

ROADWAY CONSTRUCTION, PHASING AND VACATION AGREEMENT

This Roadway Construction, Phasing and Vacation Agreement (this "Agreement") is entered into between **WILLIAMSON COUNTY, TEXAS** (the "County"); **LARKSPUR COMMUNITY DEVELOPMENT, INC.**, a Texas corporation (the "Developer"); and **WILLIAMSON COUNTY MUNICIPAL UTILITY DISTRICT NO. 32** (the "District"). The District is entering into this Agreement as managing district for itself and Williamson County Municipal Utility District No. 31 (collectively, the "Participating Districts"). In this Agreement, the County, the Developer and the District are sometimes individually referred to as a "Party" and collectively referred to as the "Parties." Each of the Parties confirms that it has the authority to enter into this Agreement and the ability to perform its obligations under this Agreement without the further approval or consent of any other person or entity.

Recitals

WHEREAS, the Developer is in the process of developing a master-planned development to be known as Larkspur in the area of the County depicted on the attached **Exhibit A** (the "Development"); and

WHEREAS, both the general public and the Developer will benefit if the County, the Participating Districts and the Developer cooperate in order to expedite the construction of an arterial roadway from Highway 183A to the Development's boundary with the adjoining property, locally known as "Bar W Ranch" ("Bar W Ranch"), as shown on the attached **Exhibit B-1** (the "Project"); and

WHEREAS, in recognition of the impact that the Development will have on traffic demands in the County, the Developer has agreed to provide 120 feet of right-of-way for the Project within the boundaries of the Development and to design and construct or cause to be constructed the northern two lanes of and one-half of the median for the Project, as shown on **Exhibit B-2** (the "Developer's Project"), as provided in this Agreement; and

WHEREAS, the County has agreed that the Developer will not be responsible for the design or construction of the other one-half of the median and the southern two lanes of the Project (the "Remainder Project"); and

WHEREAS, Section 232.105 of the Texas Local Government Code authorizes a commissioners' court to contract with a developer of land in the unincorporated area of the county to construct public improvements, and this Agreement is being entered into pursuant to and in compliance with that authority;

In consideration of the mutual promises, covenants, obligations and benefits set forth in this Agreement, the Parties agree as follows:

Section 1. The Project; Subdivision Road Standards. The Project will be a divided

four-lane arterial roadway located within 120 feet of right-of-way.

(a) The Project will include the following features:

- (i) Four 12-foot wide travel lanes;
- (ii) A 20-foot median (the "Median"); and
- (iii) Erosion/sedimentation controls, revegetation, and stormwater management during construction as required by the Texas Commission on Environmental Quality ("TCEQ"); however, no water quality or detention improvements will be required.

(b) The County agrees that other subdivision roads in the Development may be constructed to the following standards:

- (i) Local street sections may be 30 feet in width, measured from face of curb to face of curb; and
- (ii) One and one-half inches of asphalt may be used on local street sections if recommended by the Developer's geotechnical engineer.

(c) The County will cooperate with the Developer to obtain Texas Department of Transportation approval of an alignment for the Project that facilitates a roadway entry alignment with Whitewing Drive at its intersection with US Highway 183, as depicted on the attached Exhibit "B-3". The alignment of the Project with the roadway from Bar W Ranch will be as set forth on the attached Exhibit "B-4".

(d) The County agrees that the Developer will not be responsible for the design or construction of the Remainder Project.

(e) The Developer agrees to give written notice to the County when the development of the portion of Bar W Ranch that includes the connection to the Project is commenced.

Section 2. Roadway Beautification Project. The County acknowledges that the Developer has caused the creation of the Participating Districts to serve the Development and that the District will serve as the managing district on behalf of the Participating Districts in connection with the Developer's Project. The County agrees that the Developer and/or the District on behalf of the Participating Districts may construct utilities, sidewalks, subdivision walls, lighting and landscaping improvements within the portion of the Median included in the Developer's Project and in the right-of-way for the Remainder Project (collectively, the "Roadway Beautification Project") either simultaneously with the construction of each phase of the Developer's Project or thereafter. The County agrees to grant the Developer or the District a license agreement that authorizes the installation and maintenance of all or a portion of the Roadway Beautification Project. Any such license agreement will require that the licensee carry at least \$1,000,000 in liability insurance that provides coverage for liability arising out of

the Roadway Beautification Project and names the County as an additional insured.

Section 3. District Road Powers. The County acknowledges that the Participating Districts have the power, under Section 54.234, Texas Water Code, and Article III, Section 52, Texas Constitution, to design, construct, finance, issue bonds for and convey to the State, the County or a municipality for operation and maintenance, a road or improvement in aid of a road (the "Road Powers"). The County agrees to cooperate with the Developer and the District to allow the construction of the Developer's Project in a manner that enables the Developer to receive reimbursement of its costs of such design and construction from the Participating Districts to the maximum extent permitted by applicable rules of the TCEQ. The County further acknowledges that, pursuant to the District's enabling legislation, Chapter 7935, Special District Local Laws Code (the "Enabling Legislation"), the Developer's Project will be conveyed to the County for ownership, operation and maintenance. The Developer's Project constitutes a portion of the east-west arterial roadway referenced in the Enabling Legislation and, accordingly, will be maintained by the County.

Section 4. Design of the Developer's Project.

(a) The Developer, on behalf of the District, will retain Brown & Gay Engineers, Inc., or another engineer selected by the Developer and the District and approved by the County (the "Project Engineer"), to prepare the design for the Developer's Project. The Developer will advance and pay the fees and charges of the Project Engineer.

(b) The design of the Developer's Project will be subject to approval by the District, the County and all other governmental agencies with jurisdiction. The County agrees to review the plans and specifications for the Developer's Project and to provide the Project Engineer with written comments specifically identifying any required revisions within 14 days of submission of the plans and specifications to the County.

Section 5. Designated Representatives. The County, the District and the Developer each designate the individual specified below (each, a "Designated Representative") to represent it and to act on its behalf with respect to the subject matter of this Agreement. Each Designated Representative will have authority to determine and interpret the policies and exercise the discretion of the Party it represents, and any Party may rely on the decisions and representations made by another Party's Designated Representative with respect to the subject matter of this Agreement, except as provided by Section 10(d), below. Each Designated Representative may designate other representatives to transmit instructions and receive information on the Designated Representative's behalf.

County: County Engineer

Address: 3151 SE Inner Loop, Suite B
Georgetown, Texas 78626

District: Brian Williams

Address: 700 North MoPac, Suite 330
Austin, Texas 78731

Developer: Project Manager

Address: 9111 Jollyville Road, Ste. 111
Austin, Texas 78759

The Project Engineer will report regularly to, and cooperate and coordinate with, the other Parties' Designated Representatives. The Designated Representatives will be required to cooperate and coordinate with one another, including meeting with and reporting information to one another regarding the Project, either at regular intervals or at other times determined by the County, and reviewing and commenting in a timely manner on work product associated with the Project.

Section 6. Construction and Acquisition of the Developer's Project.

(a) The Developer's Project will be constructed in phases as adjoining portions of the Development are completed.

(b) The Developer's Project is a public road construction project and will be constructed and all easements, equipment, materials and supplies acquired in the name of the District. The Parties acknowledge and agree that all tangible personal property to be purchased for use in construction of the Developer's Project and all taxable services to be performed for the design, management and construction of the Developer's Project are subject to the sales tax exemption provisions of Section 151.311 of the Texas Tax Code. The District agrees to provide its taxpayer identification number and any other information reasonably required to obtain an exemption of sales tax for the Developer's Project and the labor and materials incorporated into the Developer's Project upon the Project Engineer's request.

(c) Within 10 days after execution of a construction contract for the Developer's Project (the "Construction Contract"), the Developer will provide the District with a copy of the executed Construction Contract and any related documents, including insurance certificates, that name the District as an additional insured, and payment and performance bonds in compliance with Chapter 2253, Texas Government Code. The Developer will also provide copies of any subsequent documents amending or replacing the Construction Contract or any related documents; however, no change orders to the Construction Contract as approved by the District may be made without the District's approval, which will not be unreasonably withheld or delayed. The Developer will also obtain from the contractor under the Construction Contract (the "Contractor") and provide to the District a collateral assignment of the Developer's rights under the Construction Contract that authorizes the District to exercise the Developer's rights under the Construction Contract and to complete the Developer's Project if the Developer fails to do so as provided in this Agreement. No fiscal posting will be required from the Developer in connection with the Developer's Project.

(d) The Developer acknowledges that the District, as a political subdivision of the State of Texas, is subject to the provisions of Chapter 2258, Subchapter B, of the Texas Government Code, pertaining to prevailing wage rates. The Contractor will be required to pay not less than the prevailing wage rates established by the County to workers employed by it in the execution of the Construction Contract, and to comply with all applicable provisions of Chapter 2258, Subchapter B, Texas Government Code, including the recordkeeping required therein. Further, the Contractor will be required to certify in writing that it provides worker's compensation insurance coverage for each employee of the Contractor employed on the Developer's Project, and to obtain a certificate from each subcontractor, relating to the coverage of the subcontractor's employees, in accordance with Section 406.096, Texas Labor Code. The Contractor will be required to implement and maintain all customary or necessary safety precautions and programs in connection with the construction of the Developer's Project.

(e) Subject to its rights to be reimbursed by the Participating Districts, upon commencement of construction of Developer's Project, the Developer will: (i) construct, and require its contractors and subcontractors to diligently pursue construction of, the Developer's Project in a good and workmanlike manner and, in all material respects, in accordance with the plans and specifications and all applicable laws, regulations, and ordinances, including all laws and regulations applicable to the District and (ii) make timely payment for all materials received and work properly performed under the Construction Contract, subject to any applicable retainage requirements and amounts withheld due to improper work or punch list items.

(f) The Project Engineer will:

- (i) provide the County with all existing geotechnical surveys, topographic surveys, and right-of-way boundary exhibit/control maps for the Developer's Project;
- (ii) provide all existing feasibility or environmental impacts or assessments or studies and permits or approvals required by applicable federal, state, or local law, including those for noise, trees, archaeological or historical sites, wetlands, stormwater, endangered species, or similar resources for the Developer's Project;
- (iii) provide all engineering design for construction of the Developer's Project in compliance with the County's standards applicable to roads of the same type and classification as the Developer's Project, subject to any modification set forth in this Agreement or approved by the County, including utility and infrastructure relocations or adjustments, preparation of final plans and specifications, construction cost estimates, and other supporting documentation, which will be in a form that can readily be used in preparation of the Construction Contract documents;

- (iv) prepare and submit to the County for approval plans and specifications for the Developer's Project in compliance with the County's standards applicable to roads of the same type and classification as the Developer's Project and ensure that the plans and specifications are accompanied by appropriate engineering reports as required by the County pursuant to its standards applicable to roads of the same type and classification as the Developer's Project;
- (v) within five business days of receipt, review and approve or take other appropriate action regarding shop drawings and samples, requests for information, the results of tests and inspections, and other data that the Contractor is required to submit; provided, however, that, for structural or geotechnical items, the applicable review and approval period will be ten days;
- (vi) determine the acceptability of any substitute materials and equipment proposed by the Contractor; receive and review for general content as required by the applicable specifications: maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection that are to be provided by Contractor in accordance with the Construction Contract; prepare or review change orders; and design any necessary engineering changes;
- (vii) approve all pay estimates submitted by the Contractor and certify them as correct;
- (viii) maintain master job files of correspondence, reports of conferences, shop drawings, samples, reproductions of the applicable plans and specifications, change orders, addenda, daily inspection reports, additional or revised drawings, and other construction documents related to the Developer's Project, which will be available for inspection by the County at all times;
- (ix) periodically inspect the Developer's Project during construction;
- (x) reject all work and materials found not to conform to minimum requirements of the Construction Contract and the plans and specifications and, in consultation with the County, ensure that defects are corrected or remedied;
- (xi) respond to the County in writing within three business days to advise the County of the remedies that will be effected to correct any defects brought to the attention of the Project Engineer by the County or otherwise brought to the attention of the Project Engineer;

- (xii) attend the final inspection of each portion of the Developer's Project in the presence of the County inspector; transmit a list of any items to be completed or repaired to the County and the Contractor; and verify the Contractor's correction of the same; and
- (xiii) upon completion of the Developer's Project, make any changes to the plans and specifications required to reflect field changes and, after verifying that the revised plans reflect, to the best of his knowledge and belief, actual conditions, submit record drawings of the Developer's Project to the District and the County.

All work product produced by the Project Engineer will meet customary professional standards applicable to the work product or the Developer's Project, as reasonably determined by the County, and is subject to approval by the County based on cost effectiveness, sound engineering principles and practices, and applicable legal requirements, which approval will not be unreasonably withheld, conditioned or delayed.

(g) The Developer will:

- (i) manage construction of the Developer's Project, and make monthly reports to the Parties on the progress of construction and the amounts paid to the Contractor;
- (ii) submit all proposed changes to the plans and specifications and change orders to the Construction Contract to the District for approval at least five business days prior to approving or executing them;
- (iii) arrange and coordinate materials testing with the Contractor through an independent materials testing lab and provide the Parties with all testing information within three business days of receipt;
- (iv) arrange and observe with the Contractor all acceptance testing for the Developer's Project;
- (v) upon substantial completion of the Developer's Project, provide the Parties with a certificate of substantial completion for the Developer's Project prepared by the Project Engineer, together with copy of the notice to the Contractor of observed items requiring completion or correction;
- (vi) permit the County to inspect the construction of the Developer's Project at all reasonable times during construction until final acceptance of the Developer's Project by the County; and

- (vii) coordinate the final inspection of the Developer's Project with the County's inspectors.

Section 7. Inspection. Inspections and certifications will be conducted in accordance with standard County policies, procedures, and requirements. The County will notify the Developer and Project Engineer in writing if any inspection reveals that any part of the Developer's Project is not constructed or completed in accordance with the plans and specifications or this Agreement or is otherwise materially defective, and this notice will specifically detail any deficiencies. If an inspection indicates that work or material may not comply with the plans and specifications or the requirements of this Agreement, the County may require the Contractor to suspend work until the County is satisfied any defect is or will be remedied.

Section 8. Completion of Developer's Project.

(a) The Project Engineer will prepare a written notice of substantial completion and forward the notice to the Developer, who will submit the notice to the County. The County will conduct a final inspection of the Developer's Project within five business days after receiving written notice of substantial completion from the Developer, subject to any weather-related delays. If completed in accordance with the terms of the plans and specifications and this Agreement in all material respects, the County will certify the Developer's Project as being in compliance and issue a notice of final acceptance to the Developer.

(b) Upon final acceptance of the Developer's Project by the County, all warranties for the Developer's Project and the plans and specifications will be transferred to the County and the Developer will execute any documents reasonably required to evidence such assignment. The Contractor will be responsible for any defects in workmanship or materials (ordinary wear and tear excepted) in the Developer's Project for two years following acceptance by the County. The Developer must provide the County with a two-year Contractor's warranty bond as a condition to final acceptance of the Developer's Project, which will be in a form approved by the County, such approval not to be unreasonably withheld or delayed.

Section 9. County Vacation of County Road 267.

(a) The County agrees, within 60 days of the date of the County's approval of this Agreement, to vacate the portions of County Road 266/267 depicted on the attached **Exhibit "C"**, which vacation will be effective (a) in phases, upon (1) recordation of a final plat containing the portion of County Road 266/267 to be vacated and the roadway segment depicted on **Exhibit "C"** that will replace the portion of County Road 266/267 to be vacated (the "Replacement Segment"), and (2) completion of construction of each Replacement Segment, or (b) in total, at such earlier time as Williamson County Emergency Services District No. 4 approves the total vacation of such portions of County Road 266/267.

(b) In conjunction with the vacation described in Subsection (a), the Developer agrees:

- (i) To install additional advanced signage on CR 259 and Highway 29, to notify the public of the road closure;
- (ii) To install a temporary turnaround at the northern property line of the Development;
- (iii) To proceed with the demolition the portion of CR 266/267 to be vacated and the construction of the Replacement Segment in accordance with construction plans approved by the County.

The County agrees that the Developer may remove the temporary turnaround described in (ii) above upon completion of the Replacement Segment, and that no permit or approval for such removal will be required.

Section 10. Miscellaneous.

(a) Any notice given hereunder by any Party to another must be in writing and may be effected by personal delivery or by certified mail, return receipt requested, when mailed to the appropriate Party's Designated Representative, at the addresses specified in Section 5, with copies as noted below:

County:	Williamson County, Texas 3151 SE Inner Loop, Suite B Georgetown, Texas 78626 Attention: County Engineer
Developer:	Caughfield Ranch, Ltd. 9111 Jollyville Road, Ste. 111 Austin, Texas 78759
District:	Williamson County Municipal Utility District No. 32 c/o Armbrust & Brown, PLLC 100 Congress Avenue, Suite 1300 Austin, Texas 78701

A Party may change its address for purposes of notice by giving at least five days' written notice of the new address to the other Parties. If any date or any period provided in this Agreement ends on a Saturday, Sunday or legal holiday, the applicable period will be extended to the next business day.

(b) As used in this Agreement, whenever the context so indicates, the masculine, feminine, or neuter gender and the singular or plural number will each be deemed to include the others.

(c) This Agreement contains the complete and entire agreement between the Parties respecting the Project, and supersedes all prior negotiations, agreements, representations, and understandings, if any, between the Parties regarding the Project, but does not supersede or amend any Road Improvements Construction and

Reimbursement Agreement between the Developer and the Participating Districts or any cost sharing agreement between the Participating Districts, as amended from time to time, or affect the Participating Districts' obligations thereunder. This Agreement may not be modified, discharged, or changed except by a further written agreement, duly executed by the Parties. However, any consent, waiver, approval or other authorization will be effective if signed by the Party granting or making such consent, waiver, approval, or authorization.

(d) No official, representative, agent, or employee of the County has any authority to modify this Agreement, except pursuant to such express authority as may be granted by the commissioners' court of the County. No official, representative, agent, or employee of the District has any authority to modify this Agreement, except pursuant to such express authority as may be granted by the board of directors of the District.

(e) The Parties agree to execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the purposes of this Agreement.

(f) If performance by any Party of any obligation under this Agreement is interrupted or delayed by reason of unforeseeable event beyond its control, whether such event is an act of God or the common enemy, or the result of war, riot, civil commotion, sovereign conduct other than acts of the County under this Agreement, or the act of conduct of any person or persons not a party or privy hereto, then such Party will be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof.

(g) The Parties acknowledge that, in the event of default on any obligation under this Agreement, remedies at law will be inadequate and that, in addition to any other remedy at law or in equity, each Party will be entitled to seek a writ of mandamus or specific performance of this Agreement.

(h) This Agreement will be construed under the laws of the State of Texas and all obligations of the Parties hereunder are performable in Williamson County, Texas. Any suits pursued relating to this Agreement will be filed in a court of Williamson County, Texas.

(i) Any clause, sentence, provision, paragraph, or article of this Agreement held by a court of competent jurisdiction to be invalid, illegal, or ineffective will not impair, invalidate, or nullify the remainder of this Agreement, but the effect thereof will be confined to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or ineffective.

(j) This Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective legal representatives, successors, and assigns. No Party may assign its rights or obligations under this Agreement without the written consent of the other Parties.

(k) Except as otherwise expressly provided herein, nothing in this Agreement, express or implied, is intended to confer any benefits, rights or remedies upon any person or entity other than the Parties.

(l) This Agreement may be signed in any number of multiple counterparts which, when taken together, constitute one agreement enforceable against all parties. Additionally, for purposes of facilitating the execution of this Agreement the signature pages taken from separate individually executed counterparts of this instrument may be combined to form multiple fully executed counterparts and a facsimile signature or a signature sent by electronic mail will be deemed to be an original signature for all purposes.

(m) The following exhibits are attached to and incorporated into this Agreement for all purposes:

Exhibit "A"	-	The Development
Exhibit "B-1"	-	The Project
Exhibit "B-2"	-	Developer's Project and County's Project
Exhibit "B-3"	-	Whitewing Dr. alignment
Exhibit "B-4"	-	Bar W Ranch alignment
Exhibit "C"	-	Depiction of portion of CR 266/267 to be vacated and Replacement Segments

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of equal dignity, on the date or dates indicated below, to be effective as of the date the last Party signs.

WILLIAMSON COUNTY, TEXAS

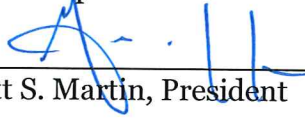
By: _____

Name: _____

Title: _____

Date: _____

LARKSPUR COMMUNITY DEVELOPMENT,
INC., a Texas corporation

By: 
Garrett S. Martin, President

Date: 11-22-16

VSS

WILLIAMSON COUNTY MUNICIPAL
UTILITY DISTRICT NO. 32

By: _____
Kevin Reynolds, President
Board of Directors

Date: _____

CAUGHFIELD PRELIMINARY PLAN OVERALL



EXHIBIT B-1

CAUGHFIELD R.O.W. SECTION EXHIBIT 608± ACRES

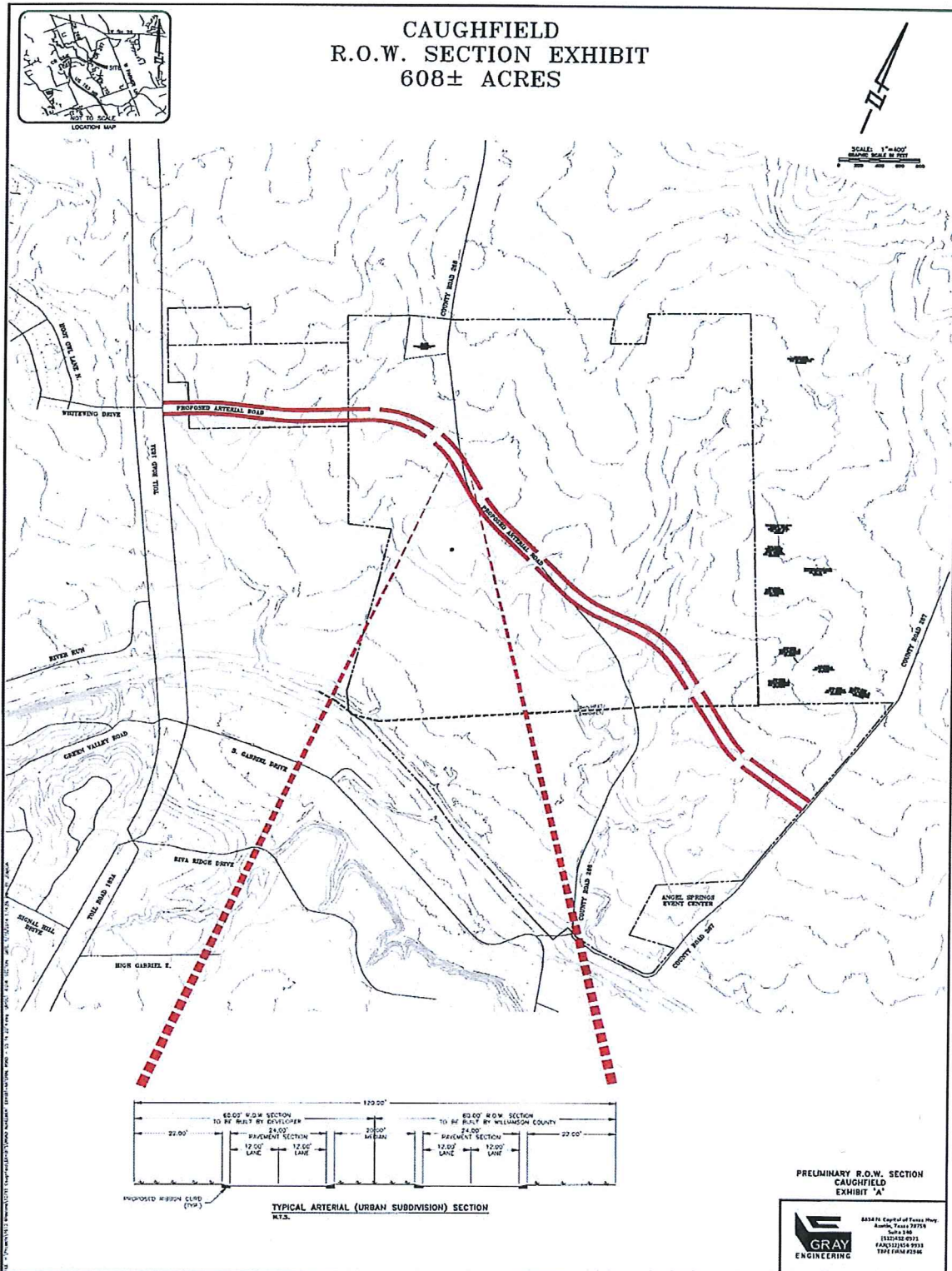
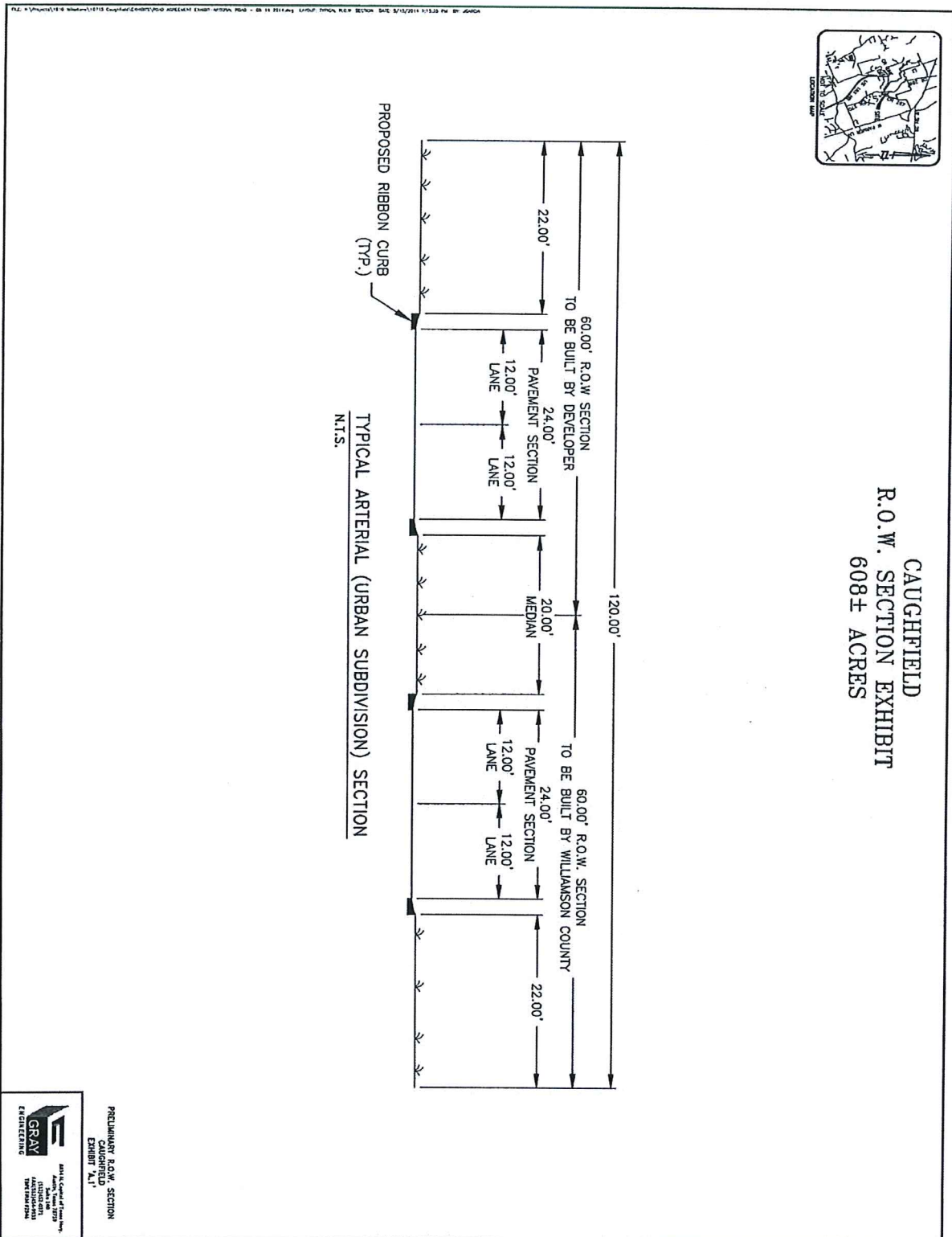


EXHIBIT B-2



CAUGHFIELD
183A INTERSECTION
608± ACRES

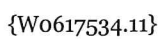
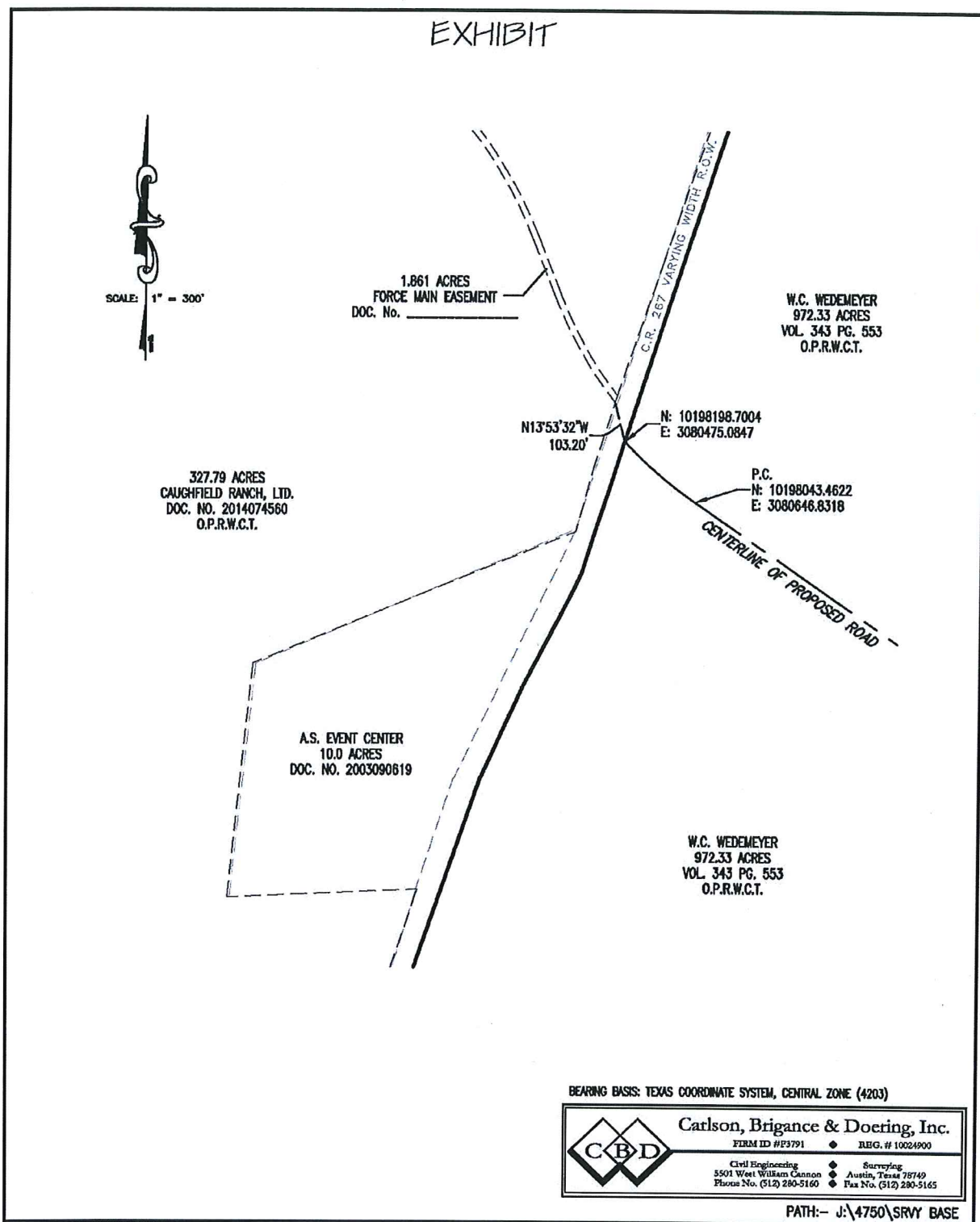


EXHIBIT B-4



CAUGHFIELD
TY ROAD 266/267
608± ACRES

