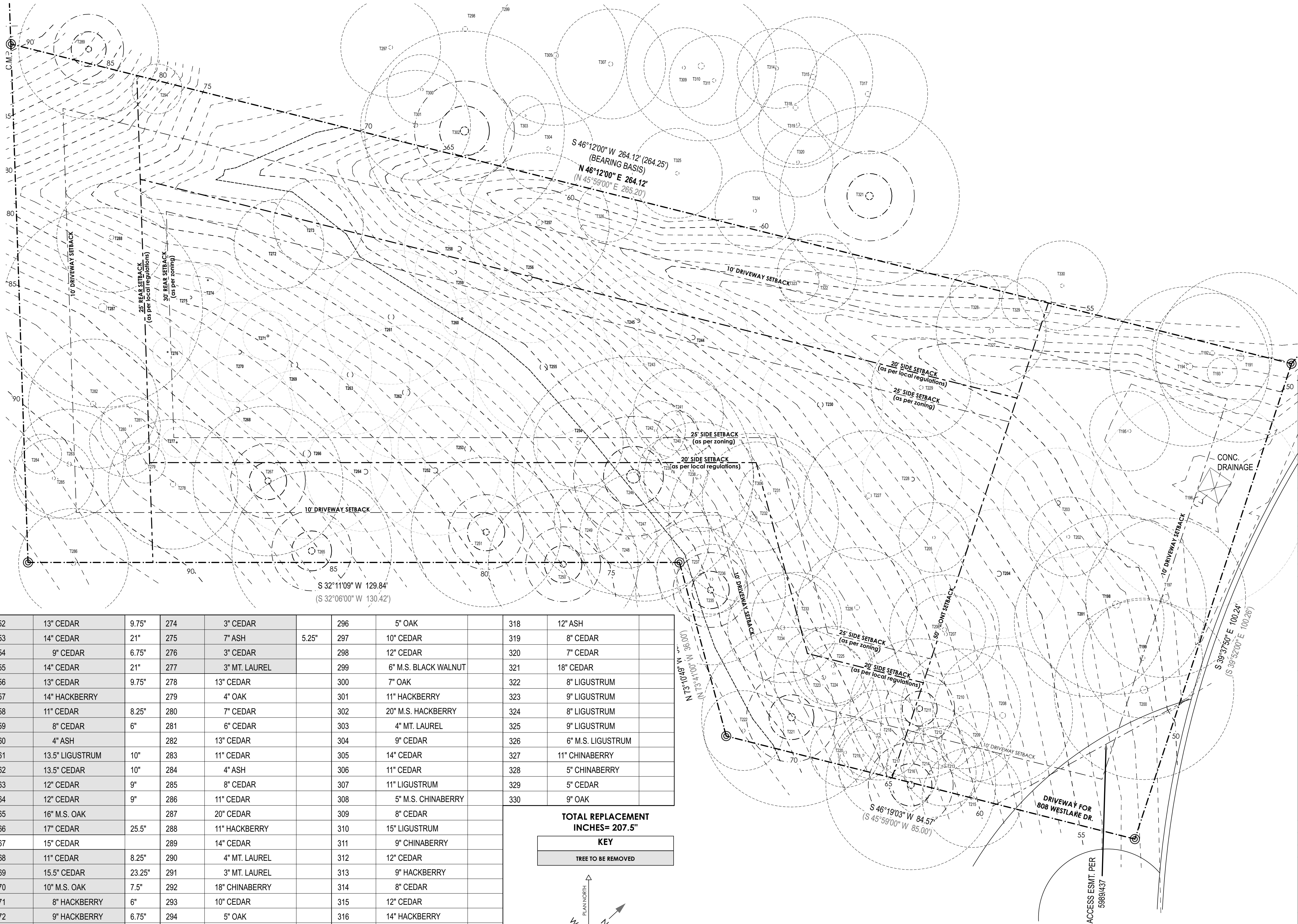
TDA Applicator License No. 0798941

Texas Licensed Irrigator LI0024812



This tree location survey certifies the size and location of the trees depicted hereon. B&G Surveying, LLC, nor the undersigned, certify the Species/Genus of these trees. For exact Species/Genus contact a Certified Arborist.

| TAG NO. | TREE DESCRIPTION  | REPL. IN. |
|---------|-------------------|-----------|
| 191     | 17" OAK           |           |
| 192     | 12" LIGUSTRUM     |           |
| 193     | 3" ASH            |           |
| 194     | 16" CEDAR         |           |
| 195     | 8" M.S. LIGUSTRUM |           |
| 196     | 21.5" HACKBERRY   | 32.25"    |
| 197     | 16" LIGUSTRUM     |           |
| 198     | 18" OAK           |           |
| 199     | 12" LIGUSTRUM     |           |
| 200     | 18" M.S. CEDAR    |           |
| 201     | 15" CEDAR         |           |
| 202     | 8" OAK            | 6"        |
| 203     | 11" CEDAR         | 8.25"     |
| 204     | 13" CEDAR         | 9.75"     |
| 205     | 7" HACKBERRY      |           |
| 206     | 11" LIGUSTRUM     |           |
| 207     | 8" OAK            |           |
| 208     | 14" CHINABERRY    |           |
| 209     | 7" CHINABERRY     |           |
| 210     | 12" LIGUSTRUM     |           |
| 211     | 14" OAK           |           |
| 212     | 5" LIGUSTRUM      |           |
| 213     | 8" LIGUSTRUM      |           |
| 214     | 9" LIGUSTRUM      |           |
| 215     | 10" CEDAR         |           |
| 216     | 17" HACKBERRY     |           |
| 217     | 10" CEDAR         |           |
| 218     | 9" CEDAR          |           |
| 219     | 5" LIGUSTRUM      |           |
| 220     | 7" LIGUSTRUM      |           |
| 221     | 18" OAK           |           |
| 222     | 8" CHINABERRY     |           |
| 223     | 10" CEDAR         |           |
| 224     | 6" LIGUSTRUM      |           |
| 225     | 8" LIGUSTRUM      |           |
| 226     | 12" CEDAR         |           |
| 227     | 13" OAK           |           |
| 228     | 10" CEDAR         | 7.5"      |
| 229     | 10" CEDAR         |           |
| 230     | 12.5" CEDAR       | 9.5"      |
| 231     | 6" OAK            |           |
| 232     | 17" CEDAR         |           |
| 233     | 9" LIGUSTRUM      |           |
| 234     | 11" CEDAR         |           |
| 235     | 15" CHINABERRY    |           |
| 236     | 7" CEDAR          |           |
| 237     | 8" CEDAR          |           |
| 238     | 11" CEDAR         |           |
| 239     | 7" CEDAR          |           |
| 240     | 4" ASH            |           |
| 241     | 9" OAK            |           |
| 242     | 6" CEDAR          |           |
| 243     | 4" ASH            |           |
| 244     | 11" HACKBERRY     | 8.25"     |
| 245     | 9" CEDAR          | 6.75"     |
| 246     | 24" OAK           |           |
| 247     | 13 " LIGUSTRUM    |           |
| 248     | 6" OAK            |           |
| 249     | 7" CEDAR          |           |
| 250     | 15" CHINABERRY    |           |
| 251     | 15" HACKBERRY     |           |



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## A1.01

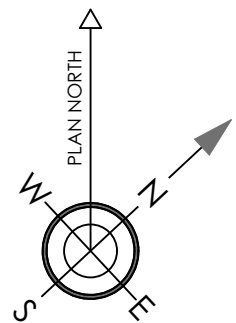
## EXISTING- SITE PLAN



This tree location survey certifies the existence and location of the trees depicted here. B&G Surveying, LLC, nor the undersigned, certify the Species/Genus of these trees. For exact Species/Genus, contact a Certified Arborist.

|     |                |     |                 |     |                    |     |                      |                                                                                                                                                                      |                   |
|-----|----------------|-----|-----------------|-----|--------------------|-----|----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| 230 | 12.5" CEDAR    | 252 | 13" CEDAR       | 274 | 3" CEDAR           | 296 | 5" OAK               | 318                                                                                                                                                                  | 12" ASH           |
| 231 | 6" OAK         | 253 | 14" CEDAR       | 275 | 7" ASH             | 297 | 10" CEDAR            | 319                                                                                                                                                                  | 8" CEDAR          |
| 232 | 17" CEDAR      | 254 | 9" CEDAR        | 276 | 3" CEDAR           | 298 | 12" CEDAR            | 320                                                                                                                                                                  | 7" CEDAR          |
| 233 | 9" LIGUSTRUM   | 255 | 14" CEDAR       | 277 | 3" MT. LAUREL      | 299 | 6" M.S. BLACK WALNUT | 321                                                                                                                                                                  | 18" CEDAR         |
| 234 | 11" CEDAR      | 256 | 13" CEDAR       | 278 | 13" CEDAR          | 300 | 7" OAK               | 322                                                                                                                                                                  | 8" LIGUSTRUM      |
| 235 | 15" CHINABERRY | 257 | 14" HACKBERRY   | 279 | 4" OAK             | 301 | 11" HACKBERRY        | 323                                                                                                                                                                  | 9" LIGUSTRUM      |
| 236 | 7" CEDAR       | 258 | 11" CEDAR       | 280 | 7" CEDAR           | 302 | 20" M.S. HACKBERRY   | 324                                                                                                                                                                  | 8" LIGUSTRUM      |
| 237 | 8" CEDAR       | 259 | 8" CEDAR        | 281 | 6" CEDAR           | 303 | 4" MT. LAUREL        | 325                                                                                                                                                                  | 9" LIGUSTRUM      |
| 238 | 11" CEDAR      | 260 | 4" ASH          | 282 | 13" CEDAR          | 304 | 9" CEDAR             | 326                                                                                                                                                                  | 6" M.S. LIGUSTRUM |
| 239 | 7" CEDAR       | 261 | 13.5" LIGUSTRUM | 283 | 11" CEDAR          | 305 | 14" CEDAR            | 327                                                                                                                                                                  | 11" CHINABERRY    |
| 240 | 4" ASH         | 262 | 13.5" CEDAR     | 284 | 4" ASH             | 306 | 11" CEDAR            | 328                                                                                                                                                                  | 5" CHINABERRY     |
| 241 | 9" OAK         | 263 | 12" CEDAR       | 285 | 8" CEDAR           | 307 | 11" LIGUSTRUM        | 329                                                                                                                                                                  | 5" CEDAR          |
| 242 | 6" CEDAR       | 264 | 12" CEDAR       | 286 | 11" CEDAR          | 308 | 5" M.S. CHINABERRY   | 330                                                                                                                                                                  | 9" OAK            |
| 243 | 4" ASH         | 265 | 16" M.S. OAK    | 287 | 20" CEDAR          | 309 | 8" CEDAR             |  <p><b>area</b><br/>lower hwa<br/>main hwa<br/>upper hwa<br/>to<br/>garage:</p> |                   |
| 244 | 11" HACKBERRY  | 266 | 17" CEDAR       | 288 | 11" HACKBERRY      | 310 | 15" LIGUSTRUM        |                                                                                                                                                                      |                   |
| 245 | 9" CEDAR       | 267 | 15" CEDAR       | 289 | 14" CEDAR          | 311 | 9" CHINABERRY        |                                                                                                                                                                      |                   |
| 246 | 24" OAK        | 268 | 11" CEDAR       | 290 | 4" MT. LAUREL      | 312 | 12" CEDAR            |                                                                                                                                                                      |                   |
| 247 | 13 " LIGUSTRUM | 269 | 15.5" CEDAR     | 291 | 3" MT. LAUREL      | 313 | 9" HACKBERRY         |                                                                                                                                                                      |                   |
| 248 | 6" OAK         | 270 | 10" M.S. OAK    | 292 | 18" CHINABERRY     | 314 | 8" CEDAR             |                                                                                                                                                                      |                   |
| 249 | 7" CEDAR       | 271 | 8" HACKBERRY    | 293 | 10" CEDAR          | 315 | 12" CEDAR            |                                                                                                                                                                      |                   |
| 250 | 15" CHINABERRY | 272 | 9" HACKBERRY    | 294 | 5" OAK             | 316 | 14" HACKBERRY        |                                                                                                                                                                      |                   |
| 251 | 15" HACKBERRY  | 273 | 9" OAK          | 295 | 6" M.S. CHINABERRY | 317 | 12" ASH              |                                                                                                                                                                      |                   |

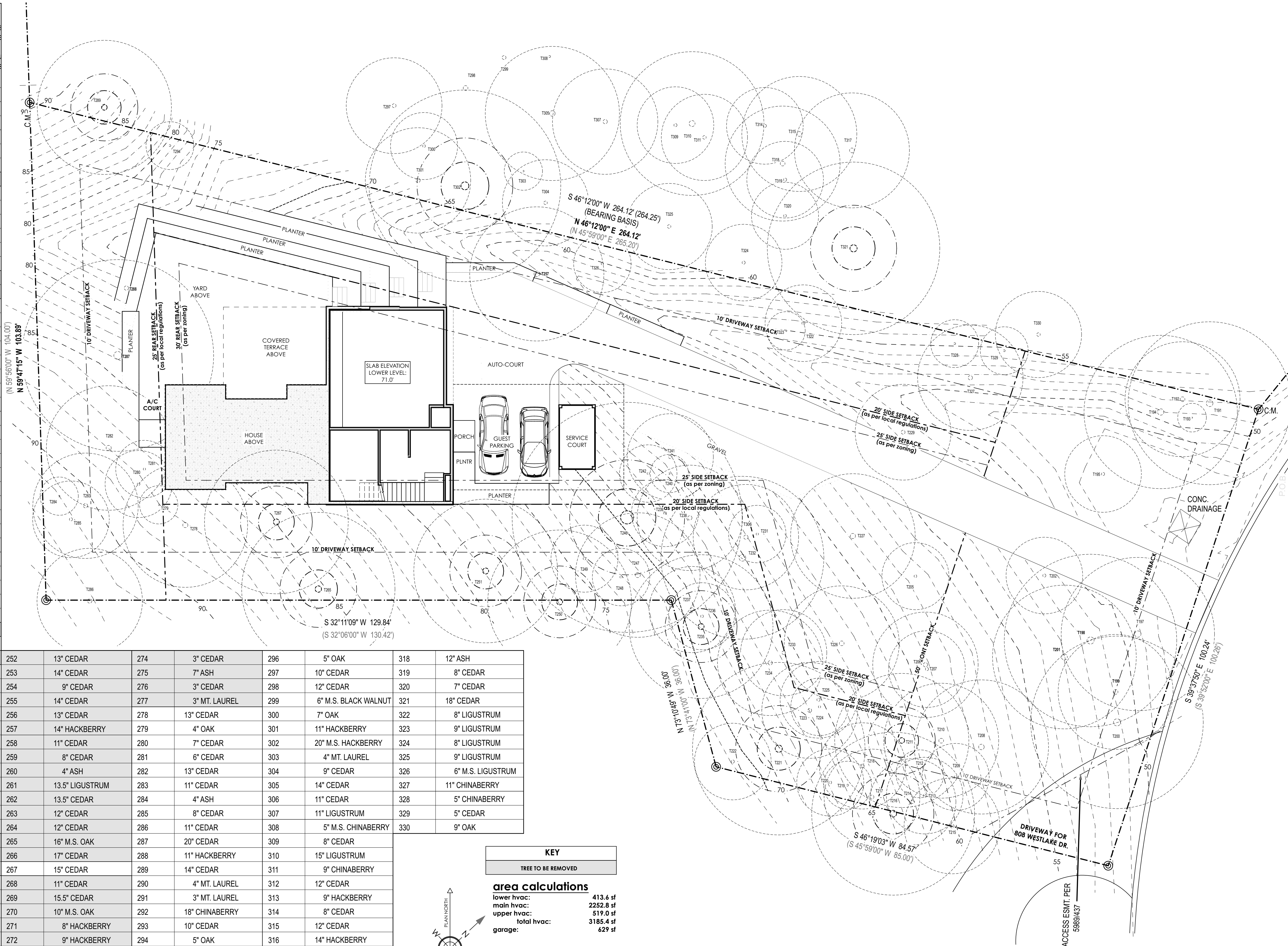
SCALE: 1" = 10'



**TREE TO BE REMOVED**

### area calculations

|             |           |
|-------------|-----------|
| lower hvac: | 413.6 sf  |
| main hvac:  | 2252.8 sf |
| upper hvac: | 519.0 sf  |
| total hvac: | 3185.4 sf |
| garage:     | 629 sf    |



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TEXAS 78746

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# A1.02

# PROPOSED- SITE PLAN



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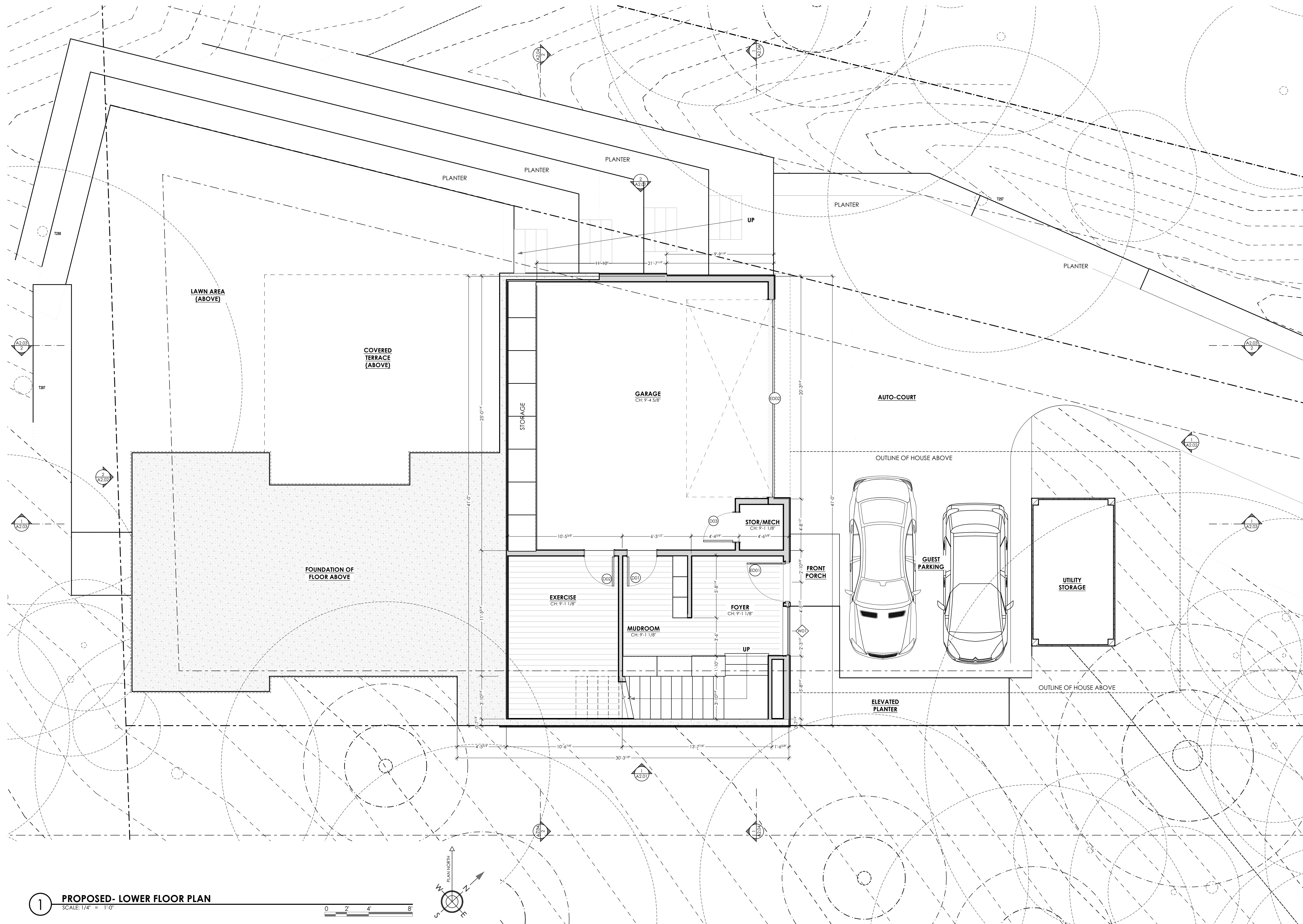
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| DATE:  | 11/4/22 |
| PM:    | SW      |
| DRAWN: | JC, SW  |

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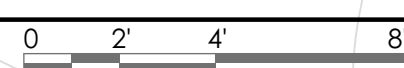
## A1.03

PROPOSED- LOWER FLOOR PLAN





**A1.04**





**WEINBERGER  
RESIDENCE**

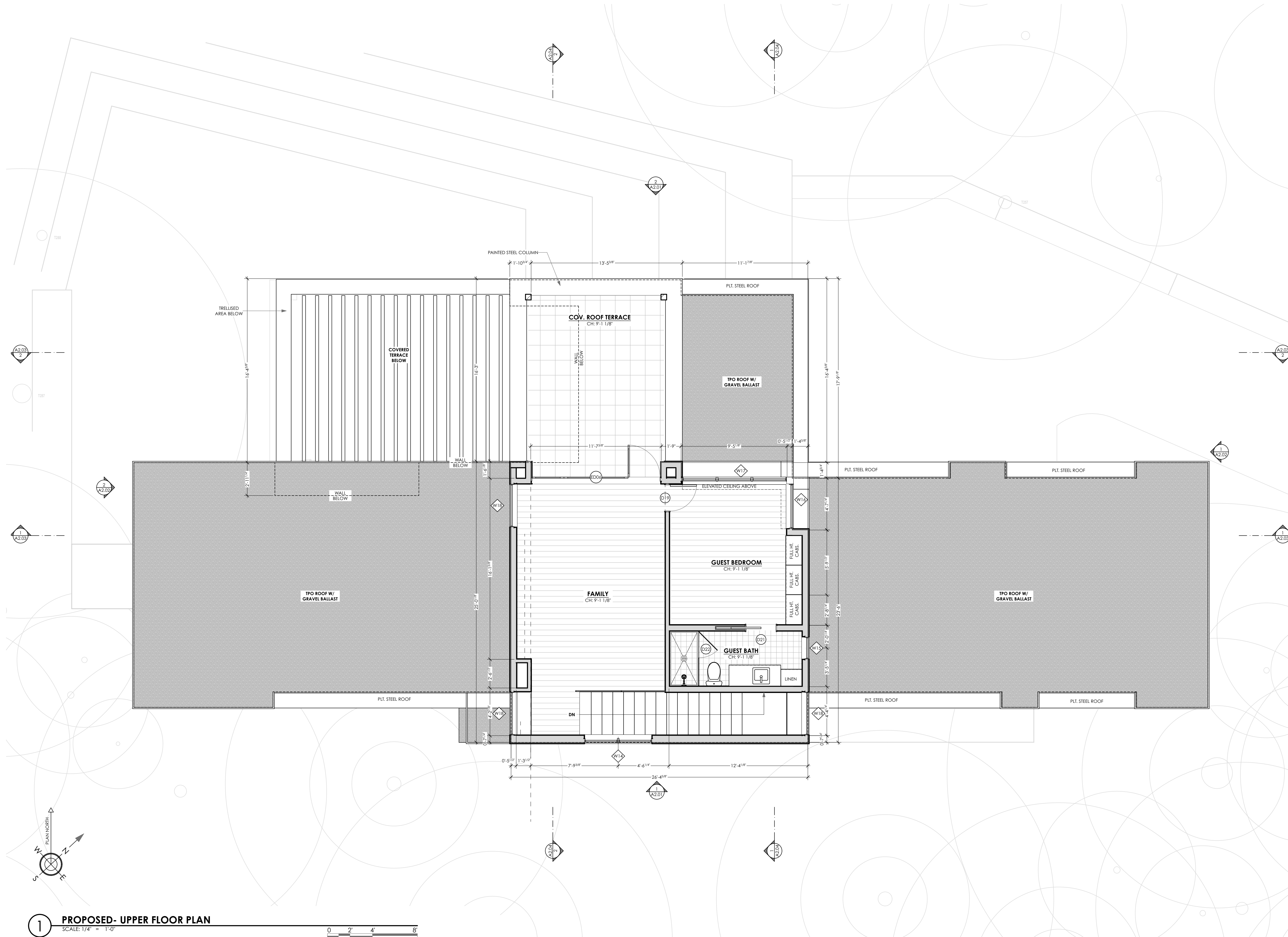
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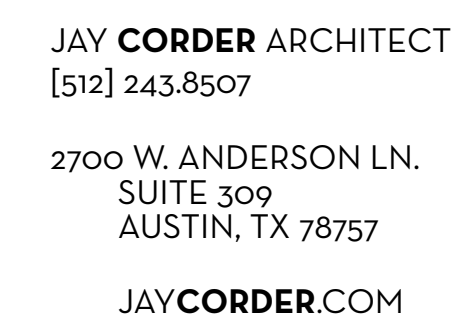
**A1.05**

PROPOSED- UPPER LEVEL PLAN



**1 PROPOSED- UPPER FLOOR PLAN**  
SCALE: 1/4" = 1'-0"





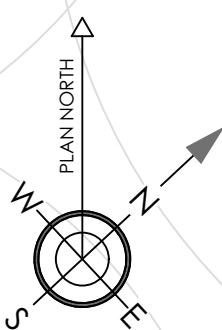
**WEINBERGER  
RESIDENCE**

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TEXAS 78746

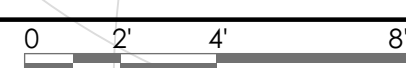
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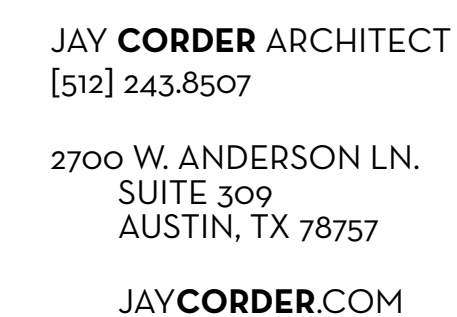
PROPOSED- ROOF PLAN



SCALE: 1/4" = 1'-0"







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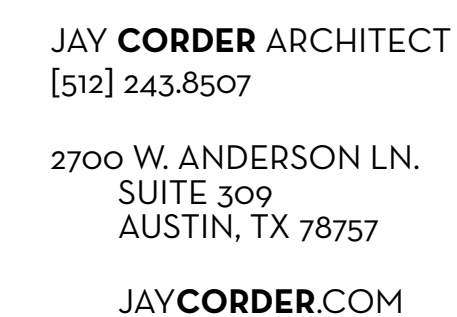
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A2.01

## EXTERIOR ELEVATIONS + BUILDING SECTIONS







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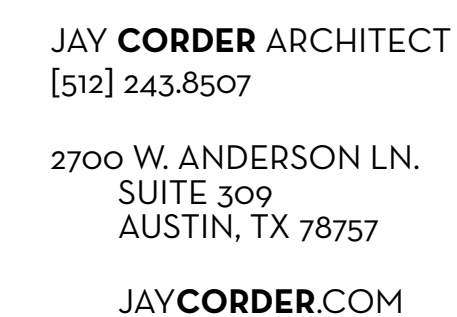
## EXTERIOR ELEVATIONS











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## EXTERIOR SECTION ELEVATIONS





(N 59°56'00" W 104.00')  
N 59°47'15" W 103.89'

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25' REAR SETBACK  
(as per local regulations)  
30' REAR SETBACK  
(as per zoning)

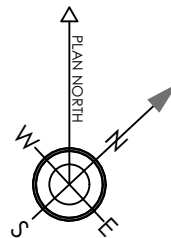
S 32°11'09" W 129.84'  
(S 32°06'00" W 130.42')

- SETBACK
- NEIGHBOR ACCESS ESMT
- GULLY

103 YAUPON VALLEY ROAD  
WEST LAKE HILLS, TEXAS

1 EASEMENTS  
SCALE: 1/16" = 1'-0"

0 8' 16' 32'



S 46°12'00" W 264.12' (264.25') (BEARING BASIS)  
N 46°12'00" E 264.12' (N 45°59'00" E 265.20')

15' WIDE GULLY

10' DRIVEWAY SETBACK

20' SIDE SETBACK  
(as per local regulations)  
25' SIDE SETBACK  
(as per zoning)

25' SIDE SETBACK  
(as per zoning)

20' SIDE SETBACK  
(as per local regulations)

10' DRIVEWAY SETBACK

10' DRIVEWAY SETBACK

25' SIDE SETBACK  
(as per zoning)  
20' SIDE SETBACK  
(as per local regulations)

50' FRONT SETBACK

10' DRIVEWAY SETBACK

DRIVEWAY FOR  
808 WESTLAKE DR.

CONC.  
DRAINAGE

YAUPON VALLEY ROAD  
S 39°37'50" E 100.24'  
(S 39°52'00" E 100.26')

S 46°19'03" W 84.57'  
(S 45°59'00" W 85.00')

ESMT. PER  
37



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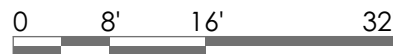
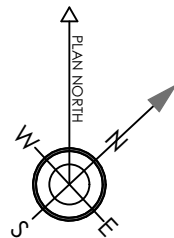
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**103 YAUPON VALLEY ROAD  
WEST LAKE HILLS, TEXAS**

1

**SLOPE ANALYSIS**

SCALE: 1/16" = 1'-0"



YAUPON VALLEY ROAD

15' WIDE GULLY

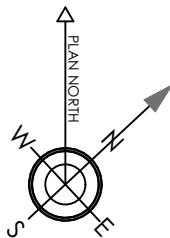


● DESIRABLE TREES (Oak, Ash, Mt Laurel, Maple and Walnut)  
■ PROTECTED TREES

103 YAUPON VALLEY ROAD  
WEST LAKE HILLS, TEXAS

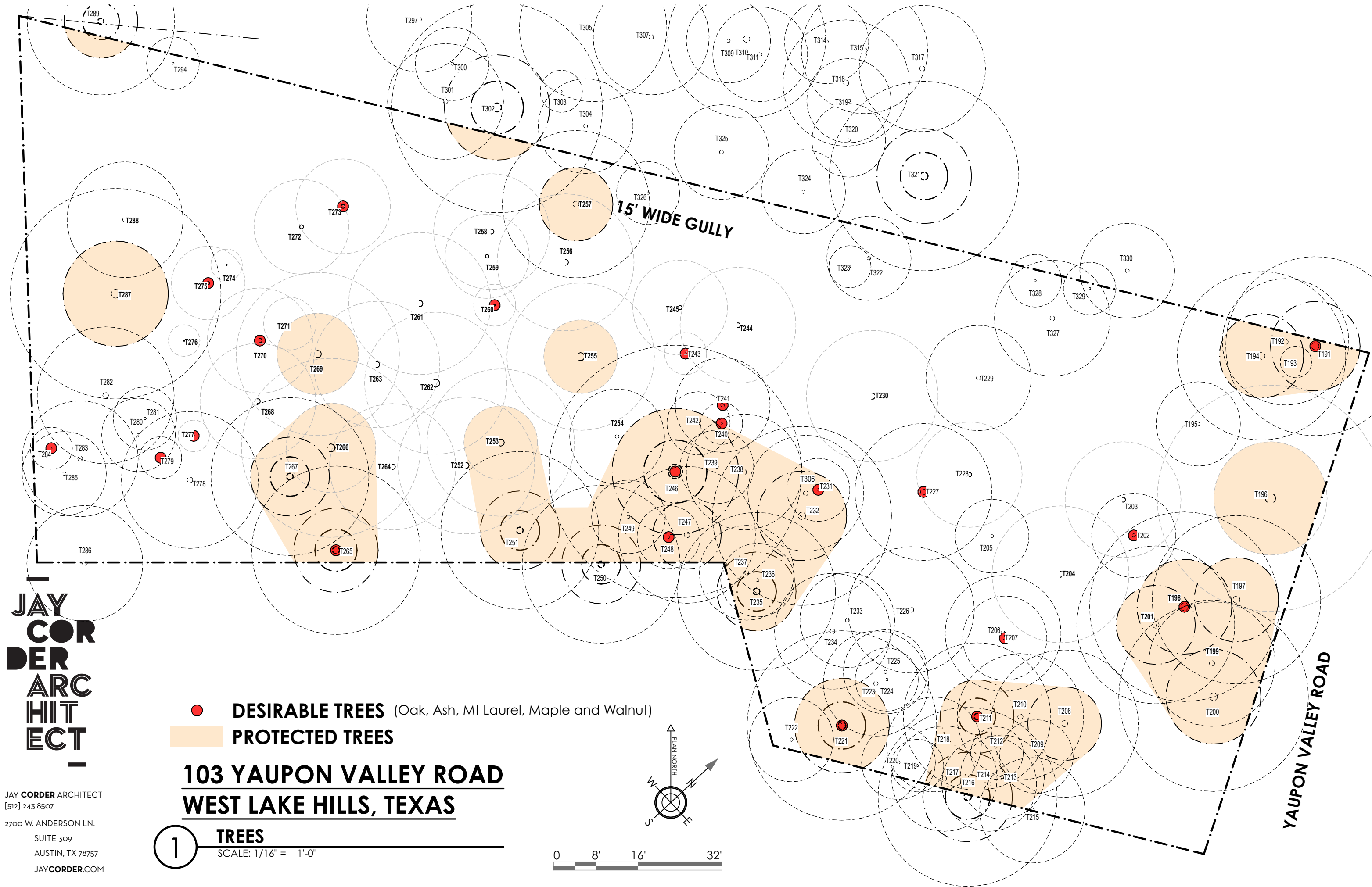
1 TREES  
SCALE: 1/16" = 1'-0"

0 8' 16' 32'



YAUPON VALLEY ROAD

15' WIDE GULLY





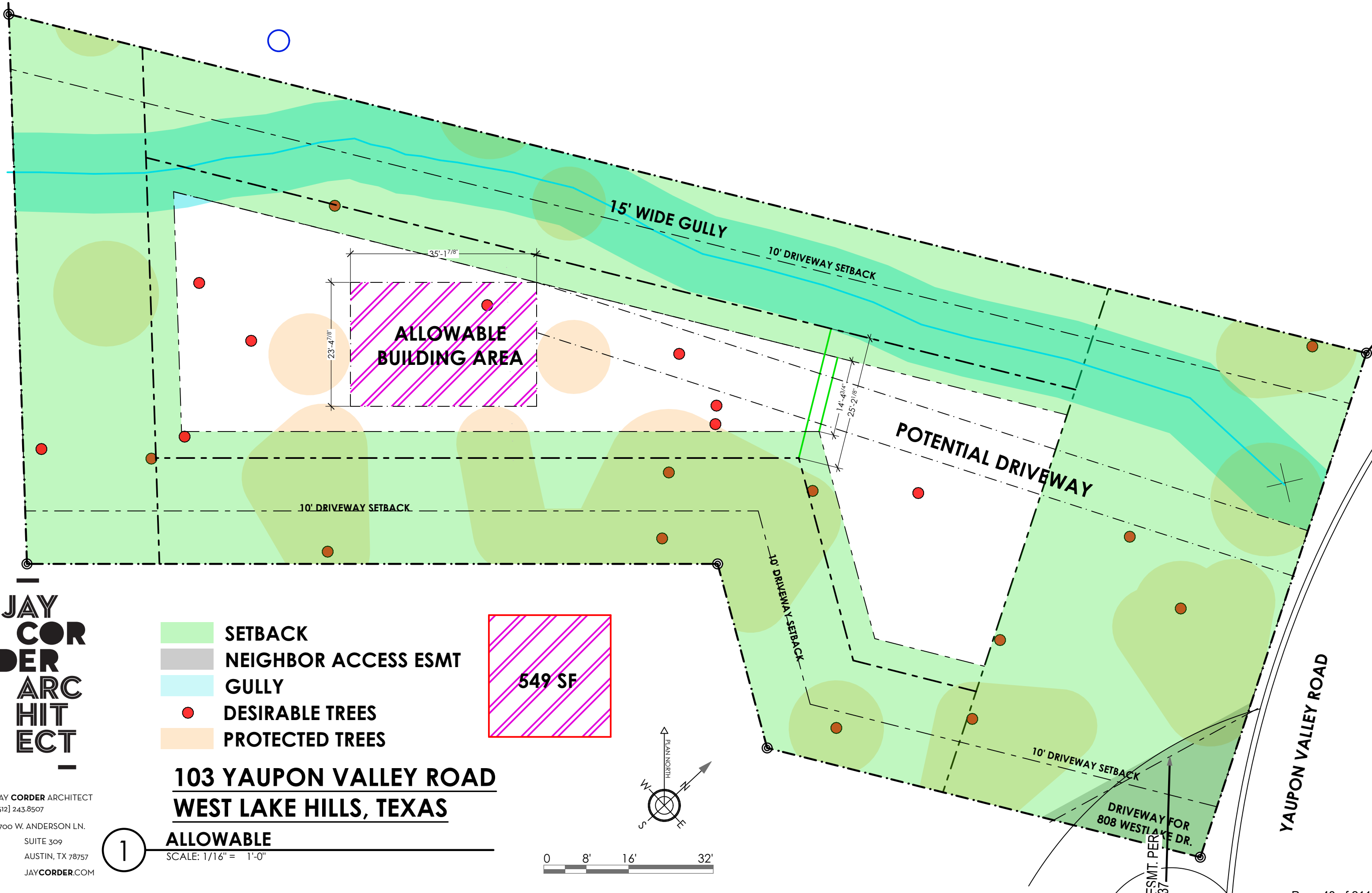
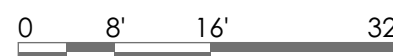
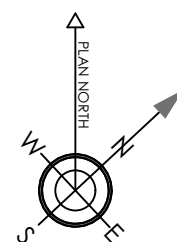
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**103 YAUPON VALLEY ROAD  
WEST LAKE HILLS, TEXAS**

**ALLOWABLE**

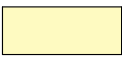
SCALE: 1/16" = 1'-0"

- SETBACK
- NEIGHBOR ACCESS ESMT
- GULLY
- DESIRABLE TREES
- PROTECTED TREES



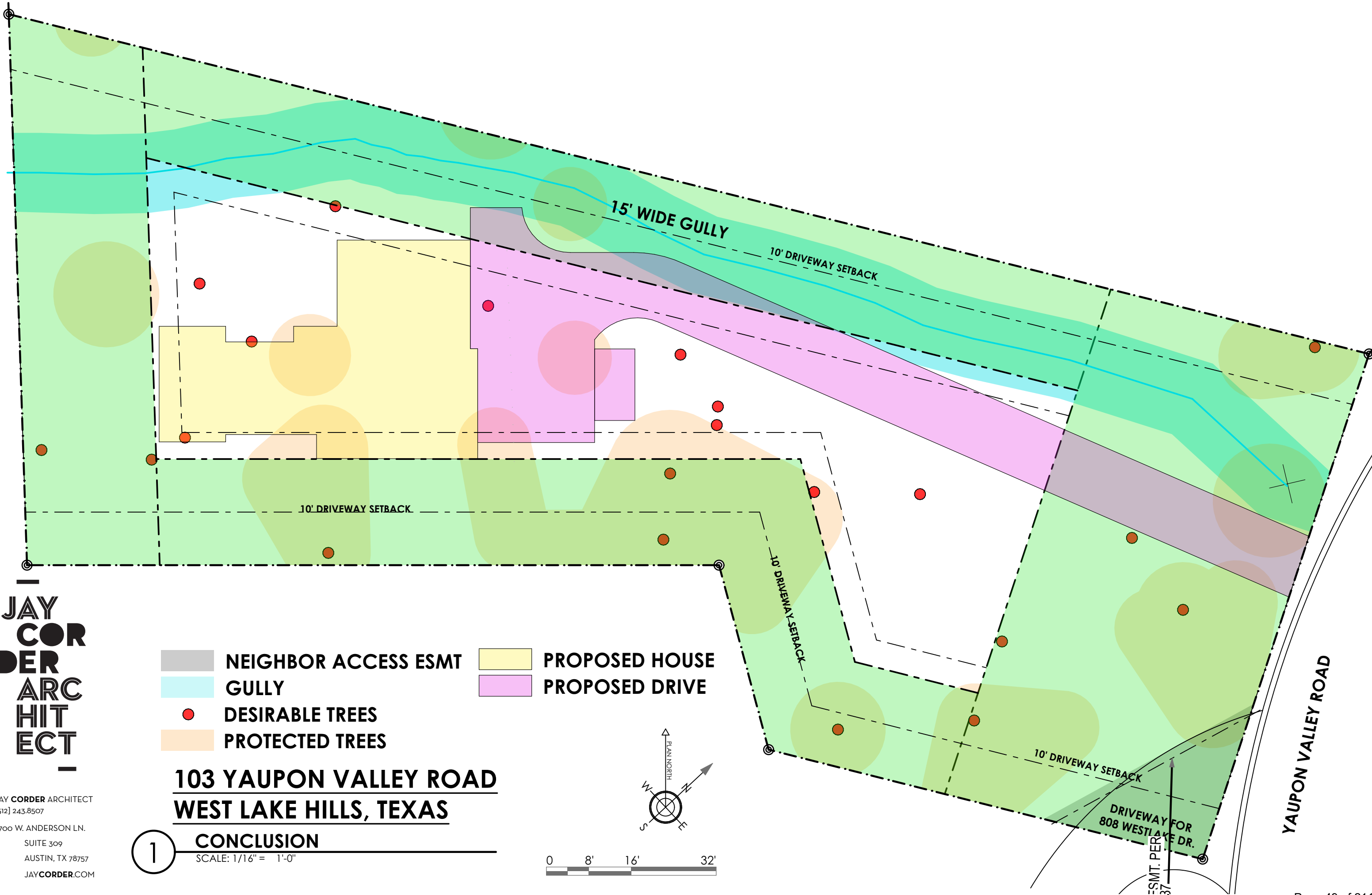
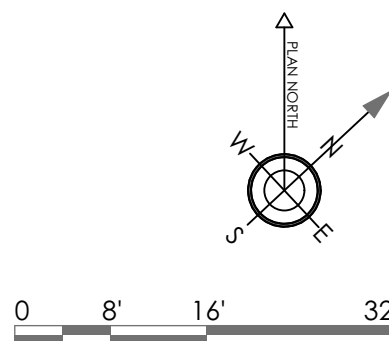
YAUPON VALLEY ROAD



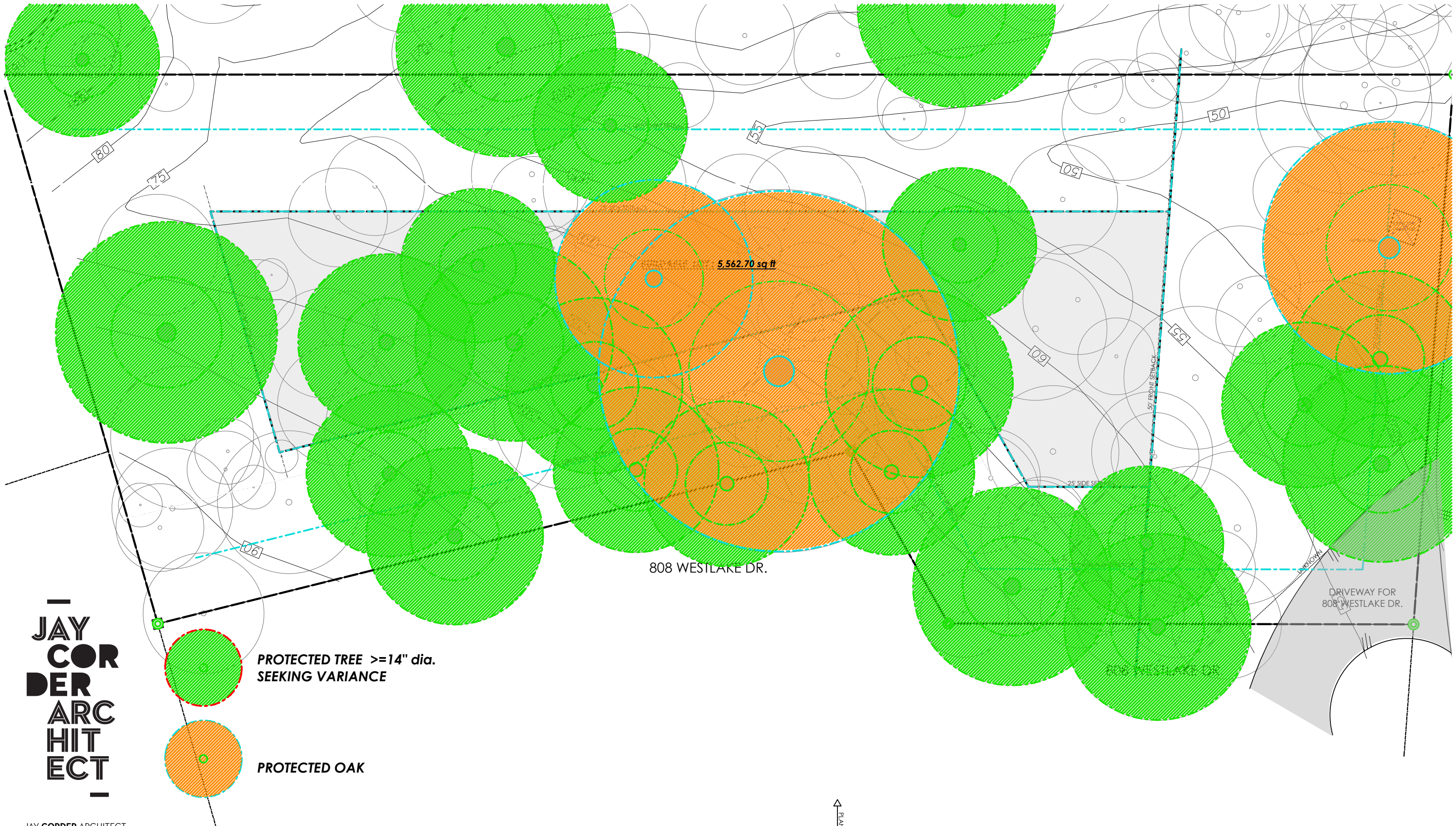
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|-------------------------------------------------------------------------------------|----------------------|---------------------------------------------------------------------------------------|----------------|
|  | NEIGHBOR ACCESS ESMT |  | PROPOSED HOUSE |
|  | GULLY                |  | PROPOSED DRIVE |
|  | DESIRABLE TREES      |                                                                                       |                |
|  | PROTECTED TREES      |                                                                                       |                |

## 103 YAUPON VALLEY ROAD WEST LAKE HILLS, TEXAS

**1 CONCLUSION**  
SCALE: 1/16" = 1'-0"



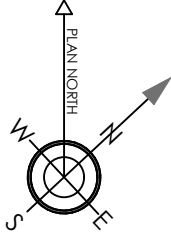
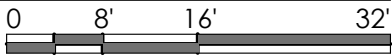




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CORDER  
ARCHITECT**

JAY CORDER ARCHITECT  
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2700 W. ANDERSON LN.  
SUITE 309  
AUSTIN, TX 78757  
JAYCORDER.COM

**1** **SITE PLAN- To Be Verified**  
SCALE: 1/16" = 1'-0"

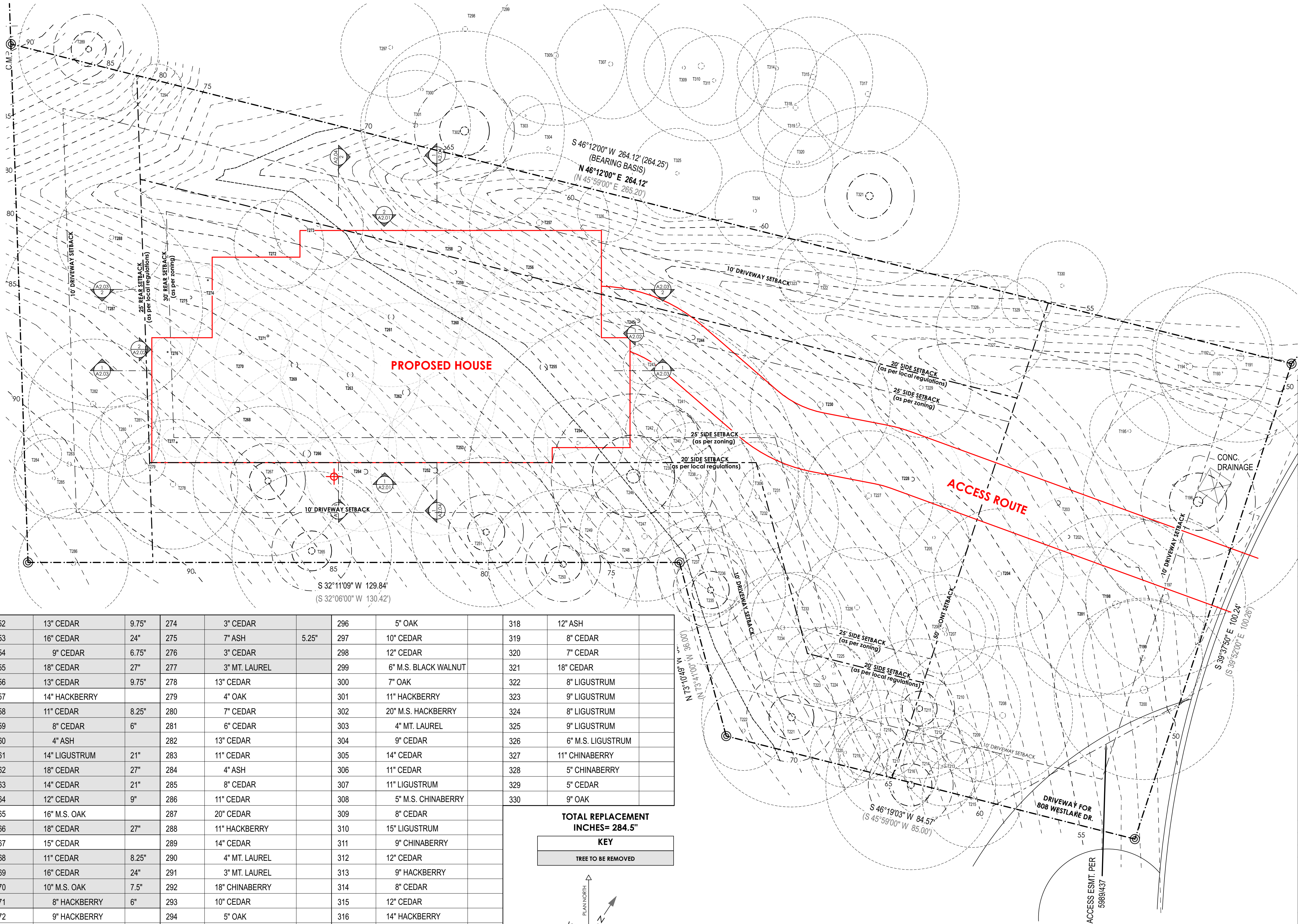


**103 YAUPON VALLEY ROAD**  
**WEST LAKE HILLS, TEXAS**



This tree location survey certifies the size and location of the trees depicted hereon. B&G Surveying, LLC, nor the undersigned, certify the Species/Genus of these trees. For exact Species/Genus contact a Certified Arborist.

| TAG NO. | TREE DESCRIPTION  | REPL. IN. |
|---------|-------------------|-----------|
| 191     | 17" OAK           |           |
| 192     | 12" LIGUSTRUM     |           |
| 193     | 3" ASH            |           |
| 194     | 16" CEDAR         |           |
| 195     | 8" M.S. LIGUSTRUM |           |
| 196     | 23" HACKBERRY     |           |
| 197     | 16" LIGUSTRUM     |           |
| 198     | 18" OAK           |           |
| 199     | 12" LIGUSTRUM     |           |
| 200     | 18" M.S. CEDAR    |           |
| 201     | 15" CEDAR         |           |
| 202     | 8" OAK            | 6"        |
| 203     | 11" CEDAR         | 8.25"     |
| 204     | 13" CEDAR         |           |
| 205     | 7" HACKBERRY      |           |
| 206     | 11" LIGUSTRUM     |           |
| 207     | 8" OAK            |           |
| 208     | 14" CHINABERRY    |           |
| 209     | 7" CHINABERRY     |           |
| 210     | 12" LIGUSTRUM     |           |
| 211     | 14" OAK           |           |
| 212     | 5" LIGUSTRUM      |           |
| 213     | 8" LIGUSTRUM      |           |
| 214     | 9" LIGUSTRUM      |           |
| 215     | 10" CEDAR         |           |
| 216     | 17" HACKBERRY     |           |
| 217     | 10" CEDAR         |           |
| 218     | 9" CEDAR          |           |
| 219     | 5" LIGUSTRUM      |           |
| 220     | 7" LIGUSTRUM      |           |
| 221     | 18" OAK           |           |
| 222     | 8" CHINABERRY     |           |
| 223     | 10" CEDAR         |           |
| 224     | 6" LIGUSTRUM      |           |
| 225     | 8" LIGUSTRUM      |           |
| 226     | 12" CEDAR         |           |
| 227     | 13" OAK           |           |
| 228     | 10" CEDAR         | 7.5"      |
| 229     | 10" CEDAR         |           |
| 230     | 14" CEDAR         |           |
| 231     | 6" OAK            |           |
| 232     | 17" CEDAR         |           |
| 233     | 9" LIGUSTRUM      |           |
| 234     | 11" CEDAR         |           |
| 235     | 15" CHINABERRY    |           |
| 236     | 7" CEDAR          |           |
| 237     | 8" CEDAR          |           |
| 238     | 11" CEDAR         |           |
| 239     | 7" CEDAR          |           |
| 240     | 4" ASH            |           |
| 241     | 9" OAK            |           |
| 242     | 6" CEDAR          |           |
| 243     | 4" ASH            |           |
| 244     | 11" HACKBERRY     | 8.25"     |
| 245     | 9" CEDAR          | 6.75"     |
| 246     | 33" OAK           |           |
| 247     | 13 " LIGUSTRUM    |           |
| 248     | 6" OAK            |           |
| 249     | 7" CEDAR          |           |
| 250     | 15" CHINABERRY    |           |
| 251     | 15" HACKBERRY     |           |



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SHEET IS FORMATTED  
TO 22"x34". SCALES  
ARE ONE HALF OF  
NOTED WHEN PRINTED  
AT HALF SIZE (11x17)

## A1.01

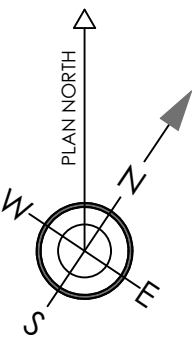
## EXISTING- SITE PLAN



**M.S.=MULTI-STEMMED**

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**1 PROPOSED- SITE PLAN**



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[512] 243.8507  
2700 W. ANDERSON LN.  
SUITE 309  
AUSTIN, TX 78757  
JAY**CORDER**.COM

## WEINBERGER RESIDENCE

FOR REVIEW ONLY

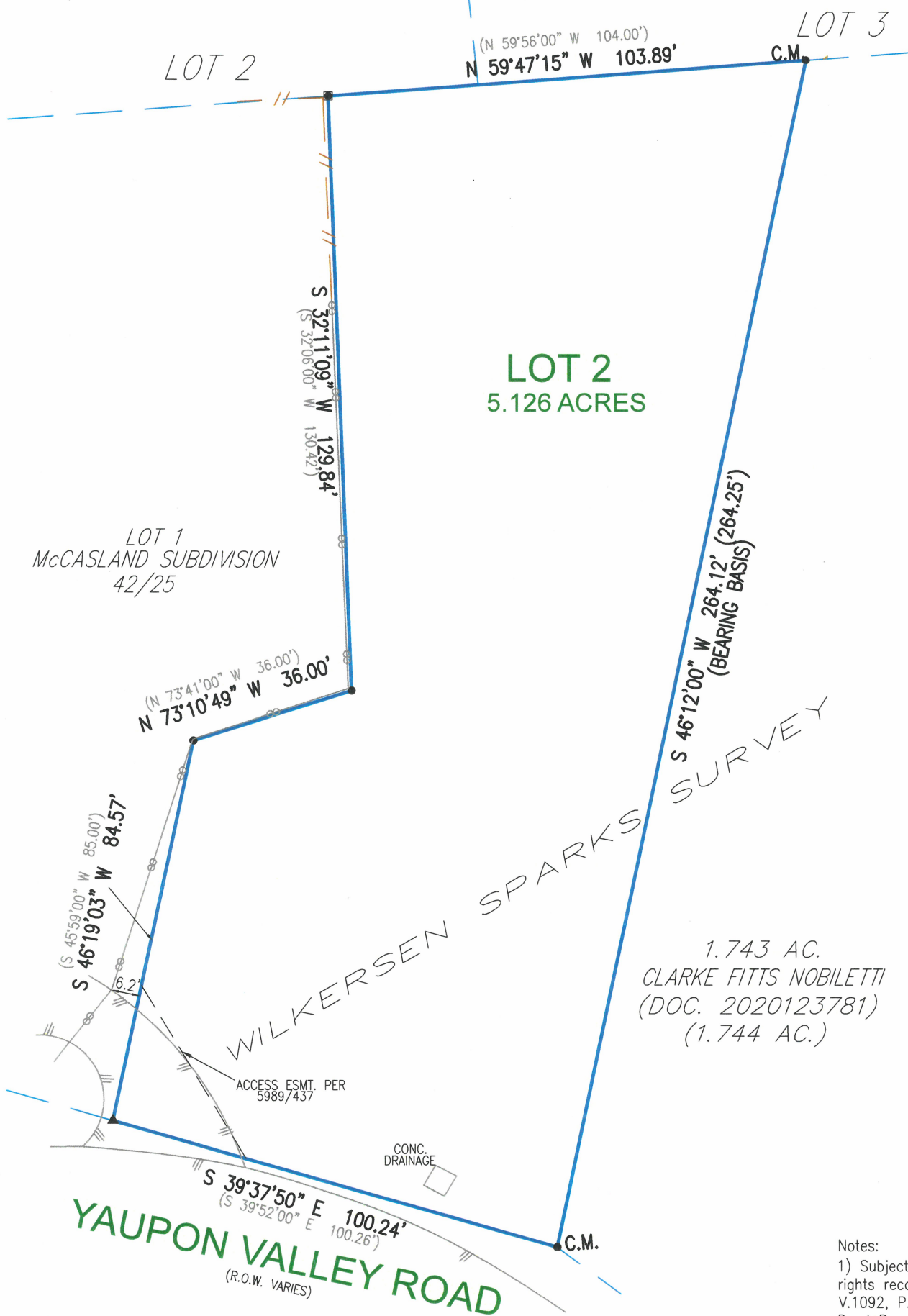
|        |         |
|--------|---------|
| DATE:  | 8/19/22 |
| PM:    | SW      |
| DRAWN: | JC, SW  |

## A1.02

Page 52 of 211



THE OVERLOOK AT WEST LAKE 90/341-342



1.743 AC.  
CLARKE FITTS NOBILETTI  
(DOC. 2020123781)  
(1.744 AC.)

Notes:

- 1) Subject to restrictions and easement rights recorded in V.645, P.210, V.1031, P.95, V.1092, P.266, V.1171, P.418, V.1425, P.87, Deed Records and Book 42, Page 25, Plat Records.
- 2) Electric easements per V.614, P.260, V.676, P.298, V.659, P.558 V.676, P.298, Deed Records contain insufficient data to locate.
- 3) Subject to Ingress and egress easement per V.947, P.539, Deed Records.
- 4) Overflow Easement per V.103, P.560 & V.274, P.527, Deed Records, does not affect this lot.
- 5) Subject to Blank Type Utility Easement per V.554, P.502, Deed Records.



LEGEND

- 1/2" REBAR FOUND
- 1/2" CAPPED REBAR SET
- 1/2" IRON PIPE FOUND
- 60D NAIL FOUND
- 60D NAIL SET
- CAPPED REBAR FOUND
- "X" SET IN CONCRETE
- "X" FOUND IN CONCRETE
- SPINDLE FOUND
- PUNCH HOLE FOUND
- CHAIN LINK FENCE
- WOOD FENCE
- METAL FENCE
- B.L. BUILDING LINE
- P.U.E. PUBLIC UTILITY EASEMENT
- D.E. DRAINAGE EASEMENT
- ( ) PER PLAT
- C.M. CONTROL MONUMENT
- R.O.W. RIGHT OF WAY
- P.O.B. PLACE OF BEGINNING
- OH OVERHEAD UTILITY LINE
- PP POWER POLE
- AC AIR CONDITIONER

*[Signature]*

TO THE LIENHOLDER AND / OR PRESENT OWNERS OF THE PREMISES SURVEYED AND TO

BENCHMARK TITLE COMPANY  
CHICAGO TITLE INSURANCE COMPANY

I DO HEREBY CERTIFY TO THOSE LISTED HEREON THAT THIS SURVEY WAS THIS DAY MADE ON THE GROUND, UNDER MY SUPERVISION, OF THE PROPERTY LEGALLY DESCRIBED HEREON, IS PREPARED IN ACCORDANCE WITH THE TITLE COMMITMENT REFERENCED HEREON, AND THAT THERE ARE NO VISIBLE BOUNDARY LINE CONFLICTS, ENCROACHMENTS, OVERLAPPING OF IMPROVEMENTS, OR ROADS IN PLACE, EXCEPT AS SHOWN HEREON. BUILDING DIMENSIONS ARE APPROXIMATE.



STREET ADDRESS: YAUPON VALLEY ROAD CITY: AUSTIN COUNTY: TRAVIS STATE OF TEXAS  
LOT: 2 SUBDIVISION: McCASLAND SUBDIVISION VOL/CAB 42 PG/SLD 25 PLAT RECORDS  
REFERENCE NAME: ASHTON WEINBERGER & ERICA WIENBERGER G.F. #: PL21-30868



B & G SURVEYING, LLC

FIRM REGISTRATION NO. 100363-00

WWW.BANDGSURVEY.COM

1404 West North Loop Blvd.

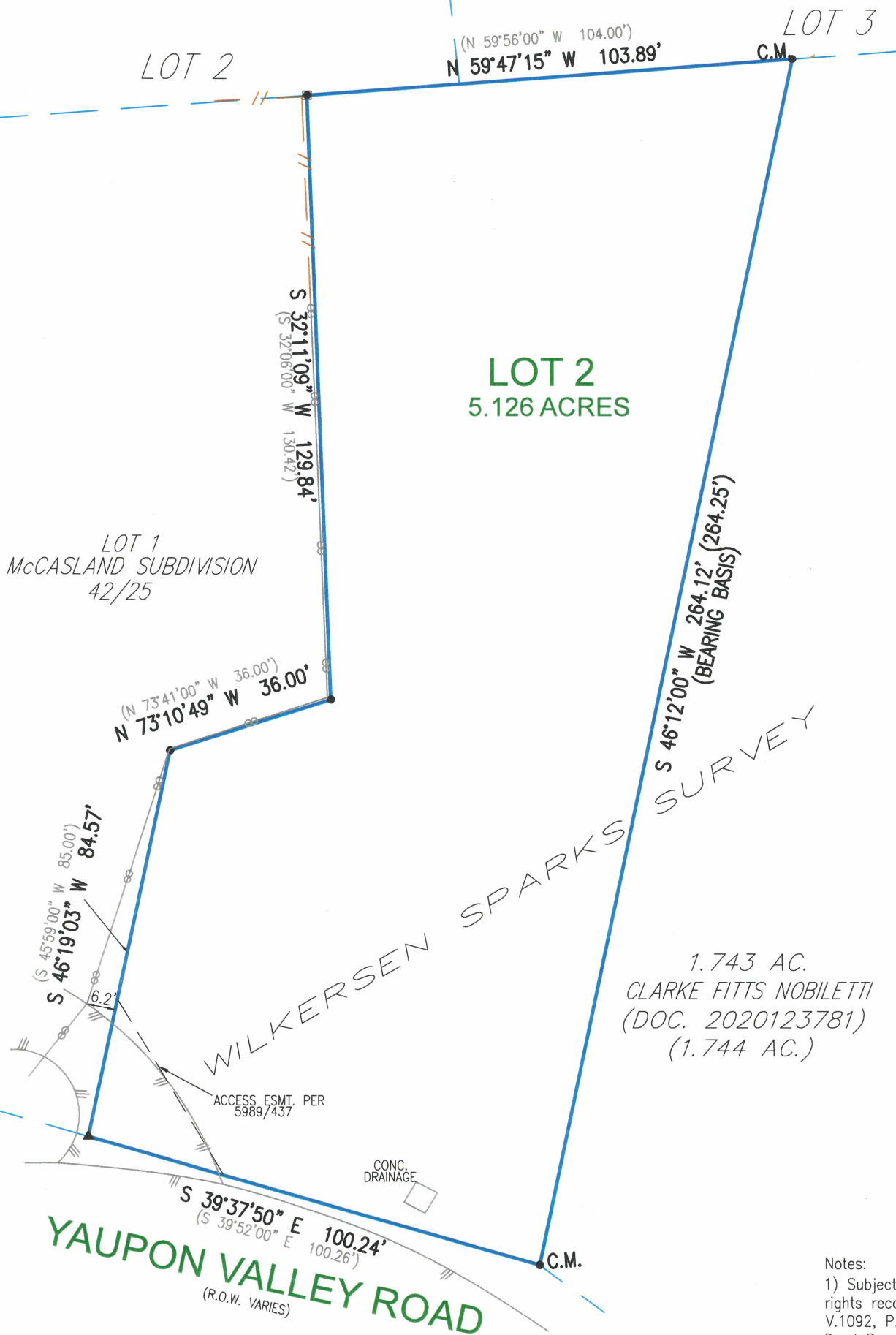
Austin, Texas 78756 - Office 512\*458-6969

|               |       |          |
|---------------|-------|----------|
| FIELD WORK BY | REESE | 08/03/20 |
| CALC'D BY     | JOSE  | 08/06/20 |
| DRAFTED BY    | JOSE  | 08/06/20 |
| CHECKED BY    | M.L.  | 08/06/20 |

JOB #: B1017621\_TA  
ORIGINAL SURVEY DATE: 05/24/21  
SCALE: 1"= 30'



THE OVERLOOK AT WEST LAKE 90/341-342



Notes:

- 1) Subject to restrictions and easement rights recorded in V.645, P.210, V.1031, P.95, V.1092, P.266, V.1171, P.418, V.1425, P.87, Deed Records and Book 42, Page 25, Plat Records.
- 2) Electric easements per V.614, P.260, V.676, P.298, V.659, P.558 V.676, P.298, Deed Records contain insufficient data to locate.
- 3) Subject to Ingress and egress easement per V.947, P.539, Deed Records.
- 4) Overflow Easement per V.103, P.560 & V.274, P.527, Deed Records, does not affect this lot.
- 5) Subject to Blank Type Utility Easement per V.554, P.502, Deed Records.



LEGEND

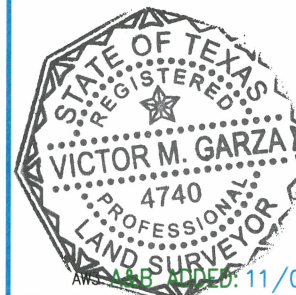
- 1/2" REBAR FOUND
- 1/2" CAPPED REBAR SET
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- 60D NAIL FOUND
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- "X" FOUND IN CONCRETE
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- CHAIN LINK FENCE
- WOOD FENCE
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- B.L. BUILDING LINE
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- ( ) PER PLAT
- C.M. CONTROL MONUMENT
- R.O.W. RIGHT OF WAY
- P.O.B. PLACE OF BEGINNING
- OH OVERHEAD UTILITY LINE
- PP POWER POLE
- AC AIR CONDITIONER

*Victor M. Garza*

TO THE LIENHOLDER AND / OR PRESENT OWNERS OF THE PREMISES SURVEYED AND TO

BENCHMARK TITLE COMPANY  
CHICAGO TITLE INSURANCE COMPANY

I DO HEREBY CERTIFY TO THOSE LISTED HEREON THAT THIS SURVEY WAS THIS DAY MADE ON THE GROUND, UNDER MY SUPERVISION, OF THE PROPERTY LEGALLY DESCRIBED HEREON, IS PREPARED IN ACCORDANCE WITH THE TITLE COMMITMENT REFERENCED HEREON, AND THAT THERE ARE NO VISIBLE BOUNDARY LINE CONFLICTS, ENCROACHMENTS, OVERLAPPING OF IMPROVEMENTS, OR ROADS IN PLACE, EXCEPT AS SHOWN HEREON. BUILDING DIMENSIONS ARE APPROXIMATE.



STREET ADDRESS: YAUPON VALLEY ROAD CITY: AUSTIN COUNTY: TRAVIS STATE OF TEXAS  
LOT: 2 SUBDIVISION: McCASLAND SUBDIVISION VOL/CAB 42 PG/SLD 25 PLAT RECORDS  
REFERENCE NAME: ASHTON WEINBERGER & ERICA WIENBERGER G.F. #: PL21-30868



B & G SURVEYING, LLC

FIRM REGISTRATION NO. 100363-00

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1404 West North Loop Blvd.

Austin, Texas 78756 - Office 512\*458-6969

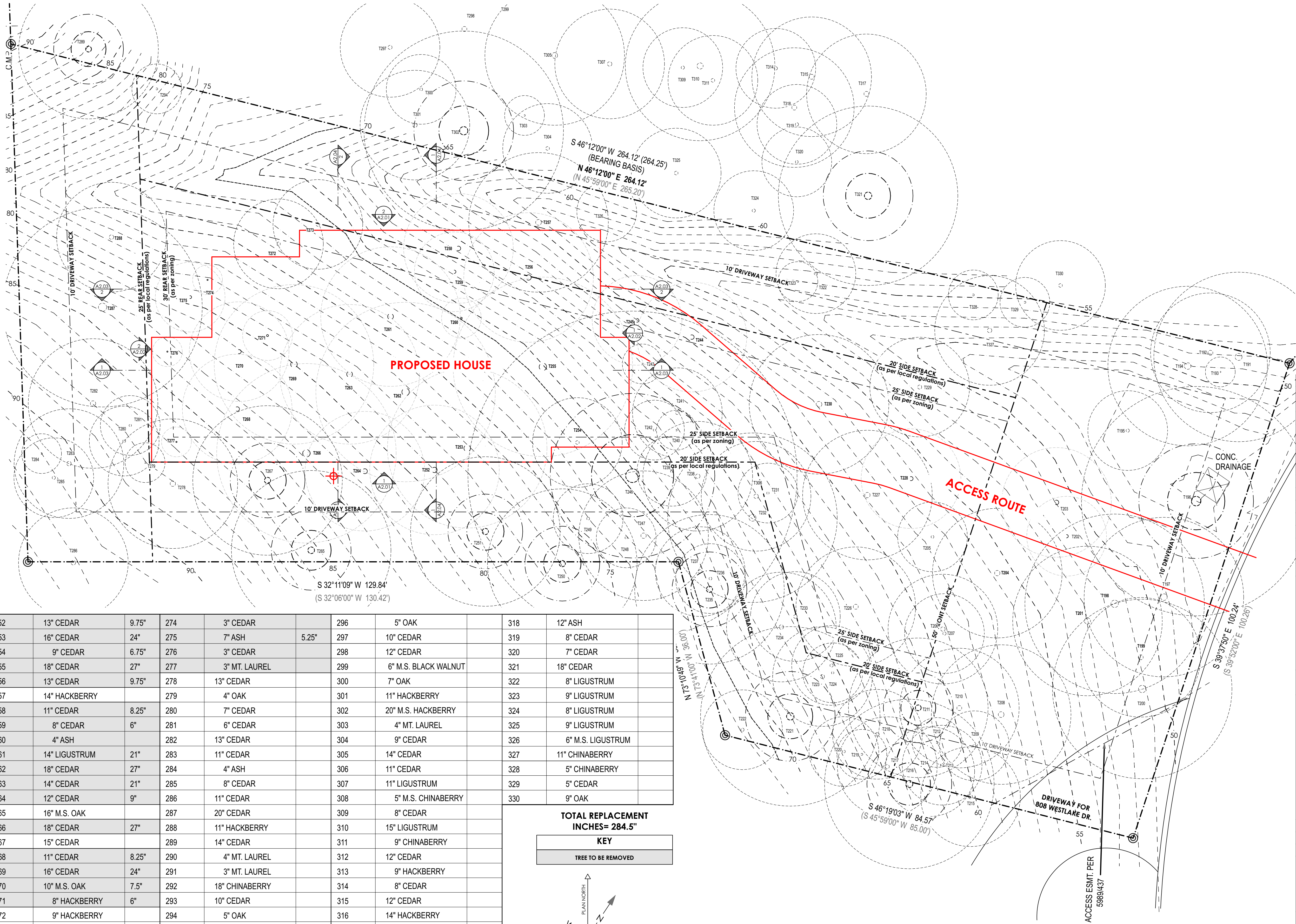
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|---------------|-------|----------|
| FIELD WORK BY | REESE | 08/03/20 |
| CALC'D BY     | JOSE  | 08/06/20 |
| DRAFTED BY    | JOSE  | 08/06/20 |
| CHECKED BY    | M.L.  | 08/06/20 |

JOB #: B1017621\_TA  
ORIGINAL SURVEY DATE: 05/24/21  
SCALE: 1"= 30'



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| TAG NO. | TREE DESCRIPTION  | REPL. IN. |
|---------|-------------------|-----------|
| 191     | 17" OAK           |           |
| 192     | 12" LIGUSTRUM     |           |
| 193     | 3" ASH            |           |
| 194     | 16" CEDAR         |           |
| 195     | 8" M.S. LIGUSTRUM |           |
| 196     | 23" HACKBERRY     |           |
| 197     | 16" LIGUSTRUM     |           |
| 198     | 18" OAK           |           |
| 199     | 12" LIGUSTRUM     |           |
| 200     | 18" M.S. CEDAR    |           |
| 201     | 15" CEDAR         |           |
| 202     | 8" OAK            | 6"        |
| 203     | 11" CEDAR         | 8.25"     |
| 204     | 13" CEDAR         |           |
| 205     | 7" HACKBERRY      |           |
| 206     | 11" LIGUSTRUM     |           |
| 207     | 8" OAK            |           |
| 208     | 14" CHINABERRY    |           |
| 209     | 7" CHINABERRY     |           |
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| 211     | 14" OAK           |           |
| 212     | 5" LIGUSTRUM      |           |
| 213     | 8" LIGUSTRUM      |           |
| 214     | 9" LIGUSTRUM      |           |
| 215     | 10" CEDAR         |           |
| 216     | 17" HACKBERRY     |           |
| 217     | 10" CEDAR         |           |
| 218     | 9" CEDAR          |           |
| 219     | 5" LIGUSTRUM      |           |
| 220     | 7" LIGUSTRUM      |           |
| 221     | 18" OAK           |           |
| 222     | 8" CHINABERRY     |           |
| 223     | 10" CEDAR         |           |
| 224     | 6" LIGUSTRUM      |           |
| 225     | 8" LIGUSTRUM      |           |
| 226     | 12" CEDAR         |           |
| 227     | 13" OAK           |           |
| 228     | 10" CEDAR         | 7.5"      |
| 229     | 10" CEDAR         |           |
| 230     | 14" CEDAR         |           |
| 231     | 6" OAK            |           |
| 232     | 17" CEDAR         |           |
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| 234     | 11" CEDAR         |           |
| 235     | 15" CHINABERRY    |           |
| 236     | 7" CEDAR          |           |
| 237     | 8" CEDAR          |           |
| 238     | 11" CEDAR         |           |
| 239     | 7" CEDAR          |           |
| 240     | 4" ASH            |           |
| 241     | 9" OAK            |           |
| 242     | 6" CEDAR          |           |
| 243     | 4" ASH            |           |
| 244     | 11" HACKBERRY     | 8.25"     |
| 245     | 9" CEDAR          | 6.75"     |
| 246     | 33" OAK           |           |
| 247     | 13 " LIGUSTRUM    |           |
| 248     | 6" OAK            |           |
| 249     | 7" CEDAR          |           |
| 250     | 15" CHINABERRY    |           |
| 251     | 15" HACKBERRY     |           |



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SHEET IS FORMATTED  
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AT HALF SIZE (11x17)

## A1.01

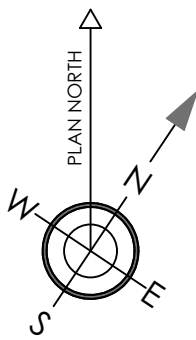
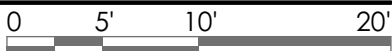
## EXISTING- SITE PLAN



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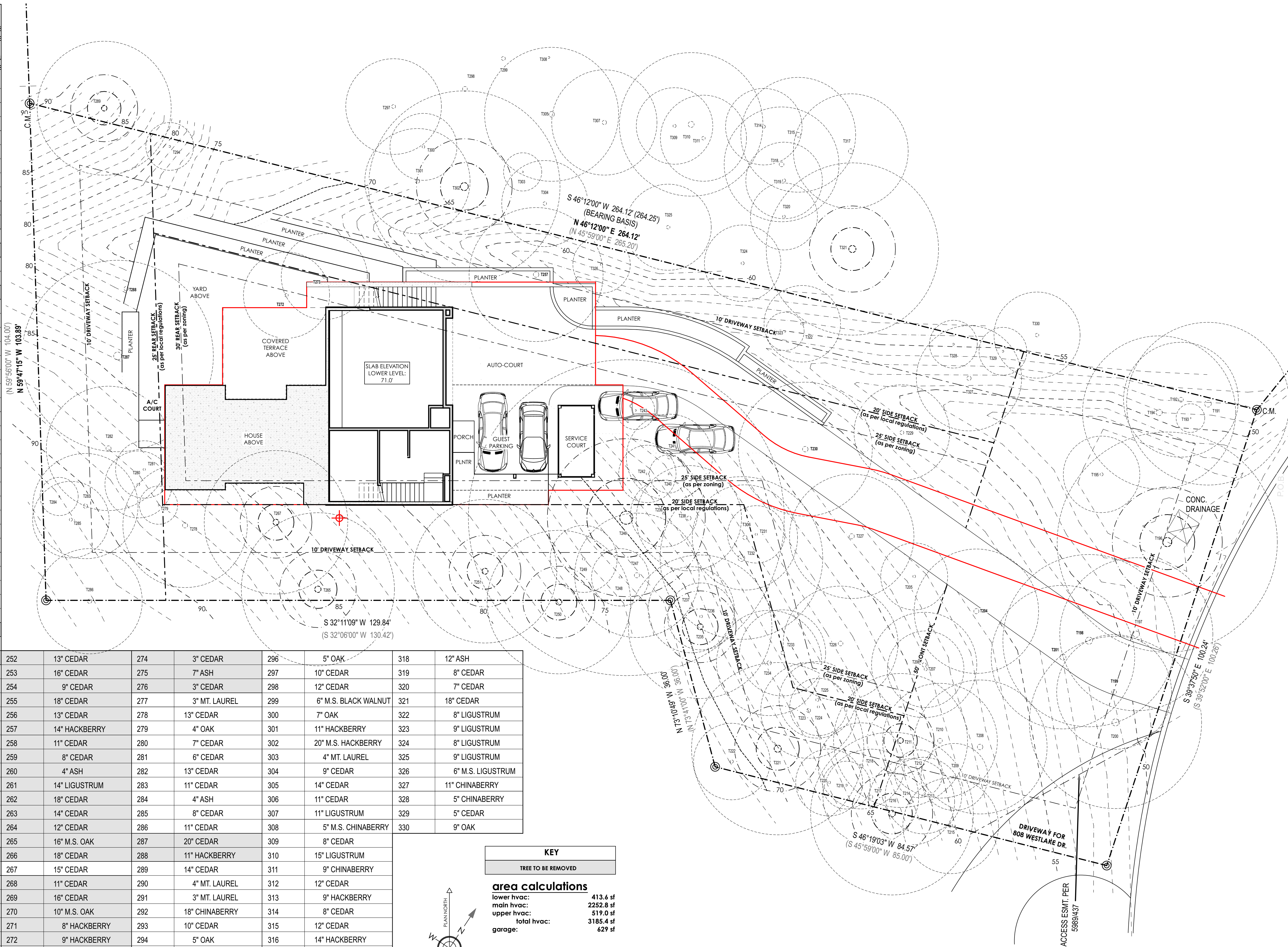
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|-----|----------------|-----|---------------|-----|--------------------|-----|----------------------|-----|-------------------|
| 230 | 14" CEDAR      | 252 | 13" CEDAR     | 274 | 3" CEDAR           | 296 | 5" OAK               | 318 | 12" ASH           |
| 231 | 6" OAK         | 253 | 16" CEDAR     | 275 | 7" ASH             | 297 | 10" CEDAR            | 319 | 8" CEDAR          |
| 232 | 17" CEDAR      | 254 | 9" CEDAR      | 276 | 3" CEDAR           | 298 | 12" CEDAR            | 320 | 7" CEDAR          |
| 233 | 9" LIGUSTRUM   | 255 | 18" CEDAR     | 277 | 3" MT. LAUREL      | 299 | 6" M.S. BLACK WALNUT | 321 | 18" CEDAR         |
| 234 | 11" CEDAR      | 256 | 13" CEDAR     | 278 | 13" CEDAR          | 300 | 7" OAK               | 322 | 8" LIGUSTRUM      |
| 235 | 15" CHINABERRY | 257 | 14" HACKBERRY | 279 | 4" OAK             | 301 | 11" HACKBERRY        | 323 | 9" LIGUSTRUM      |
| 236 | 7" CEDAR       | 258 | 11" CEDAR     | 280 | 7" CEDAR           | 302 | 20" M.S. HACKBERRY   | 324 | 8" LIGUSTRUM      |
| 237 | 8" CEDAR       | 259 | 8" CEDAR      | 281 | 6" CEDAR           | 303 | 4" MT. LAUREL        | 325 | 9" LIGUSTRUM      |
| 238 | 11" CEDAR      | 260 | 4" ASH        | 282 | 13" CEDAR          | 304 | 9" CEDAR             | 326 | 6" M.S. LIGUSTRUM |
| 239 | 7" CEDAR       | 261 | 14" LIGUSTRUM | 283 | 11" CEDAR          | 305 | 14" CEDAR            | 327 | 11" CHINABERRY    |
| 240 | 4" ASH         | 262 | 18" CEDAR     | 284 | 4" ASH             | 306 | 11" CEDAR            | 328 | 5" CHINABERRY     |
| 241 | 9" OAK         | 263 | 14" CEDAR     | 285 | 8" CEDAR           | 307 | 11" LIGUSTRUM        | 329 | 5" CEDAR          |
| 242 | 6" CEDAR       | 264 | 12" CEDAR     | 286 | 11" CEDAR          | 308 | 5" M.S. CHINABERRY   | 330 | 9" OAK            |
| 243 | 4" ASH         | 265 | 16" M.S. OAK  | 287 | 20" CEDAR          | 309 | 8" CEDAR             |     |                   |
| 244 | 11" HACKBERRY  | 266 | 18" CEDAR     | 288 | 11" HACKBERRY      | 310 | 15" LIGUSTRUM        |     |                   |
| 245 | 9" CEDAR       | 267 | 15" CEDAR     | 289 | 14" CEDAR          | 311 | 9" CHINABERRY        |     |                   |
| 246 | 33" OAK        | 268 | 11" CEDAR     | 290 | 4" MT. LAUREL      | 312 | 12" CEDAR            |     |                   |
| 247 | 13 " LIGUSTRUM | 269 | 16" CEDAR     | 291 | 3" MT. LAUREL      | 313 | 9" HACKBERRY         |     |                   |
| 248 | 6" OAK         | 270 | 10" M.S. OAK  | 292 | 18" CHINABERRY     | 314 | 8" CEDAR             |     |                   |
| 249 | 7" CEDAR       | 271 | 8" HACKBERRY  | 293 | 10" CEDAR          | 315 | 12" CEDAR            |     |                   |
| 250 | 15" CHINABERRY | 272 | 9" HACKBERRY  | 294 | 5" OAK             | 316 | 14" HACKBERRY        |     |                   |
| 251 | 15" HACKBERRY  | 273 | 9" OAK        | 295 | 6" M.S. CHINABERRY | 317 | 12" ASH              |     |                   |

SCALE: 1" = 10'



**TREE TO BE REMOVED**

|             |           |
|-------------|-----------|
| lower hvac: | 413.6 sf  |
| main hvac:  | 2252.8 sf |
| upper hvac: | 519.0 sf  |
| total hvac: | 3185.4 sf |
| garage:     | 629 sf    |



JAY **CORDER** ARCHITECT  
[512] 243.8507

2700 W. ANDERSON LN.  
SUITE 309  
AUSTIN, TX 78757

JAYCORDER.COM

[illegible]

103 YAUPON VALLEY RD.  
WEST LAKE HILLS  
TEXAS 78746

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**THIS DOCUMENT  
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AND MAY NOT BE  
USED FOR  
REGULATORY  
APPROVAL,  
PERMITTING OR  
CONSTRUCTION**

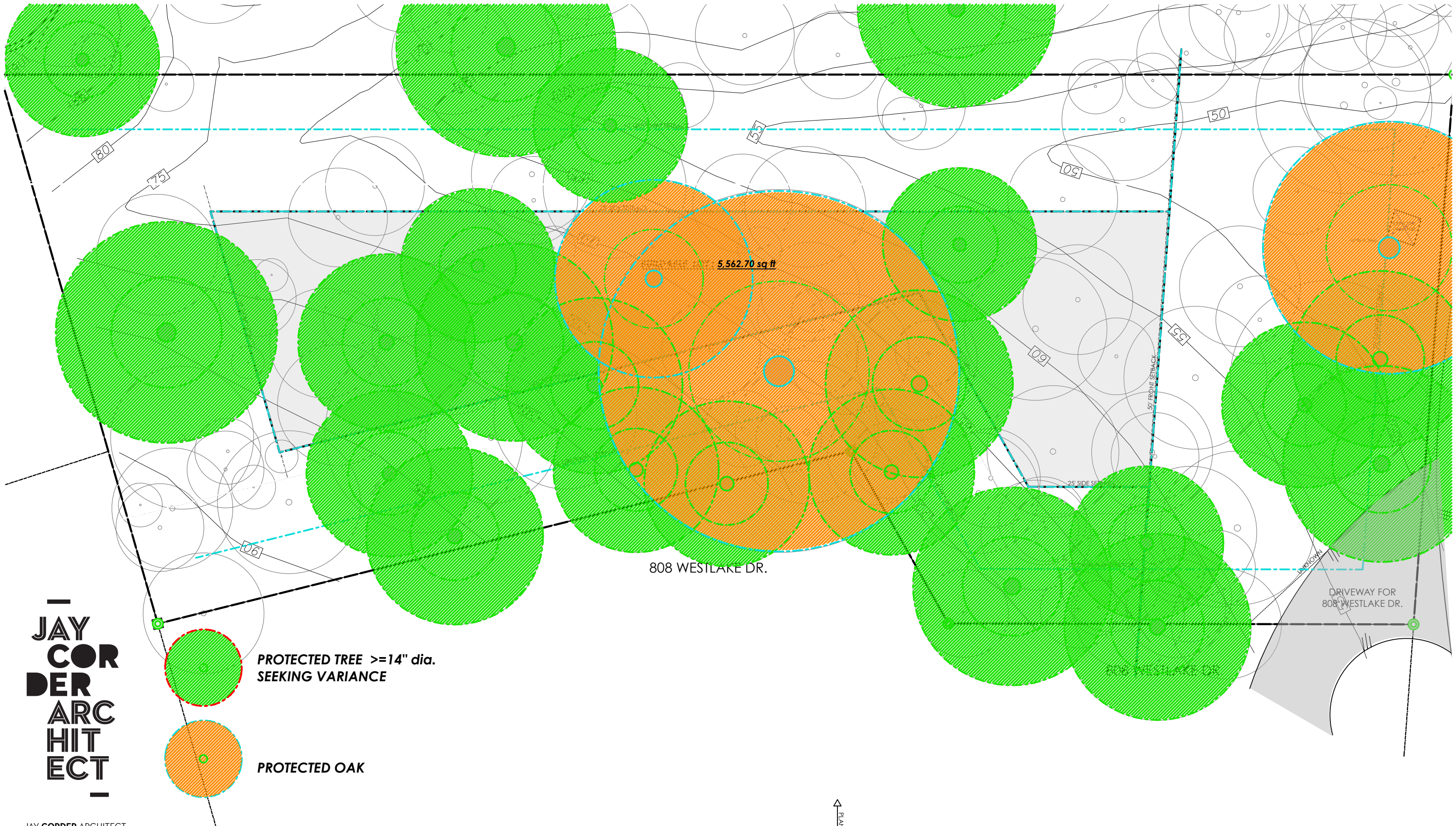
|        |         |
|--------|---------|
| DATE:  | 8/19/22 |
| PM:    | SW      |
| DRAWN: | JC, SW  |

SHEET IS FORMATTED  
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ARE ONE HALF OF  
NOTED WHEN PRINTED  
AT HALF SIZE (11x17)

# A1.02

# PROPOSED- SITE PLAN

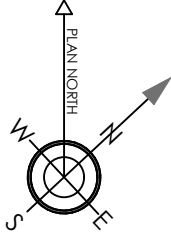
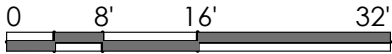




JAY  
CORDER  
ARCHITECT

JAY CORDER ARCHITECT  
[512] 243.8507  
2700 W. ANDERSON LN.  
SUITE 309  
AUSTIN, TX 78757  
JAYCORDER.COM

1 SITE PLAN- To Be Verified  
SCALE: 1/16" = 1'-0"



**103 YAUPON VALLEY ROAD**  
**WEST LAKE HILLS, TEXAS**



## Ashby Grundman

---

**From:** Ashby Grundman  
**Sent:** Wednesday, November 16, 2022 2:48 PM  
**To:** Ashby Grundman  
**Cc:** Kathy Roche  
**Subject:** FW: 103 Yaupon Valley Rd. variances

**Importance:** High

Commissioners,

See below for an email for 103 Yaupon Valley Road variance request.

Thanks.

Ashby Grundman, AICP  
Assistant City Administrator  
City of West Lake Hills  
[grundman@westlakehills.gov](mailto:grundman@westlakehills.gov)  
O: (512) 327-3628  
[REDACTED]

---

**From:** Loayza, Katherine [REDACTED] >  
**Sent:** Wednesday, November 16, 2022 2:43 PM  
**To:** Trey Fletcher <tletcher@westlakehills.gov>; Ashby Grundman <AGrundman@westlakehills.gov>; mayor@ mayor <mayor@westlakehills.gov>  
**Subject:** 103 Yaupon Valley Rd. variances  
**Importance:** High

To all,

I would like to express my opposition to any of the variances requested by the property owner. This lot is not suitable for the size of the home that is proposed, if the lot is to be developed it should be without any variances. The property owner has already removed many trees without a permit and to ask for more tree removal is a travesty given the history of the site.

The proposed development as shown in the Planning & Zoning Commission backup material will increase flooding on both my property and my neighbor at 100 Yaupon Drive.

A drainage study should be provided for this lot as the area where the proposed driveway is located is exactly where water flows through the lot, across the road and onto my neighbor's land and ultimately my property. The City should require an engineered site plan which shows the drainage pattern on the property and capture runoff so that there is no adverse downstream runoff onto our properties.

Allowing a driveway to be located exactly in the main drainage area of the property which appears to be a natural gully, where significant run-off occurs with rain events is a major concern and should not be allowed anywhere in the City.



The justification for the variances is not completely honest; for these reasons I vehemently oppose any variances for the proposed development.

Please share these concerns with the P& Z Commission, as I will not be able to attend the hearing tonight.

Thank you for your consideration of my concerns.

Katherine Loayza  
906 Westlake Drive



## Ashby Grundman

---

**From:** Ashby Grundman  
**Sent:** Wednesday, November 16, 2022 1:36 PM  
**To:** Ashby Grundman  
**Cc:** Kathy Roche  
**Subject:** FW: Proposals and variances at both 803 Westlake Dr. and 103 Yaupon Valley  
**Attachments:** Statement opposing 803 Westlake Dr. subdivision 20210410.pdf; Statement opposing 803 Westlake Dr. subdivision 20220614.pdf; Traffic on Westlake Dr..docx; Objections to proposed variances 103 Yaupon Valley Rd.pdf

Good afternoon, Commissioners,

Please see attached for an email of opposition on a couple of items that are on the agenda tonight. I will print hard copies for you to have at the dais.

Thanks.

Ashby Grundman, AICP  
Assistant City Administrator  
City of West Lake Hills  
[grundman@westlakehills.gov](mailto:grundman@westlakehills.gov)  
O: (512) 327-3628  
[REDACTED]

---

**From:** Cindy Brandimarte [REDACTED]  
**Sent:** Wednesday, November 16, 2022 11:29 AM  
**To:** Ashby Grundman <AGrundman@westlakehills.gov>  
**Subject:** Proposals and variances at both 803 Westlake Dr. and 103 Yaupon Valley

Mr. Grundman,

Thank you for your time yesterday as it was very helpful in understanding the process.

I am attaching two letters re: 803 Westlake Dr. subdivision; the second is an update of the first. My concerns for safety and traffic (see attached recent photo of traffic at the spot on Westlake Dr.) remain relevant although the proposed subdivision is not as dense as the first one.

The variances re: 103 Yaupon Valley are of great concern to me as a property owner for reasons I have stated in my attached letter.

I would like to speak at the meeting on both properties if only to read into the public record the contents of my written statements.

Thank you.

Cindy Brandimarte



To: City of West Lake Hill staff, ZAPCO and City Council members

From: Cynthia Brandimarte

Re: Proposed variances at 103 Yaupon Valley Rd.

Date: November 16, 2022

I own 808 Westlake Drive; 103 Yaupon Valley Rd. abuts my property on the west. Because the encroachments proposed by a new 2-story residence are within 20 feet of my homestead and request additional tree removal, I ask that two of the variances be denied for the following reasons:

The city code requires a 25-ft. setback from the shared property line. A two-story house built even five feet closer to my property negatively impacts both our privacy and viewshed to the west.

The tree removal of T-262, T-263, T-266, and T-269 adds to the already-destroyed mature co-dominant cedar trees, T-255, that has occurred under the present ownership.

I ask that city officials recognize that it is the responsibility of the new owners to design a structure that conforms to the topography, lot size, and city codes. These are fixed factors that are clear: when researching the purchase of a parcel, prospective owners would understand these established parameters. Why instead are the adjacent landowners now asked to make adjustments when the variances would result in negative impacts upon their privacy and viewshed, increase noise, and damage natural resources? Surely, research and design consultations were initiated before and after the sale, and the architect, aware of the city codes, could accommodate a revised layout in keeping with city codes.

Thank you.

Cynthia Brandimarte

808 Westlake Dr.





13508 FLAT TOP RANCH ROAD  
AUSTIN, TEXAS 78732  
OFFICE/FAX: (512) 583-1397  
WWW.DELCONENVIRONMENTAL.COM

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E N V I R O N M E N T A L S Y S T E M S , L . L . C .

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November 7, 2022

The City of West Lake Hills  
911 Westlake Drive  
West Lake Hills, Texas 78746  
Attn: Mr. Alex Sanchez

Re: The Weinberger Residence  
103 Yaupon Valley Road, Austin, Texas 78746  
Lot 2, McCasland Subdivision

Mr. Sanchez,

The following are calculations and design drawings for an aerobic treatment unit with drip emitter disposal to serve a proposed four-bedroom single family residence containing approximately 3,186 square feet of conditioned living space located at the above referenced address. Soil test holes excavated at the site revealed somewhat shallow Class III soils, thus the system has been sized using 0.10 gpd/sf as the long-term soil loading rate. Care has been demonstrated to avoid as many of the existing trees as possible. The system has been sized in accordance with Chapter 285 of the TCEQ OSSF Rule, effective December 2016, and the additional criteria of The City of West Lake Hills.

For your reference, I have included a summary of the system components:

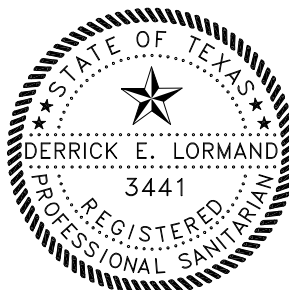
One 600 gallon per day rated NSF approved aerobic treatment unit with integrated 750-gallon pump chamber  
1/2 horsepower effluent pump with floats and controls for "timed dosing" of effluent  
1,600 linear feet of emitter tubing developing 3,200 square feet of application area

Please feel free to contact me with any questions or comments.

Respectfully,

A handwritten signature in black ink that reads "Derrick E. Lormand".

Derrick E. Lormand, R.S.  
Managing Partner  
Delcon Environmental Systems, LLC





### Site Evaluation Form

Address: 103 Yaupon Valley Road  
Subdivision: McCasland Subdivision Section:          Lot: 2 Blk:           
Or, Survey:          Abstract:          Acres:           
Slope: Flat (Under 2%) [ ☐ ] Slight (2% to 15%) [ ☒ ] Severe (Over 15%) [ ☒ ]  
Site Drainage: Poor [ ☐ ] Adequate [ ☒ ] Good [ ☐ ] Other [ ☐ ]  
Outside 100-Year Flood Plain [ ☒ ] In 100 Year Flood Plain [ ☐ ] In 100 Year Flood Plain/Floodway [ ☐ ]  
Water Supply: Public [ ☒ ] Community [ ☐ ] Private [ ☐ ]  
Other wells within 100 feet of property lines: Yes [ ☐ ] No [ ☒ ] (If yes, shown on site plan)

### Soil Evaluation

#### **Profile Hole Number 1**

| Depth    | Texture (USDA) | Description                                                     |
|----------|----------------|-----------------------------------------------------------------|
| 0" - 5"  | Class III      | Brown clay loam with roots and loose rocks, < 30% rock content  |
| 5" - 17" | Class III      | Off white to light gray clay loam "caliche", < 30% rock content |
| @ 17"    | Termination    |                                                                 |

#### **Profile Hole Number 2**

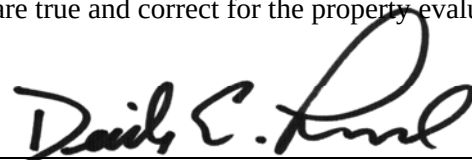
| Depth    | Texture (USDA) | Description                                                     |
|----------|----------------|-----------------------------------------------------------------|
| 0" - 4"  | Class III      | Brown clay loam with roots and loose rocks, < 30% rock content  |
| 4" - 16" | Class III      | Off white to light gray clay loam "caliche", < 30% rock content |
| @ 16"    | Termination    |                                                                 |

Indication of Seasonal Water Table: YES [ ☐ ] NO [ ☒ ]  
If yes, at what depth: None observed  
Property Located Within Edwards Aquifer Recharge Zone: YES [ ☐ ] NO [ ☒ ]  
Indication of Recharge Features within 150 feet: YES [ ☐ ] NO [ ☒ ]  
Is Soil Suitable for a Standard System YES [ ☐ ] NO [ ☒ ]  
Application Rate: 0.20 Gal/SF\*Day

Note: The drip emitter disposal system has been sized utilizing a 0.10 gpd/sf soil loading rate due to the somewhat steep slopes and the observed shallow restrictive horizon.

I, Derrick E. Lormand, a Registered Professional Sanitarian and Licensed Site Evaluator, conducted the site evaluation at the referenced location. I certify that these results are true and correct for the property evaluated.

Date of Site Visit: November 2, 2022



Derrick E. Lormand, R.S., OS# 0026727



## Design Calculations

11/7/2022

103 Yaupon Valley Road

### Design Basis

Per The Texas Commission on Environmental Quality's (TCEQ)

Health and Safety Code Chapter 366, On-Site Sewage Disposal Systems, September 11, 2007

On-Site Sewage Facilities, Title 30, TAC Chapter 285, Effective December 2016

Proposed single-family residence

Number of Bedrooms = 4

HVAC Living Space = 3186 Square Feet (SF)

Number of Equivalent Bedrooms = 4

Estimated Wastewater Flow Rate, Q = 300 Gallons Per Day (GPD)

(Per TCEQ OSSF Title 30 TAC Chapter 285, Table III)

Long-Term Soil Loading Rate, Ra = 0.1 GPD/SF

(Refer to Site Evaluation for soil loading rate determination)

### Treatment Tank Determination

(Per TCEQ OSSF Title 30 TAC Chapter 285, Table II)

Required aerobic treatment plant rating 480 GPD

Proposed aerobic treatment plant rating 600 GPD

### Drainfield Calculation

Minimum Required Application Area =  $Q / Ra = 3000$  SF

Emitters are assumed to achieve 4 square feet of application area each.

Thus, Required Number of Emitters = 750 Emitters

Proposed Number of Emitters = 800 Emitters = 3200 SF

### Effluent Pump Performance Requirements

Flow Rate per Emitter = 0.01 Gallons Per Minute

(Refer to emitter tubing specifications for this flow rate determination)

Flow Rate of Emitters = 8 GPM

It is recommended to include an additional 1.6 gallons per minute for each emitter tubing connecting to a return line in order to achieve an appropriate flushing (scouring) velocity

Flow Rate per Return Line Connection = 1.6 GPM

Number of Return Line Connections = 5 Connections

Flow Rate for Connections = 8 GPM

Required Flow Rate = 16 GPM

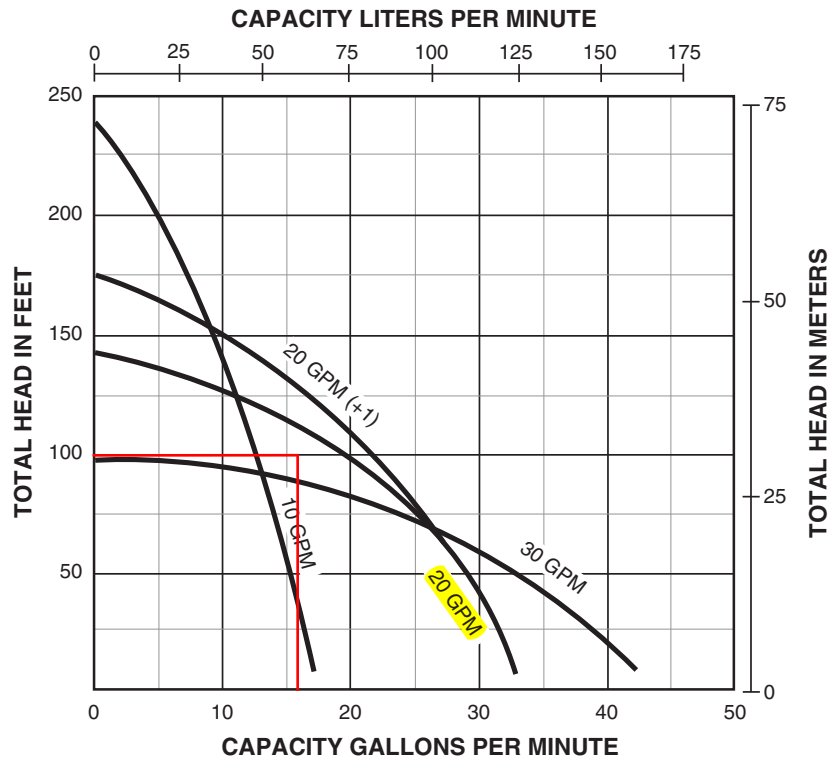


Total System Head = Friction Head + Elevation Head + Operating Head

| Pipe Friction Head Determination |                                          | Pipe Length<br>(Feet) | Pipe Diameter<br>(Inches) | Flow Rate<br>(GPM) | Head Loss<br>(Feet) |
|----------------------------------|------------------------------------------|-----------------------|---------------------------|--------------------|---------------------|
| Supply Pipe                      |                                          | 12                    | 1                         | 16                 | 1.6                 |
|                                  |                                          | 9                     | 1                         | 12.8               | 0.8                 |
|                                  |                                          | 20                    | 1                         | 9.6                | 1                   |
|                                  |                                          | 16                    | 1                         | 6.7                | 0.4                 |
|                                  |                                          | 18                    | 1                         | 3.4                | 0.2                 |
| Return Pipe                      | Friction Loss in Supply Pipe =           |                       |                           |                    | 4                   |
|                                  |                                          | 18                    | 1                         | 1.6                | 0.1                 |
|                                  |                                          | 2                     | 1                         | 3.2                | 0.1                 |
|                                  |                                          | 8                     | 1                         | 4.8                | 0.1                 |
|                                  |                                          | 0                     | 1                         | 6.4                | 0                   |
|                                  |                                          | 20                    | 1                         | 8                  | 0.8                 |
|                                  | Friction Loss in Return Pipe =           |                       |                           |                    | 1.1                 |
|                                  | Total Pipe Friction Loss =               |                       |                           |                    | 5.1                 |
|                                  | Add 20% for joints, elbows, tees, etc. = |                       |                           |                    | 6.1                 |

Total Pipe Friction Head = 6.1 Feet  
 Filter Head Loss = 7 Feet  
 Elevation Head Loss = 17 Feet  
 Operating Head = 70 Feet  
 Total System Head = 100.1 Feet (43.1 psi)

|                                |       |                  |
|--------------------------------|-------|------------------|
| Calculated System Work Point = | 16    | GPM Operating At |
|                                | 100.1 | Feet of Head     |

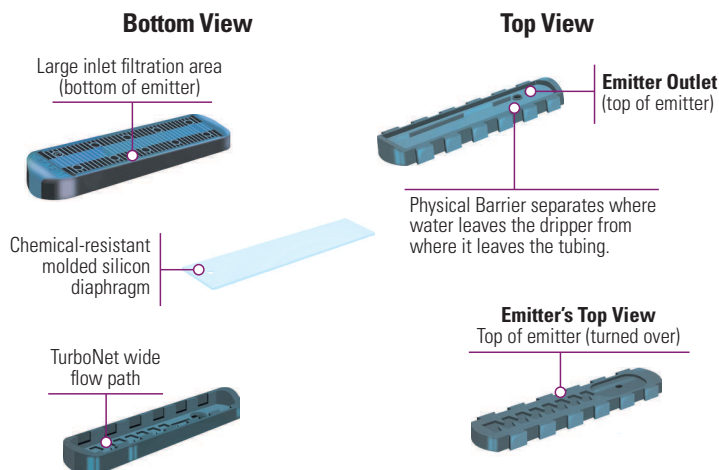


### PUMP PERFORMANCE *(Capacity in Gallons per Minute)*

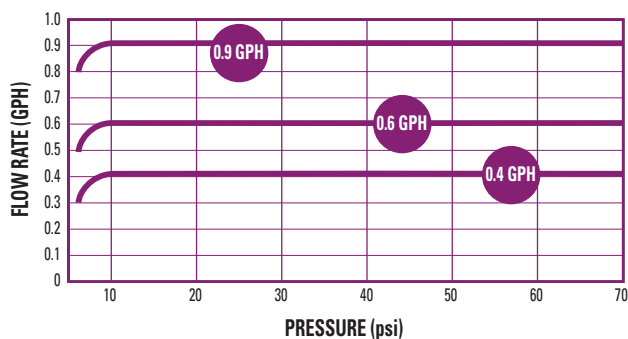
| Pump Model   | Flow Rate (GPM) | PSI |      |      |      |      |      |      |     |     |     |     |     |
|--------------|-----------------|-----|------|------|------|------|------|------|-----|-----|-----|-----|-----|
|              |                 | 0   | 10   | 20   | 30   | 40   | 50   | 60   | 70  | 80  | 90  | 100 | 110 |
| 10DOM05221   | 10              |     |      | 15.0 | 13.7 | 12.7 | 11.5 | 10.2 | 8.4 | 6.5 | 4.3 | 1.0 |     |
| 10DOM05121   | 10              |     |      | 15.0 | 13.7 | 12.7 | 11.5 | 10.2 | 8.4 | 6.5 | 4.3 | 1.0 |     |
| 20DOM05221   | 20              |     |      | 30.0 | 26.0 | 21.5 | 14.2 | 4.4  |     |     |     |     |     |
| 20DOM05121   | 20              |     |      | 30.0 | 26.0 | 21.5 | 14.2 | 4.4  |     |     |     |     |     |
| 30DOM05221   | 30              |     | 38.5 | 33.3 | 25.8 | 16   |      |      |     |     |     |     |     |
| 30DOM05121   | 30              |     | 38.5 | 33.3 | 25.8 | 16   |      |      |     |     |     |     |     |
| 20DOM05221+1 | 20 + 1          |     |      | 30   | 27.5 | 24   | 20   | 13.5 | 6   |     |     |     |     |
| 20DOM05121+1 | 20 + 1          |     |      | 30   | 27.5 | 24   | 20   | 13.5 | 6   |     |     |     |     |



## EXPLODED VIEW OF BIOLINE EMITTER



## DRIPPER FLOW RATE VS. PRESSURE



Between 0 and 7 psi, the dripper functions as a turbulent flow emitter, ensuring that the nominal design flow is not exceeded at system start-up.

## SPECIFYING INFORMATION

**SAMPLE MODEL NUMBER**

**08WRAM.6-24 V**

**A** Bioline Dripperline = 08WRAM

**1** **DRIPPER FLOW RATE**  
0.4 GPH = .4  
0.6 GPH = .6  
0.9 GPH = .9

**2** **DRIPPER SPACING**  
12" = 12  
18" = 18  
24" = 24

**3** **COIL LENGTH**  
500' = V500  
1,000' = V

BLANK Tubing Model Number: 250' = 08WRAM-250

## BIOLINE EMITTER OPERATION

Bioline® dripperline emitters are pressure compensating - delivering the water uniformly into the soil for further treatment or for reuse by the landscape. These unique emitters allow the tubing to be installed on flat topography or steep slopes.

Bioline emitters are protected against microbial slime. Each emitter is impregnated with an antimicrobial agent to resist biological build-up.

Netafim emitters are continuously self-cleaning during operation, not just at the beginning and end of a cycle. The result is dependable, clog-free operation, year after year.

## FLOW PER 100 FEET

| DRIPPER SPACING | 0.4 GPH DRIPPER |      | 0.6 GPH DRIPPER |      | 0.9 GPH DRIPPER |      |
|-----------------|-----------------|------|-----------------|------|-----------------|------|
|                 | GPH             | GPM  | GPH             | GPM  | GPH             | GPM  |
| 12"             | 40.0            | 0.67 | 61.0            | 1.02 | 92.0            | 1.53 |
| 18"             | 26.7            | 0.44 | 41.0            | 0.68 | 61.0            | 1.02 |
| 24"             | 20.0            | 0.34 | 31.0            | 0.51 | 46.0            | 0.77 |

## ORDERING INFORMATION

| FLOW RATE         | DRIPPER SPACING | COIL LENGTH    | MODEL NUMBER                    |
|-------------------|-----------------|----------------|---------------------------------|
| 0.4 GPH           | 12"             | 1,000'<br>500' | 08WRAM.4-12V<br>08WRAM.4-12V500 |
| 0.4 GPH           | 18"             | 1,000'<br>500' | 08WRAM.4-18V<br>08WRAM.4-18V500 |
| 0.4 GPH           | 24"             | 1,000'<br>500' | 08WRAM.4-24V<br>08WRAM.4-24V500 |
| 0.6 GPH           | 12"             | 1,000'<br>500' | 08WRAM.6-12V<br>08WRAM.6-12V500 |
| 0.6 GPH           | 18"             | 1,000'<br>500' | 08WRAM.6-18V<br>08WRAM.6-18V500 |
| 0.6 GPH           | 24"             | 1,000'<br>500' | 08WRAM.6-24V<br>08WRAM.6-24V500 |
| 0.9 GPH           | 12"             | 1,000'<br>500' | 08WRAM.9-12V<br>08WRAM.9-12V500 |
| 0.9 GPH           | 18"             | 1,000'<br>500' | 08WRAM.9-18V<br>08WRAM.9-18V500 |
| 0.9 GPH           | 24"             | 1,000'<br>500' | 08WRAM.9-24V<br>08WRAM.9-24V500 |
| Blank Tubing 17mm |                 | 250'           | 08WRAM-250                      |

# PMR-MF[Regulators



The medium flow Pressure-Master Regulator® is ideal for installations requiring mid-range flows [2 - 20 gpm] including solid-set, drip or other low-volume irrigation systems as well as center pivot and other mechanical-move irrigation systems.

#### FEATURES:

- Maintains a constant preset outlet pressure while handling varying inlet pressures
- Very low hysteresis and friction losses
- Maximum flow path resists plugging
- 100% water-tested for accuracy (no adjustments ever needed)
- Two-year warranty on materials, workmanship AND performance
- Can be installed above or below ground.



PMR-MF CMS models are designed specifically for mining applications where pH solutions are less than or equal to 4.0 PMR-MF EFF models (lavender top) are designed specifically for wastewater applications.

**CAUTION:**  
Always install downstream from all shut off valves.



## PMR-MF – Pressure-Master Regulator® Medium-Flow

| Model Number | Preset Oper. psi | Press. [bar] | Maximum Inlet psi | Press. [bar] | Flow Range gpm [L/hr] |               | Inlet Sizes                            | Outlet Sizes                  |
|--------------|------------------|--------------|-------------------|--------------|-----------------------|---------------|----------------------------------------|-------------------------------|
| PMR-6 MF     | 6                | 0.41         | 100               | 6.90         | 4 - 16                | 907.2 -3628.8 | 3/4" F NPT, 1" F NPT, 1"M NPT, 1"F BSP | 3/4" F NPT, 1" F NPT, 1"F BSP |
| PMR-10 MF    | 10               | 0.69         | 120               | 8.28         | 4 - 16                | 907.2 -3628.8 | 3/4" F NPT, 1" F NPT, 1"M NPT, 1"F BSP | 3/4" F NPT, 1" F NPT, 1"F BSP |
| PMR-12 MF    | 12               | 0.83         | 135               | 9.31         | 2-20                  | 453.6-4536.0  | 3/4" F NPT, 1" FNPT, 1"M NPT, 1"F BSP  | 3/4" F NPT, 1" F NPT, 1"F BSP |
| PMR-15 MF    | 15               | 1.04         | 150               | 10.35        | 2-20                  | 453.6-4536.0  | 3/4" F NPT, 1" F NPT, 1"M NPT, 1"F BSP | 3/4" F NPT, 1" F NPT, 1"F BSP |
| PMR-20 MF    | 20               | 1.38         | 150               | 10.35        | 2-20                  | 453.6-4536.0  | 3/4" F NPT, 1" FNPT, 1"M NPT, 1"F BSP  | 3/4" F NPT, 1" F NPT, 1"F BSP |
| PMR-25 MF    | 25               | 1.73         | 150               | 10.35        | 2-20                  | 453.6-4536.0  | 3/4" F NPT, 1" F NPT, 1"M NPT, 1"F BSP | 3/4" F NPT, 1" F NPT, 1"F BSP |
| PMR-30 MF    | 30               | 2.07         | 150               | 10.35        | 2-20                  | 453.6-4536.0  | 3/4" F NPT, 1" F NPT, 1"M NPT, 1"F BSP | 3/4" F NPT, 1" F NPT, 1"F BSP |
| PMR-35 MF    | 35               | 2.42         | 150               | 10.35        | 2-20                  | 453.6-4536.0  | 3/4" F NPT, 1" F NPT, 1"M NPT, 1"F BSP | 3/4" F NPT, 1" F NPT, 1"F BSP |
| PMR-40 MF    | 40               | 2.76         | 150               | 10.35        | 2-20                  | 453.6-4536.0  | 3/4" F NPT, 1" F NPT, 1"M NPT, 1"F BSP | 3/4" F NPT, 1" F NPT, 1"F BSP |
| PMR-50 MF    | 50               | 3.45         | 150               | 10.35        | 2-20                  | 453.6-4536.0  | 3/4" F NPT, 1" F NPT, 1"M NPT, 1"F BSP | 3/4" F NPT, 1" F NPT, 1"F BSP |
| PMR-60 MF    | 60               | 4.14         | 150               | 10.35        | 2-20                  | 453.6-4536.0  | 3/4" F NPT, 1" F NPT, 1"M NPT, 1"F BSP | 3/4" F NPT, 1" F NPT, 1"F BSP |

<sup>1</sup> Regulated pressure is 1/2 psi (0.03 bar) higher with increasing inlet pressure than with decreasing inlet pressure



# MODEL 217

Aerobic system control panel for systems requiring timed dosing of effluent at repeated intervals ranging from a few seconds to several hours (Repeat Cycle Timer). Includes power circuit for compressor, audible and visual High Water/Low Air Pressure alarms.

## Power Specifications:

- Input power:** 120 VAC, 60 Hz, 1 Phase, 20 Amps  
**Pump:** 120 VAC, 20 Amp C/B, 1 Hp max.  
**Compressor:** 120 VAC, 10 Amp C/B, 1/2 Hp max.  
**Alarm:** 120 VAC, 10 Amp C/B, Alarm/Control power.

## Control Features:

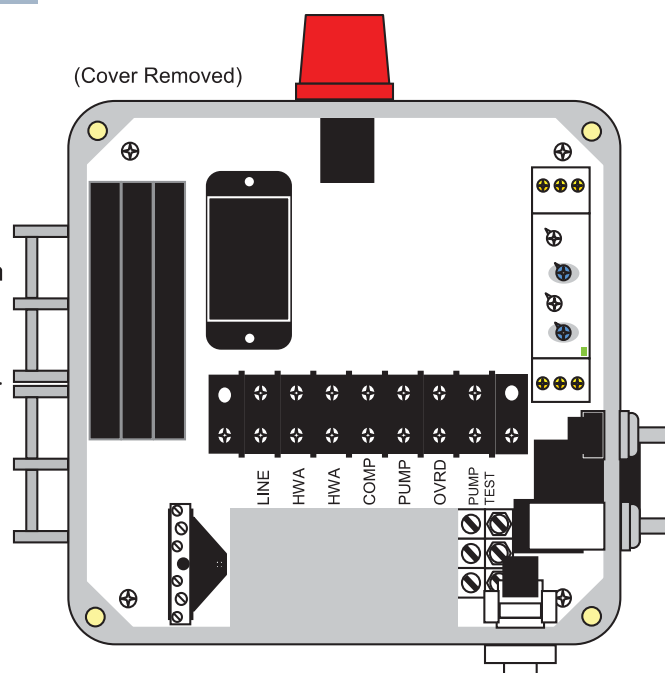
**Timer Control:** Pump on and off times are individually settable with values ranging from 0.1 second to 100 hours. Override feature turns pump on immediately if water exceeds normal levels (during surges or extended power outages). Includes Pump Test switch to verify operation of the effluent pump.

Individual circuit breakers provide short circuit protection and disconnect feature for compressor, pump and alarm circuits.

**Alarm:** Visual and audible (90 dB) alarm for High Water and Low Air Pressure faults. Includes Mute/Test switch to verify operation of the alarm circuits and to silence the audible alarm until fault is cleared.

**Enclosure:** 8"X8"X4" poly enclosure rated NEMA 4X (waterproof)

**Certifications:** NSF/ANSI Standard 40 approved  
UL Listed (UL508A) Control Panel  
for USA/Canada



Model 217

## System Component Requirements:

- High Water Alarm float – Rated 120VAC, 1 Amp min.  
Override float – Rated 120VAC, 20 Amps (1 Hp) min.  
Pump float – Rated 120VAC, 20 Amps (1 Hp) min.  
Pump – 120VAC, 1 Hp Max, UL approved with internal thermal protection.  
Compressor – 120VAC, 1/2 Hp Max, UL approved.



## CONTROL PANELS AND ALARMS

A Division of ETI

2247 Hwy 151 North,  
Downsville, LA 71234

800-277-8179

email: [aquasafe@bayou.com](mailto:aquasafe@bayou.com)

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E N V I R O N M E N T A L S Y S T E M S , L . L . C .

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The on site wastewater system has been designed to dispose of the specified wastewater flow rate. In addition to the proper design and construction of the system, it is the owner's responsibility to properly maintain the system. The following care should be taken to help ensure proper operation and high quality effluent:

**Do Not:**

1. Pour strong disinfectants or bleaches, other than small amounts used in day to day house cleaning and laundries into the system.
2. Discharge from any type of water softener into the system.
3. Put coffee grounds, chemical wastes, paint or paint thinner, oils or grease (such as used cooking grease), pet shampoo or pet dip disinfectant into the system.
4. Permit disposable diapers, tampons, sanitary napkins, large quantities of paper products, tobacco products or similar items to enter the system.
5. Overload the system with large amounts of wastewater.
6. Plant large trees or shrubs near the system tanks or disposal field – the root systems may damage the installed system components.

**Do:**

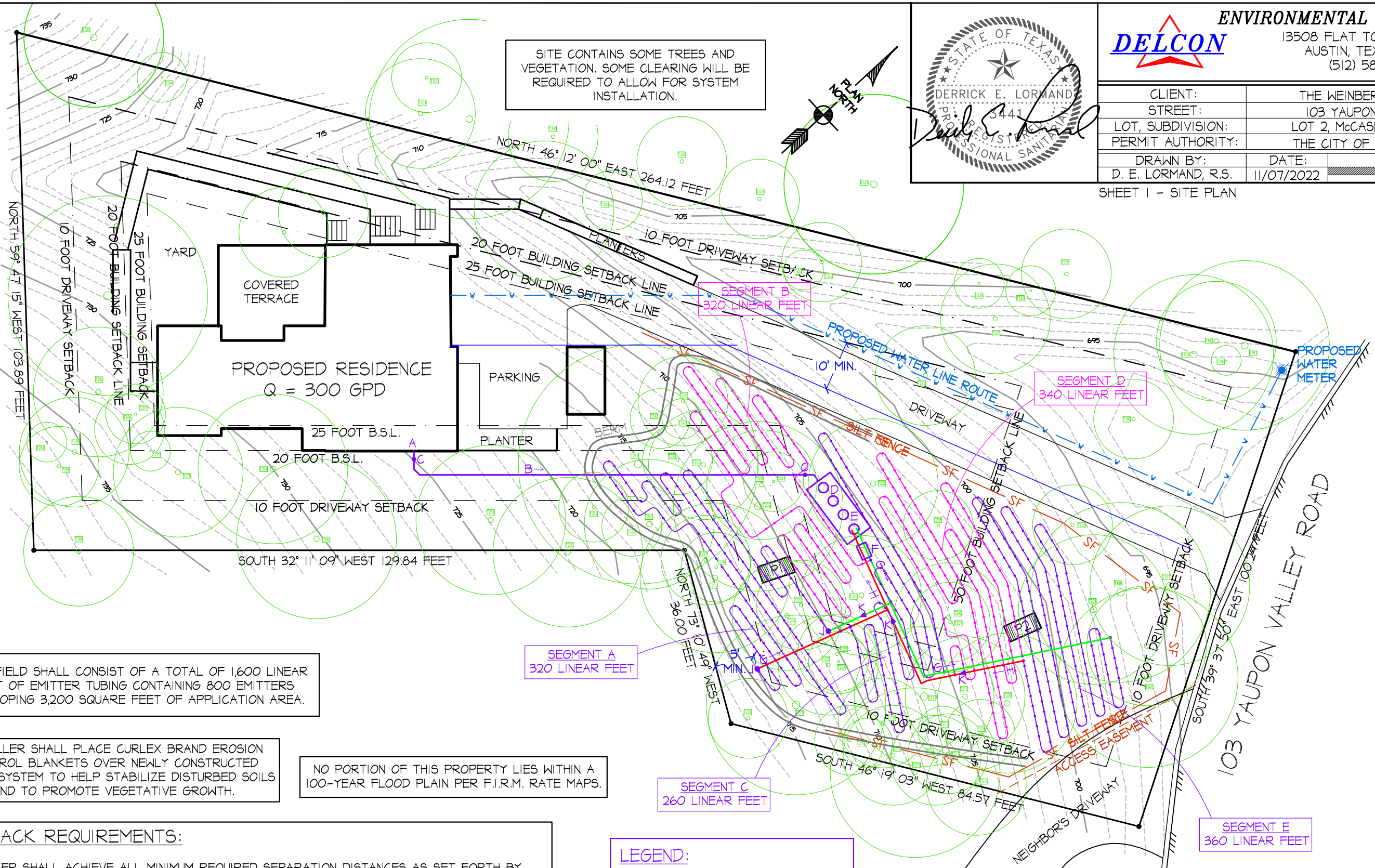
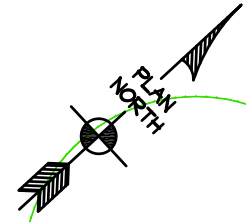
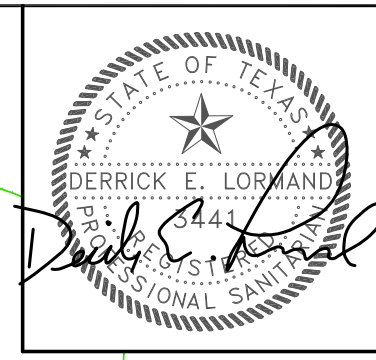
1. Maintain the vegetation (grass) in the disposal field area.
2. Conserve water usage as much as possible. Maintain low-flow plumbing fixtures throughout the structure.
3. Monitor the drainfield periodically for signs of effluent surfacing and odors.
4. Use care when digging in the vicinity of the system tanks or drainfield to avoid damaging any of the disposal system's components.

It is recommended that the system be inspected annually by a trained service person to monitor the performance of all components and to determine the frequency of solids removal. Effluent filters should be cleaned at least every 3 months. Pump performance, including electrical components (breakers, float switches, electrical connections) should be reviewed during each inspection. The high water alarm (both audio and visual) should be checked during inspections.



SHEET 1 - SITE PLAN

SITE CONTAINS SOME TREES AND VEGETATION. SOME CLEARING WILL BE REQUIRED TO ALLOW FOR SYSTEM INSTALLATION.



DRAINFIELD SHALL CONSIST OF A TOTAL OF 1,600 LINEAR FEET OF EMITTER TUBING CONTAINING 800 EMITTERS DEVELOPING 3,200 SQUARE FEET OF APPLICATION AREA.

INSTALLER SHALL PLACE CURLEX BRAND EROSION CONTROL BLANKETS OVER NEWLY CONSTRUCTED SEPTIC SYSTEM TO HELP STABILIZE DISTURBED SOILS AND TO PROMOTE VEGETATIVE GROWTH.

NO PORTION OF THIS PROPERTY LIES WITHIN A 100-YEAR FLOOD PLAIN PER F.I.R.M. RATE MAPS.

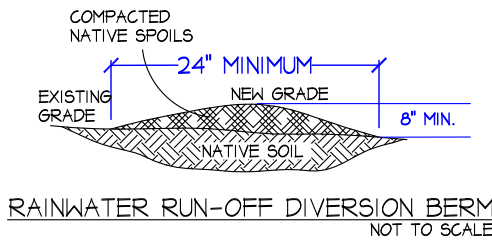
**SETBACK REQUIREMENTS:**

INSTALLER SHALL ACHIEVE ALL MINIMUM REQUIRED SEPARATION DISTANCES AS SET FORTH BY THE TCEQ IN TITLE 30, TAC CHAPTER 285, EFFECTIVE DECEMBER 2016, AND ANY ADDITIONAL LOCAL REQUIREMENTS.

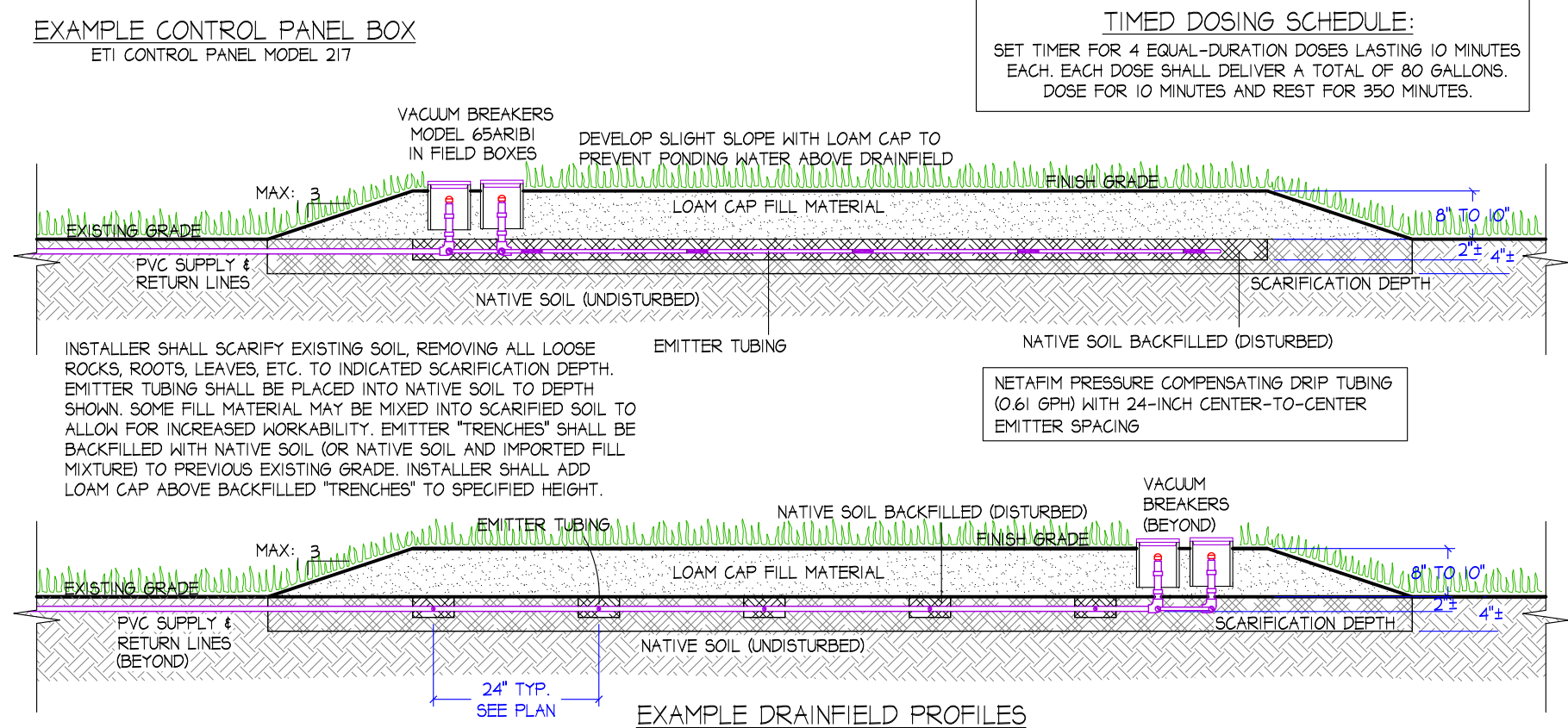
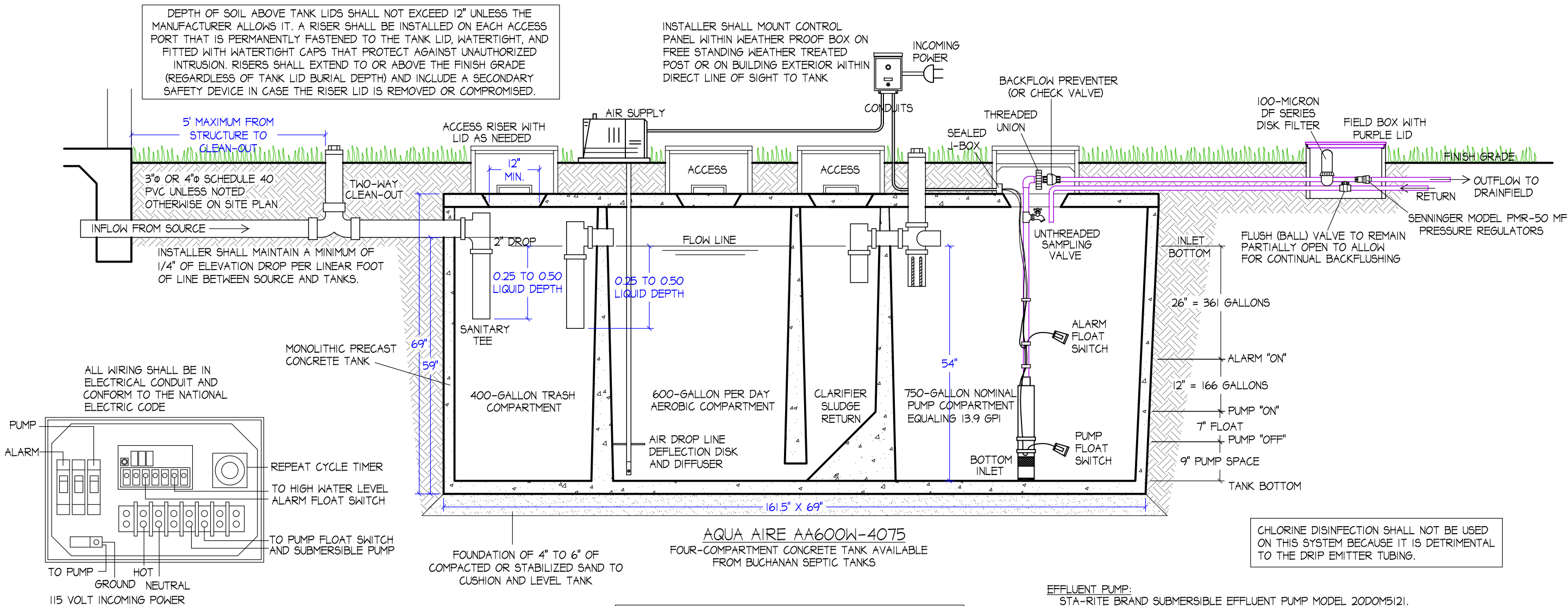
MINIMUM SEPARATION FROM TANK: 5 FEET TO FOUNDATIONS, SWIMMING POOLS AND PROPERTY LINES, ONE FOOT TO EASEMENTS, 5 FEET TO DRAINAGE EASEMENTS AND GRADE BREAKS, 10 FEET TO WATER LINES, 50 FEET TO EXISTING OR PROPOSED WATER WELLS.

MINIMUM SEPARATION FROM DRAINFIELD: ONE FOOT TO FOUNDATIONS, EASEMENTS AND SWIMMING POOLS, 5 FEET TO PROPERTY LINES, 10 FEET TO GRADE BREAKS, 10 FEET TO WATER LINES, 100 FEET TO EXISTING OR PROPOSED WATER WELLS.

- LEGEND:**
- A. SEWAGE STUB-OUT
  - B. 4" SCH. 40 PVC SEWER PIPE
  - C. TWO-WAY CLEAN-OUT
  - D. AEROBIC TREATMENT UNIT
  - E. PUMP CHAMBER
  - F. FIELD BOX
  - G. 1" SCH. 40 PVC SUPPLY LINE
  - H. 1" SCH. 40 PVC RETURN LINE
  - J. VACUUM BREAKER VALVES
  - K. ONE-WAY CHECK VALVES







EFFLUENT PUMP:  
STA-RITE BRAND SUBMERSIBLE EFFLUENT PUMP MODEL 20DOM5121.

POWER REQUIREMENT:  
115 VOLT, SINGLE PHASE, 60 HERTZ.

HIGH LEVEL ALARM:  
ON SEPARATE CIRCUIT TO ACTIVATE AUDIO-VISUAL ALARM AT CONTROL PANEL WHEN WATER LEVEL REACHES ELEVATION INDICATED ABOVE PUMP "ON" POSITION OF PUMP FLOAT SWITCH.

FLOAT SWITCHES:  
INSTALL PER MANUFACTURER'S REQUIREMENTS AND ADJUST FLOATS TO HAVE THE OPERATING RANGE AS INDICATED.

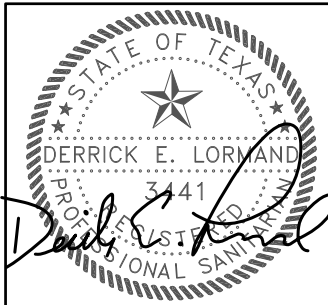
DRAINFIELD SHALL HAVE GRASS COVER. THE EXISTING SOIL IS SUITABLE TO SUPPORT VEGETATIVE GROWTH. THE OWNER IS RESPONSIBLE FOR MAINTAINING THE VEGETATION AT THE DRAINFIELD LOCATION. ALL ROCKS SHALL BE REMOVED FROM DRAINFIELD PRIOR TO COVERING WITH FILL MATERIAL. INSTALLER SHALL SEED, HYDROMULCH OR PLACE SANDY LOAM-BACKED SOD AT DRAINFIELD TO HELP DEVELOP VEGETATION AND REDUCE EROSION.

AEROBIC TREATMENT UNIT WITH SUBSURFACE DRIP EMITTER APPLICATION. SOIL APPLICATION RATE = 0.10 GALLONS PER SQUARE FOOT PER DAY - PER TCEQ OSSF WORKSHOPS RG-276/EV-01 REVISED DECEMBER 2016; TABLE I, APPENDIX B.

TREATMENT METHOD:

(1) 600 GALLON PER DAY CONCRETE FOUR-COMPARTMENT AEROBIC TREATMENT UNIT

SHEET 2 - SECTION DETAIL



**DELCON**  
**ENVIRONMENTAL SYSTEMS, L.L.C.**  
13508 FLAT TOP RANCH ROAD  
AUSTIN, TEXAS 78732  
(512) 583-1397

|                     |                                               |                     |
|---------------------|-----------------------------------------------|---------------------|
| CLIENT:             | THE WEINBERGER RESIDENCE                      |                     |
| STREET:             | 13 YAUPON VALLEY ROAD, WEST LAKE HILLS, 78746 |                     |
| LOT, SUBDIVISION:   | LOT 2 McCASLAND SUBDIVISION                   |                     |
| PERMIT AUTHORITY:   | THE CITY OF WEST LAKE HILLS                   |                     |
| DRAWN BY:           | DATE:                                         | SCALE: 1/2" = 1'-0" |
| D. E. LORMAND, R.S. | 11/07/2022                                    |                     |



GENERAL NOTES:

1. ON-SITE SEWAGE FACILITY PERMIT OR AUTHORIZATION TO CONSTRUCT SHALL BE OBTAINED FROM THE LOCAL PERMITTING AUTHORITY AND POSTED ON SITE IN A HIGHLY VISIBLE LOCATION PRIOR TO THE COMMENCEMENT OF THE INSTALLATION OF THIS SYSTEM. NO WORK MAY BEGIN UNTIL THE PERMIT TO CONSTRUCT HAS BEEN POSTED ON SITE.
2. THE INSTALLATION OF THIS SYSTEM MUST BE PERFORMED BY A STATE LICENSED INSTALLER HOLDING A CURRENT CLASS I OR CLASS II CERTIFICATE, OR BY A STATE LICENSED APPRENTICE OPERATING UNDER THE DIRECT SUPERVISION OF A STATE LICENSED INSTALLER. THE LICENSED INDIVIDUAL MUST MAINTAIN CURRENT PROOF OF LICENSE AT THE JOB SITE. THIS LICENSE MUST BE MADE AVAILABLE FOR REVIEW UPON REQUEST.
3. THIS PLAN IS SITE SPECIFIC. THIS DESIGN AND THE INFORMATION CONTAINED WITHIN REMAIN THE OWNERSHIP OF THE DESIGNER AND DELCON ENVIRONMENTAL SYSTEMS, LLC. ADDITIONAL COPIES OF THIS DESIGN MAY BE PRINTED AND REPRODUCED OR OBTAINED FROM DELCON ENVIRONMENTAL SYSTEMS, LLC. FOR CONVENIENCE ASSOCIATED WITH THE PERMIT REVIEW, INSPECTION, INSTALLATION AND LICENSING OF THIS SYSTEM. ADDITIONAL FEES MAY BE REQUIRED. ELECTRONIC COPIES OF THIS DESIGN THAT INCLUDE THE SEAL AND SIGNATURE OF THE DESIGNER ARE VALID AND SHALL BE CONSIDERED AS ORIGINAL COPIES.
4. THE LAWS AND REGULATIONS CONTAINED IN THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY’S TITLE 30 TEXAS ADMINISTRATIVE CODE CHAPTER 285 FOR ON-SITE SEWAGE FACILITIES ADOPTED MAY 2001, EFFECTIVE JUNE 2001 AND MOST RECENTLY REVISED DECEMBER 5, 2012 GOVERN THE DESIGN, PERMIT AND INSTALLATION OF THIS SYSTEM. ANY ADDITIONAL REGULATIONS ADOPTED BY THE LOCAL PERMITTING AUTHORITY ABOVE AND BEYOND THE REQUIREMENTS OF THE STATE MINIMUM SHALL SUPERSEDE. ANY ADDITIONAL REQUIREMENTS AND/OR SPECIFIC STIPULATIONS LISTED IN THE PERMIT TO CONSTRUCT OR THIS DESIGN SHALL BE STRICTLY FOLLOWED.
5. IT IS THE RESPONSIBILITY OF THE INSTALLER TO READ AND UNDERSTAND THE LAWS REGARDING THE INSTALLATION OF ON-SITE SEWAGE FACILITIES, THE SPECIAL CONDITIONS (IF ANY) CONTAINED IN THE PERMIT OR AUTHORIZATION TO CONSTRUCT AND THE REQUIREMENTS AND SPECIFICATIONS OF THIS DESIGN.
6. THIS PLAN IS INTENDED FOR USE AS A SEPTIC SYSTEM INSTALLATION GUIDE. THE PROPERTY DESCRIPTION, DIMENSIONS AND LOCATION OF ALL SITE FEATURES HAVE BEEN DEVELOPED FROM SURVEYS (IF PROVIDED), GLOBAL INFORMATION SYSTEM DATA, AERIAL PHOTOGRAPHY, SITE PLANS, SITE VISITS, FIELD MEASUREMENTS AND ANY ADDITIONAL INFORMATION PROVIDED BY THE BUILDER, INSTALLER AND OWNER. THIS SITE PLAN IS NOT A LEGAL LAND SURVEY OR PLAT MAP AND SHOULD NOT BE TREATED AS SUCH.
7. TREES AND VEGETATION WITHIN THE VICINITY OF THE PROPOSED SYSTEM SHALL BE PROTECTED. IT IS POSSIBLE THAT DAMAGE MAY OCCUR TO TREES AND VEGETATION DURING THE INSTALLATION OF THIS SYSTEM. NEITHER THE DESIGNER NOR THE INSTALLER SHALL BE RESPONSIBLE FOR DAMAGE TO VEGETATION AND/OR TREES CAUSED DURING CONSTRUCTION. NEITHER THE DESIGNER NOR THE INSTALLER SHALL BE RESPONSIBLE FOR VEGETATION REPLACEMENT ABOVE AND BEYOND THE SPECIFIC STIPULATIONS CONTAINED IN THIS DESIGN. REMOVAL AND/OR TRIMMING OF TREES AND VEGETATION MAY BE REQUIRED TO PROPERLY INSTALL AND OPERATE THIS SYSTEM.
8. NO WATER WELLS MAY BE INSTALLED CLOSER THAN 50 FEET FROM THIS SYSTEM. ALL WATER SUPPLY LINES (INCLUDING IRRIGATION SYSTEM LINES) SHALL REMAIN AT LEAST 10 FEET AWAY FROM ALL SEPTIC SYSTEM COMPONENTS UNLESS NOTED OTHERWISE ON PLAN AND SPECIFICALLY ADDRESSED AND APPROVED BY THE PERMITTING AUTHORITY.
9. NO AUTOMATIC WATER SPRINKLER SYSTEM MAY BE INSTALLED TO DIRECTLY IRRIGATE THE VEGETATION ABOVE THE APPLICATION FIELD. HAND WATERING IS PERMISSIBLE TO HELP MAINTAIN APPLICATION FIELD VEGETATION.
10. A MAINTENANCE CONTRACT WITH AN LICENSED AND CERTIFIED MAINTENANCE PROVIDER MAY BE REQUIRED BY STATE LAW WITH THIS SYSTEM. REGARDLESS, PERIODIC MAINTENANCE IS NECESSARY TO MAINTAIN OPTIMUM SYSTEM PERFORMANCE AND ENVIRONMENTAL PROTECTION. IT IS HIGHLY RECOMMENDED THAT PERIODIC ROUTINE MAINTENANCE BE PERFORMED AT THREE-MONTH INTERVALS.
11. TO THE BEST OF MY KNOWLEDGE THERE APPEAR TO BE NO EDWARD’S AQUIFER RECHARGE FEATURES WITHIN 150 FEET OF THIS SYSTEM.
12. IT IS MY PROFESSIONAL OPINION THAT THIS ON-SITE SEWAGE FACILITY CAN BE OPERATED WITHOUT CAUSING A THREAT OR HARM TO THE PUBLIC HEALTH OR TO THE ENVIRONMENT. THIS SYSTEM MUST BE PROPERLY INSTALLED AND MAINTAINED TO ACHIEVE THE DESIRED LEVEL OF TREATMENT AND DISPOSAL TO PREVENT THREATS OR HARM TO THE PUBLIC HEALTH OR TO THE ENVIRONMENT.

INSPECTION AND COORDINATION NOTES:

1. THE INSTALLER SHALL COORDINATE WITH THE PERMITTING AUTHORITY TO SCHEDULE ALL REQUIRED INSPECTIONS THROUGHOUT THE INSTALLATION PROCESS. THE INSTALLER MAY CONTACT THE PERMITTING AUTHORITY TO OBTAIN A SCHEDULE OF INSPECTIONS REQUIRED FOR THIS SYSTEM. SEVERAL INSPECTIONS MAY BE REQUIRED AT GIVEN INTERVALS DURING CONSTRUCTION. ADDITIONAL INSPECTION FEES MAY BE REQUIRED IF INSPECTIONS ARE NOT APPROVED OR IF THE INSTALLATION DEVIATES FROM THE PERMITTED DESIGN WITHOUT PRIOR APPROVAL FROM BOTH THE PERMITTING AUTHORITY AND DELCON ENVIRONMENTAL SYSTEMS, LLC.
2. NO PORTION OR COMPONENT OF THIS SYSTEM SHALL BE COVERED UNTIL REVIEWED AND APPROVED BY THE PERMITTING AUTHORITY. THE DESIGNER SHALL BE NOTIFIED TO PERFORM AN INSPECTION AT LEAST 48 HOURS IN ADVANCE PRIOR TO COVERING ANY SYSTEM COMPONENTS.
3. PERMANENT UTILITIES INCLUDING WATER, ELECTRIC AND POSSIBLY TELEPHONE SERVICE SHALL BE CONNECTED TO THIS SYSTEM AS A CONDITION OF FINAL APPROVAL.
4. THE DESIGNER SHALL DELIVER TO THE PERMITTING AUTHORITY AN APPROVAL/CERTIFICATION LETTER UPON REVIEWING THE INSTALLED SYSTEM INDICATING COMPLIANCE WITH THE DESIGN. AN AS BUILT DRAWING MAY BE REQUIRED AND INCLUDED WITH THE FINAL APPROVAL LETTER. APPROVAL SHALL NOT BE GRANTED UNTIL ALL INSPECTIONS ARE PERFORMED, ALL REQUIREMENTS ARE ACHIEVED AND ALL FEES TO THE DESIGNER AND PERMITTING AUTHORITY ARE PAID IN FULL.
5. A LICENSE TO OPERATE WILL BE ISSUED BY THE PERMITTING AUTHORITY UPON INSTALLATION COMPLETION AND WRITTEN APPROVAL/CERTIFICATION FROM DELCON ENVIRONMENTAL SYSTEMS, LLC. USE OF THIS ON-SITE SEWAGE FACILITY WITHOUT A LICENSE TO OPERATE IS A VIOLATION OF STATE AND LOCAL LAW AND IS SUBJECT TO FINES AND ADDITIONAL LEGAL ACTION INCLUDING PROPERTY CONDEMNATION AND INCARCERATION.

FIELD MODIFICATION AND ALTERATION NOTES:

1. THE INSTALLER SHALL FIELD VERIFY ALL DIMENSIONS (INCLUDING TOPOGRAPHICAL INFORMATION OF CURRENT GRADES) OF THIS DESIGN PRIOR TO CONSTRUCTION, AS SITE CONDITIONS MAY CHANGE DURING THE INTERIM TIME BETWEEN THE PERMIT ISSUANCE AND SYSTEM INSTALLATION.
2. THE INSTALLER SHALL STRICTLY ADHERE TO THE DESIGN (BOTH DIMENSIONS AND EQUIPMENT SPECIFICATIONS) AND TO ANY ADDITIONAL REQUIREMENTS OF THE PERMIT TO CONSTRUCT. ANY DISCREPANCIES BETWEEN THE DESIGN AND ACTUAL FIELD CONDITIONS SHALL BE REPORTED BY THE INSTALLER TO THE DESIGNER AND/OR THE PERMITTING AUTHORITY PRIOR TO CONSTRUCTION.
3. THE INSTALLER IS RESPONSIBLE FOR LOCATING ALL UNDERGROUND UTILITIES. PRIOR TO CONSTRUCTION, THE INSTALLER SHALL CONTACT DIG TESS OR OTHER UTILITY LOCATING ORGANIZATION TO CONFIRM THE LOCATION OF ALL PERTINENT UTILITIES WITHIN THE VICINITY OF THIS ON-SITE SEWAGE FACILITY. ANY UNFORESEEN UTILITIES DISCOVERED SHALL BE REPORTED TO DELCON ENVIRONMENTAL SYSTEMS, LLC AND/OR THE PERMITTING AUTHORITY. DESIGN MODIFICATIONS MAY BE REQUIRED TO ACCOMMODATE DISCOVERED UTILITIES.
4. IF A FIELD DISCREPANCY IS DISCOVERED DURING CONSTRUCTION, WORK SHALL STOP UNTIL THE ISSUE IS RESOLVED BY DELCON ENVIRONMENTAL SYSTEMS, LLC AND THE PERMITTING AUTHORITY. DESIGN CHANGES REQUIRED DUE TO FIELD MODIFICATIONS MAY REQUIRE ADDITIONAL DESIGN FEES, ADDITIONAL PERMITTING FEES AND ADDITIONAL TIME. FIELD CHANGES MADE WITHOUT PRIOR APPROVAL AND AUTHORIZATION FROM BOTH DELCON ENVIRONMENTAL SYSTEMS, LLC AND THE PERMITTING AUTHORITY MAY VOID PERMIT AND COULD RESULT IN LEGAL ACTIONS AGAINST THE INSTALLER.

PIPING NOTES:

1. ALL PIPING INCLUDED WITH THIS SYSTEM SHALL CONSIST OF SCHEDULE 40 PVC UNLESS NOTED OTHERWISE ON SITE PLAN OR SECTION DETAILS. ALL CONNECTIONS SHALL BE PROPERLY JOINED USING APPROPRIATE PRIMER AND SEALER/CEMENT. ALL LINES AND CONNECTIONS SHALL BE WATER-TIGHT AND MAY BE PRESSURE TESTED TO VERIFY INTEGRITY.
2. GRAVITY-FED SEWER AND TRANSMISSION LINES SHALL MAINTAIN AT LEAST  $\frac{1}{8}$ " OF VERTICAL FALL PER LINEAR FOOT OF RUN THROUGHOUT ENTIRE RUN. NO LOCAL LOW SPOTS OR DIPS WITHIN LINES. NO HARD 90 DEGREE ELBOWS ON FITTINGS SHALL BE USED WITH GRAVITY-FED SEWER LINES. A PAIR OF 45 DEGREE SWEEPING ELBOWS SHALL BE USED.
3. SEWER LINES SHALL FROM THE SOURCE(S) TO THE TREATMENT TANK(S) AND FROM THE TREATMENT TANK(S) TO THE DISPOSAL AREA(S) SHALL BE EMBEDDED IN A MINIMUM OF 4 INCHES OF CLEAN CLASS Ib, CLASS II, OR CLASS III TYPE SOIL CONTAINING LESS THAN 30% GRAVEL AND CLEAN OF ANY ORGANIC MATERIAL, TRASH AND ROCKS/GRAINS LARGER THAN 1/2" IN ORDER TO TO AVOID SHIFTING, SETTLING AND PUNCTURES.
4. A MINIMUM OF 4" OF SOIL COVER SHALL BE PLACED ABOVE ALL PVC PIPES FOR PROTECTION.
5. INSTALLER SHALL VERIFY ON PLAN THE SPECIFIC USE OF PURPLE COLORED PVC PIPE.

TANK NOTES:

1. CONCRETE TANKS SHALL BE MANUFACTURED IN COMPLIANCE WITH ASTM C 1227, STANDARD SPECIFICATION FOR PRECAST CONCRETE SEPTIC TANKS ADOPTED 2000 AND AS AMENDED.
2. PLASTIC (POLYETHYLENE) OR FIBERGLASS TANKS SHALL BE RATED FOR USE AS UNDERGROUND SEPTIC EFFLUENT AND/OR PUMP TANKS. SPECIFIC INSTRUCTIONS ASSOCIATED WITH INSTALLATION AND BACK-FILLING SHALL BE STRICTLY FOLLOWED.
3. TANKS SHALL BE BEDDED ON SPECIFIED SAND CUSHION AND SET LEVEL TO WITHIN AN OVERALL TOLERANCE OF ONE INCH FROM INLET TO OUTLET.
4. TANKS SHALL BE FILLED TO THE FLOW LINE TO DETERMINE INTEGRITY. ANY LEAKS OR WEEPS SHALL BE PATCHED TO HOLD WATER. ONCE TANKS ARE REVIEWED AND APPROVED BY THE PERMITTING AUTHORITY, THE WATER LEVEL WITHIN THE PUMP TANK (OR PUMP CHAMBER) MUST BE LOWERED TO THE NORMAL OPERATING LEVEL. DO NOT DISCHARGE EXCESS WATER INTO THE DRAINFIELD. EXCESS WATER SHALL BE REMOVED FROM TANK WITHOUT ENTERING DRAINFIELD.
5. INLET PIPES AND OUTLET PIPES SHALL BE SEALED WITH GROUT, EXPANSIVE FOAM OR SILICONE TO PREVENT LEAKING. RISERS AND INSPECTION PORTS SHALL BE SEALED WITH GROUT, EXPANSIVE FOAM OR SILICONE TO PREVENT WATER, SOIL OR INSECT INTRUSION INTO TANKS.
6. TANK EXCAVATION SHALL BE BACKFILLED WITH CLEAN CLASS II OR CLASS III SOIL FREE OF ROCK. ROCKS, CONSTRUCTION DEBRIS, TRASH, ORGANICS AND CLASS IV SOIL ARE UNACCEPTABLE BACKFILL MATERIAL.
7. DEPTH OF SOIL ABOVE TANK LIDS SHALL NOT EXCEED 12 INCHES UNLESS SPECIFICALLY ADDRESS BY THIS DESIGN AND APPROVED BY THE MANUFACTURER.

DRAINFIELD NOTES:

1. ALL ROCKS AND EXISTING VEGETATION (EXCEPT DESIRED TREES) SHALL BE REMOVED FROM PROPOSED DRAINFIELD LOCATION AS PREPARATION FOR SYSTEM INSTALLATION. ANY REMAINING ROCK EXPOSURES SHALL BE CAPPED WITH AT LEAST 3" OF LOAM TOPSOIL TO PROMOTE VEGETATIVE GROWTH.
2. INSTALLER SHALL IMMEDIATELY ESTABLISH VEGETATION ON NEWLY CONSTRUCTED DRAINFIELD. ACCEPTABLE GRASSES INCLUDE BERMUDA, SAINT AUGUSTINE, RYE, ZOIZA, TIFF OR A COMBINATION FOR MULTI-SEASON GROWTH. CLAY LOAM BACKED SOD MAY NOT BE USED. HYDROMULCH, RAW SEED OR SANDY LOAM BACKED SOD ARE ACCEPTABLE METHODS FOR ESTABLISHING VEGETATION.
3. APPLICATION AREA SHALL BE CROWNED SLIGHTLY TO SHED RAINWATER. REFER TO SITE PLAN FOR THE USE OF DIVERSION BERMS OR TROUGHS.





|               |                              |                  |                                         |
|---------------|------------------------------|------------------|-----------------------------------------|
| Meeting Date: | <u>March 8, 2023</u>         | Item Number:     | <u>                                </u> |
| Department:   | <u>Administration</u>        |                  |                                         |
|               | Trey Fletcher,               |                  |                                         |
| Prepared By:  | <u>City Administrator</u>    | Cost / Budget:   | <u>N/A</u>                              |
|               | Resolution                   |                  |                                         |
| Exhibits:     | <u>Exhibit A - Agreement</u> | Source of Funds: | <u>N/A</u>                              |

## Subject

Consider a resolution authorizing the Mayor to execute a Non-Exclusive Public ROW License Agreement with Google Fiber Texas LLC for the installation of Network Facilities.

## Recommendation

Staff recommends approval of the Resolution with the companion agreement.

## Discussion

This is a non-exclusive license agreement between the City of West Lake Hills and Google Fiber Texas LLC for the use of City public right-of-way for network facility installation. In exchange for a License Fee of 1% of Gross Revenue remitted on a quarterly basis commencing on the first date on which Licensee receives any Gross Revenues, Google Fiber is granted the ability to run their fiber to customers in the City of West Lake Hills.

This agreement allows Google to begin applying for permits from the City to start constructing the backbone of their service. Once that work is complete, Google will begin signing up customers and running their last-mile infrastructure. While Google Fiber will utilize existing utility poles for the overhead installation, in other areas of the community they will generally be using micro-trenching technology. With this approach, they make a cut two inches wide that goes below the asphalt depth along the curb or edge of pavement in neighborhood streets. This allows them to run subsurface infrastructure faster with less disruptions to the public. Staff have reviewed the micro-trenching technique and have consented to its use.

Many may be excited by this announcement. Google hopes to open West Lake Hills signups by the end of 2023. Pending more detail on engineering efforts, the plan is to build the entire city in 2023. Once the build is complete, they would open the entire city for signups but the build out may be split up into 2 segments for signups; which would open at separate times.





# City of West Lake Hills City Council

## AGENDA REPORT

|               |                              |                  |            |
|---------------|------------------------------|------------------|------------|
| Meeting Date: | <u>March 8, 2023</u>         | Item Number:     | <u></u>    |
| Department:   | <u>Administration</u>        |                  |            |
|               | <u>Trey Fletcher,</u>        |                  |            |
| Prepared By:  | <u>City Administrator</u>    | Cost / Budget:   | <u>N/A</u> |
|               | <u>Resolution</u>            |                  |            |
| Exhibits:     | <u>Exhibit A - Agreement</u> | Source of Funds: | <u>N/A</u> |

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*Many folks will be excited by this announcement, but it should be noted that Google does not anticipate activating individual service for consumers until late 2023. The City has set up an information page at [roundrocktexas.gov/googlefiber](http://roundrocktexas.gov/googlefiber) to make sure folks are getting directed to the right location to get their questions answered about this new offering in Round Rock.*

## **RESOLUTION NO. 2023-03-01**

**WHEREAS**, Google Fiber Texas LLC (“Licensee”) desires to install, maintain, operate, and control a fiber optic infrastructure network (“FTTP Network”) within City of West Lake Hills public rights-of-way; and

**WHEREAS**, the City of West Lake Hills (“City” and “Licensor”) desires to permit Licensee to install, maintain, operate and control said FTTP Network within City public rights-of-way subject to certain terms and conditions; and

**WHEREAS**, the City and Licensee desire to enter into a Non-Exclusive License Agreement setting forth said terms and conditions related to Licensee’s use of City public rights-of-way.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of West Lake Hills, Texas,

That the Mayor is hereby authorized and directed to execute on behalf of the City the attached “Non-Exclusive License Agreement Between the City of West Lake Hills and Google Fiber Texas LLC for the Use of City Public Right-of-Way for Network Facility Installation,” a copy of same being attached hereto as Exhibit “A” and incorporated herein for all purposes.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

**PASSED & ADOPTED** this, the 8<sup>th</sup> day of March, 2023.

---

LINDA ANTHONY, Mayor  
City of West Lake Hills, Texas

ATTEST:

---

TERRY BLANCHARD, City Secretary



## NON-EXCLUSIVE PUBLIC ROW LICENSE AGREEMENT

This Non-Exclusive Public ROW License Agreement (“**Agreement**”) is by and between **City of West Lake Hills**, a Type A General Law city organized and existing under the laws of the State of Texas (“**City**”), and **Google Fiber Texas, LLC**, a Texas limited liability company, and its direct parent, and its direct parent’s subsidiaries, successors, or assigns (“**Licensee**”).

### RECITALS

- A. City has jurisdiction over the use of the public rights-of-way in City, which includes any public street, road, highway, alley, lane, court, boulevard, or other similar public rights-of-way, including related facilities such as medians, parkways, sidewalks, and signs, public way, or rights-of-way, now laid out or dedicated, and the space on, above or below it, and all extensions thereof, and additions thereto, under the jurisdiction of City (“**Public ROW**”).
- B. Licensee desires, and City desires to permit Licensee, to install, maintain, operate, and control a fiber optic infrastructure network in Public ROW (“**Network**”) for the purpose of offering communications services (“**Services**”), including broadband Internet access service as defined in 47 C.F.R. § 8.1(b) (“**Broadband Internet Services**”) and Voice over Internet Protocol services, but excluding multichannel video programming services that would be subject to a video services franchise and telecommunications services as defined in 47 C.F.R. § 153(53), to residents and businesses in City (“**Customers**”).
- C. The Network consists of equipment and facilities that may include aerial or underground fiber optic cables, lines, wires, or strands; underground conduits, vaults, access manholes and handholes; electronic equipment; power generators; batteries; pedestals; boxes; cabinets; vaults; and other similar facilities (“**Network Facilities**”).

### AGREEMENT

In consideration of the mutual promises made below, City and Licensee agree as follows:

#### 1. Permission to Use and Occupy.

- 1.1. Permission to Use and Occupy Public ROW. City grants Licensee permission to use and occupy the Public ROW (the “**License**”) for the purpose of constructing, installing, repairing, maintaining, operating, and if necessary removing the Network and the related Network Facilities (the “**Work**”). This Agreement and the License do not authorize Licensee to use any property other than the Public ROW as agreed herein. Licensee’s use of any other City property, including poles and conduits, will be governed under a separate Agreement regarding that use.
- 1.2. Subject to State and Local Law. This Agreement and the License are subject to City’s valid authority under state and local laws as they exist now or may be amended from time-to-time, and subject to the conditions set forth in this Agreement.
- 1.3. Subject to City’s Right to Use Public ROW. This Agreement and the License are subject and subordinate to City’s prior and continuing right to use the Public ROW,

including constructing, installing, operating, maintaining, repairing, or removing sewers, water pipes, storm drains, gas pipes, utility poles, overhead and underground electric lines and related facilities, and other public utility and municipal uses.

- 1.4. Subject to Pre-Existing Property Interests. City's grant of the License is subject to all valid pre-existing easements, restrictions, conditions, covenants, encumbrances, claims of title or other property interests that may affect the Public ROW. Licensee will obtain at its own cost and expense any permission or rights as may be necessary to accommodate such pre-existing property interests.
- 1.5. No Grant of Property Interest. The License does not grant or convey any property interest.
- 1.6. Non-Exclusive. The License is not exclusive. City expressly reserves the right to grant licenses, permits, franchises, privileges or other rights to any other individual, corporation, partnership, limited liability company, trust, joint stock company, business trust, unincorporated association, joint venture, governmental authority or other entity of any nature whatsoever ("**Person**"), as well as the right in its own name as a City, to use Public ROW for similar or different purposes allowed Licensee under this Agreement.
- 1.7. Non-Discrimination. Municipality's grant of the License shall be open, comparable, nondiscriminatory, and competitively neutral.
- 1.7. Compliance with City Ordinances. Licensee acknowledges that it is familiar with the requirements of the Code of Ordinances of the City of West Lake Hills, Chapter 34, Streets, Sidewalks and Other Public Ways, and agrees to comply with same, or any deviations from the Code authorized by the City and all other relevant ordinances of the City.

## **2. Licensee's Obligations.**

- 2.1. Individual Permits Required. Licensee will obtain City's approval of required individual encroachment, construction, and other necessary permits before placing its Network Facilities in the Public ROW or other property of City as authorized. Licensee will pay all lawful processing, field marking, engineering, and inspection fees associated with the issuance of individual permits by City.
- 2.2. Licensee's Sole Cost and Expense. Licensee will perform the Work at its sole cost and expense.
- 2.3. Compliance with Laws. Licensee will comply with all applicable laws and regulations when, including local laws and Edwards Aquifer development requirements while performing the Work. Licensee will place its Network Facilities in conformance with the required permits, plans, and drawings approved by City.



- 2.4. Reasonable Care. Licensee will exercise reasonable care when performing the Work and will use commonly accepted practices and equipment to minimize the risks of personal injury, property damage, soil erosion, and pollution of surface or groundwater.
- 2.5. No Nuisance. Licensee will maintain its Network Facilities in good and safe condition so that its Network Facilities do not cause a public nuisance.
- 2.6. Repair. Licensee will promptly repair any damage to the Public ROW, City property, or private property if such damage is directly caused by Licensee's Work and no other Person is responsible for the damage (e.g., where a Person other than Licensee fails to accurately or timely locate its underground facilities as required by applicable law). Licensee will repair the damaged property to a condition equal to or better than that which existed prior to the damage. Licensee's obligation under this Section 2.6 will be limited by, and consistent with, any applicable seasonal or other restrictions on construction or restoration work.
- 2.7. As-Built Drawings and Maps. Licensee will maintain accurate as-built drawings and maps of its Network Facilities located in City and will provide them to City upon reasonable request and on a mutually-agreed timetable (e.g., piecemeal following the closure of each permit, or all at once after all the Work is complete).
- 2.8. Network Design. Nothing in this Agreement requires Licensee to build to all areas of City, and Licensee retains the discretion to determine the scope, location, and timing of the design and construction of the Network.

### 3. City's Obligations.

- 3.1. Emergency Removal or Relocation by City. In the event of a public emergency that creates an imminent threat to the health, safety, or property of City or its residents, City may remove or relocate the applicable portions of the Network Facilities without prior notice to Licensee. City will, however, make best efforts to provide prior notice to Licensee before making an emergency removal or relocation. In any event, City will promptly provide to Licensee a written description of any emergency removals or relocations of Licensee's Network Facilities. Licensee will reimburse City for its actual, reasonable, and documented costs or expenses incurred for any such work performed by City, the direct cause of which was Licensee's construction, installation, operation, maintenance, repair, or removal of its Network Facilities. Licensee's obligation to reimburse City under this section will be separate from Licensee's obligation to pay the License Fee (as defined below).
- 3.2. Removal of Abandoned Network Facilities. If Licensee abandons any portions of its Network Facilities ("**Abandoned Network Facilities**"), Licensee will notify Municipality and will either remove the facilities at its own expense within a commercially reasonable period of time or may abandon some or all of the Abandoned Network Facilities in place. Abandoned Network Facilities do not include Network Facilities intended for emergency use, redundant Network Facilities, or Network Facilities intended to meet future demand or capacity needs.
- 3.2. Relocation to Accommodate Governmental Purposes. If Licensee's then-existing Network Facilities would interfere with City's use of the Public ROW or other City

property for a governmental purpose, such as the construction, installation, repair, maintenance, or operation of a new water, sewer, or storm drain line, or a public road or widening of same, curb, gutter, sidewalk, park, or recreational facility, Licensee will, upon written notice from City, relocate its Network Facilities at Licensee's own expense to such other location or locations in the Public ROW as may be mutually agreed by the parties, taking into account the needs of the City's governmental purpose and Licensee's interest in maintaining the integrity and stability of its Network. Licensee will relocate its Network Facilities within a commercially reasonable period of time agreed to by the parties, taking into account the urgency of the need for relocation, the difficulty of the relocation, and other relevant facts and circumstances, except that City may not require Licensee to relocate or remove its Network Facilities with less than one hundred eighty (180) days' notice.

- 3.3. Relocation to Accommodate Non-Governmental Purposes. If Licensee's then-existing Network Facilities would interfere with (a) City's planned use of the Public ROW for a non-governmental (e.g., commercial) purpose, or (b) a third-party's use of the Public ROW, Licensee will not be required to relocate its Network Facilities.
- 3.4. Non-Discrimination. City will at all times treat Licensee in a non-discriminatory manner as compared to other non-incumbent holders of local or state franchise authority offering facilities-based broadband Internet access services.
- 3.5.
- 3.6. Post-Removal Restoration of Public ROW. When removal or relocation is required under this Agreement, Licensee will, after the removal or relocation of the Network Facilities, at its own cost, repair and return the Public ROW in which the facilities were located to a safe and satisfactory condition in accordance with the construction-related conditions and specifications as established by City.

#### 4. Contractors and Subcontractors.

- 4.1. Use of Contractors and Subcontractors. Licensee may retain contractors and subcontractors to perform the Work on Licensee's behalf.
- 4.2. Contractors to be Licensed. Licensee's contractors and subcontractors used for the Work will be properly licensed under applicable law.
- 4.3. Authorized Individuals. Licensee's contractors and subcontractors may submit individual permit applications to City on Licensee's behalf, so long as the permit applications are signed by individuals that Licensee has authorized to act on its behalf via a letter of authorization provided to City in the form attached as **Exhibit A** ("**Authorized Individuals**"). City will accept permit applications under this Agreement submitted and signed by Authorized Individuals, and will treat those applications as if they had been submitted by Licensee under this Agreement.

5. License Fee. Licensee will pay City a fee ("**License Fee**") to compensate City for Licensee's use and occupancy of Public ROW pursuant to the License. Licensee and City acknowledge and agree that the License Fee provides fair and reasonable compensation for Licensee's use and occupancy of Public ROW and other City property as authorized. The



License Fee will begin accruing on the Effective Date (as defined herein) and will be calculated as set forth in Section 5.1.

5.1. License Fee. Licensee will pay City one percent (1%) (the “**Revenue Percentage**”) of Gross Revenues for a calendar quarter, remitted within forty five (45) days of the end of each calendar quarter, commencing on the first date on which Licensee receives any Gross Revenues (as defined below). The payment will be accompanied by a report showing the basis for the computation and such other relevant facts as may be required by City to determine the accuracy of the payment.

5.1.1. As used herein, “**Gross Revenues**” means all consideration of any kind or nature, including without limitation, cash, credits, property, and in-kind contributions (services or goods) received by Licensee from Customers for Broadband Internet Services that are provided to Customers through Network Facilities located at least in part in Public ROW.

5.1.2. Gross Revenues do not include:

- (i) any revenue not actually received, even if billed, such as bad debt;
- (ii) refunds, rebates, or discounts made to end-Customers, or City;
- (iii) revenue received from the sale of Broadband Internet Services for resale in which the purchaser is required to collect and remit similar fees from the purchaser’s customer;
- (iv) revenue derived from the provision of Broadband Internet Services to Customers where none of the Network Facilities used to provide such Broadband Internet Services are located in Public ROW;
- (v) any forgone revenue from Licensee’s provision of Broadband Internet Services to Customers at no charge if required by state law;
- (vi) any revenue derived from advertising;
- (vii) any revenue derived from Services other than Broadband Internet Services, including without limitation, any revenue derived from rental of modems or other equipment used to provide or facilitate the provision of the Broadband Internet Services;
- (viii) any revenue derived from referral or marketing agreements with third party providers of online services which Licensee may make available to Customers;
- (ix) any tax of general applicability imposed upon Licensee or its Customers by City or by any state, federal, or any other governmental entity, and required to be collected by Licensee and remitted to the taxing entity (including but not limited to sales and use tax, gross receipts tax, excise tax, utility users tax, public service tax, communications taxes, and fees not imposed by this Agreement);

- (x) any forgone revenue from Licensee's provision, in Licensee's discretion, of free or reduced cost Broadband Internet Services to any Person, including without limitation employees of Licensee; provided, however, that any forgone revenue which Licensee chooses not to receive in exchange for trades, barter, services, or other items of value will be included in Gross Revenues; and
- (xi) sales of capital assets or sales of surplus equipment.

5.2. Pass Through. Licensee may identify and collect, as a separate item on the regular bill of any Customer whose Broadband Internet Services are provided by Network Facilities located at least in part in Public ROW, that Customer's pro rata amount of the License Fee.

5.3. Interest on Late Payments. Any payments that are due and payable under this Agreement that are not received within sixty (60) days from the specified due date will be assessed interest at an annual rate equal to the prevailing commercial prime interest rate in effect upon the due date.

5.4. Change in Law. Notwithstanding anything to the contrary herein, in the event of a change in applicable law that (i) prohibits collection by any City or franchising authority of any fee, including franchise fees, from any provider of video programming or communications services, including broadband Internet services, or (ii) reduces the percentage of revenue on which the fee, including franchise fee, paid by any provider of video programming or communications services is based to a percentage that is lower than the Revenue Percentage, then Licensee will have no obligation to pay the Licensee Fee or to pay a Licensee Fee based on the Revenue Percentage, as the case may be. In the case of a reduction in the percentage of revenue on which such fees may be based, the Revenue Percentage will be commensurately reduced.

## 6. Defense and Indemnity.

6.1. Obligations. Licensee will defend City, its officers, elected representatives, and employees, and indemnify them against any (a) settlement amounts approved by Licensee; and (b) damages and costs finally awarded against the indemnified party by a competent tribunal in any legal proceeding filed by a third party for property damage, personal injury, or death to the extent caused by the gross negligence or willful misconduct of Licensee or its contractors arising from this Agreement ("**Third Party Legal Proceeding**").

6.2. Exclusions. Section 6 (Defense and Indemnity) will not apply to the extent the underlying allegation (a) arises from or is related to the negligence or willful misconduct of an indemnified party or (b) is made by City's employee and covered under applicable workers' compensation laws.

6.3. Conditions. Section 6.1 (Obligations) is conditioned on the following: (a) City must promptly notify Licensee in writing of the Third Party Legal Proceeding and any allegation(s) that preceded the Third Party Legal Proceeding no later than fifteen (15)



days after City became aware of the Third Party Legal Proceeding; (b) City must reasonably cooperate in the defense at Licensee's request; and (c) City must tender sole control of the indemnified portion of the Third Party Legal Proceeding to Licensee, subject to the following: (i) City may appoint its own non-controlling counsel, at its own expense; and (ii) any settlement requiring City to admit liability, pay money, or take (or refrain from taking) any action, will require City's prior written consent, not to be unreasonably withheld, conditioned, or delayed.

**7. Limitation of Liability.** NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES IN CONNECTION WITH THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THIS LIMITATION WILL BE SUBJECT TO AND MAY BE LIMITED BY APPLICABLE LAW.

**8. Performance Bond.** Licensee will, promptly after the Effective Date, provide City with a performance bond in the amount of ten thousand dollars (\$10,000) naming City as obligee and guaranteeing Licensee's faithful performance of its obligations under this Agreement. The performance bond will remain in full force during the Term of this Agreement.

**9. Insurance.**

9.1. Licensee will carry and maintain:

9.1.1. Commercial General Liability (CGL) insurance, with policy limits not less than \$2,000,000 in aggregate and \$2,000,000 for each occurrence covering bodily injury and property damage, and \$5,000,000 umbrella coverage with the following features: (a) CGL primary insurance endorsement; and (b) CGL policy will include an endorsement which names City, its employees, and officers as additional insureds.

9.1.2. Workers' Compensation insurance with policy limits not less than the City's requirements.

9.2. All insurance certificates, endorsements, coverage verifications and other items required pursuant to this Agreement will be mailed directly to City's insurance compliance representative upon City's written request.

**10. Term.** This Agreement is effective on the later of (a) the date the last party to sign executes this Agreement and (b) the date on which any implementing ordinance becomes effective in accordance with its terms and state law ("**Effective Date**"). The Agreement will expire automatically on the twentieth anniversary of the Effective Date ("**Original Term**"), unless earlier terminated in accordance with the provisions herein. Thereafter, the Agreement will automatically renew for successive 5-year terms (each a "**Renewal Term**") unless a party provides at least six (6) months' prior written notice to the other party of its intent not to renew.

**11. Termination.**

11.1. Termination by City. City may terminate this Agreement if Licensee is in material breach of the Agreement, provided that City must first provide Licensee written notice of the breach and one hundred eighty (180) days to cure, unless the cure cannot

reasonably be accomplished in that time period, in which case Licensee must commence its efforts to cure within that time period and the cure period will continue as long as such diligent efforts continue. No termination under this paragraph will be effective until the relevant cure period has expired.

11.2. Termination by Licensee. Licensee may terminate this Agreement for convenience upon one hundred eighty (180) days' written notice to City.

**12. Assignment.** Except as set forth below, neither party may assign or transfer its rights or obligations under this Agreement, in whole or part, to a third party, without the written consent of the other party. Any agreed upon assignee will take the place of the assigning party, and the assigning party will be released from all of its rights and obligations upon such assignment.

12.1. Notwithstanding the foregoing, Licensee may at any time, on written notice to City, assign this Agreement or any or all of its rights and obligations under this Agreement:

12.1.1. to any Affiliate (as defined below) of Licensee;

12.1.2. to any successor in interest of Licensee's business operations in City in connection with any merger, acquisition, or similar transaction if Licensee determines after a reasonable investigation that the successor in interest has the resources and ability to fulfill the obligations of this Agreement; or

12.1.3. to any purchaser of all or substantially all of Licensee's Network Facilities in City if Licensee determines after a reasonable investigation that the purchaser has the resources and ability to fulfill the obligations of this Agreement.

12.2. Following any assignment of this Agreement to an Affiliate, Licensee will remain responsible for such Affiliate's performance under the terms of this Agreement. For purposes of this section, (a) "Affiliate" means any Person that now or in the future, directly or indirectly controls, is controlled with or by, or is under common control with Licensee; and (b) "control" means, with respect to: (i) a U.S. corporation, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof, or (ii) a non-U.S. corporation, if the voting power to elect directors thereof is less than fifty percent (50%), the maximum amount allowed by applicable law; and (iii) any other Person, fifty percent (50%) or more ownership interest in said Person, or the power to direct the management of such Person.

**13. Notice.** All notices related to this Agreement will be in writing and sent, if to Licensee to the email addresses set forth below, and if to City to the address set forth in City's signature block to this Agreement. Notices are effective (a) when delivered in person, (b) upon confirmation of a receipt when transmitted by electronic mail, (c) on the next business day if transmitted by registered or certified mail, postage prepaid (with confirmation of delivery), (d) on the next business day if transmitted by overnight courier (with confirmation of delivery), or (e) three (3) days after the date of mailing, whichever is earlier.

Licensee's e-mail address for notice is [googlefibernotices@google.com](mailto:googlefibernotices@google.com), with a copy to [legal-notices@google.com](mailto:legal-notices@google.com).



**14. General Provisions.** This Agreement is governed by the laws of the state of Texas. Neither party will be liable for failure or delay in performance to the extent caused by circumstances beyond its reasonable control. This Agreement sets out all terms agreed between the parties and supersedes all previous or contemporaneous agreements between the parties relating to its subject matter. This Agreement, including any exhibits, constitutes the entire agreement between the parties related to this subject matter, and any change to its terms must be in writing and signed by the parties. The parties may execute this Agreement in counterparts, including facsimile, PDF, and other electronic copies, which taken together will constitute one instrument. Each party to this Agreement agrees that Licensee may use electronic signatures.

*[Signature page follows]*

Signed by authorized representatives of the parties on the dates written below.

**Google Fiber Texas, LLC**

**City of West Lake Hills**

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
Linda Anthony, Mayor

\_\_\_\_\_  
(Title)

Address:  
1600 Amphitheatre Parkway  
Mountain View, CA 94043

Address:  
911 Westlake Drive  
West Lake Hills, TX 78746

Date: \_\_\_\_\_

Date: \_\_\_\_\_



**EXHIBIT A  
FORM OF LETTER OF AUTHORIZATION**

**[LICENSEE LETTERHEAD]**

**[Date]**

Via Email (**[Email Address]**)

West Lake Hills

**[Addressee]**

**[Address]**

Re: **[Amended]** Letter of Authorization

Dear **[Name]**,

In accordance with Section 4.3 of the Non-Exclusive Public ROW License Agreement dated **[ ]** between the **City of West Lake Hills** and **Google Fiber Texas, LLC** ("**Google Fiber**"), Google Fiber hereby designates the following Authorized Individuals (as that term is defined in the Agreement), who may submit and sign permit applications and other submissions to the City on behalf of Google Fiber. **[If applicable: This letter amends and supersedes the Letter of Authorization dated **[ ]**.]**

***[Insert name and title for each Authorized Individual, including any Authorized Individual previously named and whose authority continues. Strike through the names of any individuals who are no longer authorized, if any.]***

1. **Name, Title**
2. **Name, Title**
3. **Name, Title (previously authorized, authorization continues)**
4. **Name, Title (authorization withdrawn)**

This authorization may be withdrawn or amended and superseded by a written amendment to this Letter of Authorization, which will be effective 24 hours after receipt by the City.

Kind regards,

**[Name]**

Manager, Google Fiber Texas, LLC



# City of West Lake Hills City Council

## AGENDA REPORT

|               |                           |                  |                                 |
|---------------|---------------------------|------------------|---------------------------------|
| Meeting Date: | <u>March 8, 2023</u>      | Item Number:     | <u></u>                         |
| Department:   | <u>Administration</u>     |                  |                                 |
|               | <u>Trey Fletcher,</u>     |                  |                                 |
| Prepared By:  | <u>City Administrator</u> | Cost / Budget:   | <u>\$687,116.18</u>             |
|               |                           |                  | <u>Contingency Fund Reserve</u> |
| Exhibits:     | <u>None.</u>              | Source of Funds: | <u>Brush Pickup Reserve</u>     |

### Subject

Discuss and consider action on a report from the city administrator regarding contracts and expenditures for debris and brush removal services associated with Winter Storm Mara.

### Recommendation

No action is needed with this report; however, a budget amendment will be needed later. Staff also recommends ceasing the debris collection efforts on March 18.

### Discussion

Collection of vegetative debris and brush from the city's public rights-of-way remains on going. The two locations for brush collection are at capacity. Additional collection sites have been established by Travis County for resident use. Residents can also utilize Mansfield Dam Park, located at 4370 Mansfield Dam Park Rd. Austin, TX 78732. Also available is Austin Water's Hornsby Bend Biosolids Management Plant at 2210 FM 973 Austin, TX 78725.

To date, the City of West Lake Hills has incurred \$687,116.18 in invoiced expenses associated with debris collection and disposal due to Winter Storm Mara.

Funding to support these efforts is derived from the funds identified below, but a budget amendment will be needed as the efforts continue to remove debris.

The Contingency Fund Reserve had a balance of \$500,000.00 and the Brush Pickup Reserve had a balance \$200,000.00 from which to draw from.





# City of West Lake Hills City Council

## AGENDA REPORT

|               |                                        |                  |                     |
|---------------|----------------------------------------|------------------|---------------------|
| Meeting Date: | <u>March 8, 2023</u>                   | Item Number:     | <u>7</u>            |
| Department:   | <u>Administration</u>                  |                  |                     |
| Prepared By:  | <u>Ashby Grundman</u>                  | Cost / Budget:   | <u>Variable</u>     |
| Exhibits:     | <u>Professional Services Agreement</u> | Source of Funds: | <u>General Fund</u> |

### Subject

Discuss and consider action to approve a professional services agreement with Walter P. Moore to serve as the City Engineer.

### Recommendation

Staff recommends approval of the professional services agreement as presented.

### Discussion

At the February 8, 2023 City Council meeting, the city administrator was authorized to negotiate a professional services agreement scope and fee with Walter P. Moore. The attached professional services agreement with a general scope and fee schedule have been reviewed and recommended for approval.

Staff met with Susan Turrieta, who will be the city engineer to discuss priorities and workload. There are several items that were discussed, including reducing turnaround time on plan reviews, exploring opportunities and creative solutions for wastewater service, especially in the commercial corridor, and becoming integrated with the community to better serve the residents of West Lake Hills.

THE STATE OF TEXAS §  
COUNTY OF TRAVIS §

CITY OF WEST LAKE HILLS, TEXAS  
**PROFESSIONAL SERVICES CONTRACT**

THIS PROFESSIONAL SERVICES CONTRACT ("Contract") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between the City of West Lake Hills, Travis County, Texas, a Type A General Law municipal corporation, ("City"), whose address is: 911 Westlake Drive, West Lake Hills, Texas 78746 and Walter P Moore ("Engineer/Engineer"), whose address is 401 South 1<sup>st</sup> Street, Suite 600, Austin, Texas 78704.

**W I T N E S S E T H:**

That in consideration of the terms and conditions contained herein the parties do mutually agree as follows:

I.

Engineering Services

Engineer shall perform all services under this Contract to the prevailing professional standards consistent with the level of care and skill ordinarily exercised by members of the engineering professions, both public and private, currently practicing in the same locality under similar conditions, including reasonable, informed judgments and prompt, timely action. If Engineer is representing that he/she has special expertise in one or more areas to be utilized in this Contract, then Engineer agrees to perform those special expertise services to the appropriate local, regional or national professional standards. Engineer shall provide the services, as needed and when needed, related to engineering related services ("Base Services") as generally described in the attached Exhibit A, which is incorporated herein for all purposes. Additional Services, if applicable and as defined below may also be required and such Base and Additional Services may be collectively referred to as the "Project" or the "Work".

If Engineer determines that services outside the scope of Exhibit A ("Additional Services") are required or recommended, or that Engineer is being asked by City to perform services not covered by Exhibit A or by previously approved amendments to this Contract, Engineer shall notify City that such services are Additional Services, the cost associated with their performance and shall receive approval to perform such Additional Services prior to undertaking them. Any provision in this Contract to the contrary notwithstanding, City shall not be liable to Engineer for the payment of any Additional Services, unless the City and Engineer have entered into a written amendment to this Contract which identifies the services to be performed as Additional Services, and states the cost, or a not-to-exceed amount, for such services prior to the commencement of such Additional Services. Additional Services shall be calculated at the professional rates listed in Exhibit B.

II.

Compensation to Engineer

**COMPENSATION:** City agrees to pay Engineer for all services outlined in Section I. Payments shall be made on a flat fee and on an hourly fee basis per the rates and in the manner



indicated in Exhibit B as part of this Contract. Exhibit B is hereby incorporated herein for all purposes. Prior to the performance of any services, other than for services provided under the flat fee, Engineer shall prepare a budget and scope of work (“Work Order Approval”) for such services and shall receive written approval from City prior to commencement of such services. Engineer shall not be entitled to receive compensation for any services performed by Engineer if the Work Order Approval is not approved prior to commencement of such work.

Payments to Engineer will be made by City from invoices submitted by the Engineer and shall be based on the percentage of the work performed, or the number of hours expended, as applicable, by the Engineer on the Project as of the date of the invoice. Invoices shall itemize the services performed for each Base Services, Additional Services and expenses, as applicable. Invoices shall not be submitted more frequently than one time per month. Invoices are due and payable thirty (30) days after receipt by the City.

### III.

#### Timely Completion of Professional Services.

The Engineer shall make all reasonable efforts to complete assigned duties and tasks in a timely manner. For all services related to the Project, and on at least a Weekly Basis, the Engineer shall provide a Schedule of the tasks that have been completed and the percentage of the Project that is remaining, and any obstacles that may cause a delay in completing professional services related to the Project.

### IV.

#### Engineer’s Coordination with Owner

Engineer shall be available for conferences with City, or its Project Representative, so that the Work can be designed and managed with the full benefit of City’s experience and knowledge of existing needs and facilities and be consistent with current policies and construction standards. City shall make available to Engineer all existing plans, maps, field notes, and other data in its possession relative to the Work. Engineer may show justification to City for changes in design from City standards due to the judgment of said Engineer of a cost savings to City and/or due to the surrounding topographic and geological conditions. City shall make the final decision as to any changes after appropriate request by Engineer.

Engineer shall accompany City representatives on Project or Work observation visits during construction at appropriate frequencies to ensure the Work is progressing based on Engineer’s plans and specifications. City may require more frequent construction observation visits if construction problems arise as a result of Project design.

### V.

#### Contract Termination Provision

This Contract may be terminated at any time by City for any cause without penalty or liability except as may otherwise be specified herein. Upon receipt of written notice by City,

Engineer shall immediately discontinue all services and Engineer shall immediately terminate placing orders or entering into contracts for supplies, assistance, facilities or materials in connection with this Contract and shall proceed to cancel promptly all existing contracts insofar as they are related to this Contract. As soon as practicable after receipt of notice of termination, Engineer shall submit a statement showing in detail the services performed but not paid for under this Contract to the date of termination. City shall then pay Engineer promptly the accrued and unpaid services to the date of termination, to the extent the services are approved by City.

This Contract may be terminated by Engineer with thirty (30) days prior written notice to the City at any time for any cause without penalty or liability except as may otherwise be specified herein. Engineer shall submit written notice to terminate Contract and shall submit to City all plans and documents relative to the design of the Project or related to the Work. City shall then ascertain cost to complete the balance of the work under this Contract. If the cost to complete the balance of the work as described in the scope of work under Exhibit A is greater than the unpaid contract amount, City shall retain all unpaid balances and, in addition, Engineer shall pay directly to City the difference in the unpaid balance and the cost to complete the Work. In no case shall City pay Engineer any additional monies other than those previously paid under the Contract. Engineer shall not be held liable for any direct or indirect costs associated with the balance of work to be performed under this contract.

## VI.

### Ownership of Documents

Copies of the construction documents, both electronic and hard copy, prepared by the Engineer under this Contract shall become the property of the City and shall be delivered to the City, without restriction on future use. Drawings and specifications shall be submitted to City in both hard copy and usable electronic formats. Engineer shall retain in its files all original drawings, specifications and all other pertinent information for the Work. Engineer shall have no liability for changes made to drawings, specifications, and other documents by other Engineers subsequent to the completion of the Work. City shall require that any such change be sealed, dated, and signed by the Engineer making that change and shall be appropriately marked to reflect what was changed or modified.

The Engineer shall retain ownership of all original electronic files, specifications, and other Consulting documents for the project(s) included in this Contract. Engineer may utilize such documents for any future use, whether related to City, or another entity.

## VII.

### Insurance

The Engineer shall procure, pay for, and maintain during the term of this Contract, with a company authorized to do business in the State of Texas and otherwise acceptable to the City, the minimum insurance coverage described below.



Engineer agrees to carry and maintain insurance in the following types and amounts for the duration of this Contract as follows:

(a) Commercial General Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence and \$2,000,000 general aggregate for bodily injury and property damage, which coverage shall include products/completed operations (\$1,000,000 products/completed operations aggregate), and XCU (Explosion, Collapse, Underground) hazards. Coverage must be written on an occurrence form. Contractual Liability must be maintained covering the Consultants obligations contained in the Agreement.

(b) Workers Compensation insurance at statutory limits, including Employers Liability coverage with minimum limits of \$1,000,000 each-occurrence each accident/\$1,000,000 by disease each-occurrence/\$1,000,000 by disease aggregate.

(c) Commercial Automobile Liability insurance with minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including owned, non-owned, and hired car coverage.

(d) Errors & Omissions coverage and the following conditions will apply:

(1) Professional Liability with minimum limits of \$1,000,000 or higher.

(2) This coverage must be maintained for at least two (2) years after the Work is completed. If coverage is written on a claims-made basis, a policy retroactive date equivalent to the inception date of the Agreement (or earlier) must be maintained during the full term of the Agreement.

PLEASE NOTE: The required limits may be satisfied by any combination of primary, excess, or umbrella liability insurances, provided the primary policy complies with the above requirements and the excess umbrella is following the requirements herein stated. The Engineer may maintain reasonable and customary deductibles, subject to approval by the City.

(e) Any Subconsultant(s) hired by the Engineer shall maintain insurance coverage equal to that required of the Engineer. It is the responsibility of the Consultant to assure compliance with this provision. The City accepts no responsibility arising from the conduct, or lack of conduct, of the Subconsultant.

(f) A Comprehensive General Liability insurance form may be used in lieu of a Commercial General Liability insurance form. In this event, coverage must be written on an occurrence basis, at limits of \$1,000,000 for each occurrence, combined single limit, and coverage must include a broad form Comprehensive General Liability Endorsement, products/completed operations, XCU hazards (for engineering and architects), and contractual liability.

(g) With reference to the foregoing insurance requirement, Consultant shall specifically

endorse applicable insurance policies as follows:

- (1) The City shall be named as an additional insured with respect to General Liability and Automobile Liability.
- (2) All liability policies shall contain no cross-liability exclusions or insured versus insured restrictions.
- (3) A waiver of subrogation in favor of the City shall be contained in the Workers Compensation coverage, and all liability policies.
- (4) All insurance policies shall be endorsed to require the insurer to immediately notify the City of any material change in the insurance coverage.
- (5) All insurance policies shall be endorsed to the effect that the City will receive at least thirty- (30) days' notice prior to cancellation or non-renewal of the insurance.
- (6) All insurance policies, which name the City as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
- (7) Required limits may be satisfied by any combination of primary and umbrella liability insurances.
- (8) Consultant may maintain reasonable and customary deductibles, subject to approval by the City.
- (9) Insurance must be purchased from insurers that are financially acceptable to the City and authorized to conduct business in the State of Texas.
- (10) Power of Attorney forms must name a Texas resident.

(h) All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing and warranting the following:

- (1) Sets forth all endorsements and insurance coverages according to requirements and instructions contained herein.
- (2) Shall specifically set forth the notice-of-cancellation or termination provisions to the City.

(i) Upon request, Engineer shall furnish the City with certified copies of all insurance policies.

(j) All Engineers and Subconsultants must meet minimum OSHA safety requirements as applicable to their operations.

#### VIII. Monies Withheld

When City has reasonable grounds for believing that:



- A. Engineer will be unable to perform this Contract fully and satisfactorily within the time fixed for performance; or
- B. A claim exists or will exist against Engineer or City arising out of the negligence of the Engineer or the Engineer's breach of any provision of this Contract; then

City may withhold payment of any amount otherwise due and payable to Engineer under this Contract. Any amount so withheld may be retained by City for that period of time as it may deem advisable to protect City against any loss and may, after written notice to Engineer, be applied in satisfaction of any claim described herein. This provision is intended solely for the benefit of City, and no other person or entity shall have any right or claim against City by reason of City's failure or refusal to withhold monies. No interest shall be payable by City on any amounts withheld under this provision. This provision is not intended to limit or in any way prejudice any other right of City.

#### IX.

##### No Damages for Delays

Notwithstanding any other provision of this Contract, Engineer shall not be entitled to claim or receive any additional compensation as a result of or arising out of any delay, hindrance, disruption, force majeure, impact or interference, foreseen or unforeseen without prior written concurrence between City and Engineer.

#### X.

##### Right to Inspect Records

Engineer agrees that City shall have access to and the right to examine directly any pertinent books, documents, papers and records of Engineer involving transactions relating to this Contract. Engineer agrees that City shall have access during normal working hours to all necessary Engineer facilities and shall be provided adequate and appropriate workspace in order to conduct audits in compliance with the provisions of this section. City shall give Engineer reasonable advance notice of intended audits.

Engineer further agrees to include in subcontract(s), if any, a provision that any subconsultant of Engineer agrees that City shall have access to and the right to examine any directly pertinent books, documents, papers and records of such Engineer or subconsultant involving transactions to the subcontract, and further, that City shall have access during normal working hours to all Engineer or subconsultant facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this paragraph. City shall give the Engineer or subcontractor reasonable advance notice of intended audits.

XI.  
No Third-Party Beneficiary

For purposes of this Contract, including its intended operation and effect, the parties (City and Engineer) specifically agree and contract that: (1) the Contract only affects matters/disputes between the parties to this Contract, and is in no way intended by the parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with City or Engineer or both; and (2) the terms of this Contract are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either City or Engineer.

XII.  
Successors and Assigns

City and Engineer each bind itself and their respective successors, executors, administrators and assigns to the other party of this Contract and to the successor, executors, administrators and assigns of such other party in respect to all covenants of this Contract. Neither City nor Engineer shall assign or transfer its interest herein without the prior written consent of the other.

XIII.  
Engineer's Liability

Acceptance of any final plans by City shall not constitute nor be deemed a release of the responsibility and liability of Engineer, its employees, associates, agents or Engineers for the accuracy and competency of their designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility by City for any defect in the designs, working drawings, specifications, or other documents and work; nor shall such acceptance be deemed an assumption of responsibility or liability by City for any defect in the designs, working drawings, specifications, or other documents prepared by said Engineer, its employees, subcontractor, agents and Engineers.

XIV.  
Indemnification

TO THE FULLEST EXTENT PERMITTED BY LAW, ENGINEER SHALL AND DOES HEREBY AGREE TO INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL DAMAGES, LOSS OR LIABILITY OF ANY KIND, WHATSOEVER, BY REASON OF DEATH OR INJURY TO PROPERTY OR THIRD PERSONS CAUSED BY THE NEGLIGENT ACT OR OMISSION OF ENGINEER, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES OR OTHER PERSONS FOR WHOM IT IS LEGALLY LIABLE, WITH REGARD TO THE PERFORMANCE OF THIS CONTRACT, AND ENGINEER SHALL, AT ITS COST AND EXPENSE, DEFEND, PAY ON BEHALF OF, AND PROTECT THE CITY AND ITS



OFFICERS, AGENTS, AND EMPLOYEES AGAINST ANY AND ALL SUCH CLAIMS AND DEMANDS.

XV.  
Severability

If any of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants, or conditions of this Contract are for any reason held to be invalid, void or unenforceable, the remainder of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants, or conditions of this Contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

XVI.  
Conflict of Interest

A. Chapter 176 of the Local Government Code requires businesses conducting business activity with the City to file a “Conflict Disclosure Statement,” and the Engineer shall complete such Statement and it shall be on file with the City, with the Statement to be updated as necessary.

Received on: *Received with SOQ, 1/12/2023* (Staff use only)

B. The Engineer, when performing all services under this Contract, shall devote itself to the professional duties and services required by the City. A “conflict of interest” condition exists when another Client of the Engineer proposes that the Engineer engage in professional services for a project or development that is under the auspices and authority of the City of West Lake Hills and such development will connect to or prosper from the Project that is the subject of this Contract. The Engineer shall refrain from those situations that create an actual conflict of interest or the appearance of same. However, if such a situation is unavoidable, then Engineer shall withdraw from this Contract so that City can identify and utilize another Engineer without delay or hindrance. Engineer should also review and comply with the West Lake Hills Ethics Ordinance set out in Article 2.05 Ethics of the Code of Ordinances.

XVII.  
Gift to a Public Servant

The City may immediately terminate this Contract if the Engineer offers or agrees to confer any benefit on a City employee or official that the City employee or official is prohibited by law from accepting. “Benefit” means anything reasonably regarded as pecuniary gain or pecuniary advantage; “Benefit” does not mean purchase, by the Engineer, of a meal (breakfast, lunch, or dinner) for employee or official in the course of regular business activity. Notwithstanding any other legal remedies, City may require Engineer to remove any employee of Engineer from the Project who has violated the restrictions of this section or any similar State or Federal Law and obtain reimbursement for any expenditures made as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

XVIII.  
Governing Law and Legal Construction

A. This Contract shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

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

XIX.  
Independent Contractor

Engineer covenants and agrees that he/she is an independent contractor, and not an officer, agent, servant or employee of City; that Engineer shall have exclusive control of and exclusive right to control the details of the Work performed hereunder, and all persons performing same, and shall be liable for the acts and omissions of its officers, agents, employees, contractors, subcontractors and Engineers; that the doctrine of respondent superior shall not apply as between City and Engineer, its officers, agents, employees, contractors, subcontractors and Engineers, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Engineer.

XX.  
Disclosure

By signing this Contract, Engineer acknowledges to City that he/she has made a full disclosure in writing of any existing conflicts of interest or potential conflicts of interest, including personal financial interests, direct or indirect, in property abutting the proposed Project and business relationships with abutting property owners. Engineer further agrees that it shall make disclosure in writing of any conflicts of interests which develop subsequent to the signing of this Contract and prior to payment under the Contract.

XXI.  
Venue

The parties to this Contract agree and covenant that this Contract shall be enforceable in West Lake Hills, Texas; and that if legal action is necessary to enforce this Contract, exclusive venue shall lie in Travis County, Texas.



XXII.  
Entire Agreement

This Contract embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties relating to matters herein; and except as otherwise provided herein, cannot be modified without written agreement of the parties.

XXIII.  
Applicable Law

This Contract is entered into subject to the ordinances of the City, as they may be amended from time to time, and is subject to and is to be construed, governed, and enforced under all applicable State of Texas and federal laws. Situs of this Contract is agreed to be Travis County, Texas, for all purposes, including performance and execution.

XXIV.  
Default

If at any time during the term of this Contract, Engineer shall fail to commence the Work in accordance with the provisions of this Contract or fails to diligently provide services in an efficient, timely, and careful manner and in strict accordance with the provisions of this Contract or fails to use an adequate number or quality of personnel or equipment to complete the Work or fails to perform any of its obligations under this Contract, then City shall have the right, if Engineer does not cure any such default after thirty (30) days written notice thereof, to terminate this Contract and complete the work in any manner it deems desirable, including engaging the services of other parties thereof. Any such act by City shall not be deemed a waiver of any other right or remedy of City. If after exercising any such remedy, the cost to City of the performance of the balance of the work, as defined in Exhibit A, is in excess of that part of the contract sum which has not therefore been paid to Engineer hereunder, Engineer shall be liable for and shall reimburse City for such excess.

XXV.  
Headings

The headings of this Contract are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

XXVI.  
Non-Waiver

It is further agreed that one (1) or more instances of forbearance by City in the exercise of its rights herein shall in no way constitute a waiver thereof.

XXVII.  
Remedies

No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Contract may be waived without consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Contract.

XXVIII.  
Equal Employment Opportunity

Engineer shall not discriminate against any employee or applicant for employment because of race, age, color, religion, sex, ancestry, national origin, place of birth or disability. Engineer shall take action to ensure that applicants are employed and treated without regard to their race, age, color, religion, sex, ancestry, national origin, place of birth or disability. This action shall include, but not be limited to: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship.

XXIX.  
Construction of Contract

Both parties have participated fully in the review and revision of this Contract. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Contract.

XXX.  
Notices

All notices, communications, and reports required or permitted under this Contract shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until either party is otherwise notified in writing by the other party, at the following addresses. Mailed notices shall be deemed communicated as of five (5) days after mailing regular mail.

If intended for City, to:

City of West Lake Hills  
Attn: City Administrator  
West Lake Hills, Texas 78746  
Email: cityadmin@westlakehills.gov

If intended for Engineer, to:

Walter P Moore



Attn: Susan Turrieta  
401 South 1<sup>st</sup> Street, Suite 600  
Austin, Texas 78704

XXXI.  
Warranty

To the extent allowed by law, Engineer warrants that all Work will be performed to the professional services standard indicated in Section I. of this Contract.

XXXII.  
Attorney Fees

In the event any party to this Contract should bring suit against the other party with respect to any matters provided for in this Contract, the prevailing party shall be entitled to recover from such other party its costs of court, legal expenses and reasonable attorneys' fees in connection with such suit.

XXXIII.  
Miscellaneous

Governmental Powers; Waivers of Immunity. By its execution of this Agreement, the City does not waive or surrender any of its respective governmental powers, immunities, or rights except as provided in this section. The Parties acknowledge that the City waives its sovereign immunity as to suit solely for the purpose of adjudicating a claim under this Agreement. This is an agreement for the provision of goods or services to the City under Section 271.151 et seq. of the Texas Local Government Code.

No Third-Party Beneficiary. For purposes of this Agreement, including its intended operation and effect, the parties (City and Engineer) specifically agree and contract that: (1) the agreement only affects matters/disputes between the parties to this agreement, and is in no way intended by the parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with City or Engineer or both; and (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either City or Engineer.

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

Iran, Sudan and Foreign Terrorist Organizations. Engineer represents that neither it nor

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any of its parent company, wholly-or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website: <https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>, <https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or <https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>. The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes Engineer and each of its parent company, wholly-or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. Engineer understands "affiliate" to mean any entity that controls, is controlled by, or is under common control with Engineer and exists to make a profit.

Form 1295. Submitted herewith is a completed Form 1295 in connection with Engineer's participation in the execution of this Agreement generated by the Texas Ethics Commission's (the "TEC") electronic filing application in accordance with the provisions of Section 2252.908 of the Texas Government Code and the rules promulgated by the TEC (the "Form 1295"). The City hereby confirms receipt of the Form 1295 from Engineer, and the City agrees to acknowledge such form with the TEC through its electronic filing application not later than the 30th day after the receipt of such form. Engineer and the City understand and agree that, with the exception of information identifying the City and the contract identification number, neither the City nor its employees or representatives are responsible for the information contained in Form 1295; that the information contained in the Form 1295 has been provided solely by Engineer and the City has not verified such information.

#### Boycotts.

(a) Engineer hereby verifies that they and their parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to enable the City to comply with Section 2274.002 (as added by Senate Bill 13 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, and to the extent such Section does not contravene applicable Texas or federal law. As used in the foregoing verification, "boycott energy companies" shall mean, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by (A) above.

(b) The Engineer hereby verifies that they and their parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and



will not discriminate against a firearm entity or firearm trade association during the term of this Agreement. The foregoing verification is made solely to enable the City to comply with Section 2274.002 (as added by Senate Bill 19 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, and to the extent such Section does not contravene applicable Texas or federal law. As used in the foregoing verification, ‘discriminate against a firearm entity or firearm trade association’ (A) means, with respect to the firearm entity or firearm trade association, to (i) refuse to engage in the trade of any goods or services with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, (ii) refrain from continuing an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, or (iii) terminate an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association and (B) does not include (i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories and (ii) a company’s refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship (aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency or (bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity’s or association’s status as a firearm entity or firearm trade association. As used in the foregoing verification, (b) ‘firearm entity’ means a manufacturer, distributor, wholesaler, supplier, or retailer of firearms (i.e., weapons that expel projectiles by the action of explosive or expanding gases), firearm accessories (i.e., devices specifically designed or adapted to enable an individual to wear, carry, store, or mount a firearm on the individual or on a conveyance and items used in conjunction with or mounted on a firearm that are not essential to the basic function of the firearm, including detachable firearm magazines), or ammunition (i.e., a loaded cartridge case, primer, bullet, or propellant powder with or without a projectile) or a sport shooting range (as defined by Section 250.001, Texas Local Government Code), and (c) ‘firearm trade association’ means a person, corporation, unincorporated association, federation, business league, or business organization that (i) is not organized or operated for profit (and none of the net earnings of which inures to the benefit of any private shareholder or individual), (ii) has two or more firearm entities as members, and (iii) is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c) of that code.

IN WITNESS WHEREOF, the parties enter into this Contract on the date first written above.

WITNESS:

ENGINEER:

BY: David Lundberg  
David Lundberg, PE  
Printed or Typed Name

BY: Susan Turrieta  
Susan Turrieta, PE  
Printed or Typed Name  
Principal, Managing Director Civil  
Printed or Typed Title  
74-1554339  
Tax Identification No.

ATTEST:

CITY OF WEST LAKE HILLS, TEXAS:

\_\_\_\_\_  
Terry Blanchard, City Secretary

BY: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



## **EXHIBIT “A”**

### **SCOPE OF CIVIL ENGINEERING SERVICES**

City Engineer

#### **BASIC SERVICES:**

Services described herein are to be provided on an on-call, as-needed basis as directed by the City Administrator.

- 1) Development Review
  - a) Review site development applications in a timely manner, consistent with state law requirements.
  - b) Process – review and improvement development review application and process.
  - c) Drainage - Review drainage designs for building permits for residential and commercial properties.
  - d) Wastewater - Review residential and commercial connections for capacity and compliance.
  - e) Platting - Review engineering for preliminary and final subdivision plats and replats.
  - f) Other – additional reviews and recommendations related to site development.
- 2) Stormwater
  - a) Review update drainage criteria manual.
  - b) Assist with drainage studies and master planning.
  - c) Assist with submittals, reports, and compliance.
    - i) Municipal Separate Storm Sewer Systems (MS4).
    - ii) Floodplain Manager.
  - d) CIP development.
  - e) Procurement.
- 3) Wastewater
  - a) Evaluate issues and opportunities for the expansion of the city’s wastewater collection system.
  - b) Perform condition, capacity assessment, develop asset management program.
  - c) CIP development.
  - d) Procurement.
- 4) Pavement Management
  - a) Perform pavement condition assessments.
  - b) Develop rehabilitation recommendations.
  - c) Develop street maintenance program.
  - d) CIP development.
  - e) Procurement.
- 5) Design Services – Various infrastructure projects
  - a) Civil - Perform design services for various city infrastructure projects.
  - b) Traffic – Perform traffic engineering services including but not limited to TIAs, speed studies, queuing, and other intersection analysis.
  - c) Structural

- i) Assist with structural review.
  - ii) Design of various city infrastructure.
- 6) GIS and CADD
  - a) Assist with any GIS needs.
  - b) Assist with CAD production for design manual details.
  - c) Assist with developing exhibits.
- 7) Planning
  - a) Master Plan - Assist with review, updates, and implementation.
- 8) Meetings
  - a) City Council
  - b) Planning and Zoning
  - c) Progress meetings
- 9) Other



# **EXHIBIT “B”** **Rates, Payment and Compensation**



## **Schedule RC1**

### **BILLING RATE SCHEDULE** Infrastructure Group 2023 Standard

| <u>Category</u>                           | <u>Rate</u> |
|-------------------------------------------|-------------|
| Senior Principal/Managing Principal ..... | \$ 345.00   |
| Principal .....                           | \$ 315.00   |
| Chief Hydrologist.....                    | \$ 270.00   |
| Managing Director .....                   | \$ 275.00   |
| Team Director .....                       | \$ 260.00   |
| Senior Project Manager .....              | \$ 260.00   |
| Project Manager .....                     | \$ 190.00   |
| Senior Engineer .....                     | \$ 205.00   |
| Engineer .....                            | \$ 170.00   |
| Graduate Engineer .....                   | \$ 140.00   |
| Senior Transportation Planner.....        | \$ 200.00   |
| Transportation Planner.....               | \$ 160.00   |
| Graduate Transportation Planner .....     | \$ 135.00   |
| Senior Graphic Designer .....             | \$ 140.00   |
| Senior GIS Specialist.....                | \$ 195.00   |
| GIS Specialist.....                       | \$ 165.00   |
| Senior Designer .....                     | \$ 195.00   |
| Designer .....                            | \$ 140.00   |
| BIM Manager .....                         | \$ 215.00   |
| CAD Manager .....                         | \$ 195.00   |
| Senior CAD Technician .....               | \$ 150.00   |
| CAD Technician .....                      | \$ 115.00   |
| Senior Field Representative .....         | \$ 160.00   |
| Field Representative .....                | \$ 140.00   |
| Engineering Intern .....                  | \$ 95.00    |
| Project Accountant .....                  | \$ 145.00   |
| Senior Administrative Assistant .....     | \$ 145.00   |
| Administrative Assistant .....            | \$ 115.00   |

#### **Notes:**

1. These billing rates are effective through December 31, 2023.
2. Rates are adjusted annually.



# City of West Lake Hills City Council

## AGENDA REPORT

|               |                                        |                  |                        |
|---------------|----------------------------------------|------------------|------------------------|
| Meeting Date: | <u>March 8, 2023</u>                   | Item Number:     | <u>8</u>               |
| Department:   | <u>Administration</u>                  |                  |                        |
| Prepared By:  | <u>Ashby Grundman</u>                  | Cost / Budget:   | <u>TBD</u>             |
| Exhibits:     | <u>Professional Services Agreement</u> | Source of Funds: | <u>2021 Bond Funds</u> |

### Subject

Discuss and consider action to approve a professional services agreement with SpawGlass Contractors, Inc to serve as Construction Manager at Risk for the new Municipal Complex.

### Recommendation

Staff recommends approval of the professional services agreement.

### Discussion

At the February 22, 2023, City Council meeting, the city administrator was authorized to negotiate a professional services agreement scope and fee with SpawGlass Contractors, Inc. The recommended scope and fee have been provided and are recommended for approval.

The team for the new Municipal Complex which includes city staff, Brinkley Sargent Wiginton and AG|CM, met with several members of SpawGlass Contractors, Inc for a kickoff meeting on Tuesday, February 28, 2023.

SpawGlass will serve as the general contractor for the new municipal complex and getting them on board early allows the city to secure a Guaranteed Maximum Price (GMP) once the design documents are 100% completed. This provides several advantages to the City, as the price is set early, and long-lead items and materials can be ordered early, combating the uncertainty and supply chain issues. SpawGlass will provide a scope and fee for pre-construction activities enabling their team to work alongside the City's establish team for the benefit of the project, generating cost estimates based on design progression and ensuring efficiency and constructability issues are managed to the benefit of the overall project reducing the likelihood of change orders and unintended consequences.



**CONSTRUCTION AGREEMENT  
CONSTRUCTION MANAGER AT RISK**

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**10. Other Conditions and Services**



**CITY OF WEST LAKE HILLS  
STANDARD FORM OF  
AGREEMENT  
BETWEEN CITY AND CONSTRUCTION  
MANAGER-AT-RISK**

This Agreement is entered into by and between the **City of West Lake Hills**, a Texas home-rule municipal corporation (the “City”) and \_\_\_\_\_ a Texas corporation (the “Construction Manager” or Contractor”) for the construction of City of West Lake Hills, New Municipal Complex.

**SECTION 1. GENERAL PROVISIONS**

**1.1 Relationship of the Parties.**

1.1.1 The Construction Manager accepts the relationship of trust and confidence established with the City by this Agreement, and covenants with the City to furnish the Construction Manager’s reasonable skill and judgment and to cooperate with the Architect in furthering the interests of the City. The Construction Manager shall furnish construction administration and management services and use the Construction Manager’s best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the City. The City shall endeavor to promote harmony and cooperation among the City, Architect, Construction Manager and other persons or entities employed by the City for the Project.

**1.2 General Conditions.**

1.2.1 Basic Definitions.

1.2.1.1 Addenda. Addenda are written or graphic instruments issued prior to the execution of the Contract, which modify or interpret the proposal documents, including Drawings and Specifications, by additions, deletion, clarification or corrections. Addenda will become part of the Contract Documents when the Agreement is executed.

1.2.1.2 Approved, Approved Equal and Approved Equivalent, or Equal relate to the substitution of materials, equipment or procedure approved in writing by the Architect prior to receipt of proposals. The substitution procedure process to be followed prior to receipt of competitive sealed proposals is described in the instruction to proposers.

1.2.1.3 Calendar Day. A “calendar day” is any day of the week or Month or year, no days being excepted. Unless otherwise expressly provided, all references to “day(s)” shall mean Calendar Day(s).

1.2.1.4 City / Owner Representative. Whenever the word “City” is used, it shall mean and be understood as referring to the City of West Lake Hills, Texas. The word “Owner” shall refer to the same entity and may be used interchangeably. Whenever the words “Owner’s Representative” or “Representative” are used, it shall mean and be understood as referring to the City Project Manager or delegate, who shall act as the City’s agent. The Owner’s Representative may inspect and issue instructions but shall not directly supervise the Contractor. The City’s inspector has authority to reject the Work

for failure to comply with the Contract Documents and/or applicable laws.

1.2.1.5 **Contract Definitions:** The term “Contract Documents” shall mean those documents listed in Paragraph 1.3. The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a written Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, (2) between the City and a Subcontractor or Sub-subcontractor, (3) between the City and Architect or (4) between any persons or entities other than the City and Contractor. The Architect shall be entitled, however, to performance and enforcement of obligations of the Contractor under the Contract intended to facilitate performance of the Architect’s duties.

1.2.1.6 **Contractor.** Whenever the word “Contractor” is used, it shall mean the person(s), partnership, or corporation who has agreed to perform the work embraced in this Agreement and the other Contract Documents; specifically it shall mean the Construction Manager.

1.2.1.7 **Contract Time.** The period of time which is established in the Contract Documents for Substantial Completion of the Work. This period of time shall be accounted for in Calendar Days, as defined above, and is not subject to adjustment or extension without the written agreement of the City. The following definitions shall apply to Contract Time calculations:

a. **Work Day:** As used herein, a “Work Day” is defined as any Monday through Friday, not a legal holiday, and any Saturday or Sunday specifically approved by the OWNER, in which the CONTRACTOR can perform six or more hours of work per the current construction schedule. CONTRACTOR agrees to request specific approval from the Construction Manager or Owner, in advance, to perform work on Saturdays or Sundays and in so doing agrees to pay all charges and costs for Inspection and or Construction Management services required during the performance of any such approved work.

b. **Weather Day:** As used herein, is defined as any WORK DAY during which weather related conditions prevent the CONTRACTOR from performing four (4) or more consecutive hours of work on critical path items as identified in the current construction schedule. CONTRACTOR shall record Weather Days on the Pay Application each month for the review and possible approval by the OWNER. The approved Weather Day is then added to the Contract Time.

c. **IMPACT DAY:** As used herein, is a day that is added to the CONTRACT TIME by the OWNER by Change Order to extend the Contract Time by one full Work Day. Impact Days, once approved by the OWNER, shall extend the Contract Time on a one-to-one basis to replace a Work Day lost to conditions that prevented the CONTRACTOR from performing four (4) or more consecutive hours of work on critical path items. Impact Days are added to the Contract Time by Change Order only at the end of the work and then only if, in the opinion of the OWNER, time extension is warranted



due to delays beyond the control of the Contractor and required to complete the work within the Contract Time

1.2.1.8 **Drawings.** The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

1.2.1.9 **Extra Work.** The term “Extra Work” shall mean and include work that is **not** covered or contemplated by the Contract Documents but that may be required by the Owner’s Representative and approved by the City in writing **prior** to the work being done by the Contractor.

1.2.1.10 **Final Completion.** The term “Final Completion” shall mean that all the work has been completed, all final punch list items have been inspected and satisfactorily completed, all payments to material suppliers and subcontractors have been made, all documentation and warranties have been submitted, and all closeout documents have been executed and approved by the City.

1.2.1.11 **Interpretation of Phrases.** Whenever the words “directed”, “permitted”, “designated”, “required”, “considered necessary”, “prescribed”, or words of like import are used, it is understood that the direction, requirement, permission, order, designation, or prescription of the Owner’s Representative is intended. Similarly, the words “approved”, “acceptable”, “satisfactory”, or words of like import shall mean approved by, accepted by, or satisfactory to the Owner’s Representative. In the interest of brevity the Contract Documents may omit modifying words such as “all” or “any” and articles such as “the” and “an”, but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

1.2.1.12 **Nonconforming work.** The term “nonconforming work” shall mean work or any part thereof that is rejected by the Owner’s Representative as not conforming with the Contract Documents.

1.2.1.13 **Notice to Proceed.** A notice that may be given by the Owner to the Contractor that directs the Contractor to start the Work.

1.2.1.14 **Partial Substantial Completion.** Designation of Partial Substantial Completion may be provided on components of the Work that must be placed into service prior to the completion of the entire Work. The contractor’s One Year Warranty period for these items shall begin on the date of Partial Substantial Completion as designated by the Architect. The Architect shall determine and make all such designations.

1.2.1.15 **Parties.** The “parties” are the City and the Contractor.

1.2.1.16 **Project.** The term “Project” shall mean and include all that is required to obtain a final product that is acceptable to the City. The term “work” shall have like meaning. The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the

City or by separate contractors.

1.2.1.17 **Procore**. As used herein describes the Owner's Representative's project management software used to enhance communications between the project team members. All product submittals, RFI's, RFPs, plan sheet changes, plans and specs are held and available to all team members within this web-based software. All team members will be given access and will use this software platform for project document transmittals.

1.2.1.18 **Punch List**. A comprehensive list prepared by the Architect prior to Substantial Completion to establish all items to be completed or corrected; this list may be supplemented by the Owner's Representative or the City.

1.2.1.19 **Specifications**. The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services. Organization of the Specifications into divisions, sections and articles, and arrangement of drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

1.2.1.20 **Subcontractor**. The term "subcontractor" shall mean and include only those hired by and having a direct contract with Contractor for performance of work on the Project. The City shall have no responsibility to any subcontractor employed by a Contractor for performance of work on the Project, and all subcontractors shall look exclusively to the Contractor for any payments due.

1.2.1.21 **Substantial Completion**. The term "Substantially Completed" means that in the sole discretion of the Owner's Representative, the Project, including all systems and improvements, is in a condition to serve its intended purpose but still may require minor miscellaneous work and adjustment. Final payment of the Agreement Price, including retainage, however, shall be withheld until Final Completion and acceptance of the work by the City. Acceptance by the City shall not impair or waive any warranty obligation of Contractor.

1.2.1.22 **Work**. The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. The Work includes all labor, parts, supplies, skill, supervision, transportation, services, and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Contract Documents and all other items of cost or value needed to produce, construct and fully complete the Work identified by the Contract Documents.

1.2.1.23 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

### **1.3 Contract Documents.**

1.3.1 The Contract Documents and their priority shall be as follows:

1.3.1.1 This signed Agreement

1.3.1.2 Addendum to this Agreement

1.3.1.3 Special Conditions

1.3.1.4 Technical specifications

1.3.1.5 Drawings

1.3.1.6 Instructions to Bidders and any other notices to Bidders or Contractor

1.3.1.7 Performance bond, Payment bonds, Bid bonds and Special bonds

1.3.1.8 Contractor's Proposal

1.3.2 Where applicable, the Contractor will be furnished one (1) digital copy of plans, drawings, specifications, and related Contract Documents for its use during construction. Plans and specifications provided for use during construction shall be furnished directly to the Contractor only.

1.3.3 The Contractor shall distribute copies of the plans and specifications to suppliers and subcontractors as necessary. The Contractor shall keep one (1) copy of the plans and specifications accessible at the work site with the latest revisions noted thereon. For proper execution of the work contemplated by this Agreement.

1.3.4 All drawings, specifications, and copies thereof furnished by the City shall not be re-used on other work, and with the exception of one (1) copy of the signed Contract Documents, all documents, including sets of the plans and specifications and "as built" drawings, are to be returned to the City on request at the completion of the work. All Contract Documents, models, mockups, or other representations are the property of the City. In the event of inconsistencies within or between parts of the Contract Documents, the Contractor shall (1) provide the better quality or greater quantity of Work, or (2) comply with the more stringent requirement, either or both in accordance with the City's interpretation.

### **1.4 Owner.**

1.4.1 The Owner (or City) is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the City of West Lake Hills or the City's authorized representative. The terms "Owner" and "City" may be used interchangeably throughout this Agreement.

1.4.2 The presence of the City or Architect at the Work site does not imply



acceptance or approval of Work.

1.4.3 Information And Services Required of The Owner.

1.4.3.1 Information or services reasonably necessary for the Work and under the City's control shall be furnished by the City with reasonable promptness where requested in writing by the Contractor. In any instance where information or services from the City or Architect is required, Contractor shall promptly notify the Architect in writing, with a copy to the City, of the particular need.

1.4.4 Owner's Right to Stop the Work.

1.4.4.1 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 1.14.2. or persistently fails to carry out Work in accordance with the Contract Documents, the City may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the City to stop the Work shall not give rise to a duty on the part of the City to exercise this right for the benefit of the Contractor or any other person or entity.

1.4.5 Owner's Right to Carry Out the Work.

1.4.5.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the City to commence and continue correction of such default or neglect with diligence and promptness, the City may, without prejudice to other remedies the City may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Architect's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the City.

1.4.5.2 After the Work is complete, the City may make emergency repairs to the Work, if necessary, to prevent further damage, or if the Contractor does not promptly respond to a notice of condition requiring repairs. Contractor shall be responsible to City for this cost if the repairs are due to the Contractor's defective Work. If payments then or thereafter due the Contractor are not sufficient to cover such costs, the Contractor shall pay the difference to the City.

1.4.6 Owner's Right to Use or Occupy.

1.4.6.1 The City shall have the right to occupy or use without prejudice to the right of either party, any completed or largely completed portions of the Project, notwithstanding the time for completing the entire Work or such portions may not have expired. Such occupancy and use shall not constitute acceptance of any Work not in accordance with the Contract Documents.

## **1.5 Contractor**

The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term “Contractor” means the Contractor or the Contractor’s authorized representative.

1.5.2 The Contractor shall perform the Work in accordance with the Contract Documents

1.5.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect’s administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

1.5.4 Review of Contract Documents and Field Conditions by Contractor.

1.5.4.1 The Contractor shall carefully study and compare the Agreement, Conditions of the Contract, Drawings, Specifications, Addenda, and Modifications and shall at once report to the Architect any error, inconsistency, or omission the Contractor discovers. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents and does not relieve the Contractor of their Preconstruction responsibilities as described in Section 2 of this Agreement; however, any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Architect as a request for information in such form as the Architect may require. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume responsibility for such performance and shall pay the total amount of the attributable costs for correction. Contractor shall not be liable to City or Architect for any damage resulting from such error, inconsistency or omission which Contractor should not have discovered or which Contractor did discover and at once so reported. Contractor shall do no Work without approved Drawings and Specifications marked Issued for Construction.

1.5.4.2 If the Contractor fails to perform the obligations of Paragraph 1.5.4.1., the Contractor shall pay such costs and damages to the City as would have been avoided if the Contractor had performed such obligations.

1.5.4.3 The Contractor shall not be entitled to additional compensation for the “rework portion” of any additional work caused by its failure to carefully study and compare the Contract Documents prior to execution of the Work.

1.5.4.4 The Contractor shall make a reasonable attempt to interpret the Contract Documents before asking the Architect for assistance in interpretation. The Contractor shall not ask the Architect for observance of work prior to the Contractor’s field superintendent’s personal inspection of the Work and his determination that the Work complies with the Contract Documents. The Contractor shall arrange meetings prior to commencement of the Work of all major Subcontractors to allow the Subcontractor(s) to ask for any interpretation it may require.

1.5.4.5 If, in the opinion of the Architect, the Contractor does not make a reasonable effort to comply with the above requirements of the Contract Document and this causes the Architect or its Consultants to expend an unreasonable amount of time in the discharge of the duties imposed on the Architect by the Contract Documents, then the Contractor shall bear the cost of compensation for the Architect's additional services made necessary by such failure. The Architect will give the Contractor prior notice of intent to bill for additional services related to the above requirements before additional services are performed.

1.5.4.6 If the Contractor has knowledge that any of the products or systems specified will perform in a manner that will limit the Contractor's ability to satisfactorily perform Work or to honor Contractor's Warranty, Contractor shall promptly notify the Architect, in writing, providing substantiation for Contractor's position. Any necessary changes, including substitution of materials, shall be accomplished by appropriate Modification.

#### 1.5.5 Supervision and Construction Procedures.

1.5.5.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the City and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect.

1.5.5.2 The Contractor shall be responsible to the City for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors. It is understood and agreed that the relationship of the Contractor to City shall be that of an independent contractor. Nothing contained herein or inferable therefrom shall be deemed or construed to (1) make Contractor the agent, servant or employee of the City, or (2) to create any partnership, joint venture, or other association between City and Contractor. Any direction or instruction by City or any of its authorized representatives in respect of the Work shall relate to the results the City desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status described herein.

1.5.5.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

1.5.5.4 Contractor shall execute the Work in a good and workmanlike manner, continuously and diligently in accordance with generally accepted standards of



construction management and practice for construction of projects similar to the Project using qualified, careful and efficient workers and in conformity with the provisions of this Contract and the other Contract Documents.

1.5.6 Labor and Materials.

1.5.6.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

1.5.6.2 The Contractor may make substitutions only with the consent of the City, after evaluation by the Architect and in accordance with a Change Order Request should a Change Order request be needed.

1.5.6.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

1.5.7 Warranty.

1.5.7.1 The Contractor warrants to the City and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance (unless such maintenance is Contractor's responsibility), improper operation, or normal wear and tear. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

1.5.7.2 Prior to final payment, Contractor shall furnish any manufacturer warranties required by the Contract Documents.

1.5.7.3 When deemed necessary by the City, and prior to installation of any items specifically made subject to a performance standard or regulatory agency standard under any provision of the Contract Documents, Contractor shall furnish proof of conformance to the Architect. Proof of Conformance shall be in the form of (1) an affidavit from the manufacturer certifying that the item is in conformance with the applicable standard, (2) an affidavit from a testing laboratory certifying that the product has been tested within the past year and is in conformance with the appreciated standard, or (3) such further reasonable proof as required by the Architect.

1.5.7.4 The warranties of Contractor provided in Subparagraph 1.5.7.1. shall in no way limit or abridge the warranties of the suppliers of equipment and system which are to comprise a portion of the Work and all of such warranties shall be in form and substance

as required by the Contract Documents. Contractor shall take no action or fail to act in any way which results in the termination or expiration of such third party warranties or which otherwise results in prejudice to the rights of City under such warranties. Contractor agrees to provide all notices required for the effectiveness of such warranties and shall include provisions in the contracts with the providers and manufacturers of such systems and equipment whereby the City shall have a direct right, but not a duty, of enforcement of such warranty obligations.

1.5.7.5 In the event of failure of materials, products, or workmanship, either during construction or the warranty period (which shall be one (1) year from the Date of Substantial Completion, except where a longer period is specified), the Contractor shall take appropriate measures to assure correction or replacement of the defective items, whether notified by the City or Architect.

1.5.7.6 Approximately eleven (11) months after Substantial Completion, the Contractor shall accompany the City, the Owner's Representative, and Architect on a complete inspection of the Project and be responsible for correcting any observed or reported deficiencies within thirty (30) calendar days.

#### 1.5.8 Permits, Fees and Notices.

1.5.8.1 Unless otherwise provided in the Contract Documents, the Contractor shall establish an Allowance in the GMP for the payment for all utility connections to the project. Owner shall pay the Contractor the direct costs of these connection fees as determined by the Utility's Terms and Conditions statement.

1.5.8.2 Reserved.

1.5.8.3 Upon acceptance of the project as Substantially Complete the Owner and Contractor shall arrange for the transfer of all utilities to the Owner's account. To avoid any interruption of critical utility services, Contractor shall notify Owner 60 days prior to anticipated transfer date. Owner shall immediately make arrangements to establish accounts as necessary to transfer billing within a seven day window of the scheduled date. Should transfer of utility billing be delayed through no fault of Contractor, Owner shall pay Contractor a daily utility rate equal to the charges accrued between planned transfer date and date of actual transfer.

1.5.8.4 The Contractor shall include and pay for any inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded. All permit fees for the project shall be the responsibility of the Owner. The City will not charge inspection fees for inspection services provided by its third party inspection contractor. Should any tests or inspections need to be rescheduled or repeated, those additional tests or inspections shall be at Contractor's cost and the City may deduct such cost from any amount payable to Contractor hereunder.

1.5.8.5 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders and all other requirements of public authorities applicable to performance of the Work. The Contractor shall procure and obtain all bonds required of the City or the Contractor by the Contract Documents. In connection

with such bonds, the Contractor shall prepare all applications, supply all necessary back-up material, and furnish the surety with any required information. The Contractor shall also obtain and pay all charges for all approvals for street closing and other similar matters as may be necessary or appropriate from time to time for the performance of the Work.

1.5.8.6 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are contrary therewith, the Contractor shall promptly notify the Architect and City in writing, and necessary changes shall be accomplished by appropriate Modification.

1.5.8.7 If the Contractor performs Work which it knows to be contrary to applicable laws, statutes, ordinances, building codes, and rules and regulations and fails to provide such notice to the Architect and City, the Contractor shall be liable for any cost incurred by the City due to the failure to provide notice and shall promptly remediate any and all work identified to be in violation.

1.5.8.8 The Contractor shall be responsible for timely notification to and coordination with all utility companies regarding the provision of or revising of services to the Project. The Contractor shall inform the Architect at once when the City's participation is required. Connections for temporary and permanent utilities required for the Work are the responsibility of the Contractor. Payment for temporary and/or permanent utility services through Substantial Completion of the Work shall be the responsibility of the Contractor.

#### 1.5.9 Allowances.

1.5.9.1 Material and Equipment Allowances: The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents or identified in the development of the GMP. These stated allowances represent the cost estimate of the materials and equipment delivered and unloaded at the site. The Contractor's installation labor, overhead, profit, and other expenses contemplated for the allowance material and equipment shall be included in allowance only where called for in the Contract Documents. The Contractor shall purchase the allowance materials and equipment on the basis of the lowest responsive bids of at least three (3) competitive bids. If the actual cost of the material and equipment delivered and unloaded at the site is more or less than the individual allowance estimate, upon City approval the Allowance and Construction Cost will be adjusted accordingly by Change Order. **The City's approval will not be unreasonably withheld.**

The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Paragraph 1.5.9.1 and (2) changes in Contractor's costs, subject to the limitations set forth at Paragraph 1.9.2.1 (c).

1.5.9.2 Materials and equipment under an allowance shall be selected with reasonable promptness by the City to avoid delays in the Work (provided that if a decision is needed by a certain date to avoid delay, Contractor shall notify Architect in



writing sufficiently in advance of the needed date to allow reasonable time for selections).

1.5.9.3       Utility Connection Allowances: The Contractor shall include in the Contract Sum Utility Connection allowances stated in the Contract Documents or identified in the development of the GMP. These stated allowances represent the cost estimate of the Terms and Conditions of the Utility to perform the installation of materials and equipment of the site to provide the project with the subject utility. The Contractor's labor, overhead, profit, if any, contemplated for the Utility allowance shall be included in allowance only where called for in the Contract Documents. If the actual cost of the utility connection fees is more or less than the individual allowance estimate, upon City approval the Contract Sum will be adjusted accordingly by Change Order.

1.5.10 Superintendent.

1.5.10.1       The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. Notwithstanding the foregoing, Contractor shall keep on the job the superintendent approved by City who shall not be transferred from the Project without City's consent (which shall not be unreasonably withheld). However, such obligation to furnish the superintendent shall not be construed (1) to preclude the promotion within Contractor's organization of any person assigned to the Project or (2) to give rise to any liability of Contractor if any person assigned to the Project leaves Contractor's employ. If City reasonably determines that any employee of Contractor or of its Subcontractors is careless or not qualified to perform the Work assigned to him, and City and Contractor cannot, after a diligent and good faith attempt, agree what action should be taken with respect to the removal or reassignment of such employees, the Contractor shall promptly remove such employee from the Project and replace such employee. At all times while procurement activities are being performed in Contractor's office, Contractor shall appoint an individual (approved by City, acting reasonably) authorized to act on behalf of Contractor and with whom City may consult at all reasonable times, and who shall be authorized to receive the instructions, requests and decisions of City. All of Contractor's and Subcontractor's personnel shall comply with all applicable health, safety, and loss prevention rules of applicable authorities. Contractor shall, at its own expense, remove from the Project any person who fails to comply with such rules and instructions in any material respect.

1.5.11 Contractor's Construction Schedules.

1.5.11.1       The Contractor shall, promptly after executing the Contract, develop a construction schedule reasonably defining a plan for completing the Work within the required time and clearly defining the activities that construe the Critical Path. Identification of the Critical Path activities will be required for all schedules provided by the Contractor. The format and detail of the schedule shall be in keeping with the size and complexity of the Project, and the schedule and all subsequent updates shall be subject to the approval of the City and Architect. The schedule and any updates shall not exceed time limits current under the Contract Documents including granted time extensions, and shall be revised at appropriate intervals as reasonably required by the City and Architect,

shall be related to the entire Project (if more than one Contract is involved in the Project), and shall provide for expeditious and practicable execution of the Work. All updated schedules shall address the subject of how the Contractor intends to overcome any delays previously encountered. The Contractor shall submit to the Architect with each monthly Application for Payment, a copy of the updated construction schedule as a prerequisite for approval of Applications for Payment.

1.5.11.2 The Contractor shall prepare and keep current, for the Architect's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect reasonable time to review submittals.

1.5.11.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the City and Architect.

1.5.11.4 The process of approving Contractor's schedules and updates to Contractor's schedules shall not constitute a warranty by the City that any non-Contractor milestones or activities will occur as set out in the Contractor's schedules. Approval of a Contractor's schedule does not constitute a commitment by the City to furnish any Owner-furnished information or material any earlier than City would otherwise be obligated to furnish that information or material under the Contract Documents. Failure of the Work to proceed in the sequence scheduled by Contractor shall not alone serve as the basis for a Claim for additional compensation or time. In the event there is interference with the Work which is beyond its control, Contractor shall attempt to reschedule the Work in a manner that will hold the additional time and costs to a minimum. The construction schedules shall be in a detailed format satisfactory to the City and the Architect and shall also: (1) provide a graphic representation of all activities and events that will occur during performance of Work; (2) identify each phase of construction and occupancy; and (3) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as Milestone Dates). If not accepted, the construction schedules shall be promptly revised by the Contractor in accordance with the recommendations of the City and Architect and re-submitted for acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedules and shall promptly advise the City of any delays or potential delays. The accepted construction schedules shall be updated to reflect actual conditions as set forth in Paragraph 1.5.11.1, if requested, by either the City or Architect. In the event any schedule indicates any delays, the Contractor shall propose an affirmative plan to correct the delay. In no event shall any schedule constitute an adjustment in the Contract Time, any Milestone Date or the Contract Sum unless any such adjustment is agreed to by the City and authorized pursuant to Change Order.

#### 1.5.12 Documents and Samples at the Site.

1.5.12.1 The Contractor shall maintain at the site for the City one record copy of the Permit Drawings, Specifications, Addenda, Change Orders, As Built Mark-ups and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the City upon



completion of the Work.

1.5.13 Shop Drawings, Product Data and Samples.

1.5.13.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

1.5.13.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

1.5.13.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

1.5.13.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect is subject to the limitations of Paragraph 1.6.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Architect without action.

1.5.13.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the City or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action.

1.5.13.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. If, in the opinion of the Architect, the shop drawings indicate a lack of study and the review by the Contractor is incomplete, or indicate an inadequate understanding of the Work covered by the shop drawings, prior to submittal to the Architect, the shop drawings will be returned, unchecked, to the Contractor for correction of any/all of these deficiencies for subsequent resubmittal.

1.5.13.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

1.5.13.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

1.5.13.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice the Architect's approval of a resubmission shall not apply to such revisions.

1.5.13.10 The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the City and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The City and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the City and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Paragraph 1.5.13.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

1.5.13.11 Adequate copies of Shop Drawings for architectural, structural, mechanical and electrical work shall be submitted to the Architect for review in the order of scheduled and upcoming work.

1.5.13.12 The Contractor shall submit complete Drawings, Data and Samples to the Architect at least thirty (30) days prior to the date the Contractor needs the reviewed submittals returned. The Contractor shall be prepared to submit color samples on any key items within sixty (60) days of the execution of the Contract. Once samples of all key items are received, the Architect will finalize color selections.

1.5.13.13 The Contractor shall submit the number of copies of Product Data and Samples which the Contractor and its Subcontractor(s) need for their use. Where Shop Drawings are involved, the Contractor shall, if needed, submit one (1) high quality reproducible transparency and one (1) opaque print of the Shop Drawings for the Architect . The reproducible transparency will be marked by the Architect and/or its consultants. After final review and correction of the submittal, Contractor shall send one (1) corrected set to the Architect and one (1) to each of the Architect's consultants involved with the particular section of Work.

1.5.14 Use of Site.

1.5.14.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

1.5.14.2 The Contractor's access to the site, parking, field office location, material and equipment storage, and confinement of said areas shall be coordinated with, and approved by the City prior to the Contractor's mobilization on the site. Once agreed upon, the Contractor shall not adjust or increase any of the above areas without prior consent by the Owner.

1.5.15 Cutting and Patching.

1.5.15.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

1.5.15.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the City or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the City or a separate contractor except with written consent of the City and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the City or a separate contractor the Contractor's consent to cutting or otherwise altering the Work. Any such alteration involving cutting or removal of previously installed work shall be approved in writing by the Contractor and the Architect prior to initiation of the alteration.

1.5.16 Cleaning Up.

1.5.16.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the



Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials. The Contractor shall be responsible for protection of the Work and shall repair or replace damaged work at Substantial Completion of the Work. The Contractor shall remove all temporary protections at the completion of the Work.

1.5.16.2 If the Contractor fails to clean up as provided in the Contract Documents, the City may do so and the cost thereof shall be charged to the Contractor.

1.5.16.3 Prior to the Architect's inspection for Substantial Completion, the Contractor shall: clean exterior surfaces exposed to view; remove temporary labels, stains, and foreign substances; polish transparent and glossy surfaces; clean equipment and fixtures to a sanitary condition; clean roofs; clean the Project site; sweep paved areas and rake clean other surfaces; and remove trash and surplus materials from the Project site.

1.5.17 Access to Work.

1.5.17.1 The Contractor shall provide the City, its contractors, vendors or employees and Architect access to the Work in preparation and progress wherever located. Contractor may impose such safety "rules and regulations" on these entities as are imposed on its own sub-contractors, vendor and employees but shall not require undue or burdensome requirements that Contractor's own sub-contractors, vendors or employees are not also subject to.

1.5.18 Royalties, Patents and Copyrights.

1.5.18.1 The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the City and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the City or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

1.5.19 INDEMNIFICATION AND RELEASE.

1.5.19.1 **TO THE FULLEST EXTENT PERMITTED BY LAW, INCLUDING CHAPTER 151 OF THE TEXAS INSURANCE CODE, AND EXCEPT AS SET OUT IN SUBPARAGRAPH (B) BELOW, CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND OWNER, AND ALL OF ITS OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS FEES, ARISING OUT OF OR RESULTING FROM BODILY INJURY OR DEATH OF ANY PERSON, OR PROPERTY DAMAGE, INCLUDING LOSS OF USE OF PROPERTY, ARISING OR ALLEGED TO ARISE OUT OF OR IN ANY WAY RELATED TO THIS CONTRACT OR CONTRACTOR'S PERFORMANCE OF THE WORK OR OTHER ACTIVITIES OF CONTRACTOR, BUT ONLY TO THE EXTENT CAUSED IN**

**WHOLE OR IN PART BY THE NEGLIGENCE OR FAULT OF CONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY CONTRACTOR OR ANYONE FOR WHOSE ACTS CONTRACTOR MAY BE LIABLE.**

**NOTWITHSTANDING THE FOREGOING, TO THE FULLEST EXTENT PERMITTED BY LAW, INCLUDING CHAPTER 151 OF THE TEXAS INSURANCE CODE, CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND OWNER, AND ALL OF ITS OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES (THE "INDEMNITEES"), FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS FEES, ARISING OUT OF OR RESULTING FROM BODILY INJURY TO, OR SICKNESS, DISEASE OR DEATH OF, ANY EMPLOYEE, AGENT OR REPRESENTATIVE OF CONTRACTOR OR ANY OF ITS SUBCONTRACTORS, REGARDLESS OF WHETHER SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED, OR IS ALLEGED TO BE CAUSED, IN WHOLE OR IN PART BY THE NEGLIGENCE OF ANY INDEMNITEE, IT BEING THE EXPRESSED INTENT OF OWNER AND CONTRACTOR THAT IN SUCH EVENT THE CONTRACTOR IS TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE INDEMNITEES FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, WHETHER IT IS OR IS ALLEGED TO BE THE SOLE OR CONCURRING CAUSE OF THE BODILY INJURY, SICKNESS, DISEASE OR DEATH OF CONTRACTOR'S EMPLOYEE OR THE EMPLOYEE OF ANY OF ITS SUBCONTRACTORS. THE INDEMNIFICATION OBLIGATIONS UNDER THIS PARAGRAPH SHALL BE LIMITED BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR UNDER WORKERS COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. CONTRACTOR SHALL PROCURE LIABILITY INSURANCE COVERING ITS OBLIGATIONS UNDER THIS PARAGRAPH.**

1.5.19.2 The indemnifications contained in Paragraph 1.5.19.1. shall include but not be limited to the following specific instances:

- (a) **The City is damaged due to the act, omission, mistake, fault or default of the Contractor.**
- (b) **In the event of any claims for payment for goods or services brought by any material suppliers, mechanics, laborers, or other subcontractors.**
- (c) **In the event of any and all injuries to or claims of adjacent property owners caused by the Contractor, its agents, employees, and representatives.**
- (d) **In the event of any damage to the floor, walls, etc., caused by the Contractor's personnel or equipment during installation.**
- (e) **The removal of all debris related to the Work.**
- (f) **The acts and omissions of the subcontractors.**

**(g) The Contractor's failure to comply with applicable federal, state, or local regulations, that touch upon or concern the maintenance of a safe and protected working environment and the safe use and operation of machinery and equipment in that working environment, no matter where fault or responsibility lies.**

1.5.19.3 The indemnification obligations of the Contractor under this Paragraph shall not extend to include the liability of any professional engineer, the architect, their consultants, and agents or employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the professional engineer, the architect, their consultants, and agents and employees of any of them, provided such giving or failure to give is the primary cause of the injury or damage.

1.5.19.4 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligation under Paragraph 1.5.19.1., such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligation shall continue in full force and effect.

1.5.19.5 Contractor's indemnification obligations hereunder shall survive termination, completion, abandonment and final payment.



1.5.19.6 The Contractor assumes full responsibility for the Work to be performed hereunder, and **hereby releases, relinquishes, and discharges** the City, its officers, agents, representatives and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to or death of any person (whether employees of either party or other third parties) and any loss of or damage to any property (whether property of either of the parties hereto, their employees, or of third parties) that is caused by or alleged to be caused by, arising out of, or in connection with the Contractor's Work to be performed hereunder. This release shall apply regardless of whether said claims, demands, and causes of action are covered in whole or in part by insurance, and in the event of injury, death, property damage, or loss suffered by the Contractor, any Subcontractor, or any person or organization directly or indirectly employed by any of them to perform or furnish work on the Project, this release shall apply regardless of whether such injury, death, loss, or damage was caused in whole or in part by the negligence of the City.

1.5.20 Reproducible Record Drawings.

1.5.20.1 Required as part of Final Completion of the Project, the Contractor shall submit one (1) complete set of hard copy drawings and one set of electronic drawings with all changes made during construction, including concealed mechanical, electrical, and plumbing items.

**1.6 Administration of the Contract.**

1.6.1 Architect.

1.6.1.1 The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative or such successor Architect as City may appoint by written notice to Contractor from time to time.

1.6.1.2 City shall notify Contractor when the duties, responsibilities or limitations of authority of the Architect have been modified.

1.6.1.3 If the employment of the Architect is terminated, the City may elect to appoint a replacement Architect, or at its option, elect to complete the Project using another consultant or representative to perform the balance of the Architect's functions on the Work.

1.6.1.4 Except as herein expressly provided, the Contractor shall not be relieved of its obligation to perform the Work in strict accordance with the Contract Documents by the activities or duties of the Architect.

1.6.2 Architect's Administration of the Contract.

1.6.2.1 Certain portions of the administration of the Contract will be performed by the Architect. The Architect shall not have the authority to act on behalf of the City unless such authority is expressly granted in the Contract Documents, or otherwise provided in writing to the Contractor, nor shall such authority be implied from any act or

representation of the Architect. The City is free to elect to have some of the administration duties set out for the Architect to perform under the Contract Documents performed by a construction manager or by employees of the City.

1.6.2.2 The Architect, as a representative of the City, will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the City informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the City against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Paragraph 1.5.5.1. In no event shall City or any other party have control over, be in charge of, or be responsible for construction means, methods, techniques, sequences, procedures, or for safety precautions and programs in connection with the Work, since these are solely Contractor's responsibilities. City will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. City will not have control over, be in charge of, and will not be responsible for the acts or omissions of Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

1.6.2.3 . The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

1.6.2.4 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the City and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the City.

1.6.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

1.6.2.6 The Architect will have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have authority to require additional inspection or testing of the Work in accordance with Paragraphs 1.15.5.2. and 1.15.5.3., whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made reasonably and in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment

suppliers, their agents or employees, or other persons or entities performing portions of the Work.

1.6.2.7 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the City, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of its obligations. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

1.6.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Paragraph 1.9.4.

1.6.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion, will receive and forward to the City, for the City's review and records, written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

1.6.2.10 If the City and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

1.6.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the City or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Paragraph 1.6.2.11, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until thirty (30) days after written request is made for them.

1.6.2.12 Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings.

1.6.2.13 The Architect's decisions on matters relating to all Work will be final if consistent with the intent expressed in the Contract Documents.



### 1.6.3 Claims and Disputes.

1.6.3.1 Definition. A Claim is any demand or assertion by the Contractor that it should be paid more money than the Contract Sum, as adjusted under the Change Order provisions herein, by the City because of action or inaction on the part of City, Architect, or any party for whom City is responsible, or any party with whom City has separately contracted for other portions of the Project, including but not limited to any demand or assertion that Contractor's performance has been delayed, interrupted or interfered with, that Contractor's performance has been accelerated, constructively accelerated, or suspended, that Contractor's performance has been wrongfully terminated, that the Contract Documents have been misinterpreted, that there has been a failure of payment, that Contractor has encountered concealed or unknown conditions, that Contractor has encountered hazardous materials, that there are problems with the Contract Documents, or the timing of Architectural approvals or decisions, that action of the City have been intentionally wrongful or deceptive in any way to the Work, that the amount of time or money granted in a Construction Change Directive is inadequate, that an item treated as a minor change in the Work should have been treated as a Change Order, that a time extension granted was inadequate, or that Contractor is entitled to any other relief, on any legal theory, related to the Work and the Contract. Nothing contained in this subparagraph shall be construed as creating any Contractor right to make a claim, where no such right otherwise exists.

1.6.3.2 Notice Requirement: Within ten (10) calendar days of the first occurrence of an event that Contractor has any reason to believe might result in a Claim, or within ten (10) calendar days of Contractor's discovery of the first occurrence of the event that Contractor has any reason to believe might result in a Claim, if the first occurrence of the event was willfully hidden from the Contractor, the Contractor shall file a written document clearly captioned "Notice of Claim" with City and Architect. The notice shall clearly set out the specific matter of complaint, and the impact of damages which may occur or have occurred as a result thereof, to the extent the impact or damages can be assessed at the time of the notice. If the impact or damages cannot be assessed as of the date of the notice, the notice shall be amended at the earliest date that is reasonably possible, but no later than 21 (twenty-one) days after the date of the notice.

1.6.3.3 Any Claim or portion of a Claim that has not been made the specific subject of a notice strictly in accordance with the requirements of this Paragraph shall be waived. It is imperative that City have timely, specific notice of any subject, the impact of which City may be in a position to mitigate.

1.6.3.3.1 No course of conduct or dealings between the parties, nor implied acceptance of alteration or additions to the Work or changes to the Contract schedule, shall be the basis for any claim for an increase in the Contract Sum or change in the Contract Time.

1.6.3.4 Claims Handling During Construction: After receipt of a Notice of Claim, the City may elect to refer the matter to the Architect or another party for

review. Contractor will attend meetings called to review and discuss the Claim and mitigation of the problem, and shall furnish any reasonable factual backup of the Claim requested. The City may also elect to defer consideration of the Claim until the Work is completed, in which case the same review options shall be available to the City at the completion of the Work. At any stage, the City is entitled to refer a Claim to mediation. If this referral is made, Contractor will take part in the mediation process. The filing, mediation or rejection of a Claim does not entitle Contractor to stop performance of the Work. The Contractor shall proceed diligently with performance of the Work during the pendency of any claim, except termination under City's direction to stop the Work. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. The parties shall share the Mediator's fee and any filing fees equally, and the Mediation shall be held in Travis County, Texas.

1.6.3.5      Claims Handling Following Construction: The acceptance of final payment shall constitute a waiver of Claims by the Contractor which have not previously been identified in a timely notice of Claim and specifically reserved in the final Application for Payment.

1.6.3.6      Claims for Concealed or Unknown Conditions. Only if conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then Contractor shall be entitled to make a Claim if it can satisfy all of the other requirements of Paragraph 1.6.

1.6.3.7      Claims for Additional Cost. If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice and prior approval of City must occur before Contractor may execute the Work that forms the basis of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 1.12.4.

1.6.3.8      Calculating Claim Amount: In calculating the amount of any Claim, the following standards will apply:

- (a)      No indirect or consequential damages will be allowed.
- (b)      All damages must be directly and specifically shown to be caused by a proven wrong. No recovery shall be based on a comparison of planned expenditures to total actual expenditures, or on estimated losses of labor efficiency, or on a comparison of planned man loading to actual man loading, or any other analysis that is used to show damages indirectly.
- (c)      Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong.
- (d)      The maximum daily limit on any recovery for delay shall be the amount established by the Contractor for job overhead costs, defined in the

Schedule of Values, divided by the total number of calendar days of Contract Time called for in the original Contract. Absent an overhead amount in the Schedule of Values, the amount estimated by the Contractor and agreed to by the Architect and the City to be reasonable for job overhead costs shall be used.

## **1.7 Subcontractors.**

### **1.7.1 Definitions.**

1.7.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term “Subcontractor” is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term “Subcontractor” does not include a separate contractor or subcontractors of a separate contractor.

1.7.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term “Sub-subcontractor” is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### **1.7.2 Award of Subcontracts and Other Contracts for Portions of the Work.**

1.7.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the City, through the Architect, the names of persons or entities (including those who are to furnish labor, materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect will promptly reply to the Contractor in writing stating whether or not the City or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the City or Architect to reply promptly shall constitute notice of no reasonable objection.

1.7.2.2 The Contractor shall not contract with a proposed person or entity to whom the City or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

1.7.2.3 If the City or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the City or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute



Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

1.7.2.4 The Contractor shall not change a Subcontractor, person or entity previously selected if the City or Architect makes reasonable objection to such substitute.

1.7.2.5 The Contractor shall maintain a list of Subcontractors on a form provided by the Architect and procured as described in Section 2.4. The Contractor may obtain blank copies from the Architect.

1.7.2.6 The Contractor and Subcontractors are required to visit the site and completely familiarize themselves with the existing conditions prior to the submission of Proposal(s). No additional increase in the Contract amount will be provided when existing or known conditions require a certain amount of work to comply with the intent of the Contract Documents.

1.7.3 Sub-contractual Relations.

1.7.3.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the City and Architect. Each subcontract agreement shall preserve and protect the rights of the City and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

1.7.4 Contingent Assignment of Subcontracts.

1.7.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the City provided that:

(a) assignment is effective only after termination of the Contract by the City for cause pursuant to Paragraph 1.16.2. and only for those subcontract agreements which the City accepts by notifying the Subcontractor and Contractor in writing; and

(b) assignment is subject to the prior rights of the surety, if any, obligated under bonds relating to the Contract.

1.7.4.2 City shall only be responsible for compensating Subcontractor for Work done or materials furnished after the date City gives written notice of its acceptance of the subcontract agreement.

1.7.4.3 Each Subcontract and assignment shall provide that the City shall only be responsible to the Subcontractor for those services and materials furnished by the Subcontractor subsequent to the City's exercise of any rights under this contingent assignment.

1.7.5 Responsibility.

1.7.5.1 Contractor shall be fully responsible for the performance of its Subcontractor, including those selected or approved by the City.

**1.8 Construction by Owner or by Separate Contractors.**

1.8.1 Owner's Right to Perform Construction and to Award Separate Contracts.

1.8.1.1 The City reserves the right to perform other construction work, maintenance and repair work near or adjacent to the site during the time period of the Work. Owner may perform other Work with separate contractors. City shall have access to the site at all times. Any contractor performing work on the site whether for the project or for other projects that require access through this site shall maintain the same insurance and indemnity limits as those of the Contractor.

1.8.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

1.8.2 Mutual Responsibility.

1.8.2.1 The Contractor shall afford the City and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

1.8.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the City or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the City's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

1.8.2.3 The City shall be reimbursed by the Contractor for costs incurred by the City which are payable to a separate contractor because of delays,

improperly timed activities or defective construction of the Contractor.

1.8.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the City or separate contractors as provided in Paragraph 1.12.2.5.

1.8.2.5 The City and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Paragraph 1.5.15.

1.8.3 Owner's Right to Clean Up.

1.8.3.1 If a dispute arises among the Contractor, separate contractors and the City as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the City may clean up and the Architect will allocate the cost among those responsible.

**1.9 Changes in the Work.**

1.9.1 General.

Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work. The Contract Sum and/or Contract Time may be increased or decreased for changes in the Work if the provisions of this Paragraph have been met. Any decrease will include the associated Construction Phase Fee and General Conditions.

1.9.1.1.1 No change in the Contract Sum and/or Contract Time will be allowed for a change in the Work unless prior to performing the changed Work, the Contractor has provided the City in writing a proposal for any change in price and/or change in Contract Time caused by the change in Work, and a Change Order is subsequently executed. A field directive or field order shall not be recognized as having any impact upon the Contract Sum or the Contract Time, and Contractor shall have no Claim therefore, unless it shall, prior to complying with the directive and in any event within fourteen (14) calendar days of receiving the directive, submit a change proposal to the City, and a Change Order is subsequently executed, or Contractor satisfies the requirements of Paragraph 1.6.3. Contractor's proposal shall be subject to City's acceptance and remain firm and irrevocable for a period of forty-five (45) calendar days after receipt by City. Thereafter, Contractor reserves the right to resubmit such change proposal upon different pricing and time of performance terms.

1.9.1.2 A Change Order shall be based upon agreement among the City, Contractor and Architect; a Construction Change Directive requires agreement by the City and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone. Architect shall notify City of issuance.



1.9.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work. Except as permitted in Paragraph 1.9.3., a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order.

1.9.1.4 The Contractor, upon receipt of written notification by the Architect of a proposed item of change in the Work, shall prepare as soon as possible a Change Proposal in such form or forms as directed by the Architect.

(a) Each separate Change Proposal shall be numbered consecutively and shall include material costs, labor costs, fees, overhead and profit. The Change Proposal shall specify all costs related to the proposed change in the Work, including any disruption or impact on performance.

(b) The Subcontractor's itemized accounting shall be included with the Change Proposal.

(c) If a Change Proposal is returned to the Contractor for additional information or if the scope of the proposed change in the Work is modified by additions, deletions or other revisions, the Contractor shall revise the Change Proposal accordingly and resubmit the revised Change Proposal to the Architect.

(d) A revised Change Proposal shall bear the original Change Proposal number suffixed by the letter "R" to designate a revision in the original Change Proposal. If additional revisions to a revised Change Proposal are necessary, each subsequent revision shall be identified by an appropriate numeral suffix immediately following the "R" suffix.

(e) Upon written approval of a Change Proposal by the City, the Architect will prepare an appropriate Change authorizing such change in Work.

(f) The Contractor shall request extensions of Contract Time due to changes in the Work only at the time of submitting its Change Proposal. **Contractor's failure to do so shall represent a waiver of any right to request a time extension.**

#### 1.9.2 Change Orders.

1.9.2.1 A Change Order is a written instrument prepared by the Architect and signed by the City, Contractor and Architect, stating their agreement upon all of the following:

(a) change in the Work; and the amount of the adjustment, if any, in the Contract Sum;

(b) the extent of the adjustment, if any, in the Contract Time.

1.9.2.2 Methods used in determining adjustments to the Contract Sum may include those listed below:

- (a) mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- (b) unit prices stated in Contract Documents or subsequently agreed upon;
- (c) cost shall be determined in a manner agreed upon by the parties and a mutually acceptable fixed fee, or the percentage fee established at Subparagraph 1.9.3.6., or
- (d) as provided in Subparagraph 1.9.3.6.

1.9.2.3 Agreement on any Change Order shall constitute a final settlement of all Claims by the Contractor directly or indirectly arising out of or relating to the change in Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs and impact costs associated with such change and any and all adjustments to the Contract Sum and the Contract Time.

1.9.3 Construction Change Directives.

1.9.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the City and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The City may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

1.9.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

1.9.3.3 The Construction Change Directive shall include a unilateral change in the Contract Sum and/or Contract Time reflecting the City's view of the appropriate change in the Contract Sum and/or Contract Time for the change in Work covered by the Construction Change Directive. Until agreement is reached by the City and Contractor on these issues, the changes in Contract Sum and Contract Time set out in the Construction Change Directive shall be used for Schedule of Values, payment and scheduling purposes.

1.9.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

1.9.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective

immediately and shall be recorded as a Change Order.

1.9.3.6 In the absence of an agreement between City and Contractor on the proper change to the Contract Sum or Contract Time because of a change in the Work, Contractor may treat the matter as a Claim under Paragraph 1.6.3. In such event, the Contractor shall be entitled to recover only the amount by which the Cost of the Work has been reasonably increased over the Cost of Work without the change in the Work, plus five percent (5%).

1.9.3.7 Pending final determination of the cost of a Construction Change Directive to the City, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by the Contractor to the City for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

#### 1.9.4 Minor Changes in the Work.

1.9.4.1 The Architect will have authority, after consulting with the City, to order minor changes in the Work not involving adjustments in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be affected by written order and shall be binding on the Contractor. The Contractor shall carry out such written orders promptly.

#### 1.9.5 Changes Funded By Allowances.

1.9.5.1 Allowance balances may be used to fund changes in the Work. The Contractor will not be allowed an overhead and profit mark-up when changes in the Work are funded by one of the Allowances. Remaining balances of Allowances shall be returned to the Owner and be inclusive of overhead and profit mark-up.

### 1.10 Prosecution and Progress.

1.10.1 TIME AND ORDER OF COMPLETION. It is the meaning and intent of this Contract, unless otherwise herein specifically provided, that the CONTRACTOR shall be allowed to prosecute the Work at such times and seasons, in such order of precedence, and in such manner as shall be most conducive to economy of construction; provided, however, that the order and the time of prosecution shall be such that the Work shall be Substantially Completed as a whole and in part, in accordance with this Contract and the Contract Time; provided, also, that when the OWNER is having other work done, either by contract or by its own forces, the Architect may direct the time and manner of constructing the Work under this Contract, so that conflict will be avoided and the construction of the various works being done for the OWNER shall be harmonized, and the CONTRACTOR shall fully cooperate and coordinate its Work with OWNER or such other contractors.

1.10.1.1 The CONTRACTOR shall submit, an updated schedule with every pay estimate for review by the Architect, schedules which shall show the order in which the CONTRACTOR proposes to carry on the Work, with dates on which the CONTRACTOR will start the several parts of the work, and estimated



dates of completion of the several parts. Such schedules shall show completion of the Work within the Contract Time, and/or shall show such recovery efforts as CONTRACTOR intends to undertake in the event Substantial Completion of the Work is delayed.

1.10.1.2 EXTENSION OF TIME. The CONTRACTOR agrees that he has submitted his Bid Proposal in full recognition of the time required for the completion of this Project, taking into consideration the average climatic range and industrial conditions prevailing in this locality, and has considered the liquidated damage provisions as hereinafter set forth, and that he shall not be entitled to, nor will he request, an extension of time on this Contract, except when Substantial Completion of the Work has been delayed solely by strikes, lockouts, fires, Acts of God, or by any other cause which the Architect shall decide justifies the delay. The CONTRACTOR shall give the Architect prompt notice, in writing and within three (3) days of the start of any such delay, of the cause of any such delay, and its estimated effect on the Work and the schedule for completion of the Work. Upon receipt of a written request for an extension of the Contract Time from the CONTRACTOR, supported by relevant and all requested documentation, the Architect shall submit such written request, together with his written recommendation, to the OWNER for consideration. If the delay is not attributable in whole or in part to any act or omission of CONTRACTOR, its subcontractors or suppliers, and if the OWNER determines that CONTRACTOR is entitled to an extension of time under the terms of the Contract, the OWNER shall grant an extension of time for Substantial Completion of the Work, sufficient to compensate for the delay, and such extension of time shall be CONTRACTOR's sole and exclusive remedy, except as may be otherwise provided herein. No extensions of Contract Time shall be made for delays occurring prior to the Contractor's mobilization as defined in the City's Specifications.

The Contract Time as defined in the Bid Proposal and other sections herein incorporates 50 Weather Days per calendar year or an average of 3.33 days per calendar month. The CONTRACTOR is required to keep record of all weather related delays and to submit the monthly count on each Pay Application. The Owner's Representative shall review and sign off on this record as a part of the Pay Application approval process every month. If, during preparation of the Balancing Change Order, the status of the work progress requires an extension of the Contract Time, Impact Days shall be added to the Completion Date equal to the total number of Weather or Impact Days approved less the original 40 days resident in the original Contract Time. The Addition of Weather or Impact Days will only alter the Contract Time when added by Change Order and with demonstrated impact to the Critical Path. If the Work is completed prior to the Completion Date, No Days will be added. The addition of Weather or Impact Days shall be the CONTRACTOR's sole remedy for delays to the completion of the Work and their addition to the Contract Time shall not affect the Contract Price through any "per diem" adjustment to the General Conditions costs, Temporary Facilities costs or any other costs associated with the extension of the Contract Time.

1.10.1.3 HINDRANCES AND DELAYS. In executing the Contract, the CONTRACTOR agrees that in undertaking to complete the Work within the time herein fixed, the Contractor has taken into consideration and made allowances

for all interference, disruption, hindrances and delays incident to such Work, whether growing out of delays in securing materials, workmen or otherwise. No claim shall be made by the CONTRACTOR for damages, loss, costs or expenses resulting from interference, disruption, hindrances or delays from any cause during the progress of any portion of the Work embraced in this Contract, except where the Work is stopped or suspended by order of the OWNER's representative and such stoppage or suspension is not attributable to any act or omission of CONTRACTOR.

1.10.1.4 SUSPENSION OF WORK. OWNER may, without cause, order the CONTRACTOR in writing to suspend the Work, in whole or in part, for such period of time as OWNER may request. The Contract Price and/or Contract Time shall be adjusted for any increase in the cost of or the time required for performance of the Work caused by such suspension. No adjustment shall be made to the extent performance was or would have been suspended by a cause for which CONTRACTOR is responsible, or to the extent an adjustment is made or denied under another provision of the Contract Documents.

1.10.1.5 CHANGE OF CONTRACT TIME: The Contract Time may only be changed by a Change Order. Any claim for an adjustment of Contract Time shall be based on written notice delivered by the party making such claim to the other party and to the Architect promptly, but in no event later than ten (10) days after the event-giving rise to the claim. Notice of the extent of the claim, along with supporting data, shall be delivered within thirty (30) days of the occurrence and shall be accompanied by the claimant's written representation that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in Contract Time shall be determined by the ARCHITECT, in consultation with the City, in accordance with the requirements of this paragraph. Contractor shall submit, as a minimum, the following data:

- A. Information showing that the time requested is not included in the existing Contract and in addition to the Contract.
- B. Information documenting that the number of days requested is accurate for the event.
- C. Revised and current construction schedules showing that the time requested affects the project's critical path.

1.10.1.6 DELAYS BEYOND OWNER'S AND CONTRACTOR'S CONTROL: Where CONTRACTOR is prevented from completing any part of the Work within the Contract Time due to delays beyond the control of the OWNER and the CONTRACTOR, including, but not limited to, interference by utility owners or other contractors performing other work, Contractor shall be entitled to an extension of the Contract Time in an amount equal to the time lost. CONTRACTOR shall not be entitled to any increase in Contract Price as a result of such delays. IN NO EVENT SHALL OWNER BE LIABLE TO CONTRACTOR FOR DAMAGES ARISING OUT OF OR RESULTING FROM (i) Delays caused by, or within the control of, the CONTRACTOR, or (ii) Delays beyond the control of both parties including, but

not limited to, interference by utility owners or other contractors performing other work, fires, floods, epidemics, abnormal weather conditions, acts of God, even if such delays are due in part to the negligence, other fault, breach of contract or warranty, violation of the Texas Deceptive Trade Act, or strict liability without regard to fault of OWNER. An extension of Contract time shall be CONTRACTOR's sole and exclusive remedy for any such delays. Delays attributed to, and within the control of, a Subcontractor or Supplier shall be deemed to be delays within the control of the CONTRACTOR.

## **1.11 Payments and Completion.**

### **1.11.1 Contract Sum.**

1.11.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the City to the Contractor for performance of the Work under the Contract Documents.

### **1.11.2 Schedule of Values.**

1.11.2.1 Before the first Application for Payment, the Contractor shall submit to the Architect a Schedule of Values fairly allocating the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as reasonably required by the Architect. Once approved by the Architect and updated for changes in the Work, the Schedule of Values shall be used as a basis for reviewing the Contractor's Applications for Payment and is not to be taken as evidence of market or other value. The Schedule of Values shall not overvalue early job activities. The Contractor's Fee shall be shown as a single separate item. The Schedule of Values shall follow the trade divisions of the Specification so far as practicable.

In order to facilitate the review of Applications for Payment, the Schedule of Values shall be submitted on forms approved by the City, and shall include the following:

(a) Contractor's costs for Contractor's Fee, bonds and insurance, mobilization, etc., shall be listed as individual line items.

(b) Contractor's costs for various construction items shall be detailed. For example, concrete work shall be subdivided into footings, grade beams, floor slabs, paving, etc. These subdivisions shall appear as individual line items.

(c) On major subcontracts, such as mechanical, electrical and plumbing, the Schedule of Values shall indicate line items and amounts in detail (for example: underground, major equipment, fixtures, installation of fixtures, start up, etc.).

(d) Costs for subcontract Work shall be listed without any



addition of Contractor's costs for overhead, profit or supervision.

(e) Where payment for stored materials may be requested prior to installation, material and labor shall be listed as separate line items.

(f) Sample pages from an approved Schedule of Values are included following this document as Attachment \_\_\_\_\_.

### 1.11.3 Applications for Payment.

1.11.3.1 At the time specified in the Agreement, the Contractor shall submit to the Architect an itemized Application for Payment for operations completed in accordance with the Schedule of Values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the City or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage as provided for in the Contract Documents. Unless otherwise agreed, the Contractor shall submit requests for payment using the AIA Document G702; showing in detail the amounts requested, etc., as necessary. All blank spaces must be completed and the signatures of the Contractor shall signify attestation that said Application for Payment is true, accurate and complete. By submitting its Application for Payment, the Contractor certifies that the individual signing the application is authorized to do so. Additionally, if the Contractor prepares its Application for Payment, any supplemental supporting documentation should be provided to the Architect and the City for consideration. Applications for Payment may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier.

1.11.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the City, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the City to establish the City's title to such materials and equipment or otherwise protect the City's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. Applications for Payment shall separate references to any and all materials and/ or equipment that require separate payment for materials stored but not installed as individual line items. These items shall be specifically identified in the Original Schedule of Values as well as where this material or equipment will be incorporated into the Work.

1.11.3.3 Upon payment by the City of the invoiced cost, title to all such materials and equipment shall irrevocably pass to the City. The Contractor warrants that title to all materials and equipment covered by an Application for Payment will

pass to City upon the receipt of payment by the Contractor. Such title shall be free and clear of all liens, claims, security interests or encumbrances. No work, materials or equipment covered by an Application for Payment shall be subject to an agreement under which an interest is retained or encumbrance is attached by the seller, the Contractor, or other party.

1.11.3.4 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the City shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. Each Application for Payment shall be accompanied by a signed and notarized Partial Release of Lien/ All Bills Paid affidavit specifically covering the Work performed and any materials and equipment included and billed in the accompanying Application for Payment.

1.11.4 Certificates for Payment.

1.11.4.1 The Application for Payment will be reviewed first by the Architect who will certify to the City that portion, if any, of the Application for Payment it has determined is properly due. In the event that the Architect believes that payment should be withheld, in whole or in part, it will notify the City and Contractor of the basis of this view as provided in Subparagraph 1.11.5.1.

1.11.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the City, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents and that Architect has received a signed and notarized Partial Release of Lien/ All Bills Paid affidavit . The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the City to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

1.11.4.3 The issuance of a Certificate of Payment shall constitute a recommendation to the City in respect to the amount to be paid. This recommendation is not binding on the City if City knows of other reasons under the Contract why payment should be withheld.

1.11.4.4 The Architect will affix his signature to the same form described in Paragraph 1.11.4.1. to signify his certification of payment provided the application is otherwise satisfactory.

1.11.5 Decisions to Withhold Certification.

1.11.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the City, if in the Architect's opinion the representations to the City required by Paragraph 1.11.4.2. can not be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and City as provided in Paragraph 1.11.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the City. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the City from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Paragraph 1.5.5.2., because of:

- (a) defective Work not remedied;
- (b) third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the City is provided by the Contractor;
- (c) failure of the Contractor to make payments properly to Subcontractors for labor, materials or equipment;
- (d) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- (e) damage to the City or another contractor;
- (f) reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- (g) persistent failure to carry out the Work in accordance with the Contract Documents.

1.11.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld, less retainage.

1.11.6 Progress Payments.

1.11.6.1 After the Architect has issued a Certificate for Payment, the City shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. If the City believes the Contractor is not



current in its legitimate obligations to suppliers, laborers and/or Subcontractors on the Project, City may (but is not obligated to) withhold payment until it receives partial or final releases, or other reasonable proof from the Contractor that this situation does not exist.

1.11.6.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the City, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. City is not obligated to monitor payments to Subcontractors or Sub-subcontractors, and nothing in this paragraph shall create any right on the part of a Subcontractor or Sub-subcontractor against City.

1.11.6.3 Neither the City nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor or Sub-subcontractor.

1.11.6.4 Payment to material suppliers shall be treated in a manner similar to that provided in Paragraphs 1.11.6.2., 1.11.6.3. and 1.11.6.4.

1.11.6.5 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the City shall not constitute acceptance of Work not constructed in accordance with the Contract Documents.

#### 1.11.7 Failure of Payment.

1.11.7.1 If the City incurs any costs and expenses in curing any default of the Contractor or correcting defective Work, the City shall have an absolute right to offset such amount against the Contract Sum under this Contract, and may, in the City's sole discretion, elect either to: (1) deduct an amount equal to that to which the City is entitled, or (2) issue a written notice to the Contractor reducing the GMP by an amount equal to that to which the City is entitled.

#### 1.11.8 Substantial Completion.

1.11.8.1 When the Contractor considers that the Work, or a portion thereof which the City agrees to accept separately, is substantially complete, the Architect and City shall review the punch list prepared by Contractor and supplement the list as necessary. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

1.11.8.1.1 The Contractor's superintendent shall participate in the preparation of the Contractor's punch list that is submitted to the Architect and City for supplementation. Upon receipt, the Architect shall perform a spot review to determine the adequacy and completeness of the Contractor's punch list. Should the Architect determine that the Contractor's punch list lacks sufficient detail or requires extensive supplementation, the punch list will be returned to the Contractor for further inspection and revision. The date of Substantial Completion will be delayed until the punch list submitted is a reasonable

representation of the work to be done.

1.11.8.1.2 Upon receipt of an acceptable Contractor's punch list, the Contractor's superintendent shall accompany the Architect, its Consultants and the City (at its discretion) during their inspections and the preparation of their supplements to the Contractor's punch list. The superintendent shall record or otherwise take note of all supplementary items. The Architect will endeavor to furnish to the Contractor typed, hand written or recorded supplements to the punch list in a prompt manner; however, any delay in the Contractor's receiving said supplements from the Architect shall not be cause for a claim for additional cost or extension of time.

1.11.8.2 When the Contractor notifies Architect that it has completed or corrected items on the punch list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's punch list, which is not sufficiently complete in accordance with the Contract Documents so that the City can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. Any further inspections by the Architect for the purpose of determining the Project is Substantially Complete shall be at Contractor's cost and the City may deduct such cost from any amount payable to Contractor hereunder.

1.11.8.3 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the City and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

1.11.8.4 The Certificate of Substantial Completion shall be submitted to the City and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the City, in its sole discretion, may make payment of retainage, or a portion thereof as determined in the City's sole discretion, applying to such Work or designated portions thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

1.11.8.5 Upon final completion of all remaining outstanding or incomplete work, identified in the Certificate of Substantial Completion, the Architect shall issue a Certificate of Final Completion and Acceptance. Upon such issuance, the City shall release all remaining retainage, if any.

1.11.8.6 The Contractor shall keep all required insurance in full force,

and provide payment for all utilities, until the Certificate of Substantial Completion and Acceptance is issued, and all Work is accepted by the City in writing, regardless of the stated date of Substantial Completion. S u c h Acceptance shall not be unreasonably withheld. Contractor shall provide City a minimum of 3 days written notice of Contractor's planned utility contract termination date.

#### 1.11.9 Partial Occupancy or Use.

1.11.9.1 The City may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Paragraph 1.13.3.1. and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the City and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents.

1.11.9.2 Immediately prior to such partial occupancy or use, the City, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

1.11.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

#### 1.11.10 Final Completion and Final Payment.

1.11.10.1 Upon City's receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Paragraph 1.11.10.2. as precedent to the Contractor's being entitled to final payment have been fulfilled.

Prior to final payment, the Contractor shall submit three external portable hard drives to the City and Architect, each external hard drives with the following completed forms:

- (a) Contractor's Affidavit of Payment of Debts and Claims;
- (b) Contractor's Affidavit of Release of Liens;



- (c) Consent of Surety to Final Payment (if applicable);
- (d) Subcontractor's Unconditional Releases – each signed and notarized on a single piece of paper;
- (e) Maintenance and inspection manuals
- (f) Final list of subcontractors;\_
- (g) one (1) complete hard-copy and one (1) electronic set of marked-up copies of the Drawings and Specifications accurately showing the Project as constructed. Such Specifications and Drawings shall be marked to show all changes and modifications that have been incorporated into the Work as performed;
- (h) other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the City; and
- (i) any other “Closeout Documents” required under the Contract Documents.

Documents identified as affidavits must be notarized. All manuals will contain an index listing the information submitted. The index sections will be divided and identified by tabbing each section as listed in the index. Upon request, the Architect will furnish the Contractor with blank copies of the forms listed above. Final payment, constituting the entire unpaid balance of the Contract Sum shall be paid by the City to the Contractor thirty (30) days after Substantial Completion of the Work, unless otherwise stipulated in the Certificate of Completion, provided the Contract is fully performed, and Final Certificate of Payment has been issued by the Architect. The City may accept certain portions of the Work as being complete prior to the acceptance of the entire Project. If certain areas are accepted by the City as being completed, and if the Contractor has completed all of the requirements for final payment of the portion of Work, the City may, but is not required to, release retainage for that area/portion of Work. Amounts of retainage shall be agreed upon by both City and Contractor prior to final acceptance of these areas.

1.11.10.2 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the City shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

1.11.10.3 Acceptance of final payment by the Contractor shall constitute a waiver of claims by Contractor except for any Claims then pending that comply with the requirements of Paragraph 1.6.3.

## **1.12 Protection of Persons and Property.**

### **1.12.1 Safety Precautions and Programs.**

1.12.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all necessary safety precautions and programs in connection with the performance of the Contract.

### **1.12.2 Safety of Persons and Property.**

1.12.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

(a) employees on the Work and other persons who may be affected thereby including but not limited to the City's employees, invitees and the general public;

(b) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

(c) other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

1.12.2.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

1.12.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

1.12.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. When use or storage of explosives or other hazardous materials or equipment or unusual construction methods are necessary, the Contractor shall give the City and Architect reasonable advance notice of the presence or use of such materials, equipment or methods.

1.12.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Paragraphs 1.12.2.1(b). and 1.12.2.1(c). caused in whole or in part

by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Paragraphs 1.12.2.1, except damage or loss attributable to acts or omissions of the City or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 1.5.19.6.

1.12.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

1.12.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

1.12.2.8 Suspension of all or a portion of the Work, for any reason, shall not relieve the Contractor of its obligations under Paragraph 1.12.2.

1.12.2.9 The Contractor shall promptly report in writing to the City and Architect all accidents arising out of or in connection with the Work which cause death, personal injury, or property damage, giving full details and statement of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to City and Architect.

1.12.2.10 The Contractor shall be responsible for the protection and security of the Work and the Project, until it receives written notification that the Substantial Completion of the Work has been accepted by the City unless otherwise provided in the Certificate of Substantial Completion.

### 1.12.3 Hazardous Materials.

1.12.3.1 Contractor agrees that it shall not transport to, use, generate, dispose of, or install at the Project site any Hazardous Substance (as defined in 1.12.3.1.3.), except in accordance with applicable Environmental Laws. Further, in performing the Work, Contractor shall not cause any release of Hazardous Substances into, or contamination of, the environment, including the soil, the atmosphere, any water course, or ground water, or storm sewer except in accordance with applicable Environmental Laws (as hereafter defined at Paragraph 1.12.3.1.3). In the event Contractor engages in any of the activities prohibited in this Paragraph 1.12.3.1. **to the fullest extent permitted by law, Contractor hereby indemnifies and holds City, Architect and all of their respective officers, agents, representatives and employees harmless from and against any and all claims, damages, losses, causes of action, suits, and liabilities of every kind, including, but not limited to, expenses of litigation, court costs, punitive damages, fines and penalties incurred by City from state, federal or local agencies and attorneys' fees, arising out of, incidental to or resulting from the activities prohibited in this Paragraph 1.12.3.**

1.12.3.2 In the event Contractor encounters on the Project site any Hazardous Substance, or what Contractor may reasonably believe to be a Hazardous Substance, and which is being introduced to the Work, or exists on the Project site, in a



manner violative of any applicable Environmental Laws, Contractor shall immediately stop work in the area affected and report the condition to City and Architect in writing. The Work in the affected area shall not thereafter be resumed except by written authorization of City if in fact a Hazardous Substance has been encountered and has not been rendered harmless. In the event Contractor fails to stop the Work upon encountering a Hazardous Substance at the Project site, **to the fullest extent permitted by law, Contractor hereby indemnifies and holds City, Architect and all of their respective officers, agents and employees harmless from and against any and all claims, damages, losses, causes of action, suits, and liabilities of every kind, including, but not limited to, expenses of litigation, court costs, punitive damages fines and penalties incurred by City from state, federal or local agencies and attorneys' fees, arising out of, incidental to or resulting from Contractor's failure to stop the Work.**

1.12.3.3 City and Contractor may enter into a separate agreement and/or Change Order for Contractor to remediate and/or render harmless pre-existing Hazardous Substances, but Contractor shall not be required to remediate and/or render harmless the Hazardous Substance absent such agreement. Contractor shall not be required to resume work in any area affected by the Hazardous Substance until such time as the Hazardous Substance has been remediated and/or rendered harmless. Contractor shall be solely responsible for all costs of remediation associated with Hazardous Substances imported, with or without Owner's knowledge, to the work site by Contractor or any Subcontractor.

1.12.3.4 For purposes of this Agreement, the term "Hazardous Substance" shall mean and include any element constituent, chemical, substance, compound, or mixture, which are defined as a hazardous substance by any local, state or federal law, rule, ordinance, by-law, or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, without limitation, The Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), The Resource Conservation and Recovery Act ("RCRA"), The Toxic Substances Control Act ("TSCA"), The Clean Water Act ("CWA"), The Clean Air Act ("CAA"), the Marine Protection Research and Sanctuaries Act ("MPRSA"), The Occupational Safety and Health Act ("OSHA"), The Superfund Amendments and Reauthorization Act of 1986 ("SARA"), or environmental clean-up or disclosure statutes including all state and local counterparts of such laws (all such laws, rules and regulations being referred to collectively as "Environmental Laws") including all regulations related to the Edwards Aquifer ("EEA"). It is the Contractor's responsibility to comply with Paragraph 1.12.3.1 based on the law in effect at the time its services are rendered and to comply with any amendments to those laws for all services rendered after the effective date of any such amendments.

#### 1.12.4 Emergencies.

1.12.4.1 In an emergency affecting the safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 1.6.3. and Paragraph 1.9.

#### 1.13 Insurance and Bonds.

1.13.1 Contractor's Liability Insurance.

1.13.1.1 The Contractor shall purchase and maintain insurance as shown in ATTACHMENT 1, OWNER'S INSURANCE REQUIREMENTS OF CONTRACTOR and specific project related insurance requirements as noted in ATTACHMENT 2, SPECIAL CONDITIONS OF THE AGREEMENT.

1.13.2 Certificates of Insurance.

1.13.2.1 **Certificates of Insurance** shall be prepared and executed by the insurance company or its authorized agent and must be provided in accordance with Section 1.13.1.1.1 and are attached as EXHIBIT A, Contractor's Insurance Certificates including Builder's Risk.

1.13.3 Property Insurance.

1.13.3.1 Partial occupancy or use in accordance with Paragraph 1.11.9. shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The City and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

1.13.3.2 Loss of Use Insurance. The City, at the City's option, may purchase and maintain such insurance as will insure the City against loss of use of the City's property due to fire or other hazards, however caused.

1.13.3.3 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the City shall, at City's option, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

1.13.3.4 If during the Project construction period the City insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the City shall waive all rights for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

1.13.3.5 A loss insured under City's property insurance shall be adjusted by the City and made payable to the City for the insureds, as their interests may appear, subject to requirements of Paragraph 1.13.3. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

1.13.3.6 If after such loss no other special agreement is made and unless the City terminates the Contract for convenience, replacement of damaged property shall be

performed by the Contractor after notification of a Change in the Work in accordance with Paragraph 1.9.

#### 1.13.4 Performance Bond and Payment Bond.

1.13.4.1 Pursuant to Chapter 2253 of the Texas Government Code, for all public works contracts with governmental entities, performance and payment bonds are required when the Contract Amount exceeds \$50,000. In the event a performance or payment bond or both is required either by law or in the City's discretion, such bonds shall be executed in accordance with all requirements of Article 7.19-1 of the Texas Insurance Code, all other applicable law, and the following:

(a) The Contractor shall execute performance and payment bonds for the full Contract Amount in the forms attached hereto as **Exhibit B and C.**

(b) The bond surety shall be authorized under the laws of the State of Texas to provide a performance and payment bond and shall have attached proof of authorization of the surety to act in the performance and payment of bonds.

(c) The Contractor shall provide original, sealed, and complete counterparts of the executed bonds in the forms required by the Contract Documents, which are attached as Exhibit B and C, together with valid original powers of attorney, at the time of execution of this Agreement and prior to the commencement of Work. Copies of the executed bonds shall be attached hereto as **Exhibit B and C.**

(d) The performance and payment bonds shall remain in effect for a period of one (1) year after Final Completion of the Work and shall be extended for any warranty work to cover the warranty period.

(e) If at any time during the execution of this Agreement in the required period thereafter, the bond or bonds become invalid or ineffective for any reason, the Contractor shall promptly supply within ten (10) days such other bond or bonds, which bond or bonds shall assure performance or payment as required.

1.13.4.2 The Contractor may make such changes and alterations as the City may require in the Work or any part thereof without affecting the validity of this Agreement and any accompanying bond. If such changes or alterations diminish the quantity of the Work to be done, they shall not constitute the basis for any claim for damages or anticipated profits. If the City makes changes or alterations that render useless any Work already done or material already used in said Work, then the City shall compensate the Contractor for any material or labor so used, and for any actual loss occasioned by such change due to actual expenses incurred in preparation for the work as originally planned.

#### 1.14 Uncovering and Correction of Work.

##### 1.14.1 Uncovering of Work.



1.14.1.1 If a portion of the Work is covered contrary to the Architect's request, required inspection, or contrary to requirements in the Contract Documents, the Work must, if required in writing by the Architect, be uncovered for the Architect's examination or inspection of the work and be replaced at the Contractor's expense without change in the Contract Time.

1.14.1.2 If a portion of the Work has been covered which the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the City's expense. If such Work is not in accordance with the Contract Documents, correction shall be at the Contractor's expense.

1.14.2 Correction of Work.

1.14.2.1 Before or After Substantial Completion.

1.14.2.1.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

1.14.2.2 After Substantial Completion.

1.14.2.2.1 In addition to the Contractor's obligations under Paragraph 1.5.7., if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Paragraph 1.11.9.1., or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the City to do so unless the City has previously given the Contractor a written acceptance of such particular condition. The City shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming or defective Work within a reasonable time during that period after receipt of notice from the City or Architect, the City may correct it in accordance with Paragraph 1.4.5. The "prompt" correction of defective work by the Contractor after receipt of notification from the City as described above shall be defined as follows:

(a) The Contractor shall make written response to the City within twenty-four (24) hours of receipt of the City's notice, acknowledging receipt of the notice and providing the proposed schedule to conduct corrective work. Corrective work shall not interfere with the City's normal operation and use of the Project, unless expressly approved by the City;

(b) For corrective work which is not a life safety issue or which will not, by the nature of the defect, cause subsequent damage to the Project, corrective work shall be completed within fourteen (14) calendar days;

(c) For corrective work which by its nature may cause subsequent damage to the Project, corrective work required to prevent subsequent damage shall be completed within twenty-four (24) hours, and if such work is a temporary repair, permanent repair of the corrective work shall be completed within seven (7) calendar days. The Contractor shall also correct all subsequent damage caused by such corrective work;

For corrective work which affects services to, and ordinary use of the Project, corrective work shall be completed within twenty-four (24) hours, and if such work is a temporary repair, permanent repair of the corrective work shall be completed within seven (7) calendar days; and

(d) The time frames stated above for completion of permanent corrective work shall be equitably adjusted as required for legitimate delays caused by weather delays, material acquisition and other factors beyond the Contractor's control.

(e) Damage to existing infrastructure, structure, material, surfaces, equipment, furnishings, etc. that result from the execution of the corrective work shall be remedied or repairs reimbursed by the Contractor.

1.14.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

1.14.2.2.3 These obligations under Subparagraph 1.14.2.2. shall survive acceptance of the Work under the Contract and termination of the Contract. The period for any Work corrected pursuant to Paragraph 1.14.2. shall be extended for a period of one year after the date said corrective work is completed.

1.14.2.3 The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the City.

1.14.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the City or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

1.14.2.4.1 Where non-conforming Work is found, the entire area of Work involved shall be corrected unless the Contractor can completely define the limits to the Architect's satisfaction. Additional testing, sampling, or inspecting needed to define nonconforming Work shall be at the Contractor's expense, and performed by the City's testing laboratory if such services are

reasonably required by the Architect. All corrected Work shall be retested at the Contractor's expense. Extra architectural or other services



required to analyze non-conforming Work shall be paid for by the Contractor.

1.14.2.5 Nothing contained in Paragraph 1.14.2. shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Nothing contained in Paragraph 1.14.2. is intended to limit or modify any obligations under the law or under the Contract Documents, including any warranty obligations, expressed or implied.

1.14.3 Acceptance of Nonconforming Work.

1.14.3.1 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the City may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be affected whether or not final payment has been made.

**1.15 Miscellaneous Provisions.**

1.15.1 Governing Law.

1.15.1.1 This Contract and any disputes related to the Work shall be governed by the law of the State of Texas, and any disputes shall be resolved in Travis County, Texas.

1.15.2 Successors and Assigns.

1.15.2.1 The City and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Contractor shall not assign the Contract as a whole, or in part, without written consent of the City. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

1.15.3 Written Notice.

1.15.3.1 Written notice shall be deemed to have been served only if the writing is delivered to the addressees set out below, or to such other address as has been previously clearly identified in writing by the addressee, or if delivered by mail or in form of electronic transmission to that office, or sent by registered or certified mail to that address.

City: City of West Lake  
Hills 911  
Westlake Drive  
West Lake Hills, Texas 78746  
Attn: City Administrator

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Contractor: \_\_\_\_\_

#### 1.15.4 Rights and Remedies.

1.15.4.1 No action or failure to act by the City, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

#### 1.15.5 Tests and Inspections.

1.15.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at appropriate times. Unless otherwise provided, the Contractor shall make scheduling arrangements for such tests, inspections and approvals with an independent testing laboratory employed by the City for this purpose, or with the appropriate public authority. City shall bear the normal costs of these services, but not any excess costs attributable to Contractor-caused scheduling problems, or other Contractor error. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so the Architect may observe such procedures.

1.15.5.2 If the Architect, City or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Paragraph 1.15.5.1., the Architect will, upon written authorization from the City, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the City, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Paragraph 1.15.5.3., shall be at the City's expense.

1.15.5.3 If such procedures for testing, inspection or approval under Paragraphs 1.15.5.1 and 1.15.5.2. reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be kept and logged by the Contractor in ProCore. All testing reports will be made available to all parties.

1.15.5.4 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

1.15.5.5 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

#### **1.16 Termination or Suspension of the Contract.**

#### 1.16.1 Termination by the Contractor.

1.16.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of ninety (90) consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

(a) issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;

(b) an act of government, such as a declaration of national emergency which requires all Work to be stopped; or

(c) because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Paragraph 1.11.4.1., or because the City has not made payment on a Certificate for Payment within the time stated in the Contract Documents, provided notice is given as required under Subparagraph 1.11.4.1.

1.16.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the City as described in Paragraph 1.16.3. which constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365- day period, whichever is less.

1.16.1.3 If the Work is stopped for ninety (90) consecutive days for any reason described in Paragraph 1.16.1.1. or 1.16.1.2., the Contractor may, upon fourteen (14) days' written notice to the City and Architect, terminate the Contract and recover from the City payment for Work completed.

1.16.1.4 Notwithstanding anything to the contrary contained herein or in the other Contract Documents, the City shall not be responsible for damages for loss of anticipated profits on Work not performed on account of any termination described in Subparagraphs 1.16.1.1., 1.16.1.2., and 1.16.1.3.

#### 1.16.2 Termination by the Owner for Cause.

1.16.2.1 The City may terminate the Contract if the Contractor:

(a) refuses or fails to supply enough properly skilled workers or proper materials;

(b) fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

(c) disregards laws, ordinances, or rules, regulations or orders



of a public authority having jurisdiction;

(d) otherwise is guilty of substantial breach of a provision of the Contract Documents;

(e) fails to furnish the City, upon request, with assurances satisfactory to the City evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;

(f) fails to proceed continuously and diligently with the construction and completion of the Work, except as permitted under the Contract Documents; or

(g) fails to provide all required policies of insurance and/or bonds.

1.16.2.2 When any of the above reasons exist, the City may without prejudice to any other rights or remedies of the City and after giving the Contractor and the Contractor's surety, if any, seven days written notice of the specific default by Contractor and an opportunity to cure said default. If Contractor fails to cure default, after an additional seven day notice the Owner may terminate employment of the Contractor and may, subject to any prior rights of the surety:

(a) take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

(b) accept assignment of subcontracts pursuant to Paragraph 1.7.4;

(c) Make demand upon Contractor's surety to complete the Work; and

(d) finish the Work by whatever reasonable method the City may deem expedient.

1.16.2.3 When the City terminates the Contract for one of the reasons stated in Paragraph 1.16.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

1.16.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the City and not expressly waived, including attorney's fees, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the City. This obligation for payment shall survive termination of the Contract.

1.16.2.5 If a Performance Bond has been furnished and the Contractor is declared by the City to be in default under the Contract, the Surety shall promptly, in no event to exceed 30 days, remedy the default by commencing and continuing to perform the remaining work of the Contract in accordance with its terms and conditions, or by obtaining a bid or bids in accordance with its terms and conditions. At City's election, upon determination by the City and the Surety of the lowest responsible bidder, the Surety will complete the Work or will arrange for a Contract between such bidder and the City, and

make available sufficient funds to pay the cost of completion less the balance of the Contract Sum, but not exceeding the Penal Sum of the bond. The phrase “balance of the Contract Sum” as used herein shall mean the total amount payable by the City to the Contractor under the Contract, including any adjustments thereto made in accordance with the terms and conditions of this Contract, and amendments thereto less the amount previously paid by the City to the Contractor.

1.16.3 Suspension by the Owner for Convenience.

1.16.3.1 The City may, without cause, and with seven days written notice, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the City may determine.

1.16.3.2 If City suspends the Contractor’s performance for convenience, an adjustment shall be made to the Contract Sum as calculated under Paragraph 1.9 and shall include profit. No adjustment shall be made to the extent:

- (a) that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- (b) that an equitable adjustment is made or denied under another provision of the Contract; or
- (c) that the delay was caused by a reason beyond the control of the City

1.16.4 Termination by the Owner for Convenience.

1.16.4.1 The City may, at any time, terminate the Contract, in whole or in part, with seven days written notice, for the City’s convenience and without cause.

1.16.4.2 Upon receipt of written notice from the City of such termination for the City’s convenience, the Contractor shall:

- (a) cease operations as directed by the City in the notice;
- (b) take actions necessary, or that the City may direct, for the protection and preservation of the Work; and
- (c) except for Work not so terminated and/or directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

1.16.4.3 In the event of a termination under Paragraph 1.16.4, the Contractor shall be paid the value of its Work to the date of termination plus such sums as are reasonably required to cover the cost to Contractor, its Subcontractors and suppliers, to shut down the Project. City shall not be responsible for damages for loss of anticipated profits on Work not performed on account of any termination.

1.16.4.4 Upon determination by a court of competent jurisdiction that termination of the Contract, pursuant to Paragraph 1.16.2 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Paragraph 1.16.4, and Contractor's remedy for wrongful termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in Paragraph 1.16.4.

## **END OF GENERAL PROVISIONS**

## **SECTION 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES**

The Construction Manager shall perform the services described in this Paragraph. The services to be provided under Paragraphs 2.1 and 2.2 constitute the Preconstruction Phase services. If the City and Construction Manager agree, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases will proceed concurrently.

### **2.1 Preconstruction Phase.**

2.1.1 Preliminary Evaluation. The Construction Manager shall provide a preliminary evaluation of the City's program and Project budget requirements, each in terms of the other.

2.1.2 Consultation. The Construction Manager with the Architect shall jointly schedule and attend regular meetings with the City. The Construction Manager shall consult with the City and Architect regarding site use and improvements and the selection of materials, building systems and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies.

2.1.3 Preliminary Project Schedule. When Project requirements described in Paragraph 3.1.1 have been sufficiently identified, the Construction Manager shall prepare, and periodically update, a preliminary Project schedule for the Architect's review and the City's approval. The Construction Manager shall coordinate and integrate the preliminary Project schedule with the services and activities of the City, Architect and Construction Manager. As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, City's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the City and Architect.

2.1.4 Phased Construction. The Construction Manager shall make



recommendations to the City and Architect regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities(if needed).

2.1.4.1 Preliminary Cost Estimates. When the City has sufficiently identified the Project requirements and the Architect has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Architect and approval of the City, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques. After receipt of the preliminary cost estimate, the Contractor will reconcile their estimate with the estimate provided by the Architect. This process will be followed on each estimate that is required as described below.

2.1.4.1.1 When Schematic Design Documents have been prepared by the Architect and approved by the City, the Construction Manager shall prepare, for the review of the Architect and approval of the City, a more detailed estimate with supporting data. During the preparation of the Design Development Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the City, Architect and Construction Manager.

2.1.4.1.2 When Design Development Documents have been prepared by the Architect and approved by the City, the Construction Manager shall prepare a detailed estimate with supporting data for review by the Architect and approval by the Owner. During the preparation of the Design Development Documents (DD's), the Construction Manager shall provide an initial cost estimate at 100% DD's and update and refine this estimate when the Construction Documents (CD's) are fifty percent (50%) complete and again at ninety percent (100%) complete, and at any other appropriate intervals agreed to by the City, Architect and Construction Manager necessary to develop a GMP for the project. These cost estimate updates shall incorporate the latest design changes, alternate materials and processes as required to provide a Guaranteed Maximum Price that will meet the Owners stated project budget. Should the estimates of cost of the work exceed the latest approved project budget the Construction Manager shall inform the Owner and Architect and make recommendations for corrective action.

2.1.4.2 Subcontractors and Suppliers. The Construction Manager shall seek to develop subcontractor interest in the Project and shall furnish to the City and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect will promptly reply in writing to the Construction Manager if the Architect or City know of any objection to such subcontractor or supplier. The receipt of such list shall not require the City or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the City or Architect later to object to or reject any proposed subcontractor or supplier.

2.1.4.3 Long-Lead-Time Items. The Construction Manager shall recommend to the City and Architect a schedule for procurement of long-lead-time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead-time items are procured by the City, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the City's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the City to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long-lead-time items.

2.1.4.4 Extent of Responsibility. The Construction Manager does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The recommendations and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the City and the City's professional consultants. It is not the Construction Manager's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the Construction Manager recognizes that portions of the Drawings and Specifications are at variance therewith, the Construction Manager shall promptly notify the Architect and City in writing.

2.1.4.5 Equal Employment Opportunity and Affirmative Action. The Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs. See attached Title VI Nondiscrimination Assurances attached hereto as ATTACHMENT 1 \_\_\_\_.

## **2.2 Guaranteed Maximum Price Proposal.**

2.2.1 When the Drawings and Specifications are sufficiently complete, but in no case later than 100% Design Development Documents, the Construction Manager shall propose a Guaranteed Maximum Price, which shall be the sum of the estimated Cost of the Work and the Construction Manager's Fee along with any identified Allowances as have been determined to be necessary. Provided, however, Construction Manager understands such estimates are relied upon by the City in making various Project determinations, and, therefore, should Construction Manager's Guaranteed Maximum Price proposal exceed the City's applicable budget by more than 2.5%, all pre-construction services rendered thereafter to render the Project within 2.5% of the budget by Construction Manager shall be at the cost of the Construction Manager.

2.2.2 As the Drawings and Specifications may not be finished at the time the Guaranteed Maximum Price proposal is prepared, the Construction Manager shall provide in the Guaranteed Maximum Price for further development of the Drawings and Specifications by the Architect that is consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

2.2.3 The estimated Cost of the Work shall separately identify, the Construction Manager's Contingency, a sum not to exceed three percent (3.00%) of the Guaranteed Maximum Price, an amount established by the Owner for the Construction Manager's use, subject to Owner's

approval, to cover costs arising under Paragraph 2.2.2 and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order. Upon Contractor's completion of the Project, all unused portions of the Construction Manager's Contingency and those from the Guaranteed Maximum Price shall be set aside as cost savings for the benefit of the Owner.

2.2.3.1.1 Basis of Guaranteed Maximum Price. The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include:

(a) A list of the Drawings and Specifications, including all addenda thereto, any other documentation that may have been received outside of the Drawings and Specifications, and the Conditions of the Contract, which were used in preparation of the Guaranteed Maximum Price proposal.

(b) A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.

(c) The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, General Conditions, Allowances, Construction Manager's Contingency, and other items and the Fee that comprise the Guaranteed Maximum Price.

(d) The Date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.

2.2.3.2 The Construction Manager shall meet with the City and Architect to review the Guaranteed Maximum Price proposal and the written statement of its basis. In the event that the City or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both. This proposal shall provide the Owner no less than ten days to accept an in-budget GMP without invalidating the proposal or any of its terms

2.2.3.3 Unless the City accepts the Guaranteed Maximum Price proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Construction Manager, the Guaranteed Maximum Price proposal shall not be effective without written acceptance by the Construction Manager.

2.2.3.4 Prior to the City's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the City may specifically authorize in writing.

2.2.3.5 Upon acceptance by the City of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price and its basis shall be set forth in Amendment No. 1. The Guaranteed Maximum Price shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents, and the Date of Substantial Completion shall be subject



to adjustment as provided in the Contract Documents. The City shall authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in Amendment No. 1. Such revised Drawings and Specifications shall be furnished to the Construction Manager in accordance with schedules agreed to by the City, Architect and Construction Manager. The Construction Manager shall promptly notify the Architect and City if such revised Drawings and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

## **2.3 Construction Phase.**

### **2.3.1 General.**

2.3.1.1 The Construction Phase shall commence on:

- a) the City's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, and
- b) the City's first authorization to the Construction Manager to:
  - 1. award a subcontract, or
  - 2. undertake construction Work with the Construction Manager's own forces, or
  - 3. issue a purchase order for materials or equipment required for the Work.

## **2.4 Administration.**

2.4.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall develop bid packages to obtain bids in accordance with the applicable requirements of Chapter 2269 of the Texas Government Code from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list previously reviewed and will open all bids in the presence of the City or Owner's Representative and, after evaluating such bids as best value to the Owner, shall recommend to the City, the Owner's Representative, and Architect which bid to accept.. The City may designate specific persons or entities from whom the Construction Manager shall obtain bids; however, if the Guaranteed Maximum Price has been established, the City may not prohibit the Construction Manager from obtaining bids from other qualified bidders. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

2.4.2 If the Guaranteed Maximum Price has been established and a specific bidder among those whose bids are delivered by the Construction Manager to the City and

Architect (1) is recommended to the City by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the City requires that another bid be accepted, then the Construction Manager may require that a change in the Work be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the City by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the City.

2.4.3 Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Paragraphs 7.1.8 and 7.1.9 and shall not be awarded on the basis of cost plus a fee without the prior consent of the City.

2.4.4 The Construction Manager shall schedule and conduct meetings with appropriate Subcontractors at which the City, Owner's Representative, Architect, Construction Manager and appropriate Subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.

2.4.5 Promptly after the City's acceptance of the Guaranteed Maximum Price proposal, the Construction Manager shall prepare a schedule in accordance with Paragraph 1.5.11, General Conditions, including the Owner's occupancy requirements.

2.4.6 The Construction Manager shall provide monthly written reports to the City and Architect on the progress of the entire Work. The Construction Manager shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the City may reasonably require. The log shall be available to the City and Architect. The Construction Manager shall promptly inform City in writing of any circumstance or development that is likely to delay Substantial Completion of the Project in accordance with the schedule.

2.4.7 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall, within a reasonable time following execution of the GMP and as required by the schedule, the Construction Manager shall complete procurement of all of the Work on the Project ("Buy-Out"). As subcontracts are entered for the Work, the Construction Manager shall provide a copy of the subcontract with the applicable subcontractor and a written report of any difference between the Cost of Work as contracted by the Construction Manager and the cost of the same scope of Work as included in the Guaranteed Maximum Price. This buyout difference, as well as any other savings realized by the Construction Manager, shall be accounted for as Buy-Out Savings. All savings will accrue and be available for use as mutually agreed with the City or the Owner's Representative. The Construction Manager shall report the variances to the City and Architect at regular intervals. All costs and expenses are auditable by the City upon request. All subcontractor invoice will be submitted with each Pay Application.

## **SECTION 3 OWNER'S RESPONSIBILITIES.**

### **Information and Services.**

**3.1.1** The Owner shall provide information in a timely manner regarding the requirements of the Project, including a program which sets forth the City's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

**3.1.2** The City shall establish and update an overall budget for the Project, based on consultation with the Construction Manager and Architect, which shall include contingencies for changes in the Work and other costs which are the responsibility of the City.

**3.1.3** Structural and Environmental Tests, Surveys and Reports. In the Preconstruction Phase, the City shall furnish the following with reasonable promptness and at the City's expense. Except to the extent that the Construction Manager knows of any inaccuracy, or should have reasonably discovered such error or inaccuracy, the Construction Manager shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings and tests described in Paragraphs 3.1.3.1 through 3.1.3.4 but shall exercise customary precautions relating to the performance of the Work.

3.1.3.1 Reports, surveys, drawings and tests concerning the conditions of the site which are required by law.

3.1.3.2 Surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site.

3.1.3.3 The services of a geotechnical engineer when such services are requested by the Construction Manager and are reasonably required by the scope of the Project, as determined by the City or Architect. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

3.1.3.4 Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.

3.1.3.5 The services of other consultants when such services are reasonably required by the scope of the Project, as determined by the City or Architect,



and are requested by the Construction Manager.

3.2 **Owner's Designated Representative.** The City shall designate in writing City's Representative who shall have express authority, subject to the limitations set forth in the General Conditions, to bind the City with respect to all matters requiring the City's approval or authorization. This City's Representative shall have the authority to make decisions on behalf of the City concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Paragraph 1.6.2.1, General Conditions, the Architect does not have such authority.

3.3 **Architect.** The City shall retain an Architect to provide Basic Services, including normal structural, mechanical and electrical engineering services. The City must authorize, in writing, and cause the Architect to provide additional service, requested by the Construction Manager which must necessarily be provided by the Architect for the Preconstruction and Construction Phases of the Work. Construction Manager has no authority to request services from the Architect on the City's behalf. Such services shall be provided in accordance with time schedules agreed to by the City, Architect and Construction Manager. Upon request of the Construction Manager, the City shall furnish to the Construction Manager a copy of the City's Agreement with the Architect.

#### **SECTION 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES.**

The City shall compensate and make payments to the Construction Manager for Preconstruction Phase services as follows:

##### **4.1 Compensation.**

4.1.1 For the services described in Paragraphs 2.1 and 2.2, the Construction Manager's compensation shall be calculated as follows:

**Pre-Construction Fee: \$40,000.00**

4.1.1 If compensation is based on a multiple of Direct Personnel Expense, Direct Personnel Expense is defined as the direct salaries of the Construction Manager's personnel engaged in the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

##### **4.2 Payments.**

4.2.1 Payments shall be made monthly following presentation of the Construction Manager's invoice and, where applicable, shall be in proportion to services performed.

- 4.2.2 Payments are due and payable thirty (30) calendar days from the date the correct and approved Construction Manager's invoice is received by the Owner. The City stipulates that it is an exempt organization as defined by the Limited Sales, Excise and Use Tax Act and, as such, is exempt from the payment of the sales tax on materials and supplies used in the performance of this Contract. The Construction Manager shall issue exemption certificates to its Subcontractors and suppliers in lieu of said sales tax for all such materials and supplies, complying with all applicable State Comptroller's Rulings.

## **SECTION 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES**

The City shall compensate the Construction Manager for Construction Phase services as follows:

**General Conditions: \$ 1,102,500.00**

### **5.1 Compensation.**

- 5.1.1 For the Construction Manager's performance of the Work as described in Paragraph 2.3, the City shall pay the Construction Manager in current funds the Contract Sum consisting of the Cost of the Work as defined in Paragraph 7 and the Construction Manager's Fee determined as follows:

**Construction Manager At Risk Fee (as a Percentage): 7.0 %**

### **5.2 Guaranteed Maximum Price.**

- 5.2.1 The sum of the Cost of the Work and the Construction Manager's Fee for the Work are guaranteed by the Construction Manager not to exceed the amount provided in Amendment No. 1, subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum as adjusted by approved changes in the Work is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the City. In the event the Cost of Work plus the Construction Manager's Fee is less than the Guaranteed Maximum Price ("GMP"), the savings shall accrue one hundred percent (100%) to the City.

### **5.3 Changes in the Work.**

- 5.3.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of Amendment No. 1 may be determined by any of the methods listed in Paragraph 1.9.2.2, General Conditions, subject to the limitations provided in the General Conditions.

- 5.3.1.1 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee"

as used in Paragraph 1.9.2.2 (c), General Conditions and the term “costs” as used in Paragraph 1.9.3.6, General Conditions shall have the meanings assigned to them in the General Conditions and shall not be modified by this Paragraph 5. Adjustments to subcontracts awarded with the City’s prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

5.3.1.2 In calculating adjustments to the Contract, the terms “cost” and “costs” as used in the above-referenced provisions of the General Conditions shall mean the Cost of the Work as defined in Paragraph 6 of this Agreement, and the term “and a reasonable allowance for overhead and profit” shall mean the Construction Manager’s Fee as defined in Paragraph 5.1.1 of this Agreement.

5.3.1.3 If no specific provision is made in Paragraph 5.1.1 for adjustment of the Construction Manager’s Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Paragraph 5.1.1 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager’s Fee shall be equitably adjusted on the basis of the Fee established for the original Work.

## **SECTION 6 COST OF THE WORK FOR CONSTRUCTION PHASE.**

### **6.1 Costs To Be Reimbursed.**

6.1.1 The term “Cost of the Work” shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the City. The Cost of the Work shall include only the items set forth in this Paragraph 6.

#### **6.1.1.1 Labor Costs.**

6.1.1.1.1 Wage Rates. Pursuant to Section 2258.023(a) of the Texas Government Code, wage rates paid by the Contractor and any subcontractor on this Project shall be not less than the general prevailing rate of per diem wages for work of a similar character in this locality as specified in the schedule of general prevailing rates of per diem wages attached hereto as ATTACHMENT 3.

6.1.1.1.2 Statutory Penalty. Pursuant to Section 2258.023(b) of the Texas Government Code, if the Contractor or any subcontractor violates the requirements of this section the Contractor or subcontractor as the case may be shall pay the City **Sixty Dollars (\$60.00)** for each worker employed for each calendar day or part of the day that the worker is paid less than the stipulated wage rates.

6.1.1.1.3 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner’s agreement, at off-site workshops.

6.1.1.1.4 Wages or salaries of the Construction Manager’s supervisory



and administrative personnel when stationed at the site with the Owner's agreement.

6.1.1.1.5 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work. Further, the time for performance does not necessitate overtime work and the City shall not be required to reimburse the "premium time" portion of any overtime payments by Contractor, unless otherwise approved, in writing, in advance by the City.

6.1.1.1.6 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are based on wages and salaries included in the Cost of the Work under Paragraphs 6.1.1.1.1 through 6.1.1.1.4. Subcontract Costs. Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

6.1.1.1.7 Costs of Materials and Equipment Incorporated in the Completed Construction.

(a) Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

(b) Costs of materials described in the preceding Paragraph 6.1.4.(a) in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the City at the completion of the Work or, at the City's option, shall be sold by the Construction Manager; amounts realized, if any, from such sales shall be credited to the City as a deduction from the Cost of the Work.

6.1.1.1.8 Costs of Other Materials and Equipment, Temporary Facilities and Related Items.

(a) Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value.

(b) Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the City's prior approval.

(c) Costs of removal of debris from the site.

(d) Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office.

6.1.1.1.9 That portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work.

6.1.1.1.10 Miscellaneous Costs.

(a) That portion directly attributable to this Contract of premiums for insurance and bonds.

(b) Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

(c) Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work other than that for which payment is permitted by Paragraph 6.1.8.

(d) Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the City's consent; provided, however, that such costs of legal defenses, judgment and settlements shall not be included in the calculation of the Construction Manager's Fee or the Guaranteed Maximum Price and provided that such royalties, fees and costs are not excluded by the last sentence of Paragraph 1.5.19.1, General Conditions or other provisions of the Contract Documents.

(e) Data processing costs related to the Work.

(f) Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the City set forth in this Agreement.

6.1.1.1.11 Other Costs. Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the City.

The costs described in Paragraphs 6.1.1.1 through 6.1.1.11 shall be included in the Cost of the Work notwithstanding any provision of General Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Paragraph 6.2.

## **6.2 Costs Not To Be Reimbursed.**

### **6.2.1.1 The Cost of the Work shall not include:**

(a) Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Paragraphs 6.1.2.1 and 6.1.2.2. Expenses of the Construction Manager's principal office and offices other than the site office, except as specifically provided in Paragraph 6.1.

(b) Overhead and general expenses, except as may be expressly included in Paragraph 6.1.

(c) The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.

(d) Rental costs of machinery and equipment, except as specifically provided in Paragraph 6.1.5(b).

(e) Costs due to the negligence of the Construction Manager or to the failure of the Construction Manager to fulfill a specific responsibility to the City set forth in this Agreement.

(f) Costs incurred in the performance of Preconstruction Phase Services.

(g) Except as provided in Paragraph 6.1.7, any cost not specifically and expressly described in Paragraph 6.1.

(h) Costs which would cause the Guaranteed Maximum Price to be exceeded.

## **6.3 Discounts, Rebates and Refunds.**

6.3.1.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the City if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment therefor from the City, or (2) the City has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the City, and the Construction Manager shall make provisions so that they can be secured.

6.3.1.2 Amounts which accrue to the City in accordance with the provisions of Paragraph 6.3.1 shall be credited to the City as a deduction from the Cost of the Work.



#### **6.4 Accounting Records.**

**6.4.1.1** The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the City. The City and the City's accountants shall be afforded access to the Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Construction Manager shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

#### **SECTION 7 PAYMENT. Progress Payments.**

**7.1.1** Based upon Applications for Payment submitted to the Architect by the Construction Manager, in a form acceptable to City and the Architect, and Certificates for Payment issued by the Architect, the City shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

**7.1.1.1** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

**7.1.1.2** Provided an Application for Payment is received by the Architect not later than the 30<sup>th</sup> day of a month, the City shall make payment to the Construction Manager not later than the 30<sup>th</sup> day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the City not later than thirty (30) days after the Architect receives the Application for Payment.

**7.1.1.3** With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached and any other evidence required by the City or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager; less (2) that portion of those payments attributable to the Construction Manager's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

**7.1.1.4** Each Application for Payment shall be based upon the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the City and Architect may require. This schedule, unless objected to by the City or Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

**7.1.1.5** Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work which

has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

**7.1.1.6** Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

(a) Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the City of changes in the Work, amounts not in dispute may be included as provided in Paragraph 1.9.3.7, General Conditions, even though the Guaranteed Maximum Price has not yet been adjusted by Change Order.

(b) Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the City, suitably stored off the site at a location agreed upon in writing.

(c) Add the Construction Manager's Fee, less retainage of: (i) five percent (5%). The Construction Manager's Fee shall be computed upon the Cost of the Work described in the two preceding Paragraphs at the rate stated in Paragraph 5.1.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Paragraph, shall be an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the two preceding Paragraphs bears to a reasonable estimate of the probable Cost of the Work upon its completion.

(d) Subtract the aggregate of previous payments made by the City.

(e) Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Paragraph 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the City's accountants in such documentation.

(f) Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 1.11.5, General Conditions.

**7.1.1.7** Except with the City's prior approval, payments to Subcontractors shall be subject to retention of not less than five percent (5%). The City and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.

**7.1.1.8** Except with the City's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

**7.1.1.9** In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Paragraph 7.1.4 or other supporting data, that the Architect has made exhaustive or continuous on-site inspections or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the City, will be performed by the City's accountants acting in the sole interest of the City.

**Final Payment.**

**7.1.1.10** Final payment shall be made by the City to the Construction Manager when (1) the Contract has been fully performed by the Construction Manager except for the Construction Manager's responsibility to correct punch list items or nonconforming Work, as provided in Paragraph 1.14.2.2, General Conditions, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Construction Manager and reviewed by the City's accountants; and (3) a final Certificate for Payment has then been issued by the Architect; such final payment shall be made by the City not more than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

**7.1.2.2** The amount of the final payment shall be calculated as follows:

(a) Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee, but not more than the Guaranteed Maximum Price.

(b) Subtract amounts, if any, for which the Architect withholds or the City is entitled to withhold under this Agreement, in whole or in part, a final Certificate for Payment as provided in Paragraph 1.11.5.1, General Conditions or other provisions of the Contract Documents.

(c) Subtract the aggregate of previous payments made by the Owner. If the aggregate of previous payments made by the City exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the City.

If the aggregate of previous payments made by the City exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the City.

**7.1.2.3** The City's accountants will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager, together with all backup documentation reasonably required by the City. Based upon such Cost of the Work as the City's accountants report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Paragraph 7.2.1 have been met, the Architect will, within seven days after receipt of the written



report of the Owner's accountants, either issue to the City a final Certificate for Payment with a copy to the Construction Manager or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Paragraph 1.11.5.1, General Conditions. The time periods stated in this Paragraph 7.2 supersede those stated in Paragraph 1.11.4.1, General Conditions.

**7.1.2.4** If the City's accountants report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Paragraph 8 without a further decision of the Architect. Unless agreed to otherwise, a demand for mediation of the disputed amount shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to make such demand within this 30-day period shall result in the substantiated amount reported by the City's accountants becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the City shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

**7.1.2.5** If, subsequent to final payment and at the City's request, the Construction Manager incurs costs described in Paragraph 6.1 and not excluded by Paragraph 6.2 (1) to correct nonconforming Work or (2) arising from the resolution of disputes, the City shall reimburse the Construction Manager such costs and the Construction Manager's Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings, the amount of such savings shall be recalculated and appropriate credit given to the City in determining the net amount to be paid by the City to the Construction Manager.

## **SECTION 8 MISCELLANEOUS PROVISIONS.**

### **8.1 Dispute Resolution.**

8.1.1 During both the Preconstruction and Construction Phases, claims, disputes or other matters in question between the parties to this Agreement shall be resolved as provided in Paragraph 1.6.3., General Conditions, except that, during the Preconstruction Phase, no decision by the Architect shall be a condition precedent to mediation.

### **8.2 Other Provisions.**

**8.2.1.1** Extent of Contract. This Contract, which includes this Agreement and the other documents incorporated herein by reference, represents the entire and integrated agreement between the City and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and Construction Manager. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

**8.2.1.2** Ownership and Use of Documents. Paragraph 1.3.4, General Conditions, shall apply to both the Preconstruction and Construction Phases.

**8.2.1.3** Governing Law. The Contract shall be governed by the laws of the State of Texas. Performance and all matters related thereto shall be in Travis County, Texas, United

States of America.

**8.2.1.4 Assignment.** The City and Construction Manager respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole or in part without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

## **SECTION 9 TERMINATION OR SUSPENSION.**

### **9.1 Termination Prior To Establishing Guaranteed Maximum Price.**

9.1.1 Prior to execution by both parties of Amendment No. 1 establishing the Guaranteed Maximum Price, the City may terminate this Contract at any time without cause, and the Construction Manager may terminate this Contract for any of the reasons described in Paragraph 1.16.1.1, General Conditions.

9.1.1.1 If the City or Construction Manager terminates this Contract pursuant to Paragraph 9.1 prior to commencement of the Construction Phase, the Construction Manager shall be equitably compensated for Preconstruction Phase Services performed prior to receipt of notice of termination; provided, however, that the compensation for such services shall not exceed the compensation set forth in Paragraph 4.1.1.

9.1.1.2 If the City or Construction Manager terminates this Contract pursuant to Paragraph 9.1 after commencement of the Construction Phase, the Construction Manager shall be paid , in addition to the compensation provided in Paragraph 9.1.2, an amount calculated as follows:

- (a) Take the Cost of the Work incurred by the Construction Manager.
- (b) Add the Construction Manager's Fee computed upon the

Cost of the Work to the date of termination at the rate stated in Paragraph 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Paragraph, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion.

(c) Subtract the aggregate of previous payments made by the City on account of the Construction Phase.

The City shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the City, for any equipment owned by the Construction Manager which the City elects to retain and which is not otherwise included in the Cost of the Work under Paragraph 9.1.3.(a). To the extent that the City elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in Paragraph 9, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the City may require for the purpose of fully vesting in the City the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

Subcontracts, purchase orders and rental agreements entered into by the Construction Manager with the City's written approval prior to the execution of Amendment No. 1 shall contain provisions permitting assignment to the City as described above. If the City accepts such assignment, the City shall reimburse the Construction Manager with respect to all valid and properly payable costs arising under the subcontract, purchase order or rental agreement except those which would not have been reimbursable as Cost of the Work if the contract had not been terminated. If the City elects not to accept the assignment of any subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager shall terminate such subcontract, purchase order or rental agreement and the City shall pay the Construction Manager the costs necessarily and reasonably incurred by the Construction Manager by reason of such termination, but in no event to include any overhead or profit on work not performed.

**9.1.2 Termination Subsequent to Establishing Guaranteed Maximum Price.** Subsequent to execution by both parties of Amendment No. 1, the Contract may be terminated as provided in Paragraph 1.16, General Conditions.

9.1.2.1 In the event of such termination by the Owner, the amount payable to the Construction Manager pursuant to Paragraph 1.16.1.3, General Conditions shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Paragraphs 9.1.2 and 9.1.3 of this Agreement.

9.2.2 In the event of such termination by the Construction Manager, the amount to be paid to the Construction Manager under Paragraph 1.16.1.3, General Conditions shall not exceed the amount the Construction Manager would have been entitled to receive under Paragraphs 9.1.2 and 9.1.3 above. In no event shall Construction Manager nor any supplier or subcontractor be entitled to any fee or lost profits for work not performed.

**9.3 Suspension.** The Work may be suspended by the City as provided in Paragraph 1.16, General Conditions; in such case, the Guaranteed Maximum Price, if established, shall be increased as provided in Paragraph 1.16.3.2, General Conditions, except that the term "cost of



performance of the Contract” in that Paragraph shall be understood to mean the Cost of the Work and the term “profit” shall be understood to mean the Construction Manager’s Fee as described in Paragraphs 5.1.1 and 5.3.4 of this Agreement.

## **SECTION 10 OTHER CONDITIONS AND SERVICES.**

10.1 Construction Manager represents to the City that it has, and will keep in effect at all times during the term of this Contract, any licenses, permits, and approvals which are legally required for the Construction Manager to practice its trade.

10.1.1 **Authority to do business.** The Construction Manager represents that it has a certificate of authority authorizing it to do business in the State of Texas, a registered agent and registered office during the duration of this Contract.

10.1.2 **Authority to Contract.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective corporations.

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

10.1.4 **Presumption Against Waiver.** No waiver by either party hereto of any one or more defaults by the other party hereto in the performance of this Contract shall be construed as a waiver of any future defaults whether of a like or different character.

10.1.5 **Owner’s Reserved Rights.** The City shall have the rights by its officers, employees or agents to examine and inspect the Construction Manager’s Work at any time to verify Construction Manager’s compliance with the terms of this Contract. Any approval by City or acceptance of Construction Manager’s Work shall not waive any obligation of Construction Manager to correct defective work.

10.1.6 **Benefit.** This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns where permitted by Contract. Nothing in this Paragraph shall be construed to waive the conditions elsewhere contained in this Contract applicable to assignment by the Construction Manager. Nothing contained in this Contract shall be construed to confer any benefit upon any subcontractor or any other third party.

10.1.7 **Headings, Gender, Number.** The headings are used in this Agreement for convenience and reference purposes only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement and shall have no meaning or effect upon its interpretation. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

10.1.8 **Agreement Read.** The parties acknowledge that they have had opportunity to consult with counsel of their choice, have read, understand and intend to be bound by the terms and conditions of this Agreement.

10.1.9 **Liquidated Damages.** The amount of liquidated damages for the Construction Manager's failure to meet the deadlines for Substantial and/or Final Completion are fixed and agreed on by the Construction Manager because of the impracticability and extreme difficulty in fixing and ascertaining the actual damages that the City would in such an event sustain. The amounts to be charged are agreed to be damages the City would sustain and shall be retained by the City from current periodic estimates for payment or from final payment. As a result of the difficulty in estimation, calculation and ascertainment of City's damages due to a failure of Construction Manager to achieve timely completion of the Work, if the Construction Manager should neglect, fail, or refuse to either Substantially Complete or Finally Complete the Work within the time herein specified, or any proper extension thereof granted by the Owner's Representative pursuant to the terms of the Contract Documents, then the Construction Manager does hereby agree as part of the consideration for the awarding of this Agreement that the Owner may permanently withhold from the Construction Manager's total compensation the sum of One Thousand and no /100 DOLLARS (\$ 1,000.00) for each and every calendar day that the Construction Manager shall be in default after the time stipulated for Substantial Completion not as a penalty, but as liquidated damages for the breach of this Agreement. It being specifically understood that the assessment of liquidated damages may be made for any failure to meet either or both of the deadlines specified for Substantial Completion and/or Final Completion.

10.1.10 **Final Completion.** Contractor shall achieve Final Completion within 30 calendar days of the date of Substantial Completion, failing which, Contractor shall provide a full time on site superintendent until Final Completion at its own cost and not as a cost of the Work.

10.1.11 **Verification No Boycott Israel.** To the extent this Contract is considered a contract for goods or services subject to § 2270.002 Texas Government Code, Contractor verifies that it i) does not boycott Israel; and ii) will not boycott Israel during the term of this Contract.

**List of ATTACHMENTS**

- 1 Owner's Insurance Requirements of Contractor (Attachment 1)
- 2 Special Conditions of the Contract (Attachment 2)
- 3 Wage Rate finding for Building Construction In Travis County (Attachment 3)
- 4 Appendix A Title VI Assurances (Attachment 4)

**List of Exhibits**

- A Contractor's Insurance Certificates
- B Performance Bond
- C Payment Bond

**CONTRACTOR**

**By:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**CITY OF WEST LAKE HILLS**

**By:** \_\_\_\_\_  
**City Administrator**

**Date:** \_\_\_\_\_

APPROVED:

\_\_\_\_\_  
Notary

Date: \_\_\_\_\_

APPROVED:

\_\_\_\_\_  
City Secretary

Date: \_\_\_\_\_



## ATTACHMENT 1

### OWNER'S INSURANCE REQUIREMENTS OF CONTRACTOR

1. **Definitions.** For purposes of this Agreement:
  - 1.1 **Owner Parties.** "Owner Parties" means (a) the City of West Lake Hills, its successors and assigns, and the Engineer, (b) any officers, employees, or agents of such persons or entities, and (c) others as required by the Contract Documents, if any.
  - 1.2 **Contractor.** "Contractor" shall mean the vendor providing the service or work to be performed under this Agreement.
  - 1.3 **Subcontractor.** "Subcontractor" shall include subcontractors of any tier.
  - 1.4 **ISO.** "ISO" means Insurance Services Office.
2. **Contractor Insurance Representations to Owner Parties**
  - 2.1 It is expressly understood and agreed that the insurance coverages required herein:
    - 2.1.1 represent Owner Parties' minimum requirements and are not to be construed to void or limit the Contractor's indemnity obligations as contained in this Agreement nor represent in any manner a determination of the insurance coverages the Contractor should or should not maintain for its own protection; and
    - 2.1.2 are being, or have been, obtained by the Contractor in support of the Contractor's liability and indemnity obligations under this Agreement. Neither the requirements as to insurance to be carried as provided for herein, the insolvency, bankruptcy or failure of any insurance company carrying insurance of the Contractor, nor the failure of any insurance company to pay claims accruing, shall be held to affect, negate or waive any of the provisions of this Agreement.
  - 2.2 Failure to obtain and maintain the required insurance shall constitute a material breach of, and default under, this Agreement. If the Contractor shall fail to remedy such breach within five (5) business days after notice by the Owner, the Contractor will be liable for any and all costs, liabilities, damages and penalties resulting to the Owner Parties from such breach, unless a written waiver of the specific insurance requirement(s) is provided to the Contractor by the Owner. In the event of any failure by the Contractor to comply with the provisions of this Agreement, the Owner may, without in any way compromising or waiving any right or remedy at law or in equity, on notice to the Contractor, purchase such insurance, at the Contractor's expense, provided that the Owner shall have no obligation to do so and if the Owner shall do so, the Contractor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.

3. **Conditions Affecting All Insurance Required Herein**

- 3.1 **Cost of Insurance.** All insurance coverage shall be provided at the Contractor's sole expense.
- 3.2 **Status and Rating of Insurance Company.** All insurance coverage shall be written through insurance companies authorized to do business in the state in which the work is to be performed and rated no less than A-: VII in the most current edition of A. M. Best's Key Rating Guide.
- 3.3 **Restrictive, Limiting, or Exclusionary Endorsements.** All insurance coverage shall be provided to the Owner Parties in compliance with the requirements herein and shall contain no endorsements that restrict, limit, or exclude coverage required herein in any manner without the prior express written approval of the Owner.
- 3.4 **Limits of Liability.** The limits of liability may be provided by a single policy of insurance or by a combination of primary and umbrella policies, but in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required herein.
- 3.5 **Notice of Cancellation, Nonrenewal, or Material Reduction in Coverage.** All insurance coverage shall contain the following express provision:

In the event of cancellation, non-renewal, or material reduction in coverage affecting the certificate holder, thirty (30) days prior written notice shall be given to the certificate holder by certified mail or registered mail, return receipt requested.

- 3.6 **Waiver of Subrogation.** The Contractor hereby agrees to waive its rights of recovery from the Owner Parties with regard to all causes of property and/or liability loss and shall cause a waiver of subrogation endorsement to be provided in favor of the Owner Parties on all insurance coverage carried by the Contractor, whether required herein or not.
- 3.7 **Deductible/Retention.** Except as otherwise specified herein, no insurance required herein shall contain a deductible or self-insured retention in excess of \$25,000 without prior written approval of the Owner. All deductibles and/or retentions shall be paid by, assumed by, for the account of, and at the Contractor's sole risk. The Contractor shall not be reimbursed for same.
4. **Maintenance of Insurance.** The following insurance shall be maintained in effect with limits not less than those set forth below at all times during the term of this Agreement and thereafter as required:

4.1 **Commercial General Liability Insurance**

- 4.1.1 **Coverage.** Such insurance shall cover liability arising out of all locations and operations of the Contractor, including but not limited to liability assumed under this contract (including the tort liability of another assumed

in a business contract). Defense shall be provided as an additional benefit and not included within the limit of liability.

4.1.2 Form. Commercial General Liability Occurrence form (at least as broad as an unmodified ISO CG 0001 0798 or its equivalent).

4.1.3 Amount of Insurance. Coverage shall be provided with limits of not less than:

|                                              |             |
|----------------------------------------------|-------------|
| Each Occurrence Limit                        | \$3,000,000 |
| General Aggregate Limit                      | \$3,000,000 |
| Product-Completed Operations Aggregate Limit | \$3,000,000 |
| Personal and Advertising Injury Limit        | \$3,000,000 |

4.1.4 Required Endorsements

a. Additional Insured. Additional insured status shall be provided in favor of the Owner Parties on any of the following:

- i. ISO form CG 20 10 11 85; or
- ii. ISO form CG 20 26 11 85; or
- iii. a combination of ISO forms CG 20 33 10 01 and CG 20 37 10 01; or
- iv. any form providing equivalent protection to Owner.

b. Designated Construction Project(s) Aggregate Limit. The aggregate limit shall apply separately to this Agreement through use of an ISO CG 25 03 03 97 endorsement or its equivalent.

c. Notice of Cancellation, Nonrenewal or Material Reduction in Coverage, as required in 3.5, above.

d. Personal Injury Liability. The personal injury contractual liability exclusion shall be deleted.

e. Primary and Non-Contributing Liability. It is the intent of the parties to this Agreement that all insurance required herein shall be primary to all insurance available to the Owner Parties. The obligations of the Contractor's insurance shall not be affected by any other insurance available to the Owner Parties and shall seek no contribution from the Owner Parties' insurance, whether primary, excess contingent, or on any other basis. The Contractor's insurance coverage shall be endorsed to provide such primary and non- contributing liability.

f. Waiver of Subrogation, as required in 3.6, above.

4.1.5 Continuing Commercial General Liability Insurance. The Contractor shall maintain such insurance in identical coverage, form and amount, including required endorsements, for at least one (1) year following Date of Substantial Completion of the Work to be performed under this Agreement. The Contractor shall provide written representation to Owner stating Work completion date.



## 4.2 **Auto Liability Insurance**

- 4.2.1 Coverage. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned).
- 4.2.2 Form. Business Auto form (at least as broad as an unmodified ISO CA 0001 or its equivalent).
- 4.2.3 Amount of Insurance. Coverage shall be provided with a limit of not less than \$3,000,000.
- 4.2.4 Required Endorsements
  - a. Notice of Cancellation, Nonrenewal or Material Reduction in Coverage, as required in 3.5, above.
  - b. Waiver of Subrogation, as required in 3.6, above.

## 4.3 **Employer's Liability Insurance**

- 4.3.1 Coverage. Employer's Liability Insurance shall be provided as follows:
- 4.3.2 Amount of Insurance. Coverage shall be provided with a limit of not less than:

Employer's Liability: \$1,000,000 each accident and each disease.

- 4.3.3 Required Endorsements
  - a. Notice of Cancellation, Nonrenewal or Material Reduction in Coverage, as required in 3.5, above.
  - b. Waiver of Subrogation, as required in 3.6, above.

## 4.4 **Umbrella Liability Insurance**

- 4.4.1 Coverage. Such insurance shall be excess over and be no less broad than all coverages described above and shall include a drop-down provision for exhaustion of underlying limits.
- 4.4.2 Form. This policy shall have the same inception and expiration dates as the commercial general liability insurance required above.
- 4.4.3 Amount of Insurance. Coverage shall be provided with a limit of not less than \$5,000,000.
- 4.4.4 Continuing Umbrella Liability Insurance. The Contractor shall maintain such insurance in identical coverage, form and amount, including required endorsements, for at least one (1) year following Date of Substantial Completion of the Work to be performed under this Agreement. The Contractor shall provide written representation to the Owner stating Work completion date.

#### 4.5 **Professional Liability Insurance**

- 4.5.1 **Coverage.** The Contractor shall provide professional liability insurance for any professional design or engineering drawing required by the work. Such insurance shall indemnify the Owner from claims arising from the negligent performance of professional services of any type, including but not limited to design or design/build services as part of the Work to be performed.
- 4.5.2 **Form.** This insurance shall include prior acts coverage sufficient to cover all services rendered by the Contractor and by its consultants under this Agreement. It is recognized that this coverage may be provided on a Claims-Made basis.
- 4.5.3 **Amount of Insurance.** Coverage shall be provided with a limit of not less than \$1,000,000.
- 4.5.4 **Continuing Professional Liability Insurance.** The Contractor shall maintain such insurance in identical coverage, form and amount for at least one (1) year following Date of Substantial Completion of the Work to be performed under this Agreement. The Contractor shall provide written representation to the Owner stating Work completion date.

#### 4.6 **Builder's Risk**

- 4.6.1 **Insureds.** Insureds shall include:
- a. Owner, General Contactor and all Loss Payees and Mortgagees as Named Insureds; and
  - b. subcontractors of all tiers in the Work as Additional Insureds.
- 4.6.2 **Covered Property.** Such insurance shall cover:
- a. all structure(s) under construction, including retaining walls, paved surfaces and roadways, bridges, glass, foundation(s), footings, underground pipes and wiring, excavations, grading, backfilling or filling;
  - b. all temporary structures (e.g., fencing, scaffolding, cribbing, false work, forms, site lighting, temporary utilities and buildings) located at the site;
  - c. all property including materials and supplies on site for installation;
  - d. all property including materials and supplies at other locations but intended for use at the site;
  - e. all property including materials and supplies in transit to the site for installation by all means of transportation other than ocean transit; and
  - f. other Work at the site identified in the Agreement to which this Exhibit is attached.

## Form

- a. Coverage shall be at least as broad as an unmodified ISO Special form, shall be provided on a completed-value basis, and shall be primary to any other coverage insurance available to the insured parties, with that other insurance being excess, secondary and non-contributing.
- b. No protective safeguard warranty shall be permitted.
- c. Required coverage shall further include:
  - i. Additional expenses due to delay in completion of project (where applicable) \$ TBD
  - ii. Agreed value Included without sublimit
  - iii. Damage arising from error, omission or deficiency in construction methods, design, specifications, workmanship or materials, including collapse Included without sublimit
  - iv. Debris removal additional limit 25% of direct damage loss
  - v. Earthquake (where applicable) \$ TBD
  - vi. Earthquake sprinkler leakage (where applicable) \$ TBD
  - vii. Expediting expenses \$ TBD
  - viii. Flood (where applicable) \$ TBD
  - ix. Freezing Included without sublimit
  - x. Mechanical breakdown, including hot & cold testing (where applicable) Included without sublimit
  - xi. Notice of cancellation, non-renewal or material reduction – 60 days prior written notice to each insured Included
  - xii. Occupancy clause, as required in F, below Included
  - xiii. Ordinance or law Included without sublimit
  - xiv. Pollutant clean-up and removal \$ TBD
  - xv. Preservation of property Included without sublimit
  - xvi. Replacement cost Included
  - xvii. Theft Included without sublimit
  - xviii. Waiver of subrogation as required in G, below. Included

4.6.3 Amount of Insurance. Coverage shall be provided in an amount equal at all times to the full replacement value and cost of debris removal for any single occurrence.



4.6.4 Deductibles. Deductibles shall not exceed the following:

- |    |                                                             |                                                       |
|----|-------------------------------------------------------------|-------------------------------------------------------|
| a. | All Risks of Direct Damage, Per Occurrence, except          | \$5,000                                               |
| b. | Delayed Opening Waiting Period                              | 5 Days                                                |
| c. | Flood, Per Occurrence                                       | \$25,000 or excess of NFIP if in Flood Zone A, B or V |
| d. | Earthquake and Earthquake Sprinkler Leakage, Per Occurrence | \$25,000                                              |

4.6.5 Termination of Coverage. The termination of coverage provision shall be endorsed to permit occupancy of the covered property being constructed so long as such occupancy does not exceed 20% of the usable area of the property. This insurance shall be maintained in effect, unless otherwise provided for in the Contract Documents, until the earliest of the following dates:

- a. the date on which all persons and organizations who are insureds under the policy agree that it shall be terminated;
- b. the date on which final payment, as provided for in the Agreement to which this Exhibit is attached, has been made; or
- c. the date on which the insurable interests in the Covered Property of all insureds other than Contractor have ceased.

4.6.6 Waiver of Subrogation. The waiver of subrogation provision shall be endorsed as follows:

- a. A waiver of subrogation shall be provided in favor of all insureds.
- b. The waiver of subrogation provisions shall be endorsed as follows:

Should a covered loss be subrogated, either in whole or in part, your rights to any recovery will come first, and we will be entitled to a recovery only after you have been fully compensated for the loss.

5. Intentionally left blank.

6. **Evidence of Insurance**

- 6.1 Provision of Evidence. Evidence of the insurance coverage required to be maintained by the Contractor, represented by certificates of insurance, evidence of insurance, and endorsements issued by the insurance company or its legal agent, and must be furnished to the Owner prior to commencement of Work and not later than fifteen (15) days after receipt of this Agreement. New certificates of insurance, evidence of insurance, and endorsements shall be provided to the Owner prior to the termination date of the current certificates of insurance, evidence of insurance, and endorsements.

6.2 Form

- 6.2.1 All property insurance required herein shall be evidenced by ACORD form 28, "Evidence of Property Insurance".
- 6.2.2 All liability insurance required herein shall be evidenced by ACORD form 25, "Certificate of Insurance".

6.3 Specifications. Such certificates of insurance, evidence of insurance, and endorsements shall specify:

- 6.3.1 The Owner as a certificate holder with correct mailing address.
- 6.3.2 Insured's name, which must match that on this Agreement.
- 6.3.3 Insurance companies affording each coverage, policy number of each coverage, policy dates of each coverage, all coverages and limits described herein, and signature of authorized representative of insurance company.
- 6.3.4 Producer of the certificate with correct address and phone number listed.
- 6.3.5 Additional insured status required herein.
- 6.3.6 Amount of any deductibles and/or retentions.
- 6.3.7 Cancellation, non-renewal and material reduction in coverage notification as required by this Agreement. Additionally, the words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon Company, its agents or representatives" shall be deleted from the cancellation provision of the ACORD 25 certificate of insurance form.
- 6.3.8 Designated Construction Project Aggregate Limits required herein.
- 6.3.9 Personal Injury contractual liability required herein.
- 6.3.10 Primary and non-contributing status required herein.
- 6.3.11 Waivers of subrogation required herein.

6.4 Required Endorsements. A copy of each of the required endorsements shall also be provided.

6.5 Failure to Obtain. Failure of any Owner Party to demand such certificate or other evidence of full compliance with these insurance requirements or failure of any Owner Party to identify a deficiency from evidence that is provided shall not be construed as a waiver of the Contractor's obligation to maintain such insurance.

6.6 Certified Copies. Upon request of any Owner Party, the Contractor shall provide to the Owner a certified copy of all insurance policies required herein within ten (10) days of any such request. Renewal policies, if necessary, shall be delivered to the Owner prior to the expiration of the previous policy.

6.7 Commencement of Work. Commencement of Work without provision of the required certificate of insurance, evidence of insurance and/or required endorsements, or without compliance with any other provision of this Agreement, shall not constitute a waiver by any Owner Party of any rights. The Owner shall have the right, but not the obligation, of prohibiting the Contractor or any subcontractor from performing any Work until such certificate of insurance, evidence of insurance and/or required endorsements are received and approved by the Owner.

7. **Insurance Requirements of Contractor's Subcontractors**

- 7.1 Insurance similar to that required of the Contractor shall be provided by all subcontractors (or provided by the Contractor on behalf of subcontractors) to cover operations performed under any subcontract agreement. The Contractor shall be held responsible for any modification in these insurance requirements as they apply to subcontractors. The Contractor shall maintain certificates of insurance from all subcontractors containing provisions similar to those listed herein (modified to recognize that the certificate is from subcontractor) enumerating, among other things, the waivers of subrogation, additional insured status, and primary liability as required herein, and make them available to the Owner upon request.
- 7.2 The Contractor is fully responsible for loss and damage to its property on the site, including tools and equipment, and shall take necessary precautions to prevent damage to or vandalism, theft, burglary, pilferage and unexplained disappearance of property. Any insurance covering the Contractor's or its subcontractor's property shall be the Contractor's and its subcontractor's sole and complete means of recovery for any such loss. To the extent any loss is not covered by said insurance or subject to any deductible or co-insurance, the Contractor shall not be reimbursed for same. Should the Contractor or its subcontractors choose to self insure this risk, it is expressly agreed that the Contractor hereby waives, and shall cause its subcontractors to waive, any claim for damage or loss to said property in favor of the Owner Parties.

8. **Use of the Owner's Equipment.** The Contractor, its agents, employees, subcontractors or suppliers shall use the Owner's equipment only with express written permission of the Owner's designated representative and in accordance with the Owner's terms and condition for such use. If the Contractor or any of its agents, employees, subcontractors or suppliers utilize any of the Owner's equipment for any purpose, including machinery, tools, scaffolding, hoists, lifts or similar items owned, leased or under the control of the Owner, the Contractor shall defend, indemnify and be liable to the Owner Parties for any and all loss or damage which may arise from such use.
9. **Release and Waiver.** The Contractor hereby releases, and shall cause its subcontractors to release, the Owner Parties from any and all claims or causes of action whatsoever which the Contractor and/or its subcontractors might otherwise now or hereafter possess resulting in or from or in any way connected with any loss covered by insurance, whether required herein or not, or which should have been covered by insurance required herein, including the deductible and/or uninsured portion thereof, maintained and/or required to be maintained by the Contractor and/or its subcontractors pursuant to this Agreement.

## ATTACHMENT 2

### SPECIAL CONDITIONS OF AGREEMENT

The following Special Conditions modify the General Conditions, Document 00700. Where a portion of the General Conditions is modified or deleted by these Special Conditions, the unaltered portions of the General Conditions shall remain in effect.

#### ARTICLE 1 DEFINITIONS AND INTERPRETATIONS

1.01 Add the following paragraph to the end of Article 1.01:

The OWNER'S representative on the project site is:

AGCM

**TBD** telephone: \_\_\_\_\_

The CONSTRUCTION MANAGER is: **TBD** telephone: \_\_\_\_\_

The CONSTRUCTION INSPECTOR is: TBD

#### ARTICLE 4 RIGHTS AND RESPONSIBILITIES OF THE CONTRACTOR

**EXHIBIT A** Owner's Insurance Requirements of Contractor, Article 4.6 Builder's Risk – Builder's Risk Insurance is required for this project.

#### ARTICLE 5 PROSECUTION AND PROGRESS

##### **Temporary Facilities**

Contractor is be required to provide an on-site construction office for the duration of this project.

Contractor is required to coordinate with the Owner for all Traffic Control Documents. Contractor to coordinate with the Architect & Owner for procurement of Traffic Control Documents prior to TXDOT permitting. Contractor is to keep a minimum of one lane open at all times, in both directions. No lane closures to extend beyond the defined work day.

END OF SECTION



## ATTACHMENT 3

## Bidding Requirements, Contract Forms Conditions of the Contract

## WAGE RATES AND PAYROLL REPORTING

Section 00830BC

## WAGE RATE DETERMINATION

## Building Construction Type

County Name: TRAVIS

Wages based on DOL Prevailing Wage Rate General Decision: TX20220271 08/05/2022 and City of Austin Ordinance #20160324-015

**DOL Rate column is for information only. The Total Minimum Wage Rate is derived from the Adjusted Wage Rate Required pursuant to City Ordinance plus the DOL Fringes and can be met using any combination of cash and non-cash qualified fringe benefits, provided the cash component is at least \$15.00/hour.**

| Classification                                                                           | DOL Rate<br>For info<br>Only | Adjusted<br>Wage Rate<br>Required<br>Pursuant to<br>City<br>Ordinance | DOL<br>Fringes | Total<br>Minimum<br>Wage<br>Rate<br>Required |
|------------------------------------------------------------------------------------------|------------------------------|-----------------------------------------------------------------------|----------------|----------------------------------------------|
| Asbestos Worker/Heat & Frost Insulator<br>(Duct, Pipe, and Mechanical System Insulation) | \$ 28.10                     | \$ 28.10                                                              | \$ 8.29        | \$ 36.39                                     |
| Boilermaker                                                                              | \$ 29.47                     | \$ 29.47                                                              | \$ 24.10       | \$ 53.57                                     |
| Bricklayer                                                                               | \$ 20.07                     | \$ 20.07                                                              | \$ -           | \$ 20.07                                     |
| Carpenter                                                                                | \$ 26.00                     | \$ 26.00                                                              | \$ 9.12        | \$ 35.12                                     |
| Carpenter (Acoustical Ceiling Installation only)                                         | \$ 14.00                     | \$ 15.00                                                              | \$ -           | \$ 15.00                                     |
| Carpenter (Form Work Only)                                                               | \$ 15.62                     | \$ 15.62                                                              | \$ 0.05        | \$ 15.67                                     |
| Cement Mason/Concrete Finisher                                                           | \$ 15.71                     | \$ 15.71                                                              | \$ -           | \$ 15.71                                     |
| Drywall Finisher/Taper                                                                   | \$ 17.06                     | \$ 17.06                                                              | \$ 4.43        | \$ 21.49                                     |
| Drywall Hanger and Metal Stud Installer                                                  | \$ 17.47                     | \$ 17.47                                                              | \$ 3.45        | \$ 20.92                                     |
| Electrical Installer (Sound and Communication<br>Systems, Excluding Wiring)              | \$ 18.00                     | \$ 18.00                                                              | \$ 2.30        | \$ 20.30                                     |
| ** Electrician (Excludes Installation of Sound<br>and Communication Systems)             | \$ 31.52                     | \$ 31.52                                                              | \$ 8.97        | \$ 40.49                                     |
| ***Elevator Mechanic                                                                     | \$ 43.72                     | \$ 43.72                                                              | \$ 36.365      | \$ 80.085                                    |
| Floor Layer (Carpet)                                                                     | \$ 21.88                     | \$ 21.88                                                              | \$ -           | \$ 21.88                                     |
| Glazier                                                                                  | \$ 12.83                     | \$ 15.00                                                              | \$ -           | \$ 15.00                                     |
| HVAC Mechanic (HVAC Unit Installation Only)                                              | \$ 23.78                     | \$ 23.78                                                              | \$ 6.89        | \$ 30.67                                     |
| Ironworker, Ornamental                                                                   | \$ 26.76                     | \$ 26.76                                                              | \$ 7.88        | \$ 34.64                                     |
| Ironworker, Reinforcing                                                                  | \$ 12.27                     | \$ 15.00                                                              | \$ -           | \$ 15.00                                     |
| Ironworker, Structural                                                                   | \$ 20.73                     | \$ 20.73                                                              | \$ 5.24        | \$ 25.97                                     |
| *Lead Paint or Asbestos Abatement Worker                                                 | *                            | \$ 15.00                                                              | \$ -           | \$ 15.00                                     |
| Laborer, Common or General                                                               | \$ 11.44                     | \$ 15.00                                                              | \$ -           | \$ 15.00                                     |
| Laborer, Mason Tender - Brick                                                            | \$ 12.22                     | \$ 15.00                                                              | \$ -           | \$ 15.00                                     |
| Laborer, Mason Tender - Cement/Concrete                                                  | \$ 11.85                     | \$ 15.00                                                              | \$ -           | \$ 15.00                                     |
| Laborer, Pipelayer                                                                       | \$ 12.45                     | \$ 15.00                                                              | \$ -           | \$ 15.00                                     |

### Bidding Requirements, Contract Forms Conditions of the Contract

|                                                                       |          |          |          |          |
|-----------------------------------------------------------------------|----------|----------|----------|----------|
| Laborer, Roof Tearoff                                                 | \$ 11.28 | \$ 15.00 | \$ -     | \$ 15.00 |
| Operator, Backhoe/Excavator/Trackhoe                                  | \$ 19.43 | \$ 19.43 | \$ 3.49  | \$ 22.92 |
| Operator, Bobcat/Skid Steer/Skid Loader                               | \$ 13.00 | \$ 15.00 | \$ -     | \$ 15.00 |
| Operator, Bulldozer                                                   | \$ 14.00 | \$ 15.00 | \$ -     | \$ 15.00 |
| Operator, Crane                                                       | \$ 34.85 | \$ 34.85 | \$ 9.85  | \$ 44.70 |
| Operator, Drill                                                       | \$ 14.50 | \$ 15.00 | \$ -     | \$ 15.00 |
| Operator, Forklift                                                    | \$ 16.64 | \$ 16.64 | \$ 6.26  | \$ 22.90 |
| Operator, Grader/Blade                                                | \$ 19.30 | \$ 19.30 | \$ -     | \$ 19.30 |
| Operator, Loader                                                      | \$ 14.00 | \$ 15.00 | \$ -     | \$ 15.00 |
| Operator, Mechanic                                                    | \$ 18.75 | \$ 18.75 | \$ 5.12  | \$ 23.87 |
| Operator, Paver (Asphalt, Aggregate, and                              | \$ 16.03 | \$ 16.03 | \$ -     | \$ 16.03 |
| Operator, Roller                                                      | \$ 11.25 | \$ 15.00 | \$ -     | \$ 15.00 |
| Painter (Brush, Roller, and Spray, Excludes                           | \$ 18.76 | \$ 18.76 | \$ 6.35  | \$ 25.11 |
| Pipefitter (Including HVAC Pipe Installation)                         | \$ 33.15 | \$ 33.15 | \$ 15.37 | \$ 48.52 |
| Plumber, Excludes HVAC Pipe Installation                              | \$ 23.57 | \$ 23.57 | \$ 6.37  | \$ 29.94 |
| Roofer                                                                | \$ 12.00 | \$ 15.00 | \$ -     | \$ 15.00 |
| *Roofer, Metal                                                        | \$ 14.05 | \$ 15.00 | \$ -     | \$ 15.00 |
| Sheet Metal Worker (Excluding HVAC, Including HVAC Duct Installation) | \$ 28.35 | \$ 28.35 | \$ 15.56 | \$ 43.91 |
| HVAC Duct Installation Only                                           | \$ 28.35 | \$ 28.35 | \$ 15.56 | \$ 43.91 |
| Sprinkler Fitter (Fire Sprinklers)                                    | \$ 31.68 | \$ 31.68 | \$ 22.50 | \$ 54.18 |
| Tile Finisher                                                         | \$ 11.32 | \$ 15.00 | \$ -     | \$ 15.00 |
| Tile Setter                                                           | \$ 16.35 | \$ 16.35 | \$ -     | \$ 16.35 |
| Truck Driver, Dump Truck                                              | \$ 12.39 | \$ 15.00 | \$ 1.18  | \$ 16.18 |
| Truck Driver, Flatbed Truck                                           | \$ 19.65 | \$ 19.65 | \$ 8.57  | \$ 28.22 |
| Truck Driver, Semi-Trailer Truck                                      | \$ 12.50 | \$ 15.00 | \$ -     | \$ 15.00 |
| Truck Driver, Water Truck                                             | \$ 12.00 | \$ 15.00 | \$ 4.11  | \$ 19.11 |
| Waterproofer                                                          | \$ 16.30 | \$ 16.30 | \$ 0.06  | \$ 16.36 |

<http://www.wdol.gov/wdol/scafiles/davisbacon/tx.html>

#### **See below for Additional Wage Information.**

Note: \*Lead Paint & Asbestos Abatement and Roofer, Metal Classifications have been added to this Prevailing Wage Rate Determination pursuant to a City of Austin Prevailing Wage Survey (trades absent from DOL).

**The Wage Compliance information detailed below was excerpted from DOL General Decision TX180323 or other sources.**

#### **1. ADDITIONAL TRADE INFORMATION**

\*\*Electricians - Including low voltage wiring for computers, fire/smoke alarms.

\*\*\*Elevator Mechanics – 6% under 5 years based on regular hourly rate for all hours worked. 8% over 5 years based on regular hourly rate for all hours worked as Vacations Pay Credit. Also must be paid for 7 holidays - New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the Friday after Thanksgiving Day, Christmas Day, and Veterans Day.

Welders - Receive rate prescribed for craft performing operation to which welding is incidental.

## **Bidding Requirements, Contract Forms Conditions of the Contract**

Unlisted classifications needed for work not included within the scope of the classifications listed may be added upon the advance approval of City of Austin Contract Administration. CONTRACTOR shall submit to City of Austin Contract Administration for review the classification, a bona fide definition of work to be performed and a proposed wage with sample payrolls conforming to area practice **prior** to the start of the job for that type of work.

### **2. WAGES**

The Total Wage may be met by any combination of cash wages and credible "bona fide" fringe benefits paid for by the employer. Overtime wages must be calculated using the Adjusted Wage Rate specified in the Wage Rate Determination or the actual basic rate of pay, whichever is higher. City of Austin Ordinance No. 20160324-015 requires that construction workers are paid a Minimum Wage of at least \$15.00/hour. The cash portion of their compensation must meet or exceed this amount.

### **3. CREDITING FRINGE BENEFIT CONTRIBUTIONS TO MEET DBA/DBRA AND CITY OF AUSTIN REQUIREMENTS**

The Davis-Bacon Act (and 29 CFR 5.23), list fringe benefits to be considered. Examples are:

- > Life Insurance
- > Health Insurance
- > Pension
- > Vacation
- > Holidays
- > Sick Leave

Note: The use of a truck is not a fringe benefit; a Thanksgiving turkey or Christmas bonus is not a fringe benefit. No credit may be taken for any benefit required by federal, state, or local law such as: workers compensation, unemployment compensation; or social security contributions.

Contributions to fringe benefit plans must be made regularly, e.g. daily, weekly, etc. They must be more frequent than quarterly. (See 29 CFR 5.5 (a)(1)(I)) A periodic bonus may not be counted as a fringe benefit.

### **4. ANNUALIZATION OF BENEFIT COSTS**

If a firm provides an electrician with \$200 per month medical insurance, to calculate allowable fringe benefit credit contributions per hour, the formula  $(\$200 \times 12 \text{ months})$  divided by 2080 hours = \$1.15 per hour) should be used.

### **5. PROPER DESIGNATION OF TRADE**

A work classification on the wage decision for each worker must be made based on the actual type of work he/she performed and each worker must be paid no less than the wage rate on the wage decision for that classification **regardless** of his or her level of skill.

### **6. SPLIT CLASSIFICATION**

If a firm has employees that perform work in more than one classification, it can pay the wage rates specified for each classification **ONLY** if it maintains accurate time records



## Bidding Requirements, Contract Forms Conditions of the Contract

showing the amount of time spent in each classification. If accurate time records are not maintained, these employees must be paid the highest wage rate of all the classifications of work performed by each worker. Accurate time records tracking how many hours a worker performed the work of one trade and then switched to another trade must be accounted for on a daily basis and reflected on Employer Certified Payroll accordingly.

-----  
WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

=====

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

-----

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

### 6.1 Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: **PLUM0198-005 07/01/2014**. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014. Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

### 6.2 Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: **SULA2012-007 5/13/2014**. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier. Survey wage rates are not updated and remain in effect until a new survey is conducted.

### 6.3 Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: **UAVG-OH-0010 08/29/2014**. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that



## **Bidding Requirements, Contract Forms Conditions of the Contract**

identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

### **7. WAGE DETERMINATION APPEALS PROCESS**

**7.1** Has there been an initial decision in the matter? This can be:

- .1** An existing published wage determination
- .2** A survey underlying a wage determination
- .3** A Wage and Hour Division letter setting forth a position on a wage determination matter
- .4** A conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in **.2** and **.3** should be followed.

**7.2** With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determination  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W. Washington, DC 20210

**7.3** If the answer to the question in **.1** is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W. Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

**7.3** If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W. Washington, DC 20210

**7.4** All decisions by the Administrative Review Board are final.

**END**

**Bidding Requirements, Contract Forms Conditions of the Contract**

General Decision Number: TX180282 09/14/2018 TX282

## ATTACHMENT 3

## ATTACHMENT 4

### **Title VI Nondiscrimination Assurances APPENDIX A**

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- (1) **Compliance with Regulations:** The contractor shall comply with the Regulations relative to nondiscrimination in Federally-Assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- (4) **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sub-Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the Sub-Recipient, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Sub-Recipient shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
  - (a) withholding of payments to the contractor under the contract until the contractor complies, and/or
  - (b) cancellation, termination or suspension of the contract, in whole or in part.



- (6) Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontract or procurement as the Sub-Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance. Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Sub-Recipient to enter into such litigation to protect the interests of the Sub-Recipient, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**EXHIBT A**  
**CONTRACTOR'S INSURANCE CERTIFICATES**

## EXHIBIT B

### PERFORMANCE BOND

STATE OF TEXAS           §  
COUNTY OF TRAVIS       §

KNOW ALL MEN BY THESE PRESENTS: That \_\_\_\_\_ of the City of \_\_\_\_\_, County of \_\_\_\_\_, and State of Texas, as principal, and \_\_\_\_\_ authorized under the laws of the State of Texas to act as surety on bonds for principals, are held and firmly bound unto City of West Lake Hills as Obligee (Owner), in the penal sum of \$ \_\_\_\_\_ for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors, and assigns, jointly and severally, by these presents:

WHEREAS, the Principal has entered into a certain written contract with the Owner, effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, (the "Contract") to commence and complete the construction of certain improvements described as follows:

**CITY HALL  
City of West Lake Hills,  
Texas COP PN:**

which Contract, including the Contract Documents as defined therein, is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully perform said Contract Work and shall in all respects duly and faithfully observe and perform all and singular the covenants, conditions, and agreements in and by said Contract agreed and covenanted by the Principal to be observed and performed, and according to the true intent and meaning of said Contract and Contract Documents, then this obligation shall be void; otherwise to remain in full force and effect;

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code as amended and all liabilities on this bond shall be determined in accordance with the provisions of said Statute to the same extent as if it were copied at length herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the Work performed thereunder, or the plans, specifications, or drawings accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract, or to the Work to be performed thereunder.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Principal:

Surety:

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address:

Address:

\_\_\_\_\_

\_\_\_\_\_

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\_\_\_\_\_

Telephone: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Fax: \_\_\_\_\_

**NOTICE: THE ADDRESS OF THE SURETY COMPANY TO WHICH ANY NOTICE OF CLAIM SHOULD BE SENT MAY BE OBTAINED FROM THE TEXAS DEPARTMENT OF INSURANCE BY CALLING ITS TOLL-FREE TELEPHONE NUMBER; 1-800-252-3439.**

END OF SECTION



## EXHIBIT C

### PAYMENT BOND

STATE OF TEXAS           §  
COUNTY OF TRAVIS       §

KNOW ALL MEN BY THESE PRESENTS: That \_\_\_\_\_ of the City of \_\_\_\_\_, County of \_\_\_\_\_, and State of Texas, as principal, and \_\_\_\_\_ authorized under the laws of the State of Texas to act as surety on bonds for principals, are held and firmly bound unto City of West Lake Hills as Obligee (Owner), in the penal sum of \$ \_\_\_\_\_ for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors, and assigns, jointly and severally, by these presents:

WHEREAS, the Principal has entered into a certain written contract with the Owner, effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, (the "Contract") to commence and complete the construction of certain improvements described as follows:

**CITY HALL**  
**City of West Lake Hills,**  
**Texas COP PN:**

which Contract, including the Contract Documents as defined therein, is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall pay all claimants supplying labor or material to him or a subcontractor in the prosecution of the Work provided for in said Contract, then, this obligation shall be void; otherwise to remain in full force and effect;

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code as amended and all liabilities on this bond shall be determined in accordance with the provisions of said Statute to the same extent as if it were copied at length herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the Work performed thereunder, or the plans, specifications, or drawings accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract, or to the Work to be performed thereunder.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Principal:

Surety:

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address:

Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Fax: \_\_\_\_\_

**NOTICE: THE ADDRESS OF THE SURETY COMPANY TO WHICH ANY NOTICE OF CLAIM SHOULD BE SENT MAY BE OBTAINED FROM THE TEXAS DEPARTMENT OF INSURANCE BY CALLING ITS TOLL-FREE TELEPHONE NUMBER; 1-800-252-3439.**

END OF SECTION