

EXHIBIT "C"

Interlocal Agreement

EXHIBIT "D"

Waivers and Exceptions to the City of McAllen Platting Regulations

To the extent waivers and exceptions to the City of McAllen platting regulations are reasonably required to complete the Project, such waivers shall be deemed granted by the **CITY** provided they are approved by a majority vote of the **ZONE** Board. The **CITY** shall reserve the right to rescind any such waiver provided such action is taken by the **CITY** within seven (7) business days after the waiver is granted by the Board of the Zone and provided the City has received written notice of such waiver (excluding **CITY** holidays).

In addition to any waivers granted through the above process, the following specific waivers and exceptions are hereby granted by action of the **CITY** Commission approving this Agreement:

1. The requirement that two access points must be provided into any subdivision with over 20 lots shall not apply to this Project. Emergency access walks/drives shall be recognized as secondary access points for emergency service vehicles.
2. The requirement that the maximum street length ending in a cul-de-sac shall be 600 feet will not apply to this Project provided the unit of development enjoying the variance is designed and platted using the 'coving method' and there are emergency access walks/drives serving the unit of development.
3. The requirements pertaining to sidewalks contained in the **CITY's** Development Code will not apply to this Project provided a sidewalk having a width of at least adequate for pedestrian and bike traffic is provided in a plan that is sealed by the registered engineer designing the unit of development.
4. The requirements pertaining to side yard set-backs from property line will be five (5) feet rather than six (6) feet as required by the **CITY** Development Code.
5. The requirements pertaining to front yard set-backs for R-1 zoning will be 20 feet rather than the 25 feet as required by the **CITY** Development Code.
6. There will be no park fee collected because the parkland dedication will exceed the **CITY's** requirements as of 10/30/2014.

EXHIBIT "E"

Technology and Fiber Provisions

Exhibit "E"
Fiber Optic Infrastructure and Special Technology Provisions

Introduction & Terms

1. The special provisions contained in this Exhibit "E" and its Attachments are intended by the Parties to be a part of the overall Development Agreement and shall be binding on each Party and enforceable pursuant to the terms of the Development Agreement and this Exhibit.
2. These special provisions are set forth in three parts:

Part I – Providing the terms and conditions under which the PID and the Developer shall use one designated and contiguous Buffer Tube (as defined below) of 12 fiber optic strands to connect the Tres Lagos Project's network operations center ("TL-NOC") to the network operations centers located in the Alliance River Crossing Development ("ARC-NOC"), the Bentsen Palm Development ("BP-NOC"), and the network operations center located in the Developer's corporate offices at the Chase Tower in McAllen ("Chase-NOC"), for the benefit of the Project, the PID and the Zone;

Part II – Providing the terms and conditions under which the City will cause Developer, at no cost to the City, to install and dedicate fiber optic infrastructure to the City, which the City will connect to the City's existing fiber optic network to expand said network, to encourage competition, to increase the value of the City's fiber, and make fiber optic access available to more areas in the City for the public benefit of growing the City's economy and tax base; and

Part III – Providing other general terms and conditions applicable to this Exhibit "E" and its Attachments and the Parties agreement hereunder.

3. All defined terms in this "Exhibit E" and its Attachments shall have the same meaning as set forth in the Development Agreement to the extent other specific defined terms are not otherwise provided in this Exhibit or its Attachments,
4. All Parties acknowledge that City is acting only in its proprietary capacity and that nothing in this "Exhibit E" or its Attachments shall be considered a waiver of the City's governmental capacity to perform customary regulatory oversight of the activities of the Developer.

PART I – Fiber Optic Connection to the Zone

1. The Parties agree that in consideration of the Developer: a) voluntarily annexing +/- 2,561 acres into the City; b) agreeing to install and dedicate over \$220,000,000.00 in public infrastructure to the City; and c) agreeing to install and dedicate of over 800 miles of fiber optic strands to the City for expansion of the City's existing fiber network, the City shall provide the Developer and the PID with the exclusive irrevocable right of use (the "IRU") of the certain fiber optic strands in the black colored buffer tube being one of the 8 color coded

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buffer tubes making up the City's fiber optic network (the "Black Buffer Tube"). The IRU held by the PID shall exist for so long as the PID exists, and the IRU held by the Developer shall exist pursuant to the terms and conditions contained in the Infeasible Right of Use Agreement attached hereto as **Attachment 4**. Unless otherwise allowed under Part II of this Exhibit E, the fibers contained in the Black Buffer Tube shall be used by the Developer to connect the Tres Lagos Network Operations Center, which the Developer shall install at "Point A" as identified in **Attachment 1**, which is attached hereto and incorporated by reference as if fully set forth herein, to:

- a. The vault located at 200 S. 10th St., McAllen, Texas 78501, to be installed by Developer at "Point B" as identified in **Attachment 1**, which is attached hereto and incorporated by reference as if fully set forth herein;
 - b. The vault located in the Alliance River Crossing Project, in Donna, Texas, to be installed by Developer at "Point C" as identified in **Attachment 1**; and,
 - c. The vault located in the Bentsen Palm Project, in Mission, Texas, to be installed by Developer at "Point D" as identified in **Attachment 1**.
2. To facilitate the connection of City's existing fiber optic network to the Zone for the benefit of the Zone and the PID, the City agrees to:
 - a. Construct a new segment of the Black Buffer Tube and connect the fibers therein between:
 - i. "Point A" and "Point E", as identified in **Attachment 1**, within six (6) months from the execution hereof - said Point E being the northern extent of the City's existing fiber optic network as of the date hereof; and
 - ii. "Point B" and "Point F", as identified in **Attachment 1**, within ninety (90) days from the execution hereof - said "Point F" being the termination point of the City's existing fiber optic network that is closest to "Point B" as of the date hereof.
 - b. Connect "Point G" and "Point H", as identified in **Attachment 1**, to the fibers in the Black Buffer Tube within ninety (90) days from the execution hereof – said "Point G" being a Developer vault to be installed near the intersection of West Military Highway and S. Ware Road, and said "Point H" being a Developer vault to be installed near the intersection of West Military Highway and FM 396.
3. To cause the expansion of the City's existing fiber optic network within the corporate limits of the City, as depicted in **Attachment 1**, and allow such network to be connected to and through the Zone and the Tres Lagos Project, the Developer agrees to construct and dedicate

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to the City as part of City's overall fiber optic network a full 96 strand bundle of fiber optic cable of comparable type and quality currently used by City (subject to the Developer's IRU in the Black Buffer Tube therein):

- a. Between "Point G" and "Point I" as identified in **Attachment 1**, - said "Point I" being a Developer vault to be installed near the intersection of West Military Highway and S. 10th Street; and
 - b. Within the rights-of-way in each major collector street built by Developer within the Zone to connect "Point A" and the outside boundaries of the Zone only within such major collector street rights-of-way identified on **Attachment 2**, to be installed at the time each such segment of said major collector street is platted and constructed by Developer.
4. City hereby grants Developer a limited license during the term of the IRU in the portions of the street rights-of-way identified in subsections a. and b. to allow the Developer to install fiber and dedicate it to the City for City's connection to its fiber network; to-wit:
 - a. Said rights-of-ways which are highlighted in purple as identified on **Attachment 1** for the purpose of installing the fiber-optic infrastructure under this Agreement and dedicating the same to the City; and
 - b. Said rights-of-way located between the City's existing fiber optic network (at the location identified by City) and each pedestal or vault installed by Developer as a connection point. Once installed and dedicated to the City, the City shall connect the fiber in the Black Buffer Tube to the connection point in the respective pedestal or vault within 90 days from the City being notified the pedestal or vault has been installed.
5. The Parties expressly agree that, in consideration for the value received by the City expressed above, the fibers in the Black Buffer Tube in all route segments of the City's fiber optic network between Points A & E, E & B, B & G, G & H, and G & I (hereafter referred to as the "PID Segments" or "PID Points") shall be set aside exclusively for the IRU held by Developer and the IRU held by the PID for providing services to the PID. The PID shall use the required number of fibers within the Black Buffer Tube to provide such services as "fiber-t-the home" technologies, high-speed Internet capabilities, IP Telephony, etc. It is expressly understood that this Agreement relates only to the granting of an IRU to the "dark fiber" in the Black Buffer Tube, and DOES NOT grant a right of service of any nature to any future customers that may be served by the Developer, the PID, or any other party within the City or elsewhere using such dark fiber. The City shall have no obligation to activate or "light-up" the said dark fiber and shall only be responsible for physical maintenance, upkeep, and connections to such fiber located within the Black Buffer Tube within the City fiber network pursuant to the terms of this Agreement, the IRU Agreement and the SLA. The City

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agrees that it shall not permit any other connections to or splices into the Black Buffer Tube within the City network during the term of the IRU granted to the PID or the Developer.

6. The City and Developer have agreed to a Service Level Agreement (herein ("SLA")) with respect to the level of service to be provided by the City related to the City's Fiber Optic Network which SLA is attached hereto and made a part hereof as **Attachment 5** to this Exhibit E. The Parties expressly agree that all access to and splicing into the Black Buffer Tube in the City limits as of the date of this Agreement shall be exclusively performed by City, or its designated third-party contractors pursuant to the terms of this Agreement, the IRU Agreement, and the SLA.
7. The Parties agree that the Developer shall install as part of this Agreement wireless microwave equipment (transmitters, receivers and repeaters) at sites to be acquired by the Developer (the "Developer Sites") to provide bandwidth redundancy between the PID Points and Points A, B, C, & D, and to provide emergency back-up services (i.e. high-speed Internet access, IP telephony, etc.) to fiber-fed Developer-owned assets (the "Redundancy Equipment"). The City and Developer agree to cooperate in good faith to identify City-owned structures (i.e. fire stations, antennas, water towers, libraries, etc.) that could reasonably be used as a location for Developer to install Redundancy Equipment due to the height or strategic location of such sites (the "City Sites"). Any use of a City Site by Developer for installation of Redundancy Equipment shall be subject to terms and conditions contained in a separate site specific license agreement to be negotiated in good faith between the Parties. In return for the City agreeing to allow the Developer to use up to five (5) City Sites for the installation and operation of Redundancy Equipment, the Developer agrees at each said City Site to:
 - a. at the City's request, deliver back-up wireless service(s), where available, at the actual pro rata cost paid by Developer for such service from the provider;
 - b. jointly identify up to Five (5) Developer Sites on which Developer will provide City a back-up wireless service connection for use by the City as a connection point along the City Network to the City owned fibers serving the City owned buildings and facilities at the actual pro rata cost paid by Developer for such service from the provider.

The City Sites and the Developer Sites to be agreed on by the parties for providing signal redundancy hereunder (the "Redundancy Structures") shall be listed on **Attachment 3** hereto, which is attached hereto and made a part hereof. The Parties expressly agree that said **Attachment 3** may be amended from time to time as mutually agreed to by the Parties. Approval of the City and the Developer to any such amendment shall be reflected in writing dated and signed by both the City Manager and the authorized agent of the Developer.

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8. The Parties agree that the work performed by the Developer and the City in extending the fiber-optic network in Sections 1, 2, 3, and 7 above shall be reimbursable to the Party incurring the same from the ZONE (as defined in the Development Agreement), and that the City will have a priority of reimbursement for the cost of fiber installed by the City hereunder (*see* Section 3.7.2 of the Development Agreement). To the extent that any of such costs have not been previously identified and included in the original TIRZ Project and Finance Plan, the Parties agree to revisit these costs as they are identified and consider presentation of a request to the Board of Directors for the ZONE for approval of a non-Material Modification to the Project Plan and Finance Plan to allow reimbursement of said costs.

PART II- Expansion of City Fiber Network

1. As a condition of this Agreement, and in furtherance of the benefits to be conveyed to the City hereunder, the Parties agree as follows:

- a. Inner-City Limits Expansion. Developer shall have an IRU under the terms of the IRU Agreement attached hereto. The City will perform services and maintenance of the City fiber in which the Developer holds an IRU under the terms of the attached SLA.

- b. Outer-City Limits Expansion

1. Both Parties agree that upon expansion of their respective networks outside the City limits in public rights-of-way, the expanding Party (the "OCL Owner") agrees to give the other Party (the "OCL Tenant") an IRU in one Buffer Tube containing 12 strands of fiber in the respective expanded network together with a corresponding license for access, maintenance, and use, thereof (Developer shall be assigned the Black Buffer Tube of the City's outer City limit infrastructure);

- a. The obligation of the Developer to comply with this Section 1.b. of Part II hereof shall only apply to fiber optic infrastructure in public rights-of-way that is extended by the Developer outside the City's corporate limits that is connected to:

1. the City's existing fiber optic network; or
2. a City-owned facility (i.e. international bridge or rail yard) that is existing or proposed to be constructed by or in partnership with City that can be connected to the City-owned fiber optic network or used to create an overall loop for redundancy of the City fiber network.

2. Both Parties agree that an IRU provided by an OCL Owner to an OCL Tenant under this Part II shall be on the same terms and conditions contained in the IRU Agreement and the SLA, and such terms shall

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govern and apply to an OCL Tenant's use of the OCL Owner's Fiber. For the purpose of applying this section, the terms of the IRA Agreement and SLA will be considered modified as follows: the term "City" shall be replaced with the term "OCL Owner" and the term "Developer" shall be replaced with the term "OCL Tenant", and all addresses and parties requiring to make or receive payment shall also be modified in a like manner.

PART III - General Terms and Conditions

1. To facilitate the intent of the Parties under this Agreement, at the time the tracts within the Project are platted, the City agrees the Developer shall:
 - a. Dedicate and show all necessary easements in the plat of every unit of the Project to allow installation of the infrastructure required to provide Fiber-to-the-Home and bundled services within the ZONE;
 - b. Install and or provide the required NOC's, co-location facilities, smart poles, and fiber backbone facilities required to support the provision of Gigabit Internet capability via fiber optic strands, and provide a WiFi network capable of providing wireless signal in designated areas throughout the Zone;
 - c. Design and install a network of interconnected security cameras located in each phase of the Development to allow for video monitoring and video feeds with images to be collected and stored at the Tres Lagos NOC and/or dedicated cloud storage facility;
 - d. Include a "Technology Easement" on each plat filed within the Zone at the time of submittal to the City. The Technology Easement shall have two components, the first being an easement located within and adjacent to the perimeter of the outside boundary of each unit platted; and the second being a non-exclusive easement held by the Developer and the PID and located within the right-of-ways identified on the plat for the purpose of allowing the co-location of technology, including but not limited to surveillance cameras, Wi-Fi facilities, fiber optic, etc., as well as the maintenance, replacement, ingress and egress required for the use, operation and upkeep of said facilities. The above notwithstanding, after initial installation and platting, the Developer may only have access to the Black Buffer Tube within the City-owned fiber network by following the provisions set out in IRU Agreement and the SLA.
2. The City shall not have any responsibility for the installation or maintenance of the Smart Poles within the Project, and the City shall agree to allow the Developer to convey such facilities to the PID at the time of platting. The City will agree to reimburse the PID a mutually agreed upon flat rate per pole comparable to the rate the City would ordinarily pay for electrical power consumption elsewhere in the City.

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3. Both Parties agree to respect and observe any pre-existing easements within the Zone when platting and developing the Project and or reviewing, regulating, and approving such development. It is the specific intent of the City that nothing in the platting of or establishment of City-owned easements over the property shall be used to prevent any future resident from obtaining communications services from the provider of their choice.
4. In the event that either party causes harm or damage to the other party's fiber optic strands within the PID during the process of the operation of their respective fiber optic strands or otherwise, the damaging party shall notify the damaged party immediately and shall be responsible for the cost of all necessary splicing and/or repair of the damage caused.
5. In addition to the 96 strands of fiber that is to be built by the Developer and dedicated to the City ("City's Fiber Bundle"), Developer may install other discreet bundles or cables containing fiber optic strands within the PID. Such additional discreet bundles or cables installed by the Developer within the PID must be clearly marked (the "Developer's Fiber Bundles") and may be installed within the same conduit containing the City's Fiber Bundle. The Developer and its agents may access the Developer's Fiber Bundle at any time without consultation with the City; however the City's fiber bundle MAY NOT BE ACCESSED by Developer unless the Developer or its agents follow the requirements of the IRU Agreement and the SLA.
6. The Parties expressly agree that the City shall have no liability related to or obligation for maintenance, control, or operation of the technology infrastructure or facilities conveyed, leased, or licensed by the Developer to the PID under this agreement (including the security cameras, smart poles, NOC's and associated buildings, structures, right-of-ways, or easements); and, that all such obligations shall be assumed by the PID or the Provider selected by the PID to perform such functions.
7. The Parties agree that after construction and dedication of streets and rights-of-way within the Zone to the City by the Developer, to the extent permitted by law, the City shall not allow the future cutting of: streets, curbs, gutters, and/or driveways by any third parties for the installation of future utilities unless such cutting is required for emergency repairs. Again, to the extent permitted by law, the City agrees that all such new utilities to be installed within the Project after platting must be done through boring performed after mandatory location of all existing utilities and technology improvements. This provision shall not apply to emergency repairs carried out by the City, the PID, or any other public utility in the event such emergency repairs are needed to prevent imminent harm or damage. Further, this provision shall not apply to any holder of an easement which existed prior to the time of platting and dedication or any party that by right of law has access to the public rights-of-way of McAllen.

[Attachments start on following page]

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ATTACHMENT I (Pg. 1)

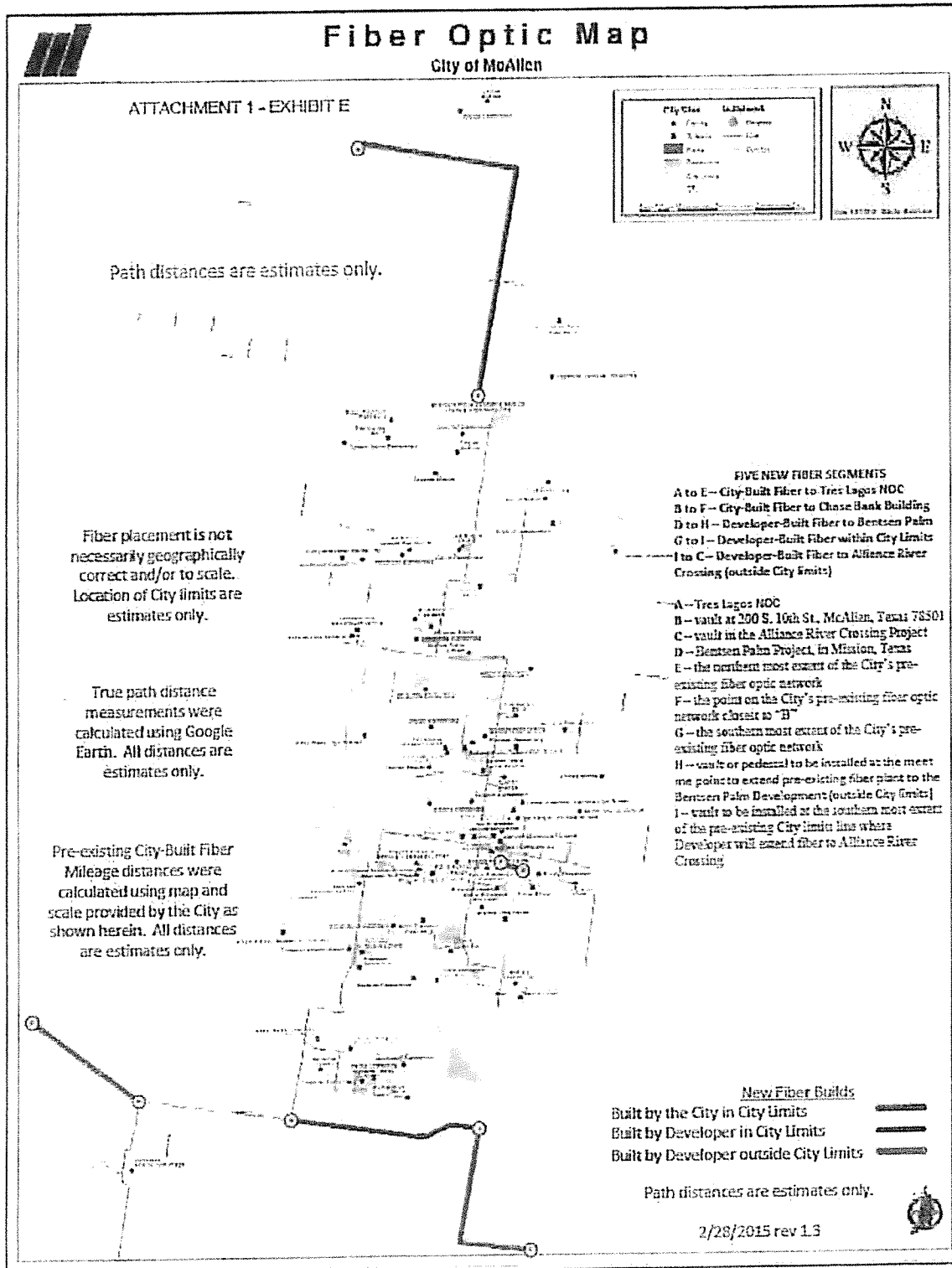


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ATTACHMENT 1 (Pg. 2)

⁴Fiber Path Mileage Totals

Path	Underground Mileage	City-Built Fiber Count Granted to Developer	City-Built Fiber Miles Granted to Developer	⁵ Developer-Built Fiber Count Granted to City	Developer-Built Fiber Miles Granted to City
¹ A to E	5.10	12	61.20		0.00
¹ B to F	0.29	12	3.48		0.00
¹ D to H	5.10		0.00	12	61.20
¹ G to I	1.99		0.00	84	167.16
¹ I to C	16.09		0.00	12	193.08
² Existing City-Built Fiber	29.50	12	354.00		0.00
¹ A to P	1.00		0.00	84	84.00
¹ P to Q	1.10		0.00	84	92.40
¹ A to R	1.00		0.00	84	84.00
¹ A to S	2.91		0.00	84	244.44
		Total Fiber Path Miles	418.68		926.28
		³ Total Fiber Value	\$218,061.10		\$482,434.41

¹ True path distance measurements were calculated using Google Earth. All distances are estimates only.

² Pre-existing City-Built Fiber Mileage distances were calculated using map and scale provided by the City. All distances are estimates only.

³ Total Fiber Value is based on the new build cost of \$50,000 per mile. \$50,000 / 96 strands = \$520.83 per strand mile

⁴ Total Fiber path mileage (and Value) does not include additional Developer-Built Fiber Miles to be Granted to the City in association with the Hidalgo County Regional Mobility Authority (“HCRMA”) Short Term Strategic Plan 2014-2022. This future build may or may not take place and is not a guarantee or commitment to be included in this Agreement. The Developer and the City will work closely together in an effort to secure this contract. In the event that the Developer is successful in procuring this contract and extends fiber within the HCRMA, then the Developer will grant 12 fiber strands within the Developer-Built fiber count to the City. (Refer to Exhibit E, Attachments).

⁵ Total Fiber path mileage (and Value) does not include additional Developer-Built Fiber Miles to be Granted to the City in association with future fiber plant extensions within the public right of way inside City limits to deliver services to new customers.

2/28/2015 rev 1.3

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ATTACHMENT 2



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ATTACHMENT 3

List of Redundancy Structures

<u>Point No.</u>	<u>Address or Location of Structure</u>	<u>Owner/Controller</u>	<u>Contact Point & Number</u>
1	Trade Zone water tower, Location: Military and Ware Rd.	City/MPUD	956-681-1700
2	S. McCall Water Tower, Location: 2051 S. McCall Rd.	City/MPUD	956-681-1700
3	Dove water tower, Location: Dove and 23rd St	City/MPUD	956-681-1700
4	Nolana water tower, Location: Nolana and 6th St	City/MPUD	956-681-1700
5			
6			
7			
8			
9			
10			

The City and Developer hereby confirm that the above points shall be used for the installation and operation of Redundancy Equipment pursuant to the terms of the Development Agreement and Exhibit "E", thereto. All such use shall be limited by and subject to the separate License Agreement between the Parties related to such matters.

Executed and agreed to by the Parties authorized agents on the 9th day of March, 2015.

CITY:

By: Jim Darling

Jim Darling
Printed Name

Mayor
Title

DEVELOPER:

By: Mike Rhodes

Mike Rhodes
Printed Name

Pres Rhodes Enterprises, Inc
Title

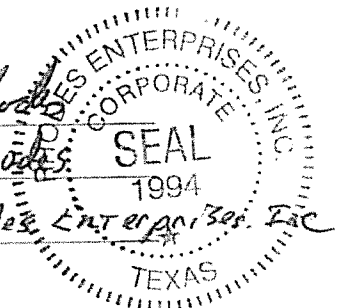


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ATTACHMENT 4 to EXHIBIT E

INDEFEASIBLE RIGHT OF USE AGREEMENT

THIS INDEFEASIBLE RIGHT OF USE (IRU) AGREEMENT (the "Agreement") is effective this 9th day of MARCH, 2015 (the "Effective Date"), by and between the City of McAllen, Texas, a Texas Home Rule Municipality, acting by and through its duly elected City Commission, and having its principal offices at 1300 Houston Avenue, McAllen, TX 78501 (hereinafter, "City"), and Rhodes Enterprises Inc., a Texas Corporation with its principal offices at 200 South 10th Street, McAllen, TX 78501 (hereinafter, "Developer"). Collectively, City and Developer may be referred to as "the parties" or individually as "a party."

WHEREAS, City owns Cable containing Fibers, and will construct or cause to be constructed Cable containing Fibers, and City will accept dedication of Cable containing Fibers along the Route specified in Exhibit A; and

WHEREAS, Developer desires to acquire from City an exclusive and indefeasible right of use in certain fibers located in the Cables along the Route.

NOW, THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. DEFINITIONS

Capitalized terms not otherwise defined herein shall have the following meanings:

- 1.1 Acceptance. Defined in Section 5.1.2.
- 1.2 Acceptance Testing. Defined in Section 5.1.
- 1.3 Acceptance Date. Defined in Section 5.1.2.
- 1.4 Access Point(s). Each splice point(s) on the Trunk Route, as determined by Developer, where an Access Point Route connects to the Trunk Route, and any other splice point(s) or handholds along the Route, as determined by Developer. Access Points where Access Point Routes connect to the Trunk Route are identified in Exhibit A.
- 1.4 Associated Rights. Defined in Section 2.1.
- 1.5 Cable. Fiber optics cable owned and controlled by City with fibers (contained in industry-standard jacketing or sheath) in the Trunk Route and or Route which makes up the portion of the fiber optic network owned by the City.
- 1.6 Claim. Any claim, liability, suit, action, proceeding, demand, assessment, judgment, cost, expense or other damage.

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1.7 Connections. The joinder at splice boxes or protective fiber enclosures of the Developer Fibers to the Developer Equipment across the Demarcation Points located along the Route.

1.8 Customer. Any third party (save and except those located in the Zone) to whom Developer provides lit bandwidth and/or other connectivity and network services using, in whole or in part, the Developer Fibers.

1.9 Demarcation Point(s). Locations at which Connections are made. Demarcation Points shall be located at the Endpoints and other points along the Route as the parties may mutually agree.

1.10. Endpoints. Physical locations along the Route described in Exhibit A.

1.10 Effective Date. The execution date of this Agreement as set forth in the preamble.

1.11 Equipment. The power, electronic and optronic equipment, including repeaters, junctions, patch panels, alarm monitoring equipment and other equipment necessary to provide a network of fiber optics transmission capacity located on either side of the Demarcation Points. The word "equipment" when not capitalized refers to equipment of any type.

1.12 Event of Default. Defined in Section 10.5 below.

1.13 Fibers. The fiber optic strands contained in the Cable.

1.14 Fiber Specifications or Specifications. Defined in Exhibit C.

1.15 Government. The United States government and any department, agency or instrumentality thereof.

1.16 IRU Fee. Defined in Section 3.1 below.

1.17 Indefeasible Right of Use or IRU. An exclusive, irrevocable, and indefeasible right to use certain Fibers subject to the terms and conditions of this Agreement.

1.18 Insolvent. The occurrence of any of the following events, whereby a party: (i) becomes or is declared insolvent or bankrupt; (ii) is the subject of any proceedings related to its liquidation, insolvency or the appointment of a receiver or similar officer for it; (iii) makes an assignment for the benefit of all or substantially all of its creditors; or (iv) enters into an agreement for the composition, extension or readjustment of all or substantially all of its obligations.

1.19 Maintenance. Defined in Section 8.1, below.

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1.20 **Developer Equipment.** Equipment installed by Developer on the Premises Side of the Demarcation Points, and any fiber optic strands or other transmission facilities connected to Developer Fibers at any Endpoints or Access Points.

1.21 **Developer Fibers.** The twelve (12) Fibers in the black protective sheath contained within the Cable owned by the City along the Trunk Route and twelve (12) Fibers in the black protective sheath contained within the Cable owned by the City along each of the Access Point Routes. The number of Developer Fibers may be increased or decreased by mutual written agreement.

1.22 **Network.** The fiber optics network operated by City, a portion of which includes the Route.

1.24. **Impositions.** All taxes, fees, levies, imposts, duties, charges or withholdings of any nature (including, without limitation, franchise, license and permit fees), together with any penalties, fines or interest thereon arising out of the transactions contemplated by this Agreement that are imposed upon the Developer Fibers by any federal, state or local government (save and except City) or other public taxing authority, but shall not include taxes, fees or similar levies based on income or calculated based on revenues derived by Developer from the Network. All taxes, fees, levies, imposts, duties, charges or withholdings of any nature (including, without limitation, franchise, license and permit (fees), together with any penalties, fines or interest thereon arising out of the transactions contemplated by this Agreement that are imposed exclusively upon the Developer by City shall only be charged pursuant to this Agreement, or a written amendment hereto.

1.23 **Network Side.** The side of the Demarcation Points at the Endpoints described on Exhibit A on which City will place its Equipment and connect the Developer Fibers to the Developer Equipment.

1.24 **Premises Side.** The side of the Demarcation Points on which Developer connects its Equipment to the Developer Fibers.

1.25 **Protective Fiber Enclosure(s).** The handholes or other enclosures, as agreed upon by the parties, installed at the Demarcation Points.

1.26 **Route.** The Trunk Route and the Access Point Routes, collectively.

1.30. **Route Mile.** The actual number of linear route miles traversed by the Cable as constructed along the Route, and based on the As-Built Drawings, without regard for the number fiber strands therein.

1.27 **Structures.** The structures supporting the Cable, including poles, risers, attachment and suspension hardware, and associated civil works located on or in easements, street licenses, rights-of-way and/or property underlying the Route.

1.28 **Term.** Defined in Section 2.2, below.

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1.29 Trunk Route. The segment of the Route from and between Points A, B, E, F, G, H and I as depicted and, and being the distance in miles as specified in Exhibit A.

1.30 Access Point Route(s). Each route extending from Access Points along the Trunk Route to the Endpoints specified in Exhibit A.

1.31 Zone. The Tax Increment Reinvestment Zone Number One, City of McAllen, Texas, created by the CITY containing the Property identified in Exhibit "A" to City of McAllen Ordinance No. 2014-75, passed and approved on December 22, 2014. "Zone" as used in the active tense, shall mean the Zone acting by and through the Board of Directors for the Zone.

1.32 PID. The Public Improvement District for the Tres Lagos Project created by the CITY on the ____ day of _____, 2015 establishing the "Tres Lagos Public Improvement District" acting by and through its Board of Directors created pursuant to the Texas Local Government Code Chapter 372, Subchapter A.

2. INDEFEASIBLE RIGHT OF USE

2.1 Effective upon the Acceptance Date and upon Developer's payment of the IRU Fee, City grants to Developer an IRU that includes (1) the exclusive, indefeasible right to use Developer Fibers along the Trunk Route and the Access Point Routes for any lawful purpose, including but not limited to, the transport of telecommunications signals, whether for itself or its Customers; (2) the exclusive right for Developer to connect Developer's Equipment to the Developer Fibers at the Demarcation Points and Access Points, and (3) the non-exclusive rights: (a) to access and use the Cable and the Structures, (b) to access the Chase Bank network operations cabinet location, and other locations as the parties may mutually agree to connect Developer's Equipment, other telecommunications services or facilities to the Trunk Route, and (c) to use Developer's Required Rights ("the Associated Rights"). Collectively, these exclusive rights and the Associated Rights constitute the "Developer IRU." The above notwithstanding, this Agreement shall be effective upon its execution by the Developer and City provided the Developer has complied with the requirements of section 3.1 (a) thru (c), which compliance shall be evidenced by Developer's execution of the Development Agreement with the City for the development of the Zone.

2.2 The Developer IRU is granted on the terms of and is subject to the covenants and conditions set forth herein.

(a) The term of the Developer IRU shall be for twenty five (25) years from the Acceptance Date (the "Term").

(b) This Agreement may be renewed for up to four (4) periods of twenty five (25) years, each ("a Renewal Term").

(c) Providing that neither party is in default, the Term of this Agreement shall be automatically extended for each allowed Renewal Term without further action unless the City notifies the Developer of its intent not to automatically

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renew the Agreement. To be effective a notice of non-automatic renewal must be in writing and must be served on the Developer by certified mail at least 180 days, but no less than 90 days, prior to the expiration of the Term or each Renewal Term, as applicable. If a notice of non-automatic renewal is properly and timely served hereunder, then any further renewal shall be upon such terms and conditions as may be mutually agreed to and approved by the parties in writing.

(d) If the parties do not agree to renew the Agreement, upon the expiration hereof, the Developer IRU shall cease upon ninety (90) days' notice by either party to the other at which time Developer may not access or maintain Connections to any Fibers along the Route and its Associated Rights shall cease. A termination of this Agreement shall have no effect on the Developer's right to access or maintain Connections to any Fibers that are located within the Zone and that are used to provide service within the Zone.

2.3 The Developer IRU granted herein does not convey to Developer any legal title to any real or personal property interest in any portion of the Developer Fibers, the Cable, the Structures or the Network, which are owned by City, or which become owned by the City during the term of this Agreement through dedication, donation, grant, or purchase.

2.4 The Developer IRU granted herein does not provide Developer with any right to physically access, control, modify, replace, relocate or encumber the Developer Fibers or the City Network, except as expressly set forth herein. Developer may not physically access the City-owned portions of the Network, including but not limited to the Trunk Route, the Access Point Routes or enter onto any City-owned property underlying the Network, except as provided herein. For the avoidance of doubt, the foregoing shall not limit the right of Developer to access the Developer Fibers and Equipment on the Premises Side of the Demarcation Points and at the Access Points.

2.5 City will not maintain or repair the Developer Fibers, except as provided in Service Level Agreement attached hereto and made a part hereof as Exhibit B.

2.6 Operations. Each party shall have full and complete control and responsibility for determining any network and service configuration or designs, routing configurations, regrooming, rearrangement or consolidation of channels or circuits and all related functions with regard to the use of that party's fiber.

2.7 Equipment. Developer acknowledges and agrees that City is not supplying nor is City obligated to supply to Developer any optronics or electronics or optical or electrical equipment or other facilities, including without limitation, generators, batteries, air conditioners, fire protection and monitoring and testing equipment, all of which are the sole responsibility of Developer, nor is City responsible for performing any work other than as specified in this Agreement.

2.8 The parties shall mutually cooperate to take such additional action as may be reasonably necessary or appropriate to document and publish their respective rights under this Agreement, including the execution and acknowledgement of a memorandum

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of IRU (or similar document) for recordation in the appropriate governmental office or for transmittal to service providers to constructively notify third parties of the rights granted hereunder.

3. PAYMENTS

3.1 Developer agrees to pay City the equivalent of an IRU fee of One Million Eight Hundred Fourth-Four Thousand and No/100 Dollars (\$1,844,000.00) (the "IRU Fee"). All Parties agree that this fee will be met through Developer:

- (a) voluntarily annexing +/- 2,561 acres into the City;
- (b) agreeing to install and dedicate of over \$220,000,000.00 in public infrastructure to the City; and
- (c) agreeing to install and dedicate no less than 800 strand miles of fiber optic strands to the City for expansion of the City's existing fiber network.
- (d) agreeing to the TIRZ reimbursing the City's cost (as set forth in the Project and Finance Plan) as necessary to make all the required connections for the PID to deliver services to the Zone.

3.2 In addition to the fees provided for in Exhibit B, Developer also agrees to pay City as an annual "Maintenance Fee of 5% of gross revenues generated by the Developer Fibers from the Developer's Customers within the City limits, save and except those located within the PID, for Maintenance during the Term. This Maintenance Fee will not apply to Developer Fibers or Customers located outside of the City limits as such limits existed on December 21, 2014, or to Developer Fibers to the extent they are used to serve the PID.

3.3 Payments made to City are non-refundable, except as provided herein.

3.4 Payments made to City shall be made by company check to the City of McAllen, and shall be have the following memo: "For Deposit to City of McAllen Fiber Fund" and shall be delivered to City at the following address:

CITY OF MCALLEN
c/o Accounts Receivable
1300 Houston Avenue
McAllen, TX 78501

The method of payment and the above address is subject to change from time to time upon notice to Developer.

3.5 In the event Developer fails to make any payment under this Agreement when due, such amounts shall accrue interest from the date such payment is due until paid in full, including accrued interest, at a monthly rate equal to 1.0 percent (1.0%).

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3.6 Splicing Charge is addressed in Service Level Agreement attached hereto as Exhibit B.

3.7 The provisions of section 2.1 above notwithstanding, this Agreement shall be effective upon its execution by the Developer and City provided the Developer has complied with the requirements of section 3.1 (a) thru (c), which compliance shall be evidenced by Developer's execution of the Development Agreement with the City for the development of the Tres Lagos Project.

4. REQUIRED RIGHTS

4.1 City shall be solely responsible for and bear fully and exclusively the costs of obtaining and maintaining during the Term (subject to Section 9 - Relocation and Eminent Domain), all rights-of-way, easements, access rights, permits, licenses, and governmental authorizations required by applicable law or otherwise necessary for the construction, installation, operation, and maintenance of the Network and the Developer Fibers and the Developer IRU granted to the Developer under this Agreement (the "Required Rights").

4.2 The foregoing notwithstanding, the Developer IRU is subject to the terms, conditions, limitations, restrictions and reservations of the Required Rights, including but not limited to, covenants, conditions, restrictions, easements, reversionary interests, bonds, mortgages and indentures, and other matters, whether or not of record, and to the rights of tenants and licensees in possession. Nothing herein shall be construed to be a representation, warranty or covenant that City possesses all Required Rights for the Route or of City's right, title or interest with the respect to the Required Rights, all of which are disclaimed. The above notwithstanding, during the Term hereof the City agrees that it shall take no action that is intended or designed to cause harm to Developers rights under this Agreement, and that it shall fully consider its obligations under this Agreement, and Developer's reliance thereon, when taking any future action that may cause harm to the Developer or a disruption to the services provided by Developer or the City-owned fiber used by Developer hereunder.

4.3 Compliance. Developer agrees to use the Developer Fibers only in a manner consistent with the Required Rights, and agrees that its rights shall in all respects be subject to the terms and conditions of the Required Rights. Developer agrees not to intentionally cause or allow to be caused any default under the Required Rights.

4.4 Access. Throughout the Term hereof, Developer is solely responsible for securing and maintaining permission to access the Premises Side of the Demarcation Points except, the Redundancy Structures (as defined in Exhibit E to the Development Agreement) and such other locations as the parties may agree.

5. INSTALLATION AND ACCEPTANCE

5.1 Following payment of the first installment of the IRU Fee, City shall coordinate with Developer in good faith on the configuration of the splicing of the Developer Fibers in the Trunk Route to the Developer Fibers in the Access Point Routes.

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City shall perform fiber acceptance testing of the Developer Fibers along Trunk Route and Access Point Routes and provide test deliverables in accordance with Exhibit C ("Acceptance Testing") for verification that such testing complies (or does not comply) with the Fiber Specifications. Developer shall have the right to be present for such testing. In the event that City fails to provide test deliverables to Developer within thirty (30) days following payment of the first installment of the IRU Fee, Developer shall have the right but not the obligation to terminate this Agreement, or in the alternative to pay for such testing to be done by a properly trained testing company, and to provide the results of the testing to the City. In the event the Developer is required to have such remedial testing performed, the Developer shall be entitled to reimbursement by the City for the cost thereof in the form of an offset against the Maintenance Fee charged hereunder.

5.1.1 If the Acceptance Testing indicates that any portion of the Developer Fibers along the Trunk Route or the Access Point Routes does not meet the Acceptance Testing criteria set forth in Exhibit C, City shall take such action as shall be reasonably necessary to cause such portion of the Developer Fibers to meet the Acceptance Testing criteria.

5.1.2 The date upon which Developer provides City with written notification of Acceptance for all of the Developer Fibers along the Trunk Route and Access Point Routes shall be the Acceptance Date of the Developer Fibers. If Developer fails to provide City with any written notice of Acceptance or Rejection within the ten (10)-business-day period after receiving the test results or deliverables from City, then Developer will be deemed to have provided its Acceptance of such Fibers.

5.2 Developer shall pay to install, construct, maintain, repair and otherwise be responsible for Developer's Equipment on the Premises Side of the Demarcation Points and at Access Points.

6. USE OF THE DEVELOPER FIBERS

6.1 Developer represents and warrants that its use of the Developer Fibers shall comply with all applicable laws, ordinances, rules, regulations and restrictions. Developer shall use commercially reasonable efforts to require its Customers to comply with all applicable laws, ordinances, rules, regulations and restrictions.

6.2 Developer shall keep the Developer Fibers free from any liens, rights or claims of third parties attributable to Developer, its Customers, and/or its use of the Trunk Route and the Access Point Routes. If Developer breaches its obligations under this Section 6.2, it shall immediately notify City in writing, shall promptly cause such lien to be discharged and released of record without cost to City, and shall indemnify City against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such lien.

6.3 Developer shall be responsible for the configuration and operation of Developer's Equipment and its use of the Developer Fibers, including but not limited to

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supplying, maintaining, testing, repairing and replacing all Premises Side accessories, facilities and Equipment necessary for Developer's use.

6.4 Developer shall comply with City's operating procedures and interconnection requirements, as updated from time to time, provided that any such updated operating procedures and interconnection requirements have been previously provided to Developer. True and correct copies of City's operating procedures and interconnection requirements as of the Effective Date shall be provided to Developer within thirty (30) days of the execution of this Agreement.

6.5 No use, however extended, of the Developer Fibers, or payment of any fees under this Agreement by Developer, shall create or vest in Developer any ownership or property rights in the City-owned portions of the Network or Developer Fibers except as set forth herein.

7. FACILITIES AND CONNECTIONS

7.1 Developer's Equipment must be located on the Premises Side of the Demarcation Points or at Access Points. Developer's Equipment shall at all times remain the sole property of Developer. Neither Party shall make any representations or take any actions inconsistent with Developer's ownership of said equipment or facilities.

7.2 The Trunk Route, Access Point Routes, certain Access Points, and the Endpoints are depicted on Exhibit A.

7.3 Developer shall not be obligated to pay for any Equipment on the Network Side of the Demarcation Points. City shall not be obligated to pay for any Equipment (including installation and maintenance charges) on the Premises Side of the Demarcation Points.

7.4 Within thirty (30) days of the Acceptance Date, Developer shall provide as-built drawings for the Route consistent with the requirements set forth in Exhibit D.

7. A. IMPOSITIONS

7.A.1 In addition to the IRU Fee and other amounts set forth in this Agreement, Developer agrees to pay its share of Impositions. The parties agree to cooperate with each other (a) to minimize the aggregate Impositions payable with respect to the Network that includes the Developer Fibers, and (b) to share such Impositions according to their respective interests in the Network along the Route.

7.A.2 City Payment. Developer shall be responsible for and shall timely pay any and all Impositions with respect to the construction or operation of the portion of the Network along the Route which Impositions are (a) imposed or assessed prior to the Acceptance Date; or (b) imposed or assessed in exchange for the approval of the original construction of the Network along the Route; or (c) that were assessed in return for the original right to install the Network along the Route on public property or in public right-of-way.

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7.A.3 Developer's Obligations. Except as to Impositions described in Section 7A.2, following the Acceptance Date, Developer shall be responsible for and shall pay all third party Impositions (a) imposed on, based on, or otherwise measured by the gross receipts, gross income, net receipts or net income received by or accrued to Developer with respect to the ownership or use of the Developer Fibers; or (b) which have been separately assessed, allocated to, or imposed by reference to the Developer Fibers; or (c) which are imposed, based on, or otherwise measured with respect to construction services performed by City for Developer. In addition, Developer shall pay its allocable share of any Impositions imposed on the conduits, manholes and hand holes that are part of the Network along the Route that are used in connection with the Developer Fibers or the cable of which the Developer Fibers are a part. To the extent the Impositions on the Developer Fibers are not separately assessed, allocated to or imposed on the Developer Fibers, Developer will pay City for only the Developer's allocable share of all such Impositions. For purposes of this Section 7.A.3., the "allocable share" shall be based on the ratio of the number Developer Fibers within the Cable owned by the City to the total number of Fibers in the Cable owned by the City along the Route, the Trunk Route or one more Access Point Routes, as applicable.

7.A.4 Cooperation. City and Developer agree to cooperate fully in the preparation of any returns or reports relating to the Impositions, and in the efforts of either party to contest an Imposition.

8. SPECIFICATIONS AND MAINTENANCE

8.1 City shall perform all routine maintenance, emergency restoration, and locate services for the Network, the Network Side Equipment, the Demarcation Points, the Connections, and the Trunk Route and the Access Point Routes including the Developer Fibers, at its own cost and expense ("Maintenance"). City shall ensure that the Route and the Network Side Equipment are maintained in serviceable condition in accordance with industry standards and practices, and the Specifications, and shall have sole responsibility for the completion of emergency repairs to the Developer Fibers, Network, Demarcation Points, Connections, and the Network Side Equipment. Maintenance and repairs shall be completed pursuant to the standards set forth in Exhibit B.

8.2 City has the right to contract with third parties in the performance of its obligations under this Agreement. The use of any such contractors, subcontractors, or designees shall not release Developer from any of its obligations under this Agreement. The City and its contractors shall be liable for any damage caused to the equipment or fiber owned by Developer and located on the Premises Side of the City Network; and, the City shall require its contractors to be insured and bonded adequately to assure they are capable of timely paying for any damage caused to Developer or its equipment or fiber in performing services on behalf of the City.

8.3 City and Developer each shall work together in good faith to prevent damage to each other's equipment and to each other's ability to use the Network. Developer shall not use equipment, technologies, or methods of operation that interfere in

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any way with or adversely affect the Network, or City's use of the Network to transmit their own signals. Developer shall not use equipment, technologies, or methods of operation that interfere in any way with or adversely affect any third party's use of the Network. City shall manage the Network such that a third party's use of the Network or Developer's or an affiliate's use of the Network does not interfere with or adversely affect Developer's use of the Developer Fibers.

8.4 If, at any time during the Term or subsequent Renewal Term, any of the Developer Fibers fail to operate in conformance with the Specifications, Developer shall provide notice of such failure, and within thirty (30) days thereafter City shall correct such failure or replace such failing Developer Fiber(s) with other fibers in the Cable containing the Developer Fibers which are capable of functioning in accordance with such Specifications ("Substituted Fibers"). Such Substituted Fibers shall thereafter be Developer Fibers for all purposes of this Agreement and the replaced failed fibers shall revert to City and Developer shall have no further rights with respect thereto. If City is unable to correct or replace the failed Developer Fibers within thirty (30) days from the date of Developer's notice, Developer may, with the pre-approval by City of the expense (which approval shall not be unreasonably withheld, conditioned or delayed), procure substitute assets (including pulling new fiber in existing City-owned conduit) at Developer's expense, and this Agreement shall continue in full force and effect as to the remaining Developer Fibers and Associated Rights. In the event that City is unable to correct or replace the failed Developer Fibers, and Developer is unable to procure substitute assets under this section, City and Developer shall expeditiously negotiate in good faith a reasonable in-kind compensation to be paid by City to Developer for the loss of the failed Developer Fibers.

9. RELOCATION AND EMINENT DOMAIN

9.1 In the event that any portion of the Network that includes the Trunk Route and/or the Access Point Routes, or the Demarcation Points, needs to be relocated, replaced or rebuilt, for the following reasons:

- a. If a regulatory agency or governmental authority (other than City) or third party with legal authority to do so orders or threatens to order such relocation (e.g., through filing or threatening to file a condemnation suit or other exercise of eminent domain, nationalization, or expropriation),
- b. As directed by a grantor of Required Rights or by a person that declines to reasonably grant Developer Required Rights,
- c. To abate interference with or interruption of its Network or the Developer Fibers, or an unreasonable risk thereof, due to the existence of physical conditions (e.g., soil subsidence, rockslides, seismic conditions, or other force majeure event),
- d. In the event of the actual or threatened loss, termination or expiration of Required Rights, or
- e. as reasonably determined by City ("Discretionary Changes")

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City shall notify Developer as soon as is practical. City shall further notify Developer of the cause therefor (identifying a. through e. as applicable), and the impact said relocation, replacement or rebuilding is expected to have on the Trunk Route, the Access Point Routes, Demarcation Points, Equipment, and the Connections.

9.2 Notwithstanding any provisions or implications to the contrary in this Agreement, the precise route of the Network, the Trunk Route and/or the Access Point Routes, the Equipment, the Connections and/or the Demarcation Points may change from time to time. The Parties will work together in good faith to effectuate any changes required to be made for the reasons described in 9.1 during the Term. However:

(i) Changes made must provide Developer with substantially the same quality of service and approximately the same route as existed before the Trunk Route and/or the Access Point Routes, Connections and/or Demarcation Points were moved. In no event may the number of Fibers comprising the Developer IRU be reduced, nor may Developer's rights pursuant to this Agreement be diminished or reduced.

(ii) The costs of any changes made due to causes listed in Section 9.1 (b) or (d), including all reasonable costs incurred by Developer in moving Developer's Equipment and Developer's Fibers to the new locations of the Demarcation Points, as reasonable necessary, shall be borne as provided under Section 9.4. or 9.4.A. as applicable.

(iii) For changes made due to causes listed in Section 9.1(a) or (c), Developer shall pay a portion of the costs of any such changes to the Trunk Line, the Access Point Routes and/or the Demarcation Points that are not reimbursed by a third party. Developer's portion shall equal the product of (a) the ratio that the number of months remaining in the Term bears to 300 months; multiplied by (b) the ratio 12 to the total number of fibers maintained by City along the affected portions of the Trunk Route or Access Point Route, as applicable. In addition, Developer shall bear the entire cost of moving Developer's Equipment, and of extending its network to the new location of the Connections and Demarcation Points.

(iv) The costs of any changes made due to causes listed in Section 9.1 (e) including all reasonable costs incurred by Developer in moving Developer's Equipment and Developer's Fibers and extending Developer's network to the new locations of the Demarcation Points shall be borne solely by City.

9.3 Should any portion of the Trunk Route and/or the Access Point Routes be acquired by eminent domain, nationalization, or expropriation by any authority or entity possessing such power (other than City), or sold to such authority or entity under threat of eminent domain, nationalization, or expropriation (either of which will constitute a "Taking"), both Parties shall each be excused from performance of their obligations under this Agreement to the extent the Taking renders performance impossible or not feasible. In the proceeding for any such Taking in which the interests of the parties in the affected portion of the Route are severed, any awards resulting from the proceeding or otherwise provided shall be fairly apportioned between the parties in accordance with

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such interests. As between The Parties, the provisions of Section 9.2(iii) shall apply to any relocation resulting from a Taking

9.3.a. For purposes of clarity, the costs of any relocation of an Access Point Route caused or required by the relocation of an Endpoint by the owner or operator of such Endpoint or the establishment of another Access Point Route to another Endpoint shall be subject to good faith negotiations by the parties and shall not be governed by the provisions in this Section 9.

9.4 City shall be solely responsible for and bear fully and exclusively the costs of relocation or rebuild of an Access Point Route as a result of any event described in Section 9.1(b), (d), or (e) except as excused herein below. In the event a relocation or rebuild of an Access Point Route or any portion thereof is required as a result of an event described in Section 9.1 (b), (d) or (e), and taking into account the interests of the parties in maintaining the Access Point Route or any portion thereof and Developer's use of the Developer Fibers as provided herein, if City determines in good faith in its reasonable judgment, after consultation with Developer, that it is technically or economically infeasible to relocate or rebuild an Access Point Route or any portion thereof to operate within the Fiber Specifications, City shall notify Developer in a timely manner. Unless otherwise agreed, no sooner than (30) days after City's notice to Developer, Developer shall notify City, and Developer shall, at Developer's option, either (i) abandon the affected Access Point Route pursuant to Section 10.3, or (ii) terminate its obligations under this Agreement with respect to the affected Access Point Route.

9.5 Legal title to the Developer Fibers located in Cable owned by City remains with City at all times during the Term of this Agreement, including but not limited to, in the case of where either Party becomes Insolvent; provided that, in the event City becomes Insolvent, any action to terminate this Agreement shall not affect the grant of the Developer IRU in the Developer Fibers or the grant of the Developer Associated Rights, which collectively shall be deemed to be a fully performed separate transaction severable from any other provisions of this Agreement. The parties acknowledge the Developer IRU constitutes an indefeasible grant to Developer of an IRU in the Developer Fibers and that the grant of the IRU is intended to be non-executory in nature, and shall not be subject to assumption or rejections in any City bankruptcy proceeding. Moreover, in the event of City becoming Insolvent, any action to terminate or reject this Agreement shall give Developer the right to access the Developer Fibers at the Demarcation Points and preserve the Developer Associated Rights for the limited purpose of using the Developer Fibers as contemplated in this Agreement, including the placement and maintenance of Developer's Equipment on the Premises Side of the Demarcation Points and the right to use the Developer Fibers.

10. TERMINATION AND BREACH

10.1 Unless terminated in accordance with this Section 10, this Agreement shall continue in force and effect for the Term. Upon expiration of the Term or Renewal Term, as applicable, Developer's right to use the Developer Fibers and/or the Trunk Route and the Access Point Routes shall terminate as provided under Section 2.2, above,

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and City shall owe no additional duties or consideration to Developer with respect to such use.

10.2 In the event that Developer fails to timely pay the IRU Fee, as provided under Section 3.1, above, City may terminate the Agreement upon thirty (30) days' notice, unless such failure to pay is cured within that thirty (30)-day period.

10.3 In the event that, prior to the expiration of the Term, City decides or acts to abandon any portion of the Trunk Route, an Access Point Route, Cable along the Route and/or the Network Side Access Facilities, Developer's right to use such Developer Fibers and the Associated Rights granted hereunder during the Term shall not be affected, and prior to any such abandonment, City shall transfer to the Developer at no cost the legal title to the Cable in which the Developer Fibers that are the subject of the Developer IRU are located. In such circumstances, City agrees to work with and undertake commercially reasonable efforts to assign the rights to attach the Cable to the Structures to Developer, and otherwise cooperate with Developer to take such action to maintain and preserve Developer's use and enjoyment of the Developer Fibers, including but not limited to granting Developer an License in the City rights-of-way to maintain, repair, replace, use and access the Developer Fiber.

10.4 City or Developer may terminate this Agreement immediately without liability and without prior written notice in the event either Party is ordered in a final and non-appealable order by a court of law, regulatory authority or governmental authority (other than City) to terminate this Agreement.

10.5 In addition to Section 10.2, a party shall be deemed in breach of this Agreement only upon its failure to cure a default, subject to the following procedures:

10.5.1 Upon the occurrence of an Event of Default, the non-defaulting party must provide written notice of the default to the defaulting party. The defaulting party will have thirty (30) days following receipt of the written notice to cure the default. If the nature of the default is such that the default cannot be cured within thirty (30) days, the time for curing the default shall be extended for such period of time as may be necessary to complete the cure, but in any event such period of time shall not exceed ninety (90) days.

10.5.2 Upon the failure of the defaulting party to timely cure any Event of Default pursuant to Section 10.5.1, the non-defaulting party may, subject to the terms of Sections 12 and 13 (Indemnification and Limitation of Liability), pursue any legal or equitable remedies it may have under applicable law or principles of equity relating to such breach, subject to the limitations in Section 22.

10.5.3 All rights and remedies of the non-defaulting party set forth in this Agreement shall be cumulative, and none shall exclude any other right or remedy, now or hereafter allowed by or available under any statute, ordinance, rule of court, or the common law, either at law or in equity, or both.

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10.6 In the event of a termination under Section 10.4: all of Developer's rights to the Developer IRU and Associated Rights shall terminate; and Developer and City shall meet to provide a means to achieve a reimbursement to Developer of that portion of the IRU Fee provided to City by Developer that is equal to the value of the percentage of IRU Term that can no longer be used by Developer due to the termination.

10.6.1 "Event of Default" by City shall mean the following: (i) breach of any material provision of this Agreement, including any representation, warranty or covenant; or (ii) City becomes Insolvent or ceases operations of its Network.

10.6.2 "Event of Default" by Developer shall mean: (i) the breach of any representation, warranty, obligation or covenant; (ii) the failure to make other payments hereunder other than the IRU Fee; or (iii) Developer becomes Insolvent or ceases operations.

11. ASSIGNMENT

11.1 Developer may not assign, delegate, license or sublicense this Agreement or any of its rights or obligations hereunder to any other party without the prior written consent of City, which consent shall not be unreasonably withheld, conditioned or delayed. By way of illustration and not limitation, it shall not be unreasonable for City to withhold consent if the proposed assignment, delegation, license or sublicense increases the financial, legal or operational risk to City or places additional burdens upon City.

11.2 Section 11.1 notwithstanding, upon notice in writing to City, this Agreement, and all of Developer's rights and duties hereunder, may be sold, assigned, or transferred at any time by Developer to: Developer's affiliates or wholly owned subsidiaries; any successor entity with or into which Developer is sold, merged or consolidated; or any entity created as a result of any reorganization of Developer. City has the right to contract with affiliates and third parties for the installation, inspection, maintenance and repair of the Trunk Route and the Access Point Routes. Any such sale, assignment or transfer shall explicitly be made subject to the Developer IRU and the Associated Rights granted hereunder. No approval by City to a transfer or assignment under this section is required provided notice of such transfer or assignment is given as required herein.

11.3 Nothing in this Agreement shall be construed or interpreted to prohibit Developer from (i) leasing or licensing the Developer Fibers or otherwise providing capacity to others, including without limitation, fiber optic capacity within the Developer Fibers during the term of the IRU, provided that Developer shall remain responsible and liable for all of its obligations under this Agreement; or (ii) granting to third parties IRUs and a right to use the Developer Fibers and Associated Rights, as applicable, which are coextensive with and subject to the rights that have been granted to it in the Developer Fibers and the Associated Rights under this Agreement.

11.4 In the event this Agreement or any interest therein, is sold, assigned, transferred or otherwise disposed of to any third party, including to or by any secured party or subsequent assignee or transferee in connection with an assignment for security

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or otherwise, such third party shall be subject to all conditions and terms of this Agreement.

12. INDEMNIFICATION

12.1 Developer agrees to release, indemnify, defend, and hold City's Indemnitees harmless from and defend City's Indemnitees against, and assumes liability for any Claim relating to, any injury, loss or damage by Developer's Customers for damages to or failure of the Developer Fibers or the Network, and for any claims by any person or government agency going to the content or information transmitted over the Developer Fibers by Developer, Developer's Customers, or their Customer's end-users or is caused in whole or in part by Developer's Equipment, including but not limited to any Claim arising or resulting, in whole or in part, from any breach of Developer's obligations under this Agreement

12.2 City, to the extent permitted by law, agrees to release, indemnify, defend, and hold harmless Developer's Indemnitees from and against, and to assume liability for, any Claim related to any injury, loss or damage to any individual, tangible property or facilities of any third person or entity to the extent it arises or results, in whole or in part, from any alleged or actual negligent act or omission of City or its agents or employees, including due to or arising from the Developer Fiber not being maintained by City as required by this Agreement or the Service Agreement.

12.3 Nothing contained herein shall operate as a limitation on either party's right to bring a claim for damages against any third party, such damages to include, but not be limited to, direct, indirect, special, consequential or punitive damages, based on any acts or omissions of a third party that might affect the construction, operation or use of the Trunk Route and/or the Access Point Routes. For purposes of this Section 12.4, Developer's and Developer's officers, directors, employees, agents and affiliates are not third parties.

12.4 Each party's obligations under this Section 12 are material obligations to the continuing performance of the other party's obligations hereunder.

13. LIMITATION OF LIABILITY

13.1 NEITHER PARTY SHALL BE LIABLE TO THE OTHER, WHETHER IN CONTRACT, TORT, BY INDEMNITY OR OTHERWISE, FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, RELIANCE, MULTIPLE OR CONSEQUENTIAL DAMAGES OR ANY LOST BUSINESS DAMAGES IN THE NATURE OF LOST REVENUES OR PROFITS AS A RESULT OF THE PERFORMANCE OR NONPERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT (WHETHER ARISING OUT OF OUTAGES, TRANSMISSION INTERRUPTIONS OR PROBLEMS, FUNCTIONAL DEGRADATION, OR ANY OTHER REASON). ANY CLAIM FOR SUCH DAMAGES IS SPECIFICALLY WAIVED AND BARRED, WHETHER OR NOT SUCH DAMAGES WERE FORESEEABLE OR A PARTY WAS NOTIFIED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING,

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THIS LIMITATION OF LIABILITY ABOVE SHALL NOT LIMIT EITHER PARTY'S INDEMNIFICATION OBLIGATION TO THE OTHER PARTY AS TO THIRD-PARTY CLAIMS.

13.2 In no event shall either parties' liability to the other for the breach of this Agreement, or Claims related to or connected in any way with this Agreement (other than with respect to third-party claims that are subject to indemnification), exceed, in the aggregate, one million dollars (\$1,000,000.00). The foregoing sentence, however, shall not operate as a limit on any obligation City might have to refund the IRU Fee and the Maintenance fee, in whole or in part, pursuant to a provision of this Agreement.

13.3 EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, Developer MAKES NO WARRANTY TO City OR ANY OTHER ENTITY, WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO THE INSTALLATION, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, USEFUL LIFE, FUTURE ECONOMIC VIABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE ROUTE, THE Developer FIBERS, OR THE NETWORK, OR ANY DELIVERABLE OR CONSTRUCTION PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED. WITHOUT LIMITING THE FOREGOING, Developer DOES NOT WARRANT THAT THE TRUNK ROUTE OR THE ACCESS POINT ROUTES WILL BE UNINTERRUPTED OR ERROR-FREE.

13.4 City shall have no responsibility for or owe any duty to Customers under this Agreement. Developer's obligations to make payments for the IRU and/or Maintenance shall not be changed or relieved by virtue of any inability by Developer to collect payments or charges from Customers or other third parties. In the event of termination of this Agreement, it is Developer's sole responsibility to transition its Customers to alternative service arrangements.

13.5 The Parties agree Developer is solely responsible for any claims or losses that arise as a result of Developer installing fiber optic cable intended to be conveyed or dedicated to the City for expansion of and inclusion in the City-owned Network for the benefit of City under this Agreement until such time as the installed fiber optic cable is tested, and ownership thereof is accepted by the City in writing or through the City using or controlling the cable. This Agreement is intended to provide the essential terms for Developer providing fiber and related goods, and installation services thereof, to City for extending the City Network in conjunction with Developer requiring new extensions of the Network to serve the Developer's Customers. This Agreement shall be subject to Chapter 271, Subchapter I, of the Texas Local Government Code. The Parties agree that the final judgment in any action brought by a Party in reliance on said Chapter 271 shall require the losing Party to pay the reasonable legal fees and costs of the prevailing Party.

14. WAIVER OF TERMS OR CONDITIONS

14.1 The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or

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relinquishment of any such terms or conditions, and the same shall be and remain at all times in full force and effect. Nor shall either party, by mere lapse of time, be deemed to have waived any breach of any terms or provisions of this Agreement.

15. FORCE MAJEURE

15.1 Neither party shall be liable for any delay or failure in performance of any part of this Agreement resulting from the following events, to the extent such events are beyond the party's reasonable control: acts of God, acts of civil or military authority, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, power blackouts, or unusually severe weather. In the event of any delay in the performance of a party's obligations under this Agreement resulting from one of the above events, the due date for the performance of the original obligation(s) shall automatically be extended by a term equal to the time lost by reason of the delay.

16. INSURANCE

16.1 Throughout the period during which this Agreement remains in effect, both Parties shall take out and maintain the following minimum insurance:

16.1.1 Workers' compensation and employers' liability insurance, as required by law, covering all its employees who perform any of the obligations under this IRU. If any employee is not subject to the workers' compensation laws of Texas, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to Texas' compensation laws.

16.1.2 Public liability and property liability insurance covering all operations under this Agreement with limits for bodily injury or death of not less than \$1 million for each occurrence, limits for property damage of not less than \$1 million for each occurrence, and \$2 million aggregate for accidents during the policy period. A single limit of \$2 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

16.1.3 Automobile liability insurance on all self-propelled vehicles used in connection with this Agreement, whether owned, non-owned or hired, shall have limits for bodily injury or death of not less than \$1 million per person and \$2 million each occurrence, and property damage limits of \$1 million for each occurrence. A single limit of \$2 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

16.2 The insurance policies shall be in such form and issued by such insurer as shall be satisfactory to each Party. The insurer shall be financially solvent with an AM Best Rating of A or better. In the event of a loss arising out of or related to Developer's use of the Trunk Route and/or the Access Point Routes under this Agreement,

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Developer's insurance shall be primary (pay first) with respect to any other insurance which may be available to Developer, regardless of how the "other insurance" provisions may read.

16.3 Developer shall furnish to City within thirty (30) days of the execution of this Agreement and at the request of City, but no more than annually, a certificate evidencing compliance with the foregoing requirements. This certificate will list City as additional insureds and will include the following cancellation, suspension, material change or nonrenewal language: "In the event of cancellation, suspension, material change or nonrenewal of any of the said policies, the insuring company shall give the party to whom this certificate is issued thirty (30) days prior notice of such event."

16.4 At Developer's expense, Developer shall have the right at any time to require public liability insurance and property damage liability insurance greater than the limits specified herein if such higher limits are the generally accepted industry standard.

17. NOTICE

17.1 Unless otherwise provided herein, all notices concerning this Agreement shall be in writing and addressed to the other party as follows:

If to City:

City of McAllen
Attn: City Manager
1300 Houston Avenue
McAllen, Texas 78501
Phone: (956) 681-1000

With a copy to:

City Attorney's Office
Attn: Kevin Pagan
1300 Houston Avenue
McAllen, Texas 78501
Phone: (956) 681-1000

If to Developer:

Rhodes Enterprises, Inc.
Attn: Mike Rhodes, President
200 S. 10th Street
McAllen, Texas 78501
Phone: (956) 287-2800

With a copy to:

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Earl & Associates P.C.
Mr. David L. Earl and Megan J. Clay
601 NW Loop 410, Ste. 390
San Antonio, Texas 78216
Phone: (210) 222-1500

or to such other address as either party may designate by notice from time to time in accordance with the terms of this section.

17.2 Except as otherwise provided herein, all required notices shall be transmitted to the parties' addresses specified in Section 17.1 by personal delivery, certified mail (return receipt requested), or by recognized national overnight delivery service, with a courtesy copy by facsimile or via electronic mail. Any notice that is given by either party may be given by the attorneys for that party and shall be deemed effective for all purposes herein. The notice shall be deemed received upon actual delivery or refusal of delivery as evidenced by the records of the U.S. Postal Service or delivery service, such as the case may be.

18. CONFIDENTIALITY

18.1 In the absence of a separate confidentiality agreement between the parties, if either party provides confidential and/or proprietary information to the other in writing and identified as such, to the extent permitted by law, the receiving party shall protect the confidential or proprietary information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, which, in any event, shall not be less than reasonable care.

18.2 All confidential and proprietary information, unless otherwise specified in writing, shall remain the property of the disclosing party and shall be used by the receiving party only for its intended purpose.

18.3 This Agreement in form and structure as well as its content, including its terms and conditions, is deemed confidential.

18.4 The parties agree to use their best efforts to avoid disclosing to each other confidential information that is not reasonably required for the administration of this Agreement.

18.5 Neither party shall be required to treat as confidential any information which: (i) becomes publicly available other than through the recipient; (ii) the recipient is required to disclose by law, rule or regulation, or by court order; (iii) is independently developed by the recipient; (iv) becomes available to the recipient without restriction from a third party; or (v) becomes relevant to the settlement of any dispute or enforcement of either party's rights under this Agreement in accordance with its terms and conditions. If any confidential or proprietary information is required to be disclosed pursuant to subsection (ii) above, the party required to make such disclosure shall

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immediately inform the other party of the disclosure, and shall take all reasonable protective measures to preserve the confidentiality of such confidential or proprietary information as fully as possible in the context of such permitted disclosure.

18.6 These confidentiality obligations shall survive the expiration or termination of this Agreement for a period of two (2) years.

19. PUBLICITY AND ADVERTISING

19.1 In connection with this Agreement, neither party shall publicize this Agreement.

20. MERGER

20.1 With the exception of the Development Agreement between the Parties, and Exhibit E to the Development Agreement, this Agreement constitutes the entire, full and complete agreement between the Parties with respect to the subject matter hereof, and supersedes any previous agreements, understandings or communications, whether written or oral, relating to Developer's use of the Trunk Route and the Access Point Routes and Developer Fibers.

21. REPRESENTATIONS, WARRANTIES AND COVENANTS

21.1 Each party represents, warrants and covenants that on the Effective Date:

21.1.1 It has taken all requisite corporate and Commission action to approve the execution, delivery and performance of this Agreement;

21.1.2 City is a duly organized Texas Municipal Corporation, and Developer is a duly organized Texas Corporation validly existing and in good standing under the laws of its state of incorporation or formation;

21.1.3 It has the full right and authority to enter into, execute, deliver and perform its obligations under this Agreement;

21.1.4 It is qualified to do business in all jurisdictions applicable to this Agreement where such qualification is required by applicable law, except where the failure to be so qualified could not reasonably be expected to have a material adverse effect on its ability to perform its obligations under this Agreement; and

21.1.5 It shall perform its obligations under this Agreement, route in a manner consistent with applicable law, and, in the case of Developer, shall not use or knowingly permit the Developer Fibers to be used for any illegal purpose or in any other unlawful manner.

21.1.6 To its reasonable knowledge and belief, there are no actions or lawsuits pending or threatened which might reasonably be expected to prevent or preclude it from performing its obligations hereunder.

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22. MISCELLANEOUS

22.1 Neither Party is under any obligation, express or implied, to amend, supplement, or otherwise change or modify any of the provisions of this Agreement. However, if both Parties agree to amend, supplement, or otherwise change or modify any of the provisions of this Agreement, then any such amendment, supplement, change or modification, to be enforceable, must be evidenced by written documentation duly executed by both parties. Any attempt to amend, supplement, change or modify this Agreement by oral agreement shall be void and not binding upon either Party.

22.2 This Agreement has been made and is made solely for the benefit of the parties and their successors. Nothing herein is intended to confer any rights or remedies upon any third party.

22.3 Use of the term "include" or "including" shall mean "include, without limitation" or "including, without limitation." The descriptive headings of the several sections of this Agreement are inserted for convenience only and do not constitute a part of this Agreement. Such headings shall not in any way define or affect the meaning, construction or scope of any of the provisions of this Agreement. All Exhibits hereto are hereby incorporated by reference and made a part hereof. In the event that any inconsistency exists between the provisions of this Agreement and any of its Exhibits, the provisions of the Agreement shall supersede the provisions of the Exhibits.

22.4 If a provision of this Agreement requires judicial interpretation, then the parties hereby stipulate that the court interpreting or construing said provision should not construe the terms of this Agreement more strictly against the party preparing this Agreement, it being acknowledged that the parties have sought and received advice of counsel, to the extent that each deems necessary for the full understanding of all the consequences hereof, and each has had an equal opportunity to negotiate the terms of this Agreement.

22.5 Each party shall take or cause to be taken such further actions to execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further documents and instruments as may be necessary or as may be reasonably requested in order to fully effectuate the purposes, terms and conditions of this Agreement.

22.6 This Agreement is deemed executed in and shall be construed under the laws of the State of Texas, without reference to choice of law principles. The parties hereby each agree that any and all disputes arising under or in connection with this Agreement are subject to the exclusive jurisdiction of the courts of Hidalgo County, Texas. Each party hereby acknowledges that it is subject to general personal jurisdiction in the State of Texas, and the District Courts of Hidalgo County, Texas for purposes of any legal action required or allowed to be brought hereunder.

22.7 This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same document. This Agreement also may be executed via counterpart facsimiles on

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(i) the telecopy or facsimile by each party of a signed signature page thereof to the other party, with return receipt by telecopy or facsimile requested and received, and (ii) the parties' agreement that they will each concurrently post, by next business day courier, a fully executed original counterpart of the Agreement to the other party.

22.8 Should any court of law or administrative or governmental entity with jurisdiction declare any provisions of this Agreement to be void or unenforceable, the remaining provisions of the Agreement shall remain in full force and effect.

22.9 Nothing contained in this document, or in any amendment or supplement thereto, shall be deemed or construed to: (i) make City the agent, servant, employee, joint venture, associate or partner of Developer or vice versa; or (ii) create any partnership, joint venture or agency relationship between City and Developer. Neither party shall have the right to obligate or bind the other party in any manner to any third party.

22.10 Nothing herein shall be construed to limit the right of City, by contract or otherwise, to confer upon others who are not parties to this Agreement rights or privileges to use the Network, provided any such conveyance of rights or privileges to a third party does not interfere with Developer's exclusive use of the Developer Fibers or its ability to exercise its rights and fulfill its obligations hereunder.

22.11 Unless otherwise provided, in any instance hereunder where City's approval or consent is required or the exercise of City's judgment is required, the granting or denial of such approval or consent and the exercise of such judgment shall be within the sole discretion of City, and City shall not, for any reason or to any extent, be required to grant such approval or consent or exercise its judgment in any particular manner, regardless of the reasonableness of the request or Developer's judgment.

22.12 The term "person" and words importing persons as used in this Agreement shall include firms, associations, partnerships (including limited partnerships), limited liability companies, joint ventures, trusts, corporations and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons.

22.13 Unless expressly herein, words having well-known technical or trade meanings shall be so construed.

22.14 Except as set forth to the contrary herein, any right or remedy of City or Developer shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.

22.15 City and Developer agree that a scanned or electronically reproduced copy or image of this Agreement, in executed form, shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence hereof notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Agreement and without the requirement that the unavailability of such original, executed counterpart of this Agreement first be proven.

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23. RESOLUTION OF CONFLICTING PROVISIONS

23.1 The Parties recognize that they have entered into agreements contained in the Development Agreement (including but not limited to Exhibit E thereof) which relate to establishing fiber optic connections to the Zone for use by the Developer and PID to provide fiber related services within the Zone; as such terms are defined in such Development Agreement. The Parties expressly agreed that the language, terms, and agreements contained in the said Development Agreement (and in Exhibit E thereto) shall be controlling in the event of a conflict between such language, terms, and agreements and any of the language, terms, and agreements contained in this Agreement.

24. NON-INTERRUPTION OF PID FIBER USE

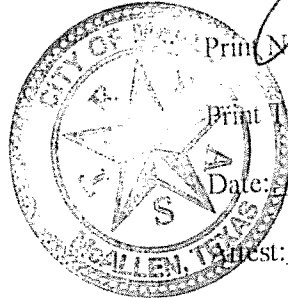
24.1 Both Parties agree that neither the City nor the Developer shall take any action that would interrupt or cause harm to the Cable or the Fiber which is relied on by the PID for providing service to the properties within the PID. The Parties agree that any interruption of signal or service to the PID as a result of an action by either Party shall be remedied immediately, and that in the event testing of the fiber indicates the span loss (span shall be FDP to FDP) in the portions of the Route serving the PID are greater than a bi-directional average of 0.50 dB/km, as calculated using an industry-accepted optical loss test set at 1550 nm, then if not remedied within 30 days the PID shall have the right to install a new fiber optic cable in the portions of the City owned conduit and/or Developer owned conduits within the Route containing the Fiber, Developer Fiber, in cooperation with the City, as needed to restore reliable signal to the PID. In the event the PID is required to take such remedial action and install new Cable, the cost for doing so shall be paid by the PID, and neither the Developer nor the City shall be entitled to compensation for the PID's use of said conduits. The PID is an intended third party beneficiary of this provision

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

[Signatures follow on next page]

CITY

Exhibit "E"
Fiber Optic Infrastructure and Special Technology Provisions



By: [Signature]
Print Name: Jim Darling
Print Title: Mayor
Date: 3-10-15
Attest: [Signature]

DEVELOPER

By: [Signature]
Print Name: Mike Rhodes
Print Title: Pres Rhodes Enterprises, Inc.
Date: 3-9-15
Attest: [Signature], Secretary

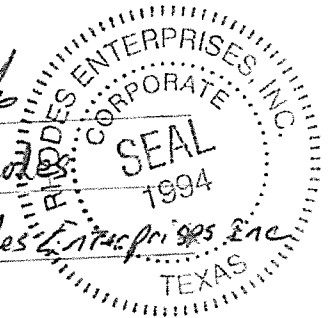


Exhibit “E”
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EXHIBITS

- Exhibit A** Diagram of Route, Endpoints and Demarcation Points
- Exhibit B** Splicing and Maintenance Services Level Agreement (SLA)
- Exhibit C** Fiber Specifications
- Exhibit D** As-Built Drawings

Exhibit "E"
Fiber Optic Infrastructure and Special Technology Provisions

Exhibit A to IRU Agreement

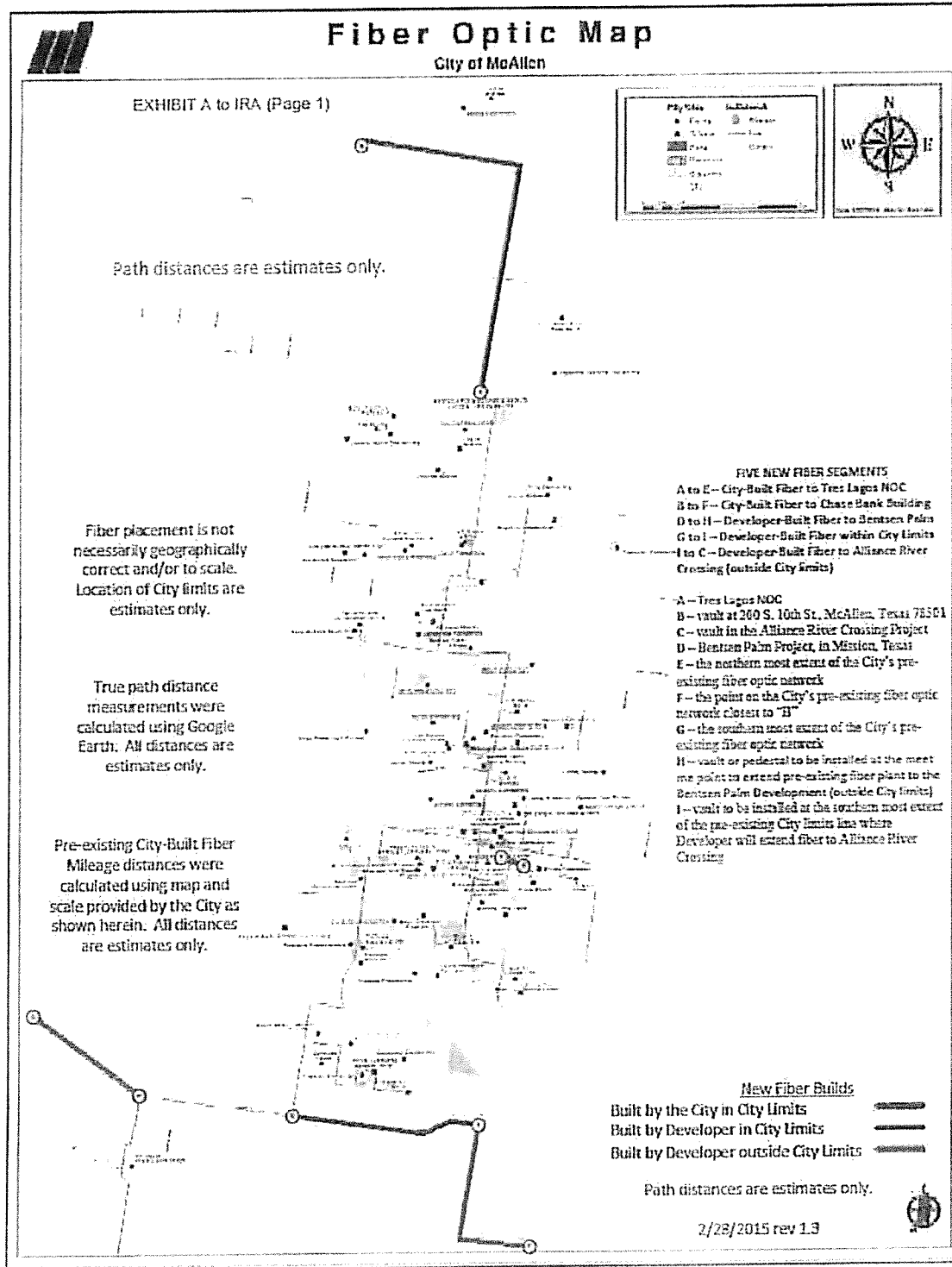


EXHIBIT A

Exhibit "E"
Fiber Optic Infrastructure and Special Technology Provisions

"Fiber Path Mileage Totals"

Path	Underground Mileage	City-Built Fiber Count Granted to Developer	City-Built Fiber Miles Granted to Developer	⁵ Developer-Built Fiber Count Granted to City	Developer-Built Fiber Miles Granted to City
¹ A to E	5.10	12	61.20		0.00
¹ B to F	0.29	12	3.48		0.00
¹ D to H	5.10		0.00	12	61.20
¹ G to I	1.99		0.00	84	167.16
¹ I to C	16.09		0.00	12	193.08
² Existing City-Built Fiber	29.50	12	354.00		0.00
¹ A to P	1.00		0.00	84	84.00
¹ P to Q	1.10		0.00	84	92.40
¹ A to R	1.00		0.00	84	84.00
¹ A to S	2.91		0.00	84	244.44
Total Fiber Path Miles			418.68		926.28
³ Total Fiber Value			\$218,061.10		\$482,434.41

¹ True path distance measurements were calculated using Google Earth. All distances are estimates only.

² Pre-existing City-Built Fiber Mileage distances were calculated using map and scale provided by the City. All distances are estimates only.

³ Total Fiber Value is based on the new build cost of \$50,000 per mile. \$50,000 / 96 strands = \$520.83 per strand mile

⁴ Total Fiber path mileage (and Value) does not include additional Developer-Built Fiber Miles to be Granted to the City in association with the Hidalgo County Regional Mobility Authority ("HCRMA") Short Term Strategic Plan 2014-2022. This future build may or may not take place and is not a guarantee or commitment to be included in this Agreement. The Developer and the City will work closely together in an effort to secure this contract. In the event that the Developer is successful in procuring this contract and extends fiber within the HCRMA, then the Developer will grant 12 fiber strands within the Developer-Built fiber count to the City. (Refer to Exhibit E, Attachments).

⁵ Total Fiber path mileage (and Value) does not include additional Developer-Built Fiber Miles to be Granted to the City in association with future fiber plant extensions within the public right of way inside City limits to deliver services to new customers.

2/28/2015 rev 1.3

EXHIBIT A

Exhibit "E"
Fiber Optic Infrastructure and Special Technology Provisions

Exhibit B to IRU Agreement

Service Level Agreement

{SEE ATTACHMENT 5 to EXHIBIT E}

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Exhibit C to IRU Agreement

FIBER SPECIFICATIONS

1.0 Compliance.

All work will be done in accordance with federal, state, local, and applicable rules and laws regarding safety and environmental issues, including those set forth by Occupational Safety and Health Administration and the Environmental Protection Agency. In addition, all work and the resulting fiber system will comply with the generally applicable industry standards.

2.0 Route Detail Information.

City will provide to Developer a description of the type of Fiber (i.e., underground or aerial) and splice points which shall be available to Developer under the IRU Agreement in the Route thereof. If Developer desires additional information concerning the Trunk Route or the Access Point Routes, the parties shall negotiate in good faith to determine the feasibility of providing the additional detail requested. Updates to information will be provided by City to Developer within ninety (90) days of completion of any change to the Trunk Route and/or the Access Point Routes, including any relocation projects affecting the Developer's Fibers.

3.0 Deviations from Specifications.

City may deviate from these Specifications when field conditions dictate and as provided in the Agreement.

4.0 Fiber Cable Splicing Testing, and Acceptance Procedures.

a. Subsequent to the Fiber optic splices being made, as provided herein, all strands of the Trunk Line, the Access Point Routes and the Connections shall be tested to ensure such strands meet the standards provided in this Agreement. The parties shall cooperate in accomplishing the testing so that City can expeditiously and at its expense test the Trunk Route and the Access Point Routes, and to allow Developer access to the test results to confirm the test results provided in this Agreement.

b. All splices will be performed with an industry-accepted fusion splicing machine. Testing will be documented on diskettes (or other acceptable media) in Laser Precision format and on trace analysis sheets reflecting bidirectional losses by fiber and installed span loss by fiber. One copy of trace diskettes and three copies of trace analysis sheets will be submitted by each party to the other party promptly upon completion of the testing. All testing will be performed at 1550 nm.

c. During initial unidirectional OTDR testing, a general indicator of the quality of each splice will be an objective loss of 0.15 dB or less. If, after three attempts, a party is not able to produce a loss value of less than 0.15 dB, then 0.25 dB will become the objective. If, after two additional attempts, a value of less than 0.25 is not achievable, then the splice will be marked as "Out-of-Spec" ("OOS") on a field data sheet. The parties recognize that

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unidirectional OTDR test data is not an acceptance/rejection criterion. Attempts to improve the loss for existing splices that are marked OOS will not be made unless agreed upon by both parties.

d. The installed span loss (span shall be FDP to FDP) shall be a bi-directional average of 0.50 dB/km or less, as calculated using an industry-accepted optical loss test set at 1550 nm. The installed span loss includes the inherent attenuation of the glass, the backbone splice losses, the pigtail splice losses, the inherent loss in the pigtails, and the connector losses.

e. Optical Return Loss will be recorded on the testing documentation, for informational purposes only.

f. Customer fiber assignments will be consecutive in count. The maximum number of fibers within a single buffer tube (or ribbon or fiber bundle) shall be 12.

g. Optical Fiber Specifications - Single Mode Fiber

Operation Temperature	-60 c to 85 c
Optical Properties	• 1300-1550 nm
• Standard Attenuation	• < .35 dB/km @ 1550 nm
• Attenuation Uniformity	• 0.1 dB/km
• Splice Loss	• < .15 dB per splice bi-directional average • < .2 dB for DS fiber

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Exhibit D to IRU Agreement
AS-BUILT DRAWING SPECIFICATIONS

City shall, within 90 days from the execution of this Agreement, provide to Developer As-Built drawings containing the specific identification, by appropriate designator, of the Trunk Route and the Access Point Routes. Developer shall cause the splice points with the Developer Fibers to be designated on Network maps and as-built drawings. Facilities shall be marked in the field. Any maps or drawings that must be updated shall be delivered as soon as practicable thereafter to City. Detailed as-built drawings will contain the following information presented in the format described below:

1. Route Description: The as-built will contain a geographical depiction of the Route containing the Trunk Route and the Access Point Routes, provided in the form of a hard-copy map. The depiction will identify each access point.

2. Fiber Level Details: The as-built will provide details on Developer's fiber assignment numbers within the Cable between each access point and the next contiguous POP, fiber distribution bay, Developer's individual fiber assignments, and Developer's circuit ID's to aid in identifying fibers within the Cable.

3. Mileage: Mileage will be the fiber distances via Optical Time Domain Reflectometer ("OTDR") traces between an access point and the next contiguous access point.

4. Site Names: City's access points will be identified using City's names for such sites, whether or not Developer uses the same names.

5. Drawings shall contain cable information, and to the extent applicable, splice locations, assist point locations with permanent structures, survey stations, conduit information, Regen Space locations, and optical distances to the nearest Regen Space from each of Developer's splice locations.

6. Map Info should be used as the land base to include all locations, addresses and route mileage for the long-haul portion. In the metropolitan areas AutoCAD should be used at 1" = 200' scale. Drawings shall be "blue lines," as such term is understood in the industry or in CAD format revision 13 or a later revision. Developer may adopt any replacement method of creating or providing drawings that is generally accepted in the industry and that provides equivalent information.

7. Definition of type of cable and fiber installed.

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ATTACHMENT 5 to EXHIBIT E
&
EXHIBIT B to IRU Agreement

SERVICE LEVEL AGREEMENT

This Service Level Agreement (the "SLA") is entered into as of this 9th day of MARCH 2015, (the "Effective Date") by and between Rhodes Enterprises Inc., a Texas Corporation with its principal offices at 200 South 10th Street, McAllen, TX 78501 (hereinafter, "**Developer**"), and The City of McAllen, Texas, a Texas Municipal Corporation with its principal offices at 1300 Houston Avenue McAllen, TX 78501 (hereinafter, "**City**"). Collectively, Developer and City may be referred to as "the parties" or individually as "a party." Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the IRU Agreement.

WHEREAS, City has agreed to grant to Developer the exclusive, irrevocable and indefeasible right to use twelve (12) specific strands of Fiber (the "Developer Fiber" or "Black Buffer Tube") on the terms and conditions specified in the Indefeasible Right of Use Agreement (hereinafter, "IRU Agreement") to which this SLA is attached; and

WHEREAS, In exchange for the compensation established herein, City has agreed to provide splicing, certain routine maintenance, emergency restoration and locate services for the Developer as set forth herein;

NOW, THEREFORE, in consideration of the mutual promises set forth below, and for other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, City and Developer agree as follows:

1. **DEFINITIONS.** Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the IRU Agreement.

2. **MAINTENANCE SERVICES.**

2.1 In General. City shall provide maintenance services (the "Maintenance Services") for the Developer Fiber, Access Points and Cable as set forth herein, and shall have access to all splice points associated with connections to the Developer Fibers for the provision of such Maintenance Services. City shall provide Scheduled Maintenance and Unscheduled Maintenance, each as defined below, for the Developer Fiber.

2.2 Scheduled Maintenance. "Scheduled Maintenance" means (a) routine maintenance and repair of the Developer Fiber and Access Points; (b) patrol of the Developer Fiber, and Access Points on a regular basis; (c) maintenance of a "Call-Before-You-Dig" program as applicable and all required and related cable locates; (d) maintenance of sign posts as applicable, as permitted by the underlying right-of-way owner, along the subject Fiber and Cable routes with the number of the local "Call-Before-You-Dig" organization and the "800" number for its "Call-Before-You-Dig" program if allowed by applicable state and local laws; and (e)

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assignment of properly trained and certified maintenance technicians. Subject to the other provisions contained in this SLA, City shall maintain (or cause to be maintained) any hut, collocation facility, or other structure used to house Developer's Access Points.

2.3 **Unscheduled Maintenance.** "Unscheduled Maintenance" means non-routine maintenance, emergency repair, and restoration of the Developer Fiber and Access Points not included in Scheduled Maintenance, namely, (a) "Emergency Unscheduled Maintenance" to repair and restore the Developer Fiber in response to an alarm identification by either Party's OC (as defined below), notification by Developer, or notification by any third Party of any imminent failure, interruption, or impairment in the operation of the Developer Fiber, or to prevent failure, interruption or impairment of the Developer Fiber in response to any event imminently likely to cause such failure, interruption, or impairment; and (b) Non-emergency Unscheduled Maintenance in response to any potential (although not imminent) service-affecting situation to prevent any failure, interruption, or impairment of the operation of the subject Cable, Fibers, or Access Points.

2.4 **City Not Responsible for Developer Equipment.** Developer has exclusive control and responsibility to install, test, inspect, maintain, and repair the Developer's Equipment. City shall have no responsibility or obligation to perform any Maintenance Services hereunder (or otherwise perform maintenance, repair, or replacement) with respect to the Developer Equipment, and shall not be liable for any loss or damage attributable to any Developer Equipment that malfunctions or is not installed, tested or maintained properly by Developer.

3. **TERM.** The initial term of this SLA shall commence upon the Acceptance Date and continue in effect for the same term as the IRU Agreement unless terminated or modified earlier by mutual agreement of the Parties. (hereinafter, the "Maintenance Term"). Subject to renewal of the IRU Agreement, this SLA shall renew for additional terms commensurate with and equal to the Renewal Terms of the IRU Agreement unless either Party provides written notice of its intent not to renew in the same manner required for non-renewal of the IRU Agreement.

4. SPLICING AND MAINTENANCE CHARGES.

4.1 **Splicing Charge.** Developer agrees to pay City for the costs incurred with respect to any splicing. Splicing shall be billed to Developer at City's cost plus ten percent (10%), which payment shall be due within thirty (30) days after Developer's receipt of an invoice from City. In no event shall the City charge more for splicing services than is customary in the market for such services. The City shall base its pricing for such services on the rate charged by the lowest responsive bidder for such services received by the City in response to a request for bids for such services issued within no less 12 months prior to invoicing for such services.

4.2 **Annual Charge for Scheduled Maintenance.** Annual charge for Scheduled Maintenance shall only be applicable to City-owned fiber cable routes outside of those fiber cable routes required to serve the Zone or PID. This includes fiber cable extensions within the City limits performed by Developer and then dedicated to the City. Developer shall pay to City

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for the provision by City of Scheduled Maintenance hereunder, an annual maintenance charge of two hundred fifty dollars (\$250.00), or equivalent, per Route mile of active or lit Developer Fiber ("Annual Maintenance Charge"). The initial Annual Maintenance Charge for Scheduled Maintenance is set forth in Schedule A. The Annual Maintenance Charge shall be based exclusively on active or lit route miles of Fiber, and shall be irrespective of the number of Fibers Developer has in any particular Route Segment. The Annual Maintenance Charge is subject to periodic review and adjustment pursuant to Section 4.3 below, and must not exceed 110% of the cost for such maintenance than is customary in the market for such services. The City shall base its pricing for such services on the rate charged by the lowest responsive bidder for such services received by the City in response to a request for bids for such services issues within no less 12 months prior to invoicing for such services.

4.3 Invoices. City shall invoice Developer for the Annual Maintenance Charge on an annual basis in advance, and Developer shall pay the Annual Maintenance Charge, or equivalent, set forth in the invoice within thirty (30) days of its receipt thereof.

4.4 Periodic Review. The Annual Maintenance Charge is fixed at the rate set out in Exhibit A, and must not exceed 110% of the cost for such maintenance than is customary in the market for such services. The City shall base its pricing for such services on an amount not to exceed 110% of the rate charged by the lowest responsive bidder for such services received by the City in response to a request for bids for such services issued in compliance with Texas law on no less than an annual basis. At the time of issuance and publication of the request for bids the City shall send a copy of the request to Developer. This process for establishing the amount of fees and other pricing is referred to herein as the "Competitive Pricing Procedure" or "CPP".

4.5 In addition to adjustments made under the CPP, City may make non-standard adjustments to the Annual Maintenance Charge to reflect actual increased charges to City by Grantors under the Underlying Maintenance Agreements for Scheduled Maintenance in connection with the Grantor Segments containing the Developer Fiber that are in excess of the adjustment to the Annual Maintenance Charge based on the CPP. Any non-standard adjustments to the Maintenance Charges must include relevant Grantor invoices and other supporting information, and at least ninety (90) days' notice must be given prior to the commencement of the applicable period to which the adjustment would apply. Such additional non-standard adjustments shall be pro-rated between City and Developer based on the number of Fibers each has in the applicable Grantor Route Segment.

4.6 Costs for Unscheduled Maintenance. The Parties agree that Annual Maintenance Charge does not cover Unscheduled Maintenance or Relocation. Each Party shall be responsible for its pro rata share of Unscheduled Maintenance costs based on the ratio of each Party's Fibers in the particular Route Segment to the total number of Fibers in that Route Segment. For its share of any costs and expenses incurred for Unscheduled Maintenance, Developer shall pay the charges set forth in an invoice from City, accompanied, as applicable, by relevant invoices from Grantors or other service providers, and bid tabulations for such services, evidencing such costs and expenses, within thirty (30) days of its receipt thereof. Notwithstanding the foregoing, in the event that the need for Unscheduled Maintenance becomes

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necessary as a result of a Party's, its agent's, or its customer's negligence or willful misconduct, that Party shall be solely responsible for the entire Unscheduled Maintenance costs. In the event that the need for Unscheduled Maintenance becomes necessary as a result of the negligence or willful misconduct of a third party, City shall take commercially reasonable action to collect the costs thereof from such responsible third party, and shall, offset each Party's share of the costs for Unscheduled Maintenance on a pro rata basis, to the extent such costs have actually been recouped from such responsible third party. Each party's responsibility for Relocation costs shall be as described in Section 9 of the IRU Agreement.

4.7 Expenses. City is responsible for professional travel, meals, lodging, and such other expenses as it may incur ("Expenses") in performance of Scheduled Maintenance, and no charge shall be assessed to Developer for such costs. Reasonable Expenses incurred by City in connection with Unscheduled Maintenance including restoration and emergency repair activities, shall be allocated and may be invoiced by City as provided in Section 4.4, subject to the provision, upon Developer request, of back-up documentation.

5. MAINTENANCE SPECIFICATIONS AND REQUIREMENTS.

5.1 Operations Center. City shall itself or through a third party, operate and maintain an Operations Center ("OC") and have trained staff available twenty-four (24) hours a day, seven (7) days a week. City shall have a maintenance employee or contractor available for dispatch twenty-four (24) hours a day, seven (7) days a week.

5.2 Scheduling; Response Parameters and Requirements.

5.2.1 City shall respond to any notice of any failure of the Developer Fibers to operate in accordance with the Fiber Specifications, whether or not causing any interruption of Developer's use thereof (an "Outage") as quickly as reasonably possible (subject to delays due to a Force Majeure Event) in accordance with the procedures of this Section 5, and, in any event, City will use reasonable efforts to have a maintenance technician at the site requiring Emergency Unscheduled Maintenance on any Route Segment within five (5) hours after the time City becomes aware of an event requiring such Emergency Unscheduled Maintenance. City will restore the Developer Fibers and the connections on the same priority as other communications services within City's service area; however, City shall have no liability to Developer in the event City is unable, due to the demands of restoring other priority services such as service to fibers serving operation centers for emergency service providers or the PID.

5.2.2 City shall notify Developer at least three (3) business days in advance of Scheduled Maintenance for which it is responsible that will cause interruption of use by Developer or its customers of the Developer Fibers. In the event that Scheduled Maintenance of which Developer has been so notified is canceled or delayed for any reason, City shall notify Developer at City's earliest reasonable opportunity and will provide a new notice under this Section 5.2.2 to reschedule any such canceled or delayed maintenance.

5.2.3 Developer shall have the right to be present during the performance of any Scheduled Maintenance or Unscheduled Maintenance so long as this

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requirement does not interfere with City's ability to perform its obligations under this SLA or violate any applicable third party limitations or restrictions on access; provided that in the event of such third party limitations on access, City will cooperate with Developer in obtaining any necessary permissions from such third party to permit Developer to be present during the performance of such maintenance activities.

5.2.4 City shall perform Scheduled Maintenance between the hours of midnight and 6:00 a.m. or in accordance with its then current preventative maintenance procedures, which shall be consistent with industry practice. Unscheduled Maintenance may be performed at any time, but City agrees to use commercially reasonable efforts when conducting such Unscheduled Maintenance to minimize any interruption of Developer's use of the Developer Fibers or such use by its customers.

5.2.5 City shall use commercially reasonable efforts to remedy any problems related to the Developer Fiber or Access Points as quickly as possible, except that restoration of open fibers on fiber strands among the Developer Fiber not immediately required for service shall be completed in a mutually agreed upon manner and on a mutually agreed upon schedule. If any Developer Fiber is not being utilized by Developer, repairs may be scheduled for the next available Planned System Work Period ("PSWP"), which is a pre-arranged period of time reserved for performing certain work on the subject Cable that may potentially impact Developer's communications traffic. If, at any time, it becomes apparent that an Outage as to any Developer Fiber will extend beyond eight (8) hours, a manager or officer of each Party will work together to determine a plan to restore the subject Fibers as soon as possible.

5.2.6 Major system work (including fiber rolls and hot cuts on Developer Fiber) will be scheduled during a PSWP. Generally, this will be restricted to weekends, avoiding the first and last weekend of each month and holidays of high communications traffic.

5.2.7 In the case of any permitted rerouting activities, City shall notify Developer at least thirty (30) days in advance of any voluntary rerouting activities and as soon as reasonably possible in the case of any involuntary rerouting activities if the subject rerouting activities are intended to require any interruption of service by Developer related thereto.

5.2.8 City's representatives responsible for initial restoration of a cut Developer Fiber shall carry in their vehicles the appropriate equipment that would enable a temporary splice, with the objective of restoring Developer's fiber operation as quickly as reasonably possible. City or its representatives shall maintain an inventory of spare cable in one or more storage facilities to facilitate timely restoration. Each Party shall maintain sufficient capability to teleconference with the other Party during an Emergency Unscheduled Maintenance on fiber strands granted to Developer hereunder and to provide regular communication during the repair process.

5.2.9 When correcting or repairing Cable discontinuity or damage, including in the event of Emergency Unscheduled Maintenance, City shall use reasonable

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efforts to repair discontinuity having an impact on traffic within twenty-four (24) hours after City's maintenance employee, contractor, subcontractor or designee arrives at the problem site. To accomplish such objective, it is acknowledged that the repairs so affected may be temporary in nature. City or its representative, promptly upon arriving on the site of the cut or damage, shall determine the course of action to be taken to restore the fiber(s) and shall begin restoration efforts. City or its representative shall splice Fibers such that lit Fibers in all buffer tubes, ribbons or fiber bundles shall have priority over any dark fibers to allow transmission systems to come back on line; and provided further that City will continue such restoration efforts until all lit Fibers in all buffer tubes or ribbons are spliced and all traffic restored. The goal of emergency restoration splicing shall be to restore service as quickly as possible. This may require the use of some type of mechanical splice, such as the "3M Fiber Lock" to complete the temporary restoration. Within forty-eight (48) hours after completion of an Emergency Unscheduled Maintenance by City, City shall commence its planning for permanent repair if applicable, and shall notify Developer of such plans and shall implement and complete such permanent repair within seven (7) days. Permanent restorations will take place as soon as practicable after the temporary repairs are completed.

5.3 Cooperation. Each Party agrees to work in a cooperative manner with the other Party to attempt to identify maintenance and repair problems in the Developer Fiber and Access Points, and communicate in accordance with the contact/escalation list in Exhibit B hereto. Without limiting the generality of the foregoing and in the event that any Scheduled Maintenance or Unscheduled Maintenance requires a traffic roll or reconfiguration involving the Developer Fiber, electronic equipment or other facilities, then, each Party shall make its personnel available as reasonably necessary to accomplish the maintenance in a coordinated and cooperative manner.

5.4 Splice Enclosures. Neither Party shall open the splice enclosure of the other Party.

5.5 Contractors/Grantors. City may, in its reasonable discretion, contract with qualified third parties for the performance of the Services hereunder, provided it shall require its contractors, subcontractors, and designees to perform in accordance with requirements and procedures reasonably comparably to those set forth in this SLA. The use of any such contractors, subcontractors, or designees, shall not release City from liability for any of its obligations under this SLA.

6. CONTACT INFORMATION. Each Party shall provide the other Party with the names and telephone numbers of at least three (3) agents or representatives, in the order that the other Party shall contact them for reporting purposes and otherwise regarding the performance of Maintenance Services hereunder (the "Contact/Escalation List"). Each Party's initial Contact/Escalation List is set forth in Exhibit B, which such list may be updated from time to time by the applicable Party.

7. FAILURE TO PROVIDE MAINTENANCE SERVICES. If at any time during the Term of the IRU Agreement, City fails to provide restoration services for the

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Developer Fibers in connection with City's provision of Maintenance Services, the Parties' respective rights therewith shall be governed by Section 6.2 of the IRU Agreement.

8. **CONFIDENTIAL INFORMATION.** If either party provides confidential and/or proprietary information to the other in writing and identified as such, the protection of such information by the receiving party shall be governed by Section 20 ("CONFIDENTIALITY") of the IRU Agreement.

9. **INSURANCE.** During the term of this SLA, both Parties shall maintain a policy of comprehensive liability insurance, including public liability, bodily injury, and property damage, written by a company licensed to do business in the State of Texas, covering use and activity contemplated by this SLA with combined single limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars \$2,000,000.00 aggregate, with Two Million Dollar (\$2,000,000.00) umbrella coverage. Each party shall name the other, including their officers, employees, and agents as Additional Insureds for the said purpose and use of this SLA. Each Party shall also maintain Workers' Compensation insurance to meet the requirements of the Workers' Compensation laws of Texas where applicable. Certificates of Insurance evidencing such insurance coverage shall be provided to the other Party upon request.

10. **ASSIGNMENT.** This SLA may not be assigned by either party without the prior written approval of other party. Notwithstanding the foregoing, nothing herein shall limit City, at its sole discretion and without notification to or consent of Developer, from retaining such qualified contractors and subcontractors as it deems appropriate to perform its obligations hereunder.

11. **USE OF NAMES AND MARKS.** Neither Party may use the marks or names of the other for any purposes without the prior written approval of that Party.

12. **GOVERNING LAW; EXCLUSIVE JURISDICTION.** This SLA shall be governed, construed, and enforced by the laws of the State of Texas, and venue over this SLA shall be in Hidalgo County, Texas.

13. **TERMINATION.** Either Party may terminate this SLA upon thirty (30) days prior written notice upon a Default by the other Party or termination of the IRU Agreement, provided that City shall be paid for satisfactory services rendered under this SLA prior to the effective date of its termination and Developer shall be refunded that portion of the Annual Maintenance Charge for the remaining number of days in the year from the date of termination. In the event of termination of this SLA, Developer shall have the right to provide or procure Maintenance Services for the Developer Fibers in accordance with Section 7, hereof.

14. **DEFAULT AND REMEDIES.**

14.1 **Default.** A default under this SLA ("Default") shall occur if a Party fails to perform, in any material respect, any of its obligations set forth in this SLA, and such failure is not excused by any provision of this SLA and continues un-remedied for a period of thirty (30) days following receipt of written notice from the non-breaching Party, provided that if the breach by its nature cannot be cured within thirty (30) days and the breaching Party within that time has

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commenced to cure, there shall be no Default so long as the Party thereafter diligently continues such cure to completion.

14.2 Remedies. Upon the occurrence of a Default, the non-breaching Party shall have the right, subject to the express limitations contained in this SLA, to pursue any and all legal or equitable remedies it may have against the defaulting Party, including termination of the SLA and the rights of Developer (if it is the non-breaching Party) to obtain a refund of the portion of the Annual Maintenance Charge for the remaining number of days in the year from the date of termination.

14.3 Limitation of Liability. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER, WHETHER IN CONTRACT, TORT, BY INDEMNITY OR OTHERWISE, FOR ANY PUNITIVE, SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR ANY LOST BUSINESS DAMAGES IN THE NATURE OF LOST REVENUES OR PROFITS (WHETHER ARISING OUT OF TRANSMISSION INTERRUPTIONS OR PROBLEMS, ANY INTERRUPTION OR DEGRADATION OF SERVICE OR OTHERWISE) AS A RESULT OF THE PERFORMANCE OR NONPERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT. ANY LIABILITY FOR INTERRUPTIONS OR OUTAGES, SHALL BE LIMITED TO REPLACEMENT OR REPAIR OF THE AFFECTED FIBER IN ACCORDANCE WITH THE TERMS OF THIS MAINTENANCE AGREEMENT.

14.4 Further Remedies – Right-of-First Refusal. In the event that the City is unable to perform services as required under this SLA, then the Developer may exercise its Right-of-First Refusal to purchase the existing fibers in use OR pull new fiber cable in existing City conduit to replace the existing Developer Fibers.

15. COMPLIANCE WITH STATE AND FEDERAL LAWS. The Parties shall comply with all applicable federal and State laws.

16. ENTIRE AGREEMENT. This SLA, along with the IRU Agreement, and the Development Agreement (including Exhibit E thereto), comprises and sets forth the entire agreement between the Parties as of the date of the final signature below with respect to the subject matter of the SLA, and supersedes any previous written or oral representations, statements, negotiations, or agreements, other than those contained in the Development Agreement and its Exhibits.

17. NO AGENCY OR EMPLOYMENT RELATIONSHIP. This SLA shall in no way be interpreted as creating an agency, joint venture, partnership, or other legally recognizable partnership entity, or employment relationship between the Parties.

18. SEVERABILITY. If any part of this SLA is held to be in violation of any law, the provisions held to be invalid shall be of no force and effect, but all of the other provisions of this SLA shall continue to be binding on the Parties.

19. MODIFICATION IN WRITING. This SLA may be modified only by written amendment executed by the authorized representatives of both Parties.

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20. **SURVIVAL.** The rights and obligations of the Parties under this SLA that would by their nature survive the expiration or termination of this SLA shall survive the expiration or termination of this SLA. Notwithstanding the foregoing, the provisions of Sections 7, 9, 15, 21, 22 shall survive termination of this SLA.

21. INDEMNIFICATION.

21.1 Indemnification by Developer. Developer hereby agrees to indemnify, defend and hold harmless City, its officers, employees, agents and all successors of City, from all claims, actions, causes of action, demands, rights, damages, costs, sums of money, accounts, covenants, contracts, promises, attorneys' fees and all liabilities or obligations of any kind or nature whatsoever at law, in equity, or otherwise, asserted by third parties arising out of or relating to Developer's negligent or willful acts or omissions in performance of this SLA.

21.2 Indemnification by City. To the extent permitted by law, City hereby agrees to indemnify, defend and hold harmless Developer, its officers, employees, agents and all successors of Developer, from all claims, actions, causes of action, demands, rights, damages, costs, sums of money, accounts, covenants, contracts, promises, attorneys' fees and all liabilities or obligations of any kind or nature whatsoever at law, in equity, or otherwise, asserted by third parties arising out of or relating to City's negligent or willful acts or omissions in performance of this SLA

22. **NOTICES.** All notices, demands and requests required or permitted to be given under the provisions of this SLA shall be (a) in writing, (b) delivered by facsimile transmission with confirmation of delivery, or sent by overnight commercial delivery service or certified mail, return receipt requested. Notice shall be deemed to have been given on the date of transmission and receipt of facsimile transmissions, or the delivery date set forth in the records of the delivery service or on the return receipt when addressed as follows:

If to City:

City of McAllen
Attn: City Manager
1300 Houston Avenue
McAllen, Texas 78501
Phone: (956) 681-1000

With a copy to:

City Attorney's Office
Attn: Kevin D. Pagan
1300 Houston Avenue
McAllen, Texas 78501
Phone: (956) 681-1000

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If to Developer:

Rhodes Enterprises, Inc.
Attn: Mike Rhodes, President
200 S. 10th Street
McAllen, Texas 78501
Phone: (956) 287-2800

With a copy to:

Earl & Associates P.C.
Attn: David L. Earl & Megan J. Clay
601 NW Loop 410, Ste. 390
San Antonio, Texas 78216
Phone: (210) 222-1500

or to any such other persons or addresses as the Parties may from time to time designate in a writing delivered in accordance with this Section 22.

EXECUTED ON THIS 9th DAY of March, 2015 to be effective on the date hereof.

CITY OF MCALLEN

By: [Signature]
Name: David L. Earl
Title: Mayor

DEVELOPER

By: [Signature]
Name: Mike Rhodes
Title: pres Rhodes Enterprises Inc

SEAL
ENTERPRISES, INC.
CORPORATE
TEXAS

Exhibit "E"
Fiber Optic Infrastructure and Special Technology Provisions

Exhibit A- SLA*

ROUTE SEGMENTS SUBJECT TO MAINTENANCE AGREEMENT**							
Route No.	Start Point	End Point	Distance	Number of Developer Fibers	Fee	Fee	Total Fee
1	B	A	14.79 mi	12			
2	F	G	7.30 mi	12			
3	G	I	1.99 mi	12			
4	G	H	2.50 mi	12			
Total Fee							***

* NOTE -- Only route segments listed above are included in this SLA. Route segments may be added to this SLA from time to time at the request of the Developer as it expands the City's fiber cable plant and such additions shall be shown by update and amendment to this Exhibit A -- SLA.

**For Route Segments, Start Points and End Points refer to Exhibit A of to the IRU Agreement.

*** See Attachment 4 to Exhibit E -- Section 3 (Payments)

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Exhibit B - SLA

Contact/Escalation List

CITY ESCALATION LIST					
<u>No.</u>	<u>Name</u>	<u>Email Address</u>	<u>1st Phone Number</u>	<u>2nd Phone Number</u>	<u>3rd Phone Number</u>
1					
2					
3					

DEVELOPER ESCALATION LIST					
<u>No.</u>	<u>Name</u>	<u>Email Address</u>	<u>1st Phone Number</u>	<u>2nd Phone Number</u>	<u>3rd Phone Number</u>
1	Joe Jarmusch	joej@mlrhodes.com	956-328-6644	956-316-4090 Ext.741	956-287-2800
2	Lorell Hathcock	lorell@mlrhodes.com	956-478-5955	956-316-4090 Ext.743	956-287-2800
3	Joe Farlas	joef@mlrhodes.com	956-522-8512	956-316-4090 Ext.742	956-287-2800

EXHIBIT "F"

Sewer and Recycled Water Provisions

- 1) The City of McAllen, acting by and through the Board of the McAllen Public Utilities Board (the "PUB") shall provide public retail sewer service to the Project within the Zone, as such service levels and capacities as are required by the Project pursuant to the terms and conditions of the PUB's Certificate of Convenience and Necessity issued by the Texas Commission on Environmental Quality and the regulations for sewer service passed and approved by the Board of the PUB and approved by the Commission of CITY.
- 2) The PUB agrees that it has reviewed the Development Agreement to which this **Exhibit "F"** is attached, and that it understands and agrees to the obligations for extension of sewer and recycled water service and utility infrastructure to the **ZONE** as set forth therein.
- 3) With respect to recycled water service to the **ZONE** for the use and benefit of the proposed PID, and the properties served thereby, the PUB agrees to:
 - a) Install the required recycled water mains to the Zone on or before the 31 day of March, 2017;
 - b) Return at no less than 80% of the potable water used by the retail water customers within the **ZONE** (as indicated by monthly meter readings) back to the PID for use in serving the **ZONE** with recycled water service delivered at a point identified by the PID; and
 - c) Assure that the recycled water delivered has a water quality equal to or better than the minimum water quality requirements set forth in 30 Texas Administrative Code §210.33(1).

Agreed to by and between **DEVELOPER** and PUB on this ____ day of _____, 2015.

PUB:

By: _____

Printed Name

Title

DEVELOPER:

By: _____

Mike Rhodes

Printed Name

Pres Rhodes Enterprises, Inc.

Title

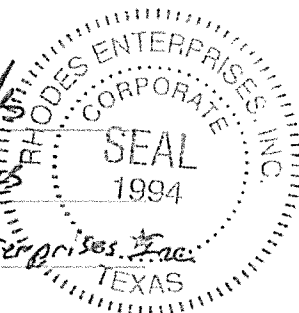


EXHIBIT "G"

Insurance Requirements

STANDARD INSURANCE REQUIREMENTS CONSTRUCTION/SERVICES/PROFESSIONAL SERVICES

The Certificate of Insurance should be made to the City of McAllen, P.O. Box 220, McAllen, TX 78505-0220, (1300 Houston, McAllen, Texas 78501) and should reference the operation.

All certificates must be received prior to commencement of service/work. All Certificates of insurance shall be approved by the Risk Manager and/or his/her designated representative prior to the commencement of any work.

In the event the insurance coverage expires prior to the completion of this contract, a renewal certificate shall be issued thirty (30) days prior to said expiration date. The City must be notified at least thirty (30) days prior to any material change in and/or cancellation and/or non-renewals of such policies.

The term "City" shall include The City of McAllen and/or McAllen Public Utilities (MPU) and their employees, officers, officials, agent, and volunteers in respect to the contracted services. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirement.

The City reserves the right to make reasonable requests or revisions pertaining to the types and limits of that coverage.

During the term of the Contract, the successful contractor/respondent/selected firm shall acquire and maintain, for the duration of the contract period the following insurances:

- A. **Comprehensive Commercial General Liability:** The Contractor/Respondent/Selected Firm shall provide minimum limits of \$250,000 each occurrence, \$500,000 annual aggregate combined single limit for bodily injury and property damage liability. This shall include premises/operations, independent contractors, products, completed operations, personal and advertising injury, and contractual liability. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs maintained by the City and shall name the "City of McAllen" as an additional insured with a waiver of subrogation. The policy of insurance shall be written on an "occurrence" form.

Blanket "XCU" – Explosion, Collapse & Underground
Independent Contractors
Care, Custody and Control
Contractual Liability

No endorsements excluding these coverage's are allowed.

Additional Insured Requirement:

To the fullest extent of coverage allowed under Chapter 151 of the Texas Insurance Code, the City of McAllen and/or McAllen Public Utilities (MPU) shall be included as additional insured under the CGL policy, using ISO Additional Insured Endorsements CG20101001 and CG20371001, or endorsements providing equivalent coverage, including products completed operations

STANDARD INSURANCE REQUIREMENTS - CONSTRUCTION/SERVICES/PROFESSIONAL SERVICES CONTINUED:

- B. **Business Automobile Liability:** The Contractor/Respondent/Selected Firm shall maintain limits of no less than \$250,000 combined single limit per occurrence for bodily injury and property damage, and \$500,000 annual aggregate. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs maintained by the City and shall name the "City of McAllen" as an additional insured with a waiver of subrogation. The policy of insurance shall be written on an "occurrence" form.

Applicable as long as no fragile or perishable products are transported; otherwise, Cargo Insurance is required.

Additional Insured Requirement:

To the fullest extent of coverage allowed under Chapter 151 of the Texas Insurance Code, the City of McAllen and/or McAllen Public Utilities (MPU) shall be included as additional insured under the CGL policy, using ISO Additional Insured Endorsements CG20101001 and CG20371001, or endorsements providing equivalent coverage, including products completed operations

- C. **Builder's Risk/Fire & Extended Coverage**

The Contractor shall insure the building or other work included in this contract on an all-risk (special causes of loss) policy, with an insurance company or companies acceptable to the Owner. The amount of the insurance at all times to be at least equal to the amount paid on account of work and material and plus the value of the work or materials furnished or delivered but not yet paid for by the Owner. Builder's Risk Policies shall cover loss of materials by theft, vandalism, malicious mischief or other loss whether materials are incorporated in the work or not.

The policies shall be in the names of the City and the Contractor, as their interests may appear, and certificates of insurance shall be delivered to the Owner before monthly partial payments are made. The policy shall provide for the inclusion of names of all other contractors, subcontractors and other employed on the premises as ensured and shall stipulate that the insurance companies shall have no right to subrogation against any contractors, subcontractors or other parties employed on the premises for any work building alterations, construction or erection to the described property.

- D. **Workers' Compensation:** The contractor/respondent/selected firm shall provide and maintain workers' compensation insurance for all employees in the full amount required by statute and full compliance with the applicable laws of the State of Texas. Employer's Liability insurance shall be provided in amounts not less than \$500,000 per accident for bodily injury by accident; \$500,000 policy limit by disease; and \$500,000 per employee for bodily injury by disease."

In addition, a Waiver of Subrogation Endorsement shall be provided by the contractor naming the City of McAllen in said policy for Worker's Compensation Insurance. Contractor/Respondent/Selected Firm shall further ensure that all of its sub-contractors maintain appropriate levels of workers' compensation insurance.

STANDARD INSURANCE REQUIREMENTS - CONSTRUCTION/SERVICES/PROFESSIONAL SERVICES CONTINUED:

- E. **Professional Services - Insurance Provisions:** Errors & Omissions (Professional Liability): \$1,000,000 Each Claim Limit \$1,000,000 Aggregate Limit. If coverage is written on a claims-made basis, the retroactive date shall be on or prior to the date of the contractual Agreement. The certificate of insurance shall state that the coverage is claims-made and include the retroactive date. The insurance shall be maintained for the duration of the contractual Agreement and for four (4) years following completion of the services provides under the contractual Agreement or for the warranty period, whichever is longer. An annual certificate of insurance submitted to the City shall evidence coverage.
- F. **Deductible Clause:** Contractor/Respondent/Selected Firm to declare self-insured retention or deductible amounts in excess of \$25,000.
- G. **Other Provisions:** All insurance carriers shall be rated A6 or better and be published on a current A.M. Best Rating Guide, or some other recognized equivalent rating service (e.g., Moody's, Standard & Poor's). The City may request a copy of the insurance policy according to the nature of the project. City reserves the right to accept or reject the insurance carrier. All Certificates of Insurance shall be provided on the Acord Form 25. All insurance requirements are imposed and must be complied with by any and all sub-contractors, and/or lower-tier sub-contractors. A copy of endorsements providing Additional Insured, Primary Insurance and Waiver of Subrogation wording shall be attached to the certificates of insurance.

Print Agenda Return



**AGENDA
HIDALGO COUNTY
COMMISSIONERS COURT MEETING
June 7, 2016
9:30 A.M.**

NOTICE is hereby given in accordance with Chapter 551, Texas Government Code, that a SPECIAL MEETING of the Commissioners Court will be held in the Commissioners Courtroom of the Administration Building, 100 E. Cano, 1st floor, Edinburg, Hidalgo County, Texas. Discussion and possible action relating to the following business will be transacted:

- 1. Roll Call**
- 2. Pledge of Allegiance**
- 3. Prayer**
- 4. Approval of Consent Agenda**
- 5. County Judge's Office:**
 - A. 54881** Consideration and approval of a Resolution in Honor of the McAllen United Angels Girls Soccer Team
 - B. 54916** Order ratifying Amended and Restated Interlocal Agreement (as to McAllen TIRZ Number One)
- 6. Constables:**
 - A. 54807** Constable Pct. #2:

Discussion, consideration and approval to appoint Jason Garcia as Reserve Deputy Constables by Martin Cantu, Constable Pct. 2 in accordance with Texas Local Government Code Section 86.012.
- 7. Sheriff's Office:**
 - A. 54862**
 1. Approval of Interlocal Cooperation Agreement for Shooting Range Use/Training between the Hidalgo County Sheriff's Office and the Texas Department of Public Safety.
 2. Authorization for County Judge, as authorized official, and County Sheriff to sign two original documents.
 - B. 54852** Approval to appropriate \$85,000.00 from the unreserved fund balance in the Sheriff's Federal Sharing - U.S. Department of Treasury (Fund 1228).

8. **District Attorney's Office:**

- A. **54932** DA Investigation HB65 (1223)
Approval to 2016 appropriation of funds in the amount of \$30,000.00 to fund operating expenditures.

9. **Human Resources:**

- A. **54906** Precinct 4 CRC (1100):
1. Requesting waiver of the Budget Amendment Policy - Personnel - Related Amendments.
2. Discussion, consideration, and approval of the following personnel actions effective next full pay period:

Action	Dept/Program	Slot #	Position Title	Current Budgeted Salary	Proposed Budgeted Salary
Delete	124-001	0001	Equipment Operator III	\$36,470.00	\$0.00
Create	124-077	0003	Clerk IV	\$0.00	\$31,252.00

3. Approval of interdepartmental transfer.
4. Approval to revise the salary schedule in accordance with Commissioners' Court action.

- B. **54797** Elections Department (1100):
1. Requesting waiver of the Budget Amendment Policy - Personnel - Related Amendments.
2. Discussion, consideration, and approval to extend the following temporary full-time positions, effective 07/01/2016 through 12/31/2016:

Employee #	Slot #	Position Title	Proposed Budgeted Salary/Hourly Rate
199290	T172	Elections Clerk	\$10,504.00/yr - \$10.10/hr
214809	T173	Elections Clerk	\$10,504.00/yr - \$10.10/hr
211052	T176	Elections Clerk	\$10,504.00/yr - \$10.10/hr
211060	T177	Elections Clerk	\$10,504.00/yr - \$10.10/hr
212938	T178	Elections Clerk	\$10,504.00/yr - \$10.10/hr
212946	T179	Elections Clerk	\$10,504.00/yr - \$10.10/hr
199281	T180	Elections Clerk	\$10,504.00/yr - \$10.10/hr
212920	T181	Elections Clerk	\$10,504.00/yr - \$10.10/hr
Vacant	T174	Elections Clerk	\$10,504.00/yr - \$10.10/hr
Vacant	T182	Elections Clerk	\$10,504.00/yr - \$10.10/hr

3. Approval to waive posting, hiring, and enrollment procedures for temporary slot #s T172, T173, T176, T177, T178, T179, T180, and T181 and keep the temporary employee #s currently filling the slot #s listed above.
4. Approval of interdepartmental transfer.
5. Approval to revise salary schedule in accordance with Commissioners Court action.

- C. **54824** Health Adm/Health Clinics (1100)/ RLSS-LPHS/IMM DIV LOCAL/H.D. ADM (1293):
1. Requesting waiver of the Budget Amendment Policy - Personnel - Related Amendments.
2. Discussion, consideration, and approval of the following personnel actions effective next full pay period:

Action	Dept/Program	Slot#	Position Title	Current Budgeted Salary	Proposed Budgeted Salary
Delete	340-001	0045	Public Health Technician III	\$52,132.00	\$0.00

Create	340-001	0056	Public Health Coordinator	\$0.00	\$57,847.00
Delete	340-003	0005	Assistant Director Of Nursing	\$74,557.00	\$0.00
Budgeted	340-003	G058	Public Health Specialist	\$18,000.00	\$17,101.00
Salary / Reduce	340-006	G003		\$18,452.00	\$17,530.00
Create	340-003	0151	Assistant Director of Clinical Care Services	\$0.00	\$80,000.00
Delete	340-012	G007		\$29,934.00	\$0.00
	340-005	G009	Licensed Vocational Nurse II	\$1,498.00	\$0.00
	340-003	G060		\$11,087.00	\$0.00

3. Approval to waive posting, hiring, and enrollment procedures and assign employee #131504 to Slot No. 0056, Public Health Coordinator position.

4. Approval of interdepartmental transfer.

5. Approval to revise the salary schedule in accordance with Commissioners' Court action.

10. HIDTA - Task Force:

- A. **54801** Approval of correction for 2016 HIDTA Grant (approved on CC 04/26/16 AI-54270), changing effective salary redistribution date from 05/02/16 to 04/18/16 (Pay Period 10).
- B. **54697**
 - 1. Approval to amend (increase) the 2016 HIDTA Task Force - Chapter 59 Fund Budget (Fund 1251) in the amount of \$178,185.00.
 - 2. Approval to appropriate funds in the amount \$178,185.00 in the 2016 HIDTA Task Force - Chapter 59 Fund Budget (Fund 1251).

11. Health & Human Services Department:

- A. **54879** Requesting approval of letter to city mayors related to Zika Virus Prevention Efforts.
- B. **54851**
 - 1. Requesting approval for Commissioner's Court to accept and County Judge Ramon Garcia to sign the Lease Agreement with Carson Map Company, Inc.
 - 2. Requesting approval to process lease agreement fee payment in the amount of \$590.00 with authority for County Treasurer to issue a check after auditing procedures are completed by County Auditor.
- C. **54833** Requesting approval to allow Hidalgo County Health & Human Services Dept. staff in partnership with Hidalgo County Emergency Management staff to host and provide training for local Amateur Radio Operators. The Field Day Exercise will be held on June 25, 2016.
- D. **54835** Requesting approval to renew for a period of one year the Memorandum of Agreement with Texas A&M University Health Science Center for an On-Site Education program.
- E. **54793** Presentation of Walk Across Texas Challenge #9 Winners
- F. **54822**
 - 1. Requesting approval to accept the CPS/OT-UNIQUE grant contract amendment #2016-004045-01. The purpose of the amendment is to amend certain contractual language and revise the budget.
 - 2. Requesting approval of the Certification of Revenue in the amount of \$2,500.00.
 - 3. Requesting approval of the budget appropriation.

- G. Health Care Funding District:**
1. Discussion and/or action, including but not limited to Health Care Funding District and/or Expenditures
- H. Indigent Health Care Program:**
1. Discussion and/or action, including but not limited to Indigent Health Care Program and 1115 Waiver and/or Expenditures
 2. **54796** Discussion South Texas MCO Pass-Through Payment Pilot Program.
- 12. Emergency Management:**
- A. **54927** Approval of continuance of local state of disaster under Texas Government Code Section 418.108
- 13. Urban County:**
- A. **54901** The Urban County Program requests authorization to advertise for construction and related activities for all projects identified in the 2016-2017 One Year Action Plan and subsequent amendments, TDHCA, TDA, Colonia funded activities and Texas General Land Office projects.
 - B. **54907** Requesting approval to Re-authorize Urban County Program Director to sign and execute Loan Agreements, Rehabilitation Contracts, Promissory Notes, Release of Liens on Property that have met the established Affordability Periods, and CHDO Agreements, as they relate to the Housing Program.
 - C. **54908** Requesting approval to Re-authorize Urban County Program Director to sign and execute contracts and agreements after Hidalgo County Commissioners' Court approval as they relate to all Hidalgo County Urban County Program projects included in the Annual Consolidated Plan.
 - D. **54909** Requesting approval to re-designate Urban County Program Director as Certifying Officer Designee for Environmental review procedures for entities assuming HUD Environmental responsibilities (CDBG, HOME, ESG, COLONIA, TDHCA, TDA, GLO Program and etc.).
 - E. **54912** Requesting approval to re-authorize Urban County Program Director to approve certain Change Orders on Urban County Projects.
 - F. **54913** Requesting authority to change the Annual Action Plan approved by Commissioners' Court on May 10, 2016 to include an additional \$8,713.00 awarded to the County of Hidalgo for the HOME Program after submittal of Annual Action plan to HUD and authorize County Judge to sign a new SF-424.
 - G. **54878** The Urban County Program is requesting authorization to waive the CDBG Redistribution and Recapture Policy for program year 28(2015).
 - H. **54832** Subject to Compliance with HB 1295, when and if Applicable, the Urban County Program on behalf of the City of Granjeno is requesting approval of a best and final negotiated

contract for Professional Service- Construction Material Testing Services with Raba-Kistner Consultants Inc., in the amount of \$7,208.45 utilizing CDBG FY 20 (2007) Parks Recreational Facility Improvement funds.

- I. **54827** 1. Request approval to decrease the 2014 HOME Owner Occupied Rehabilitation (Rehab) Program line item by \$75,000
2. Request approval to increase the 2014 HOME Community Housing Development Organization (CHDO) Program line item by \$75,000
- J. **54826** Request approval to increase the 2014 HOME Community Housing Development Organization (CHDO) Program agreement between Hidalgo County Urban County Program and Proyecto Azteca by \$75,000 and approve the addendum (Right of Exercise) with Proyecto Azteca
- K. **54825** 1. Requesting exemption from competitive bidding requirements under the Texas Local Government Code 262.024 (a)(4) for professional engineering services;

2. Presentation of the scoring grid for the purposes of ranking by CC of at least three (3) engineering firms from the County's approved "pool" as graded and evaluated by the City of Hidalgo, Urban County Program, and Hidalgo County Purchasing Department, in connection with and funded through Hidalgo County Urban County Program Year 27 (2014) Hidalgo Parks, Recreational Facility Improvement funds.

Professional Service Firm	Grade	Ranked
Javier Hinojosa Engineering	94.33%	
LVN Engineering	92.67%	
S&B Infrastructure, LTD.	92.33%	

3. Authority to negotiate a professional engineering service contract with the No. 1 ranked firm of _____ for the provision of engineering services for an Urban County Program Year 27 (2014) Hidalgo Parks, Recreational Facility Improvements project.

- L. **54773** Subject to Compliance with HB 1295, when and if Applicable, the Urban County Program on behalf of the City of San Juan, is requesting consideration and action to award and enter into a construction contract with O.M.T. Utilities in the amount of \$193,600.00. UCP funds in Year 27 (2014) Water/Sewer Improvement line item will be utilized.

- M. **54694** 1. Requesting exemption from competitive bidding requirements under the Texas Local Government Code 262.024 (a)(4) for professional engineering services;

2. Presentation of the scoring grid for the purposes of ranking by CC of at least three (3) engineering firms from the County's approved "pool" as graded and evaluated by the City of San Juan, Urban County Program, and Hidalgo County Purchasing Department, in connection with and funded through Hidalgo County Urban County Program Year 28 (2015) San Juan Street Improvement funds.

Professional Service Firm	Grade	Ranked
Perez Consulting Engineers	92.00%	
S&B Infrastructure	89.67%	
Javier Hinojosa Engineering	88.67%	

3. Authority to negotiate a professional engineering service contract with the No. 1 ranked firm of _____ for the provision of engineering services for an Urban County Program Year 28 (2015) San Juan Street Improvements project.

- N. **54692** 1. Requesting exemption from competitive bidding requirements under the Texas Local Government Code 262.024 (a)(4) for Professional Engineering Services-Construction Materials Geo-Technical Testing services;
2. Presentation of the scoring grid for the purposes of ranking by CC of at least three (3) Construction Materials Geo-Technical Testing engineering firms from the County's approved "pool" as graded and evaluated by the City of San Juan, Urban County Program, and Hidalgo County Purchasing Department, in connection with and funded through Hidalgo County Urban County Program Year 28 (2015) San Juan Street Improvement funds.

Professional Service Firm	Grade	Ranked
Millennium Engineers Group	91.33%	
Professional Service Industries	86.67%	
Terracon Consultants, Inc.	85.00%	

3. Authority to negotiate a professional engineering service contract with the No. 1 ranked firm of _____ for the provision of Construction Materials Geo-technical Testing service for an Urban County Program Year 28 (2015) San Juan Street Improvements project.

- O. **54691** "Subject to Compliance with HB 1295, when and if applicable." The Urban County Program on behalf of City of Granjeno is requesting authority to purchase parks, recreational equipment/supplies through Hidalgo County's membership and participation with Buyboard approved vendor Exerplay, Inc, (Buyboard Contract # 423-13) in the amount of \$183,622.65 (quote attached hereto). Freight and installation are included in quote. City of Granjeno UCP Year 28 (2015) Parks, Recreational Facilities and Improvement funds will be utilized.

14. Elections Administration:

- A. Discussion and/or action, including but not limited to Elections updates

15. Head Start Program:

- A. **54805** Discussion/Approval of Program Calendars for Program Year 2016-2017
- B. **54780** Discussion/Approval of Summer Work Schedule
- C. **54787** Discussion/Approval on Request to Enter into a Thirty-Six (36) Month New Copier Lease Agreement for Fifty-Seven (57) Copiers Through Hidalgo County's Membership/Participation in the State of Texas Department of Information Resources (DIR) Awarded Vendor, Kyocera Document Solutions America, Inc., DIR Contract DIR-TSO-3092
- D. **54786**

Presentation for Discussion, Consideration and Approval to Enter into a Memorandum of Understanding (MOU) between Hidalgo County Head Start Program and the Entities Listed on the Attached List

- E. **54785** Discussion/Approval of the Following 2016-2017 Hidalgo County Head Start Program Plans:
 - 1. Child Nutrition Services
 - 2. Education Services
 - 3. Family Services
 - 4. Health Services
 - 5. Human Resources
 - 6. Mental Health Services
 - 7. Special Services
 - 8. Transition Services
 - 9. Transportation Services
- F. **54784** Discussion/Approval of Audit Findings and Corrective Action Plan for the Child and Adult Care Food Program
- G. **54783** Discussion/Approval of Relocation of Funded Enrollment Slots
- H. **54782** Discussion/Approval to Disburse Lump Sum Summer Paychecks to Staff who resign as of the Last Summer Leave Day/Last Working Day for Position Assigned
- 16. **Planning Department:**
 - A. **54837**
 - 1. Preliminary Approval with Variance Request
 - a. Conchas Subdivision- Pct. 3 (Maria Conchas) (Bentsen Palm Drive & Mile 3 North Road)
 - 2. Final Approval
 - a. Eduardo's No. 13 Subdivision- Pct. 3 (Aniceto Izaguirre) (Trosper Road & Mile 4 North Road)
- 17. **Precinct #2 - Comm. Cantu:**
 - A. **54925** Appointment of member to the Hidalgo County Housing Authority
- 18. **Precinct #4 - Comm. Palacios:**
 - A. **54915** Resolution in Honor of Jesus M. Ozuna for his Service to Hidalgo County Precinct 4
- 19. **Budget & Management:**
 - A. **54929** 2015 General Fund & Special Revenue Fund-Capital Leases:
 - 1. Approval of certification of revenues, as certified by the Co. Auditor, to fund capital lease expenditures for various departments.
 - 2. Approval of 2015 appropriation of revenues & expenditures to fund capital lease expenditures for various departments.
 - 3. Approval of various 2015 intradepartmental transfers to fund capital lease expenditures for various departments.
 - B. **54790**

Discussion, consideration and approval to submit the following FEMA Subgrant Application Form 90-91 related to the May/June DR-4223 with authority for County Judge to sign required documentation:

FEMA Project Number	Total Subgrant Application Amount
PA-06-TX-4223-PW-01937(1)	124,265.01

- C. **54850** TXDOT - Pct 4 FM2220 (Mile 5 to FM1924):
Approval and concurrence of the Plans of Proposed State Highway Improvement for FM2220 (Mile 5 to FM1924) CSJ:2094-01-038, with authorization for County Judge to sign title sheets for the plan sets for this project.
- D. **54794** Requesting approval to process the Eligibility Tracking Calculators, LLC (ETC) invoice #4314 as claim with authority for County Treasurer to issue payment after review, audit and processing procedures are completed by the County Auditor.

20. **Purchasing Department:**

Notes:

A. FOR ANY CONTRACT(S) AWARDED AND APPROVED UNDER THIS AGENDA, EXECUTED COPIES OF THE CONTRACT(S) WILL BE AVAILABLE ON THE COUNTY INTRA-NET WEBSITE AND WILL BE FOWARDED VIA E-MAIL, FAX OR HAND DELIVERED TO HIDALGO COUNTY AUDITOR'S OFFICE.

B. ANY AND ALL REQUESTS FOR PAYMENT(S) APPROVED WILL BE SUBJECT TO COUNTY AUDITORS PROCESSING PROCEDURES INCLUDING AUTHORITY FOR COUNTY TREASURER TO ISSUE PAYMENT(S)/CHECK(S).

A. **Hidalgo County**

1. **54871** Acceptance and approval of an Invoice #14-5-000018-\$2,836.93 [dated 5/30/14] from L&G Engineering Laboratory [Construction Materials Testing/Geotechnical Engineering] through approved WA#5 by HCCC on 04-18-14 [re: Contract #C-13-220-08-13] and evidenced by PO#707737 and compliant with terms of WA with authority for Hidalgo County Treasurer to issue payment and audited by HC Auditor.

B. **Executive Officer**

1. **54828** Pursuant to executed Real Estate Broker Services-Notice to Proceed document dated 10-27-15 to CBRE, Inc., requesting approval to terminate said order inasmuch it is not in the best interest of Hidalgo County to dispose of these two properties with authority to send termination notice to CBRE.

C. **Pct. 1**

1. **54791** A. Requesting exemption from competitive bidding requirements under the Texas Local Government Code, Section 262.024 (A) (4) a professional services;

B. Presentation of scoring grid (for the purpose of ranking by CC) of the firms graded and evaluated through the County's approved "pool" of professional engineering services for Pct No.1 Mile 8N, Mile 2E, Mile 2 1/2 E & Mile 4 N);

Evaluator	LeFevre Engineering & Consulting	Quintanilla, Headley and Associates, Inc.	Hinojosa Engineering
Score	98	91	86
Ranking			

C. Authority for the Purchasing Department to negotiate a professional contract with the No. 1 ranked firm _____ for professional engineering services for Pct No. 1 Mile 8N, Mile 2E, Mile 2 1/2E & Mile 4 N).

2. **54792** A. Requesting exemption from competitive bidding requirements under the Texas Local Government Code, Section 262.024 (A) (4) a professional services;

B. Presentation of scoring grid (for the purpose of ranking by CC) of the firms graded and evaluated through the County's approved "pool" of professional engineering services for Pct No.1 Mile 1 ½ W,J. Flores, Englemen, Las Cumbres & Mile 20 N;

Evaluator	Cortraw Engineering PLLC	International Consulting Engineering	Rio Delta Engineering
Score	91	97	90
Ranking			

C. Authority for the Purchasing Department to negotiate a professional contract commencing with the No. 1 ranked firm _____ for professional engineering services for Pct No. 1 Mile 1 ½ W,J. Flores, Englemen, Las Cumbres & Mile 20 N.

3. **54626** Presentation of sole responsible vendor submitting the lowest and best bid and meeting all specifications and / or requirements (as detailed in the documentation contained herein) for the purpose of award and approval of contract for Request for Bid titled: Hidalgo County - Precinct 1 - "Hauling Of All Road Materials" through project No.: 2016-159-05-04-FAZ.

D. Pct. 2

1. **54905** a. Requesting exemption from competitive bidding requirements under the Texas Local Government Code, Section 262.024 (A) (4) a professional service;

b. Presentation of scoring grid (for the purpose of ranking by CC) of the firms graded and evaluated through the County's approved "pool" of professional engineering services for "Yuma Avenue Road Project" for Pct 2.

Total Scores	HINOJOSA ENGINEERING	JAVIER HINOJOSA ENGINEERING	L&G CONSULTING ENGINEERS, INC.
EVALUATOR	97	95	98
RANKING			

c. Authority for the Purchasing Department to negotiate a professional services agreement commencing with the No. 1 ranked firm of _____ for professional engineering services for "Yuma Avenue Road Project" for Pct 2.

2. **54903** Approval of Work Authorization No. 6 (with an estimated cost of \$198,379.69) as submitted by project engineer, L&G Consulting Engineers, to provide PS&E and other design related services for the Pct 2 Regional Linear Park Project.

3. **54900** Approval of Supplemental Agreement No. 1 for L&G Consulting Engineers, Contract No. C-15-097-03-17 resulting in an amendment to Exhibit B Scope of Services and Exhibit D Fee Proposal (with an estimated cost decrease of \$27,600.00) for services under Work Authorization No. 5 for the Pct 2 Yuma Ave Road Project.

4. **54904**

Approval of Supplemental Agreement No. 1 for L&G Consulting Engineers, Contract No. C-15-046-03-03 resulting in additional environmental services needed for the project (with an estimated cost increase of \$35,035.52) for services under Work Authorization No. 4 for the Pct 2 Regional Linear Park Project.

E. Pct. 4

1. 54928

a. Requesting exemption from competitive bidding requirements under the Texas Local Government Code, Section 262.024 (A) (4) for a professional service;

b. Presentation of the scoring grid (for the purposes of ranking by CC) the firm graded & evaluated through the County's approved "pool" of Architectural Firms in connection to the **"Design and Construction of a New Mechanical Shop" at Hidalgo County Precinct 4;**

ARCHITECTURAL FIRMS

FIRMS	ERO Architects	GMS Architects	Negrete & Kolar Architects, LLP
Scores	98	95	93
Ranking			

c. Authority for the Purchasing Department to negotiate a professional (AIA form of Agreement) for Architectural Services for the purposes of the **"Design and Construction of a New Mechanical Shop" at Hidalgo County Precinct 4**, commencing with the No.1 ranked firm _____ for Architectural Services.

d. Requesting exemption from competitive bidding requirements under the Texas Local Government Code, Section 262.024 (A) (4) for a **professional service;**

e. Presentation of the scoring grid (for the purposes of ranking by CC) the firm graded & evaluated through the County's approved "pool" of Engineering Firms in connection to the **"Construction Material Testing" for (job specific) Project: "Mile 17.5 (Paving & Drainage Improvements) within Hidalgo County Precinct 4;**

ENGINEERING FIRMS

FIRMS	Terracon	Trinity Soils Investigation Laboratories, Inc. (TSI Laboratories)	Professional Service Industries, Inc. (PSI)
Scores	98	97	95
Ranking			

f. Authority for the Purchasing Department to negotiate a professional engineering services agreement for the purposes of **"Construction Material Testing" for (job specific) project: Mile 17.5 (Paving & Drainage Improvements) in Hidalgo County Precinct 4**, commencing with the No.1 ranked firm _____ for **Engineering Services.**

g. Acceptance and approval of **Work Authorization No. 1** with an estimated cost of **(\$103,498.56)** as submitted by project engineer, **Dos Logistics, Inc.** for the purposes of Engineering Services for: **Brushline Road Improvements (for approximately 3.65 Miles from 3,000 Ft. North of Mile 22.5 Street to FM 490) within Hidalgo County Precinct No. 4**, in connection to (on call) agreement #C-15-384-12-08.

F. Sheriff's Office

1. 54696

Presentation of sole/quote received from National Medical Services Inc. meeting all specifications and/or requirements for the purpose of award and approval of contract [but in no event to exceed \$50K] for Request for Sealed Quotes titled: Hidalgo County Precinct Sheriff's Office-DNA Testing Lab Services-Project" RFSQ No:2016-174-04-27-SMA.

G. Co. Wide

1. **54897** A. Recommendation by Ricardo Saldana, HC-EMC, County Judge's Office and Rey Salazar, HC-DBM for discussion, consideration and action to select Tetra Tech, Inc., fka, Beck Disaster Recovery [awarded vendor thru H-GAC contract #HP07-16/effective 06-01-2016 thru 05-31-19 including renewals], by negotiating & engaging consulting services of "Emergency Preparedness & Disaster Recovery Services" including but not limited to:
1. Assist the county in the identification, assessment and preparation of FEMA project worksheets for the reimbursement of eligible repairs;
 2. Assess and evaluate all damages incurred;
 3. Work with each precinct and department to ensure that all eligible items are taken into consideration on project work sheets;
 4. All Hazards Preparedness, Planning, Consulting & Recovery Services;
 5. Emergency Consulting Services;
 6. Disaster Debris Monitoring & Management Services;
 7. Financial Recovery Services;
- so as to have in place all necessary services should an emergency event occur as Hurricane Season is on-going; **OR, IN THE ALTERNATIVE AND IF REQUIRED THROUGH FEMA:**

B. Nomination of a least three (3) awarded firms by H-GAC [list attached herein] for the provision of "Emergency Preparedness & Disaster Recovery Services" for the purpose of scoring/grading [with criteria developed by HC as done for Debris Removal Services] for ranking by CC to negotiate and finalize and contract for services detailed in item A herein with selection of the evaluation committee.

21. Executive Office:

- A. **54868** Discussion, consideration and action on Letter of Commitment from Commissioners Court to partner with Tropical Texas Behavioral Health for the Assisted Outpatient Treatment (AOT) Grant Program (related to outpatient treatment) with authority for County Judge to sign; to be submitted with grant application to The Substance Abuse and Mental Health Services Administration
- B. **54359** Requesting permission by Sacred Heart Catholic Church in Edinburg to use the courthouse parking lot for their Annual Karmesse to be held on October 8, 2016
- C. **54818** Approval to accept settlement check from State Farm Insurance Company in the amount of \$2,367.25 to settle auto accident claim with County vehicle. (Sheriff Office)
- D. **54930** Discussion and possible action ratifying Edinburg Economic Development Corporation action of EEDC Meeting held on December 29, 2015, relating to a waiver of the restrictions, conditions and covenants contained in the Correction Special Warranty Deed dated September 11, 2006 in favor of the Edinburg Economic Development Corporation and binding upon First National Bank, a national banking association, and/or any successors or assigns of First National Bank

22. Open Forum

23. **Closed Session:**
Commissioners' Court may go into Closed Session pursuant to Chapter 551, Texas Government Code, Sections 551.071 & 551.072 to discuss the following:
- A. Real Estate Acquisition
 - B. Pending and/or potential litigation
 - C. 54816 Claim of Roberto Martinez
24. A. Requesting exemption from competitive bidding requirements under the Texas Local Government Code, Section 262.024(A) (4) "a Professional Service" for the "provision of legal services/representation in connection with litigation."

 B. Requesting engagement with the firm of _____ for the "Provision of Legal Services/Representation in connection with Litigation" and authority to submit letter of engagement (subject to compliance with HB1295)
25. **Open Session:**
- A. Real Estate Acquisition and appropriation for same
 - B. Pending and/or potential litigation
 - C. 54817 Claim of Roberto Martinez
26. **Closed Session:**
Commissioners' Court may reconvene into Closed Session for the discussion regarding the agenda items listed
27. **Open Session:**
Commissioners' Court may reconvene into Open Session for the discussion regarding the agenda items listed
28. **Adjourn**

FIRST AMENDMENT TO
DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MCALLEN, TEXAS
AND RHODES ENTERPRISES, INC. AND REINVESTMENT ZONE
NUMBER ONE, CITY OF MCALLEN, TEXAS

This First Amendment ("1st Amendment") is hereby made to that certain Development Agreement ("Agreement"), executed and effective as of March 9th, 2015, by and between the CITY OF MCALLEN, TEXAS (hereinafter called "CITY"); Rhodes Enterprises, Inc., a Texas corporation, or assigns (hereinafter referred to as "DEVELOPER"); and REINVESTMENT ZONE NUMBER ONE, CITY OF MCALLEN, TEXAS, a tax increment reinvestment zone created pursuant to Texas Tax Code Chapter 311 (hereinafter called "ZONE"), by and through its duly authorized Board of Directors ("Board of Directors for the ZONE") (hereinafter collectively the "Parties" or in the singular a "Party") for the purpose of reconfirming the Agreement, and making modifications thereto:

RECITALS

WHEREAS Resolution No. 2014-51 approved by the CITY Commission of CITY on October 27, 2014, expressed the CITY's intent to create a tax increment financing reinvestment zone and to participate in the ZONE, and

WHEREAS on November 18, 2014, the COUNTY OF HIDALGO, by resolution, expressed its intent to participate in the ZONE, and

WHEREAS on December 22, 2014, the City Commission of the CITY passed and approved Ordinance No. 2014-75, which created the ZONE and authorized the Tax Increment Fund; and

WHEREAS the CITY approved the original Project and Finance plan on December 22, 2014; and

WHEREAS on March 17, 2015, the CITY, the COUNTY OF HIDALGO, the ZONE, and the DEVELOPER approved and executed the Original Interlocal Agreement, which was amended on September 15, 2015 by the approval and execution by the Parties and the COUNTY OF HIDALGO of the First Amendment to that Interlocal Agreement; and

WHEREAS on or about December 14, 2015, the Parties and the COUNTY OF HIDALGO agreed to enter into a further amendment, and to fully restate, the Original Interlocal Agreement as previously amended by the First Amendment to that Interlocal Agreement, in order to implement and fund the Original Project and Finance Plan and the Amended Supplemental Project and Finance Plan for the ZONE; and

WHEREAS on December 14, 2015 the City amended the original Project and Finance Plan by approving a ZONE authorized and proposed Amended Supplemental Project and Financing Plan; and

WHEREAS the Parties desire that the Agreement reflect the changes in the projects of the ZONE and financing of such projects and be understood and interpreted to be consistent with the creation documents of the ZONE, the amended and restated Interlocal Agreement, the original Project and Finance Plan and the Amended Supplemental Project and Financing Plan.

THEREFORE the Parties agree as follows:

I. AGREEMENT

1.0 Entire Agreement. This 1st Amendment is made to supplement or modify the Agreement between the Parties, and it is the express intent of the Parties that the Agreement, as amended hereby, shall remain in full force and effect and binding on the Parties without interruption.

1.1 Definitions. All defined terms used in this 1st Amendment that are not otherwise defined in this 1st Amendment shall have the meanings assigned to such terms in the Agreement.

1.2 Purpose and Overview of 1st Amendment. This 1st Amendment calls for a swap of approximately 100 acres of Tres Lagos land for approximately 150 acres of nearby City land. The specifics are shown on the maps included in the Project and Finance Plan. This 1st Amendment allows the 100 acre tract to be used as a site for a future Campus of Texas A & M University. This 1st Amendment contemplates the construction of the public improvements for the Texas A&M Project to include both those outlined in the Original Project and Finance Plan and additional horizontal and vertical improvements to accommodate the needs of the Campus of Texas A & M University. This 1st Amendment further binds the City and Developer to split the costs of the required environmental studies and reviews necessary on both sites and to split the closing costs for the land swap. This 1st Amendment and the Amended Supplemental Project and Finance Plan outline the changes to the project and the changes to the financing of the project. As further described in the Amended Supplemental Project and Finance Plan, the CITY will contribute 70% and the COUNTY will contribute 67% of their respective Available Tax Increment from the year 2015 through 2025, or until the aggregate amount of the 10% reduction has reached \$2,500,000.00, whichever occurs first, and thereafter through the remaining Term of the ZONE the CITY will contribute 80% and the COUNTY will contribute 77% of their respective Available Tax Increment.

II. AMENDMENT

2.0 The Agreement is hereby modified and amended as follows:

Section 1.4 shall read as follows: 1.4 "Available Tax Increment" shall mean (1) as to CITY, an amount calculated as a millage rate per \$100 of Captured Appraisal Value of real property in the Zone that equals 70% of the CITY's M&O Tax Rate as levied, collected, and allocated to the general fund (i.e., excluding only the portion of the CITY's property tax rate that

is appointed for payment of outstanding general obligation bonded indebtedness commonly referred to as the “interest and sinking fund rate”); and (2) as to COUNTY, an amount (provided by the County pursuant to the amended and restated Interlocal Agreement) calculated as a millage rate per \$100 of Captured Appraised Value of real property in the Zone that equals 67% of the COUNTY’s M&O Tax Rate levied, collected and allocated to the general fund (excluding only that portion of the COUNTY’s property tax rate that is apportioned for payment of outstanding general obligation bond indebtedness commonly referred to as the “interest and sinking fund rate”), together with any rollback taxes collected from within the Zone over the term of the Zone. The term “Available Tax Increment” shall mean 80% of the CITY’s M&O Tax Rate and 77% of the COUNTY’s M&O Tax Rate once the aggregate amount of the 10% reduction has reached \$2,500,000.00 or after December 31, 2025, whichever occurs first.

Section 1.21 shall read as follows: 1.21 “Project and Finance Plan” shall mean the final Project Plan and Financing Plan for the ZONE as amended and/or supplemented and approved by the Board of Directors of the ZONE and approved by the City Commission of CITY.

Section 1.22 shall read as follows: 1.22 “Project Costs” shall mean the costs of the Public Infrastructure Improvements as described in the Project and Finance Plan.

Section 1.24 shall read as follows: 1.24 “Public Infrastructure Improvements” shall mean those certain public improvements to be constructed as part of the Project and generally described in the Project and Finance Plan.

Section 3.7.2.1 through 3.7.2.5 shall read as follows:

3.7.2.1 FIRST, to pay debt service on the “City of McAllen Combination Tax and Assessment Revenue Certificates of Obligations Taxable Series 2016” (hereafter the “C of Os”) issued by the CITY;

3.7.2.2 SECOND, to reimburse the CITY for Pre-TIRZ Administrative Costs approved by the ZONE, unless the same has been previously paid from the proceeds of the C of Os;

3.7.2.3 THIRD, to pay Administrative Costs to the CITY and County pursuant to the Interlocal Agreement to reimburse the CITY for the CITY Project Costs, plus interest, as provided in the Project and Finance Plan, for the CITY Public Improvements;

3.7.2.4 FOURTH, to reimburse CITY, DEVELOPER or PUB for Project Costs, plus Interest, as provided for in the Project and Finance Plan incurred by the CITY, DEVELOPER or PUB, for allowed and approved Public Infrastructure Improvements constructed by either on a first in, first out basis; and

3.7.2.5 FIFTH, to reimburse or pay the cost of any project or improvement that was not included in the Project and Finance Plan, but was later added as a subsequent project with approval of the ZONE and the CITY.

Section 5.1 shall read as follows: 5.1 **CITY and Zone** shall only use Available Tax Increment funds to pay for annual debt service on the C of Os as it is incurred, for Public Improvements and related costs required under the Project and Finance Plan and this Agreement. **CITY** shall deposit its Available Tax Increment into the Tax Increment Fund established pursuant to the Interlocal Agreement with the County at the time required therein. After the annual debt service on the C of Os has been paid, the **CITY** pre-TIRZ Administrative Costs have been paid, the **CITY** and County Administrative Costs as incurred have been paid (maximum of \$400,000.00), and the **CITY** has been reimbursed for the **CITY** Public Improvements incurred and approved to date, the remainder of the Available Tax Increment shall be used to reimburse the Developer for Project Costs incurred by Developer and reimburse the PUB up to a maximum of \$3,000,000.00 for upgrades to its recycled water plant.

Section 5.2 shall read as follows: 5.2 **Contract Revenue Bonds and C of Os. CITY and ZONE** acknowledge that for a successful Project the **CITY and ZONE** shall cause Contract Revenue Bonds and C of Os to be issued. The Contract Revenue Bonds shall be for vertical infrastructure of approximately \$12,800,000.00 and the C of Os shall be for horizontal infrastructure and related expenses of approximately \$24,500,000.

Section 5.3 shall read as follows: 5.3 If the Additional Available Tax Increment (as defined in the Second Amendment to the Interlocal Agreement) are not sufficient to pay the debt service on the Contract Revenue Bonds when due County agrees to backstop the payment of said debt service with its 23% Additional Available Tax Increment not to exceed \$6,800,000 for payment of the said debt service on the Contract Revenue Bonds. If the Available Tax Increment is not sufficient to pay the debt service on the C of Os as said debt service is due, the PID Debt Service Assessments shall be used to backstop the shortfall. Additionally a DEVELOPER'S renewable irrevocable letter of credit will serve as a final source of payment of debt service shortfalls on the C of Os.

Section 20.3 is added and shall read as follows:

"20.3 Redirected Increment. The Parties hereby agree that during years 2015 through 2025 of the Project ten percent (10%) of the amount of the original available tax increment contributed by the CITY and the COUNTY (80% and 77% respectively) to the Tax Increment Fund under the Original Project and Finance Plan, the Interlocal Agreement, and the Agreement shall be redirected and applied by the CITY and ZONE to the payment of debt service on the Contract Revenue Bonds (as that term is defined in the Amended Supplemental Project and Finance Plan and Interlocal Agreement) (the "Diverted Increment"). The Parties expressly agree

that the Diverted Increment will only be diverted towards the payment of debt service if the sum of CITY's Additional Pledge during years 2015 through 2025 of the Zone is not sufficient to pay the debt service on the Contract Revenue Bonds during such years. The Parties further agree that the maximum amount of Diverted Increment shall be \$2,500,000.00, and upon the earlier of December 31, 2025 or the amount of Diverted Increment reaching \$2,500,000.00, the amount of contribution by the City and the County shall return to 80% and 77% respectively.

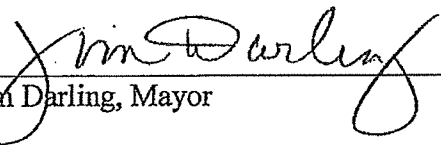
III. RATIFICATION

3.0 As amended and supplemented hereby, the Agreement is ratified and shall remain in full force and effect. In the event of a conflict between this 1st Amendment and the Development Agreement, this 1st Amendment shall control. The parties agree that a facsimile copy or electronic copy (including PDF copy) of the signature of the person executing this 1st Amendment on any party's behalf shall be effective as an original signature and shall cause the facsimile copy or electronic copy (including PDF copy) of this 1st Amendment to be legally binding and effective as an execution counterpart hereof.

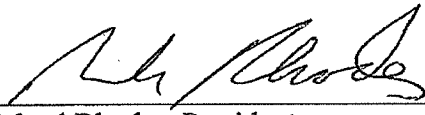
THIS 1st AMENDMENT IS EXECUTED AND EFFECTIVE ON THIS 11th DAY OF JANUARY, 2016.

{Signatures on next page}

CITY OF MCALLEN

By: 
Jim Darling, Mayor

RHODES ENTERPRISES, INC.

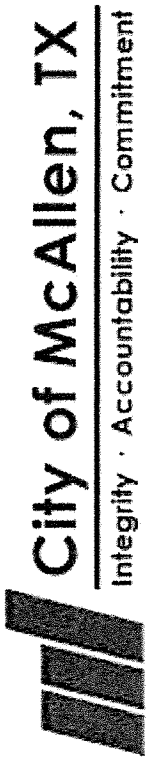
By: 
Michael Rhodes, President

**TAX REINVESTMENT ZONE NUMBER ONE,
CITY OF MCALLEN, TEXAS**

By: 
Michael Rhodes, Chairman

Exhibit D

**Amended and Supplemental Project and Finance Plan
approved by the ZONE BOARD on November 18, 2015
and by the City Commission of the CITY on December 14, 2015**



City of McAllen

Tax Increment Reinvestment Zone No. 1

Amended Supplemental Project & Financing Plan

Approved by TIRZ Board on August 27, 2015

Amended by TIRZ Board on November 18, 2015



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Project Financing Plan	8
Project Plan and Finance Plan –General Information	23

Project Location Plan – 100 A&M Acre Site in Tres Lagos

Tres Lagos

[illegible]

Species	Number of individuals	Sex	Age	Weight (g)	Length (mm)	Wing (mm)	Tail (mm)	Bill (mm)	Foot (mm)	Middle toe (mm)	Claw (mm)
<i>Alcedo semitorquatus</i>	1	♂	Adult	10.5	110	55	45	15	10	15	5
<i>Alcedo semitorquatus</i>	1	♀	Adult	10.5	110	55	45	15	10	15	5
<i>Alcedo semitorquatus</i>	1	♂	Adult	10.5	110	55	45	15	10	15	5
<i>Alcedo semitorquatus</i>	1	♀	Adult	10.5	110	55	45	15	10	15	5
<i>Alcedo semitorquatus</i>	1	♂	Adult	10.5	110	55	45	15	10	15	5
<i>Alcedo semitorquatus</i>	1	♀	Adult	10.5	110	55	45	15	10	15	5
<i>Alcedo semitorquatus</i>	1	♂	Adult	10.5	110	55	45	15	10	15	5
<i>Alcedo semitorquatus</i>	1	♀	Adult	10.5	110	55	45	15	10	15	5
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<i>Alcedo semitorquatus</i>	1	♀	Adult	10.5	110	55	45	15	10	15	5
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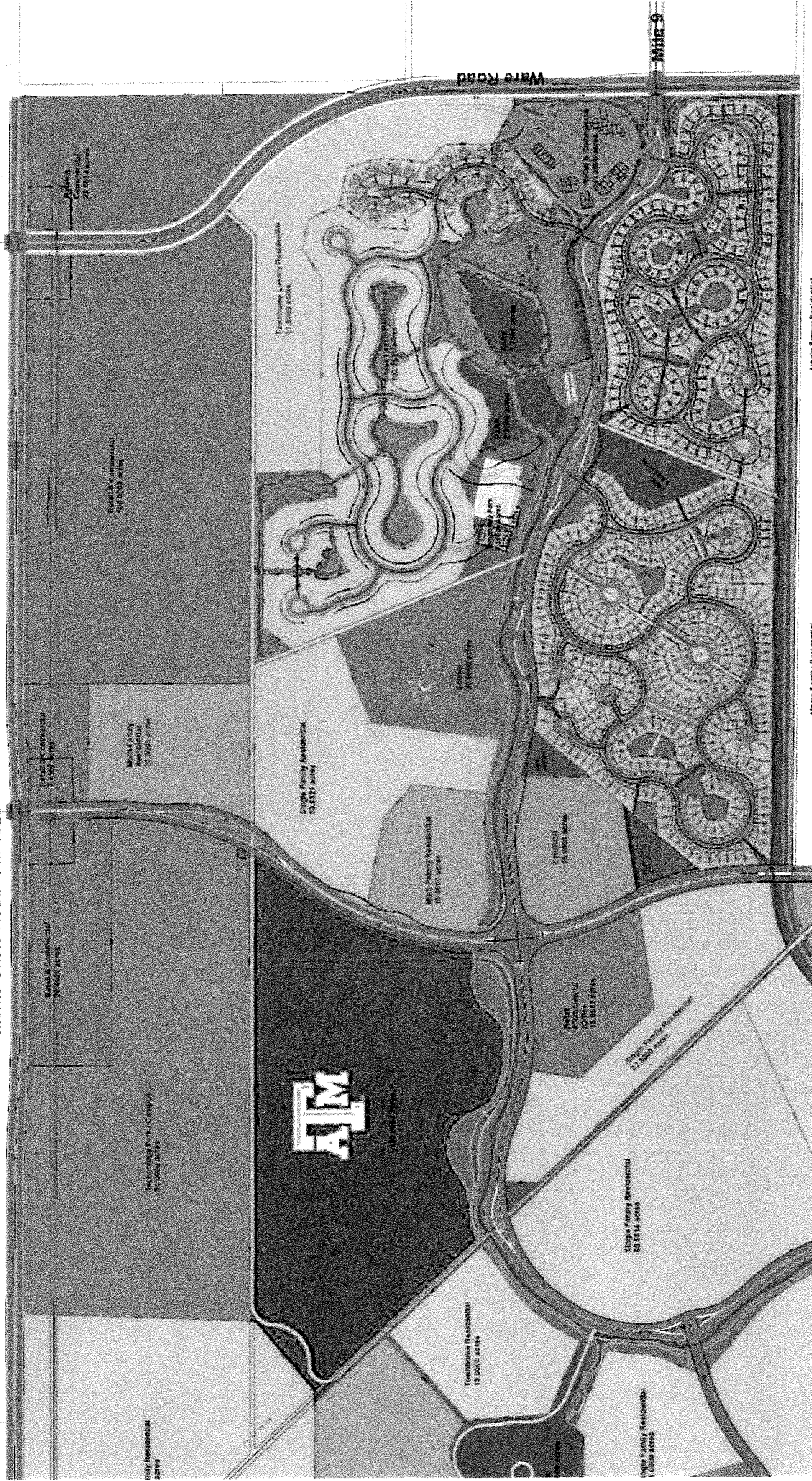
Revised Tres Lagos Plan with 100 Acre Supplemental A&M Project Site



Local View of Supplemental A&M Project Site

1" = 400' feet

Monte Cristo Road FM 1925



City Tracts traded for REI 100 Acre Tract for A&M Project (with Proposed Future Sports Complex Site Shown)



Supplemental A&M Project Financing Plan

A&M Site Building & Expanded Phase I Infrastructure

Supplemental Financing Plan for Project

- Original Phase I of Tres Lagos Project required \$16.5mm in public infrastructure
- Phase I costs increase from \$16.5mm to \$24.5mm, and \$10.0mm additional for vertical construction required to accommodate the A&M Project, the \$24.5mm in infrastructure costs are already in Original Project and Finance Plan, but supplemental plan amendments are required to fund Vertical Costs
- Goals:
 - Facilitate Infrastructure and New Vertical costs at Lowest reasonable overall expense
 - Minimum City General Fund Exposure
 - Ultimate reliance on the Tax Increment Financing (TIF)
- **Financing Plan Proposal:**
 - Series A Contract Revenue Bonds: ~\$12.8mm City Contract Revenue Bonds to Fund the A&M Project Vertical Construction
 - During first 10 years, 10% of Existing Tax Increment Revenue from Original Tres Lagos Project and Finance Plan will divert to cover Series A Debt Service ("Diverted Increment")
 - City will fund remaining Series A debt service using City's 20% residual Tax Increment not pledged to Original TIRZ Project Cost ("City Pledge")
 - If City Pledge and Diverted Increment are not sufficient to cover Series A Debt Service County will contribute 10% of Existing Tax Revenue from Original Tres Lagos Project and Finance Plan for first 10 years.
 - County will pledge it's 23% residual Tax Increment during years 2015 thru 2026 to cover any shortfall of debt service up to a maximum of \$6.8mm ("County Pledge")
 - Series B: ~\$24.77mm City Secured Certificates of Obligation to Fund Required Infrastructure
 - Original City 80% and County 77% TIF Increment (less Diverted Increment) pledged to Fund Debt Service
 - Developer pays & guarantees Balance of Series B Debt Service with automatically renewable irrevocable Bank LOC (1 year Debt Service) and Public Improvement District Special Assessment on undeveloped Project Land



Financing Plan Mechanics

- City issues 2 Series of City guaranteed obligations (Contract Revenue Bonds & Certificates of Obligation) with AA rating
 - Assumed to be one notch below current GO Rating
- Series A: Contract Revenue Bonds~\$12.8mm 20 Year, Fixed Rate, Amortizing, Level Debt
 - Vertical Infrastructure
 - Interest Capitalized Years 1 to 3, Amortization Deferred
 - Non-taxable
- Series B: Certificates of Obligation~\$24.77mm 30 Year, Fixed Rate, Amortizing, Increasing Debt Service
 - Horizontal Infrastructure
 - Taxable
 - Financing structured as interest only for 5 years and then gradual amortization of principal in years 6 to 30.
 - For first 10 Years, Diverted Increments will flow back to City for Series A Debt Service
 - Annual revenues from 77% and 80% original TIF (less Diverted Increment) pledged to fund debt service.
 - If Original TIF funds (77% and 80%less Diverted Increment) are not fully able to pay annual debt service:
 - Years 3 to 30 –Developer guarantees & pays annual balance of debt service
 - Developer provides City with Irrevocable Bank issued automatically renewing LOC equal to one year debt service for Series B Certificates of Obligation
 - PID Assessment for guaranteeing payment of Debt Service until original TIF increment generates at least 120% of annual Series B debt service, then PID assessment extinguished

PID Credit Enhancement Mechanics

- PID Special Assessment put in place in 2015, with first Special Assessments for Debt Guarantee (SADG) levied for interest payments in 2016 thru 2020 and principal & interest debt service starting in approximately 2021
- PID levy is basically credit enhancement to the growing TIF revenue stream
- PID levy expected to decrease each year starting in 2019 as TIF revenues increase
- If development occurs as expected, PID levy for principal would never be required, and no PID assessments should be required after year 2020
- Pro rata PID Assessment for debt service on Certificates of Obligation may be paid at sale of assessed undeveloped property in lump sum to satisfy assessment lien, or paid as scheduled in annual or semi-annual payments to cover Debt Service

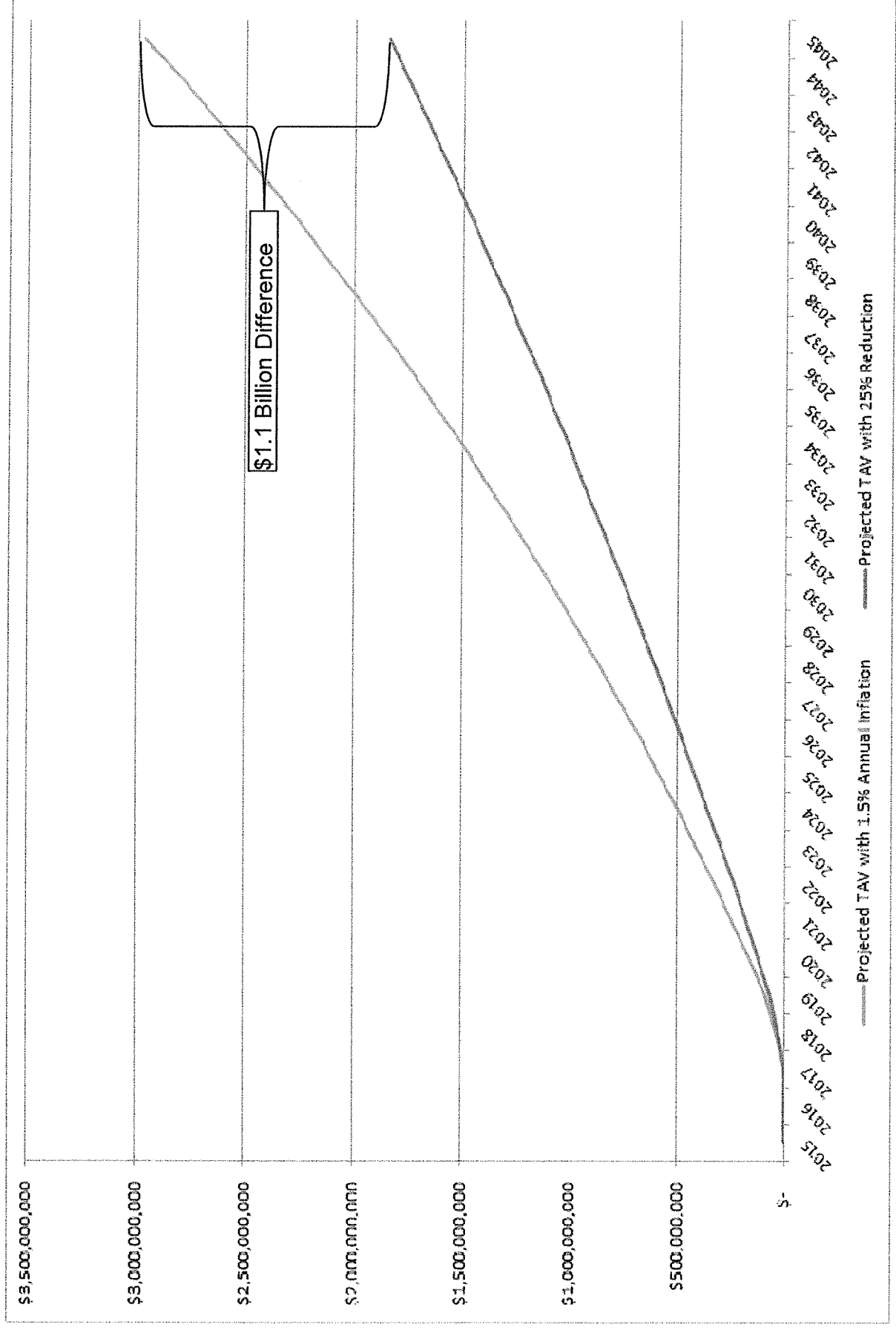
City Benefits

- Lowest possible cost of capital for the Project
- Minimizes tax increment required for this project component so that TIF funds can more efficiently be applied to other projects
- Bootstraps project development both efficiently and quickly
- City receives redirected 10% of Original TIF Increment (up to \$2.5mm) during years 1 thru 10 of Zone to offset Series A Contract Revenue Bonds debt service obligation
- City receives redirected 10% of Original County TIF Increment (up to \$6.8 mm) during years 1 thru 10 of Zone to Offset Series A Contract Revenue Bonds debt service obligation
- City has PID lien on Developer's Undeveloped Land to back Series B debt
- City obtains Developer's 100 AC site with all improvements and utilities to site for A&M Project via land swap to Developer of less valuable City land (page 7)

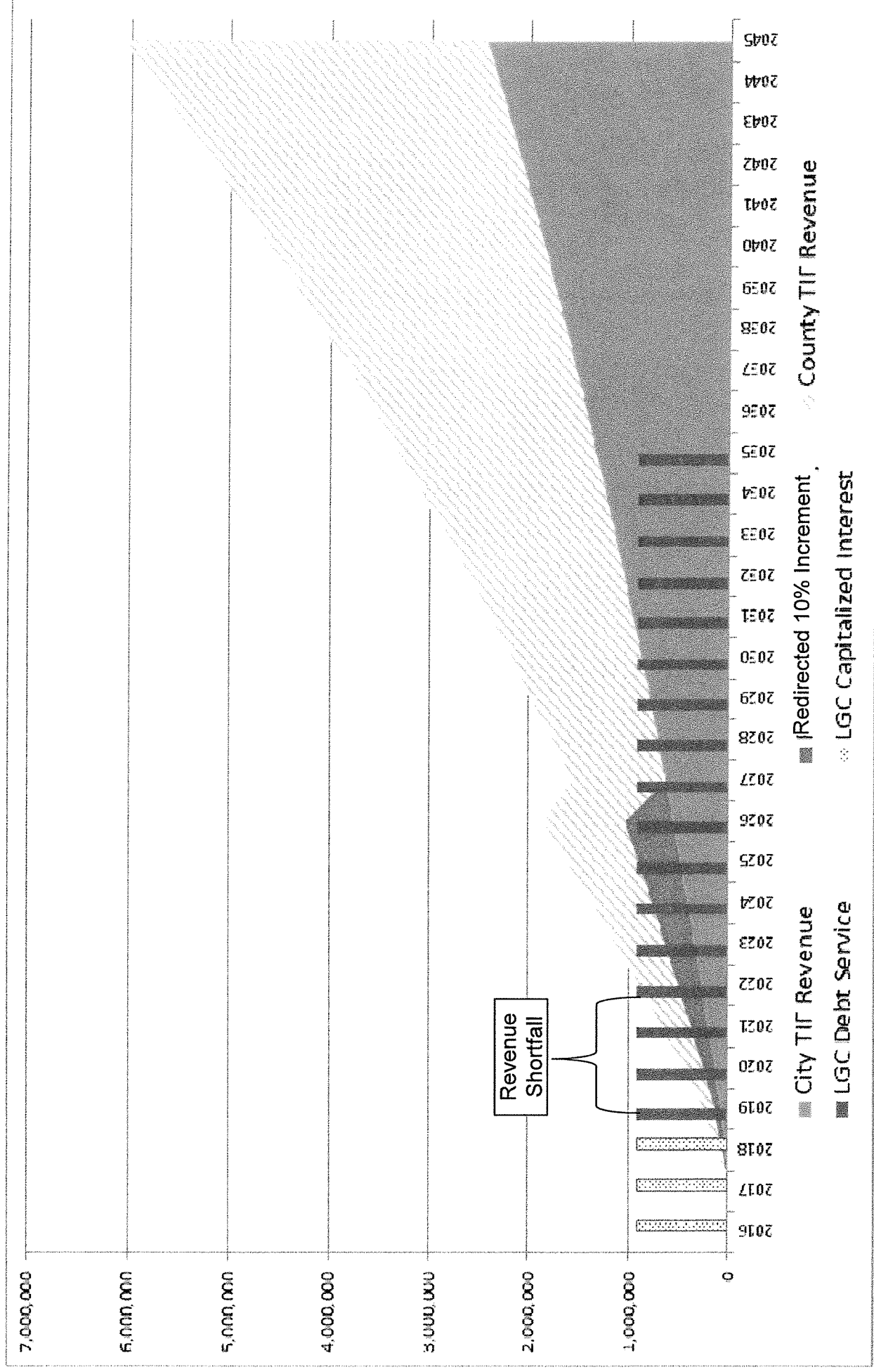
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Projected Assessed Value – Expected Case and Low Growth (“Stress Case”)



Revenue vs. Debt Service – Expected Case



Revenue vs. Debt Service - REI

Scenario 1

City of McAllen, TX

Tres Lagos Master Planned Community

Taxable Assessed Value, Tax Increment Revenue and Debt Service Coverage - Rhodes Enterprises, Inc.

\$10mm Titan Project Fund with 20 Year Debt Amortization, 1.5% Annual Growth In Taxable Assessed Value

FYE	Taxable Assessed Value	Calculation of Rhodes Tax Increment Revenue						Debt Service Coverage				Total Rhodes Obligation
		City Tax Rate Rhodes Share 0.0034504	County Tax Rate Rhodes Share 0.00408716	Delinquency Rate 4.0%	Net Collected		Excess (Shortfall)					
					Tax Increment Revenues	Redirtcted10% Tax Increment Credit to City						
2016												(866,163)
2017	250,000	863	1,022	(75)	1,809	181	1,628	866,163	-	(866,163)	(866,163)	
2018	42,227,026	145,700	172,589	(12,732)	305,557	30,556	275,001	866,163	0.00	(864,535)	(863,842)	
2019	88,677,592	305,973	362,440	(26,737)	641,676	64,168	577,509	866,163	0.32	(591,161)	(474,085)	
2020	162,465,752	560,572	664,024	(48,984)	1,175,612	117,561	1,058,050	866,163	0.67	(288,654)	(968,530)	
2021	244,828,374	844,756	1,000,653	(73,816)	1,771,592	177,159	1,594,433	866,163	1.22	191,888	(282,969)	
2022	323,398,838	1,115,855	1,321,783	(97,506)	2,340,133	234,013	2,106,119	1,345,956	1.18	248,477	2,899	
2023	410,494,061	1,416,369	1,677,755	(123,765)	2,970,359	297,036	2,673,323	1,368,811	1.54	737,308	710,982	
2024	493,555,748	1,702,965	2,017,241	(148,808)	3,571,398	357,140	3,214,258	1,398,698	1.93	1,288,941	1,501,190	
2025	585,590,552	2,020,522	2,393,402	(176,557)	4,237,367	423,737	3,813,630	1,417,075	2.30	1,815,560	2,261,264	
2026	673,603,118	2,324,200	2,753,124	(203,093)	4,874,231	487,423	4,386,808	1,433,875	2.69	2,396,555	3,096,442	
2027	771,046,536	2,660,419	3,151,391	(232,472)	5,579,337		5,579,337	1,448,632	3.06	2,952,933	3,896,913	
2028	864,235,629	2,981,959	3,532,269	(260,569)	6,253,659		6,253,659	1,470,842	3.85	4,130,706	4,788,056	
2029	966,819,225	3,335,913	3,951,545	(291,498)	6,995,960		6,995,960	1,485,520	4.25	4,782,817	5,628,305	
2030	1,065,411,976	3,676,097	4,354,509	(321,224)	7,709,382		7,709,382	1,503,341	4.71	5,510,440	6,564,590	
2031	1,173,618,875	4,049,455	4,796,768	(353,849)	8,492,374		8,492,374	1,519,224	5.13	6,206,042	7,466,953	
2032	1,278,105,256	4,409,974	5,223,821	(385,352)	9,248,443		9,248,443	1,537,065	5.59	6,973,150	8,453,864	
2033	1,392,185,421	4,803,597	5,690,085	(419,747)	10,073,934		10,073,934	1,563,744	6.02	7,711,378	9,406,378	
2034	1,502,318,755	5,183,601	6,140,217	(452,953)	10,870,865		10,870,865	1,577,790	6.44	8,510,190	10,440,333	
2035	1,622,524,510	5,598,359	6,631,517	(489,195)	11,740,681		11,740,681	1,595,400	6.89	9,293,075	11,447,492	
2036	1,738,810,528	5,999,592	7,106,797	(524,256)	12,582,133		12,582,133	1,616,384	7.36	10,145,281	12,547,117	
2037	1,865,407,947	6,436,404	7,624,221	(562,425)	13,498,199		13,498,199	1,633,652	7.78	10,965,749	14,528,460	
2038	1,988,116,348	6,859,797	8,125,750	(599,422)	14,386,124		14,386,124	1,659,289	8.26	11,864,548	15,686,649	
2039	2,121,381,992	7,319,616	8,670,428	(639,602)	15,350,442		15,350,442	1,677,083	8.67	12,726,835	16,800,359	
2040	2,250,793,137	7,766,137	9,199,352	(678,620)	16,286,869		16,286,869	1,697,778	9.15	13,673,359	18,019,935	
2041	2,391,014,448	8,249,956	9,772,459	(720,897)	17,301,518		17,301,518	1,721,174	9.59	14,589,091	19,200,822	
2042	2,527,419,750	8,720,609	10,329,969	(762,023)	18,288,555		18,288,555	1,745,799	10.05	15,580,344	20,479,379	
2043	2,674,895,452	9,229,459	10,932,726	(806,487)	19,355,698		19,355,698	1,762,114	10.48	16,542,756	21,721,277	
2044	2,818,597,793	9,725,290	11,520,060	(849,814)	20,395,536		20,395,536	1,786,139	10.98	17,593,584	23,074,273	
2045	2,973,638,316	10,260,242	12,153,736	(896,559)	21,517,418		21,517,418	1,812,198	11.42	18,609,396	24,384,523	
Total		127,704,248	151,271,648	(11,159,036)	267,816,861	2,188,973	265,627,887	43,492,779	11.87	19,705,220	25,798,015	
											222,135,109	
											284,450,880	

Revenue vs. Debt Service – City of McAllen

Scenario 1

City of McAllen, TX

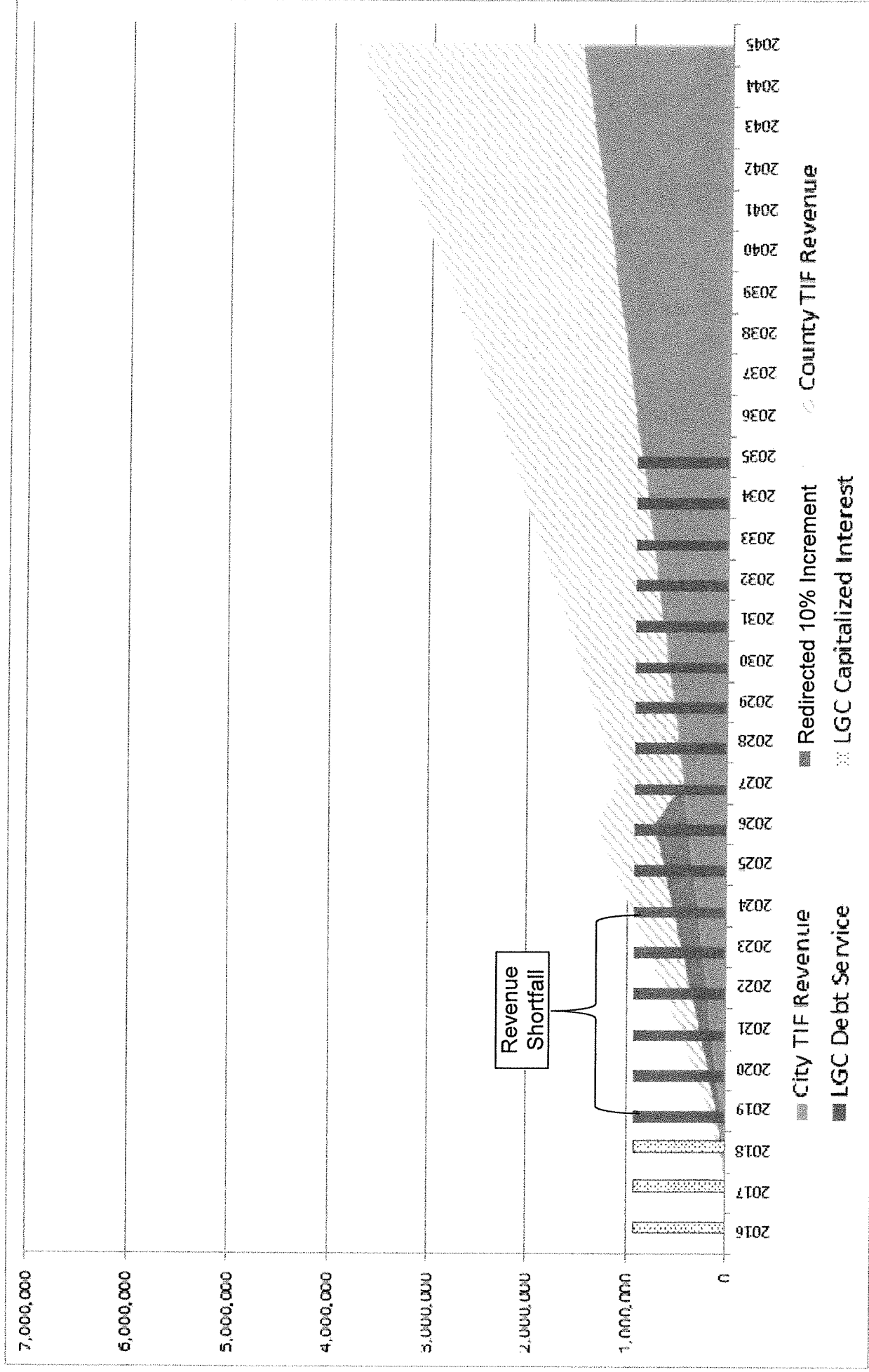
Tres Lagos Master Planned Community

Taxable Assessed Value, Tax Increment Revenue and Debt Service Coverage - City and Local Government Corp. 4B

\$10mm Titan Project Fund with 20 Year Debt Amortization, 1.5% Annual Growth In Taxable Assessed Value

FYE	Taxable Assessed Value	Calculation of City Tax Increment Revenue										Debt Service Coverage				Addtl County Revenue 0.00122084	Excess (Shortfall)
		City Tax Revenue 0.0008626	Delinquency Rate 4.0%	Net Collected Tax Increment Revenues	10% Tax Increment Credit to City	Tres Lagos Project Revenue	Tres Lagos			Debt Service Coverage							
							City Tax Revenue	LGC Debt Service	Debt Service Coverage	Excess (Shortfall)							
2016		216	(9)	207	181	388	388	-	-	388	305	693					
2017	250,000	36,425	(1,457)	34,968	30,556	65,524	65,524	-	-	65,524	51,552	117,076					
2018	42,227,026	76,493	(3,060)	73,434	64,168	137,601	137,601	925,738	0.15	(788,137)	108,261	(679,876)					
2019	88,677,592	140,143	(5,606)	134,537	117,561	252,098	252,098	925,300	0.27	(673,202)	198,345	(474,857)					
2020	162,465,752	211,189	(8,448)	202,741	177,159	379,901	379,901	924,375	0.41	(544,474)	298,896	(245,578)					
2021	244,828,374	278,964	(11,159)	267,805	234,013	501,819	501,819	922,963	0.54	(421,144)	394,818	(26,326)					
2022	323,398,838	354,092	(14,164)	339,928	297,036	636,964	636,964	925,863	0.69	(288,899)	501,148	212,249					
2023	410,494,061	425,741	(17,030)	408,712	357,140	765,851	765,851	922,700	0.83	(156,849)	602,553	445,704					
2024	493,555,748	505,130	(20,205)	484,925	423,737	908,662	908,662	923,688	0.98	(15,026)	714,912	699,886					
2025	585,590,552	581,050	(23,242)	557,808	487,423	1,045,231	1,045,231	923,613	1.13	121,618	822,362	943,980					
2026	673,603,118	665,105	(26,604)	638,501	-	638,501	638,501	922,475	0.69	(283,974)	941,324	657,350					
2027	771,046,536	745,490	(29,820)	715,670	-	715,670	715,670	925,275	0.77	(209,605)	1,055,093	845,488					
2028	864,235,629	833,978	(33,359)	800,619	-	800,619	800,619	926,800	0.86	(126,181)	1,180,332	1,054,151					
2029	966,819,225	919,024	(36,761)	882,263	-	882,263	882,263	922,050	0.96	(39,787)	1,300,698	1,260,911					
2030	1,065,411,976	1,012,364	(40,495)	971,869	-	971,869	971,869	923,956	1.05	47,913	1,432,801	1,480,714					
2031	1,173,618,875	1,102,494	(44,100)	1,058,394	-	1,058,394	1,058,394	923,756	1.15	134,638	1,560,362	1,695,000					
2032	1,278,105,256	1,200,899	(48,036)	1,152,863	-	1,152,863	1,152,863	922,356	1.25	230,507	1,699,636	1,930,143					
2033	1,392,185,421	1,295,900	(51,836)	1,244,064	-	1,244,064	1,244,064	923,738	1.35	320,326	1,834,091	2,154,417					
2034	1,502,318,755	1,399,590	(55,984)	1,343,606	-	1,343,606	1,343,606	922,613	1.46	420,993	1,980,843	2,401,836					
2035	1,622,524,510	1,499,898	(59,996)	1,439,902	-	1,439,902	1,439,902	-	-	1,439,902	2,122,809	3,562,711					
2036	1,738,810,528	1,609,101	(64,364)	1,544,737	-	1,544,737	1,544,737	-	-	1,544,737	2,277,365	3,822,101					
2037	1,865,407,947	1,714,949	(68,598)	1,646,351	-	1,646,351	1,646,351	-	-	1,646,351	2,427,172	4,073,523					
2038	1,988,116,348	1,829,904	(73,196)	1,756,708	-	1,756,708	1,756,708	-	-	1,756,708	2,589,868	4,346,576					
2039	2,121,381,992	1,941,534	(77,661)	1,863,873	-	1,863,873	1,863,873	-	-	1,863,873	2,747,858	4,611,731					
2040	2,250,793,137	2,062,489	(82,500)	1,979,990	-	1,979,990	1,979,990	-	-	1,979,990	2,919,046	4,899,036					
2041	2,391,014,448	2,180,152	(87,206)	2,092,946	-	2,092,946	2,092,946	-	-	2,092,946	3,085,575	5,178,521					
2042	2,527,419,750	2,307,365	(92,295)	2,215,070	-	2,215,070	2,215,070	-	-	2,215,070	3,265,619	5,480,690					
2043	2,674,895,452	2,431,322	(97,253)	2,334,070	-	2,334,070	2,334,070	-	-	2,334,070	3,441,057	5,775,126					
2044	2,818,597,793	2,565,060	(102,602)	2,462,458	-	2,462,458	2,462,458	-	-	2,462,458	3,630,337	6,092,795					
2045	2,973,638,316																
Total		31,926,062	(1,277,042)	30,649,020	2,188,973	32,837,993	32,837,993	15,707,259		17,130,734	45,185,038	62,315,772					

Revenue vs. Debt Service – 25% Reduction in TAV



Revenue vs. Debt Service – REI - 25% Reduction in TAV

Scenario 2

City of McAllen, TX

Tres Lagos Master Planned Community

Taxable Assessed Value, Tax Increment Revenue and Debt Service Coverage - Rhodes Enterprises, Inc.

\$10mm A&M Project Fund with 20 Year Debt Amortization, 25% Reduction in Taxable Assessed Value

FYE	Taxable Assessed Value	Calculation of Rhodes Tax Increment Revenue						Debt Service Coverage				Total Rhodes Obligation
		City Tax Rate Rhodes Share 0.0034504	County Tax Rate Rhodes Share 0.00408716	Delinquency Rate 4.0%	Net Collected Tax Increment Revenues	Redirtcted10% Tax Increment Credit to City	Net Rhodes Tax Increment Revenues	Master Infrastructure Debt Service	Debt Service Coverage	Excess (Shortfall)		
2016								866,163	-	(866,163)	(866,163)	
2017	187,500	647	766	(57)	1,357	136	1,221	866,163	0.00	(864,942)	(864,422)	
2018	31,667,457	109,265	129,430	(9,548)	229,148	22,915	206,233	866,163	0.24	(659,930)	(572,131)	
2019	66,030,328	227,831	269,877	(19,908)	477,799	47,780	430,019	866,163	0.50	(436,143)	(1,178,810)	
2020	120,373,825	415,338	491,987	(36,293)	871,032	87,103	783,929	866,163	0.91	(82,234)	(673,793)	
2021	180,318,051	622,169	736,989	(54,366)	1,304,792	130,479	1,174,313	1,345,956	0.87	(171,644)	(596,079)	
2022	236,491,580	815,991	966,579	(71,303)	1,711,267	171,127	1,540,140	1,368,811	1.13	171,329	(95,951)	
2023	298,174,760	1,028,822	1,218,688	(89,900)	2,157,610	215,761	1,941,849	1,384,382	1.40	557,467	458,306	
2024	355,852,967	1,227,835	1,454,428	(107,291)	2,574,973	257,497	2,317,475	1,398,698	1.66	918,778	982,695	
2025	419,326,568	1,446,844	1,713,855	(126,428)	3,034,271	303,427	2,730,844	1,417,075	1.93	1,313,769	1,552,682	
2026	478,748,099	1,651,872	1,956,720	(144,344)	3,464,249	346,425	3,117,824	1,433,875	2.17	1,683,949	2,087,685	
2027	544,252,628	1,877,889	2,224,448	(164,093)	3,938,243		3,938,243	1,448,632	2.72	2,489,612	2,682,276	
2028	605,470,174	2,089,114	2,474,653	(182,551)	4,381,217		4,381,217	1,470,842	2.98	2,910,375	3,225,670	
2029	672,685,220	2,321,033	2,749,372	(202,816)	4,867,589		4,867,589	1,485,520	3.28	3,382,069	3,833,558	
2030	735,753,067	2,538,642	3,007,141	(221,831)	5,323,952		5,323,952	1,503,341	3.54	3,820,611	4,406,072	
2031	804,922,357	2,777,304	3,289,846	(242,686)	5,824,465		5,824,465	1,519,224	3.83	4,305,241	5,030,519	
2032	870,083,930	3,002,138	3,556,172	(262,332)	6,295,977		6,295,977	1,537,065	4.10	4,758,912	5,617,902	
2033	941,265,370	3,247,742	3,847,102	(283,794)	6,811,050		6,811,050	1,563,744	4.36	5,247,306	6,253,543	
2034	1,008,203,284	3,478,705	4,120,688	(303,976)	7,295,417		7,295,417	1,577,790	4.62	5,717,627	6,859,633	
2035	1,081,456,514	3,731,458	4,420,086	(326,062)	7,825,482		7,825,482	1,595,400	4.91	6,230,082	7,523,304	
2036	1,150,417,627	3,969,401	4,701,941	(346,854)	8,324,488		8,324,488	1,616,384	5.15	6,708,104	9,065,236	
2037	1,225,804,073	4,229,514	5,010,057	(369,583)	8,869,989		8,869,989	1,633,652	5.43	7,236,337	9,747,931	
2038	1,296,849,534	4,474,650	5,300,432	(391,003)	9,384,078		9,384,078	1,659,289	5.66	7,724,789	10,381,951	
2039	1,374,432,458	4,742,342	5,617,525	(414,395)	9,945,472		9,945,472	1,677,083	5.93	8,268,389	11,084,513	
2040	1,447,625,270	4,994,886	5,916,676	(436,462)	10,475,100		10,475,100	1,697,778	6.17	8,777,322	11,743,413	
2041	1,527,469,830	5,270,382	6,243,014	(460,536)	11,052,860		11,052,860	1,721,174	6.42	9,331,685	12,461,373	
2042	1,602,874,894	5,530,560	6,551,206	(483,271)	11,598,495		11,598,495	1,745,799	6.64	9,852,696	13,136,884	
2043	1,685,048,198	5,814,090	6,887,062	(508,046)	12,193,106		12,193,106	1,762,114	6.92	10,430,992	13,883,548	
2044	1,762,732,380	6,082,132	7,204,569	(531,468)	12,755,233		12,755,233	1,786,139	7.14	10,969,094	14,580,819	
2045	1,847,303,547	6,373,936	7,550,225	(556,966)	13,367,195		13,367,195	1,812,198	7.38	11,554,997	15,340,004	
Total		84,092,533	99,611,534	(7,348,163)	176,355,904	1,582,650	174,773,254	43,492,779		131,280,476	167,092,169	

Revenue vs. Debt Service – City of McAllen - 25% Reduction in TAV

Scenario 2

City of McAllen, TX

Tres Lagos Master Planned Community

Taxable Assessed Value, Tax Increment Revenue and Debt Service Coverage - City and Local Government Corp. 4B

\$10mm A&M Project Fund with 20 Year Debt Amortization, 25% Reduction in Taxable Assessed Value

FYE	Taxable Assessed Value	Calculation of City Tax Increment Revenue					Debt Service Coverage					Addtl County Revenue 0.00122084	Excess (Shortfall)
		City Tax Revenue 0.0008626	Delinquency Rate 4.0%	Net Collected Tax Increment Revenues	10% Tax Increment Credit to City	Tres Lagos Project Revenue	Tres Lagos City Tax Revenue	LGC Debt Service	Debt Service Coverage	Excess (Shortfall)			
2016		162	(6)	155	136	291	291	-	-	291	229	520	
2017	187,500	27,316	(1,093)	26,224	22,915	49,138	49,138	-	-	49,138	38,661	87,799	
2018	31,667,457	56,958	(2,278)	54,679	47,780	102,459	102,459	925,738	0.11	(823,279)	80,612	(742,666)	
2019	66,030,328	103,834	(4,153)	99,681	87,103	186,784	186,784	925,300	0.20	(738,516)	146,957	(591,559)	
2020	120,373,825	155,542	(6,222)	149,321	130,479	279,800	279,800	924,375	0.30	(644,575)	220,139	(424,436)	
2021	180,318,051	203,998	(8,160)	195,838	171,127	366,964	366,964	922,963	0.40	(555,999)	288,718	(267,280)	
2022	236,491,580	257,206	(10,288)	246,917	215,761	462,678	462,678	925,863	0.50	(463,185)	364,024	(99,161)	
2023	298,174,760	306,959	(12,278)	294,680	257,497	552,178	552,178	922,700	0.60	(370,522)	434,440	63,917	
2024	355,852,967	361,711	(14,468)	347,243	303,427	650,670	650,670	923,688	0.70	(273,018)	511,931	238,912	
2025	419,326,568	412,968	(16,519)	396,449	346,425	742,874	742,874	923,613	0.80	(180,739)	584,475	403,736	
2026	478,748,099	469,472	(18,779)	450,693	-	450,693	450,693	922,475	0.49	(471,782)	664,445	192,664	
2027	544,252,628	522,279	(20,891)	501,387	-	501,387	501,387	925,275	0.54	(423,888)	739,182	315,295	
2028	605,470,174	580,258	(23,210)	557,048	-	557,048	557,048	926,800	0.60	(369,752)	821,241	451,489	
2029	672,685,220	634,661	(25,386)	609,274	-	609,274	609,274	922,050	0.66	(312,776)	898,237	585,461	
2030	735,753,067	694,326	(27,773)	666,553	-	666,553	666,553	923,956	0.72	(257,403)	982,681	725,278	
2031	804,922,357	750,534	(30,021)	720,513	-	720,513	720,513	923,756	0.78	(203,243)	1,062,233	858,990	
2032	870,083,930	811,936	(32,477)	779,458	-	779,458	779,458	922,356	0.85	(142,898)	1,149,134	1,006,237	
2033	941,265,370	869,676	(34,787)	834,889	-	834,889	834,889	923,738	0.90	(88,849)	1,230,855	1,142,006	
2034	1,008,203,284	932,864	(37,315)	895,550	-	895,550	895,550	922,613	0.97	(27,063)	1,320,285	1,293,222	
2035	1,081,456,514	992,350	(39,694)	952,656	-	952,656	952,656	-	-	952,656	1,404,476	2,357,132	
2036	1,150,417,627	1,057,379	(42,295)	1,015,083	-	1,015,083	1,015,083	-	-	1,015,083	1,496,511	2,511,594	
2037	1,225,804,073	1,118,662	(44,746)	1,073,916	-	1,073,916	1,073,916	-	-	1,073,916	1,583,246	2,657,162	
2038	1,296,849,534	1,185,585	(47,423)	1,138,162	-	1,138,162	1,138,162	-	-	1,138,162	1,677,962	2,816,124	
2039	1,374,432,458	1,248,722	(49,949)	1,198,773	-	1,198,773	1,198,773	-	-	1,198,773	1,767,319	2,966,092	
2040	1,447,625,270	1,317,595	(52,704)	1,264,892	-	1,264,892	1,264,892	-	-	1,264,892	1,864,796	3,129,688	
2041	1,527,469,830	1,382,640	(55,306)	1,327,334	-	1,327,334	1,327,334	-	-	1,327,334	1,956,854	3,284,188	
2042	1,602,874,894	1,453,523	(58,141)	1,395,382	-	1,395,382	1,395,382	-	-	1,395,382	2,057,174	3,452,556	
2043	1,685,048,198	1,520,533	(60,821)	1,459,712	-	1,459,712	1,459,712	-	-	1,459,712	2,152,014	3,611,726	
2044	1,762,732,380	1,593,484	(63,739)	1,529,745	-	1,529,745	1,529,745	-	-	1,529,745	2,255,262	3,785,007	
2045	1,847,303,547												
Total		21,023,133	(840,925)	20,182,208	1,582,650	21,764,858	21,764,858	15,707,259	-	6,057,599	29,754,095	35,811,693	

Bond Financing Assumptions – Sources and Uses

Project Sources And Uses (1)

	(A&M Buildings) LGC 4B Contract Revenue Bonds	Master Infrastructure Certificates of Obligation	Issue Summary
Sources Of Funds			
Par Amount of Bonds	\$12,840,000.00	\$24,770,000.00	\$37,610,000.00
Total Sources	\$12,840,000.00	\$24,770,000.00	\$37,610,000.00
Uses Of Funds			
Deposit to Project Construction Fund	10,000,000.00	24,500,000.00	34,500,000.00
Deposit to Capitalized Interest (CIF) Fund (2)	1,352,213.00	-	1,352,213.00
Deposit to Debt Service Reserve Fund (DSRF) (2)	1,284,000.00	-	1,284,000.00
Total Underwriter's Discount (0.600%) (2)	77,040.00	148,620.00	225,660.00
Costs of Issuance	122,500.00	122,500.00	245,000.00
Rounding Amount	4,247.00	(1,120.00)	3,127.00
Total Uses	\$12,840,000.00	\$24,770,000.00	\$37,610,000.00

(1) Estimated Sources and Uses of Funds as of 8/27/2015.

(2) Capitalized Interest Funding, Debt Service Reserve Fund, and Underwriter Discount will change based on actual interest rates.

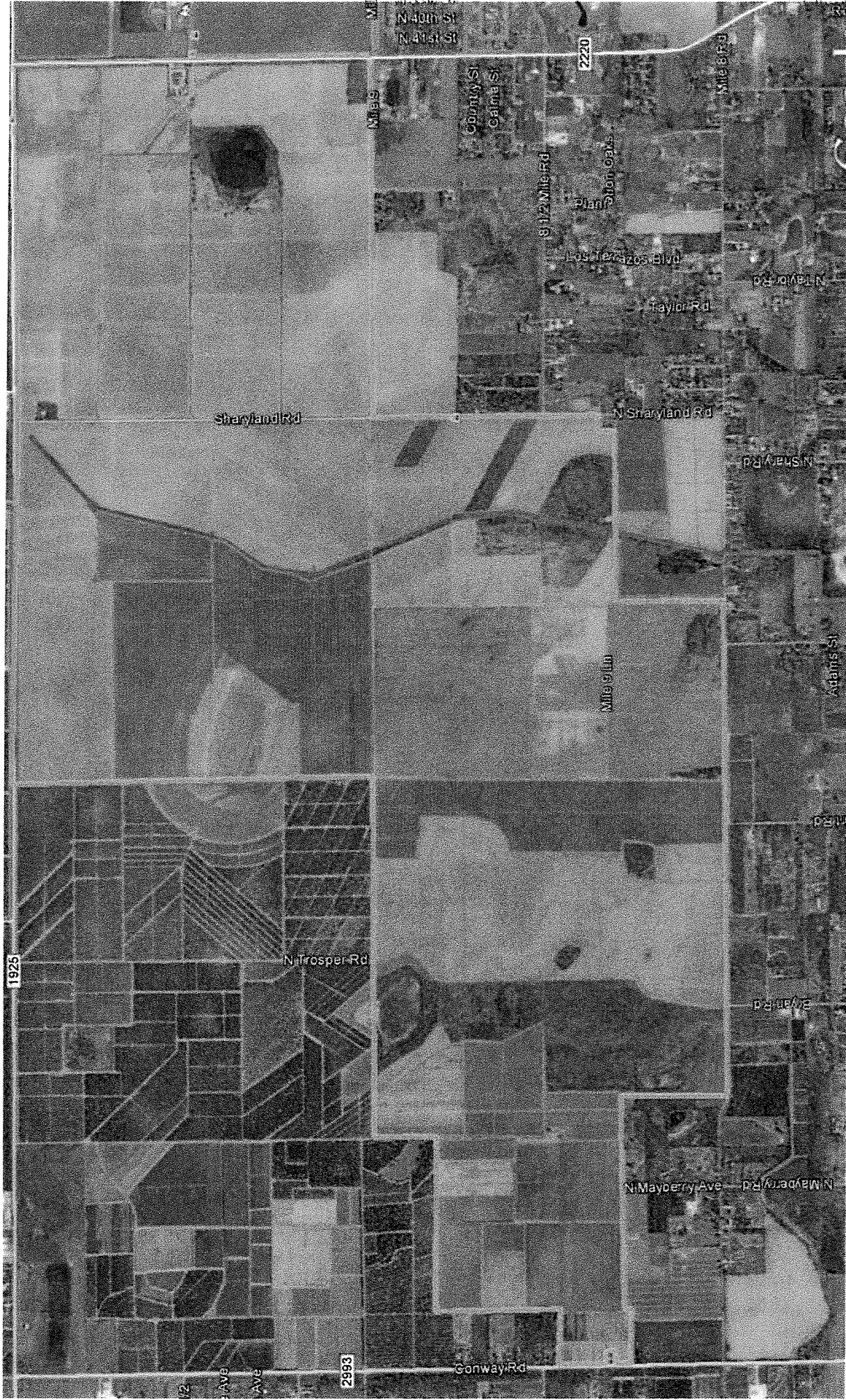
Financing Schedule

Financing Timeline	
Week 1	- Kickoff Meeting, - Hire All Consultants - Refine Business Points As Necessary
Week 2	First Draft Indenture Distributed
Week 3	- First Draft Preliminary Offering Statement (POS) Distributed - Comments due on Indenture
Week 4	- Second Draft Indenture Distributed - Comments due on POS
Week 5	- Second Draft POS Distributed - Documents Sent to Rating Agencies and Insurers [Profile with Attorney General As Necessary]
Week 6	- Rating Agency Conference Calls and Presentations - Receive Rating
Week 7	- Post POS Electronically - C of O Marketing Begins
Week 8 & 9	C of O Pricing
Week 11	C of O Closing

Project Plan and Finance Plan – General Information

DESCRIPTION AND MAP SHOWING EXISTING USES AND CONDITIONS OF REAL PROPERTY IN THE ZONE

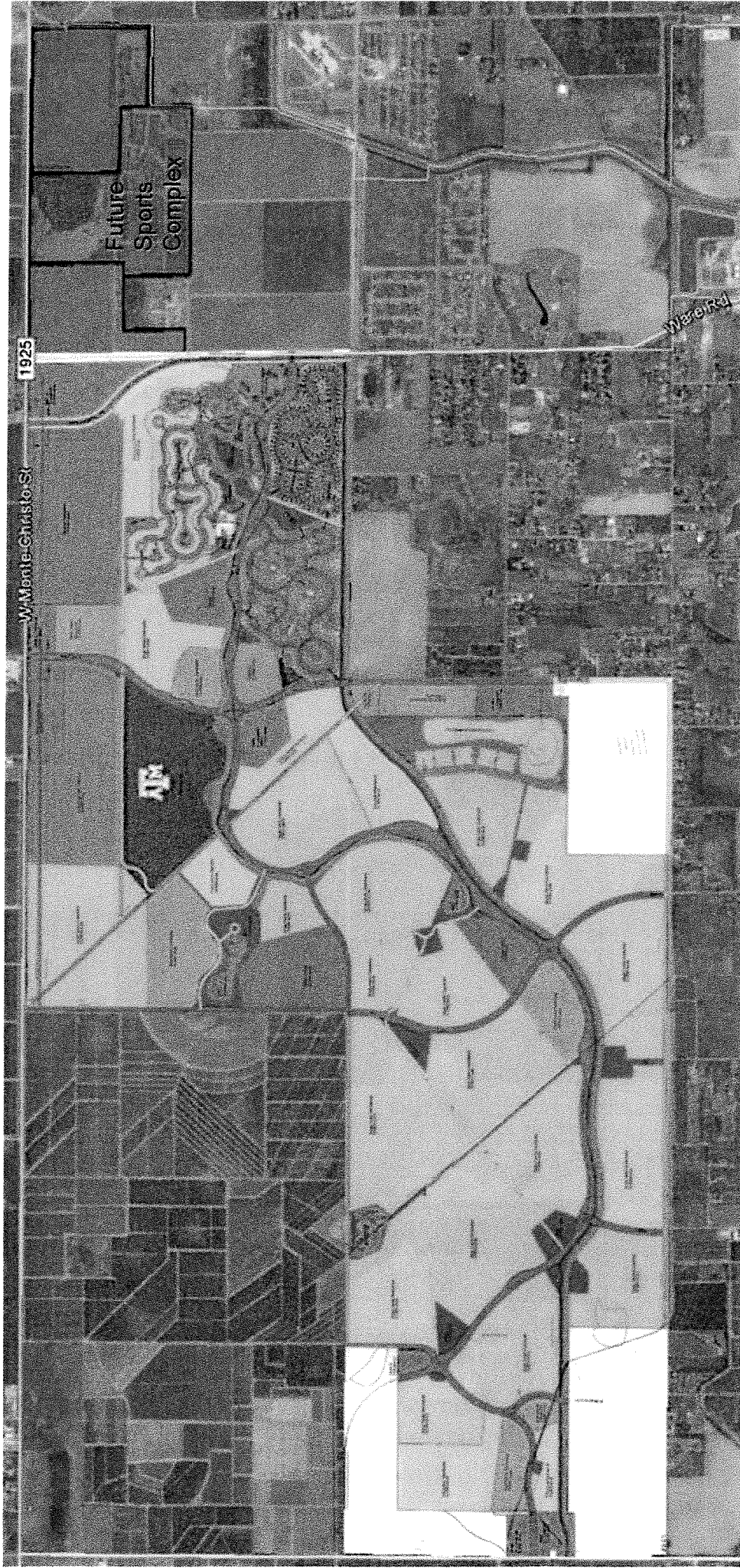
All real property in the Zone is currently undeveloped farm land, with no residential structures, and is under agricultural exemption.



DESCRIPTION AND MAP SHOWING PROPOSED USES OF PROPERTY IN THE ZONE

The proposed uses in the Zone are as depicted in the Original Finance and Project Plan, as modified in the Below Land Plan
The proposed use of the 100 Acre A&M Site will be an institutional and/or office use meeting the requirements of the C-4 Zoning District
All other Land Use and Zoning will be adjusted as indicated below

No other changes in City or County Master Plan, building codes, other municipal ordinances, and subdivision rules and regulations are required
(A full size copy of the below plan is available for inspection and copying at the Board's Office)



OTHER PROJECT PLAN DETAILS:

ESTIMATED PROJECT COSTS: The Original Project and Finance Plan for the Zone is not reduced or diminished by this Amendment. This Amendment only structures financing for funding (Series B) of the first \$24.5mm of the overall \$258.9mm in infrastructure costs, and adds an additional \$10mm in vertical and onsite project cost for building on the 100 acre Site, and structures Contract Revenue Bond financing (Series A) for funding such \$10.0mm.

ESTIMATED NON-PROJECT COSTS:
\$0.00

METHOD OF RELOCATING PERSONS TO BE DISPLACED:
No displacement will occur as a result of the Project

OTHER FINANCE PLAN DETAILS:

ESTIMATED PROJECT COSTS OF THE ZONE: The project costs for infrastructure and administrative expenses for the original Tres Lagos Project is provided in the Original Project and Finance Plan for the Zone and will not substantially change as a result of this Amendment and Supplemental Project and Finance Plan for the A&M Project. The only changes to the Original Project and Finance Plan will be the issuance of Series B Certificates of Obligation to fund Project Costs, the issuance of Series A Contract Revenue Bonds and the priority of use of the TIF funds which will be:

- (1st) Payment of Series A and Series B debt service
- (2nd) Payment of City Approved Pre-TIRZ Administrative costs
- (3rd) Payment of City and County Approved Administrative costs
- (4th) Payment of City project costs (fiber, water reuse, and fire station)
- (5th) Payment of those public works and public improvements in those locations and quantities as set forth in the Original Project and Finance Plan, as amended and supplemented hereby.



OTHER FINANCE PLAN DETAILS (con't.):

ECONOMICALLY FEASIBILITY AND ECONOMIC FEASIBILITY STUDY DETAILS:

The economic feasibility of this Project Plan and Finance Plan, as amended and supplemented hereby, was analyzed by the independent economic consultant for the Developer, City Staff, and County Staff. In addition all financial projections contained in this Project and Finance Plan were reviewed, stress tested, and adjusted by the City's Financial Advisor, and by Jeffries, for the contemplated bond transactions. After consultation with the above parties, and after consideration of this Plan and its attachments, by their respective action approving this Amended and Supplemental Project Plan and Finance Plan, the Board of the Zone and the Commission for the City of McAllen find that this Project Plan and Finance Plan is Economically Feasible and will provide benefit to the City of McAllen and Hidalgo County.

ESTIMATED AMOUNT OF BONDED INDEBTEDNESS TO BE INCURRED:

- (1) Series A for funding Project Cost of vertical construction and associated site work - \$10,000,000.00 (plus cost of issuance)
- (1) Series B for funding Project Cost of Master Infrastructure for expanded Phase I - \$24,5000,000.00 (plus cost of issuance)

ESTIMATED TIME WHEN RELATED COSTS OR MONETARY OBLIGATIONS ARE TO BE INCURRED:

Year 2016 - See slides on pages 8 thru 27 hereof for details of issuance of obligations

DESCRIPTION OF THE METHODS OF FINANCING ALL ESTIMATED PROJECT COSTS AND THE EXPECTED SOURCES OF REVENUE TO FINANCE OR PAY PROJECT COSTS, INCLUDING THE PERCENTAGE OF TAX INCREMENT TO BE DERIVED FROM THE PROPERTY TAXES OF EACH TAXING UNIT ANTICIPATED TO CONTRIBUTE TAX INCREMENT TO THE ZONE THAT LEVIES TAXES ON REAL PROPERTY IN THE ZONE:

Method of financing project costs and percent of Tax Increment to be derived from taxes of each taxing unit are set forth in the forgoing slides and spreadsheets on pages 9 thru 30 hereof. In summary they are:

	<u>Original Project</u>	<u>Supplemental Project</u>
	Tres Lagos	A&M Project
City of McAllen Tax Increment	80%	20%
Hidalgo County Tax Increment	77%	23% (only if shortfall in Series A debt service)

CURRENT TOTAL APPRAISED VALUE OF TAXABLE REAL PROPERTY IN THE ZONE:

Appraised assessed value: \$1,064,613.00

ESTIMATED CAPTURED APPRAISED VALUE OF THE ZONE DURING EACH YEAR OF ITS EXISTENCE:

See tables on page 17 hereof

DURATION OF THE ZONE:

30 years

BOND ISSUANCE TEAM:

Financial Adviser: First Southwest -Anne Burger Entrekin

Co-Underwriters: Jeffries – Matt Challis & Raymond James -Tom Oppenheim



EXHIBIT E

**Map and description of +/- 100 acre tract within the Project,
which is to be conveyed from DEVELOPER to CITY for the Supplemental Project**

EXHIBIT

September 10, 2015

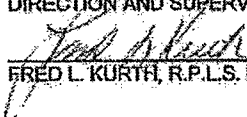
**METES AND BOUNDS DESCRIPTION
100.00 ACRES OUT OF ALL OF LOTS 1-5, BLOCK 1,
AND PORTIONS OF LOTS 6-10, BLOCK 5,
M & M SUBDIVISION,
HIDALGO COUNTY, TEXAS**

A tract of land containing 100.00 acres situated in Hidalgo County, Texas, said 100.00 acres being all of Lots 1-5, Block 1, and part or portion out of Lots 6-10, Block 5, M & M SUBDIVISION, Recorded in Volume 8, Page 20, Hidalgo County Map Records, said 100.00 acres also being more particularly described as follows:

BEGINNING at the Northeast corner of said Lot 3, Block 1 said corner being within the right-of-way of Monte Cristo Road (FM 1925), for the Northeast corner of this tract;

1. THENCE, S 09° 01' 00" W along the East line of Lots 3, 4 and 5, Block 1, within the 40 foot right-of-way of 29th Street (Rooth Road) a distance of 1983.50 feet to the Southeast corner of this tract;
2. THENCE, N 80° 14' 00" W a distance of 2204.13 feet to the Southwest corner of this tract;
3. THENCE, N 09° 01' 00" E a distance of 1969.41 feet to the North line of said Lot 6, Block 5, for the Northwest corner of this tract;
4. THENCE, S 80° 36' 00" E along the North line of Lots 6, and 7, Block 5 and Lots 2 and 3, Block 1, and within the existing right-of-way of Monte Cristo Road (FM 1925), a distance of 2203.99 feet to the POINT OF BEGINNING and containing 100.00 acres, of which 1.625 acres lie within Monte Cristo Road (FM 1925), leaving a net of 98.375 acres of land, more or less.

I, FRED L. KURTH, A REGISTERED PROFESSIONAL LAND SURVEYOR DO HEREBY AFFIRM THAT THIS METES AND BOUNDS DESCRIPTION REPRESENTS THE RESULTS OF AN EASEMENT SURVEY MADE ON THE GROUND ON 09-10-2015 UNDER MY DIRECTION AND SUPERVISION.


FRED L. KURTH, R.P.L.S. #4750

9/10/15
DATE



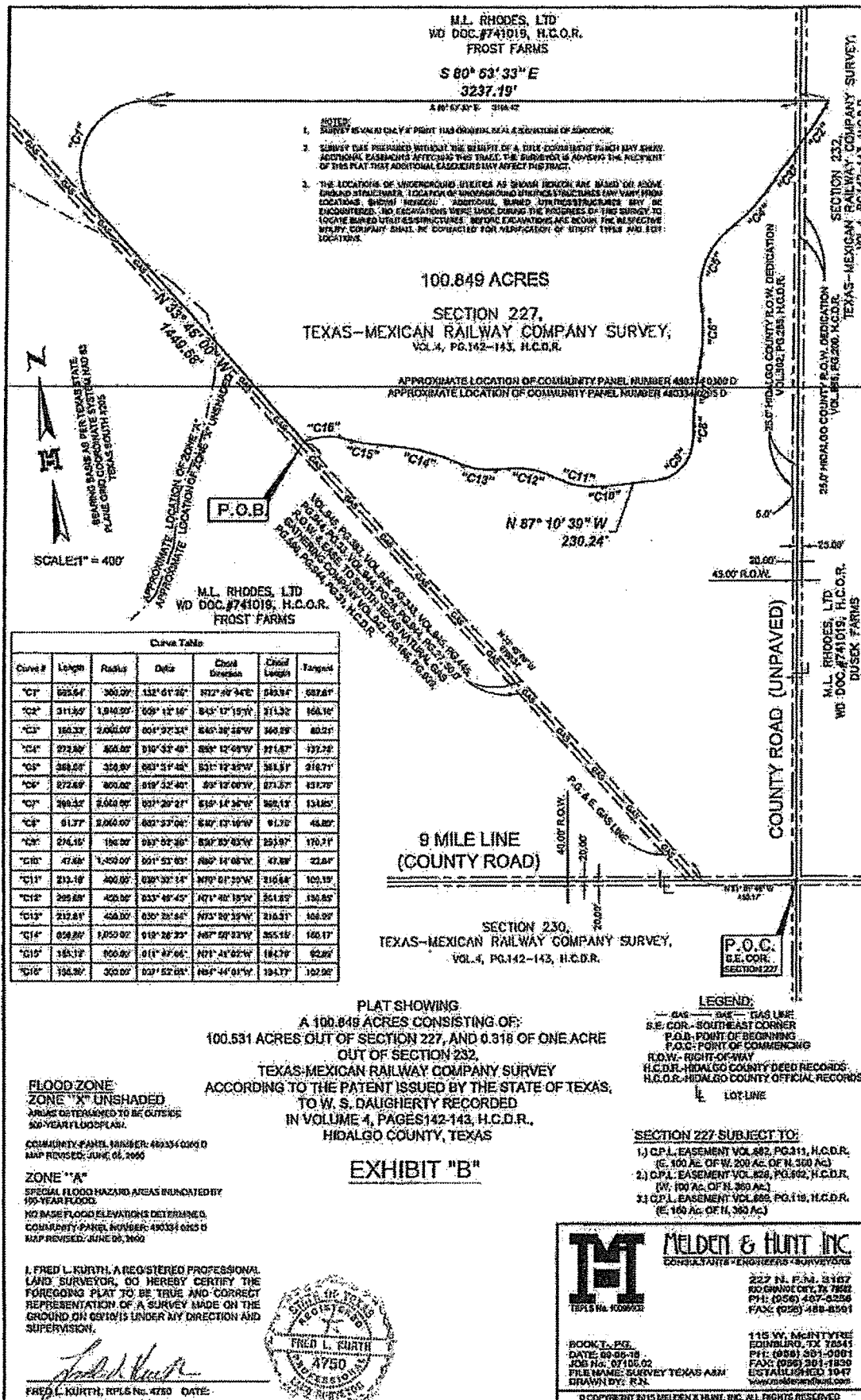


Exhibit F

**Map and description of two tracts located east of the Project,
which are to be conveyed by CITY to DEVELOPER**

EXHIBIT IV

September 10, 2015

METES AND BOUNDS DESCRIPTION 95.465 ACRES BEING ALL LOTS 1-5, BLOCK 1, AND PORTIONS OF LOTS 6-10, BLOCK 5, M & M SUBDIVISION, HIDALGO COUNTY, TEXAS

A tract of land containing 95.465 acres situated in Hidalgo County, Texas, said 95.465 acres being all of Lots 1-5, Block 1, and part or portion out of Lots 6-10, Block 5, all out of M & M SUBDIVISION, recorded in Volume 8, Page 20, Hidalgo County Map Records, said 95.465 acres also being more particularly described as follows:

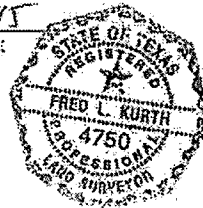
BEGINNING at the Northeast corner of said Lot 3, Block 1 and being within the existing right-of-way of Monte Cristo Road (FM 1925), for the Northeast corner of this tract;

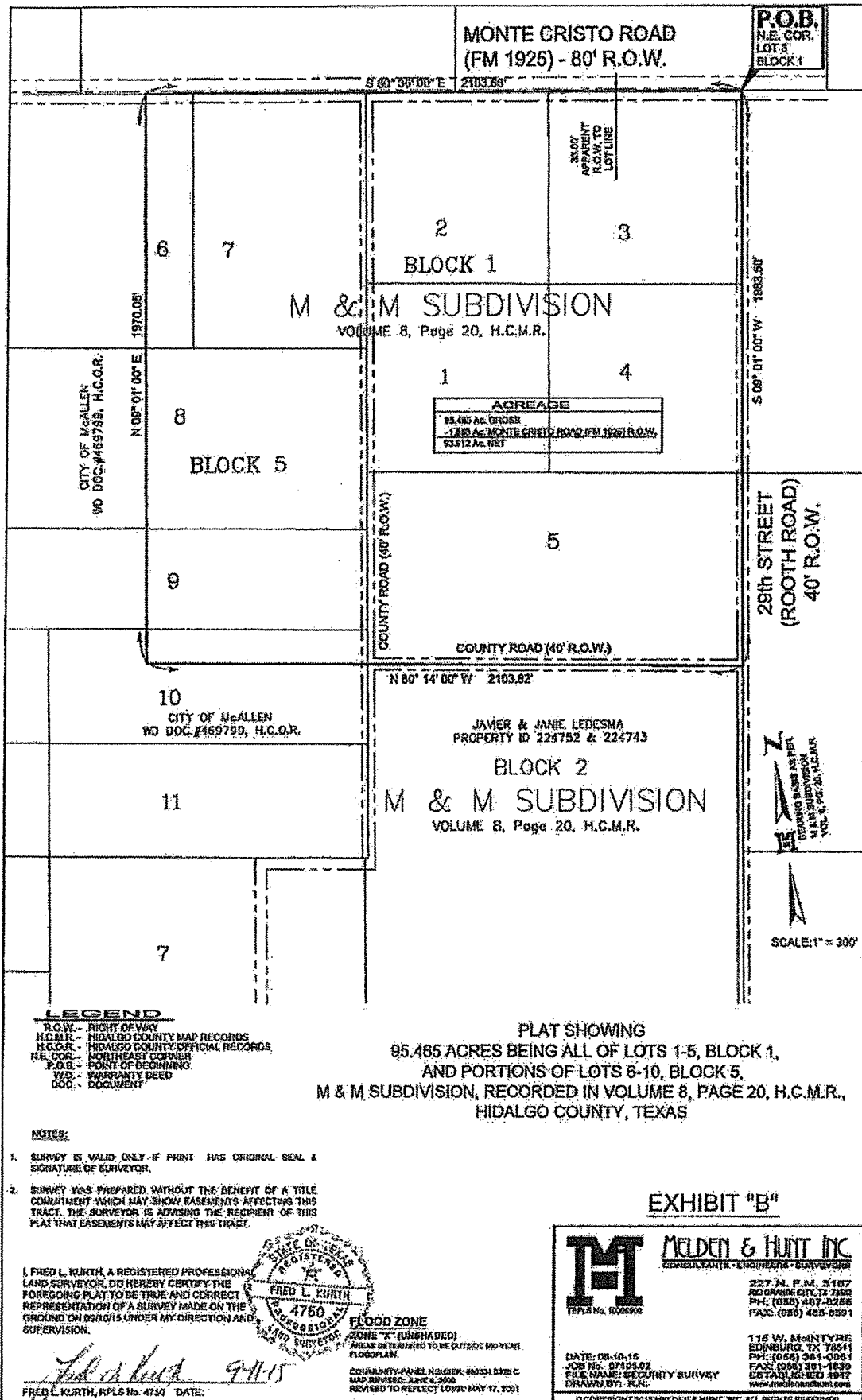
1. THENCE, S 09° 01' 00" W along the East line of said Lots 3, 4 and 5, Block 1, and within the existing right-of-way of 29th Street (Rooth Road), a distance of 1983.50 feet to the Southeast corner of this tract;
2. THENCE, N 80° 14' 00" W a distance of 2103.82 feet to the Southwest corner of this tract;
3. THENCE, N 09° 01' 00" E a distance of 1970.05 feet to the North line of said Lot 6, Block 5, for the Northwest corner of this tract;
4. THENCE, S 80° 36' 00" E along the North line of said Lots 6 and 7, Block 5 and Lots 2 and 3, Block 1, and within the existing right-of-way of Monte Cristo Road (FM 1925), a distance of 2103.68 feet to the POINT OF BEGINNING and containing 100.00 acres, of which 1.553 acres lie within Monte Cristo Road (FM 1925), leaving a net of 93.912 acres of land, more or less.

I, FRED L. KURTH, A REGISTERED PROFESSIONAL LAND SURVEYOR DO HEREBY AFFIRM THAT THIS METES AND BOUNDS DESCRIPTION REPRESENTS THE RESULTS OF A SURVEY MADE ON THE GROUND ON 09-10-2015 UNDER MY DIRECTION AND SUPERVISION.


FRED L. KURTH, R.P.L.S. #4750

DATE: 9-11-15





September 10, 2015

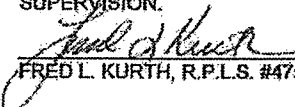
**METES AND BOUNDS DESCRIPTION
54.535 ACRES OUT OF SECTION 231,
TEXAS-MEXICAN RAILWAY COMPANY SURVEY,
HIDALGO COUNTY, TEXAS**

A tract of land containing 54.535 acres situated in Hidalgo County, Texas, said 54.535 acres being a part or portion out of SECTION 231, TEXAS-MEXICAN RAILWAY COMPANY SURVEY, according to the patent issued by the State of Texas to W.S. Daugherty Recorded in Volume 4, Page 142-143, Hidalgo County Deed Records; said 54.535 acres also being more particularly described as follows:

BEGINNING at the Northwest corner of said Section 231, said corner being in the intersection of Ware Road (FM 2220) and Monte Cristo Road (FM 1925), for the Northwest corner of this tract;

1. THENCE, S 80° 33' 00" E a distance of 1273.16 feet to the Northeast corner of this tract;
2. THENCE, S 08° 57' 00" W a distance of 1557.13 feet to the Northernmost Southeast corner of this tract;
3. THENCE, N 80° 14' 00" W along the North line of ECISD #50 as recorded in Volume 41, Page 32, Hidalgo County Map Records, a distance of 871.20 feet to an inside corner of this tract;
4. THENCE, S 08° 57' 00" W along the West line of said ECISD #50, a distance of 1000.00 feet to the Southernmost Southeast corner of this tract;
5. THENCE, N 80° 14' 00" W along the existing North right-of-way line of Rogers Road (80' right-of-way) a distance of 289.48 feet to an outside point of this tract;
6. THENCE, N 35° 38' 30" W along a corner clip of said Rogers Road, a distance of 71.23 feet to an inside corner of this tract;
7. THENCE, N 80° 14' 00" W along a corner clip of said Rogers Road, a distance of 62.55 feet to the Southwest corner of this tract;
8. THENCE, N 08° 57' 00" E along the West line of said Section 231 and within the existing right-of-way of Ware Road (FM 2220) a distance of 2500.09 feet to the POINT OF BEGINNING, and containing 54.535 acres of land, more or less, of which 0.950 of one acre lies within Monte Cristo Road (FM 1925) and 2.417 acres lie within Ware Road (FM 2220), leaving a net of 51.168 acres more or less.

I, FRED L. KURTH, A REGISTERED PROFESSIONAL LAND SURVEYOR DO HEREBY AFFIRM THAT THIS METES AND BOUNDS DESCRIPTION REPRESENTS THE RESULTS OF A SURVEY MADE ON THE GROUND ON 09-10-2015, UNDER MY DIRECTION AND SUPERVISION.


FRED L. KURTH, R.P.L.S. #4750

9-11-15
DATE:



